

# Clearinghouse REVIEW

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Sargent Shriver National Center on Poverty Law



# Goldberg on Life Support at the Social Security Administration

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Over forty years ago the U. S. Supreme Court ruled in *Goldberg v. Kelly* that recipients of means-tested public benefits must be afforded the “opportunity to be heard” before their benefits can be suspended.<sup>1</sup> The due process clause requires, the Court held specifically, that *before any such suspension* the recipient must receive (1) “timely and adequate notice detailing the reasons for a proposed termination”; (2) “an opportunity to confront and cross-examine the witnesses relied on”; (3) the opportunity to present the recipient’s own arguments and evidence orally; (4) the right to retain an attorney; (5) an impartial decision maker who did not participate in making the decision under review; (6) a decision that rests “solely on the legal rules and evidence adduced at the hearing”; and (7) notice of the decision which states the reasons for the determination and indicates the evidence relied upon.<sup>2</sup>

When recipients of Supplemental Security Income (SSI) appeal adverse determinations that reduce or suspend benefits, they too often face a roadblock at reconsideration, the first stage of the appeal process.<sup>3</sup> That subsequent stages function more satisfactorily is of no benefit to someone who is denied due process at reconsideration or is otherwise prevented from completing the first stage. A broken appeal threatens the income, housing, and well-being of the very people it should protect. And, because SSI is linked to Medicaid eligibility in many states, a broken SSI appeal can cut off access to needed medical care.

The problem is not with Social Security Administration regulations; for the most part, these regulations conform to the requirements of *Goldberg* and constitutional due process.<sup>4</sup> Rather, the problem is the agency’s failure to follow its regulations, leading to due process violations that can have dramatically negative effects on individuals seeking to appeal adverse determinations.

<sup>1</sup>*Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

<sup>2</sup>*Id.* at 267–68, 270–71.

<sup>3</sup>We focus here on nondisability appeals, i.e., appeals of suspensions and reductions that are based on a criterion other than disability. Some examples: a recipient is allegedly ineligible due to excess income or resources; a recipient is allegedly living in an institution or has been outside of the country; or a recipient has allegedly been paid more than the correct amount by the Supplemental Security Income (SSI) program.

<sup>4</sup>See 20 C.F.R. §§ 416.1410, 416.1413, 416.1420, 416.1422 (2011).

In response to long-standing concerns and an increasing volume of complaints about how SSI appeals operate in Social Security Administration district offices, the National Senior Citizens Law Center decided to study SSI appeals at the ground level preliminarily. The center enlisted from diverse communities the cooperation of attorneys and other advocates who represent clients in appealing benefit suspensions and reductions at the critical reconsideration stage.<sup>5</sup> Advocates from fourteen legal services programs in eleven states completed, for each of their SSI nondisability appeals, a questionnaire on compliance with Social Security Administration regulations governing reconsiderations. We summarize the results below. While the National Senior Citizens Law Center makes no claim of statistical significance as to any specific defects in reconsiderations, the results do highlight a pervasive dysfunction in how Social Security Administration district offices conduct SSI appeals. This dysfunction needlessly jeopardizes two groups who have no resources to fall back on: older Americans and people with disabilities.

## I. Social Security Administration Regulations

Social security regulations establish a three-stage administrative appeal process that, on paper, protects the due process rights of SSI recipients who face a reduction or loss of benefits.<sup>6</sup> The three stages are reconsideration, a hearing before an administrative law judge, and review by

the agency's Appeals Council. The regulations require "[a]dvance written notice of intent to discontinue payment because of an event requiring suspension, reduction ... or termination of payments..." known as a Notice of Planned Action.<sup>7</sup> The regulations go on to state that "[i]f an appeal is filed within 10 days of receipt of the notice, the payment shall be continued or reinstated at the previously established payment level ... until a decision on such initial appeal is issued."<sup>8</sup>

SSI recipients may choose among three methods of reconsideration: case review, informal conference, or formal conference.<sup>9</sup> Of these, only the formal conference meets the requirements prescribed by *Goldberg* for means-tested public benefits.

### A. Case Review

A recipient who selects case review must be given the opportunity to "review the evidence in [the Social Security Administration's] files and then to present oral and written evidence to [the agency]."<sup>10</sup> The Social Security Administration should then use this evidence to review its determination and make a reconsidered determination based on the preponderance of the evidence.<sup>11</sup> Whoever makes the reconsidered determination must not have been involved in the initial determination.<sup>12</sup> The agency must then send the recipient a written notice of its reconsidered determination, giving the specific reasons for the determination and explaining the right to a hearing before an administrative law judge.<sup>13</sup>

<sup>5</sup>The study focused on the first of the four SSI appeal stages and did not include appeals of adverse disability determinations, for which state agencies, not the Social Security Administration, handle the first step of the appeal.

<sup>6</sup>20 C.F.R. § 416.1400(a).

<sup>7</sup>*Id.* §§ 416.1336, 416.1404.

<sup>8</sup>*Id.* § 416.1336. Generally "receipt" is presumed to occur five days after the date printed on the advance notice, unless recipients can show that they did not receive the notice within five days (*id.* § 416.1401). The Social Security Administration must halt recoupment of an overpayment pending a determination on reconsideration if an appeal is filed within thirty days of the date printed on the notice (plus five days for mailing) (Program Operations Manual System (POMS) § SI 02220.017(d) (2012)). If the appeal is filed later, benefits may continue if the SSI recipient can establish good cause for late filing (20 C.F.R. §§ 416.1409(b), 416.1411; POMS § GN 03101.020.B.2 (2011)).

<sup>9</sup>20 C.F.R. § 416.1413.

<sup>10</sup>*Id.* § 416.1413(a).

<sup>11</sup>*Id.* §§ 416.1413(a), 416.1420.

<sup>12</sup>*Id.* § 416.1420.

<sup>13</sup>*Id.* § 416.1422.

## B. Informal Conference

If an SSI recipient chooses the “informal conference” option, all the requirements for case review still apply.<sup>14</sup> Regulations require the Social Security Administration, “as soon as [it] receives a request for a ... conference, [to] set the time, date, and place for the conference” and to send written notice about the conference to the recipient at least ten days in advance unless all parties agree to a shorter notice period.<sup>15</sup> Normally the date for the conference must be within fifteen days of the reconsideration request, but that time may be extended if the agency believes that “delay will ensure that the conference is conducted efficiently and properly.”<sup>16</sup> The recipient may choose whether to appear in person or by telephone; while normally held at a Social Security Administration office, the conference may be held elsewhere in person if “circumstances ... make this arrangement reasonably necessary.”<sup>17</sup> At the informal conference the parties may present witnesses; “a summary record ... will become part of the case record,” and “[t]he official who conducts the proceeding will make the reconsidered determination.”<sup>18</sup>

## C. Formal Conference

If the recipient chooses a “formal conference,” all the informal conference procedures are followed, with this: the parties may ask the Social Security Administration “to subpoena adverse witnesses and relevant documents” and may cross-examine adverse witnesses, as required under *Goldberg*.<sup>19</sup>

Because the time for requesting reconsideration with full benefit continuation is so short, advocates and recipients alike too often give insufficient thought

to which method of reconsideration to choose and routinely request case review or indicate no choice at all. In doing so, advocates and recipients waive due process rights. In some situations choosing case review or an informal conference may be appropriate, but this choice should be made carefully, with attention to the facts of the individual case and what is required to prove them. If there is any doubt, the advocate should select the formal-conference option to preserve due process rights.

## II. Due Process Violations in SSI Appeals

Our study of how Social Security Administration district offices responded to requests for reconsideration of SSI suspensions and reductions found widespread due process violations that had major impact on SSI recipients.<sup>20</sup> These violations occurred even when one would expect greater adherence to regulatory standards because recipients were represented by attorneys or other experienced legal advocates. No doubt unrepresented claimants fare worse.

### A. Failure to Process Appeal Requests

Although federal regulations require the Social Security Administration to schedule a conference upon receiving a reconsideration request, all the attorneys we interviewed reported that the agency often did not contact them or their clients for months or years after an SSI request for reconsideration had been filed and usually did so only after multiple phone calls, e-mails, and faxes. In reviewing clients’ agency case files, some attorneys uncovered evidence of old appeal

<sup>14</sup>*Id.* § 416.1413(b).

<sup>15</sup>*Id.* § 416.1413c.

<sup>16</sup>*Id.* § 416.1413c(c).

<sup>17</sup>*Id.* § 416.1413c(d).

<sup>18</sup>*Id.* § 416.1413(b).

<sup>19</sup>*Id.* § 416.1413(c).

<sup>20</sup>We also found major due process and statutory violations affecting social security beneficiaries requesting reconsideration, as well as violations affecting both SSI and social security beneficiaries who request waivers of overpayment adjustment and recovery (see *infra* III. Due Process Violations in Response to Waiver Requests).

## Obtaining Information from the Social Security Administration

Overpayment notices seldom explain how the overpayment arose .... Even reconsideration determinations seldom give a good accounting of how the overpayment was computed.

—CHARLES T. HALL, *SOCIAL SECURITY DISABILITY PRACTICE* § 5.20 (2009)

Although we do not focus here on the quality of information that the Social Security Administration gives to Supplemental Security Income (SSI) and social security beneficiaries, the issue deserves some attention as a backdrop to the appeal process. In our study, severely limited access to accurate information on recipients' own cases emerged as an overarching theme and source of frustration for recipients and their advocates.

**Notices of Benefit Reduction and Suspension Were Often Incomplete or Incomprehensible.** When the Social Security Administration makes a determination to reduce or suspend benefits, it must give clear notice that explains the facts on which the decision is based and the agency's reasoning (20 C.F.R. § 416.1404 (2011)). When an overpayment is assessed against an SSI recipient, the agency must specify the months for which an overpayment is assessed and the amount of income the agency alleges that the recipient received during each of those months (20 C.F.R. § 416.558(a)); *Ford v. Shalala*, 87 F. Supp. 2d 163 (E.D.N.Y. 1999)). Notices are often indecipherable or so vague that the recipient cannot prepare a proper rebuttal.

**When Individuals and Their Advocates Contacted Social Security to Get Further Information, They Were Often Rebuffed.** Social Security Administration employees are instructed to give recipients access to their files, especially the parts that are relevant to adverse actions (Program Operations Manual System §§ GN 03101.120, GN 03102.200 (2012)). In practice files are not made available. The social security advisory board admitted "the near impossibility of getting through to some local field offices by phone" (Social Security Advisory Board, Statement on the Supplemental Security Income Program (June 1, 2009), <http://1.usa.gov/lcSDft>). And when claimants and advocates come to the district office, the relevant information in a client's electronic file is located in many different places and employees often cannot find the relevant information. Advocates reported being told that the information was in the computer but could not be shown to the advocate.

requests from three to four years earlier, with no indication that the agency had responded to those requests. One California attorney said that,

[w]ith our district office, it takes a very long time to hear a response after filing a request for reconsideration and generally takes phone calls, letters and eventually the scheduling of an appointment before we receive a response. In essence I am not sure the request would be followed up on without the telephone calls and letters.<sup>21</sup>

From advocates' reports, Social Security Administration representatives at district offices appear to be simply overwhelmed by the caseloads they are ex-

pected to handle. As a result, claims are not processed. Because one cannot proceed to the next step of the administrative appeal without a determination on reconsideration and because recipients must exhaust their administrative remedies before a civil action may be filed, such delays effectively bar relief.<sup>22</sup>

### 1. Lost Paperwork

The Social Security Administration does not uniformly log requests for reconsideration as the requests are received.<sup>23</sup> As a result, the agency appears regularly to lose paper requests and supporting material, even when requests are sent by certified mail and an agency employee signs the return receipt. One Maryland advocate lamented that "[m]y [local agency office] systematically loses docu-

<sup>21</sup>We quote several survey respondents here; we do not identify them by name in order not to impair their effectiveness in working with social security district offices.

<sup>22</sup>20 C.F.R. § 416.1430; see 42 U.S.C. § 405(g).

<sup>23</sup>The Social Security Administration is attempting to improve the way reconsideration requests are handled in local offices and is developing a uniform system for logging requests for reconsideration.

ments, appeals that are mailed there.... I file reconsiderations and have proof that they were received, but claimants and I get no decision on them. They simply do not get processed and, unless I hound [the agency], nothing happens.”

Because benefits continue unchanged only if a recipient files a request for reconsideration within ten days (plus five days for mailing) of a notice of planned action, a Social Security Administration office’s loss of an appeal request or supporting evidence can permanently affect an individual’s rights. If a request for reconsideration is not filed within the sixty-day statute of limitations, the right to appeal is forfeited entirely.<sup>24</sup> An overwhelming majority of people are unrepresented at this stage and are unlikely to be able to prove that they filed their request within the requisite time. One California advocate reported that her client was denied the right to a conference because the agency claimed that it could not find any record that a request was filed. Almost a year later the request was found in a burlap bag under an agency employee’s desk.

## 2. Refusal to Accept Appeals and Claims that Appeals Are Not Allowed

Staff at local Social Security Administration offices must help a recipient file an appeal anytime the recipient disagrees with a determination.<sup>25</sup> When recipients want to appeal after the time limit expires, agency employees are instructed to develop the appeal to ascertain whether the recipient had good cause for late filing.<sup>26</sup> However, agency employees do not always help in filing appeals, and sometimes recipients or their advocates are actually told that they may not appeal.

A Social Security Administration representative told a Maryland paralegal representing a client who was appealing an overpayment not to bother filing because

the appeal would just be denied. The client eventually prevailed at the next level of appeal before an administrative law judge and received \$11,000 in back benefits. In another case, an Oregon man was told that he could not appeal a suspension of his benefits. When the man complained to the agency district office, the office wrote to him on agency letterhead stating that his issue (the suspension of benefits based on an outstanding arrest warrant) was not “appealable,” even though courts in other cases had already determined the agency’s policy to be unlawful. This exact scenario recurred on countless occasions all across the country. In view of the barriers that advocates face in ensuring that an appeal is processed, how people without representation can challenge incorrect determination is hard to imagine, and most people who appeal an issue other than disability have no access to an attorney or other representation.<sup>27</sup> Few legal aid providers take these cases, and such providers handle only a limited number.

Besides, in effect, denying individuals the right to appeal adverse determinations, district offices’ failure to process and respond to reconsideration requests wastes the hours that advocates and clients spend trying to convince district offices that requests have been made and must be acted upon. And, all too often, while such efforts are under way, recipients are without the subsistence income necessary to retain housing and obtain food.

## B. Failure to Continue Benefits Pending Appeal

Even when appeals are filed within the advance notice period, benefits do not routinely continue. In the words of one California attorney, “[w]hen I am involved I have to ... monitor that the benefits continue without interruption. The usual problem is that the office is

<sup>24</sup>20 C.F.R. § 416.1336(b).

<sup>25</sup>See POMS §§ GN 03101.120, GN 03102.200 (2012).

<sup>26</sup>POMS § GN 03101.010.A.2 (2011).

<sup>27</sup>Private attorneys who handle social security cases generally do not take these cases because, unlike with appeals of denials of disability claims, the attorneys usually have no prospect of attorney fees paid from past-due benefits; with few cases offering a prospect of fees, most private attorneys have not developed the necessary expertise.

backlogged and the appeal forms are not timely entered into the system.”

One reason for this attorney’s experience, which is common, is that when the Social Security Administration sends a notice to suspend benefits, the suspension is entered into the system and takes effect automatically fifteen days later without the need for any further input. If the SSI recipient files a timely request for reconsideration in order for benefits to continue, as *Goldberg* requires, an agency employee must manually enter the request into the system. Thus the increasingly common work backlogs in agency offices ensure that timely benefit continuation, as envisioned in *Goldberg*, will not occur.

In a case from the East Coast, Jessica received notice that her benefits were to be suspended. Jessica’s attorney filed a request for reconsideration within the ten days required for continued benefits pending appeal, but the benefits were suspended. The attorney wrote to the district office manager about the unlawful suspension. The Social Security Administration restored the benefits for one month but withheld benefits again the next month, even though the request for reconsideration was still pending. As a result of the agency’s actions, Jessica almost lost her apartment.

Failure to continue SSI benefits pending a reconsideration determination is particularly harmful to recipients. The maximum monthly SSI payment is only \$698 in most states, and few recipients have any assets in reserve. Even a slight interruption in benefits can cause hunger and homelessness for recipients who are awaiting a reconsidered determination.

### **C. Failure to Hold Formal or Informal Conferences**

Even when recipients check “formal conference” on the request for reconsideration form and specifically request a formal conference in an accompanying letter brief, advocates report that conferences are rarely held. Often the Social

Security Administration makes a decision with no conference having taken place.

In one Minnesota case, an SSI recipient, Khadra, received benefits on the basis of disability due to the effects of a diabetic coma. Her attorney disputed an alleged overpayment and requested a formal conference. The Social Security Administration district office denied the request for reconsideration without offering a conference first. When Khadra’s attorney reminded the office that Khadra was entitled to a conference, an agency representative claimed that a conference was not available on appeal.

When a conference does occur, the person conducting it often appears unfamiliar with the basic Social Security Administration rules governing conferences. Advocates report that the decision makers are unprepared or were involved in earlier determinations on the case. One advocate reported a “conference” conducted in a parking lot.

### **D. Determinations that Disregard Basic Due Process**

Once an appeal is processed and a reconsidered determination made, the Social Security Administration must issue a written determination that clearly explains the facts and reasoning behind the decision.<sup>28</sup> Advocates report that even when appeals are processed, determinations are often unwritten; the agency often proposes to take the same action at a later date, apparently with no institutional knowledge that its previous effort was reversed on appeal. Written notice is an essential safeguard.

Even when determinations are written, they often omit the facts and law on which the decision is based. One SSI recipient, Maria, was charged with an overpayment, and her benefits were suspended due to property whose ownership she disputed. Seven months after Maria filed an appeal, the Social Security Administration denied the reconsideration request in a notice stating, “Your Request

<sup>28</sup>20 C.F.R. § 416.1422.

for Reconsideration is being dismissed because ... no decision has been made regarding [the] property....” Maria, facing homelessness without her benefits, moved hundreds of miles away to live with a relative.

The case of Rosa Martinez of Redwood City, California, illustrates well the level of dysfunction in appeals.<sup>29</sup> A notice of planned action advised that her benefits would be suspended. The day Martinez received the notice she went to the Social Security Administration office to appeal but was told, despite the notice’s written statement to the contrary, that the action could not be appealed. Her attorney gave her the agency’s request-for-reconsideration form, which she completed, taking care to check the box requesting a formal conference and handing the form in the next day at the agency office. The same day she filed the request, the agency issued a notice of reconsideration affirming the suspension without ever presenting any evidence, let alone offering Martinez an opportunity for rebuttal. The suspension went into effect on the first of the next month. Far from being unusual, this scenario plays out regularly across the country.

### III. Due Process Violations in Response to Waiver Requests

Complex financial eligibility rules combined with Social Security Administration delays in processing information often result in an SSI recipient having an incorrect benefit amount in a given month. Delays in recording wage infor-

mation of social security disability insurance beneficiaries can result similarly in payment of benefits for a month when benefits should not have been paid.<sup>30</sup> In both programs those who are overpaid are normally obligated to repay the overpayment, unless they apply for and are granted a waiver of recovery.<sup>31</sup> In order for a waiver to be granted, the individual must (1) be without fault in connection with the overpayment and (2) demonstrate that recovery of the overpayment would either defeat the purpose of the SSI or social security program or be against equity and good conscience.<sup>32</sup>

Perhaps the most common abuse in the waiver process is its inappropriate use when a recipient disputes either the existence or the amount of the overpayment. Many local social security offices almost reflexively encourage the recipient to file a waiver request instead of an appeal or, where an appeal has already been filed, treat the appeal as a request for waiver. Too many advocates are equally insensitive to the critical distinction between an appeal and a waiver request. A request for waiver of recovery of an overpayment is an admission that the overpayment exists and in the amount alleged. While such an admission may be appropriate in some circumstances, it is not at all appropriate, and appeal is the appropriate course, if there is any question as to the amount of the overpayment.<sup>33</sup> The Social Security Administration is aware of the problem and has responded to advocates’ requests by issuing good instructions that empha-

<sup>29</sup>*Martinez v. Astrue*, No. 08-4735CW (N.D. Cal. Sept. 26, 2009); see Gerald A. McIntyre et al., *Social Security Administration Retreats from “Unknowing Flight” Doctrine and Will Pay Hundreds of Millions in Back Benefits*, 43 CLEARINGHOUSE REVIEW 479 (Jan.–Feb. 2010).

<sup>30</sup>While social security disability insurance does not have any financial eligibility rules, beneficiaries do not generally understand the complex rules that govern when wages make an individual ineligible for benefits.

<sup>31</sup>20 C.F.R. §§ 404.506, 416.550.

<sup>32</sup>The SSI program has an additional provision for granting a waiver if the individual is without fault and recovery would impede the efficient or effective administration of the program (20 C.F.R. §416.550(b)(3)). The Social Security Administration applies this provision to all overpayments of \$1,000 or less (POMS SI 02260.030B.2 (2011)).

<sup>33</sup>The granting of a request for waiver does not necessarily bar recovery from others. There are situations in which the granting of a waiver could decrease the chance that a subsequent waiver request will be granted (see POMS SI 02260.010B.5.e (2011)) (“Usually, we will find fault if the individual has incurred a similar overpayment in the past and at the time of the prior similar overpayment had reporting responsibilities explained to him or her. In this situation the individual should have had adequate knowledge of the effect of the change or event and of his or her obligation to report it.”).



size always processing appeals prior to processing waiver requests.<sup>34</sup>

Social security beneficiaries who file a request for waiver of recovery “are entitled to the opportunity for a prerecoumment oral hearing,” the Supreme Court ruled in 1979.<sup>35</sup> Social Security Administration regulations appropriately implement this mandate for SSI as well as social security.<sup>36</sup> If a beneficiary requests a waiver within thirty days of receiving the notice of overpayment, no recoupment should take place until after the initial waiver determination is made.<sup>37</sup> Even if a beneficiary does not request a waiver until recoupment starts, once the request is made benefits should be restored to the original amount pending the waiver determination.<sup>38</sup> After ensuring the continuation of benefits, the agency must review the documentation that the beneficiary submits to determine if waiver can be allowed in full.<sup>39</sup> If waiver can be allowed, the process ends there. However, if the documentation submitted does not support a waiver, the agency must send the beneficiary a notice of the date, time, and place of the personal conference, with the option of conducting the conference face-to-face, by telephone, or by videoteleconference.<sup>40</sup> The file review must be held at least five days prior to the personal conference.<sup>41</sup> At the personal conference the beneficiary has the right to be represented by an attorney, to testify, and to cross-examine witnesses.<sup>42</sup> The decision maker at the conference must not have been previ-

ously involved in the issue under review and must issue a written decision setting forth findings of fact and conclusions in support of the decision.<sup>43</sup> This decision after the conference constitutes an “initial determination” on the waiver request. A beneficiary may thus file a request for reconsideration of this decision to commence an agency administrative appeal.

The actual treatment of waiver requests by social security district offices, however, does not match the process set forth in the regulations. As with requests for reconsideration, waiver requests often are not processed at all. This is true for both social security and SSI cases; as a result, people are denied their constitutional right to avoid recoupment or collection when a waiver request is pending. Individuals are also often denied their right to a personal conference before a negative determination is made.

A Nevada attorney reported that she filed a waiver request for an SSI client in January 2011. In April 2011 the attorney began to call and send faxes to the Social Security Administration office to inquire about the status of the waiver request; she received no response until July, when the agency asked about the client’s wife’s insurance benefit. In August, the attorney learned in a phone call with the agency that the waiver request had been denied back in April. Neither the client nor the attorney was ever notified of the right to a conference prior to denial of the waiver, as agency regulations require.<sup>44</sup>

<sup>34</sup>Social Security Administration, Emergency Message 10092 (Dec. 22, 2010). These same instructions also tell agency employees to treat those waiver requests which raise a question as to the existence or amount of the overpayment as if they were requests for reconsideration.

<sup>35</sup>*Yamasaki v. Califano*, 442 U.S. 682 (1979) (Title II); POMS §§ SI 02260.001A4 (2012) (SSI), SI 02260.006 (2012) (SSI).

<sup>36</sup>20 C.F.R. §§ 404.506 *et seq.*, 416.550 *et seq.*

<sup>37</sup>*Id.* § 404.506(b); Emergency Message 10092, *supra* note 36.

<sup>38</sup>See *supra* note 39.

<sup>39</sup>20 C.F.R. § 404.506(c).

<sup>40</sup>*Id.*

<sup>41</sup>*Id.*

<sup>42</sup>*Id.* § 506(e).

<sup>43</sup>*Id.* § 506(f).

<sup>44</sup>*Id.* § 416.557.

Even when held, conferences are not conducted properly. We heard disturbing tales from around the country of conferences held only to discuss a payment plan instead of a recipient's eligibility for a waiver and of people being forced into payment plans without being allowed to make their case for a waiver.

#### IV. Recommendations

Although the Social Security Administration is making some improvements on its processing of nondisability appeals, the agency needs to do much better in ensuring minimum due process for individuals facing a possible loss of benefits. The agency should take at least the following steps to move in that direction.

##### A. Train Social Security Employees More Effectively

Social Security Administration employees who interact with the public should know that *all* initial determinations with respect to benefits may be appealed and that telling someone otherwise or talking someone out of appealing is never appropriate. Employees should also know that when someone seeks to appeal a determination after the deadline for benefit continuation or for any appeal has passed, employees have an affirmative duty to inquire about and develop a case for good cause for missing the deadline, even if the individual does not specifically request a finding of good cause.

The Social Security Administration should ensure that employees responsible for conducting reconsiderations have a basic knowledge of the fundamentals of due process and the specific requirements for conducting reconsiderations under agency regulations. The agency should ensure that those responsible for processing waiver requests are similarly well equipped. At present such basic knowledge is extraordinarily rare. For an

employee with a host of other responsibilities in a short-staffed organization to develop a solid grounding in the concept of due process, particularly when the employee has only infrequent exposure to processing reconsiderations, is a challenge. Perhaps an idea worthy of consideration would be to establish demonstration projects in one or two parts of the country; these specialized units would receive more extensive training, and all reconsideration requests would be assigned to them.

##### B. Adopt a System to Track Appeals and Waiver Requests

No process is in place to ensure that reconsideration and waiver requests are entered into the Social Security Administration's systems when received. An appeal can sit on an employee's desk for months, without anyone being accountable; processing of appeal and waiver requests is not tracked at the district office level to inform agency supervisors of an office's performance on these matters.

The Social Security Administration should put a system in place to ensure that all requests for reconsideration or waiver are logged in on the day they are received, that subsequent steps in processing the request through a reconsidered determination or approval or denial of a waiver are promptly recorded, and that such records are available to agency supervisors.<sup>45</sup>

##### C. Ensure Continuation of Benefits when Reconsideration Is Requested Timely

A notice of planned action to suspend SSI benefits triggers an automatic suspension of benefits fifteen days after the notice is sent. When a recipient appeals within the fifteen-day advance notice period, benefits are likely to be suspended anyway, in violation of *Gold-*

<sup>45</sup>The Social Security Administration is considering a system for inputting nondisability appeals and tracking their processing at the district office level. If fully implemented, this system will definitely be an improvement, although questions may remain around the initial input.

*berg* and Social Security Administration regulations. This is so because stopping the suspension requires an employee to make a manual entry into the system, and severe workload pressures make timely manual entries unlikely. The agency should consider adding a step to benefit suspensions by requiring an additional input at least fifteen days after notice is sent in order to verify that no request for reconsideration has been filed. How the benefit continuation mandated by the Supreme Court more than forty years ago can become a reality is difficult to see without such a change.

#### **D. Give Recipients and Advocates Full Access to Files**

Recipients and their advocates are often forced to appeal without having adequate information about the basis for or the facts supporting a benefit suspension or reduction. Often appellants and their representatives are given no access to files at all prior to a reconsidered determination, while at other times they are allowed to see only some of the relevant files. The Social Security Administration should ensure that SSI recipients and advocates can see all relevant files regardless of the physical location of the files.



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