

Altering the Framework for Recipients who receive Social Security Disability Insurance and Unemployment Compensation

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Two pieces of potential legislation pending in the United States Congress would drastically alter the status quo familiar to disability advocates when it comes to the simultaneous collection of Social Security Disability Insurance benefits and unemployment compensation.

First, however, it is important to review today's understanding of the interplay between the two programs. In August of 2010, Social Security Chief Administrative Law Judge ("ALJ") Frank A. Cristaudo reminded ALJs in a policy memorandum that "[t]he receipt of unemployment insurance benefits is only one of many factors that must be considered in determining whether the claimant is disabled. 20 C.F.R. §§ 404.1512(b) and 416.912(b)." In part, ALJ Cristaudo stated:

...the Supreme Court held, in a unanimous decision, that a claim for Social Security disability benefits is often consistent with a claim for relief under the Americans With Disabilities Act (ADA) even though there must be an ability to work in order to obtain relief under ADA. The Court noted that, under the presumptions embodied in our five-step sequential evaluation process, 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.

Judge Cristaudo cautioned ALJs that they must be mindful of Social Security Ruling 00-1c, which incorporates *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795 (1999). Judge Cristaudo reminded ALJs that "...our decision-making 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."

While it seems evident that Social Security has spent significant deliberation on the issue of simultaneous receipt of benefits, Congress is grappling with the issue currently.

On February 12, 2015, H.R. 918 was introduced in the United States House of Representatives by Rep. Sam Johnson (R-TX). Along with H.R. 918, Senator Orin Hatch (R-UT), introduced the same legislation to the United States Senate on the same day. H.R. 918 and S. 499, to be cited as the "Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act" would drastically change the receipt of Social Security Disability Compensation while simultaneously receiving unemployment compensation. H.R. 918 and S. 499 are intended to amend Title II of the Social Security Act. In sum, for any month where an individual has received unemployment compensation, that individual is deemed to have engaged in Substantial Gainful Activity. This would be contrary to the current rules on Substantial Gainful Activity which, in part, encourage claimants to attempt work activity by allowing them to earn up to \$1,130 in 2016, before being found to have engaged in Substantial Gainful

Activity. This provision also attaches to the Trial Work Period afforded to claimants who have been previously found disabled. In that situation, the receipt of unemployment compensation shall be deemed against the claimant as having performed “services” in that month, thus exhausting a month of the Trial Work Period. H.R. 918 was referred to the House Committee on Ways and Means, where it is still pending. S. 499 was read twice and referred to the Committee on Finance. There is a second Bill that has been introduced in the United States Senate. Senator Jeff Flake (R-AZ) and co-sponsor Senator Joe Manchin, III (D-WV) introduced their Bill on February 3, 2015. The Bill, S.343 has been titled the “Reducing Overlapping Payments Act.” The Bill was read twice and referred to the Committee on Finance. Less restrictive than the House Bill, this Bill would reduce SSDI payments to “zero” for any months when unemployment compensation is received.

Even though legislative change is only slowly moving through Congress, cause for concern should exist. Indeed, the occurrence of claimants receiving payments for both programs represents less than one-percent of total beneficiaries according to the U.S. Government Accountability Office¹. Thus, a legislative overhaul does not seem to be of critical importance, yet two critical pieces of legislation are being eagerly pursued by both the House of Representatives and the Senate.

Finally, Ohio is also interested in examining the simultaneous collection of Social Security Disability Insurance benefits and unemployment compensation. Currently pending in the Ohio House of Representatives is H.B. 394. H.B. 394 was introduced by State Representative Barbara Sears (R- Monclova Township) on November 9, 2015. Among many drastic changes to our State’s laws on unemployment compensation, H.B. 394 would no longer allow individuals receiving Social Security Disability Insurance to also receive unemployment compensation. H.B. 394 is currently being considered by the Insurance committee.

¹ <http://www.gao.gov/products/GAO-12-764> (Last accessed 12/18/15).