

**Association of Administrative Law Judges Conference  
San Francisco, California – November 5, 2003**

**Address by  
Hal Daub, Chairman  
Social Security Advisory Board**

I would like to thank you for inviting me to talk with you today. When I spoke to you at last year's conference, I said that the Social Security Disability system was a troubled program with serious problems that cry out to be remedied. Among other things, I mentioned the delays of months or even years that many claimants face. I mentioned the largely unexplained inconsistency of outcomes and the absence of a quality review system that could reliably indicate whether and to what extent that inconsistency reflected unequal application of the law.

These and other problems that I spoke of last year are still present in the system. The issues the Social Security Advisory Board identified in its studies of the disability program are still issues that need to be corrected.

But I sense – and I think we all sense – that this year there is a decidedly brighter outlook.

As you know, a little more than a month ago, the Commissioner of Social Security announced her long-awaited plan for restructuring the disability adjudication process. Many of the details of the plan are yet to be developed, and even its base structure may be modified in some ways. The Commissioner has indicated that she intends to consult widely and deeply with you and others who are a part of the program and also with those who are affected by it. So much remains to be learned about this plan, but I can tell you that the Advisory Board is pleased that the Commissioner has taken a bold and significant step to address what, in our January 2001 report, we called "The Need for Fundamental Change."

It has been clear to the Board for a long time that the program needs more than tweaking. It is clear that the announced plan opens the door to the kind of thoroughgoing, systemic reform that addresses and, if well developed and implemented, should be able to remedy some of the major problems that the Board has identified. The Board will be carefully studying the new plan as it unfolds further and as it ultimately goes into operation. We intend to continue to play a useful and helpful role in the process as we fulfill our statutory responsibilities to advise the President, the Congress, and the Commissioner of Social Security. We also will continue to look at issues not addressed by the plan. We have completed work on and are about to release a report calling for serious reexamination of the underlying concepts and definition of disability that goes beyond procedural change, and we intend to undertake further work in that area. We also are engaged in a project to take a more global look at Social Security generally and its role in the overall picture of economic and health security.

One of the most encouraging aspects of the newly announced plan is that it takes a systemic approach to rationalizing the overall process instead of limiting itself to a series of ad hoc fixes to the existing elements. But I know that your particular concern is the appeals process. So I would like to take a few minutes to review with you some of the Board's recommendations for that part of the program.

In our January 2001 report, we suggested having the agency represented at the hearing. We felt this would bring greater consistency and accountability into the process. Many ALJs expressed agreement with this concept. It would have addressed concerns about the difficulty of maintaining impartiality while still adequately carrying out the responsibility to question the claimant and probe the validity of the claim. It would also help the judge better understand the decision rationale of the examiner who originally developed the record. And, in so doing, it would have strengthened the line of accountability between the two parts of the process.

That Board recommendation, as you probably are aware, was not included in the changes that have been proposed by the Commissioner. But the plan does attempt to accomplish at least some of the objectives that we were seeking when we suggested agency representation. The plan attempts to assure that decisions coming out of the State Agencies will include meaningful rationales describing how those decisions were reached. And the new Federal Reviewing Official position seems to be aimed at creating a stronger accountability bridge between the DDS and hearing processes.

The Board also recommended closing the record after the ALJ hearing. This is another item for which we have heard fairly broad support in the ALJ community. And this recommendation is incorporated into the Commissioner's plan. We also suggested the need to reexamine the role of the Appeals Council, and the Commissioner's plan certainly does that—eliminating the Appeals Council in favor of a stronger quality review system backstopped by 3-judge Appeals Boards. That is another concept supported by many ALJs and recommended last year in a consultant study commissioned by the Board and carried out by Professors Paul Verkuil and Jeffrey Lubbers. That study also recommended replacing District Court review with a new Article I Social Security Court and the Board also felt that consideration should be given to such a move. The Commissioner's plan, however, is limited to changes that she can implement by regulation. So, at least for now, that proposal must stay in the "not yet" category.

As my last specific concerning the appeals process, I want to remind you of what the Board actually put down as its first recommendation. In our January 2001 report, we said:

First, SSA's relationship with the ALJs needs to be changed from one of confrontation to cooperation.

We went on to point out that both sides could stand to work a lot harder at that.

I have to say that I am encouraged by what I see here today. It seems to me that many elements of the Commissioner's plan take into account long-standing concerns and recommendations of the ALJ community. And what I have heard about your initial reaction seems to recognize that. As I look at the agenda for this conference, it seems to represent a commitment for strong cooperation in perfecting a plan that will work.

If we step back for a moment, I think it has long been clear to observers inside and outside the system that it has been, in many respects, dysfunctional. In far too many instances, it did not provide either prompt or even-handed justice to disabled individuals seeking help. If we can keep our eyes on that individual claimant and remember that the goal is to see that he or she gets treated expeditiously and fairly, then we can – we have to – work together to make this program one that our Nation can take pride in.

I thank you for inviting me to speak with you today.