Senate Bill Would Reduce SSDI Benefits by Receipt of Unemployment Benefits

An issue that has come up at recent Congressional hearings is the concurrent receipt of unemployment insurance (UI) benefits and SSDI benefits. A bipartisan group of Senators [Coburn, R-OK; Flake, R-AZ; King, I-ME; and Manchin D-WV] introduced a bill on June 6, 2013, that would reduce SSDI benefits for any month in which UI benefits were received. Two additional Senators have signed on as co-sponsors: Sen. John Cornyn (R-TX) and Sen. Joe Donnelly (D-IN). The bill has been referred to the Senate Committee on Finance, which has not scheduled a hearing to date.

S. 1099, "The Reducing Overlapping Payments Act," provides that for any month prior to which an individual attains full Social Security retirement age (currently age 66) and is entitled to SSDI benefits and "is entitled for such month to unemployment compensation," SSDI benefits for that month "shall be reduced to zero." The bill does provide that the procedural requirements of 42 U.S.C. § 405(b)(1), "including provision of reasonable notice and opportunity for a hearing" shall apply. Under the bill, receipt of UI benefits would reduce SSDI benefits for the same month but would not make the individual ineligible for SSDI benefits.

SSA's long-standing policy has been that receipt of UI benefits is a factor to be considered, but is not determinative of a claimant's ability to perform substantial gainful activity. "Receipt of unemployment benefits does not preclude the receipt of Social Security disability benefits. The receipt of unemployment benefits is only one of many factors that must be considered in determining whether the claimant is disabled. *See* 20 CFR 404.1512(b) and 416.912(b)." This policy was most recently restated in an August 2010 Chief Administrative Law Judge Memorandum, reprinted in the August 2010 ***NOSSCR Social Security Forum***.

The August 2010 Chief ALJ Memorandum, relying on *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999), states that "a person can qualify for Social Security disability benefits even though he or she remains capable of performing some work. Similar logic applies to applications for unemployment benefits." The Memorandum continues:

> In addition, it is often uncertain whether we will find a person who applies for unemployment benefits ultimately to be disabled under our rules, and our decisionmaking process can be quite lengthy. Therefore, it is SSA's position that individuals need not choose between applying for unemployment insurance and Social Security disability benefits.
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> However, application for unemployment benefits is evidence that the ALJ must consider together with all of the medical and other evidence. Often, the underlying circumstances will be of greater relevance than the mere application for and receipt of the benefits. For instance, the fact that a person has, during his or her alleged period of disability, sought employment at jobs with physical demands in excess of the person's alleged limitations would be a relevant factor that an ALJ should take into account, particularly if the ALJ inquired about an explanation for this apparent inconsistency.
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> Accordingly, ALJs should look at the totality of the circumstances in determining the significance of the application for unemployment benefits and related efforts to obtain employment.

In 2012, the Government Accountability Office (GAO) was asked by Members of Congress to determine the extent to which individuals received SSDI and Unemployment Insurance (UI) benefits at the same time. See article "Reports of Interest" in the October 2012 issue of the ***NOSSCR Social Security***

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included: (1) The 500-700 annual disposition goal is in effect a quota and is affecting the quality of decisions; (2) The annual disposition "quota" is leading ALJs to "pay down the backlog" with the allowance rate on the increase (as discussed below, this is statistically untrue) and individuals found eligible who are not in fact disabled; (3) Claimant representatives are allowed to withhold adverse evidence; and (4) Procedural reforms are needed in the hearing process, e.g., closing the record before the hearing.

Mr. Sutton's testimony addressed these and other issues, in an effort to counter the allegations raised by the ALJs:

- The Social Security definition of disability is very strict and only about 4 in 10 applications are eventually approved. Statistics show that the allowance rate has dropped at all administrative levels since the agency instituted the ALJ disposition goal in 2007.
- The statutory definition of disability has not been "loosened." Listings for diabetes and obesity have been eliminated. The 1984 Social Security Disability Benefits Reform Act has been mischaracterized. Passed by Congress unanimously in 1984 and signed into law by President Reagan, the Act did not change the definition of disability.
- Demographic changes explain most of the growth in the SSDI rolls, with the three main factors cited by the SSA Chief Actuary as: (1) the aging of the baby boomers; (2) the advent of women as full participants in the labor force who are now insured for SSDI; and (3) the increase in the full retirement age from 65 to 66. While the economic downturn has added to the applications for benefits, it has had a much smaller effect on awards.
- The ALJ hearing process is fair and appropriate. The process should be kept informal and nonadversarial. The record should not be closed before the hearing.
- NOSSCR has supported a number of recommendations for strengthening SSDI, including providing SSA with adequate resources to carry out all necessary program functions and improving work incentives.
- NOSSCR supports reallocation of funds from the OASI Trust Fund to the DI Trust Fund in the short term so that the DI Trust Fund's reserves are not depleted by 2016. Reallocation will allow time for Congress to adopt sensible options to assure the long-term solvency of both Trust Funds.

During the hearing, the Republican Members of the Subcommittee referred to the DI Trust Fund reserves depletion in 2016 and that it would result in a 20% benefit cut to beneficiaries. They did not appear to support reallocation to provide a short-term solution.

The written statements of all witnesses are available at http://oversight.house.gov/hearings/. Scroll down to the June 27 hearing on "Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges." The archived webcast of the hearing can be viewed at http://www.ustream.tv/recorded/35013559.

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Forum. "Under certain circumstances, individuals can legitimately receive DI and UI concurrently, but concurrent receipt could also be an indicator of improper payments." To reach this conclusion, the GAO reviewed detailed SSDI and UI case files for "a nongeneralizable selection of eight individuals" who received concurrent benefits. The results "cannot be projected to the population of individuals receiving concurrent DI and UI benefits." SSA's comments to that report were rather critical and it rejected the GAO's characterization that concurrent receipt "may be an indicator of improper payments." "GAO acknowledges that under current law receipt of payments from both of these programs is permissible; therefore, dual receipt alone is not a flag for improper payments." SSA reviewed the same 8 cases and found that the records "revealed no improper payments issued on the basis of concurrent receipt of [SS]DI and UI. *Income Security: Overlapping Disability and Unemployment Benefits Should Be Evaluated for Potential Savings*, GAO-12-764 (July 2012).