

# Social Security Advisory Board Examination of Social Security's Reinstatement of Reconsideration

April 2020

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The House Ways and Means Social Security Subcommittee (“Subcommittee”) asked the Social Security Advisory Board (“Board”) to examine two aspects of the Social Security Administration’s (SSA’s) disability programs:

1. To review SSA’s decision to reinstate reconsideration
2. To recommend improvements to the adjudication process so that the “right” disability determination can be made earlier in the process

This brief addresses the first charge to examine SSA’s decision and justification for reinstating reconsideration in the ten Prototype states.<sup>1</sup>

SSA has moved forward with reconsideration reinstatement in SSA’s disability redesign “test” Prototype states,<sup>2</sup> despite objections from Members of Congress and disability advocates. To see its effort to fruition, the agency has committed to fully funding this conversion and to working in partnership with Prototype state Disability Determination Services (DDSs) throughout the process of reinstatement. SSA has issued several public statements justifying the change.<sup>3</sup> In testimony to the Subcommittee on July 25, 2018, Patricia Jonas, then Deputy Commissioner of the Office of Analytics, Review, and Oversight at SSA, stated that reinstating reconsideration would:

- Create a uniform disability process across the country
- “Provide claimants the opportunity to receive a favorable decision more quickly”
- Help reduce the hearings backlog and wait time goals by as much as one year<sup>4</sup>

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<sup>1</sup> The ten Prototype states are Alabama, Alaska, California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. In California, only parts of Los Angeles were subject to the elimination of reconsideration.

<sup>2</sup> SSA. 2016. “[Modifications to the Disability Determination Procedures: Extension of Testing of Some Disability Redesign Features](#).” Federal Register 81 (165): 58544. (August 25).

<sup>3</sup> Astrue, Michael. *Oversight Hearing on SSA Disability Claims Backlogs*. 111<sup>th</sup> Congress. (April 27, 2010) ([Statement of Michael Astrue Commissioner of SSA; SSA](#)); SSA. 2018. “[Modifications to the Disability Determination Procedures: End of the Single Decisionmaker Test and Extension of the Prototype Test](#)” Federal Register 83 (238): 63965. (December 12).

<sup>4</sup> Jonas, Patricia. *Hearing on Examining Changes to Social Security’s Disability Appeals Process: US House of Representatives Committee on Ways and Means*, 115<sup>th</sup> Congress. (July 25, 2018) ([Statement of Patricia Jonas, Deputy Commissioner for the Office of Analytics, Review, and Oversight for SSA](#)).

The Board focused its research and discussions with stakeholders from SSA, the DDSs, the representative and advocacy communities and others on topics that follow below.

## Resources to Reinstate Reconsideration

After SSA announced its intention to reinstate reconsideration, the agency asked DDSs in the Prototype states to estimate their resource needs for reinstatement, including additional hires, office equipment, and renovations. SSA fulfilled nearly all those requests, with the expectation that hiring and other acquisitions would be completed by the end of FY 2019. After years of tight budgets and insufficient funds to fill positions resulting from examiner turnover,<sup>5</sup> the Prototype DDSs were allowed to “staff up” in ways they hadn’t been able to for some time.

## State Support for the Decision

The Board has learned that the ten Prototype DDSs had no influence on SSA’s decision to reinstate reconsideration. Only after SSA announced its decision to reinstate reconsideration in the FY 2018 budget did it send a letter to governors of Prototype states asking for their acknowledgement. Once the decision became public, advocacy groups in some Prototype states mobilized against the decision. Figure 1 below outlines the Board’s understanding of the timeline of events leading up to reinstatement.

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<sup>5</sup> US Government Accountability Office (GAO). 2004. GAO, GAO 04-121, “[Strategic Workforce Planning Needed to Address Human Capital Challenges Facing the DDSs](#)” (January).

Figure 1. Observed Timeline of SSA’s Communication with State DDS Administrators about the Decision to Reinstate Reconsideration and State Implementation



Source: Ray, Rebecca. [“SSA Adds Another Step to the Disability Insurance Process in 10 States.”](#) TrueHelp: A Division of Allsup. January 9, 2019.

## Achieving a Consistent National Process

SSA could have moved toward national uniformity either by reinstating reconsideration in the Prototype states or by eliminating reconsideration. Uniform practice regarding reconsideration, however, does not ensure nationally uniform policy implementation. Variations in outcomes, such as allowance rates, accuracy rates, and claims pending, may persist, despite the reinstatement of reconsideration.<sup>6</sup> The Board has been informed of other DDS inconsistencies, such as examiner training, the role of the examiner in processing the disability claim,<sup>7</sup> and the use and quality of consultative examinations. These factors may influence the accuracy, timeliness and consistency of determinations nationwide.<sup>8</sup> Other

<sup>6</sup> See: SSA. US-GOV-SSA-344, [“DDS Accuracy.”](#) Updated November 27, 2019. Distributed by SSA; SSA. US-GOV-SSA-307, [“SSA State Agency Workload Data.”](#) Updated December 20, 2019. Distributed by SSA. Strand, Alexander. 2002. [“Social Security Disability Programs: Assessing the Variation in Allowance Rates.”](#) SSA Office of Research, Evaluation, and Statistics Working Paper No.98 (August).

<sup>7</sup> While nearly all determinations require the final decision be made by a medical professional, in some states, the examiner studies the claim carefully, identifying key issues for this professional and facilitating both a complete file and a fair decision timely. In others, the examiner gathers evidence for the file but does not prepare or synthesize the information for medical or psychological review.

<sup>8</sup> Recruitment of medical or psychiatric professionals by DDSs to conduct consultative examinations varies geographically (especially for some specialties). Also, the Board has been told that effective oversight of consultative examiners can be influenced by state regulations that can make it difficult

factors including acquiescence rulings<sup>9</sup> contribute to inter- and intra-regional variation.

## Examining Evidence Relating to Decision Timeliness

SSA stated that reinstatement would reduce the time to a decision<sup>10</sup> and the number of claimants waiting for a hearing. However, in testimony to the Subcommittee on July 25, 2018, and again in discussions with the Board, stakeholders raised concerns that some claimants in Prototype states, who might have otherwise been determined eligible at the hearing stage, would instead abandon their claim following a second denial at reconsideration.<sup>11</sup> Also, the agency's projections about program savings and workload assumptions suggest the agency does expect fewer claimants to continue to appeal after denial following the reinstatement of reconsideration.<sup>12</sup>

SSA could alleviate or confirm the validity of these concerns by analyzing its longitudinal data on applicants and publicly releasing this analysis and methodology. Such analyses should address the influence of multiple denials on claimant behavior. Specifically, it should consider whether the reconsideration step disproportionately discourages further appeals by those who are denied but who would otherwise be allowed at the hearings level assuming no change in health condition(s); the extent to which the reconsideration step discourages further

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for a DDS to exert quality control, depending on whether the medical professionals report directly to the DDS or to a vendor.

<sup>9</sup> Acquiescence rulings are explanations of how SSA will apply court decisions to the adjudication of SSA claims in the same circuit, which is at variance with SSA's national policies for adjudicating claims. SSA. "[Acquiescence Ruling Definition](#)." SSA. Accessed February 27, 2020. The US Courts of Appeals are organized into 12 regional circuits and SSA divides the US and its territories into 10 regions.

<sup>10</sup> This measure combines the time to process a case with information about the likelihood that a final decision is reached at each stage.

<sup>11</sup> Dubin, Jon C. 2016. "[Social Security Disability Adjudicative Reform: Ending the Reconsideration Stage of SSDI Adjudication after Sixteen Years of Testing and Enhancing Initial Stage Record Development](#)" in *SSDI Solutions* (The McCrery-Pomeroy SSDI Solutions Initiative). West Conshohocken: Infinity Publishing.

Burdick, Jennifer, Catherine M. Callery, Jon C. Dubin, Lisa Ekman, and Louise M. Tarantino. *Hearing on Examining Changes to Social Security's Disability Appeals Process: US House of Representatives Committee on Ways and Means, 115th Congress. (July 25, 2018)* ([Testimonies of Jennifer Burdick, Catherine M. Callery, Jon C. Dubin, Lisa Ekman, and Louise M. Tarantino](#))

<sup>12</sup> SSA's FY 2018 budget justification was estimated to yield \$3.4 billion in benefit cost savings over ten years through the reinstatement of reconsideration in the Prototype states.

appeals by those who would not have been allowed at the hearings level; and, associated costs or savings to taxpayers and claimants. The potential costs and benefits to claimants with and without the reconsideration step must be estimated and compared, e.g. the cost-benefit from an earlier decision at reconsideration relative to a delayed decision at the hearings level.<sup>13</sup>

## The Board's Empirical Approach

The Board set out to determine whether evidence supports SSA's claims about wait time reduction, etc. However, when the Board asked for data, SSA responded that cohort Prototype data were not available. The Board did receive aggregated descriptions of the expected effects of reinstatement, but SSA has not provided the data that the Board requested or any analyses supporting SSA's rationale.

In early 2019, the Board learned about the existence of data from SSA's disability improvement efforts implemented following Prototype, known as the Disability Service Improvement (DSI) initiative. DSI produced cohort data that may have informed the Board's work and that the Board formally requested from SSA. The agency declined to provide the data, citing the deliberative process exemption to the Freedom of Information Act (FOIA). SSA's decision to apply FOIA to this request obstructs the Board from doing its work.

Without access to relevant data, the Board cannot evaluate SSA's justifications for reinstating reconsideration. Thus, we are unable to evaluate the quality of data gathered and any analyses performed on those data that SSA may or may not have used in its decision to restore reconsideration. Similarly, SSA indicated its intent to evaluate reinstatement, but we do not know what data or analysis SSA plans to perform to evaluate the effects of reinstating reconsideration in the Prototype states. We do not even know whether a formal evaluation plan exists.

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<sup>13</sup> A decision at the reconsideration level averaged 109 days in 2019, whereas a decision at the hearings level averaged 506 days in 2019. SSA. 2020. "[FY 2021 Congressional Justification \[of Budget Estimates for Appropriations Committees\]](#)" (February).

## Suggestions for Consideration and Analysis

Analyses evaluating the reinstatement of reconsideration, using appropriate methods and variables, could be conducted by SSA, the Office of Inspector General, the Government Accountability Office (GAO), or outside researchers. This and other research should be shared publicly so that SSA management, Congress, the Office of Management and Budget, and interested public organizations may be better informed about the costs and benefits of alternative administrative procedures.

## Questions Requiring Further Examination

The merit of reinstating reconsideration should be judged by evaluating trade-offs to beneficiaries and taxpayers. If reconsideration results in a quicker and more accurate disability determination process at acceptable cost, it represents a desirable policy. If it discourages people from appealing who would have been granted benefits or who later reapply and receive awards, it represents an undesirable policy. Without a detailed plan for collecting appropriate data and analyzing it, it is impossible for SSA management, Congress, or the public to determine the most desirable policy. These are empirical questions that SSA should address publicly, either by releasing existing analyses or engaging in additional robust and transparent study. A request for the conduct of this analysis could come from the Congress or be undertaken by GAO. A retrospective study of Prototype and non-Prototype states could have strengthened SSA's justification to reinstate reconsideration by addressing the following research questions, among others:

- What is the expected time to a final decision in Prototype and non-Prototype states controlling for other relevant case or claimant characteristics such as the alleged impairment?<sup>14</sup>
- What is the allowance rate at each adjudication stage and after all stages in Prototype and non-Prototype states controlling for other factors that may affect allowance rates?
- What percentage of cases at the hearings level is attributable to the elimination of reconsideration? What percent of the hearings backlog is expected to be further reduced by reinstatement?

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<sup>14</sup> SSA completed a similar analysis at the request of the Board in 2017, but it did not differentiate between Prototype and non-Prototype states. A similar analysis could be conducted comparing Prototype and non-Prototype states.

- How did the decision or ability to appeal an initial denial change before and after the introduction of the Prototype, and what were the influencing factors? What are the likelihoods of allowances and denials at each stage of adjudication? By case characteristics?

SSA's decision to reinstate reconsideration, creates another opportunity to evaluate the effectiveness of reconsideration as an adjudicative step by studying the experience of statistically similar claimants in Prototype states before and after reinstatement. SSA should be encouraged to study how reinstatement affects the time to a final decision, overall allowance rates, and appeal and/or re-application behavior and for whom. More detailed research questions could include:

- How do applicants who do not appeal a *reconsideration* denial differ from those who do appeal including in their predicted likelihood of allowances at the hearing level?
- How do applicant choices to appeal after an *initial* denial differ under Prototype and non-Prototype disability determination processes? Is there a difference between the groups in the predicted likelihood of overall allowance rate after all adjudicative stages?
- How often do those who do not appeal re-apply? After how long?

The Board will continue its study of possible process improvements at the initial and reconsideration stages of disability determination. In the meantime, SSA, either on its own or in concert with GAO or others, should examine these questions and make the findings and data public.

## Acknowledgments

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