BE IT RESOLVED, That the American Bar Association recommends that Congress enact legislation amending the Social Security Act that would require the Secretary of Health and Human Services to implement the following practices at the initial determination process of disability claims.

1. Provide claimants with a clear written statement
* of applicable eligibility requirements;
* of the claimant’s responsibilities in the disability determination process;
* of the administrative steps in the process;
* of the nature of relevant medical and vocational evidence; and
* of the availability of legal representation.

2. In gathering medical evidence,
* consult claimants’ treating sources, including physicians, psychologists and medical facilities, and compensate adequately for providing relevant medical information;
* assist claimants’ treating sources by publishing and distributing informational materials regarding the eligibility criteria used in the disability program and the nature of the medical evidence needed to decide claims; and
* obtain evidence concerning claimants’ symptomatology and limitations relative to their total functional capacity including information from non-medical sources, such as social service workers, family members, previous co-workers and others who have been in regular contact with claimants

3. Prior to the denial of claims
* notify claimants of pending adverse action;
* inform claimants of reasons why the finding of disability cannot be made and that they have access to all the evidence in their claims file, including medical reports
* provide claimants with an opportunity to submit further evidence; and
* advise claimants' treating sources of any deficiencies in the medical evidence and give them an opportunity to supply additional medical information.

4. Provide claimants and their representatives with an opportunity to have a face-to-face interview with the agency decision makers before a final decision on the claim is made.

5. In making final decisions,
* vest decision-making authority in two-member teams, including a disability examiner and a medical or psychological professional;
* provide claimants who are denied benefits with a clear and detailed statement that includes the reasons for denial for the period covered by the application, the opportunity to appeal, the availability of representation, the consequences of failing to appeal, and any preclusive effect the denial may have on future applications;
* revise the Social Security quality assurance process to assure that claims are decided only after all evidence was properly developed, and require that a substantial number of denials are periodically reviewed prior to implementation.

6. Eliminate the reconsideration stage, with appeals from the final decision in the initial determination process going directly to an administrative law judge.

BE IT FURTHER RESOLVED, That the American Bar Association recommends that Congress enact legislation amending the Social Security Act to require the Secretary of Health and Human Resources take specific affirmative steps to ensure that applicants unable to adequately access the Social Security system, in particular homeless people, receive assistance in applying for benefits to which they may be entitled.
This report and recommendation focuses on the early stages of the Social Security Administration (SSA) disability claims process, including the initial decision making procedure and the reconsideration stage. It reflects a common assumption of a number of important recent studies, namely, if adequate reforms are made at these levels, they will result in a fairer and more accurate process and also reduce the number of appeals to subsequent levels, particularly a reduction in the review work of the ADJ's, the Appeals Council and in the cases judicially reviewed. Brief references are made to additional reform proposals for the latter levels, but they may be better understood after the reforms at the early stages have been implemented and evaluated.

The recommendations in this report are based primarily on a review of the recent major works that have examined the SSA disability claim process and an extrapolation from these of key elements that can be consistently adapted to the present system so that it can function as fairly, accurately and efficiently as possible.

THE DISABILITY DETERMINATION PROCESS

The Social Security Administration is responsible for implementing two major disability programs authorized by the Social Security Act: Disability Insurance Benefits for wage earners and their survivors; and Supplemental Security Income, a public assistance program for disabled adults and children. With some slight differences, both programs require claimants to show that they are unable "to engage in any substantial gainful activity by reason of any medically-determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S. C. secs. 416 (1), 423 (d)(1)(A). For most claimants, the disability standard also refers to various vocational factors, such as the claimant's age, education and prior work experience. Although there are other eligibility requirements for both programs, such as proof of coverage in the case of Disability Insurance Benefits and indigence in the case of Supplemental Security Income, the difficult and most-often-contested issue is disability. Thus, of the approximately 250,000 administrative hearings and 50,000 agency reviews of hearing decisions in the disability programs each year, the overwhelming majority involve disability issues.

There are four distinct administrative steps followed in determining eligibility for Social Security disability programs. The process begins at a state agency, known as the Disability
Determination Service (DDS), where all disability claims are referred by local SSA offices. Disability evaluations are made by two-member teams, consisting of a medical consultant and a lay disability examiner. However, most responsibility is assumed by the disability examiner. The DDS team is responsible for compiling evidence provided by the claimant, supplementing that evidence with additional material from existing sources or from a consultative examination, and evaluating that evidence against the applicable disability standard. The initial decision on eligibility is based on the disability determination made at the DDS. Claimants dissatisfied with the initial decision can then seek reconsideration, which involves a second look at the claim by the DDS with a different evaluation team. The third administrative stage is an administrative hearing by an Administrative Law Judge at a local office of SSA's Office of Hearings and Appeals. Finally, a claimant dissatisfied with a hearing decision as well as SSA (to a limited extent on its own motion) may seek review by the Appeals Council, located at the headquarters office of the Office of Hearings and Appeals.

At each stage where disability is being evaluated, the decisionmaker is expected to follow SSA's "sequential evaluation process." See 20 C.F.R. secs. 404.1520, 416.920. Through the sequential evaluation process, the determination of disability is phased as follows: First, a finding of non-disability is mandated where the claimant is, in fact, engaging in substantial gainful activity. Second, if a claimant is not engaging in substantial gainful activity, a non-disability finding is mandated nonetheless unless the medical evidence establishes that the claimant's impairment is "severe". Third, in cases where the claimant has a severe impairment, a disability finding is mandated where medical evidence shows that the claimant's impairment or combination of impairments meets or equals the requirements of SSA's "Listing of Impairments". Fourth, if the claimant's impairments are severe but do not meet or equal the requirements of the Listing, a finding of non-disability is mandated where the medical and vocational evidence establishes that the claimant is capable of doing work he or she held in the past, a finding of disability will depend on whether the medical and vocational evidence, including the application in many cases of SSA's Medical-Vocational Guidelines, establish that the claimant can perform any other "substantial gainful activity" existing in sufficient numbers in the national economy. Thus, depending on where in the sequential evaluation process a disability claim is being evaluated, the decisionmaker must consider various types of medical and/or vocational evidence.
The reasons for the need for reform of the SSA disability claims process were well stated in the introductory "Overview" of a Report of the Disability Advisory Committee to the Commissioner of Social Security, July 25, 1989, stating: "...In light of the basic goals and objectives of the hearings and appeals process, as we understand them, and on the basis of testimony presented at our public meetings and the information provided by staff of the agency, the Committee has concluded that the problems within the current process can be classified as those of fairness, timeliness, and efficiency. More specifically:

- The fairness, efficiency, and public credibility of the disability determination process have been eroded by perceived errors made by the State Disability Determination Services (DDS), either as a result of incomplete information or the use of inappropriate or unpopular standards in determining eligibility for benefits.
- The fairness, efficiency and judicial credibility of the current hearings and appeals process have been undermined by both the current structure of the process and the fact that the structure does not impose accountability for error.
- The fairness and public credibility of the process can be improved by assigning sufficient staff to Social Security Administration (SSA) district offices (DOs) and to DOSS and by improving the attitude and posture of some DO and DOS units toward persons seeking benefits or assistance...." (p.1)

This Advisory Committee Report and several other studies deal with the entire adjudicative process from the initial application stage through judicial review. As indicated above, the present report focuses on the initial decision making and the reconsideration processes on the assumption (generally shared by all the other reports) that improving the information gathering and decision making processes at the earliest stages of the proceedings, and allocating sufficient resources to do so, will result in a more accurate, fairer, more timely and more cost-efficient process, and also, that good decisions at an early stage should relieve the burden on subsequent Law Judge, Appeals Council and judicial review stages.

The recommendations in the present report are further limited in that the processes are viewed from an administrative and regulatory law perspective, dealing primarily with structural and procedural aspects. Thus, matters of considerable importance, such as management practices and personnel qualifications,
training and attitudes are not dealt with, although they have been addressed in several other reports.

Certain major structural changes recommended in other reports are deemed unwarranted at this time. One, for example (see Arner report infra, "Background Materials"), recommends the federalization of the disability claims process by eliminating the state role. Like all centralization schemes, it has an intellectual appeal because it provides for an orderly system. Unfortunately, as we have recently seen in the HUD and Savings and Loan scandals, a centralized federal system does not assure either political or internal administrative integrity. The present federal/state relationship in the disability claims process, despite its recognized shortcomings, at least has a built-in oversight mechanism (federal agency overseeing state action) that provides a measure of accountability as well as diverse opportunities for innovative experimentation.

A second structural change recommended by others is at the judicial review level to establish a Social Security Court to replace the review function of the United States District Courts. This may be attractive as a means of relieving the caseload on the regular courts and providing more uniformity in decision making. On the other hand, it raises serious questions about the appropriateness of using specialized courts in a judicial system consisting primarily of courts of general jurisdiction. However, given the underlying assumption of the present report that the number of appeals can be reduced by improving the information gathering and decision making processes at the initial stages of the disability claims process (a view accepted by some proponents of the Social Security Court), such a proposal, at best, is premature. Also, the American Bar Association has rejected the idea.

The most radical proposal was made Professor Jerry Mashaw (see Mashaw Study infra, "Background Materials"). He suggested that all reforms be made internally in the SSA and that the ALJ and judicial review stages be eliminated. He argued that the internal processes can be structured and controlled whereas the ALJ and judicial review processes cannot (id. at p.195 et seq.). However, given the recent history of SSA's regressive measures and its resistance to needed reforms, their view in the present report is that reliance on internal efforts alone would be unwarranted at this time.

BACKGROUND MATERIALS

By the mid 1970's there were at least a score of works that had examined one or more aspects of the disability claims process. On the assumption that the newer ones have digested the earlier findings, the earliest work on which this report relies
is the study sponsored by the Center for Administrative Justice, an activity of the American Bar Association, entitled Social Security Hearings and Appeals, Mashaw et al (1978), (hereafter Center for Administrative Justice study), widely recognized as a seminal work in this area. Also, the most extensive empirical study of the disability claims process at the state level is found in Mashaw, Bureaucratic Justice: Managing Social Security Disability Claims (1983) (hereafter, Mashaw Study).

Other major works have been done by and for governmental agencies and private organizations. One of the most prominent was undertaken at the request of the Commissioner of Social Security. An advisory committee of ten members was designated by the Commissioner in February, 1989 "to identify and analyze current problems undermining the effectiveness of the hearings and appeals process used by the Social Security Administration". After conducting public meetings in different parts of the country, hearing testimony from 56 witnesses and receiving 40 statements for the record from varied sources, the committee issued its final report dated July 25, 1989 entitled Report of the Disability Advisory Committee to the Commissioner of Social Security. (hereafter SSA Advisory Committee Report)

The Administrative Conference of the United States (ACUS) and its committees and reporters have addressed important aspects of the disability claims process in the following:


The General Accounting Office (GAO), responding to requests by members of Congress, has been tracking certain activities of Social Security Administration and has issued several reports on special problems of the disability claims process, as follows:


**Selective Face-to-Face Interviews With Disability Claimants Could Reduce Appeals**, April, 1989. (hereafter GAO interview report)

**Demonstration Projects Concerning Interviews with Disability Claimants**, February, 1987. (hereafter GAO demonstration report)

An important and comprehensive study of the entire disability claims and appeals process was carried out by Frederick B. Arner with a grant from the Alfred P. Sloan Foundation. Mr. Arner had over thirty years of active experience with the process in the Congressional Research Service, the House Committee on Ways and Means, as the primary staff person for its Social Security Subcommittee and as a consultant to the Social Security Administration. His study resulted in a report dated September, 1989 and entitled **A Model Disability Structure for the Social Security Administration**. (hereafter Arner report)

On October 11-12, 1985, a Symposium on Federal Disability Benefits Programs was conducted at the Case Western Reserve School of Law, cosponsored by the Administrative Conference of the United States, the American Bar Association (ABA), the ABA Section of Administrative Law and its Commission on Legal Problems of the Elderly, the Case Western Reserve School of Law and the Cleveland Legal Foundation. It included an extensive collection of briefing papers and a final Report and Recommendations on the entire disability claims process. The recommendations were approved by the American Bar Association in August, 1986. (hereafter ABA Resolution)

Another document contributing to the dialogues on the SSA disability claims process was issued by the Save Our Security Coalition in 1987 entitled **Contributors' and Beneficiaries' Bill of Rights**.
REFORM PROPOSALS

All the studies of the disability claims process recognize the need for providing adequate assistance to claimants, largely because a substantial number have literacy, language and financial resource problems and, of course, are presumably disabled. The most difficult problems arise in connection with the assemblage of complete and accurate medical information and making decisions in accordance with the statutory standards. The present system has not given appropriate consideration to these factors and such failure underlies the proposals for reform, especially at the initial decisionmaking stage.

1. The Initial Decision Making Process

The present report envisages six aspects of the initial decision making process: (a) information to applicants; (b) gathering of medical evidence; (c) notice of pending adverse action; (d) personal interview of claimant with decision makers; (e) final decision process; and (f) elimination of reconsideration stages.

a. Information to applicants

All the studies emphasized the need to improve the delivery of information to applicants. Mashaw refers to "The Informational Shortfall" and the "corrosive effect of ignorance" (p.195). More specifically, the SSA Advisory Committee Report recommended that SSA:

{o Provide applicants with a practical and understandable explanation of the eligibility requirements and their responsibilities for meeting those requirements....
{o Establish a policy requiring person-to-person communication between applicants and SSA DO intake employees and applicants and DDS employees as a means of producing a quality file that will facilitate a decision based on the facts of the situation...." (p.17)

The ABA Resolution stated that, in state level procedures, the agency should "Provide More Information to Claimants on Procedures and Burden of Proof". (p.14)

b. Gathering medical evidence

Some of the most extensive discussions in the reports revolved around the gathering of medical evidence, perceived to be one of the major weaknesses of the present system. The SSA
Advisory Committee Report recommended that SSA:

"Affirmatively assist applicants by ensuring that every appropriate method of securing evidence to support their claims is pursued: - expand current efforts to increase physician understanding of disability eligibility requirements; - standardize forms and make them impairment-specific if feasible; - reassess from time to time the amount paid for medical evidence to ensure that the rate is sufficient to encourage physician cooperation; and ensure conformance with the rules pertaining to reliance on treating physician evidence." (p.17)

The ACUS Bloch medical report provides a comprehensive study of the use of doctors and other medically trained personnel in the Social Security Administration disability claim procedure. It also includes comparative analyses of practices in other government programs, such as railroad retirement programs, civil service disability retirement benefits, veterans disability programs and black lung disability benefits. Its recommendations regarding the SSA process seek to "enhance the decision-making role of permanent medical staff at the initial decision level", to provide for notification to claimants of apparent deficiencies in medical evidence as part of the initial decision-making process, and fully involve medical staff, including physicians and paramedics, in development of the medical issues both at the initial determination and appeal stages. In particular, it recommends that a physician, employed by SSA on a full or part time basis, be made a formal member of the initial decision making team - along with the disability examiner - and be given significant responsibilities in the decision making process. (p.234 et seq.)

The ABA Resolution in its recommendations to "improve the quality of medical evidence" stated: "Vigorous efforts should be made to obtain treating physicians' reports. When a treating physician's report is not detailed or comprehensive enough, every practicable effort should be made to obtain a supplemental report from the treating physician, and claimants and their representatives should be notified of this policy". And also that "...SSA should increase efforts to educate the medical community regarding the eligibility criteria used in the disability program and the kind of medical evidence SSA requires, in order to increase the number of physicians capable of meeting SSA standards and requirements...".

c. Notice of pending adverse action

Several of the studies recognize the need to inform the claimant that the file record is inadequate, particularly with regard to the medical evidence, and to provide an opportunity to..."
meet the requirements for an allowance.

The SSA Disability Committee Report, for example, as quoted in "a." above, recommended that SSA adopt a policy requiring communication between the applicant and federal and state authorities "as a means of producing quality files". The ACUS Recommendation on Medical Evidence (par.4) urged that

"SSA should require that claimants be informed specifically of any deficiencies in the medical evidence, and should encourage the claimant to provide additional information and explanation, as needed. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints. ".

d. Personal interview of claimant with decisionmakers

The idea for providing a personal, or face-to-face, interview session between the claimant, including claimant's representative, and the decision makers at the initial stage of the process has been the subject of extensive investigation by SSA, GAO and others since at least 1984, when Congress mandated the conduct by SSA of demonstration projects to test the efficacy of the idea. At present, the initial decisionmaking stage is a paper process.

There is general agreement among the observers that providing for a personal interview with appropriately trained personnel as a part of the initial decisionmaking process would significantly improve the quality and accuracy of initial decisions and thereby reduce the burden on the subsequent appeals processes.

The SSA Advisory Committee Report, as already noted, recommended the establishment of a policy requiring person-to-person communication between applicants and state and federal officials. (see "a." above). The ACUS Bloch process report recommends: "Add an optional face-to-face interview with the claimant as part of a revised initial decision process...(S)uch an interview would be extremely helpful in improving the quality of initial decisions and thereby reducing the number of claims appealed to the administrative hearing level...." (p.130)

The most extensive investigations of the subject were undertaken by SSA and GAO. In 1984 Congress enacted the Social Security Disability Reform Act (Public Law 98-460) requiring the SSA to conduct demonstration projects to determine the efficacy of face-to-face interviews with disability claimants at the initial intake stage on the state level. After considerable delays and changes in approach, a number of states were selected
and data was gathered. Again delayed by a false start in providing for outside evaluation of the data, the evaluation function was assigned to the Inspector General's office by the agency. By the Summer of 1991 (at the time the present report was prepared) the evaluation report had not yet been issued.

The GAO demonstration report of February, 1987 sharply criticized the SSA project as follows: "It is questionable whether the demonstration projects currently implemented by SSA will successfully meet the objectives described above (reduced cost, improved claimant satisfaction, and better and more timely decisions at a lower level). In its project design and implementation, SSA has allowed variables to enter the picture that currently are not being adequately controlled for. As a result, it is unlikely that the demonstration projects will provide sufficient information for the Congress to adequately assess the need to change the disability appeals process." (p.16)

Thereupon, at the request of the Chairman of the House subcommittee on Social Security, GAO undertook its own study and in April, 1989 issued its report *Selective Face-to-Face Interviews With Disability Claimants Could Reduce Appeals*. Among its findings were the following: "GAO found that the ALJs were reversing 70 to 100 percent of DDS decisions for several categories of claimants, including those 55 to 59 who suffered from back disorders, heart conditions, lung disease, diabetes, or anxiety.... For these categories of older claimants, information elicited at the (ALJ) hearings (because the claimant appeared personally) appears to have been the principal difference between evidence used by the ALJs and that used by the DDSs." (p.3) The report also noted that "Some ALJs believe DDSs could approve more cases and reduce the need for appeals if DDSs made more realistic determinations about the ability of older workers to continue working." (ibid.)

Finally, the Arner report, for its model disability claims process, states that "(t)here is a consensus among almost every serious commentator on the disability program that some enhancement of the initial determination of disability is necessary. Particular attention will be given to the idea of instituting face-to-face contact with the claimant at the initial stage of the process, a development in which Congress has shown considerable interest in recent years." (p.5)

e. Final decision process

An important recommendation regarding the final decision making process was made in the ACUS Bloch medical report. It is there proposed that the final decision in the initial process be made by a team of two persons, including an examiner and a staff physician. At present, the disability examiner has the primary responsibility for making the decision
and the medical role is that of consultant. Other Recommendations adopted by ACUS (Recommendation 89-10) deal with the adequacy of information in the decision notice and the opportunity for appeal.

The Bloch report further recommends that "The medical member of the team should be given primary responsibility for developing the medical evidence and resolving certain specified medical issues. The two members of the team should work together throughout the process: however, each should be responsible for an independent, albeit coordinated, review of the claim." (p.235)

On the matter of decision notices, the SSA Advisory Committee Report recommends that SSA "Ensure that notices of DDS decisions are clear and detailed and provide information about the opportunity to seek representation and appeal as well as pathways for employment and reemployment". (p.17) The Bloch process report recommends that the quality of formal initial decisions be improved. It states that the present "...quality and detail of the notices is, all to often, less than optimal; most notices are far less clear and informative than they can and should be. Every effort should be made to include as much relevant information as possible in the initial decision in order to allow the claimant to make an intelligent decision whether to appeal and, if the claimant decides to appeal, to be able to prosecute the appeal." (pp. 131-132)

f. The reconsideration stage

An important issue of the final decision process at the state level is whether to continue the reconsideration stage. Some commentators agree that the reconsideration process presently in use either at the option of the claimant or automatically by the state agency should be abolished. It is maintained that an appeal should be taken directly to an ALJ. The SSA Advisory Committee Report is ambivalent on the question. It states that "(t)he Committee believes that the present reconsideration process is flawed and therefore should be changed but we reached no consensus on what change might be best. We recommend that SSA consider the following options: "Collapsing the initial and reconsideration steps into one; Abolishing reconsideration and allowing applicants to go directly to hearing; Terminating the DDS responsibility for reconsideration and placing the responsibility with SSA); or Providing face-to-face hearings at reconsideration." (pp.17-18)

The ACUS Bloch process report recommends: "Establish a single initial decision procedure to replace the current two-step process of initial decision and reconsideration.... On balance, it seems that a separate, formal reconsideration process as used by the Social Security Administration is unnecessary. Instead, the resources used to implement the reconsideration level of
review could be allocated more effectively to improving the initial decision process..." (p.129) The Arner report model disability adjudication system provides that "(t)here will be no reconsideration and the claimant will be able to appeal an initial denial directly to an Administrative Law Judge." (p.7)

Mashaw, on the contrary, adhering to his stance on solely internal reforms, not only recommended the retention of the reconsideration stage but also to structure representation into that process.

2. The ALJ Hearing

As indicated above, there is agreement among a number of informed observers of the disability adjudication system that a claimant should be able to appeal a denial at the initial stage directly to an ALJ at the Office of Hearings and Appeals of the SSA, thus entirely eliminating the reconsideration stage. The ALJ hearing is an informal evidentiary proceeding that is governed by procedural due process standards and more. The "more" consists of a residual paternalistic aspect of the system whereby the ALJ is said to wear "three hats", namely to represent the government since no attorney appears for the agency, assist the claimant and make the decision. This has been modified because a large proportion of appealing claimants are now represented by counsel. Nevertheless, the ALJ is still expected to take affirmative steps, such as, for example, to seek medical advice if deemed necessary.

Reform proposals have largely left the role of the ALJ intact, supporting its relatively independent status, but critical of aberrational reversal rates among different ALJs, ranging from at least 20% to 70% (a sophisticated analysis of reversal rates was made in the Center for Administrative Justice study, pp.19-24). It is expected that by improving the quality of initial decisions there will be an improvement in the reversal rate picture, although improved selection criteria and training of ALJs could also be helpful. Other management proposals include an increase of staff resources for ALJs and more extensive use of modern technological advances such as two way video conduct of hearings.

3. The Appeals Council

All studies agree that the present manner in which the Appeals Council functions is flawed. Various suggestions for reform have been made. One of the most comprehensive and thoughtful is the ACUS Koch/Koplow report. Their work manifests the difficulty of designing an appropriate role for the Council since they find there are four possible models and present the...
arguments for and against each of them. The following is an excerpt from their concluding remarks:

"Having considered four models for future Appeals Council operations, we conclude that: (1) the status quo of the Appeals Council is too deeply flawed to be sustained and the present structure is not performing to anyone's satisfaction; (2) the Appeals Council should not be abolished, at least not before one more effort at serious reform; (3) a 'case correction' role could be expanded and improved, but pursuing a chimera of accuracy would prove unsatisfactory and eats the Appeals Council's real potential; and (4) the role of system reform - suggesting new policies, developing new practices, and implementing new experiments - is the most valuable role for the Appeals Council, enabling it to put its case-handling experience to the best use and empowering it to aid the SSA in the most valuable way." (17 Florida State University Law Review, supra, at p.319; see also GAO ALT report).

4. Judicial Review

As indicated earlier, proposals have been made to establish a Social Security Court for the review of SSA decisions in order to free the United States District Courts of this responsibility. When the idea was submitted to the American Bar Association, it was rejected. Whatever the merits of the arguments in favor of relieving the District Courts of this responsibility, by instituting reforms at the administrative adjudicative levels it may be possible to reduce the number of appeals to the courts and lessen the burden on them sufficiently to retain the traditional American concept that courts of general jurisdiction are preferable to a system of specialized courts.

COST CONSIDERATIONS

One cannot say for sure whether the recommendations in this report will result in increased costs. Some data exist suggesting that the overall cost to SSA would not be significant, particularly when one considers projected cost savings in reduced numbers of hearings, Appeals Council reviews and federal court appeals. In fact, the Social Security Administration already spends a huge amount of money on processing disability claims. In fiscal year 1988, for example, the SSA spend more than 1.5 billion dollars on blindness and disability claims from the initial decision level through the Appeals Council proceedings. In the same year, DDS's spend $216,811,999 on medical consultants, consultative examinations and compiling other medical evidence for disability claims. Of this amount,
$124,750,278 was for consultative examinations. (See ACUS Bloch medical report). Almost half of all initial denials are appealed to the reconsideration level resulting, in fiscal year 1989, in almost 500,000 reconsideration decisions. See Staff report of Senate Special Committee on Aging, Disabled Yet Denied: Bureaucratic Injustice in the Disability Determination System (Comm. Print 1990).

Certainly a large portion, if not all, of the cost of improving the initial decision process could be funded through savings from the elimination of the reconsideration stage. The cost of the reconsideration stage in 1988 was approximately 12% of the 1.5 billion dollars spent on processing disability claims, amounting to $180,000,000. (ACUS Bloch Medical Report) It would also appear that by improving the initial claims process, there is a real possibility that the number of appeals would be reduced resulting in savings for Administrative Law Judge hearings and Appeals Council reviews. It should be kept in mind, however, that the most important consideration is that procedures be adopted to assure the fairness and accuracy of disability decision making so that benefits are awarded to those who meet the disability standard and denied to those who do not.

In a hearing held by the House of Representatives Subcommittee on Social Security on May 1, 1991 on HR 1799, a bill dealing with reforms similar to those recommended in this report, there was testimony to the effect that the adoption of such procedures might result in an increase in benefit allowances of approximately five per cent. This, of course, would indicate that the present procedures unfairly deprive deserving claimants of benefits to which they may be entitled. Recognizing the budgetary implications of an increase in expenditures, it is recommended that Congress, as a matter of policy, should consider how best to allocate the funds reasonably available for disability benefits among the full group of persons entitled to receive them or whether to provide for additional funding of the program.

CONCLUSION

The data and analyses of the flaws in the SSA disability adjudication process are now substantially complete and widely available. It is time for significant action to be taken. During the past decade shortcomings of the process have been aggravated and SSA has been lethargic in its response to Congressional mandates, such as the one requiring it to conduct demonstration projects to determine the efficacy of face-to-face claimant interviews at the initial decision stage. Given the interest in reform by Congress, the GAO, numerous private organizations and most of all, the affected claimants and would-be claimants, it
would be unconscionable to delay further. Both the Congress and the SSA should take the necessary steps.

This report has had the advantage of examining the recommendations from the responsible sources named above, and borrowing heavily from them (verbatim in some instances). The accompanying recommendations may be viewed as synthesizing those that provide a consistent structure and fair procedure. Also, as previously indicated, the recommendations are limited to the initial decisionmaking and reconsideration stages of the adjudication process and are primarily focused on administrative and regulatory law aspects. They are made with an awareness that certain conforming procedures may already be in place and also that critical management practices need attention. The recommendations are not cast in specific legislative or regulatory language, but are intended to provide specific guides for such implementation.

Respectfully submitted,

Ernest Gellhorn
Chair, Section of Administrative Law and Regulatory Practice

August, 1991
1. Summary of Recommendation

The recommendation proposes improvements in the fairness, timeliness and efficiency of initial decisionmaking in Social Security disability claims by providing claimants with clear information about eligibility requirements and the nature of needed evidence, assistance in gathering relevant medical evidence, notice of pending adverse action and the opportunity to submit further evidence, and the opportunity for face-to-face interviews with agency decisionmakers; by vesting decisionmaking authority in two-member teams composed of a disability examiner and a medical or psychological professional; and by eliminating the reconsideration stage.

2. Approval by Submitting Entity

Approved at a regulatory scheduled meeting of the Section Council on May 4, 1991.

3. Previous Submissions to the House or Relevant Association

None

4. Need for Action at this Meeting

Action is necessary at this meeting in order for the recommendation to affect developing legislative activity in Congress.

5. Status of Legislation

There is no legislation covering all of the points included in the recommendation. H.R.1799, 102d Cong., 1st Sess. (1991), calls for some similar reforms, including a face-to-face hearing at the initial decision level and elimination of reconsideration. A hearing was held on H.R.1799 on May 1, 1991. The Senate Special Committee on Aging is considering similar legislation based on its Report No. 101-131 (1991).

6. Costs to the Association

None
7. **Disclosure of Interest**

None

8. **Referrals**

An earlier version of the report and recommendation was reviewed by the Commission on Legal Problems of the Elderly in February, 1991. At that time, the Commission voted to support the recommendation. The final version of the recommendation was resubmitted to the Commission on May 9, 1991. A copy of the final report with recommendation was circulated to all section and division chairs in May, 1991.

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