Reinventing Social Security Disability Programs: From Disability to Functionality

by
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As concerns mount with respect to the solvency of many disability systems throughout the world, ranging from workers' compensation to Social Security, experts continue to grapple with the most effective means to determine the eligibility to receive benefits, create an effective manner to transition disability benefits recipients back to employment, and reduce program expenditures in a fair, yet effective manner. The problem is further magnified due to the focus upon *disability* and the inconsistency of its programmatic definition with its true meaning in the context of human function. The mistakes in definition and approach have resulted in cost reduction strategies, ranging from early intervention in the return-to-work process to the provision of incentives to employers to hopefully expedite the return to work process, with less than satisfactory outcomes.

While the Social Security Administration continues to seek answers as to the best method to properly determine or adjudicate the number of individuals on the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) rolls, the negative financial impact on the Trust Fund supporting these programs and Old Age and Survivors Dependents Income (OASDI) continue to grow. The debate sometimes turns into finger-pointing and accusations. However, there must be a bi-partisan recognition that we need to advance the residual functional abilities of the individual and provide realistic incentives to motivate the return to work before remedial action can be taken.

Although pundits may claim that the system is irreparable, a more thorough review indicates the system is simply in need of repair. Some of the fundamentals tenets and practices of the SSDI and SSI programs are viable and serve the entire disabled population. The focus needs to be directed away from negative connotations associated with disability and an emphasis placed upon the positive attributes of the system and the positive attributes of the individuals receiving disability allowances through SSDI and SSI programs.

The *Disability* Industry…Serving the Disabled or Merely Self-Serving?

As with many causes of social interest, "Disability" has spawned its own industry. In a meeting sponsored by the Social Security Administration and held at the American Institutes for Research in 1999, nearly fifty different professional groups were identified as "stakeholders" in the disability determination process. Stakeholders were identified within a broad range of providers to the overall disability insurance administration process. These included administrative law judges, lawyers, consulting physicians, disability evaluators employed by the state disability determination services, etc. Ironically, the potential recipient of benefits was not identified by the group of experts assembled as the first stakeholder. The fact is *the only stakeholder* is the individual who may or may not receive a disability allowance. All other parties to the process are more appropriately identified as ancillary service providers.

The problem with this system is delineated by the "stakeholder" issue; the more burdensome and bureaucratic the system, the greater the need or reliance upon the ancillary service provider to untangle the intricacies of this system. While we continue to layer the need for services upon the programs, a greater percentage of the potential benefit dollar is directed away from the true intent of the program and into the coffers of the service providers.

Compounding the problem is the fact that it is very difficult to disassemble an industry heavily predicated upon the need for legal representation. Outside the legal arena, if a more effective means to provide a service exists, the necessity of the service provision is negated. The evolution of the internet provides a good example of improvement of a system through simplification; the reduction in the office-to-office courier services, travel agencies, and other related functions that are now more effectively handled through electronic data transmission.

The goals of the Social Security Administration should be to include a methodology that reduces the dependency upon the multiple layers of services and enables the recipient of SSDI or SSI benefits, or their families, to navigate the programs without fear or suspicion as to the intention of the process.

Work Disincentives of the Current Social Security Disability Programs

In a report authored by the Social Security Advisory Board, entitled "The Social Security Definition of Disability" (October 2003), there were seven disincentives identified for Social Security beneficiaries to consider involvement in programs designed to achieve a return to substantial gainful activity. The disincentives were identified as follows:

1. *The definition of disability* – "person must demonstrate the 'inability to engage in any substantial gainful activity'".
2. *Impact on attitudes and motivation* – having an applicant "prove that they cannot work may undermine their motivation and desire for employment."
3. *Availability of health benefits* – the receipt of health benefits (Medicaid or Medicare) may be worth more than the wages received if the job does not provide adequate and dependable health insurance coverage.
4. *Delayed and incomplete availability of health benefits* – in many cases the waiting period to have coverage for pre-existing conditions may be enough to prevent a beneficiary from considering a return to work.
5. *Delayed rehabilitation services* – the delays associated with establishing eligibility for SSDI or SSI compound the delay into the provision of vocational rehabilitation services, thus impacting the motivation essential to the process.
6. *Complexity of work incentives* – the complexity of work incentives may be confusing and engender a distrust that the design is to only discontinue benefits.
7. *All-or-nothing choice* – the fact most return to work jobs may be or are lower-paying than benefits received, the loss of benefits may far outweigh the transition to work.

When a disability system provides a greater incentive for one to maintain the perception of disability, the system itself becomes disabled. The consequences of the

well-intentioned transition to a working status may serve to further disable the individual on a socio-economic basis, creating a "spiral effect" where a further degradation of the beneficiaries' self-perception will occur.

The Social Security Administration and policymakers continue to be confounded by the disability dilemma created by the mechanisms of the system. The methodologies necessary to implement an effective change may result in the raising of expenditures in some areas. However, if the ultimate goal is to make certain the right individual is getting the check for the proper reason and not abusing the benefit if they do not need it, we must consider the steps necessary to achieve this end. We must also be willing to consider the long-range impact of the steps versus just the costs of the initial changes.

The steps to be considered include:

1. De-emphasize disability and placing the focus upon a level of ability to foster a belief that a return to work is possible on the part of the SSDI/SSI recipient.
2. Recognize the fact the determination of disability must be resourced to avoid the costs associated with an inappropriate award of benefits. This includes hiring or referring to appropriate medical personnel or suitably trained health professionals to evaluate the appropriateness of a disabling condition.
3. Improve the quality and utility of the medical evidence associated with the disability determination process.
4. Recognize the additional costs associated with living with a severe impairment and providing a base level of support regardless of the earning level of the SSDI/SSI eligible individual.
5. Develop a more realistic level for the commencement of earnings offsets and the rate at which they are applied.
6. Conduct educational outreach to employers to reduce the potential fears and explain the benefits available to them through the various disability support programs.

The Definition of Disability…The Main Obstacle

Defining disability has been a challenge that continues to confront the social insurance programs and the policy makers charged with the oversight of those programs. While it would seem that all insurance programs associated with disability have a high degree of commonality, the reality is that there is a wide disparity in such systems. For example, in workers' compensation the issue of evaluating disability becomes more confused as every state has a permanent disability and/or permanent impairment rating program to provide compensation benefits directly linked to the severity and permanency of an injury. The methodology for the correlation of a permanent impairment to a disability is ambiguous. There is no consistency for the definition of a work related disability. In some states, the scale of compensation is linked to a formula that considers the nature of the injury and the loss of anatomical function to that body part. In other states the permanent disability system adjusts the level of compensation to reflect the perceived disability in the subsequent performance of work activities. The level of disability may be adjusted for the individual's age at injury, type of work performed at

date of injury, and other factors that may be deemed to impact one's ability to perform work in the labor market.

The disability program of the Veteran's Administration is unique in that the disabled veteran qualifies for the receipt of benefits based upon varying levels of a service-connected disability. The program is almost entirely based upon the determination of impairment and a presumption of a disability associated with the medical limitation. The rating system rarely takes into consideration the true level of residual functional ability of the veteran. Thus it would be hard to describe the disability rating as truly tied to an inability to function. The inherent contradiction also results in those that have established a level of disability (as defined by the program) trying to get a higher benefit.

In SSDI and SSI determinations, the decision to award benefits (in cases other than those where the disease process is terminal or the injury/disease is given as very severe) is based upon a presumption of a total inability to perform substantial gainful activity. The applicant is presumed to be unable to participate in substantial gainful activity for 12 months or more. In easier language, substantial gainful activity is work that will pay a wage at a level necessary for survival. In circumstances where the severity of the medical condition is not defined in the "medical listings" (*Disability Evaluations under Social Security*), the system is biased against the younger skilled worker and in favor of the older untrained worker. For example, an injury/disease condition that directs sedentary functional restrictions may result in an unfavorable determination in a younger individual but may result in an award of disability benefits in an older individual.

Are We Penny-Wise and Pound Foolish in Making a $250,000 Decision?

Based upon the Fiscal Year 2004 budget, the Social Security Administration allocates approximately $750 per claim filed to the state disability determination services to perform the necessary medical determination of eligibility process SSDI or SSI benefits ($14.9 billion for approximately 2 million claims filed in FY 2003). The $750 includes all costs associated with the state's operation of the disability determination service, and is not limited to actual claims investigation expenses. The decision to be made with respect to SSDI/SSI eligibility is not limited in its impact to the solvency of the Trust Fund. Social service agencies covering housing, rehabilitation, medical services, food and education, just to name a few, are impacted by the decision. The authors of this article believe that an allowance granted to a 35 year old beneficiary could easily exceed $250,000 in total social services provided within a ten year period.

Furthermore, if an individual is denied benefits at the point of the initial determination, the right to appeal the decision is provided. This results in an increase to approximately $2000 to the Social Security Administration to administer the appeals process. This does not include the potential out-of-pocket expenses to the individual appealing the decision to pay for legal and medical-legal costs. While most legal fees are on a contingency basis, once a denial is overturned, the lawyer or claimant advocate is allowed to claim fees out of past due benefits up to $5,300.

Once the individual is placed on SSDI or SSI benefits, how often is his or her case reviewed to determine if the entitlement to continued benefits is appropriate? In most

cases, the review is cursory and does not include the establishment of work-related abilities by an independent medical review. It is understood that some cases (e.g., quadriplegia, multiple sclerosis, etc.) are not in need of a re-evaluation due to the permanency or the insidious progressive nature of the disease process. It is also understood that the adjudicator workforce is challenged by the increasing rate of disability applications.

With so much on the line for the Social Security Administration, federally and state-supported programs, as well as the individual, are we devoting the proper level of resources and attention to the problem? When one considers that an insurance company will often pay in excess of $2,500 to attain a proper evaluation of a case that may have a potential pay-out of $25,000, the answer is a resounding "No!"

If Social Security is looking at the likelihood of a potential pay-out of $120,000 over a 10-year period, the evaluation methodology needs to include an accurate assessment of the residual abilities of the individual to perform work-related activities. The failure to undertake this assessment will continue to undermine the potential of a return to work as evidenced by the less than one-half of one percent that leaves the rolls for substantial gainful activity. If we spend $2,000 on a thorough evaluation process and raise the return to work level at one year to a paltry 3%, the savings to the Trust Fund could be nearly $2 billion dollars per year after the expenses.

Improving the Quality and Utility of the Medical Evidence

In nearly every insurance and social system designed to replace wages lost subsequent to an injury or illness, the determination of eligibility is based upon a measure of disability. The conundrum lies in the fact *disability can not be medically measured*. The measurement of the loss of anatomical or psychological function associated with an impairment is the area of expertise of the physician. Disability is the loss of socioeconomic function consequential to the loss of anatomical or psychological function.

With the SSDI and SSI processes set up on an "all or nothing" basis, the onus is upon the applicant to prove that he or she is incapable of performing at a level necessary to attain or acquire employment. The potential beneficiary is focused upon emphasizing limitations as opposed to residual abilities. In a medical evaluation where any financial incentive is linked to a "poor performance", applicants may limit performance to emphasize the existence of a purported problem, thus engendering a basic distrust between the consulting evaluator and the patient. The physician is challenged to pay specific attention to the nature of limitations. Many physicians are either unwilling or inexperienced to meet this challenge. Thus, the likelihood of extracting an accurate portrayal of residual abilities is limited or non-existent.

Physicians are unable to measure disability both by definition or with diagnostic devices Physicians do have the capability to measure physical abilities. The measurement of physical abilities is performed in a manner consistent with the determination of an individual's abilities to perform work-related activities on a safe and dependable basis. Although the determination of function is inherent in the SSDI and SSI processes, there is no mandate for functional evaluations that measure abilities and limitations before making a decision of eligibility.

We should presume *all* people have abilities! A healthier environment is fostered when one acknowledges a physical impairment exists and the purpose of the evaluation is to determine the abilities of the individual. Functional levels not impacted by the impairment can potentially be enhanced or emphasized to allow for a return to work. For example, if an individual is limited to sedentary work due to a severe musculoskeletal impairment, but retains the ability to perform rapid manipulations with his hands, the residual abilities may offer a basis for re-training or direct placement in the labor market.

The conundrum lies in the question, "How many individuals applying for SSDI or SSI benefits have ever had a thorough evaluation of abilities before commencing the application process?" The answer is less than one percent! How many consultative evaluations have subsequent utility upon which physical rehabilitation and vocational restoration activities could be constructively planned? The same percentage or less applies!

If the assessment of abilities is so critical, it would follow logically to implement a program designed to evaluate functional capabilities. Mandating a change in the evaluation process requires departure from the *status quo* and the design of another process specifying the manner in which the evaluation is conducted. The evaluation process must be standardized and cover the factors necessary for an accurate determination. The evaluation process should also require an inter-disciplinary approach to the determination of residual abilities. It is also understood by the authors that the candidates for evaluation will be mitigated by the nature and severity of the condition involved.

Unfortunately, the traditional medical evaluation offers minimal utility to professionals involved in restoring an individual to substantial gainful activity. The failure to synchronize the evaluation process on an inter-disciplinary basis has significantly hindered the success of the efforts to restore substantial gainful activity.

An example of an interdisciplinary approach to a comprehensive evaluation of function is detailed below:

1. Conduct review of medical records to determine nature of illness or injury.
2. Conduct physician evaluation and review of systems.
3. Commence interdisciplinary evaluation process
    a. Obtain relevant vocational and educational history
    b. Completion of self-perception instruments addressing current ADL's and pain perception
    c. Clinical in-take (i.e., Resting HR, Resting BP, ROM, review of medical restrictions, etc.) to address safety issues in testing and determine what may or may not be administered in the functional testing process.
    d. Performance of seated cognitive-based tests (i.e., response-based, pencil/paper)
    e. Performance of seated manipulative tasks (i.e., fingering, handling, feeling, seated reach)
    f. Performance of standing manipulative tasks (i.e., gross manipulation, tool usage on timed basis with progressive resistance)
    g. Performance of postural tolerance (i.e., reaching directly in front of body, overhead, kneeling, stooping, crouching)
    h. Performance of upper extremity strength tests (i.e., grip strength, pinch strength, bilateral grip strength, torque strength, push together, pull apart)
    i. Performance of full body strength tests (i.e., static push, static pull, static lifts)
    j. Performance of dynamic lift tests (progressive load format)
    k. Performance of dynamic carry tests (i.e., progressive load format with distance defined)
4. Functional evaluation provides automatic calculation on artificial intelligence basis of all of the physical demand classifications of the Dictionary of Worker Traits.
5. Residual physical functional data input in conjunction with relevant vocational and educational history into job search classification system.
6. Classification system identifies occupational titles and/or O*Net Codes of potential employability based upon residual functional abilities profile.
7. If no occupational titles and/or O*Net Codes are identified, operator identifies and inputs physical or aptitude performance factors that need to be improved to provide reasonable employment opportunities. The protocol will be set to identify non-impairment affected areas of performance (i.e., handling if the issue is lower extremity, fingering if the issue is cardiovascular, etc.) for first revisions, impairment affected areas that may be improved with physical re-conditioning, non-impairment affected aptitude areas that may be improved, and finally impairment affected areas that would require aptitude improvement (although this is not likely)
8. Artificial intelligence generates report to specifications of areas tested and residual functional analysis/assessment.
9. Report transmitted on encrypted 128-bit system (or current state of the art), which could also be linked to artificial intelligence in the decision-making process.

The Economic Advantages to the Trust Fund of a Functional Based Disability Determination System

The rate of initial denial cases being appealed and overturned needs to be more closely examined. It was estimated that 28% of all SSDI/SSI applicants who are ultimately awarded benefits are not disabled, and that 61% of the applicants who were denied benefits are disabled. In 2001 the budget for SSDI was $55 billion and SSI was an additional $32 billion. Applying the math to the numbers, approximately $24,360,000,000 is incorrectly paid on an annual basis.

In 1998 SSA processed more than 2 million applications and heard over 500,000 appeals at a cost of nearly $4 billion dollars. This works out to $2,000 per case. With a 50% reduction in the number of cases appealed, this amounts to nearly $500 million per year. Why would the number of appeals drop when a lawyer or advocate can be retained so easily? One only needs to look at the basis upon which most SSDI and SSI denials are based. The lack of sound medical evidence to make a decision is the greatest fault. However, if the system was based upon the actual physical performance of the applicant, more lawyers would be reluctant to take cases through the appeals process. The trickle-down effect of this decision would be the ability to reduce the manpower necessary to administer the appeals process as well as having some beneficiaries avoid the costs of legal representation when an appropriate determination is made at the outset.

Costs associated with an appropriate *medical evaluation* of ability exceed the current allocation to determine the eligibility for an allowance. The market range for a medical evaluation including a functional abilities evaluation is $900 to $1200. While the cost-to-budget comparison appears to be an insurmountable problem to overcome, this must be balanced against the costs of placing an individual on the SSDI or SSI programs.

Individuals provided with a more thorough evaluation have a greater sense of confidence that an appropriate assessment of abilities has taken place. Understanding that one's own performance, as opposed to an opinion of potential performance, was used to make the decision as to eligibility enhances the acceptability of the ultimate decision reached.

Converting "Tax Receivers" into Taxpayers

Very few of the experts on Social Security disability programs dispute the fact that most individuals seeking benefits have some form of impairment that has "significantly" impacts the ability to function. When a system's mechanisms perpetuate the problem it is intended to counteract, one must understand the problem a solution is developed.

The foremost issue confronting the recipient of SSDI or SSI benefits is the loss of a financial basis of support. The use of an arbitrary and low index for the determination of when one has established the ability to financially provide for his/her own support is the primary deterrent to helping re-establish the functionality of the individual with a disability. While it may be perceived that the low index value of approximately $800 per month for the establishment of substantial gainful activity is a cost-saver to the system, the opposite is true. When one looks at the fact less than one-half of one percent of the

SSDI or SSI recipients ultimately re-establish themselves above the SGA level, the point is proven.

While some may bemoan the *entitlement* approach some recipients take to government assistance programs, we should embrace entitlement in this circumstance. The costs associated with living with a severe impairment are higher than those for the unimpaired person. The increased expenses do not go away. We should recognize a base level of cost-of-living for the individual with a severe impairment. The base level of support would be for the entire lifetime of the individual once permanency of the impairment is determined. For example, an individual with paraplegia would receive a fixed amount from Social Security, regardless of the amount of income earned. This would serve to offset the higher costs associated with living independently with a severe impairment.

Offsets against wages should commence at a higher level of earnings. This could be indexed against the poverty level established by the federal government. Thus, offsets would not commence until wages exceeded the poverty level. This would accomplish two goals: 1) reduce the strain on other government assistance programs; and 2) provide an incentive for a return to work without making the individual feel as if he/she was going to be impacting the ability to be financially independent. All wages would be subject to the Social Security withholding. This class of citizens would still be contributing to the stability of the Social Security system, as opposed to depleting its resources.

Enhancing the Return to Work Process… Enhancing the Employer's Perception of Hiring the Disabled

Currently, less than one-half of one percent of SSDI and SSI recipients leaves the rolls due to a return to substantial gainful activity. While vocational rehabilitation is a worthy endeavor, the ability to facilitate a return to work is hindered by the lack of a thorough outline of disability recipient's functional abilities. Lacking the means to tie abilities to the functions of work, vocational rehabilitation counselors will err on the side of extreme caution. Currently, most cases referred to vocational rehabilitation counselors lack medical evidence establishing the performance capabilities of the SSDI or SSI recipient.

Congress enacted the Ticket to Work, Work Incentives Improvement Act in 2001, and the results have been less than exemplary. While the extension of government-sponsored benefits such as Medicare and the expedited ability to return to the rolls in the event the employment does not succeed have been provided to the beneficiary, employers and SSDI/SSI recipients have not made a significant improvement in the reduction of those on the rolls.

The Ticket to Work's attempt to defuse the employer's negativity toward hiring the disabled through allowing the continuance of Medicare Part A for up to 5 years subsequent to the commencement of employment was a well-intentioned move. Unfortunately, the result has not been as stellar as had been anticipated.

What went wrong? Most employers are unaware of the program's existence. One can not expect employers to utilize a program about which they are completely unaware.

We must also consider other programs that have a negative impact upon the perceptions of those hiring. Employers consider other programs including, but not limited to: worker's compensation, short-term disability and long term disability insurance, accommodations in conjunction with the ADA, ergonomic modifications, etc. Although employers are not supposed to discriminate against the disabled in the hiring process, the fact remains that an individual with a disability is still perceived as a cost-driver with a limited return potential to the business. If worker's compensation expenses are too high, the individual with a disability is viewed as a cost-driver and the likelihood of hiring will be negatively impacted.

The use of the term *disability* is perhaps the biggest deterrent to the hiring process. To an employer disability means *"unable to do"*. Employers pay wages based upon the **"ability to do"**. It does not matter what types of tax advantages or offset programs exist. If the worker is unable to work at a level of performance necessary to generate profits for the employer, the job will not be provided.

Thus, the individual identifying to the employer that they meet the criteria under the Americans with Disabilities Act for consideration of reasonable accommodation in the hiring or employment processes has already placed his or herself at a disadvantage. Unfortunately, the individual may not have a disability as it relates to the performance of the employer's job and he/she may have just been removed from employment consideration.

To reverse the negatives associated with disability, the government must re-think its approach as an enforcer of the rights of the disabled and move to support the more positive attributes of hiring an individual with an impairment. The former approach seems to serve the legal community more than even those with severe impairments. The Social Security Administration also needs to provide educational forums for employers to outline all of the positive attributes of hiring individuals that may be on the roles of SSDI and SSI. They will also want to reinforce the fact the government does not mandate employers to hire individuals who can't do the job.

Recommendations

The willingness to implement and accept change is one of the greatest obstacles to any program. When the change affects a program that has become the basis of support for millions of individuals, the sensitivities associated with change are even greater. We must recognize that the failure to make a constructive change in the current Social Security Disability Determination and Supplemental Security Income programs will ultimately result in a failure of the program or the need to raise the contribution levels to a disproportionate percentage of one's earnings.

The changes necessary constitute a paradigm shift in the philosophies of the government toward the disabled. We must recognize ability, even at its lowest level, as a foundation upon which to build. The steps to be taken in order to achieve the desired result are as follows:

1. De-emphasize disability and place the focus upon a residual level of ability to foster a belief that a return to work is possible on the part of the SSDI/SSI recipient. This must be accomplished through a standardized approach to functional testing that is medically and scientifically sound.

2. Recognize that the determination of disability must be resourced to appropriately trained medical personnel to avoid an inappropriate award of benefits.
3. Improve the quality and utility of the medical evidence associated with the disability determination process.
4. Recognize additional costs are associated with living with a severe impairment and provide a base level of support regardless of the earning level of the SSDI/SSI eligible individual.
5. Develop a more realistic level for the commencement of earnings offsets and the rate at which they are applied.
6. Conduct educational outreach to employers to reduce the potential fears and explain the benefits available to them through the various disability support programs.

The result of the changes to the SSDI and SSI processes will be the restoration of the motivation to be independent on the part of the recipient. Instead of promoting a process that is in itself disabling, the Social Security Administration will be restoring the individual to function.

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