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July 4, 2010

Independence Day Every Day

The Honorable Earl Pomeroy
Acting Chairman
The Honorable Sam Johnson
Ranking Member
Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Chairman
The Honorable John Shimkus
Ranking Member
Subcommittee on Health
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Subject: 2010 Review and Action Steps to Increase Employment and Economic Empowerment of Americans with Disabilities

Dear Acting Chairman Earl Pomeroy, Chairman Frank Pallone, Mr. Sam Johnson and Mr. John Shimkus:

Today we are living through dire and uncertain economic times for millions more Americans than anyone could have predicted would be the case three years ago. These tough economic conditions for so many people and programs exacerbate the lack of progress made over the past ten years with Congressional and Administration intent and policy goals to markedly increase the employment outcomes of Americans with disabilities.

1 | Increase Employment and Economic Empowerment of Americans with Disabilities

NCIL shares with you and your Subcommittee Members key recommendations we think will invigorate a fresh and focused Congressional and Administration review with the intent that you lead and plan for action to remedy this urgent problem.

Problem Statement and Urgency of Recommendations

Problem Statement

Even as the US proudly celebrates the 20th Anniversary of the Americans with Disabilities Act (ADA), NCIL members report with sadness that ten years after the early work to implement the Ticket to Work and Work Incentives Improvement Act (Ticket Act 1999), national public policy on employment and disability remains stuck in a morass of confusing program rules and conflicting objectives.

The high rate of poverty that is linked to disability remains unacceptable on moral and economic grounds. We must uncouple and demystify the conflicting goals of today's disability benefit and health coverage programs and markedly increase employment outcomes. Respected national policy expert and economist Gene Sperling has stated in recent years: "Employment of Americans with disabilities is a national economic imperative."

- Almost half of working-age adults who experience income poverty for at least a 12-month period have one or more disabilities.
- Nearly two-thirds of working-age adults who experience consistent income poverty—more than 36 months of income poverty during a 48-month period—have one or more disabilities.
- Male household heads reaching their mid-50s have a 53-percent chance of having been disabled at least once and a 19-percent chance of having begun a chronic and severe disability.
- People with disabilities are much more likely to experience various forms of material hardship—including food insecurity, not getting needed medical or dental care, and not being able to pay rent, mortgage, and utility bills—than people without disabilities, even after controlling for income and other characteristics.
- Measures of income poverty that fail to take disability into account likely underestimate the income people with disabilities need to meet basic needs.¹

Over ten years ago, the Ticket Act was signed into law as P. L. 106-170. Its intent was to reduce barriers to work for Social Security Title II and Title XVI disability beneficiaries by

¹ Data excerpt verbatim from: *Half in Ten, Why Taking Disability into Account is Essential to Reducing Income Poverty and Expanding Economic Inclusion*, Shawn Fremstad, September 2009, Center for Economic and Policy Research, 1611 Connecticut Avenue, NW, Suite 400, Washington, D.C. 20009, (202-293-5380, www.cepr.net);

From this study: "The current official poverty measure should be replaced with a modern measure that takes into account the extra costs associated with disability and views poverty as a multi-dimensional phenomenon rather than one limited to income."

offering greater choice in vocational rehabilitation and employment services **and** to assure seamless, ongoing access to affordable health coverage and accessible benefits planning services.

The Ticket Act triggered a prolonged, uneven, and phased implementation of services and demonstrations to integrate disability beneficiary **employment supports** as a core new mission of the Social Security Administration (SSA). *That outcome on the ground has not taken hold in the practices, methods and procedures at Social Security Field Offices and/or online, to understate the problem ten years later.* Work incentive customer services at SSA Field Offices or online are not, and need to be 1) accessible and predictable, 2) on time and 3) with user friendly methods that disability beneficiaries and their **non**-legally trained circles of support can use and easily navigate.²

NCIL Member Emeritus Doug Martin, Ph.D., who helped craft the SSI and Medicaid 1619 work incentive rules over 30 years ago put it simply many, many times: *“When beneficiaries make work decisions, they expect predictable outcomes about their benefits.”*

NCIL members know and work with thousands of very visible American civilians and veterans with a significant disability who work today in government, in non-profit organizations, the private sector and in self employment. By *significant* disability, we mean that most all of this cohort we refer to would qualify for Social Security disability benefits were they not working. These nationwide success stories pay their fair share of taxes; more critically, each one of this group can access employer sponsored group health coverage and other benefits in the private sector where the majority of Americans obtain their benefits and health coverage plans. NCIL posits that access to private group health coverage and other benefits via employment for this population and this public policy remains a completely undervalued cost savings to federal and state government.

It is time to measure cost sharing and the cost savings when more of this population works across state and federal government programs, not within the silos that administer them.

² Excerpt below verbatim from: *THE DISABLED IN DEBT TO SOCIAL SECURITY: CAN FAIRNESS BE GUARANTEED?* 2010 Stella L. Smetanka, University of Pittsburgh School of Law, www.law.pitt.edu

“The most important change that the Social Security Administration should implement ... is a realization that most people want to abide by the rules.

They expect the same from their government, such that it will not send them a benefit to which they are not entitled. While a certain confidence in the SSA is a good thing, it is certainly dashed upon the first overpayment notice, which the beneficiary did nothing to cause. The beneficiary complied with the rules as he or she understood them, which were to report changes, especially upon returning to work.

A conversion to an accessible, responsive SSA would prevent the accumulation of enormous, unrecoverable overpayments while instilling confidence in all citizens, including those who pay into the SSA system and those who receive disability benefits. Recently, on November 7, 2008, SSA Commissioner Michael J. Astrue released the SSA’s Fiscal Year 2008 Performance and Accountability Report. The SSA identified Strategic Goal 4 as to “Preserve the Public’s Trust in Our Programs.” Objective 1 is to “Curb Improper Payments.” “

Urgency of Recommendations

Title II, Title XVI, and Title XIX Social Security and Medicaid disability benefits are the bedrock foundation for independent living and access to health coverage for 11.3 million disabled individuals age 18 to 64 participating in the SSI and SSDI programs (SSA 2009), Americans who could be homeless, in needless pain and suffering or dead before their time without them.

NCIL will fight with every fiber in its membership to preserve and strengthen these programs. NCIL members believe it is now urgent for Congress to undertake a thorough, multi-Committee review of the Ticket Act and examine the supports and infrastructures it has only begun to put in place to improve employment outcomes of Social Security disability beneficiaries. The economic imperative is that employment outcomes for those receiving Social Security disability benefits contributes markedly to both their quality of life and to our national economic well being.

Job one today is to make Social Security's congressionally mandated role as a key source of employment supports the reality that the Ticket Act legislated in theory.

These critical disability benefits must be there and available for anyone when significant disability emerges in one's life. Improving Social Security and Medicaid process, procedures and rule making that supports diverse employment outcomes can help and cannot wait another month.

As of 2009, there are 11.3 million Social Security disability beneficiaries today across the country age 18 to 64; 8.5 million receive Social Security Disability Insurance (SSDI) or Title II benefits; 5.6 million receive Supplemental Security Income (SSI) cash benefits; 1.4 million Americans are concurrent (dual eligibles), eligible for both SSI and SSDI.³ Recent annual cash benefits to SSI and SSDI beneficiaries total approximately \$146 billion per year.⁴ The national costs of providing Medicaid to people eligible because they were blind or disabled was \$126 billion in 2007.⁵ The national costs of providing Medicare to people eligible for Medicare through SSA was \$81 billion in 2008.⁶ The total combined costs of public disability benefits and related health care services nationally are \$440 billion per year.⁷

³ Social Security Administration, *Master Beneficiary Record, 100 percent data*. Released December, 2009. Web. Accessed January 2010. < http://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/index.html >. And, Social Security Administration. *Supplemental Security Record, 100 percent data*. Released December, 2009. Web. Accessed January 2010. <

http://www.socialsecurity.gov/policy/docs/quickfacts/stat_snapshot/index.html >.

⁴ Ibid.

⁵ United States. Department of Health and Human Services. Office of the Actuary, Centers for Medicare and Medicaid Services. *2008 Actuarial Report on the Financial Outlook for Medicaid*. Washington, D.C., 2008. Print.

⁶ Board of Trustees of the Federal Hospital Insurance and Supplementary Medical Insurance Trust Funds. *2009 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Supplementary Medical Insurance Trust Funds*. Washington, D.C., 2009. Print.

⁷ Data from Virginia Commonwealth University, National Training Center (NTC) for WIPA Grantees

During the current severe economic downturn, Social Security received 400,000 more applications for disability benefits in 2008 than their own actuaries predicted. In 2009, Social Security received over 600,000 more applications for disability benefits than they anticipated.⁸

President Barack Obama's recently appointed National Commission on Fiscal Responsibility and Reform will present findings and a package of major, statutory change to Congress before the close of 2010 on near and longer term solutions to the growing US deficit crisis. *NCIL believes strongly that the inter agency federal policy goals to increase employment outcomes initiated by the Ticket Act must "come into their own" in the next few years as direct components of addressing the US deficit crisis.*

Recommendations

The Ticket Act is the law of the land. Congress must act to provide needed oversight. The Obama Administration along with the Social Security Administration must provide the initiative and collaborative leadership to implement the inter agency work needed to meet the original goals of the Ticket Act for many more disability beneficiaries.

NCIL members across this country encourage a priority Congressional and Administration focus on the following recommendations.

Recommendations to the US Congress

1. Reauthorize by October 2010, improve, and double the funding for Social Security funded Work Incentives Planning and Assistance (WIPA) grants to include their increased use of online tools and information services. According to reliable, recent surveys of Social Security disability beneficiaries,⁹ WIPA funded benefits counselors (called Community Work Incentives Coordinators or CWICs) each have a potential caseload of 5,000 Social Security disability beneficiaries who are now taking concrete steps to seek work or are working, *an impossible caseload by any standard.*^{10,11}

⁸ The Honorable Michael J. Astrue, Commissioner, Social Security Administration. *Congressional Testimony*. November 19, 2009.

⁹ The data presented are from the 2004 National Beneficiary Survey (NBS), a nationally representative survey of 7,601 SSI and SSDI beneficiaries age 18 to 64. See Thornton et al. (2006) for a description of the 2004 NBS.

¹⁰ "In 2004, 40 percent of working-age disability beneficiaries reported having work goals or expectations. Based on the current number of disability program participants, *that percentage translates into about 4.5 million individuals.*

These work-oriented beneficiaries differed from other beneficiaries in many respects: for example, they were younger, more likely to be nonwhite, and more educated. They also had been on the disability rolls for a shorter time during their most recent period of entitlement, were more likely to have experienced childhood disability onset, had lower levels of non-SSA benefits and income from assistance programs, and reported being in better health. ... Just over half of all work-oriented beneficiaries (representing 21 percent of all beneficiaries) indicated participating in any recent employment-related activities, compared with just 6 percent of beneficiaries classified as not work-oriented. More specifically, about one-quarter of work-oriented

These community-based counselors remove barriers to employment and increase the numbers of Social Security disability beneficiaries that return to work.

2. Reauthorize Medicaid Infrastructure Grants (MIGs) by the close of 2011, which promote state-centric infrastructure building on work and health coverage for workers with a disability, as well as increase and improve Medicaid Buy-Ins (MBI) for workers with a significant disability. Take the steps needed to develop a single, national Medicaid Buy-In with a minimum threshold set of worker earnings and asset-building provisions.

Recommendations to the Obama Administration and to the Social Security Administration

1. Establish by Executive Order a Commission on People with Disabilities, Employment, Economic Empowerment and Social Security, to present a concrete set of proposals to increase the employment rates and asset building potential of veterans and civilians with disabilities.
2. Indefinitely prioritize implementation of Schedule A within the Office of Personnel Management and make the federal government a model employer of Americans with disabilities.
3. Expand the Disability Program Navigator initiative at One Stop Career Centers through the Department of Labor and work towards permanent codification of the DPN initiative via reauthorization of the Workforce Investment Act of 1998 (WIA).

beneficiaries received training or services during the previous year that were intended to enhance their employment prospects, and *41 percent reported engaging in or actively seeking work.*

By comparison, only 4 percent of beneficiaries classified as not work-oriented reported engaging in employment service/training activities, and just 3 percent reported engaging in or pursuing work. ... *Overall, 27 percent of beneficiaries had earnings in at least one year during 2004 to 2007, including 7 percent with earnings above the annualized SGA level in at least one year (Exhibit 2). As expected, work-oriented beneficiaries were significantly more likely to have earnings and to have higher earnings relative to other beneficiaries.* Nearly half of all work-oriented beneficiaries (45 percent) had earnings in at least one of the four years, compared to just 15 percent for others, and 13 percent had earnings above annualized SGA, compared to just 3 percent of others. Among those with earnings, work-oriented beneficiaries had higher average earnings (\$7,091 versus \$5,121) and were more likely to have earnings in multiple years (80 percent versus 66 percent) (statistics not shown). Among work-oriented beneficiaries, SSI-only beneficiaries were significantly less likely than others to have earnings in any of the four years, and both SSI-only and concurrent (those receiving both SSI and SSDI) beneficiaries had lower average earnings and were significantly less likely to earn above SGA than SSDI-only beneficiaries.” *Work-Oriented Social Security Disability Beneficiaries: Characteristics and Employment-Related Activities*, Gina A. Livermore, 2009, Center for Studying Disability Policy, Mathematica Policy Research, Inc., Washington, DC

¹¹ Please also see: Kregel, J. (2009) Work incentives planning and assistance: Assisting beneficiaries to obtain employment and reduce dependence on SSA benefits. *Journal of Vocational Rehabilitation*, 31 (1), 1-9.

4. Expand outreach on Social Security's Ticket to Work Program and Social Security's initiative to directly hire its beneficiaries.¹²
5. Reform and expand the uses and utility of the SSI Plan for Achieving Self-Support (PASS) program among the 11 million + disability beneficiaries of SSI and SSDI, based on individual needs and preferences.
6. The federal government, and in particular the Social Security Administration, its Regional Offices and its Field Offices, must come to play a partnership role with state and local agencies, including state Medicaid agencies, to build networks that coordinate information services on employment planning, benefits planning, and financial planning.

NCIL members nationwide strongly recommend and request that the Social Security Office of Operations, in partnership with the Social Security Office of Employment Support Programs, establish a basic, a thorough and a public set of guidelines by July 2011 that prescribes a business model partnership between local Social Security Field Offices, Social Security Work Incentives Planning and Assistance (WIPA) grantees and all who interact with processing Social Security Act Title II, Title XVI and Title XIX (Medicaid) work incentive rules.

The new business guidelines must shape and put into place by July 2011 on time, efficient, accessible, easy to use work relationships and predictable process between WIPA Community Work Incentives Coordinators (CWICs), benefits planners, disability beneficiaries, Employment Networks, vocational rehabilitation counselors, employers, family members, and Social Security Field Office staff.¹³

Relevant Context and Background

Two recent developments underscore the timeliness of this inter agency recommendation:

- The new Affordable Care Act (ACA) signed into law in March 2010 will markedly increase state government roles and responsibilities in expanding health coverage programs and protections; and,

¹² Ticket to Work Program (TTW): "TTW participants are more likely to leave the rolls because of work than nonparticipants, and they remain off the rolls longer." Gina Livermore, 2010, *Longitudinal Employment Outcomes for Social Security Disability Beneficiaries with Work Goals and Expectations*, Presented at the Center for Studying Disability, Policy Research Forum, Washington, DC, May 19, 2010.

¹³ Ibid (Smetanka 2010): "The Deputy Commissioner of the SSA identified a key goal in 2002: to remove SSI from the high-risk designation that the Government Accountability Office ("GAO") placed on the program in 1997.¹³ ... A 2004 GAO report found that in 2003, the total overpayment debt increased to nearly \$3 billion.

- Draft release in April 2010 of an SSA Work Incentives Simplification Proposal (WISP) for SSDI beneficiaries, as outlined to outside organizations since April by the SSA Office of Program Development and Research (OPDR) and other senior SSA officials.

For Social Security to successfully implement a serious work incentives overhaul and policy shift, and to finally arrest chronic SSA overpayments to beneficiaries, Social Security must also reform how Social Security processes wage reporting on a monthly basis in the Title II (SSDI), Title XVI (SSI) and the Title XIX (Medicaid) programs in a new partnership with CMS (the Centers for Medicare and Medicaid Services).

The Ticket Act *added* programs and provisions to federal and state agencies to support employment outcomes for Social Security disability beneficiaries. These multiple agencies, SSA, CMS and RSA (Rehabilitation Services Administration) have made marginal and uneven progress in working better together on one outcome, employment. No one can make the case that Ticket Act implementation has made procedures and process on Social Security work incentives and Medicaid health coverage rules for workers easier to use. It never happened.¹⁴

NCIL believes strongly that we have run out of time and patience with work incentive rules and procedures that are either unknown or just too plain complicated to explain to be of any practical use to wide numbers of disability beneficiaries.

Suggested Strategies for Social Security Recommendation 6:

NCIL offers some of the recommended steps needed to craft an adequate and complete set of Field Office guidelines to provide more timely communication and services between CWICs, beneficiaries, Employment Networks and local SSA Field Offices:

- (1) Gather baseline information by surveying local SSA Field Offices (FO) to assess familiarity with Work Incentive Planning and Assistance services, and knowledge about work incentives rules that Field Office staff are required to process timely and approve.
- (2) Social Security Field Office staff provide services and assistance to consumers who are accessing work incentives across the spectrum of disability programs. However, under the current system, staff work is only recognized when working with certain work incentives program, while work with other work incentives programs goes unrecognized. Social Security needs to restructure

¹⁴ As summed up by the Sixth Circuit Court of Appeals: Medicaid is an “aggravated assault on the English language, resistant to attempts to understand it ... A determination of such eligibility requires an eye glazing examination of a labyrinthine maze of sections and seemingly infinite subsections of the Medicaid Act.” Quote from workshop presentation by staff of the Centers for Medicare and Medicaid Services (CMS), August 2008, National Eligibility Workers Conference

its staff work credits system in order to recognize needed staff work as part of a holistic approach to resolving a beneficiary's benefits issues. Social Security should provide Field Office staff uniform work credits for all time spent on return-to-work and work incentives processes and procedures, including time spent working with other benefits programs related to a beneficiary's case, regardless of beneficiary status or program participation. In many cases, this restructuring of work credits would more accurately reflect work that is already being done, and better align staff to focus on work incentive procedures and approvals that can only be executed by Social Security staff.

- (3) The new guidelines are integrated with the **Social Security Online** outreach campaign (www.socialsecurity.gov) and with ongoing advancements being made using online tools, and telephonic and other reporting services for all Social Security disability beneficiaries.
- (4) As the new business model guidelines become implemented, they include implementation of these recommendations when overpayments to beneficiaries with earned income might still occur:
 - An SSA Title II or Title XVI beneficiary who has reported earnings in a reasonable and timely fashion shall not be liable to repay overpayment sums in excess of \$500.
 - An SSA Title II or Title XVI beneficiary who has reported earnings in a reasonable and timely fashion shall be required to repay any amount of an overpayment at a rate of not more than 2% of their current disability benefit.
 - An SSA Title II or Title XVI beneficiary who uses their Ticket to Work and acquires earned income will not be liable for more than \$200 in overpayments.

NCIL directs this letter to two Congressional House Subcommittees of jurisdiction who were essential in the shaping and passage of the Ticket Act of 1999.

We are hopeful this letter can help you with your continued leadership roles in these matters for the economic emancipation and empowerment of all Americans.

The NCIL Employment/Social Security Subcommittee and all NCIL members welcome your response to this letter. We offer any assistance as field practitioners that you need with these matters. Contact NCIL Subcommittee Chair Bryon R. MacDonald at email: bryon.wid@gmail.org or phone 510-251-4304.

Thank you for your time, your review and your consideration of these urgent matters and recommendations.

Respectfully Submitted:



Kelly Buckland, Executive Director
National Council on Independent Living



Daniel Kessler, President
National Council on Independent Living



Bryon MacDonald
Employment/SSA Subcommittee Chair

CC: The Honorable Michael J. Astrue, Commissioner, Social Security Administration