



11 DUPONT CIRCLE NW  
SUITE 800  
WASHINGTON, DC 20036  
202-588-5180  
NWLC.ORG

January 31, 2020

Commissioner Andrew Saul  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235-6401

**Re: Notice of Proposed Rulemaking on Rules Regarding the  
Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg.  
36588 (November 18, 2019), Docket No. SSA-2018-0026**

[Submitted via [www.regulations.gov](http://www.regulations.gov)]

Dear Commissioner Saul:

The National Women's Law Center (the "Center") takes this the opportunity to comment in opposition to SSA's Proposed Rule Regarding the Frequency and Notice of Continuing Disability Reviews (CDRs). The proposed changes would cause serious harm to women with disabilities and their families.

The Center fights for gender justice — in the courts, in public policy, and in society — working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone — especially those who face multiple forms of discrimination, including based on disability. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

Social Security Disability Insurance (SSDI) provides modest income to more than 10.4 million people, including more than 5.1 million women and girls,<sup>1</sup> that is vital to helping these disabled people and their families make ends meet. Nearly 52 percent of non-elderly adults receiving Supplemental Security Income (SSI) in 2017 were women.<sup>2</sup> SSI kept more than 708,300 women age 18 through 64, 59 percent of whom were women of color, above the Federal Poverty Line in 2017.<sup>3</sup>

---

<sup>1</sup> NAT'L WOMEN'S LAW CTR. calculations based on U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, 2018 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT TABLE CREATOR, <http://www.census.gov/cps/data/cpstablecreator.html> [hereinafter "CPS 2018 TABLE CREATOR"].

<sup>2</sup> NAT'L WOMEN'S LAW CTR. calculations based on U.S. SOC. SEC. ADMIN., SSI ANNUAL STATISTICAL REPORT, 2017 (Sep. 2018), Federally Administered Payments, at 26 (Table 5), [https://www.ssa.gov/policy/docs/statcomps/ssi\\_asr/2017/sect02.pdf](https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2017/sect02.pdf).

<sup>3</sup> NAT'L WOMEN'S LAW CTR. calculations based on CPS 2018 TABLE CREATOR, *supra* note 1.

Because of the importance of SSDI and SSI to women who cannot work because of their disability, the Center strongly opposes the proposed rule that, if finalized and implemented, would harm disability beneficiaries. Many applicants already must spend years waiting for disability benefits. Once qualified, people face review periods based on their likelihood of medical improvement: every six to 18 months if medical improvement is expected, every three years if medical improvement is possible, and every five to seven years if medical improvement is not expected. The proposed rule would create a new category, medical improvement likely, that would review most disability beneficiaries every two years. The harm that would result from more frequent CDRs is too vast for SSA to continue pursuing this proposed rule. More specifically, the Center opposes the proposed changes to CDRs for the following reasons:

- **SSA inaccurately estimated the burden of CDRs on people with disabilities.** In the Notice of Proposed Rulemaking (NPRM), SSA estimates beneficiaries will spend 60 minutes completing the full medical CDR form (SSA-454-BK). Yet this 15-page long form with complex language, short essay requirements, lists of all medical providers and contact information, appointment dates, tests, treatments, and more will likely take many beneficiaries longer than 60 minutes. In addition, CDRs place a high cost on people with disabilities receiving benefits. The process often requires them to pay for copies of medical records, pay for help from their health care provider, and potentially pay for a representative to assist in paperwork completion and any hearings and appeals that may be involved in the process. If these costs preclude them from obtaining required documents or procuring assistance with the process, beneficiaries face a high likelihood of losing their benefits. SSA should not force disability beneficiaries to bear this burden of more time and money more frequently than the current process already does.
- **There is a high risk of disability beneficiaries losing their vital benefits, risking their lives.** A harsh SSA policy implemented in 1981-1984 threatened benefits for nearly half a million people, unfairly revoked benefits for 200,000 of those people, and of those 200,000 people, over 21,000 died before they could appeal the decision.<sup>4</sup> Under the current system, for every beneficiary whose disability benefits was terminated for medical improvement in Fiscal Year 2018, more than five disabled workers died.<sup>5</sup> Social Security disability benefits save lives.<sup>6</sup> Finalizing and implementing this proposed rule could lead to more deaths, further making this proposed rule unjustified and unreasonable.

---

<sup>4</sup> JOHN R. KEARNEY, SOC. SEC. ADMIN., OFFICE OF POLICY, SOCIAL SECURITY AND THE "D" IN OASDI: THE HISTORY OF A FEDERAL PROGRAM INSURING EARNERS AGAINST DISABILITY, 66 SOC. SEC. BULLETIN 1-27, 16 (2005/2006), available at <https://www.ssa.gov/policy/docs/ssb/v66n3/v66n3p1.pdf>; KNIGHT-RIDDER NEWSPAPERS, SOCIAL SECURITY CUTS FROM REAGAN YEARS BEING RESTORED, CHICAGO TRIBUNE (Dec. 4, 1989), <https://www.chicagotribune.com/news/ct-xpm-1989-12-04-8903150162-story.html>.

<sup>5</sup> NAT'L ORG. OF SOC. SEC. CLAIMANTS' REPRESENTATIVES calculations based on SOC. SEC. ADMIN., OFFICE OF RETIREMENT AND DISABILITY POL'Y, ANNUAL STATISTICAL REPORT ON THE SOCIAL SECURITY DISABILITY INSURANCE PROGRAM, 2018, Table 50 (Oct. 2019), available at [https://www.ssa.gov/policy/docs/statcomps/di\\_asr/2018/sect03f.html](https://www.ssa.gov/policy/docs/statcomps/di_asr/2018/sect03f.html).

<sup>6</sup> See, e.g., ALEXANDER GELBER, TIMOTHY MOORE & ALEXANDER STRAND, NEW EVIDENCE SHOWS LARGER BENEFITS OF DISABILITY INSURANCE INCOME, STAN. INST. FOR ECON. POL'Y RES (May 2018), <https://siepr.stanford.edu/research/publications/benefits-disability-insurance-income>.

- The proposed rule lacks evidence.** There is no evidence that terminating disability benefits faster encourages individuals to return to work. SSA even stated in the NPRM that the agency cannot quantify the effects of the increased frequency of CDRs on workforce participation.<sup>7</sup> The evidence cited by SSA in support of the proposed rule is unpersuasive, at best. For example, SSA cites a T.J. Moore study of the effect of losing benefits on work activity based on a 1997 statutory change,<sup>8</sup> but that study examines a different population—people whose benefits SSA terminated because drug or alcohol addiction were no longer qualifying impairments, not people who had their disability benefits reviewed more frequently—and contains old data.<sup>9</sup> And even in that study, almost 80 percent of people whose benefits were terminated did not make earnings at a Substantial Gainful Activity (SGA) level.<sup>10</sup> When SSA researchers looked specifically at people whose disability benefits were terminated for medical improvement, they found that those people are unlikely to be able to perform work that pays the SGA threshold following termination of their disability benefits.<sup>11</sup> Further, SSA claims in the NPRM that “[i]n many cases, shortening the time a person spends out of the labor force may improve work outcomes.”<sup>12</sup> In support of that assertion, the NPRM cites an SSA analysis of administrative data about “all working-age people in the general population who spend one year or more out of the work force” in an attempt to back up this claim.<sup>13</sup> However, this analysis does not specifically address the people affected by this proposed rule—those who leave the workforce because of a terminal or chronic disability that makes one unable to perform substantial gainful activity. Even so, SSA states that the working-age population data only “shows a *modest* correlation between the length of time outside of the workforce and likelihood of reentering at an SGA level, [and] the data does not provide evidence of *causality* between the two.”<sup>14</sup> The lack of evidence demonstrating that terminating disability benefits could help severely disabled people return to work (1) makes it difficult for the Center to comment on the full scope of proposed rule’s impacts and (2) indicates how unreasonable it would be for SSA to impose such a high cost, monetarily, physically, and mentally, on people with disabilities through this proposed rule.
- Increasing the frequency of CDRs will impose higher costs on SSA.** SSA estimates this proposed rule would lead to 2.6 million more CDRs from Fiscal

---

<sup>7</sup> Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 63588, 63591 (proposed Nov. 18, 2019) (to be codified at 20 C.F.R. pt. 404, 416).

<sup>8</sup> *Id.*

<sup>9</sup> See TIMOTHY J. MOORE, THE EMPLOYMENT EFFECTS OF TERMINATING DISABILITY BENEFITS, 124 J. PUBLIC ECON. 30-43, Appendix A (2015), *available at* [https://data.nber.org/data-appendix/w19793/Appendix\\_NBER.pdf](https://data.nber.org/data-appendix/w19793/Appendix_NBER.pdf).

<sup>10</sup> *Id.* Sixty-three percent of people whose benefits were terminated had at least one year without any earnings and only 20 percent made more than the SGA threshold in all five years of the study.

<sup>11</sup> JEFFREY HEMMETER & MICHELLE STEGMAN BAILEY, EARNINGS AFTER DI: EVIDENCE FROM FULL MEDICAL CONTINUING DISABILITY REVIEWS, 5 IZA J. LABOR POL’Y 1-22 (2016), *available at* <https://izajolp.springeropen.com/articles/10.1186/s40173-016-0066-9>. These SSA researchers also critiqued the T.J. Moore article, noting that its focus on “removing a specific disability category...may not reflect the general population of disability beneficiaries.” *Id.*

<sup>12</sup> Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. at 63591.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (emphasis added).

Year 2020-2029. SSA already experiences problems performing CDRs, such as more than a dozen IT systems that do not even share beneficiary's updated addresses with each other, falling behind on currently scheduled CDRs, and much more. The proposed rule will likely increase appeal requests. SSA should focus on improving problems in the CDR process rather than making them worse through a major increase in the number and frequency of CDRs.

These are only some of the many reasons the Center opposes the proposed rule. Based on the limited evidence provided in the NPRM, the extreme harm that would be imposed on disability beneficiaries, and the higher costs to SSA, the Center urges SSA to withdraw this proposed rule.

Sincerely,



Melissa Boteach  
Vice President for Income Security and Child Care/Early Learning  
National Women's Law Center



Amy K. Matsui  
Senior Counsel & Director of Income Security  
National Women's Law Center



Sarah Hassmer  
Senior Counsel for Income Security  
National Women's Law Center