Reforming the Social Security Disability System: A Clarion Call for Action and Change

Presented by Bruce Growick, Ohio State University
Social Security Advisory Board Forum On
The Social Security Definition of Disability
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Description: The purpose of this presentation is to outline ways in which the Social Security Disability System can be improved so that both program and fiscal integrity can be maintained. Three areas are explored: the definition and process of disability determination, the connection between disability status and rehabilitation, and the delivery of return-to-work services by both the private and public sectors.

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INTRODUCTION

The Social Security Administration (SSA) today is indeed faced with enormous challenges in the development of its disability program. As consistently cited by its own studies, as well as those of the GAO and other interested parties, the disability portion of the Social Security System is in need of bold suggestions and change in order to remain true not only to its mission, but also to its financial solvency. This is not to imply that the current administration of SSA has not been creative and progressive in its approach to this problem. To the contrary, the current administration of SSA has approached, quite judiciously, the need for both stability and consistency, while it also explores ways in which the current system can be improved.

For example, during the past year SSA has convened a group of experts in the field who have made significant suggestions on how the current 'ticket' program can be improved. Know as the Adequacy of Incentives Work Group, they have drafted specific suggestions on how both the supply and demand side of the 'Ticket' program can be improved to make it more robust. And, more generally, the current Administration has begun to embark on a series of demonstration projects that examine some of the fundamental aspects of the program, like early intervention, time-limited benefits, and partial disability.

Yet, because delays in disability determination remain intolerable, because the return-to-work rate of SSA beneficiaries is almost non-existent, and because an actuarial deficit looms imminently for the disability trust fund, suggestions for significant change need to be strongly considered. For this reason, the purpose of this presentation is to outline ways in which the Social

Security Disability System can be improved so that both program and fiscal integrity can be maintained.

MY BACKGROUND AND QUALIFICATIONS

As a faculty member at Ohio State University for the last twenty years in the area of disability and rehabilitation, I have had the unique opportunity to be involved in the training of rehabilitation professionals, the delivery and administration of services for individuals with disabilities, and programmatic research into ways in which disability is defined and treated in our society. For two years, during a leave of absence from Ohio State, I was the Director of Rehabilitation Services for the Ohio Bureau of Workers' Compensation. In this capacity, I oversaw the delivery of return-to-work-services for the entire State of Ohio, including 2 state-of-the-art rehabilitation facilities, 15 field offices, and 450 professionals serving over 8,000 injured workers a year. As many of you might know, workers' compensation, like social security insurance, is an indemnity system geared towards the monetary, medical, and return-to-work needs of individuals with disabilities. These three features, by the way, are fundamental components of all work-related indemnity programs.

During this time, I have also been a Vocational Expert for the Social Security Administration and other adjudicatory bodies, where decisions on disability benefits are contingent upon factors affecting employability. As a Vocational Expert, I am asked to opine on the employability of individuals with physical, mental and/or emotional limitations, citing source documents about the availability of jobs within an individual's residual functional capacity. In these file reviews and hearings, I have personally experienced both the best and the worst of our disability determination systems in America.

And finally for the last nine years, I have been intimately involved in the development, passage, and implementation of the new 'Ticket-to-Work' program. I represented the International Association of Rehabilitation Professionals, an association consisting of 3600 rehabilitation professionals who work mostly in the insurance industry. These professionals help individuals with disabilities in

workers' compensation, long and short-term disability, and even personal injury to learn to cope with their limitations and return-to-work (RTW). In this capacity, I participated in the RTW Policy Group headed by Tony Young, then of United Cerebral Palsy, and I testified in front of the Social Security Subcommittee of the U.S. House Ways and Means on the need for and viability of the proposed 'Ticket' program. At present, I am a Presidential appointee to the U.S. Access Board, the federal entity empowered with developing the rules and regulations for implementation of the ADA, specifically Titles II and III.

THREE AREAS OF CONCERN

My remarks on the reform of the Social Security Disability System are divided into three parts, corresponding with the three aspects of the system that appear to be most prominent and in need of change. They are the following: 1) the definition and process of disability determination used by SSA, 2) the current disconnect between this process and the return-to-work efforts of SSA, and 3) the specific provision of rehabilitation services by both public and private providers so sorely needed by SSA Beneficiaries. These three aspects of the SSA Disability System were chosen because they are also the major portions of the disability program that are addressed by the Social Security Advisory Board in their most recent publication entitled "The Social Security Definition of Disability" published last October (2003). These concerns have been percolating for some time now, and they represent areas in which I feel I can provide some insight and helpful suggestions based upon my professional experience, and the current state of the SSA disability system.

A. <u>The Definition and Process of Disability Determination Used by SSA</u>. When I first became involved with the RTW Group and met with the Social Security Subcommittee of the U.S. House Ways and Means in 1995, we were told <u>then</u> that changing the established and well-ingrained process of determining disability in the SSA program was pragmatically 'off-limits'. The general consensus at the time was that the low return-to-work rate of SSA beneficiaries should be addressed, and not the disability determination (DD) process itself.

Even though the DD process was too lengthy and mired down in administrative burdens, it was felt that addressing both issues at the same time was too much to undertake.

Unfortunately, we now acknowledge the fact that one of the major obstacles to the success of the 'Ticket' program is the inextricable relationship between the SSA definition of disability and how it is applied, and the ability of beneficiaries to return-to-work. Therefore, I applaud the Social Security Advisory Board in its recognition of the need to address the threshold question of how the definition of disability should be structured and administrated as part of its overall program. Simply put, I think, like Wittenburg and Loprest at the Urban Institute in their recent publication entitled "A More Work-Focused Disability Program? Challenges and Options", that SSA should tackle the way in which the DD process operates so that alternate statuses of disability can be created other than 'permanent and total' disability for a lifetime.

Similar to workers' compensation, temporary and even partial statuses of disability should be established so that the opportunity for RTW services can be provided, before permanent and total disability is granted. In this way, the Social Security Administration can develop further its current and planned demonstration projects in Early Intervention, Time-Limited Medical Benefits Only, and Permanent Partial Disability. As the Social Security Advisory Board acknowledges in their recent publication, when it comes to the DD process, it is 'difficult to sort out problems that are attributable to administrative burdens from those that are attributable to inadequate policy development'. I urge SSA to explore ways in which its process and procedure for determining disability can be altered so that the inherent disincentives to rehabilitation do not outweigh, or even supplant, the natural desire for competitive employment by individuals with disabilities.

As for the definition of disability itself, rather than the process of DD used by SSA, I would offer two observations. First of all, there appears to be an over-reliance on the medical listings and non-medical grids in the DD process of SSA. The current definition of disability, which uses a list of 'a priori' disabling medical

conditions, causes some misclassifications because individuals with specific medical conditions and certain non-medical attributes, such as age, education and skill level, are considered unemployable, even though there is research and practical experience to the contrary. A pure medical model of disability determination in any indemnity system is anachronistic, and reinforces the old adage that certain conditions are, in and of themselves, disabling.

Secondly, the definition of disability should continue to reside in the applicant's inability to work, regardless of how competitive employment or SGA is defined. SSA, like other insurance programs, should operate under a system in which the condition of disability should be tied to an inability to work, because it is the individual's inability to perform remunerative activity that makes them eligible for benefits and services. The ADA, as a civil rights law for example, can use a much broader definition of disability, like significant limitations to major life activities, but SSA should remain a work-related indemnity program.

B. Connection Between Disability Status and RTW. With a change in the process of determining disability and the creation of different classifications of disability status, it is imperative for the Social Security Administration to connect disability status with return-to-work efforts. As I have testified previously, in front of the Social Security Subcommittee of the House, and others have observed, there is currently a tremendous and gravely unfortunate disconnect that exists between the DD process and RTW efforts. The assumption that SSA applicants have received rehab services to maximize their RTW efforts before applying for benefits tends to be untrue. Regrettably, many current recipients and future applicants for disability under SSA have not received adequate services to dispel the notion that they are unemployable, and a decision on their disability status should not be made in its absence.

Unfortunately, when all of the other return-to-work services for individuals with disabilities have failed, the SSA bears the brunt of that failure. As witnessed by the implementation of the "Ticket", incentives for employment, such as extended health care and suspended review of disability status, are not enticing enough beneficiaries to explore employment after a guarantee of benefits are

granted. The SSA cannot remain uninvolved in the delivery of return-to-work services, like it has in the past.

Acknowledging the need for employment services as part of the application process for SSA benefits leads us to this question: who should provide those services? Undeniably, a combination of both public and private providers would be best. The new Work Incentive Coordinator positions in SSA are an example of how SSA can provide support and direction to applicants and beneficiaries, while the Alternate Providers, now ENs, of the 'Ticket' program are a good example of private-sector involvement in the RTW process. As prophetically postulated and supported by a former member of this Advisory Board, Caroline Weaver in her seminal work entitled "Privatizing Vocational Rehabilitation: Options for Increasing Individual Choice and Enhancing Competition", the overall well-being of individuals with disabilities is predicated on the accountability, performance, and cost-effectiveness of vocational rehabilitation services.

The 'Ticket' program, as we all know, is an acknowledgement of this fact, as supported by the SSA demonstration projects from the 1990s, especially Project NetWork. The supply-side of the RTW equation for SSA beneficiaries needs to be addressed as much as, if not more than, the demand side. Without a viable and healthy rehabilitation program for SSA applicants and beneficiaries, the best reformulation of the definition and process of determining disability will not produce the most desirable results. But, this ideal solution will certainly not be easy. How can rehabilitation services from the public and private sectors be balanced or harmonized so that the best parts of each are used effectively and efficiently?

In 1997, I wrote an article entitled 'Inspiring a Partnership Between Private-Sector Rehabilitation and the Social Security Administration', in which I envisioned empowering individuals with disabilities with the opportunity to choose their provider of service. Unfortunately, I was admittedly naïve in the thought that our venerable State-Federal System of VR would embrace the 'Ticket', and think about ways that both systems of providers could function collaboratively for the

betterment of people in need. This fact is especially self-evident since the GAO had cited extremely low RTW rates for SSA beneficiaries (less than 1/2 of 1 percent). Painfully, the GAO acknowledged that current SSA Beneficiaries had a greater likelihood of reaching retirement age, or dying than returning to work under the current system of RTW. The 'Ticket' was to be a pathway to employment through ENs for those beneficiaries who did not need extensive, ongoing services, but rather short-term, goal-directed assistance in securing employment.

This is not to cast aspersions on the State-Federal VR System. Ostensibly, this system can no longer be the sole provider of services to almost everyone who is disabled in our country. No matter how well VR serves their constituents, the sheer number and, and more importantly, the diversity of individuals with disabilities in our society necessitates alternate providers for individuals with different needs. However, under an operating budget in which appropriated funding is based upon the number and types of individuals served, the State-Federal System has rightfully considered the 'Ticket' program as new and unwanted competition. The current reauthorization of the Rehabilitation Act, which only occurs periodically, does not regrettably even mention the 'Ticket' program. May I strongly encourage the current administration of RSA to consider ways in which it can deregulate its monopoly of services to SSA beneficiaries.

C. Delivery of RTW Services to SSA Beneficiaries. Like many experts in the field, I also feel that the SSA should not be dragged into the rehabilitation or RTW business, per se. However, like all well-administered indemnity programs, SSA needs to maintain an active oversight of the provision of these RTW services. It is a basic axiom of the insurance industry that you 'manage cases against the risk', meaning that the company always provides services that will reduce its exposure. SSA, as a government administered indemnity program, needs to make sure that in addition to paying the medical bills and providing money for sustenance, it must also have available an effective way in which individuals can return to work.

The best way of achieving this goal is by embracing the use of the private-sector of rehabilitation, as well as the public-sector. Vocational rehabilitation, as a profession, must diversify so that individuals can be served differently. For example, rehabilitation services for SSI recipients should be distinguished from such services for SSDI beneficiaries. Rehabilitation services for SSI recipients, who might not have a work history and might never adequately reach SGA even with extended supports, might be different from RTW services, for SSDI beneficiaries with extended, competitive work experience. Historically, the SSI and the SSDI programs were combined because they both used the same process of determining disability. It was easy to combine them administratively for purposes of disability determination, but it is unwise to develop a rehabilitation program for individuals with different needs. Whereas SSI is a cash transfer program for individuals who are both disabled and economically disadvantaged, the SSDI program was developed for individuals with a work history whose rehabilitation needs might be different from SSI recipients.

CONCLUSION

The political realities of the 'Ticket' Program are stark and sobering. Whereas the Democrats wanted greater incentives for SSA beneficiaries, such as extended health care and continued disability coverage if necessary, so they could return to work, the Republicans wanted greater choice among providers and increased access to services, so the trust fund would be saved. Both of these goals are laudable and quite complementary. Because, if the SSA Disability Trust Fund does not remain solvent in the future, all individuals with disabilities will be hurt by the lack of programmatic accountability and responsibility, as stated by Caroline Weaver of this Board.

The 'Ticket' program is failing for various reasons, some expected and some perhaps unintended. As reviewed by me in another publication called the 'Unintended Consequences of an Imperfect Law', the 'Ticket' lacks an appropriate payment schedule for providers, the lack of harmony between private

and public sectors of rehabilitation, and the lack of adequate administrative support for both beneficiaries as well as providers. Although a very good step in the right direction, the 'Ticket' will continue to be benign unless some of the threshold concerns, such as disability status, and connection to RTW are addressed and resolved.

Lets hope the years ahead will bring us regulation and/or legislation that will address the need for different statuses of disability, a strong and viable connection between disability and work within the DD process, and a vibrant and harmonious system of RTW that includes both public and private providers.

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