

FACSIMILE SHEET

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner
500 E Street, S.W., Suite 850
Washington, DC 20254

Date: _____

Number of Pages: 4From: Brian D. Coyne
Chief of StaffTo: Diana Fortuna

Location/Organization: _____

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Fax Number: (202) 358-6076

Fax Number: 456-7431**Message:**

The Washington, D.C. Office of the Commissioner has relocated effective October 28, 1996. Please note the new address, telephone and fax numbers listed above.

**TALKING POINTS
WELFARE REFORM AND SSI CHILDHOOD DISABILITY ISSUE**

Q: Under the welfare reform law signed by the President on August 22, 1996, the Social Security Administration was to issue regulations establishing a new eligibility standard for children with disabilities and publish the standard in the Federal Register by November 22, 1996? Why hasn't the SSA complied with the law?

A: The welfare reform law did change the statutory definition of disability for children under the SSI program. The statutory language stated that the child's disability must impose "marked and severe" functional limitations on the child. It was left to the Social Security Administration to specifically define this new eligibility standard through implementing regulations.

Since the passage of welfare reform, SSA has been involved in a very intensive discussion over the policy and legal issues surrounding the interpretation of this new law. Disability is a complex issue, and drafting regulations to implement this new law is an enormous task. It is taking some time to work through these issues. I am confident that the final result will be a set of regulations that meet both the letter and spirit of the law, ensuring that all children and families affected will be treated fairly and compassionately.

Q. When will the new childhood disability standard be announced and published in the Federal Register?

A: The new disability standard will be published as quickly as possible. However, because this new standard will have a direct impact on thousands of low-income disabled children, it is essential that we take whatever time is necessary to ensure that the new guidelines are appropriate. We must ensure that they meet the letter and spirit of the law and yet protect SSI entitlement for those disabled children who we all agree should receive benefits under the program.

Q: It is my understanding that about 100,000 new applications for SSI disability benefits from disabled children are being held by SSA and cannot be processed until this new disability standard is published. Aren't you concerned about the negative consequences this has for low-income families with disabled children?

A: Absolutely. We are very concerned about this impact. But, as I stated previously, we are also concerned about the equally adverse consequences of rushing too quickly to establish a new standard without carefully considering all the policy and legal issues that might arise under this new standard.

SSA will move as quickly as possible to expedite the processing of those claims as soon as the new standard is established.

Q: As you know, the advocates are saying that the Administration has a great deal of leeway in setting the new standard and are arguing for a more liberal interpretation where fewer children would lose benefits. On the other hand, many Republicans on the Hill have said they are watching the Administration closely to ensure that the new standard follows the statutory intent of welfare reform. What effect will either have on the Administration's final decision?

A: We will always welcome the advice of various constituencies. But, in the end, we must take actions that are consistent with the law and in the public interest. In this case, we will carefully consider all the various policy and legal issues and arrive at a standard that is most appropriate based on the letter and spirit of the law.

Q: The President has repeatedly stated that there were parts of the welfare reform law that he objected to and would like to seek changes to. Will the Administration attempt to circumvent the welfare reform law by developing a new definition of disability for disabled children not consistent with congressional intent?

A: Absolutely not. As I have stated, we will carefully consider all the various policy and legal issues and arrive at a standard that is most appropriate based on the letter and spirit of the law, yet protect SSI entitlement for those disabled children who we all agree should receive benefits under the program.

Q: How many disabled children currently receiving SSI benefits will SSA have to re-review once the new disability standard is established?

A: SSA will be required to redetermine the eligibility of approximately 300,000 children who currently receive disability benefits under the SSI program.

Q: I understand SSA will begin sending notices next week to the 300,000 children whose cases must be re-reviewed under the new standard. How can SSA send notices to these children informing them of the review process when the new standard hasn't been finalized?

A: Under the law, SSA is required to send notices by January 1, 1997 stating that a child's case will be reviewed in the near future. Although the final rules on the new eligibility standard have not been finalized yet, we believe it is appropriate and fair to inform those who might be affected by the new law as early in the process as possible. Under the law, benefits cannot be terminated for any child before July 1, 1997.

Q: Is the White House involved in these discussions?

A: The Office of Management and Budget and the Domestic Policy Council have been involved in discussions with the Social Security Administration about the legal and policy issues surrounding interpretation of this new law.

Q: Who will make the decision on interpreting the new law?

A: The Commissioner of Social Security

facsimile
TRANSMITTAL

Fortuna - fyi

to: Carol Rasco
fax #: 456-2418
re: Regulations for SSI provisions in welfare bill
date: October 8, 1996
pages: 3, including this cover sheet.

From the desk of...

Elizabeth A. Luse
Council
Special Committee on Aging
U.S. Senate
Washington, DC 20510

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United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6000

MARY BERRY GELWIN, STAFF DIRECTOR/CHIEF COUNSEL
 THERESA M. FORESTER, MINORITY STAFF DIRECTOR

October 8, 1996

The Honorable Bill Clinton
 President of the United States
 The White House
 Washington, DC 20500

Dear Mr. President:

The recently enacted welfare reform legislation included changes to the eligibility standard for low-income children who receive Supplemental Security Income (SSI). The legislation eliminated the Individual Functional Assessment, an eligibility standard formulated for children as a result of the Supreme Court decision in *Sullivan v. Zebley*. The Social Security Administration (SSA) is now in the process of carrying out a directive to draft a new definition that will permit a child to receive benefits if he or she has a "medically determinable physical or mental impairment, which results in marked and severe functional limitations."

As Chairman of the Senate Special Committee on Aging, I have worked to ensure that the SSI program is not vulnerable to false claims for disability benefits from disabled adults, immigrants, and children. However, I am concerned that as SSA carries out its mandate to revise the disability criteria, children with severe disabilities may be denied eligibility unfairly.

Congress intended that the new eligibility guidelines should be more strict than the Individual Functional Assessment; however, Congress recognized that the revised standard should continue the use of criteria which take into account functional limitations. In addition, there was no explicit directive that the new standard equal the level of severity generally found in the Listing of Medical Impairments.

Evidence of congressional intent can be found in a colloquy between Senator John Chafee and Senator Bob Dole (Cong. Rec. S13614). My colleagues noted that a definition requiring a "marked, severe, and pervasive impairment" was rejected by the conferees. When this language was proposed, the Congressional Budget Office (CBO) calculated that the number of children who would be affected could be anywhere from 10 to 28 percent of the children currently on the program. Upon further consideration, the term "pervasive" was dropped from the definition because the term implied some degree of impairment in almost

The Honorable Bill Clinton

October 8, 1996

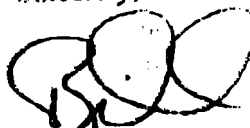
Page 2

all areas of a child's functioning or body systems. With the deletion of the term "pervasive," it is clear that Congress is not demanding a drastic change in the level of severity required to demonstrate eligibility for benefits. In choosing a more lenient definition, it is also clear that the number of children who ultimately lose benefits will be lower than the range cited by CBO.

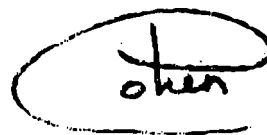
L why doing SBA?
The SSI program provides critical health services and financial support for families with disabled children. While the program has experienced problems, I believe that SSA has initiated steps to implement safeguards which protect against potential abuses. I know that you will do whatever you can to encourage a standard that will promote confidence in the program and will direct help to those who need it most. *lost?*

With best wishes, I am

Sincerely,



William S. Cohen
Chairman



cc: Carol Rasco, Director
Domestic Policy Counsel
Shirley Chater, Commissioner
Social Security Administration

Attachment 3
How Cases Would be Treated Under Different Options

OPTION	LEVEL OF SEVERITY
Denials Under All Options	ONLY MODERATE LIMITATIONS
Qualify Under Option 3: Adding a New Functional Step at less than Listings Level	ONE MARKED LIMITATION AND ONE MODERATE LIMITATION
Qualify Under Option 2: Using Functional Equivalence with a Motor Domain and a Form Qualify Under Option 1: Using Functional Equivalence within the Listings	TWO MARKED LIMITATIONS

Examples of Moderate and Marked Functional Limitations

CHILD #1 -- MENTAL IMPAIRMENT 14-year old boy with mild mental retardation who does not have specific medical findings to meet listings	CHILD #2 -- PHYSICAL IMPAIRMENT 12-year old girl with juvenile rheumatoid arthritis who does not have specific medical findings to meet listings
<u>Example of Moderate in Personal Domain:</u> can be on his own only in familiar places; can only handle small amounts of money; has to be reminded of personal care at home <u>Example of Moderate in Social Domain:</u> has only occasional difficulty maintaining relationships with children his own age	<u>Example of Moderate in Motor Domain:</u> occasional pain and stiffness in knees and ankles limits walking when pain occurs; unable to run; is sometimes symptom-free; sometimes has general malaise from illness and medication <u>Example of Moderate in Personal Domain:</u> pain and stiffness in wrist are less frequent and severe; when they occur, cause some difficulty in self-care activities such as eating, dressing, toileting <u>Example of Moderate in Social Domain:</u> when symptoms are present, tends to be irritable and avoids interacting with people.
<u>Example of Marked in Personal Domain:</u> gets lost when on his own; can't handle money; requires close supervision at home for bathing and dressing <u>Example of Marked in Social Domain:</u> has serious difficulty maintaining relationships with children his age	<u>Example of Marked in Motor Domain:</u> frequent pain and stiffness in knees and ankles requires cane to walk; unable to run; is rarely symptom-free; frequent general malaise from illness and medication <u>Example of Marked in Personal Domain:</u> frequent pain and stiffens in wrists causes serious difficulty eating, dressing, toileting, etc.; is rarely symptom free <u>Example of Marked in Social Domain:</u> Because of frequent illness and symptoms, is depressed, irritable, and socially withdrawn

DRAFT

Attachment 7

Summary of SSA Table on How Cases Would be Treated Under Different Options

OPTION	CHILD #1 14-year old boy with mild mental retardation who does not have specific medical findings to meet listings	CHILD #2 12-year old girl with juvenile rheumatoid arthritis who does not have specific medical findings to meet listings
Denials Under All Options	ONLY MODERATE LIMITATIONS Example of Moderate in Personal Domain: can be on his own only in familiar places; can only handle small amounts of money; has to be reminded of personal care at home Example of Moderate in Social Domain: has only occasional difficulty maintaining relationships with children his own age	ONLY MODERATE LIMITATIONS Example of Moderate in Motor Domain: occasional pain and stiffness in knees and ankles limits walking when pain occurs; unable to run; is sometimes symptom-free; sometimes has general malaise from illness and medication Example of Moderate in Personal Domain: pain and stiffness in wrist are less frequent and severe; when they occur, cause some difficulty in self-care activities such as eating, dressing, toileting Example of Moderate in Social Domain: when symptoms are present, tends to be irritable and avoids interacting with people.
Qualify Under Option 3: Adding a New Functional Step at less than Listings Level	ONE MARKED AND ONE MODERATE LIMITATION	ONE MARKED AND ONE MODERATE LIMITATION
Qualify Under Option 2: Using Functional Equivalence with a Motor Domain and a Form Qualify Under Option 1: Using Functional Equivalence within the Listings	TWO MARKED LIMITATIONS Example of Marked in Personal Domain: gets lost when on his own; can't handle money; requires close supervision at home for bathing and dressing Example of Marked in Social Domain: has serious difficulty maintaining relationships with children his age	TWO MARKED LIMITATIONS For Option Two Only: Example of Marked in Motor Domain: frequent pain and stiffness in knees and ankles requires cane to walk; unable to run; is rarely symptom-free; frequent general malaise from illness and medication For Options One and Two: Example of Marked in Personal Domain: frequent pain and stiffens in wrists causes serious difficulty eating, dressing, toileting, etc.; is rarely symptom free Example of Marked in Social Domain: Because of frequent illness and symptoms, is depressed, irritable, and socially withdrawn

United States Senate
Office of the Democratic Leader
Washington, DC 20510-7020

October 4, 1996

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

You have an opportunity to implement the recently enacted welfare reform legislation in a manner that treats low-income disabled children fairly. In crafting a new definition of disability for children under the Supplemental Security Income (SSI) program, Congress provided the executive branch with great latitude to interpret the statute. Knowing of your long-standing commitment to these children, I know you will use that latitude wisely.

My staff and I were deeply involved in crafting with Senator Dole, Senator Chafee and Senator Conrad the compromise language that ultimately became the basis for the new law. We made a conscious and sustained effort to ensure that the Social Security Administration was granted considerable discretion to implement regulations that would tighten the program without dropping truly disabled children from the rolls. This understanding is confirmed by the views of the Congressional Budget Office (CBO) at the time; CBO told Congress that the new policies could cut between 10 to 28 percent of the children from the program, depending upon SSA's regulatory interpretation.

A great deal of effort went into forging a bipartisan compromise over reforming this program. In the end, we reaffirmed that a functional assessment of a child's abilities was critical in evaluating childhood disability. The legislative history makes clear that, to accomplish this, SSA should establish a functional assessment beyond the "Listings of Impairments." The new definition of disability, requiring that qualifying impairments be "marked and severe functional limitations," explicitly does not establish the listings level of severity, or any equivalent measure, as the basis for determining childhood disability. For SSA to interpret the statute otherwise would be a tragic mistake with potentially devastating consequences for thousands of this nation's most vulnerable children.

Certainly, the new statute requires SSA to eliminate the old Individualized Functional Assessment. It does not, however, compel SSA to adopt the very strict level of the listings. A better approach, which we envisioned when crafting the compromise language, would require one marked and one moderate disability in order to qualify. This approach is supported by several respected organizations representing children with disabilities with whom we consulted in the process of developing the new definition. Such an approach meets the statutory requirement that the test determine eligibility only for "marked and severe functional limitations" without requiring the listings level of severity.

call Debbie Chung

Pol. shift in last yr

- { def of severe
- { Lindy + Haskins called Judy C
- { call Rubiner - got rid of abuse
- end'd IM/m
- Rens, 7 ACT

Sen - Alex → Roth
+ Santorum

House - McCrory, Shaw
H. running road
Jeweller - RFC - late lawsuit

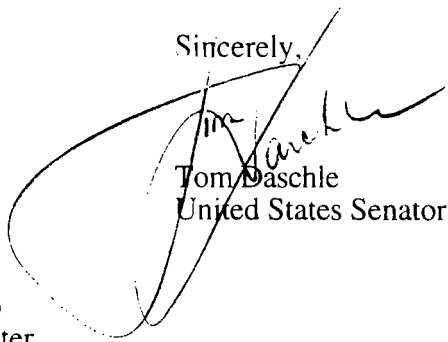
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October 4, 1996
Page Two

I trust that you will do everything you can to strike a balance that ensures only those children who are severely disabled receive SSI benefits, without denying those who are truly deserving. Thank you for your consideration of this legislative history in interpreting the new law in the best interest of America's most vulnerable children.

With best wishes, I am

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Tom Daschle". The signature is written over the printed name and title.

Tom Daschle
United States Senator

cc: The Honorable Carol Rasco
The Honorable Shirley Chater

DRAFT

MEMORANDUM FOR FRANK RAINES AND CAROL RASCO

FROM: Ken Apfel, Sally Katzen, and Diana Fortuna

SUBJECT: Determination of Childhood Disability in the Supplemental Security Income Program under Welfare Reform -- DECISION

ISSUE

The welfare reform law provided a new general definition of childhood disability for the Supplemental Security Income (SSI) program intended to tighten eligibility requirements, but its terms are not precise. The Administration supported some tightening. The Social Security Administration is given substantial discretion in drawing the eligibility line.

Based on discussions with SSA, this paper provides ^{Also on diff} three options that differ considerably in terms of how many children will lose benefits. Soon after a decision is made, SSA can begin to process new claims; approximately 1,500 cases per day are being held pending a resolution of this issue.

Budgetary impacts associated with the options range from affirming the \$7.5 billion savings over the six-year period from FY1997-FY2002 scored at the time of enactment, to a loss of \$5.9 billion of those savings. Note that scoring at the time of enactment is not binding; at the time of the February budget, we will re-estimate the baseline in any case.

BACKGROUND

Under SSI, an individual under the age of ^{to} eighteen with physical or mental impairments of sufficient severity may be determined disabled for purposes of receiving means-tested cash benefits. Prior to enactment of welfare reform, a child was considered disabled if he or she had an impairment of "comparable severity" with that of an adult. Further, in response to a Supreme Court decision (*Sullivan v. Zehley*), SSA established an additional step (known as the Individualized Functional Assessment or IFA) that allowed for a determination of disability at a lower level of severity than was in place prior to that decision. Approximately one million children are currently receiving benefits. ~~(*Sullivan v. Zehley*)~~

The definition in the new law states that a child is disabled if he or she has an impairment which results in "marked and severe functional limitations." The new law explicitly eliminated the IFA. It was by this action that Congress most clearly signaled its intention that the eligibility standards should be tightened.

DRAFT

The disability determination process involves first identifying whether a child's impairment can be found to "meet or equal" the impairments in SSA's 100-page tabulation of medical impairments (known as the Listing of Impairments). If a child's impairment is not found in the Listing and is not found by an evaluating physician or psychologist to "medically equal" an impairment in the Listing, the individual may still be determined to be disabled. He or she can be found to have an impairment that is "equivalent" to the listing by an evaluation of the functional limitations caused by the impairment in a number of "domains," such as personal behavior and social behavior. In these cases, the disability determination hinges on the level of severity of the functional limitation. Individuals are found to have impairments equivalent to the Listing if they have "marked" limitations in at least two "domains"-- the "two marked" criteria has become known as "Listing level severity."

Jd

Here is where FA came in under old law

why?

OPTIONS

Attachment 1 is a chart summarizing the impacts of each of the following three options. Below is a brief description of each option. We can provide more detailed descriptions of the options if you wish.

Option 1 -- "Two marked"; savings: \$7.5 billion; children on rolls losing benefits: 190,000. SSA would separate the current "functional equals" procedures and regulations from the rest of the Listing in which they are currently embedded and highlight them in such a way as to clarify the way in which the evaluations should be conducted. The procedures, however, would be essentially unchanged. The level of severity would be "Listing level." Savings are the same as the estimate at the time of enactment.

Option 2 -- "Two marked; add motor domain"; savings: \$5.6 billion; children on rolls losing benefits: 145,000. SSA would add a "motor domain" to the four mentally-oriented behavioral domains currently used for the functional equivalence evaluation. The addition of this physically-oriented domain would ensure greater consideration of limitations caused by physical impairments. The level of severity would be "Listing level," with the "motor domain" essentially providing an additional opportunity to have a "marked" limitation in a second domain. In addition, SSA would put in place a standard form that adjudicators would be required to fill out when making their determinations. SSA believes that this form would promote greater uniformity in decisionmaking. Savings under this option would be 25% less than under Option 1.

Option 3 -- "Lower-than-Listing level; additional functional step"; savings: \$1.6 billion; children on rolls losing benefits -- 45,000. An additional functional step at a lower-than-Listing level of severity would be added to the determination process. The rationale for this option comes from arguments being made by advocates and by some members of Congress (see Senator Chaffee's letter at Attachment 2) that the Congress did not intend to establish a "Listing level" severity standard, even after eliminating the IFA. These advocates want the least possible impact of the

Add
Dashed

Option 4 — Redirect SSA to
identify an alt betw Opt 2 + 3

DRAFT

new law. Because the Conference Report explicitly stated that "in those areas of the Listing that involve domains of functioning, the conferees expect no less than two marked limitations as the standard for qualification," proponents of Option 3 need to include an additional step, not required by the law, outside the Listing in order to establish a "lower-than-Listing" standard. Savings would be 78% less than under Option 1.

RECOMMENDATION

We recommend Option 2. Although Option 1 is arguably closer to Congressional intent because it ties to OMB and CBO scoring, it is the most severe in terms of impact. Our goal is to find a way to reduce impact while remaining consistent with our policy to tighten eligibility. Option 3 would put SSA in the position of defending a much lower threshold than could fairly be said to have been anticipated by either the President or the Congress. Option 2's addition of a "motor domain" and the greater discipline on the process that would result from the standard form would help ensure that a significant number of severely disabled children are found eligible without lowering the standard of severity below that explicitly identified in the Conference Report as appropriate.

One alternative to this recommendation could be to do Option 1 by regulation now and Option 2 by legislation. Under this alternative, we would be ensuring that no member of Congress could accuse the Administration of being less stringent through regulation than was anticipated when this provision of the bill was scored. However, as many as 45,000 of the children currently receiving benefits could lose them while waiting for enactment of Option 2.

Attachments (2)

c: Barry Anderson

Prepared by: Richard Green
Program Examiner
Income Maintenance Branch

DRAFT

Attachment 1

COMPARISON OF OPTIONS FOR DETERMINING SSI CHILDHOOD DISABILITY UNDER WELFARE REFORM

	SEVERITY STANDARD FOR DISABILITY	CHANGE IN EVALUATION PROCEDURES	REDUCTIONS IN SSI PAYMENTS		REDUCTIONS IN NUMBER OF SSI RECIPIENTS	
			1997-2002	IN 2002	CHILDREN IN CURRENT PAY STATUS	CHILDREN RECEIVING BENEFITS IN 2002
Option 1 -- Listing Level Severity; Procedures Clarified	Listing Level -- <u>"two marked"</u>	Listing procedures clarified, but unchanged; IFA step dropped	\$7.5 billion (bill scoring)	\$1.7 billion (bill scoring)	190,000	250,000
Option 2 -- Option 1 plus New Motor Domain plus Functional Equals Form	Listing Level -- <u>"two marked"</u>	new domain added; standard form to be completed by adjudicator; IFA step dropped	\$5.7 billion	\$1.2 billion	145,000	185,000
Option 3 -- Additional Functional Step at Less than Listing-Level Severity	Less than Listing Level -- <u>"one marked, one moderate"</u>	IFA step dropped, but new step added	\$1.6 billion	\$0.3 billion	45,000	50,000

ID:

SEP 30 '96 23:46 No.020 P.05

JOHN H. CHAFFEE
RHODE ISLAND

CHAIRMAN, COMMITTEE ON
GOVERNMENT AND PUBLIC WORKS

COMMITTEE ON FINANCE

JOINT COMMITTEE
ON TAXATION

SENATE ARMS CONTROL
OBSERVER GROUP

United States Senate

WASHINGTON, DC 20510-3802

September 17, 1996

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The Honorable Bill Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

Your administration has a key role to play in the implementation of the children's Supplemental Security Income (SSI) provisions that were included in the welfare reform bill enacted last month. While we are all interested in ensuring that only children who are truly disabled receive SSI benefits, we are equally concerned that those children who are, in fact, severely disabled remain eligible for the program. The Social Security Administration (SSA) has the difficult responsibility of striking a balance between these two goals.

The statutory language was intended to give SSA substantial discretion in drawing the eligibility line for this program. Clearly, the new law cannot be read to allow SSA to continue the current level of severity which drew so much criticism. At the same time, the new definition was never intended to "gut" the program and, in fact, affirms the importance of functional assessment as part of an effective evaluation of childhood disability.

The debate over this issue was heated at times, but, ultimately, we reached a compromise on the definition of childhood disability in September, 1995. That definition became part of the overall Congressional compromise on SSI, and was included in the first two versions of welfare reform approved by Congress and then finally in the bill enacted in August. The compromise is notable in two ways. First, it preserves a broad functional approach, beyond the "Listings of Impairments," in measuring childhood disability. Second, it specifically does not establish the listings level of severity, or any equivalent level of severity, as the measure to be used in assessing childhood disability.

The enclosed Senate colloquy between those of us involved in this compromise is important in understanding the meaning of the new definition. This colloquy was not entered into lightly. Rather, it was the subject of much negotiation and was key to the final language of the definition regarding "physical and mental impairment, which results in marked and severe functional limitations" after dropping the requirement that the effect of the impairment also be "pervasive".

Keith Jack
Call after you
review
KA

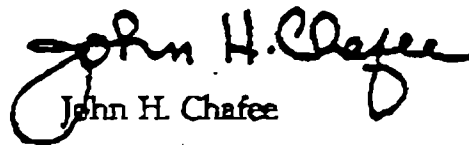
The Honorable Bill Clinton
September 17, 1996
Page two

It is certainly appropriate for SSA, as the regulatory agency, to adopt a disability test that is stricter than the old Individualized Functional Assessment (IFA), but which is not at the very strict level of the "Listings." The proposal put forward by several disability advocates and organizations with considerable expertise — a one marked/one moderate level — is an acceptable and reasonable approach that fulfills the statutory demand for a test that allows benefits only for marked and severe functional limitations, but does not require that these limitations be pervasive.

The Congressional Budget Office (CBO) has also acknowledged that SSA would have a great deal of flexibility in meeting the requirements of the new law. The enclosed Senate Finance Committee report shows that CBO estimated that the new definition of childhood disability could bar anywhere from 10-28 percent of children from the program, depending upon the regulatory interpretation of the new definition.

I know that you will do everything in your power to ensure that children with severe disabilities who are truly deserving are not harmed by the changes in the new welfare law. Thank you in advance for your attention to this matter. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely,


John H. Chafee

JHC:bd

cc: Secretary Shalala
Commissioner Chater

"DRAFT"** Add INS notice re
naturally to SSI***OPTIONS FOR THE TITLE XVI CHILDHOOD DISABILITY STANDARD UNDER
P.L. 104-193:****INTRODUCTION**

The new law defines disability for individuals under age 18 as "marked and severe functional limitations." Because this language is a new standard for deciding childhood disability and not specific enough for adjudication, it is necessary to more specifically define the level of severity intended by Congress.

The conference report states that only needy children with severe disabilities should be eligible for SSI. Under options 1 through 4 in this paper, we interpret the statutory standard to mean that a child's impairment will be disabling if it "meets," "medically equals," or "functionally equals" the severity of an impairment in our listings. However, there are other interpretations of this same language that reach a less restrictive conclusion, and that is covered in Option 5.

The key issues are how we will evaluate the functional limitations of children claiming benefits and the level of severity of the standard. The model we start with in Option 1 is current "functional equivalence," most often established by "marked" limitations in two of four functional areas. Thus, Option 1 illustrates a way our existing procedures could achieve the level of severity we believe Congress intended. This option results in the majority of children previously put on the rolls under the IFA procedure being dropped, and is consistent with earlier CBO impact estimates.

Option 5 is the other end of the spectrum, illustrating an approach proposed by Advocate groups, which maintain that only minimal change in the number of children on the rolls was intended. Option 5 results in very few children being removed and very little of the original projected savings.

We also identify several options that address both procedural and policy concerns that have been raised about our current functional equivalence instructions. Adoption of these features could result in somewhat fewer children being removed from the rolls than in the original estimates.

*- who are 25-80%**→ Ask Chafee/Conrad/other?**→ Brief CR**- other cuts**- How to sell a doc's
- ask for a compromise**~~Susan?~~**Comment next wk
- 1 -**IM 3m
APP, Conrad, NASE**and
Admirals*

"DRAFT"**OPTION 1: LISTING-LEVEL SEVERITY. FUNCTIONAL EQUALS PROCEDURES/REGULATIONS SEPARATED AND HIGHLIGHTED****Description**

Under this option, functional equals will be the last step in the process and will be applied in every case where an impairment does not meet or medically equal a listing. While functional equals procedures already exist, they may not have been given the attention needed in every case because of the IFA step.

In this option, the functional equals provision would be a stand-alone regulation, not part of the regulation on equivalence, as is now the case. We would also add clarifying information from existing POMS instructions and provide a standard format to ensure evaluation of physical and multiple impairments. This option would not be a change in current functional equals policy.

Pros

- o All children get a functional evaluation
- o Clear message of requirement to use/document functional equals
- o Builds on existing instructions/regs
- o Clarifies current policy/little training needed
- o Already partially drafted-- deadline can be met
- o Can work cases immediately
- o Standard format will improve consistency

Cons

- o Advocates will say listing-level-only standard was not intended
- o Some concern that functional equals is not well-understood, needs clarification and focus to be applied as intended, and that little change is being signaled which may result in inadequate evaluation (but see Pros, which address to some extent)

Implementation

We can implement this option within the 90-day deadline. We can draft the standard format quickly, and the regulations are already partially drafted. We can also quickly provide interim instructions to adjudicators. With clarifications, little additional training will be needed. This will enable us to begin processing the majority of new childhood claims filed since August 22.

Impact: See attached impact estimates. The savings from this option are in line with the original estimates.

Examples: See attached examples.

"DRAFT"

OPTION 2: SAME AS OPTION 1, PLUS A "MOTOR" DOMAIN

Description

The distinguishing feature under this option would be the addition of a fifth, "motor," domain to the four domains used for functional equivalence evaluation under Option 1. The additional domain would ensure more consideration of limitations caused by physical impairments and accord them more independent weight. Although we state in our current regulations that all the physical and mental functional limitations are included in the listings, adding a motor domain would reemphasize this principle and make it clearer. However, we would have to ensure that our rules avoid double-weighting between the motor and other domains.

Pros

- o All children get a functional evaluation
- o Highlights functional equals for physical and multiple impairments
- o Clear message of requirement to use and document functional equals
- o Standard format helps to clarify and achieve consistency among decisions
- o More like a new method of determining disability than simply reiterating old functional equals policies

Cons

- o Requires more complex restructuring of existing instructions/regs than Option 1
- o Training will be needed
- o Advocates may still say listing-level-only standard was not intended
- o Some concern that functional equals is not well-understood, needs clarification and focus to be applied as intended-- addition of a "motor" domain may not address

Implementation

Assuming some new instructions would need to be written, it is more problematic to implement the regulations for this option within the 90-day deadline. (OMB assistance would be critical to meeting deadlines.) Adjudicators will need training to apply the new "motor" domain under functional equivalence. Also, interim instructions could not be released as quickly; claims filed since August 22 would have to be held until any needed instruction changes are resolved.

Impact: See attached impact estimates. The savings under this option are about 10% less than the original estimates.

Examples: See attached examples.

"DRAFT"**OPTION 3: SAME AS OPTION 2, PLUS A FUNCTIONAL EQUALS FORM****Description**

The distinguishing feature of this option from Option 2 is a requirement to complete a standard form, as opposed to simply providing the guidance of a format. This should provide better understanding of the decisionmaking process and promote even greater uniformity. The structure of a form will make the division of the limitations more evident and result in more allowances.

Pros

- o Same as in Option 2
- o Better understanding and greater uniformity across States

Cons

- o Same as Option 2
- o Form must be drafted, approved, printed, and distributed

Implementation

The implementation issues are the same as in Option 2. In addition, we would have to work closely with OMB to expedite clearance of the new form. Printing and mailing will likely cause further delay in meeting implementation deadlines. We note too that this option could be used with Option 1 without the addition of the motor domain under Option 2. In fact, the majority of additional children allowed under this option would still be allowed without the new motor domain.

Again, it is not possible to release interim instructions to adjudicators under this option due to need to get new policies and the form developed. If only the new form is employed (and not a new motor domain), there might be ways to start processing new claims as soon as the contents of the new form are determined.

Impact: See attached impact estimates. The savings under this option are about 25% less than the original estimate. If only the form is added and not the motor domain, the savings would be about 20% less than the original estimates.

Examples: See attached examples.

"DRAFT"

OPTION 4: SAME AS OPTION 3, BUT LIMITATIONS THAT ARE NOT CLEARLY "MODERATE" OR "MARKED" WOULD BE DEEMED "MARKED"

Description

The distinguishing feature of this option from Option 3 is the incorporation of a recommendation of the National Commission on Childhood Disability:

Requiring that, after all available evidence has been obtained, if SSA judges that such evidence could support a severity determination of either "marked" or "moderate" in a particular functional domain, a presumption that the limitation is "marked" would be applied.

Report to Congress of the National Commission on Childhood Disability: Supplemental Security Income for Children with Disabilities, October 1995, p. 55. Recognizing that judgments about "marked" and "moderate" are subjective, the intent was to give the benefit of the doubt to children at the margins.

Pros

- o Same as in Option 3
- o Would provide some additional protection for children in a limited number of cases

Cons

- o Same as Option 3
- o Could be more confusing and less uniform among decisions
- o Potential for severity "creep," with clear "moderates" in the upper range becoming "marked"

Implementation

The implementation issues are the same as in Option 3. We note too that this concept could be applied to any option or combination of options, including Option 1 alone and Option 1 plus a form.

Impact: See attached impact estimates. Additional savings from this option will be negligible. We estimate about the same 25% (or 20% without the motor domain) reduction from the original estimate as under option 3.

Examples: See attached examples.

"DRAFT"

OPTION 5: AN ADDITIONAL FUNCTIONAL STEP AT LESS THAN LISTING-LEVEL

Description

Based on a different interpretation of ambiguous conference language, functional equals would be retained, but an additional functional step would be added at a lower level of severity. An argument can be made that Congress rejected sole reliance on a listing-level severity standard, and that SSA should establish an additional functional step beyond the listings. The most frequent proposal is for a marked limitation in at least one domain combined with at least a moderate limitation in another domain. Allowances based on three moderate limitations would be eliminated.

Pros

- o Most supported by advocates because it leaves the great majority of children on the rolls

Cons

- o Not clear how a new functional step different from the just-eliminated IFA can be constructed--one marked and one moderate limitation is currently an IFA allowance
- o Could be perceived by Congress as an IFA by another name which leaves children on the rolls they intended to take off
- o Revisions are extensive, would take longer, and would delay issuance

Implementation

Drafting regulations would be relatively simple and quick, if we retain most of our IFA guidelines (under a new name). For interpretations other than a marked plus a moderate, regulations would take substantially longer.

To the extent that significant changes in regulations are required we could expect significant public interest and using the public comment process could be very useful. The regulations must also be shared with Congress 45 days before they are implemented.

Impact: See attached impact estimates. The savings under this option would be reduced by about 80% from the original estimate.

Examples: See attached examples.

"DRAFT"

Table 1.--Estimated reductions in Federal SSI payments under several options for implementing the standard of disability for children under P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, fiscal years 1996-2002

(in millions)

Option for implementing standard of disability for children ¹	Fiscal years							Total
	1996	1997	1998	1999	2000	2001	2002	1996-2002
Option 1. Listing-level severity, functional equals procedures separate	0	\$200	\$1,085	\$1,445	\$1,660	\$1,450	\$1,650	\$7,490
Option 2. Option 1 plus new motor domain	0	180	980	1,305	1,500	1,305	1,485	6,755
Option 3. Option 1 plus new motor domain and functional equals form	0	150	825	1,100	1,255	1,090	1,235	5,655
Option 4. Option 1 plus new motor domain, functional equals form, and some "moderate" impairments deemed to be "marked"	0	150	825	1,100	1,255	1,090	1,235	5,655
Option 5. An additional functional step at less than listing level severity	0	45	260	345	375	295	315	1,635

¹ Also includes the impact of the provisions requiring continuing disability reviews (CDRs) for certain children and eligibility redeterminations for SSI recipients who attain 18 years of age, *assum* that sufficient resources will be available to conduct all the reviews required. The benefit savings due to modifying the standard of disability for children have been reduced by the estimated savings from conducting CDRs on these children using the special administrative expenses whose appropriation was authorized under section 203 of P.L. 104-121.

² Reduction in benefit payments of less than \$2.5 million.

Notes: 1. Estimates are based on the assumptions underlying the President's Fiscal Year 1997 Budget.

2. Reductions in benefit payments shown above are projected on a cash outlay basis. In particular, SSI payments due on October 1st in fiscal year 2001 are included with benefit payments for the prior fiscal year.

Social Security Administration
Office of the Chief Actuary
September 17, 1998

"DRAFT"

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Table 2.—Estimated reductions in average number of Federal SSI recipients in payment status under several options for implementing the standard of disability for children under P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, fiscal years 1996-2002

(in thousands)

Option for implementing standard of disability for children ^a	Fiscal years						
	1996	1997	1998	1999	2000	2001	2002
Option 1. Listing-level severity, functional equals procedures separate ^b	(7)	35	185	240	245	250	250
Option 2. Option 1 plus new motor domain.....	(2)	30	170	220	220	225	225
Option 3. Option 1 plus new motor domain and functional equals form.	(2)	25	140	185	185	185	185
Option 4. Option 1 plus new motor domain, functional equals form, and some "moderate" impairments deemed to be "marked".....	(2)	25	140	185	185	185	185
Option 5. An additional functional step at less than listing level severity	(7)	10	45	55	55	50	50

^a Also includes the impact of the provision requiring continuing disability reviews (CDRs) for certain children and eligibility redeterminations for SSI recipients who attain 18 years of age assuming that sufficient resources will be available to conduct all the reviews required. These are net of the estimated reduction in average number of Federal SSI recipients due to CDRs conducted on children using the special administrative expenses whose appropriation was authorized under section 203 of P.L. 104-121.

^b Reduction in average number of Federal SSI recipients in payment status of less than 2,500.

Note: Estimates are based on the assumptions underlying the President's Fiscal Year 1997 Budget.

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September 17, 1996

"DRAFT"

In the chart below, we provide two case examples and show the level of functional limitations required to be allowed under the first option. We then track similar kinds of cases through the other options to show how varying levels of functioning or procedural changes would permit allowances. As you move from option 1 through option 5, the necessary functional limitations become generally "easier" to show, and thus more cases are expected to be allowed.

OPTION	CHILD #1 A boy with mild mental retardation who does not have specific medical (IQ) findings to meet the listings	CHILD #2 A girl with juvenile rheumatoid arthritis who does not have specific medical findings to meet the listings
Option 1: Using Functional Equivalence	The functional evidence obtained shows he has marked limitations in two areas, personal functioning (gets lost when on his own, can't handle money, requires close supervision at home) and social functioning (has serious difficulty maintaining relationships with children his age.)	The functional evidence obtained shows she has marked limitations in two areas, personal functioning (pain in wrist causes serious difficulty eating, dressing, etc.; pain in legs requires cane to walk even short distances; is rarely symptom free) and social functioning (depressed, irritable, and socially withdrawn.)
Option 2: Using Functional Equivalence with a Motor Domain	Similar cases would not be affected by this option since it deals with physical impairments.	Would result in some increase in allowances in cases like these since some limitations caused by pain in wrist and legs could be marked limitation in the motor area (requires cane to get around and can't carry school books) as well as in the personal area (cause serious limitations in self care such as dressing, eating, etc.), and not requiring marked level of limitation in another area such as social.

Option 3: Using Functional Equivalence with a Motor Domain and a Form	would result in some increase in allowances of these kinds of cases since requiring a form to be completed would facilitate additional development and discovery of information not previously in file that would support marked functional limitations.	increase in allowances of cases like these since requiring a form to be completed would facilitate additional development and discovery of information not previously in file that would support marked functional limitations.
Option 4: Using Functional Equivalence with a Motor Domain and a Form and "Deemed" Marked	Would result in a few additional allowances of cases like these where an area of functioning is a close call between marked and moderate (such as in the social area where a child has <u>occasional serious</u> difficulty in relationships with children his age.)	Would result in a few additional allowances in cases like these where an area of functioning is a close call between marked and moderate (such as in the personal area where pain in her wrists is <u>less frequent</u> but still causes serious limitations in self care.)
Option 5: Using Functional Equivalence and adding a New Functional Step at the Marked/Moderate level	Would result in many more allowances in cases like these since only one area of functioning would have to have a marked limitation and the second area could have only a moderate limitation (moderate in personal would mean that he can be on his own only <u>in familiar places</u> , can only handle <u>small amounts</u> of money, has to be <u>reminded</u> of serious personal care problems at home.)	Would result in more allowances in cases like these since only one area of functioning would have to have a marked limitation and the second area could have only a moderate limitation (moderate limitation in personal area based on pain in wrist causing <u>some difficulty</u> in personal care activities.)
Denials under all options above	Cases like these where a child does not have any marked limitations but has moderate limitations only such as in personal (can be on his own only in familiar places, can only handle small amounts of money, has to be reminded of personal care at home) and in social (has only <u>occasional</u> difficulty maintaining relationships with children his own age.)	Cases like these where a child does not have any marked limitations but has moderate limitations only such as in the motor area (has <u>occasional</u> pain that limits walking, <u>sometimes</u> is symptom-free) and in the personal area (has some difficulty in personal care.)

$$\begin{array}{r}
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 \underline{570} \\
 1300
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 236 \\
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 = 24\%$$

DRAFT

Table 1.- Estimated Reduction in the average number of Federal SSI recipients in payment status under several options for implementing the standard of disability for children under P.L. 104-183, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, at selected times (in thousands)

Option for implementing standard of disability for children (1)	Children in Current Pay Status removed from the rolls (2)	Reduction in the average number of children receiving benefits in FY 2002		
		Current Pay	New Awards	Total
Option 1. Listing-level severity, functional equals procedures separated.....	190	105	145	250
Option 2. Option 1 plus new motor domain.....	175	90	135	225
Option 3. Option 1 plus new motor domain and functional equals form.....	145	75	110	185
Option 4. Option 1 plus new motor domain, functional equals form and some "moderate" impairments deemed to be marked.....	145	75	110	185
Option 5. An additional functional step at less than listing-level severity.....	45	25	25	50

(1) Also includes the impact of the provision requiring continuing disability reviews (CDRs) for certain children and eligibility determinations for SSI recipients who attain 18 years of age assuming sufficient resources will be available to conduct all the reviews required. FY 2002 columns are net of the estimated reduction in average number of Federal SSI recipients due to CDRs conducted on children using the special administrative expenses whose appropriation was authorized under section 203 of P.L. 104-121.

(2) Estimated number of disabled children receiving Federal SSI benefits as of enactment who would be removed from the rolls by July 1, 1997 if all appeals were processed by that date. To be consistent with earlier tables, this column does not take normal attrition into consideration.

Note: Estimates are based on the assumptions underlying the President's Fiscal Year 1997 Budget.

Social Security Administration
Office of the Chief Actuary
September 23, 1996

DRAFT

Table 2.- Estimated reduction in Federal SSI payments and average number of Federal SSI recipients under Option 1 for implementing P.L. 104-193 assuming that benefit continuation stops at the reconsideration level, fiscal years 1996-2002

	Fiscal Years							Total
	1996	1997	1998	1999	2000	2001	2002	1996-2002
Reduction in Federal payments (millions) (1)	*	\$220	1,225	1,445	1,655	1,450	1,850	\$7,645
Reduction in average number (thousands) (2)	*	40	210	240	245	250	250	

* Reduction less than \$2.5 million or 2,500 recipients

(1) Also includes the impact of the provisions requiring continuing disability reviews (CDRs) for certain children and eligibility determinations for SSI recipients who attain 18 years of age, assuming that sufficient resources will be available to conduct all the reviews required. The benefit savings due to modifying the standard of disability for children have been reduced by the estimated savings from conducting CDRs on these children using the special administrative expenses whose appropriation was authorized under section 203 of P.L. 104-121.

(2) Also includes the impact of the provision requiring continuing disability reviews (CDRs) for certain children and eligibility determinations for SSI recipients who attain 18 years of age assuming sufficient resources will be available to conduct all the reviews required. FY 2002 columns are net of the estimated reduction in average number of Federal SSI recipients due to CDRs conducted on children using the special administrative expenses whose appropriation was authorized under section 203 of P.L. 104-121.

Note: 1. Estimates are based on the assumptions underlying the President's Fiscal Year 1997 Budget.

2. Reductions in benefit payments shown above are projected on a cash outlay basis. In particular, SSI payments due on October 1st in fiscal year 2001 are included with benefit payments for the prior fiscal year.

Social Security Administration
Office of the Chief Actuary
September 23, 1996



OFFICE OF THE COMMISSIONER
BALTIMORE, MARYLAND 21235
(410) 965-3120

TO	FROM
NAME <i>Diana Fortuna</i>	NAME <i>Brian Cye</i>
TELEPHONE NUMBER	TELEPHONE NUMBER
FAX NUMBER <i>202/456-7431</i>	FAX NUMBER (410) 966-1463

REMARKS:

- CR remtg + examples
- MR example
*who can help here? *MA - who loses it??*
- Diane G
- rare diseases
- motor - what does it capture - gross/fine
- can include stamina
- 15 FE - don't know
- who are these kids? in current listings
- Handout

COVER AND

5

PAGES

OPTIONS FOR THE TITLE XVI CHILDHOOD DISABILITY STANDARD UNDER
P.L. 104-193: INTRODUCTION

The new law defines disability for individuals under age 18 as "marked and severe functional limitations." Because this language can be interpreted in various ways, a decision is needed about how the Agency will apply the new definition before we can proceed with implementing instructions and regulations. The decision is urgent because the legislation requires us to apply the new standard immediately, even in the absence of regulations, and most new applications and claims in the "pipeline" are being held until new instructions are issued. Moreover, P.L. 104-193 requires regulations to be published by November 20, 90 days after enactment. To meet this deadline, we need to finish writing and begin clearing the regulations immediately. We have promised to provide the draft rules to OMB 30 days prior to publication which means that the regulations must be drafted, cleared, and approved within the next 6 weeks.

There are two major issues to be decided: (1) The level of severity required for a child to be found disabled, and (2) the process for determining severity.

There are different opinions about the level of severity intended by the statute, but the most likely meaning based on SSA's discussions with congressional staff as the bills were being drafted, and the one that is best supported by the conference agreement, is that a child's impairment(s) will be disabling if it "meets," "medically equals," or "functionally equals" the severity of an impairment in our listings. (See Attachment A for an explanation of these terms.) Although this would return to the level of severity used prior to the Zebley decision in February, 1990, i.e., listing-level severity, the policy is in fact broader and more comprehensive, because it now includes functional equivalence. Nevertheless, some people hold that listing-level severity is still too restrictive. See Attachment B for a discussion of the arguments on both sides of this issue.

We implemented functional equivalence after the Zebley decision to address the Supreme Court's criticisms of our medical equivalence policy. Although there are various ways to apply functional equivalence, the model is the childhood mental disorders listings, which require "marked" limitations in two of four functional areas or "extreme" limitations in one.

There are also several processing options for evaluating the severity of impairments that do not meet or medically equal our listings. These options can have significantly differing effects on the number of children who are found disabled both on redetermination and in the future.

**OPTION 1: LISTING-LEVEL SEVERITY, FUNCTIONAL EQUALS
PROCEDURES/REGULATIONS SEPARATED AND HIGHLIGHTED**

Description

Current rules require a decision about functional equals in all cases that cannot be allowed on the basis of "meets" or "medical equals." However, functional equals may not have been given the attention it needed in every case because of the presence of the IFA step. With the elimination of the IFA, functional equals will now be the last step in the process and will be applied in every case where a child's impairment does not meet or medically equal a listing.

The functional equals provision would be published as a stand-alone regulation rather than as part of the discussion of listing equivalence, as is now the case. In addition, clarifying information from existing POMS instructions would be included to ensure correct evaluation of physical impairments. A standard format would be provided.

This alternative would not be a change in current functional equals policy. However, it would better focus adjudicators on functional equals, clarify the process, and may be viewed by advocates as a concession to some of their concerns.

Pros

- o Ensures that all children get a functional evaluation
- o Ensures fair application of functional equals to children with physical impairments as intended
- o Adjudicators get clear message of requirement to use and document functional equals in all cases
- o Helps to clarify the policy, and would be better accepted by advocates
- o Builds on existing instructions/regs (revisions already drafted--90-day deadline can be met)
- o Standard format helps achieve consistency among State decisions

Cons

- o Advocates will say listing-level only standard was not intended
- o Advocates have stated that functional equals is not well understood, needs clarification and focus to be applied as intended

Impact

This option would remove approximately 180,000 children from the rolls and yield the projected program savings. Previously estimated administrative cost savings would be reduced dramatically since we would expect adjudicators to explain their decision in a standard format, although many decisions would be less complex than under the IFA.

OPTION 2: AN ADDITIONAL FUNCTIONAL STEP AT LESS THAN LISTING-LEVEL**Description**

Based on a different interpretation of legislative intent, listing-level severity, including functional equals, would be retained, but an additional functional step would be added at a lesser level of severity. There are ambiguities in the conference language on this issue. (See Attachment B for more complete discussion.) An argument has been made that the Congress rejected sole reliance on a listing-level severity standard, and that SSA should establish an additional functional step beyond the listings, at a lower level of severity. The most frequent proposal is that a marked limitation in at least one domain combined with at least one moderate limitation in another domain would be required for entitlement.

Pros

- o Most supported by advocates because it leaves most children on the rolls

Cons

- o Not clear how a new functional step different from the just-eliminated IFA can be constructed--one marked and one moderate limitation is currently an IFA allowance
- o Could be perceived by Congress as an IFA by another name which leaves children on the rolls they intended to take off
- o Revisions are clearly too extensive for an interim final regulation, delaying issuance

not if just M/L

Impact

This option would only remove approximately 35,000 children and reduce projected program savings by 80 percent. It would achieve essentially none of the previously estimated administrative cost savings.

OPTIONS FOR BRIDGING THE GAP

Introduction

There is a significant difference in the impacts of Option 1 and Option 2 in terms of the number of children estimated to be removed from the rolls. There are several further steps that could be considered for bridging the gap between Option 1 and Option 2.

New Functional Equals Domain Structure

We would consider a new set of domains on which all functional equals determinations would be based. The domains could provide protection against double-weighting of limitations and better address physical impairments. This new domain structure could help answer advocate concerns about inadequacies in evaluation of physical impairments under current childhood mental listing domains (which are referenced under Option 1 as the way in which functional limitations are measured).

- o **Implementation:** It is believed that if we decide to address the new domain structure, proposed changes must be published in an NPRM and public comments considered before they become effective. Not only would it be difficult to complete development of the domains so that a regulations could be published by 11/22/96, but the domain structure is new and should be presented to the public for comment from advocates and the medical community.

Required Functional Equivalence Form

A requirement could be added that adjudicators must complete a form addressing each domain and rating a child's limitations in each. This requirement would further focus adjudicators on a complete, sound consideration of functional equals. The form differs from the structured format under Option 1 in that it is intended to be a check-block type form with rationale to assure basis for decisions. This option answers advocate charges that adjudicators have historically not given proper attention to the functional equals step.

- o **Implementation:** This option could used with the Option 1 approach or in conjunction with the NPRM in which the revised domains are published.

Some "Moderate" Impairments Deemed To Be "Marked"

Where all relevant evidence had been obtained and would support a severity determination of either "moderate" or "marked" (for example, some members of the adjudicative team think it is "moderate", others that it is "marked"), the limitation will be deemed to be "marked." This option allows some of the highest "moderates" to be consider as "markeds", thus, answering, in part, advocate concerns that a 2 marked standard denies children who should be allowed. This option was also one of the recommendations of the National Commission on Childhood Disabilities.

*fixing
issues*

*ISA
bad-month-
very bad kids
worth it?*

- o **Implementation:** It is believed that this option could be implemented in either Option 1 or as part of an NPRM.

Impact

These changes would reduce projected program savings by approximately 20%-40%.

whichever is later, and ends on September 30, 1997.

(iii) **CHILD CARE OBLIGATIONS EXCLUDED IN DETERMINING FEDERAL AFDC OBLIGATIONS.**—As used in this subparagraph, the term "obligations of the Federal Government to the State under part A of title IV of the Social Security Act" does not include any obligation of the Federal Government with respect to child care expenditures by the State.

(C) **SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 OR 1997 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA AND TERMINATION OF AFDC ENTITLEMENT.**—The submission of a plan by a State pursuant to subparagraph (A) is deemed to constitute—

(i) the State's acceptance of the grant reductions under subparagraph (B) (including the formula for computing the amount of the reduction); and

(ii) the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.

(D) **DEFINITIONS.**—As used in this paragraph:

(i) **STATE AFDC PROGRAM.**—The term "State AFDC program" means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

(ii) **STATE.**—The term "State" means the 50 States and the District of Columbia.

(iii) **STATE FAMILY ASSISTANCE GRANT.**—The term "State family assistance grant" means the State family assistance grant (as defined in section 403(a)(1)(B) of the Social Security Act, as added by the amendment made by section 103(a)(1) of this Act).

(2) **CLAIMS, ACTIONS, AND PROCEEDINGS.**—The amendments made by this title shall not apply with respect to—

(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this title under the provisions amended; and

(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

(3) **CLOSING OUT ACCOUNT FOR THOSE PROGRAMS TERMINATED OR SUBSTANTIALLY MODIFIED BY THIS TITLE.**—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made with respect to State expenditures under a State plan approved under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to assistance or services provided on or before September 30, 1995, shall be treated as claims with respect to expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. Each State shall complete the filing of all claims under the State plan (as so in effect) within 2 years after the date of the enactment of this Act. The head of each Federal department shall—

(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs under such State plans; and

(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than from funds authorized by this title.

(4) **CONTINUANCE IN OFFICE OF ASSISTANT SECRETARY FOR FAMILY SUPPORT.**—The individual who, on the day before the effective date of this title, is serving as Assistant Secretary for Family Support within the Department of Health and Human Services shall, until a successor is appointed to such position—

(A) continue to serve in such position; and

(B) except as otherwise provided by law—

(i) continue to perform the functions of the Assistant Secretary for Family Support under section 417 of the Social Security Act (as in effect before such effective date); and

(ii) have the powers and duties of the Assistant Secretary for Family Support under section 416 of the Social Security Act (as in effect pursuant to the amendment made by section 103(a)(1) of this Act).

(C) **TERMINATION OF ENTITLEMENT UNDER AFDC PROGRAM.**—Effective October 1, 1996, no individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act (as in effect on September 30, 1995).

TITLE II—SUPPLEMENTAL SECURITY INCOME

SEC. 200. REFERENCE TO SOCIAL SECURITY ACT.

Except as otherwise specifically provided, wherever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

Subtitle A—Eligibility Restrictions

SEC. 201. DENIAL OF SSI BENEFITS FOR 10 YEARS TO INDIVIDUALS FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN BENEFITS SIMULTANEOUSLY IN 2 OR MORE STATES.

(a) **IN GENERAL.**—Section 1611(e) (42 U.S.C. 1382(e)), as amended by section 105(b)(4)(A) of the Contract with America Advancement Act of 1996, is amended by redesignating paragraph (5) as paragraph (3) and by adding at the end the following new paragraph:

"(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this title during the 10-year period that begins on the date the person is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the person in order to receive assistance simultaneously from 2 or more States under programs that are funded under title IV, title XIX, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under this title.

"(B) As soon as practicable after the conviction of a person in a Federal or State court as described in subparagraph (A), an official of such court shall notify the Commissioner of such conviction."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 202. DENIAL OF SSI BENEFITS FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.

(a) **IN GENERAL.**—Section 1611(e) (42 U.S.C. 1382(e)), as amended by section 201(a) of this Act, is amended by adding at the end the following new paragraph:

"(5) No person shall be considered an eligible individual or eligible spouse for purposes of this title with respect to any month if during such month the person is—

"(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

"(B) violating a condition of probation or parole imposed under Federal or State law."

(b) **EXCHANGE OF INFORMATION.**—Section 1611(e) (42 U.S.C. 1382(e)), as amended by section 201(a) of this Act and subsection (a) of

this section, is amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under this title, if the officer furnishes the Commissioner with the name of the recipient, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the recipient, and notifies the Commissioner that—

"(A) the recipient—

"(i) is described in subparagraph (A) or (B) of paragraph (5); and

"(ii) has information that is necessary for the officer to conduct the officer's official duties; and

"(B) the location or apprehension of the recipient is within the officer's official duties."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 203. TREATMENT OF PRISONERS.

(a) **IMPLEMENTATION OF PROHIBITION AGAINST PAYMENT OF BENEFITS TO PRISONERS.**—

(1) **IN GENERAL.**—Section 1611(e)(1) (42 U.S.C. 1382(e)(1)) is amended by adding at the end the following new subparagraph:

"(I)(i) The Commissioner shall enter into an agreement, with any interested State or local institution described in clause (i) or (ii) of section 202(x)(1)(A) the primary purpose of which is to confine individuals as described in section 202(x)(1)(A), under which—

"(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, social security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the inmates of the institution as the Commissioner may require for the purpose of carrying out paragraph (1); and

"(II) the Commissioner shall pay to any such institution, with respect to each inmate of the institution who is eligible for a benefit under this title for the month preceding the first month throughout which such inmate is in such institution and becomes ineligible for such benefit as a result of the application of this subparagraph, \$400 if the institution furnishes the information described in subclause (I) to the Commissioner within 30 days after the date such individual becomes an inmate of such institution, or \$200 if the institution furnishes such information after 30 days after such date but within 90 days after such date.

"(II)(i) The provisions of section 552a of title 5, United States Code, shall not apply to any agreement entered into under clause (i) or to information exchanged pursuant to such agreement.

"(II) The Commissioner is authorized to provide, on a reimbursable basis, information obtained pursuant to agreements entered into under clause (i) to any Federal or federally-assisted cash, food, or medical assistance program for eligibility purposes.

"(III) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this title and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985."

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall apply to individuals whose period of confinement in an institution commences on or after the first day

of the seventh month beginning after the month in which this Act is enacted.

(b) STUDY OF OTHER POTENTIAL IMPROVEMENTS IN THE COLLECTION OF INFORMATION RESPECTING PUBLIC INMATES.—

(1) **STUDY.**—The Commissioner of Social Security shall conduct a study of the desirability, feasibility, and cost of—

(A) establishing a system under which Federal, State, and local courts would furnish to the Commissioner such information respecting court orders by which individuals are confined in jails, prisons, or other public penal, correctional, or medical facilities as the Commissioner may require for the purpose of carrying out section 1611(e)(1) of the Social Security Act; and

(B) requiring that State and local jails, prisons, and other institutions that enter into agreements with the Commissioner under section 1611(e)(1)(I) of the Social Security Act furnish the information required by such agreements to the Commissioner by means of an electronic or other sophisticated data exchange system.

(2) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Social Security shall submit a report on the results of the study conducted pursuant to this subsection to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) **ADDITIONAL REPORT TO CONGRESS.**—Not later than October 1, 1998, the Commissioner of Social Security shall provide to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a list of the institutions that are and are not providing information to the Commissioner under section 1611(e)(1)(I) of the Social Security Act (as added by this section).

SEC. 204. EFFECTIVE DATE OF APPLICATION FOR BENEFITS.

(a) **IN GENERAL.**—Subparagraphs (A) and (B) of section 1611(c)(7) (42 U.S.C. 1382(c)(7)) are amended to read as follows:

“(A) the first day of the month following the date such application is filed, or

“(B) the first day of the month following the date such individual becomes eligible for such benefits with respect to such application.”

(b) **SPECIAL RULE RELATING TO EMERGENCY ADVANCE PAYMENTS.**—Section 1631(a)(4)(A) (42 U.S.C. 1383(a)(4)(A)) is amended—

(1) by inserting “for the month following the date the application is filed” after “is presumptively eligible for such benefits”; and

(2) by inserting “, which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months” before the semicolon.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 1614(b) (42 U.S.C. 1382c(b)) is amended—

(A) by striking “or requests” and inserting “, on the first day of the month following the date the application is filed, or, in any case in which either spouse requests”; and

(B) by striking “application or”.

(2) Section 1631(g)(3) (42 U.S.C. 1382(g)(3)) is amended by inserting “following the month” after “beginning with the month”.

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to applications for benefits under title XVI of the Social Security Act filed on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

(2) **BENEFITS UNDER TITLE XVI.**—For purposes of this subsection, the term “benefits under title XVI of the Social Security Act” includes supplementary payments pursuant

to an agreement for Federal administration under section 1616(a) of the Social Security Act, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

Subtitle B—Benefits for Disabled Children
SEC. 211. DEFINITION AND ELIGIBILITY RULES.

(a) **DEFINITION OF CHILDHOOD DISABILITY.**—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)), as amended by section 105(b)(1) of the Contract with America Advancement Act of 1996, is amended—

(1) in subparagraph (A), by striking “An individual” and inserting “Except as provided in subparagraph (C), an individual”; and

(2) in subparagraph (A), by striking “(or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)”;

(3) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively;

(4) by inserting after subparagraph (B) the following new subparagraph:

“(C)(I) An individual under the age of 18 shall be considered disabled for the purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

“(II) Notwithstanding clause (I), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled.”; and

(5) in subparagraph (F), as redesignated by paragraph (3), by striking “(D)” and inserting “(E)”.

(b) **CHANGES TO CHILDHOOD SSI REGULATIONS.**—

(1) **MODIFICATION TO MEDICAL CRITERIA FOR EVALUATION OF MENTAL AND EMOTIONAL DISORDERS.**—The Commissioner of Social Security shall modify sections H2.00C.2. and 112.02B.2.c.(2) of appendix 1 to subpart P of part 404 of title 20, Code of Federal Regulations, to eliminate references to maladaptive behavior in the domain of personal/behavioral function.

(2) **DISCONTINUANCE OF INDIVIDUALIZED FUNCTIONAL ASSESSMENT.**—The Commissioner of Social Security shall discontinue the individualized functional assessment for children set forth in sections 416.924d and 416.924e of title 20, Code of Federal Regulations.

(c) **MEDICAL IMPROVEMENT REVIEW STANDARD AS IT APPLIES TO INDIVIDUALS UNDER THE AGE OF 18.**—Section 1614(a)(4) (42 U.S.C. 1382c(a)(4)) is amended—

(1) by redesignating subclauses (I) and (II) of clauses (i) and (ii) of subparagraph (B) as items (aa) and (bb), respectively;

(2) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively;

(3) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(4) by inserting before clause (i) (as redesignated by paragraph (3)) the following new subparagraph:

“(A) In the case of an individual who is age 18 or older—”;

(5) by inserting after and below subparagraph (A)(iii) (as so redesignated) the following new subparagraph:

“(B) In the case of an individual who is under the age of 18—

“(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such

impairment or combination of impairments no longer results in marked and severe functional limitations; or

“(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that the individual was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked and severe functional limitations; or”;

(6) by redesignating subparagraph (D) as subparagraph (C) and by inserting in such subparagraph “In the case of any individual,” before “substantial evidence”; and

(7) in the first sentence following subparagraph (C) (as redesignated by paragraph (6)), by—

(A) inserting “(i)” before “to restore”; and

(B) inserting “, or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations” immediately before the period.

(d) **EFFECTIVE DATES, ETC.**—

(1) **EFFECTIVE DATES.**—

(A) **SUBSECTIONS (a) AND (b).**—

(i) **IN GENERAL.**—The provisions of, and amendments made by, subsections (a) and (b) of this section shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title XVI of the Social Security Act on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such provisions and amendments.

(ii) **DETERMINATION OF FINAL ADJUDICATION.**—For purposes of clause (i), no individual's claim with respect to such benefits may be considered to be finally adjudicated before such date of enactment if, on or after such date, there is pending a request for either administrative or judicial review with respect to such claim that has been denied in whole, or there is pending, with respect to such claim, readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

(B) **SUBSECTION (c).**—The amendments made by subsection (c) of this section shall apply with respect to benefits under title XVI of the Social Security Act for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

(2) **APPLICATION TO CURRENT RECIPIENTS.**—

(A) **ELIGIBILITY REDETERMINATIONS.**—During the period beginning on the date of the enactment of this Act and ending on the date which is 1 year after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual under age 18 who is eligible for supplemental security income benefits by reason of disability under title XVI of the Social Security Act as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of, or amendments made by, subsections (a) and (b) of this section. With respect to any redetermination under this subparagraph—

(i) section 1614(a)(4) of the Social Security Act (42 U.S.C. 1382c(a)(4)) shall not apply;

(ii) the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under title XVI of such Act;

(iii) the Commissioner shall give such redetermination priority over all continuing eligibility reviews and other reviews under such title; and

(iv) such redetermination shall be counted as a review or redetermination otherwise required to be made under section 208 of the Social Security Independence and Program Improvements Act of 1994 or any other provision of title XVI of the Social Security Act.

(B) **GRANDFATHER PROVISION.**—The provisions of, and amendments made by, subsections (a) and (b) of this section, and the redetermination under subparagraph (A), shall only apply with respect to the benefits of an individual described in subparagraph (A) for months beginning on or after the later of July 1, 1997, or the date of the redetermination with respect to such individual.

(C) **NOTICE.**—Not later than January 1, 1997, the Commissioner of Social Security shall notify an individual described in subparagraph (A) of the provisions of this paragraph.

(3) **REPORT.**—The Commissioner of Social Security shall report to the Congress regarding the progress made in implementing the provisions of, and amendments made by, this section on child disability evaluations not later than 180 days after the date of the enactment of this Act.

(4) **REGULATIONS.**—Notwithstanding any other provision of law, the Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation pertaining to the eligibility of individuals under age 18 for benefits under title XVI of the Social Security Act at least 45 days before the effective date of such regulation. The submission under this paragraph shall include supporting documentation providing a cost analysis, workload impact, and projections as to how the regulation will effect the future number of recipients under such title.

(5) **CAP ADJUSTMENT FOR SSI ADMINISTRATIVE WORK REQUIRED BY WELFARE REFORM.**—

(A) **AUTHORIZATION.**—For the additional costs of continuing disability reviews and redeterminations under title XVI of the Social Security Act, there is hereby authorized to be appropriated to the Social Security Administration, in addition to amounts authorized under section 201(g)(1)(A) of the Social Security Act, \$150,000,000 in fiscal year 1997 and \$100,000,000 in fiscal year 1998.

(B) **CAP ADJUSTMENT.**—Section 251(b)(2)(H) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by section 103(b) of the Contract with America Advancement Act of 1996, is amended—

(i) in clause (i)—
(I) in subclause (II) by—
(aa) striking “\$25,000,000” and inserting “\$175,000,000”; and
(bb) striking “\$160,000,000” and inserting “\$310,000,000”; and
(II) in subclause (III) by—
(aa) striking “\$145,000,000” and inserting “\$245,000,000”; and
(bb) striking “\$370,000,000” and inserting “\$470,000,000”; and

(ii) by amending clause (ii)(I) to read as follows:

“(I) the term ‘continuing disability reviews’ means reviews or redeterminations as defined under section 201(g)(1)(A) of the Social Security Act and reviews and redeterminations authorized under section 211 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.”

(C) **ADJUSTMENTS.**—Section 606(e)(1)(B) of the Congressional Budget Act of 1974 is amended by adding at the end the following new sentences: “If the adjustments referred to in the preceding sentence are made for an appropriations measure that is not enacted into law, then the Chairman of the Committee on the Budget of the House of Represent-

atives shall, as soon as practicable, reverse those adjustments. The Chairman of the Committee on the Budget of the House of Representatives shall submit any adjustments made under this subparagraph to the House of Representatives and have such adjustments published in the Congressional Record.”

(D) **CONFORMING AMENDMENT.**—Section 103(d)(1) of the Contract with America Advancement Act of 1996 (42 U.S.C. 401 note) is amended by striking “medicaid programs,” and inserting “medicaid programs, except that the amounts appropriated pursuant to the authorization and discretionary spending allowance provisions in section 211(d)(2)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall be used only for continuing disability reviews and redeterminations under title XVI of the Social Security Act.”

(6) **BENEFITS UNDER TITLE XVI.**—For purposes of this subsection, the term “benefits under title XVI of the Social Security Act” includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

SEC. 212. ELIGIBILITY REDETERMINATIONS AND CONTINUING DISABILITY REVIEWS.

(a) **CONTINUING DISABILITY REVIEWS RELATING TO CERTAIN CHILDREN.**—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as redesignated by section 211(a)(3) of this Act, is amended—

(1) by inserting “(i)” after “(H)”; and
(2) by adding at the end the following new clause:

“(ii)(I) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this title of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which is likely to improve (or, at the option of the Commissioner, which is unlikely to improve).
“(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this title.

“(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this title would be served thereby, to the individual.

“(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1631(c) shall not apply to a finding by the Commissioner that the requirements of subclause (II) should not apply to an individual's representative payee.”

(b) **DISABILITY ELIGIBILITY REDETERMINATIONS REQUIRED FOR SSI RECIPIENTS WHO ATTAIN 18 YEARS OF AGE.**—

(1) **IN GENERAL.**—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as amended by subsection (a) of this section, is amended by adding at the end the following new clause:

“(iii) If an individual is eligible for benefits under this title by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility—

“(I) during the 1-year period beginning on the individual's 18th birthday; and

“(II) by applying the criteria used in determining the initial eligibility for applicants who are age 18 or older.

With respect to a redetermination under this clause, paragraph (4) shall not apply and such redetermination shall be considered a substitute for a review or redetermination otherwise required under any other provision of this subparagraph during that 1-year period.”

(2) **CONFORMING REPEAL.**—Section 207 of the Social Security Independence and Program Improvements Act of 1994 (42 U.S.C. 1382 note; 108 Stat. 1516) is hereby repealed.

(c) **CONTINUING DISABILITY REVIEW REQUIRED FOR LOW BIRTH WEIGHT BABIES.**—Section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)), as amended by subsections (a) and (b) of this section, is amended by adding at the end the following new clause:

“(iv)(I) Not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this title by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

“(II) A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subparagraph during that 12-month period.

“(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this title.

“(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this title would be served thereby, to the individual.

“(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1631(c) shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefits for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

SEC. 213. ADDITIONAL ACCOUNTABILITY REQUIREMENTS.

(a) **REQUIREMENT TO ESTABLISH ACCOUNT.**—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended—

(1) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F)(I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (II).

"(II) Benefits described in this subclause are past-due monthly benefits under this title (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1616 or section 212(b) of Public Law 93-66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g)) that exceeds the product of—

"(aa) 6, and

"(bb) the maximum monthly benefit payable under this title to an eligible individual.

"(II)(I) A representative payee shall use funds in the account established under clause (I) to pay for allowable expenses described in subclause (II).

"(II) An allowable expense described in this subclause is an expense for—

"(aa) education or job skills training;

"(bb) personal needs assistance;

"(cc) special equipment;

"(dd) housing modification;

"(ee) medical treatment;

"(ff) therapy or rehabilitation; or

"(gg) any other item or service that the Commissioner determines to be appropriate; provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

"(III) The use of funds from an account established under clause (I) in any manner not authorized by this clause—

"(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

"(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and the total amount of such benefits so used shall be considered to be the uncompensated value of a disposed resource and shall be subject to the provisions of section 1613(c).

"(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

"(III) The representative payee may deposit into the account established pursuant to clause (I)—

"(I) past-due benefits payable to the eligible individual in an amount less than that specified in clause (I)(II), and

"(II) any other funds representing an underpayment under this title to such individual, provided that the amount of such underpayment is equal to or exceeds the maximum monthly benefit payable under this title to an eligible individual.

"(IV) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (I)."

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382(b)(a)) is amended—

(1) by striking "and" at the end of paragraph (10);

(2) by striking the period at the end of paragraph (11) and inserting "; and"; and

(3) by inserting after paragraph (11) the following new paragraph:

"(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1631(a)(2)(F)."

(c) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (19);

(2) by striking the period at the end of paragraph (20) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(21) the interest or other earnings on any account established and maintained in accordance with section 1631(a)(2)(F)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 214. REDUCTION IN CASH BENEFITS PAYABLE TO INSTITUTIONALIZED INDIVIDUALS WHOSE MEDICAL COSTS ARE COVERED BY PRIVATE INSURANCE.

(a) IN GENERAL.—Section 1611(e)(1)(B) (42 U.S.C. 1382(e)(1)(B)) is amended by inserting "or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance" after "section 1614(f)(2)(B)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to benefits for months beginning 90 or more days after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

SEC. 215. REGULATIONS.

Within 3 months after the date of the enactment of this Act, the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle.

Subtitle C—Additional Enforcement Provision

SEC. 221. INSTALLMENT PAYMENT OF LARGE PAST-DUE SUPPLEMENTAL SECURITY INCOME BENEFITS.

(a) IN GENERAL.—Section 1631(a) (42 U.S.C. 1383) is amended by adding at the end the following new paragraph:

"(10)(A) If an individual is eligible for past-due monthly benefits under this title in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g)) equals or exceeds the product of—

"(I) 12, and

"(II) the maximum monthly benefit payable under this title to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse), then the payment of such past-due benefits (after any such reimbursement to a State) shall be made in installments as provided in subparagraph (B).

"(B)(i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

"(ii) Except as provided in clause (III), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (I) and (II) of subparagraph (A).

"(III) In the case of an individual who has—

"(I) outstanding debt attributable to—

"(aa) food,

"(bb) clothing,

"(cc) shelter, or

"(dd) medically necessary services, supplies or equipment, or medicine; or

"(II) current expenses or expenses anticipated in the near term attributable to—

"(aa) medically necessary services, supplies or equipment, or medicine, or

"(bb) the purchase of a home, and such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under title XVIII, a State plan approved under title XIX, or any private entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other arrangement, the limitation specified in clause (II) may be exceeded by an amount equal to the total of such debt and expenses.

"(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this title—

"(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

"(ii) is ineligible for benefits under this title and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

"(D) For purposes of this paragraph, the term 'benefits under this title' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a), and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66."

(b) CONFORMING AMENDMENT.—Section 1631(a)(1) (42 U.S.C. 1383(a)(1)) is amended by inserting "(subject to paragraph (10))" immediately before "in such installments".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section are effective with respect to past-due benefits payable under title XVI of the Social Security Act after the third month following the month in which this Act is enacted.

(2) BENEFITS PAYABLE UNDER TITLE XVI.—For purposes of this subsection, the term "benefits payable under title XVI of the Social Security Act" includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

SEC. 222. REGULATIONS.

Within 3 months after the date of the enactment of this Act, the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle.

Subtitle D—Studies Regarding Supplemental Security Income Program

SEC. 231. ANNUAL REPORT ON THE SUPPLEMENTAL SECURITY INCOME PROGRAM.

Title XVI (42 U.S.C. 1381 et seq.), as amended by section 105(b)(3) of the Contract with America Advancement Act of 1996, is amended by adding at the end the following new section:

"ANNUAL REPORT ON PROGRAM

"SEC. 1637. (a) Not later than May 30 of each year, the Commissioner of Social Security shall prepare and deliver a report annually to the President and the Congress regarding the program under this title, including—

"(1) a comprehensive description of the program;

"(2) historical and current data on allowances and denials, including number of applications and allowance rates for initial determinations, reconsideration determinations, administrative law judge hearings, appeals council reviews, and Federal court decisions;

"(3) historical and current data on characteristics of recipients and program costs, by

recipient group (aged, blind, disabled adults, and disabled children);

"(4) historical and current data on prior enrollment by recipients in public benefit programs, including State programs funded under part A of title IV of the Social Security Act and State general assistance programs;

"(5) projections of future number of recipients and program costs, through at least 25 years;

"(6) number of redeterminations and continuing disability reviews, and the outcomes of such redeterminations and reviews;

"(7) data on the utilization of work incentives;

"(8) detailed information on administrative and other program operation costs;

"(9) summaries of relevant research undertaken by the Social Security Administration, or by other researchers;

"(10) State supplementation program operations;

"(11) a historical summary of statutory changes to this title; and

"(12) such other information as the Commissioner deems useful.

"(b) Each member of the Social Security Advisory Board shall be permitted to provide an individual report, or a joint report if agreed, of views of the program under this title, to be included in the annual report required under this section."

SEC. 232. STUDY BY GENERAL ACCOUNTING OFFICE.

Not later than January 1, 1999, the Comptroller General of the United States shall study and report on—

(1) the impact of the amendments made by, and the provisions of, this title on the supplemental security income program under title XVI of the Social Security Act; and

(2) extra expenses incurred by families of children receiving benefits under such title that are not covered by other Federal, State, or local programs.

TITLE III—CHILD SUPPORT

SEC. 300. REFERENCE TO SOCIAL SECURITY ACT.

Except as otherwise specifically provided, wherever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

Subtitle A—Eligibility for Services; Distribution of Payments

SEC. 301. STATE OBLIGATION TO PROVIDE CHILD SUPPORT ENFORCEMENT SERVICES.

(a) STATE PLAN REQUIREMENTS.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking paragraph (4) and inserting the following new paragraph:

"(4) provide that the State will—

"(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

"(i) each child for whom (I) assistance is provided under the State program funded under part A of this title, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this title, or (III) medical assistance is provided under the State plan approved under title XIX, unless, in accordance with paragraph (29), good cause or other exceptions exist;

"(ii) any other child, if an individual applies for such services with respect to the child; and

"(B) enforce any support obligation established with respect to—

"(i) a child with respect to whom the State provides services under the plan; or

"(ii) the custodial parent of such a child;"; and

(2) in paragraph (6)—

(A) by striking "provide that" and inserting "provide that—";

(B) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;";

(C) in subparagraph (B), by inserting "on individuals not receiving assistance under any State program funded under part A" after "such services shall be imposed";

(D) in each of subparagraphs (B), (C), (D), and (E)—

(i) by indenting the subparagraph in the same manner as, and aligning the left margin of the subparagraph with the left margin of, the matter inserted by subparagraph (B) of this paragraph; and

(ii) by striking the final comma and inserting a semicolon; and

(E) in subparagraph (E), by indenting each of clauses (i) and (ii) 2 additional ems.

(b) CONTINUATION OF SERVICES FOR FAMILIES CEASING TO RECEIVE ASSISTANCE UNDER THE STATE PROGRAM FUNDED UNDER PART A.—Section 454 (42 U.S.C. 654) is amended—

(1) by striking "and" at the end of paragraph (23);

(2) by striking the period at the end of paragraph (24) and inserting "; and"; and

(3) by adding after paragraph (24) the following new paragraph:

"(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family."

(c) CONFORMING AMENDMENTS.—

(1) Section 452(b) (42 U.S.C. 652(b)) is amended by striking "454(6)" and inserting "454(4)".

(2) Section 452(g)(2)(A) (42 U.S.C. 652(g)(2)(A)) is amended by striking "454(6)" each place it appears and inserting "454(4)(A)(II)".

(3) Section 466(a)(3)(B) (42 U.S.C. 666(a)(3)(B)) is amended by striking "in the case of overdue support which a State has agreed to collect under section 454(6)" and inserting "in any other case".

(4) Section 466(e) (42 U.S.C. 666(e)) is amended by striking "paragraph (4) or (6) of section 454" and inserting "section 454(4)".

SEC. 302. DISTRIBUTION OF CHILD SUPPORT COLLECTIONS.

(a) IN GENERAL.—Section 457 (42 U.S.C. 657) is amended to read as follows:

"SEC. 457. DISTRIBUTION OF COLLECTED SUPPORT.

"(a) IN GENERAL.—Subject to subsection (e), an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

"(1) FAMILIES RECEIVING ASSISTANCE.—In the case of a family receiving assistance from the State, the State shall—

"(A) pay to the Federal Government the Federal share of the amount so collected; and

"(B) retain, or distribute to the family, the State share of the amount so collected.

"(2) FAMILIES THAT FORMERLY RECEIVED ASSISTANCE.—In the case of a family that formerly received assistance from the State:

"(A) CURRENT SUPPORT PAYMENTS.—To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

"(B) PAYMENTS OF ARREARAGES.—To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

"(i) DISTRIBUTION OF ARREARAGES THAT ACCRUED AFTER THE FAMILY CEASED TO RECEIVE ASSISTANCE.—

"(I) PRE-OCTOBER 1997.—Except as provided in subclause (II), the provisions of this section (other than subsection (b)(1)) as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Act Reconciliation of 1996 shall apply with respect to the distribution of support arrearages that—

"(aa) accrued after the family ceased to receive assistance, and

"(bb) are collected before October 1, 1997.

"(II) POST-SEPTEMBER 1997.—With respect to the amount so collected on or after October 1, 1997 (or before such date, at the option of the State)—

"(aa) IN GENERAL.—The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

"(bb) REIMBURSEMENT OF GOVERNMENTS FOR ASSISTANCE PROVIDED TO THE FAMILY.—After the application of division (aa) and clause (ii)(II)(aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

"(cc) DISTRIBUTION OF THE REMAINDER TO THE FAMILY.—To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

"(ii) DISTRIBUTION OF ARREARAGES THAT ACCRUED BEFORE THE FAMILY RECEIVED ASSISTANCE.—

"(I) PRE-OCTOBER 2000.—Except as provided in subclause (II), the provisions of this section (other than subsection (b)(1)) as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Act of 1996 shall apply with respect to the distribution of support arrearages that—

"(aa) accrued before the family received assistance, and

"(bb) are collected before October 1, 2000.

"(II) POST-SEPTEMBER 2000.—Unless, based on the report required by paragraph (4), the Congress determines otherwise, with respect to the amount so collected on or after October 1, 2000 (or before such date, at the option of the State)—

"(aa) IN GENERAL.—The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued before the family received assistance from the State.

"(bb) REIMBURSEMENT OF GOVERNMENTS FOR ASSISTANCE PROVIDED TO THE FAMILY.—After the application of clause (i)(II)(aa) and division (aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the

How the Individual Functional Assessment (IFA) Enables Children to Qualify for SSI

Many children have very severe disabilities that do not match any of the exact medical criteria for SSI on the Social Security Administration's list of impairments. Some of them are able to qualify for SSI through an individual functional assessment (IFA).

In an IFA, examiners and physicians of the state Disability Determination Service (DDS) look at a child's limitations in various functional "domains" relevant to the child's age—areas of development and functioning vital to a child's life. The domains are: cognition, communication, motor abilities, social skills, personal/behavioral patterns, and concentration, persistence and pace. (Another, responsiveness to stimuli, applies only to infants.) When the DDS finds that a child has "marked" or "moderate" limitations in several of these domains, the child's impairment can be considered comparable in severity to one that would disable an adult—the ultimate standard for a child's SSI eligibility.

Many children with mental retardation, for example, qualify through an IFA when their IQ is just above the limit established by the listed criteria and they have moderate limitations in three of the domains.

The IFA is also helpful when children have a combination of mental and physical impairments. Even when no one impairment meets the specific medical criteria, the IFA allows DDS examiners to assess the total impact on the child's ability to function.

Further, children's health is often compromised by adverse life circumstances that are not among the listed criteria—problems such as physical and sexual abuse, lead poisoning, prenatal exposure to drugs and sexually transmitted diseases, exposure to violent behavior against others (such as witnessing their mother's murder) and the impact on health of abject poverty. When the result is severely impaired functioning, the IFA enables them to receive assistance.

The following examples illustrate how children who have severe disabling conditions, yet do not match a listed impairment, qualify through an IFA.

INDIVIDUAL FUNCTIONAL ASSESSMENT—EXAMPLES

2

Justin, who has hemophilia

Justin was 11 when he finally qualified for SSI. He has had bleeding disorders since he was six months old. Over a four-year period, his mother has had to rush him to the emergency room 30 times for bleeding joints, hematomas and other injuries; he had another 60 doctor visits for bleeding problems. While his diagnosis is hemophilia, he did not meet the criteria for a coagulation disorder because medication partially controlled his bleeding and he had no permanent joint deformities. Yet Justin's condition severely restricts his ability to function age-appropriately.

The IFA found moderate limitations in Justin's motor skills because of joint swelling so severe it affects his ability to walk. This makes it impossible for him to participate in physical education or recreational activities. In part as a result of this exclusion from peers' activities, the examiner found that Justin has a marked limitation in social skills and his ability to communicate age-appropriately. For example, he doesn't report injuries and gets violent when his classmates do so for him. As a result, Justin's disability was considered severe enough for him to qualify for SSI.

1 marked
1 mod
MOD - MOTOR SKILLS

MARKED - SOCIAL &

COMMUNICATION

2 marked

Bill, who has cerebral palsy

At 29 months, Bill gets around by scooting on one knee and one foot. When he stands it is on tiptoes. Although his primary diagnosis is cerebral palsy, with a secondary diagnosis of progressive developmental delay, he does not meet the listed criteria for SSI.

From the age of three months, Bill has received physical therapy and other developmental training. Recent tests found Bill's speech and motor skills at less than two thirds those of most children his age. He also gets upset very easily. The consultant who examined Bill said he would continue to need physical and occupational therapy.

An IFA found that Bill has a moderate limitation in cognitive development and a marked limitation in communicative and motor development. The examiner concluded that these pronounced impairments substantially reduce Bill's ability to perform or function in an age-appropriate manner. He is eligible for SSI.

1 marked

1 mod

MOD - COGNITIVE

MARKED - COMMUNICATIVE & MOTOR

2 marked??

Jason, who has psychiatric disorders

Jason is 8-1/2. Over the past year his behavior has grown out of control. He has trouble sleeping and talks about committing suicide.

INDIVIDUAL FUNCTIONAL ASSESSMENT—EXAMPLES

3

A psychiatric evaluation resulted in a primary diagnosis of dysthymia (a type of depression), with a secondary diagnosis of borderline intellectual functioning. During hospitalization for treatment Jason was very depressed, tearful, fearful and impulsive, and had a lot of difficulty focusing on tasks.

On tests while he was in the hospital, Jason had a verbal IQ score of 82 and performance IQ of 71. The resulting full scale IQ of 75 is classified as borderline. His academic scores place him at the kindergarten to first-grade level. The examiner described him as having "intensely negative and painful emotion." The IFA considered the psychiatric diagnosis and evidence of borderline cognitive functioning, along with reports of activities of daily living from Jason's mother and teachers.

The DDS doctor concluded that because Jason's behavior gets in the way of his learning, he has a moderate limitation of his cognitive functioning. His anxiety, competitiveness and overreaction in the school setting create a moderate limitation in his social skills, further supported by the fact that other children leave him alone and he has no close friends. Jason's personal/behavioral functioning was also rated as moderately limited due to his need for constant supervision—more than any other student. The limitations in Jason's attention and concentration further contributed to the DDS doctor's overall conclusion that this child has a disability of comparable severity to one that would disable an adult.

Susan, who has developmental delays

Susan, 3-1/2, lives with her mother and siblings and attends a therapeutic preschool. She has a primary diagnosis of developmental delays with language disorder. When Susan applied for SSI, the DDS ordered psychological testing and evaluation. She was reportedly immature, impulsive and had few internal controls. She would hit to get attention and her speech was barely intelligible. Susan's test summary included a performance IQ of 82, verbal scale of 75 and full scale IQ of 77.

Evaluating the effects of her impairment, DDS examiners found that Susan had moderately limited cognitive development. Because her speech was barely understandable by her mother, pediatrician and psychologist, the examiners found that Susan had a marked ? limitation in communication. Her motor development was found moderately limited, as were her social development and personal/behavioral development, based both on her mother's

MMD - COGNITIVE

MMD - SOCIAL

MMD - PERSONAL/BEHAV.

MMD - COGNITIVE

MMD - MOTOR

MMD - SOCIAL

MMD - PERSONAL
BEHAV

INDIVIDUAL FUNCTIONAL ASSESSMENT—EXAMPLES

4

reports and the examiner's testing. Together, Susan's impairments are severe enough to be considered disabling in an adult.

John, who has hyperactivity disorder

John had prenatal exposure to both drugs and alcohol. Now 7-1/2, he was an unusually quiet baby and showed early developmental delays. He attended therapeutic preschool and has been in special education since starting school. John's primary diagnosis is attention deficit hyperactivity disorder, with a secondary diagnosis of developmental delay. He has frequent tantrums and has been taking medication, amitriptyline, for over a year.

With his SSI application, John's parents were able to provide very thorough documentation of psychological testing by the schools, several very complete individualized education programs (IEPs) and a neurological evaluation. The DDS also paid for a psychiatric examination. Both the neurologist and the psychiatrist reported hyperactivity as the most serious of John's problems. His psychometric scores consistently placed him below the norm.

Through an IFA, examiners found that John has moderate limitation in motor skills, with sensory integration a particular concern; moderate limitation of personal/ behavioral functioning and a need for constant supervision and redirection; and marked limitation in the domain of concentration, persistence and pace, based on his inattention, distractibility and bizarre behavior. The DDS doctor concluded that John needs significant structure in order to function at all and that his impairments were comparable to those that would disable an adult.

Doreen, an abused adolescent

Doreen was abused for many years before being removed to foster care. At 15, she sucks her thumb whenever she isn't doing something else with her hands. She has a primary diagnosis of borderline intellectual functioning and a secondary diagnosis of post-traumatic stress syndrome. Her full-scale IQ is 74.

The IFA found Doreen's cognitive functioning at the first-grade level in reading and written communication and the fourth-grade level in math—a marked limitation. She had moderate limitations in personal/ behavioral functioning and in concentration, persistence and pace, based on teachers' reports that she could not concentrate for longer than four minutes at a time, could not complete

MOD - MOTOR

MOD - PERSONAL/ BEHAV

MARKED - CONCENTRATION

MARKED - COGNITIVE

MOD - 2 DOMAINS

INDIVIDUAL FUNCTIONAL ASSESSMENT—EXAMPLES

5

assignments and required constant supervision. Doreen's impairments were found comparable to those that would disable an adult SSI applicant.

Mike, who has multiple mental disorders

Mike, 10, is being raised by his grandmother. He had suffered abuse and, probably, prenatal alcohol or drug exposure. He had abdominal surgery at four weeks and a traumatic blow to the head several years later. His primary diagnosis is functional nonpsychotic anxiety-related disorders, with a secondary diagnosis of mental retardation. Mike is in special education at school, in a regular classroom with considerable pull-out time. While in the classroom, he has an aide to keep him on task and provide safety for the other students.

A psychiatric evaluation found that Mike had no friends, picked fights, argued constantly and was very aggressive with others. He can change quickly from being very nice to very aggressive. He tends to prefer playing with younger children, preferably girls. He often says that he wishes he were a girl and dresses in his sister's clothes. Mike has sleep problems, nightmares and bed-wetting, though this has improved with use of nightly nasal spray. His performance IQ was measured at 79 and all of the test scales were at the borderline level.

An evaluation using the IFA found that Mike has moderate limitation of cognitive functioning and marked limitation of social skills, of personal/behavioral functioning and in concentration, persistence and pace. The effects of a structured setting and adaptations were also considered, as all school activities and subjects were modified for Mike. The DDS doctor concluded that Mike's impairments substantially reduced his ability to function independently, appropriately and effectively in an age-appropriate manner and were therefore comparable in severity to an impairment that would disable an adult.

For more information about the Individual Functional Assessment and these cases, contact Rhoda Schulzinger [REDACTED] at the Bazelon Center, 202/467-5730.

MDD - COGNITIVE

MARKED - 3

functional
signals?

**SSI CHILDHOOD DISABILITY DETERMINATIONS
INITIAL CLAIMS ALLOWANCES, 2/11/91-12/31/94**

<u>Impairment</u>	<u>% IFA Allowed</u>
Pulmonary Tuberculosis	38.1%
Thyroid Disorders	25.6%
Diabetes Mellitus	19.9%
Aplastic Anemia	24.8%
Organic Mental Disorders	33.6% (5,474)
Schizophrenic/Paranoid Func Disorders	22.8%
Developmental Disorders, Inc. Autism	28.7% (4,306)
* Mental Retardation	32.6% (101,669)
Multiple Sclerosis	17.0%
Cerebral Palsy	7.3% (1,597)
Epilepsy	18.5 % (1,824)
Muscular Dystrophies	15.9%
Glaucoma	16.7%
Deafness	12.3% (1,807)
Loss of Voice	29.8% (3,418)
Intercranial Injury	24.9%
Burns	28.7%

Source: Report to Congress of the National Commission
on Childhood Disability , App. 7F (1995)

Yo. Wednesday

Your boss
a beast?
Contest:
Page 33



Eugene's severe asthma makes it difficult for his mother to work; the family uses SSI to supplement their income

ALEJANDRO A. ALVAREZ / DAILY NEWS

BREATHING ROOM

Would loss of SSI fund devastate disabled poor?

by **Mary Flannery**
Daily News Staff Writer

There's only one way that Charol Jamison knows how to treat her son's severe asthma.

"Stay on top of it," she said. "I know the problem isn't going to go away."

Her son's condition may not disappear. But the \$490 in Supplemental Security Income she receives monthly in his behalf may be wiped out.

Proposed legislation to dismantle the children's portion of SSI, a cash-assistance program for poor people older than 65 and disabled people of any age, is part of the package of welfare cuts, known as the Personal Responsibility Act of 1995, under consideration in Washington.

Most public attention has focused on cuts to the

food-stamp, school-lunch and welfare rolls. Changes to SSI would also severely impact poor children and their families, according to advocates.

Under the current law, SSI makes monthly payments totaling \$8 billion to 890,000 poor children with chronic mental or physical disabilities, including spina bifida, Down syndrome and autism, or a combination of problems. Nearly 8,800 Philadelphia children receive SSI.

Advocates estimate that proposed cuts would mean two-thirds of children on SSI today would receive no benefits or services. Of the 5.3 million adults receiving SSI, only those disabled because of drug addiction or alcoholism would be excluded. (The funds come from general tax revenues, not Social Security taxes.)

Parents of disabled children use SSI money at their discretion — to buy diapers for incontinent teen-agers,

for electric bills run up by a ventilator, to pay for parking at a hospital. For some parents, the SSI benefit is a substitute for wages, allowing them to work reduced hours to care for their children at home.

Critics of SSI point out that children can qualify because of behavioral problems, including Attention Deficit Hyperactivity Disorder, which they say varies greatly in severity and can be "coached" by parents. Also, while SSI regulations call for a review of a recipient's disability every three years, the agency itself admits reviews do not occur on schedule, which means that payments can continue indefinitely.

U.S. Rep. Curt Weldon, a co-sponsor of the Personal Responsibility Act, called SSI "well-intentioned but a boondoggle" in a telephone interview last week.

"This program is out of control," said Weldon, a Re-

See **SSI** Next Page

A DISQUIETING SPRING

For this Philadelphia mother and daughter, the dissolution of Supplemental Security Income spells disaster.

BY DAISY FRIED



Vanessa Cooke and her six-year-old daughter, La'Shaira, must remain strong.

"Here go my needles," says six-year-old La'Shaira Cooke, at a table near a window of the small apartment where she lives with her mother and sister on the fifth floor of a West Philadelphia high-rise. "Here go my MPH. Here go the things to put in my machine. Here go my pricker."

The first-grader is laying out the components of her "One Touch II" gadget, which identifies her blood-sugar level. Her fingertips are callused like a guitar-player's from the pricks she gives her fingers everyday to draw blood for testing.

A little more than four years ago, after La'Shaira was diagnosed with diabetes, her mother, Vanessa Cooke, began applying for Supplemental Security Income (SSI), federal cash grants of about \$450/month for low-income children with disabilities. After repeated denials, her application was approved this January.

But Vanessa and La'Shaira have yet to see a cent, and Vanessa fears they may never receive any money. If the Republican Congress—which alleges that SSI is rife with parental fraud—has its way, cash grants to disabled children will be virtually eliminated.

Since she was 22 months old, La'Shaira has been in danger of insulin rejection. Her mother has had the full-time job of (1) making sure her blood sugar is checked four times a day, (2) giving her immediate insulin injections in addition to her three regular daily injections if anything is out of whack, (3) regulating her special diet, and (4) monitoring her blood sugar.

Despite such vigilance, La'Shaira's condition has never been under control. Vanessa carries a beeper, and is often

summoned to school when La'Shaira's blood sugar deviates from the norm. She cannot afford a car, and so she depends on cabs or public transportation. The demands of her daughter's illness disallow Vanessa, who has a high school degree and some college, to get a job.

"I'm capable," she says, "but who would hire me when I always have to be running off to La'Shaira's school? I have my priorities. Taking care of La'Shaira is what I do."

Vanessa receives \$403 of public assistance a month, plus \$213 worth of monthly food stamps to support her family of three. "I take from Peter to pay Paul," she says. "It's a constant tug o' war. Now why would I fight this long if I had no reason? It is time-consuming. It would be much easier to get a job."

The SSI program was created in 1974 to aid low-income blind and disabled persons. Allocations of aid were made based on a list of eligible disabilities.

In a 1990 decision, *Zebley v. Sullivan*, a conservative Supreme Court decided by a 7-2 margin that policies used to determine children's eligibility for SSI were illegal because the existing listings, created to assess adults' (in)ability to work, failed to cover all disabling illnesses and abnormalities. *Zebley* showed that needs varied with each individual case.

To deal with the huge variables, the Social Security Administration (SSA), which administers SSI, instituted the Individual Functional Assessment (IFA), where state examiners and physicians look at a child's limitations in various areas of development and functioning vital to a child's life. IFA is especially helpful when children have a combination of mental and physical impairments.

Prior to *Zebley*, each of a child's conditions would be considered on its own merits, explains Joe Scullin, Director of Social Services of United Cerebral Palsy (UCP) of Philadelphia.

"If you had a child who was mildly retarded, but whose IQ did not meet the mental retardation guideline for disability purposes, and who also had mild cerebral palsy, the child would not receive assistance. After *Zebley*, with the IFA, the child's conditions would be considered cumulatively," says Scullin.

It was thanks to IFA that a municipal judge finally found that La'Shaira Cooke's "special diet far exceeds her food stamp allotment; beeper maintenance, cab fares and other related expenses take up a substantial part of the family budget."

IFA is the particular bugaboo of legislators who want to dismantle SSI. Pennsylvania's own Senator Rick Santorum called SSI a "travesty" in a May 1994 *Washington Times* piece, stating that "abuses of the program have been encouraged by recent changes in the rules under which children's SSI eligibility is determined. Essentially children can now qualify if they cannot engage effectively in age-appropriate activities." He also alleged that "there is no assurance that the cash will actually be used to help the disabled child."

In 1987, 300,000 children received SSI cash grants. After *Zebley*, awards to children skyrocketed, largely because eligibility was opened up. In February of 1995, children receiving SSI checks numbered 892,500, forty thousand of them in Pennsylvania.

A review of SSI by the Department of Health and Human Services reports that, in fact, an estimated 1.1—1.4 million kids meet SSI's disability and income criteria.

Since 1991, because of strict regulations, about a million children have been denied SSI under IFA.

A just-released report by the United States General Accounting Office, a body whose staffing and funding depends upon Congress, says that "measuring the extent to which coaching may actually occur is extremely difficult," and calls evidence of fraud "scant."

The report adds that studies by the SSA's Office of Disability found that less than half of 1% of all child applications might reflect coaching, and that most of the suspicious applications had been denied benefits anyway.

Community Legal Services lawyer Jonathan Stein calls the GAO report "shoddy and irresponsible": it never looked at actual cases itself, and recommends, despite all lack of significant findings, that Congress "could eliminate IFA and direct the Social Security Administration to revise functional criteria under medical listings" without proposing the preferable step of amending or revising it.

"After *Zebley*, you essentially had the birth of an entirely new program. Any new program will need fine-tuning. Areas of weakness are natural," explains Stein. But he says this doesn't mean congress should take an axe to the program itself.

"If there is fraud or misuse, the solution is to enforce, not to cut. The criticism [SSI opponents] are making is a criticism of government, not of the people. They're basically blaming the victim for their own lack of attention," says UPC's Scullin.

In May of 1994, then-Representative Santorum authored a House bill recommending not only that IFA be struck as a method of assessing children's needs, but also that cash grants be eliminated in favor of vouchers that could only be applied to medical necessities.

That bill went nowhere, but influenced a new bill, a small piece of what some advocates for the disabled call the "Contract on America." The new bill goes to vote under "House Bill 4," the so-called "Personal Responsibility Act," in the House of Representatives the week of March 20. Besides regressing eligibility requirements, it calls for the elimination of cash grants except in extreme cases where recipients would otherwise be institutionalized.

Cash subsidies would be replaced by block grants to states, which could then be applied to a limited list ➤



HARVEY FINKE

La'Shaira's medical needs frequently keep her at home.

► of services which parents of children with disabilities approved under a revised program could choose from.

Robin Bolduc, disability rights advocate with a Public Interest Law Center of Philadelphia, whose daughter has Down's syndrome, explains what's wrong with block grants.

"Each family with disabled kids has unique support needs. If you block the grant and have states provide families with a list of services, and their needs aren't on the list, they're out of luck. It's also a set amount of money. If more children are identified as eligible, oops, too bad, 'out of money,' you'll have to wait." And states would have the option of taking 20% of the grant and moving it into a project they like better," she says. Most states that have tried service-driven programs in various other mental retardation programs have already switched to family-driven cash grants, which are not only more flexible, but also cheaper, Bolduc says.

"With a block grant, the state has to subcontract with service providers. That creates administrative costs at the state level. Then, the service provider has its own administrative costs, so by the time you're done, the dollar that gets to the kid goes through two layers of administrative costs."

Personal Responsibility Act did you say?

"Families are saying 'we want to take responsibility for making decisions about raising our children. [The Republicans] are saying, no, the state will decide,'" says Bolduc.

The varieties of needs of the disabled are legion and extend beyond the scope of simple medical care. Sometimes, mothers like Vanessa Cooke just need money to cover some of what they could make if they could work. UCP's Joe Scullin names a few others: accessible housing, wheelchair-accommodating vehicles, child care for a special needs child. Over-the-counter nutritional supplements, diapers for older children. Special clothing for children with ostomy products and catheters "all over

their stomachs." Specially-adapted toys. Tutoring assistance. Three-digit monthly electric bills for children on respirators.

"And that's just off the top of my head," Scullin says.

La'Shaira Cooke can't eat lunch with her schoolmates. She might eat something she isn't supposed to. Eligible for subsidized lunches, she can't take advantage of them: she eats special meals brought from home in the school nurse's office instead. Three days a week, the nurse is in school and tests La'Shaira's blood sugar. Vanessa Cooke does it the other two days. Vanessa can never go far from the neighborhood for long when La'Shaira is at school—she never knows when she'll have to rush in for an emergency.

That's not all.

"La'Shaira cannot participate in the little parties they have in school. I have to go on all her field trips, because what if something happened and I couldn't get there? She cannot go to camp. Next year she will be eligible for Juvenile Diabetes Foundation camp, but I don't know if I'll be able to afford it. I have no idea whether they have scholarships or if La'Shaira would get one. She cannot go to visit her friends because she might eat something she shouldn't. Her friends can come here, but I start with her first injection when she wakes up in the morning and she gets her last injection as close to midnight as possible. Once in a while, it's okay. But I am too tired to have more little kids here most of the time. La'Shaira gets lonely."

When, if, La'Shaira gets her money, Vanessa wants to take her to a museum. Vanessa chooses her words carefully because La'Shaira is sitting right next to her, folding up a piece of paper to make a fan.

"By now, she should have some set dosage, some target range. Her readings have all been high lately. Her prognosis is not good. I don't know what is going to happen. I would like for her to go to a museum now. Who's to say if she'll be able to go later on?" ■

Justin, who has hemophilia

Justin was 11 when he finally qualified for SSI. He has had bleeding disorders since he was six months old. Over a four-year period, his mother has had to rush him to the emergency room 30 times for bleeding joints, hematomas and other injuries; he had another 60 doctor visits for bleeding problems. While his diagnosis is hemophilia, he did not meet the criteria for a coagulation disorder because medication partially controlled his bleeding and he had no permanent joint deformities. Yet Justin's condition severely restricts his ability to function age-appropriately.

The IFA found moderate limitations in Justin's motor skills because of joint swelling so severe it affects his ability to walk. This makes it impossible for him to participate in physical education or recreational activities. In part as a result of this exclusion from peers' activities, the examiner found that Justin has a marked limitation in social skills and his ability to communicate age-appropriately. For example, he doesn't report injuries and gets violent when his classmates do so for him. As a result, Justin's disability was considered severe enough for him to qualify for SSI.

Bill, who has cerebral palsy

At 29 months, Bill gets around by scooting on one knee and one foot. When he stands it is on tiptoes. Although his primary diagnosis is cerebral palsy, with a secondary diagnosis of progressive developmental delay, he does not meet the listed criteria for SSI.

From the age of three months, Bill has received physical therapy and other developmental training. Recent tests found Bill's speech and motor skills at less than two thirds those of most children his age. He also gets upset very easily. The consultant who examined Bill said he would continue to need physical and occupational therapy.

An IFA found that Bill has a moderate limitation in cognitive development and a marked limitation in communicative and motor development. The examiner concluded that these pronounced impairments substantially reduce Bill's ability to perform or function in an age-appropriate manner. He is eligible for SSI.

Jason, who has psychiatric disorders

Jason is 8-1/2. Over the past year his behavior has grown out of control. He has trouble sleeping and talks about committing suicide.

A psychiatric evaluation resulted in a primary diagnosis of dysthymia (a type of depression), with a secondary diagnosis of borderline intellectual functioning. During hospitalization for treatment Jason was very depressed, tearful, fearful and impulsive, and had a lot of difficulty focusing on tasks.

On tests while he was in the hospital, Jason had a verbal IQ score of 82 and performance IQ of 71. The resulting full scale IQ of 75 is classified as borderline. His academic scores place him at the kindergarten to first-grade level. The examiner described him as having "intensely negative and painful emotion." The IFA considered the psychiatric diagnosis and evidence of borderline cognitive functioning, along with reports of activities of daily living from Jason's mother and teachers.

The DDS doctor concluded that because Jason's behavior gets in the way of his learning, he has a moderate limitation of his cognitive functioning. His anxiety, competitiveness and overreaction in the school setting create a moderate limitation in his social skills, further supported by the fact that other children leave him alone and he has no close friends. Jason's personal/behavioral functioning was also rated as moderately limited due to his need for constant supervision—more than any other student. The limitations in Jason's attention and concentration further contributed to the DDS doctor's overall conclusion that this child has a disability of comparable severity to one that would disable an adult.

Susan, who has developmental delays

Susan, 3-1/2, lives with her mother and siblings and attends a therapeutic preschool. She has a primary diagnosis of developmental delays with language disorder. When Susan applied for SSI, the DDS ordered psychological testing and evaluation. She was reportedly immature, impulsive and had few internal controls. She would hit to get attention and her speech was barely intelligible. Susan's test summary included a performance IQ of 82, verbal scale of 75 and full scale IQ of 77.

Evaluating the effects of her impairment, DDS examiners found that Susan had moderately limited cognitive development. Because her speech was barely understandable by her mother, pediatrician and psychologist, the examiners found that Susan had a marked limitation in communication. Her motor development was found moderately limited, as were her social development and personal/behavioral development, based both on her mother's

reports and the examiner's testing. Together, Susan's impairments are severe enough to be considered disabling in an adult.

John, who has hyperactivity disorder

John had prenatal exposure to both drugs and alcohol. Now 7-1/2, he was an unusually quiet baby and showed early developmental delays. He attended therapeutic preschool and has been in special education since starting school. John's primary diagnosis is attention deficit hyperactivity disorder, with a secondary diagnosis of developmental delay. He has frequent tantrums and has been taking medication, amitriptyline, for over a year.

With his SSI application, John's parents were able to provide very thorough documentation of psychological testing by the schools, several very complete individualized education programs (IEPs) and a neurological evaluation. The DDS also paid for a psychiatric examination. Both the neurologist and the psychiatrist reported hyperactivity as the most serious of John's problems. His psychometric scores consistently placed him below the norm.

Through an IFA, examiners found that John has moderate limitation in motor skills, with sensory integration a particular concern; moderate limitation of personal/ behavioral functioning and a need for constant supervision and redirection; and marked limitation in the domain of concentration, persistence and pace, based on his inattention, distractibility and bizarre behavior. The DDS doctor concluded that John needs significant structure in order to function at all and that his impairments were comparable to those that would disable an adult.

Doreen, an abused adolescent

Doreen was abused for many years before being removed to foster care. At 15, she sucks her thumb whenever she isn't doing something else with her hands. She has a primary diagnosis of borderline intellectual functioning and a secondary diagnosis of post-traumatic stress syndrome. Her full-scale IQ is 74.

The IFA found Doreen's cognitive functioning at the first-grade level in reading and written communication and the fourth-grade level in math—a marked limitation. She had moderate limitations in personal/ behavioral functioning and in concentration, persistence and pace, based on teachers' reports that she could not concentrate for longer than four minutes at a time, could not complete

assignments and required constant supervision. Doreen's impairments were found comparable to those that would disable an adult SSI applicant.

Mike, who has multiple mental disorders

Mike, 10, is being raised by his grandmother. He had suffered abuse and, probably, prenatal alcohol or drug exposure. He had abdominal surgery at four weeks and a traumatic blow to the head several years later. His primary diagnosis is functional nonpsychotic anxiety-related disorders, with a secondary diagnosis of mental retardation. Mike is in special education at school, in a regular classroom with considerable pull-out time. While in the classroom, he has an aide to keep him on task and provide safety for the other students.

A psychiatric evaluation found that Mike had no friends, picked fights, argued constantly and was very aggressive with others. He can change quickly from being very nice to very aggressive. He tends to prefer playing with younger children, preferably girls. He often says that he wishes he were a girl and dresses in his sister's clothes. Mike has sleep problems, nightmares and bed-wetting, though this has improved with use of nightly nasal spray. His performance IQ was measured at 79 and all of the test scales were at the borderline level.

An evaluation using the IFA found that Mike has moderate limitation of cognitive functioning and marked limitation of social skills, of personal/behavioral functioning and in concentration, persistence and pace. The effects of a structured setting and adaptations were also considered, as all school activities and subjects were modified for Mike. The DDS doctor concluded that Mike's impairments substantially reduced his ability to function independently, appropriately and effectively in an age-appropriate manner and were therefore comparable in severity to an impairment that would disable an adult.

For more information about the Individual Functional Assessment and these cases, contact Rhoda Schulzinger or Lee Carty at the Bazelon Center, 202/467-5730.

CHAIRMAN, COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
COMMITTEE ON FINANCE
JOINT COMMITTEE
ON TAXATION
SENATE ARMS CONTROL
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United States Senate

WASHINGTON, DC 20510-3902

September 17, 1996

P. 2/3
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The Honorable Bill Clinton
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

Your administration has a key role to play in the implementation of the children's Supplemental Security Income (SSI) provisions that were included in the welfare reform bill enacted last month. While we are all interested in ensuring that only children who are truly disabled receive SSI benefits, we are equally concerned that those children who are, in fact, severely disabled remain eligible for the program. The Social Security Administration (SSA) has the difficult responsibility of striking a balance between these two goals.

The statutory language was intended to give SSA substantial discretion in drawing the eligibility line for this program. Clearly, the new law cannot be read to allow SSA to continue the current level of severity which drew so much criticism. At the same time, the new definition was never intended to "gut" the program and, in fact, affirms the importance of functional assessment as part of an effective evaluation of childhood disability.

The debate over this issue was heated at times, but, ultimately, we reached a compromise on the definition of childhood disability in September, 1995. That definition became part of the overall Congressional compromise on SSI, and was included in the first two versions of welfare reform approved by Congress and then finally in the bill enacted in August. The compromise is notable in two ways. First, it preserves a broad functional approach, beyond the "Listings of Impairments," in measuring childhood disability. Second, it specifically does not establish the listings level of severity, or any equivalent level of severity, as the measure to be used in assessing childhood disability.

The enclosed Senate colloquy between those of us involved in this compromise is important in understanding the meaning of the new definition. This colloquy was not entered into lightly. Rather, it was the subject of much negotiation and was key to the final language of the definition regarding "physical and mental impairment, which results in marked and severe functional limitations" after dropping the requirement that the effect of the impairment also be "pervasive".

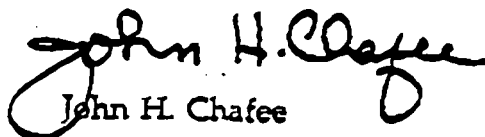
The Honorable Bill Clinton
September 17, 1996
Page two

It is certainly appropriate for SSA, as the regulatory agency, to adopt a disability test that is stricter than the old Individualized Functional Assessment (IFA), but which is not at the very strict level of the "Listings." The proposal put forward by several disability advocates and organizations with considerable expertise - a one marked/one moderate level - is an acceptable and reasonable approach that fulfills the statutory demand for a test that allows benefits only for marked and severe functional limitations, but does not require that these limitations be pervasive.

The Congressional Budget Office (CBO) has also acknowledged that SSA would have a great deal of flexibility in meeting the requirements of the new law. The enclosed Senate Finance Committee report shows that CBO estimated that the new definition of childhood disability could bar anywhere from 10-28 percent of children from the program, depending upon the regulatory interpretation of the new definition.

I know that you will do everything in your power to ensure that children with severe disabilities who are truly deserving are not harmed by the changes in the new welfare law. Thank you in advance for your attention to this matter. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely,


John H. Chafee

JHC:bd

cc: Secretary Shalala
Commissioner Chater

National Organization for Rare Disorders, Inc.®

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out of the darkness,
into the light...

July 31, 1996

Carol Rasco
Assistant to the President
for Domestic Policy
The White House
Washington, DC 20500

AUG 1 1996

Dear Carol:

Instead of phoning you at this busy time before Congress goes into recess, I am writing to express our genuine concern about the pending Welfare Reform legislation. Carol, this statute is probably the most frightening piece of legislation the disability community has ever seen, and we are praying that the President will veto it.

The media describes the law, and President Clinton's concerns, in terms of poverty stricken families who do not want to go to work. However, as you well know, its effect on severely disabled children is rarely mentioned. Moreover, everyone seems to ignore its potential effects on middle-class families when elderly parents need nursing home care. This law is not about lazy people living off the dole; it is about severely disabled kids and elderly folks with Alzheimer's disease. The President must focus on these issues.

Our primary concern is the deletion of the Individual Functional Assessment (IFA) provision, which has enabled children with unusual diseases to qualify for SSI and Medicaid. The IFA was mandated by the Supreme Court's Zebley decision because children in poverty were ordinarily denied SSI if their diagnosis was not on the Social Security Administration's Listing of Impairments. Since the listing was developed for adult diseases, childhood illnesses generally are not included on the list so children with cystic fibrosis, epidermolysis bullosa, spinal muscular atrophy, etc., were often denied SSI benefits and Medicaid. The Supreme Court decided this was not acceptable so they required SSA to examine these children individually if there was no equivalent adult disease on the list, and have a physician decide whether they were actually disabled. Thus the IFA made it possible for children on respirators, those who required tube feeding or chronic nursing care, etc., to qualify for SSI and Medicaid even if they had an unusual disease.

Associate Members

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National Coalition for Research in Neurological & Communicative Disorders
National Head Injury Foundation
National Incontinentia Pigmenti Foundation
National Lymphedema Network
National Niemann-Pick Disease Foundation
National Patient Air Transport Hotline
National Spasmodic Dysphonia Association
Neuropenia Support Association
Osteoporosis and Related Bone Diseases National Resource Center
Pacific Northwest Sarcoid Association

Parent to Parent of GA, Inc.
Parent to Parent of New Zealand
Recurrent Respiratory Papillomatosis Foundation
Research Trust for Metabolic Diseases in Children/UK
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Tourette Syndrome Association of MD, DC, & VA
Treacher Collins Foundation
Tuberous Sclerosis Association of IL
United Scleroderma Foundation, Inc.
Vaincre les Maladies Lyso-somiales/ France
West Central Head Start

*Associations are joining continuously. For newest listing, please contact the NORD office

Carol Rasco
July 31, 1996
Page Two

Carol, the Republican Welfare Reform bill now going through Congress is inhumane. It will devastate the most vulnerable people in our society, severely disabled children living in poverty, and this is **not** what America is all about! The President must not sign the bill and take away this safety net simply because conservatives think that poor people should pull themselves up by their bootstraps. The Individual Functional Assessment (IFA) is a lifeline for severely disabled children who will not get medical care, nor food and clothing, if they no longer qualify for SSI and Medicaid.

Thank you in advance for caring about medically disenfranchised children with rare diseases that are not on SSA's Medical Impairment Listing. We hope you can help.

Warmest regards,



Abbey S. Meyers
President

ASM:aa

P.S. Chris Jennings at the White House has a photo of a child with a rare hereditary disease, Ichthyosis, who qualified for SSI only because she had an Individual Functional Assessment. Her disease is not on SSA's list. Her mother's letter to the President is attached.

cc: Chris Jennings

KENI CONRAD
NORTH DAKOTA
202-224-2043

COMMITTEES
AGRICULTURE, NUTRITION,
AND FORESTRY
FINANCE
GOVERNMENT
RELATIONS

United States Senate

WASHINGTON, DC 20510-3403

September 4, 1996

President Bill Clinton
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500-0005

Dear Mr. President:

I am writing regarding the Supplemental Security Income (SSI) provisions of the new welfare law. As you know, there are approximately 1 million children on SSI. For this reason, it is imperative that the Social Security Administration (SSA) implement the new law with great care and in a manner which ensures that disabled children are not harmed.

The SSA has significant latitude in interpreting the new law which for the first time in the history of the 25 year old program requires the implementation of a broad functional limitations test to evaluate children, retaining the central tenants of the earlier Functional Assessment test. Over 275,000 of the 1 million children on SSI will soon be subjected to new reviews under this law. The Congressional Budget Office has told Congress that with the discretion afforded the SSA under the new law, policies could either cut close to 30 percent of the total 1 million, or cut well below 10 percent -- depending on the SSA's interpretation of the law.

The Senate debate and the legislative history of the final SSI reforms make it clear Congress did not call for or intend for a radical overhaul of the program. In fact, in a colloquy with Senator Chafee and me on September 14, 1995, Senator Dole referred to the SSI program as simply in need of a "tune up."

The intent of Congress in mandating reforms was to remove from the SSI program children who are not truly disabled. I thus urge you to instruct the SSA to carefully develop policies that do not harm disabled children who rely on SSI, but only impact the much smaller group intended by Congress. Additionally, I encourage you to pay careful consideration to the recommendations of nationally recognized experts of this program, such as the Community Legal Services of Philadelphia, The Arc (formerly Association of Retarded Citizens), and the Judge David L. Bazelon Center for Mental Health Law, in developing a comprehensive functional test at a severity level that impacts the fewest number of disabled children.

On a related matter, Congress did not explicitly make the new law retroactive to claims pending on the date of enactment. Consequently, I urge that you clarify that the new law is prospective. That is, families who properly received benefits under existing rules prior to passage of the new law should not now be asked to repay these benefits as a result of this change.

09-16-96 16:01PM

TO 312159810424

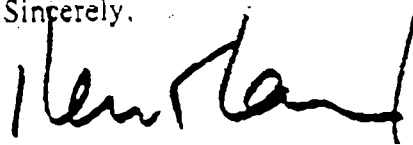
FROM 103

Page 2

Also, for families at risk of termination, I request that you instruct the SSA to provide parents with the following: (1) adequate information and appropriate assistance regarding the medical and functional evidence of disability required to receive benefits; and (2) appropriate assistance in finding legal representation to appeal their cases. It is also important that the SSA continue benefits in cases of appeal until the Administrative Law Judge hearing and decision are final -- an essential protection given the lives and health of children are at stake and the risk of error is great in mass reviews under a complex, new law.

I appreciate your attention to these matters and look forward to hearing from you.

Sincerely,



KENT CONRAD
United States Senate

KC:wman

cc: Carol Rasco, Director
Domestic Policy Council
Shirley Chater, Commissioner
Social Security Administration

THE SSI COALITION

FOR A RESPONSIBLE SAFETY NET

SUPPLEMENTAL SECURITY INCOME FOR LOW INCOME ELDERLY AND PEOPLE WITH DISABILITIES

PROPOSAL FOR A NEW CHILDREN'S SSI DISABILITY STANDARD

The welfare reform bill passed by Congress and signed by President Clinton requires the Social Security Administration (SSA) to reformulate the Supplemental Security Income (SSI) standard used for determining whether children are disabled. As set forth below, we believe that President Clinton and SSA should adopt a new standard that ensures that children with marked functional limitations are not terminated from SSI or denied on SSI applications in the future.

To that end, we are proposing a new SSI disability test for children that keeps the first three steps currently used in the sequential evaluation, and adds a fourth step that specifically considers the child's functional limitations in determining disability, but that is stricter than the standard embodied in the Individualized Functional Assessment (IFA). Specifically, the new test will deny disability to children with only moderate functional limitations. The disability standard used previously allowed children with only moderate functional impairments to qualify for SSI disability benefits.

The welfare reform law made modest changes to the children's SSI program. The new law makes three changes to the SSI children's disability standard:

- ◆ SSI disability benefits are available only to children with "marked and severe" functional limitations;
- ◆ the Individualized Functional Assessment test is eliminated; and,
- ◆ references to maladaptive behavior in the personal/behavioral domain in mental impairment listings are eliminated.

Despite these changes, much of the current children's SSI evaluation scheme remains as before. This reflects Congress' intent, despite the sound and fury of the debate over the children's SSI program, to fine tune, but not radically overhaul, the program through the changes made in the final welfare reform bill that was signed by President Clinton. And, key to the fine tuning is that Congress agreed that functional limitations must be considered in determining whether children are disabled.

To that end, SSA must ensure that any disability standard adopted to implement the changes in the welfare reform bill provides:

- ◆ that functional limitations are adequately considered in determining disability; and



- that children who have marked functional limitations are not terminated from the SSI rolls.

SSA should adopt a new four step disability standard that keeps the first three steps and replaces the IFA test with a new marked and severe functional limitation test. The SSI children's test should consist of the following four steps:

1. **SUBSTANTIAL GAINFUL ACTIVITY TEST:** Is the child working in a job (engaging in substantial gainful activity)? If yes, the child is not disabled. If no, go to the second step.

2. **SEVERE IMPAIRMENT TEST:** Does the child have a severe impairment or combination of impairments? If no, the child is not disabled. If yes, go to the third step.

3. **LISTINGS TEST:** Does the child have an impairment that meets, or medically or functionally equals, the impairments described in the Listings of Impairments at 20 C.F.R. Part 404, Subpart P., App. 1? If yes, the child is disabled. If no, go to step four.

4. **MARKED AND SEVERE FUNCTIONAL LIMITATIONS TEST:** Does the child have an impairment(s) that results in marked and severe functional limitations. In determining this, the child's functioning is assessed in domains derived from the Listings (used at step three) that also factor in physical functional limitations. The domains applicable depend on the age of the child and are broken into three age groups: birth to age 1; age 1 to age 3, and age 3 to age 18 (the age breakdowns follow the Listings).

A child will be found to have marked and severe impairments and be found disabled for SSI if she or he has: a) impairments that prevent the performance of substantially any function or functions in one domain; b) a marked impairment in one domain, and a moderate impairment in another domain; or c) a combination of impairments in various domains that causes substantial reduction in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. *extreme int*

For more information, or to receive a more detailed proposal, contact Thomas Yates at the SSI Coalition For A Responsible Safety Net, 205 W. Monroe, Chicago, IL 60606-5013, Phone 312.460.8402.