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SOCIAL SECURITY ADMINISTRATION

Paying Attorneys Who Represent Disability Applicants

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Social Security Administration: Paying Attorneys Who Represent Disability Applicants

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss issues involving the Social Security Administration's (SSA) process for paying attorneys representing applicants for disability benefits. SSA operates the nation's two largest programs providing benefits to people with severe long-term disabilities—the Disability Insurance (DI) program and the Supplemental Security Income (SSI) program—which together provide an important economic safety net for individuals and families. At any point in the disability determination process, applicants may seek help from an attorney or other individual as they pursue their claim. In many instances, when applicants are found eligible for DI benefits, SSA will pay the attorney directly from the beneficiaries' past-due benefits. Complaints about the time it takes SSA to pay attorneys coupled with recent legislative changes to the attorney payment process—changes that include collecting a user fee for paying the attorney—have raised questions about whether additional changes are needed to the payment process.

As you requested, today I will discuss three areas of the attorney payment process: the process itself, including the costs of processing the payments; possible changes to the way the user fee is charged; and changes being considered for the attorney fee payment process overall. My testimony is based on our ongoing review of the attorney fee process, which was mandated by the Ticket to Work and Work Incentives Improvement Act of 1999 (the Ticket to Work Act).[1] Our final report is due to the Congress by December 2000.

In summary, while SSA has been paying attorney fees from beneficiaries' past-due benefits for over 30 years, the payment process remains inefficient, and little historical data are available to help us analyze proposed changes. Under the current procedures, the inefficiencies in processing fee payments to attorneys result from using a number of different staff in different units and various information systems that are not linked, and are not designed to calculate and process all aspects of the attorney fee payment, thus necessitating manual calculations. The Ticket to Work Act includes a provision that requires SSA to charge an assessment—referred to in my statement as a user fee—to recover the costs of this service. We have only begun to analyze the estimate that was used as a basis for the current user fee, and SSA does not know the actual

[1] P.L. 106-170 primarily focuses on strategies to help disabled beneficiaries work by providing access to vocational rehabilitation, employment, and other support services.

cost it incurs in processing attorney fees; however, the agency is currently developing a methodology to better capture these costs.

SSA has trouble with making timely payments to attorneys, and some have questioned the appropriateness of charging a user fee for a service that takes so long. A recent legislative proposal calls for eliminating the user fee if SSA does not pay the attorney within 30 days. In many cases, it will be difficult for SSA to meet these timeframes. Attorneys need to realize that, while it is possible for SSA to improve the efficiency of the process it uses to pay them, some factors that delay their payments are outside SSA's control and are unlikely to change at this time.

Three possible changes to the attorney fee payment process include whether (1) joint checks for past-due benefits should be issued to the beneficiary and the attorney, (2) the dollar limit on certain attorney fees should be raised, and (3) SSA's attorney fee payment process should be expanded to the SSI program. These changes would have both policy and administrative implications that need to be considered. Some of the changes could increase attorney representation for disability applicants, according to attorneys we spoke with. However, not everyone agrees with this premise. Moreover, there are some drawbacks to these changes. For example, issuing joint checks to the beneficiary and the attorney might delay payments to the beneficiary and might increase the chance that attorneys would short change beneficiaries. Finally, SSA indicated it may need to make significant modifications to its information systems to issue joint checks or pay attorneys who represent SSI recipients.

Background

The DI program, created in 1954, provides monthly cash benefits to workers who have become severely disabled and to their dependents and survivors. These benefits are financed through payroll taxes paid by workers and their employers and by the self-employed. In fiscal year 1999, 6.5 million individuals received DI benefits. The SSI program was created in 1972 as an income assistance program for aged, blind, or disabled individuals whose income and resources are below a certain threshold. SSI payments are financed from general tax revenues, and SSI recipients are usually poorer than DI beneficiaries. In fiscal year 1999, about 5.3 million blind and disabled individuals received SSI benefits.[2] For both programs, disability for adults is defined as an inability to engage in any substantial

[2]Some DI benefit recipients have incomes low enough to qualify them for SSI as well and receive benefits from both programs.

gainful activity because of a severe physical or mental impairment. The standards for determining whether the severity of an applicant's impairment qualifies him or her for disability benefits are set out in the Social Security Act and SSA regulations and rulings.

SSA's disability claims process is complex, multilayered, and lengthy. Potential beneficiaries apply for benefits at any one of SSA's local field offices, where applications are screened for nonmedical eligibility: applicants for DI must meet certain work history requirements, and applicants for SSI must meet financial eligibility requirements. If the applicants meet the nonmedical eligibility requirements, their applications are forwarded to a state disability determination service (DDS), which gathers, develops, and reviews the medical evidence and prior work history to determine the individual's medical eligibility; the DDS then issues an initial determination on the case. Applicants who are dissatisfied with the determination may request a reconsideration decision by the DDS. Those who disagree with this decision may appeal to SSA's Office of Hearings and Appeals (OHA) and have the right to a hearing before one of the administrative law judges (ALJ) located in hearings offices across the country. Individuals who disagree with the ALJ decision may pursue their claim with SSA's Appeals Council and ultimately may appeal to a federal district court.

This process can be both time-consuming and confusing for the applicants and may compel many of them to seek help from an attorney. Obtaining representation for a pending case has become increasingly popular because disability representatives have been successful in obtaining favorable decisions for their clients upon appeal.[3] In fiscal year 1997, about 70 percent of all cases decided at the ALJ-hearing level involved representatives.

The fees attorneys representing DI and SSI applicants can charge are limited by law and must be approved by SSA. In order to be compensated, attorneys must file either a fee agreement—a formal contract signed by the applicant and the attorney setting the fee as a percentage of the applicant's past-due benefits—or a fee petition that details the specific costs associated with the case. Past-due benefits are calculated by multiplying the monthly benefit amount by the total number of months

[3]Data from fiscal year 1997 show that the percentage of favorable hearings decisions for claimants with representation was about 58 percent, compared with 39 percent for individuals without representation; however, because attorneys might select only cases that they feel will result in a favorable decision, the data might be misleading.

from the month of entitlement up to, but not including, the month SSA effectuates the favorable disability decision. When fee agreements are filed, attorney fees are limited to 25 percent of the applicant's past-due benefits, up to $4,000 per case.[4] In fee petition cases, however, SSA can approve any fee amount as long as it does not exceed 25 percent of the beneficiary's past-due benefits. For DI cases, SSA usually withholds the amount of the fee from the beneficiaries' past-due benefits and pays the attorneys directly, in effect guaranteeing payment for the attorney. In SSI cases, however, SSA does not have the authority to pay attorneys directly, and only calculates the amount an attorney is due. Attorneys must instead collect their fees from the SSI recipients.

Effective February 1, 2000, the Ticket to Work Act imposed a 6.3 percent user fee on attorneys for SSA's costs associated with "determining and certifying" attorney fees on the basis of beneficiaries' past-due benefits. This amount is deducted from the approved attorney's fee. The act also directed us to study a number of issues related to the costs of determining and certifying the attorney fees, "efficiencies" available to reduce these costs, changes to the attorney fee requirements, and the new user fee.

The Process and Cost of Paying Attorneys

While SSA has been paying attorney fees for over 30 years, the payment process itself is inefficient, and the costs of the process are not known. Approving and paying attorney fees is a complex process that involves many steps; a number of staff in different units and locations; and various information systems that are not linked and that, therefore, require considerable manual intervention. Regarding the costs to administer this multistep process, we have not yet fully determined whether SSA's past estimate appropriately captured the costs associated with administering attorney fees; however, the agency is currently developing a way to capture actual costs.

The Payment Process Involves Many Steps

Attorneys are compensated for their services through either a fee agreement or a fee petition. Attorneys told us that the fee agreement is usually an easier, quicker way to get paid and that, although the fee petition is useful, it is also a more cumbersome tool used primarily when potential fees exceed the statutory limits or when attorneys were unable to file a fee agreement at the beginning of a case. In 1999, fee agreements

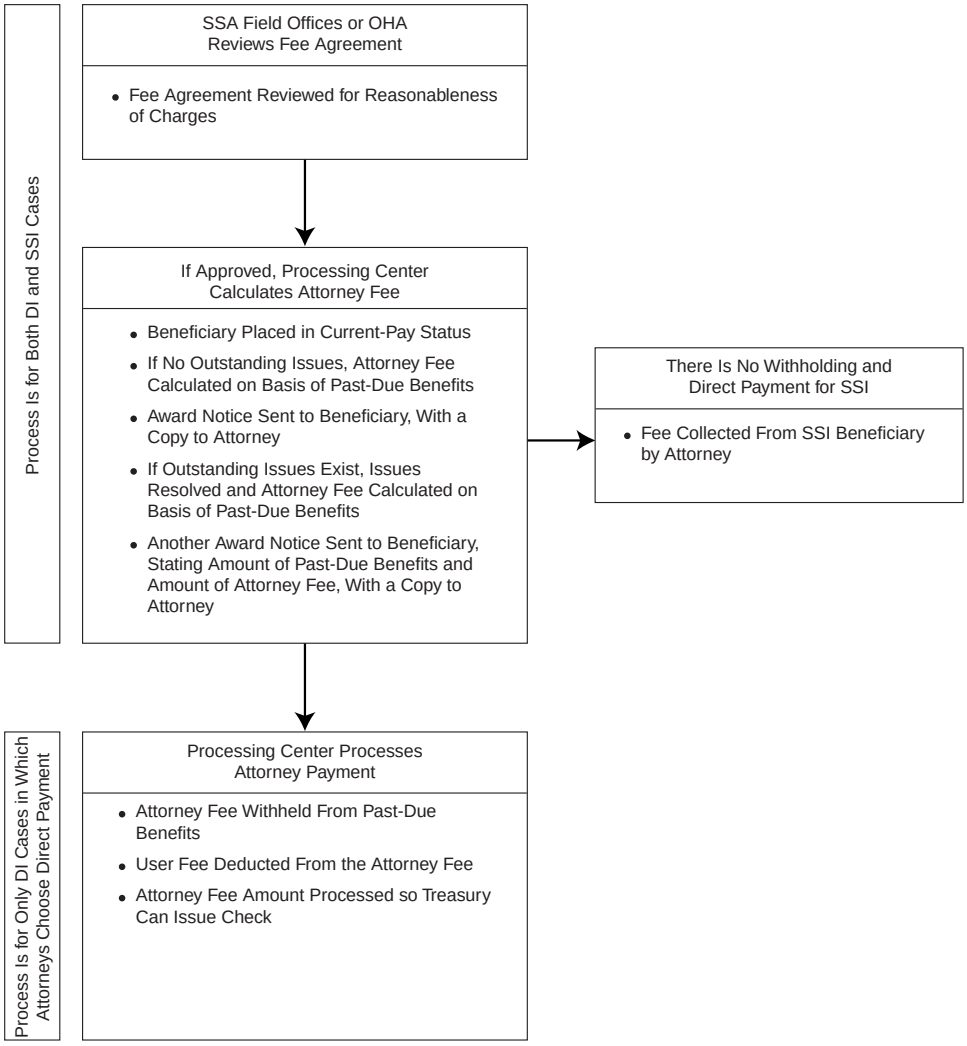
[4]In certain fee agreement cases, attorneys may request fees up to $5,000 if they feel that work on the case warrants a higher fee.

accounted for about 85 percent of attorney payments, and fee petitions accounted for the balance.

Figure 1 shows the steps involved in processing attorney fee agreements. First, officials in SSA's field offices or ALJs in OHA—depending on where the case is being determined—review fee agreements for DI and SSI cases to assess the reasonableness of the attorney fee charges.[5] If a favorable decision is made on the case and SSA approves the fee agreement, both items—the applicant's case and the fee agreement—are forwarded to a processing center for payment.

[5]All parties involved—SSA, the beneficiary, and the attorney—may question the amount of the attorney's fee, and the fee may be changed if warranted.

Figure 1: Key Steps for Processing Attorney Fee Agreements



Source: GAO analysis based on SSA information.

At the processing centers, SSA takes the steps necessary to effectuate payment to the beneficiary and calculate the attorney fees. For both DI and SSI cases, the processing center staff first place the beneficiary in current-pay status so that he or she can begin receiving monthly benefits as soon as possible. The processing center also calculates the attorney's fee—25 percent of past-due benefits up to $4,000. The processing center then sends the beneficiary an award notice, which states the amount of

benefits the beneficiary will receive and the amount of money that the beneficiary agreed to pay the attorney as stipulated in the fee agreement. A copy of the award notice is also sent to the attorney.

In some cases, however, SSA must obtain additional information to determine the final amount of the beneficiary's benefits, which also affects the amount the attorney receives. In these cases, the agency withholds past-due benefits until this additional information is obtained, as the beneficiary's past-due benefit amount may be reduced—or offset—by other payments that have been made to the beneficiary, such as workers' compensation payments. Additionally, in cases in which the applicant was determined eligible for both DI and SSI, benefit amounts to be paid by the two programs need to be adjusted before the final past-due benefit payment is made. These offset and coordination activities involve manual steps—such as dealing with payers of workers' compensation insurance—and can take as long as 6 months to complete. When SSA has had to take extra steps to determine the final past-due benefit amount and the amount the attorney should receive, the agency prepares and mails another award notice to the beneficiary and the attorney. At the time this award notice is sent, the beneficiary's past-due benefits are also processed for payment on one of SSA's information systems. These information systems—the Modernized Claims System (MCS) and the Modernized Supplemental Security Income Claims System (MSSICS)—are designed to process payments for beneficiaries or their representatives only—they are not designed to effectuate payments for nonbeneficiaries, such as attorneys.

In DI cases only, after the award notice has been mailed, and if the attorney has elected to have SSA withhold his or her fee from the past-due benefits, SSA begins steps to have the Department of the Treasury issue a check to the attorney. Staff must manually calculate the 6.3 percent user fee and deduct it from the total fee amount. Then various information systems and many manual steps are involved in communicating the attorney fee information to Treasury. For example, data from one information system on the amount of each attorney payment are copied by hand to form a list of payees. Staff then deliver the list to another part of the processing center where the payee data are then manually entered into another information system for further processing. As soon as all the attorney fee information has been verified, SSA sends the information to Treasury so that a check can be issued.

For SSI fee agreement cases, the beneficiary and attorney receive an award notice similar to the one for DI cases—that is, the amount of past-due benefits is stated as well as the amount of money that the beneficiary agreed to pay to pay the attorney. SSA is not authorized to withhold and to

direct payment for SSI cases. The attorney must obtain payment directly from the beneficiary.

When a fee petition is involved, the attorney submits a statement detailing his or her charges for the case following a favorable decision. The petition is usually reviewed by an ALJ. If the ALJ approves the fee, the petition is sent to the processing center, where it is processed in the same manner as the fee agreements.

The Cost to SSA of Paying Attorneys Is Unclear

The Ticket to Work Act requires SSA to impose an assessment, or user fee, to pay for the costs the agency incurs when paying attorneys directly from a claimant's past-due benefits. For calendar year 2000, the act established the user fee at 6.3 percent of the attorney fees; for calendar years after that, the percentage charged is to be based on the amount the Commissioner determines necessary to fully recover the costs of "determining and certifying" fees to attorneys, but no more than 6.3 percent.

The actual costs of administering attorney fees are not yet known because SSA was not required to capture these costs in its information systems and did not have a methodology to do so. The 6.3 percent user fee found in the law was based on an estimate prepared by the agency. Documentation SSA provided us indicates that the percentage was computed by multiplying the numbers of fee petitions and fee agreements the agency processed in 1994 by the amount of time SSA determined it spent on various related activities. When data were not available on the volume of activities or the time spent on them, SSA used estimates. The agency's overall cost estimate included both the time spent by the ALJs reviewing documentation to support the attorney fees—that is, the fee petitions and fee agreements—as well as the processing centers' costs associated with calculating the fees, choosing the notice language, and preparing the notices. In addition, the agency included the cost of administering the user fee itself. We recently received information on the basis for SSA's 6.3 percent user fee calculation and have only begun to analyze the assumptions the agency used to compute it.

In order to comply with the Ticket to Work Act, SSA is currently in the process of developing a methodology to capture the current costs of administering the attorney fee provisions. These costs could then provide the foundation for the agency's decisions about what the rate should be to achieve full recovery of costs. SSA has established a work group to identify the components of administering attorney fees and to develop its new methodology. Thus far, the work group has identified four

components associated with the cost of administering attorney fees: (1) the time that SSA field office staff spend informing claimants that they are entitled to legal representation when filing an appeal; (2) the time it takes an ALJ to review and approve the fee; (3) the charges incurred by SSA's Office of Systems to program systems to track attorney fee cases and related computing time to generate a payment file/tape for Treasury to use to pay the attorney; and (4) the process for calculating the attorney fee, entering relevant attorney and other key data into SSA's information systems, and certifying related amounts for payment.

In April and May of this year, SSA work group officials told us that they do not plan to capture cost information from the first two components because it would be time-consuming to do so, and the methods currently available to SSA for capturing these two types of costs may not produce reliable results. For the third component, SSA officials told us they can readily gather cost information related to time spent on programming SSA's systems to track attorney fees. However, SSA does not have a cost allocation methodology in place to determine related computing time for processing attorney fees. SSA officials indicated that computing time would constitute an insignificant portion of SSA's total costs to administer attorney fees. To capture data on the fourth component, SSA modified one of its information systems in February 2000 to determine the number of attorney fee cases it administers. Using the number of cases it processes, SSA is working on a methodology to estimate the costs involved in this fourth component for paying attorneys. SSA plans to have this cost data available by the end of fiscal year 2000.

However, in commenting on a draft of this statement, SSA officials told us that they do plan to capture costs for the second component—the time it takes the ALJ to review and approve the fee. In reviewing the law, the cost of ALJ time spent reviewing and approving fees appears to be part of the cost of "determining and certifying" fees and may represent a significant portion of the total costs. As SSA determines the ALJ costs in its current approach, it will need an allocation methodology that accurately allocates the costs associated with DI cases for which SSA is paying an attorney directly to those cases. Attorneys we talked with told us they are concerned now that they are paying more than their fair share of the cost of the process.

Possible Changes to the Way the User Fee Is Charged

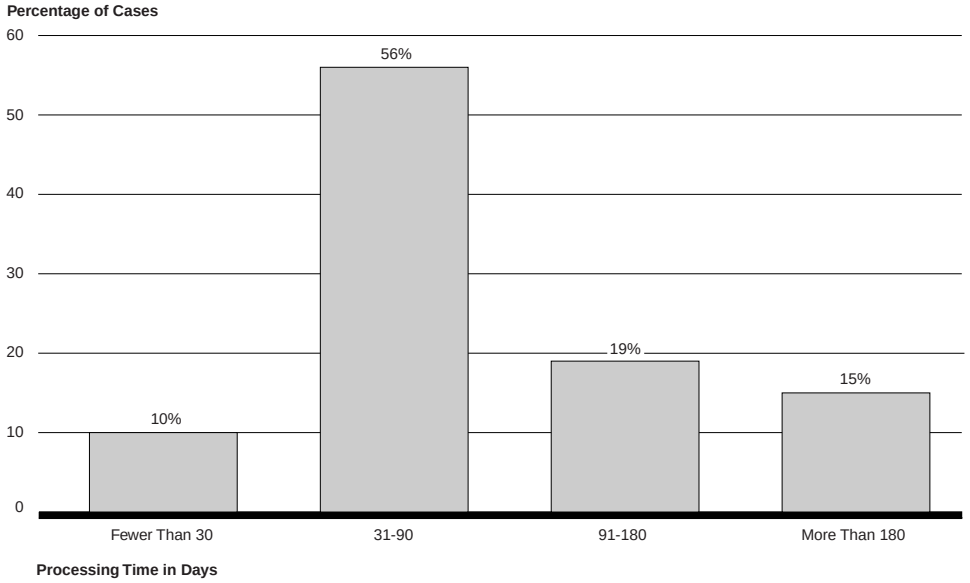
Attorneys have expressed concern about the length of time it takes SSA to process their fees and have questioned the appropriateness of charging a user fee for a service that takes so long. In regard to the user fee, you specifically asked us to look at issues surrounding (1) linking the amount of the user fee to the timeliness of the payment to the attorney and (2) expressing the user fee as a fixed amount instead of a percentage. When considering one or both of these changes, certain policy and administrative implications would need to be addressed.

Timeliness of Payments to Attorneys

According to the National Organization of Social Security Claimants' Representatives (NOSSCR),[6] individual attorneys, and SSA officials, SSA often has trouble making timely payments to attorneys. Processing attorney fees represents a small part of SSA's overall activities—in 1999, we estimate that SSA processed about 6 billion beneficiary payments and SSA reported it processed less than 200,000 attorney payments. Additionally, SSA officials told us that they view such responsibilities as paying beneficiaries as more directly linked to their mission than paying attorneys. As a result, SSA has not routinely gathered and monitored performance data on the length of time it has taken to pay attorneys. However, recently tabulated data show that from January 1995 through May 2000, only 10 percent of attorney fees for fee agreements were paid within 30 days from the time of the beneficiary is put on current-pay status to payment of fees. As figure 2 shows, there is a wide range of elapsed processing times for payments.

[6]NOSSCR is an interest group for Social Security lawyers.

Figure 2: Processing Time of Fee Agreement Cases From January 1995 to May 2000



Note: These data refer only to cases in which the beneficiary was eligible for DI; they do not include cases in which beneficiaries were eligible for both DI and SSI, which take longer to process.

Source: SSA.

This sometimes lengthy payment process can be attributed to a number of factors—some within and some outside SSA's control. Factors within SSA's control include the actual processing steps and systems used as well as the relative priority attorney fee payments are given compared with other SSA activities. As mentioned earlier, SSA's process for administering attorney payments includes many manual steps. For instance, staff manually record attorney fee information—names, addresses, and amount to be paid—on SSA forms and then physically walk the information to different units for processing. This manual intervention is needed because SSA's information systems are not currently programmed to handle this work. Manual processes leave room for human error and require additional work to check for accuracy, which results in a longer fee processing time. Additionally, we were told that it can take months for an ALJ to review and approve fee petitions; during this time, the attorney waits for payment.

Competing work priorities can also contribute to payment delays. Processing technicians have responsibilities other than their attorney fee workload. When these other workloads grow, attorney fee payment processing may receive less priority. For example, recently SSA had to redirect the work of a substantial number of processing technicians to handle the temporary workload increase that resulted from the new law eliminating the earnings test for individuals who receive retirement benefits and continue to work.[7] In addition to work surges caused by legislation, some processing center staff routinely answer SSA's 800 number during peak hours. These staffing fluctuations may result in a temporary halt to attorney fee and other work while the priority workload is completed.

Some payment delays are outside SSA's control, such as when SSA is waiting for information from other agencies or individuals. After a favorable decision, SSA processes the case for payment of past-due benefits and for attorney fees. SSA refers to dealing with all outstanding issues as "developing the case." This must be done before the amount of past-due benefits are finalized and the attorney fees can be determined and payments processed. Issues such as dealing with payers of state workers' compensation insurance can substantially increase processing times. Further, in fee petition cases, SSA has to wait until after the attorney files the petition before beginning payment action for the attorney.

However, one recent change may actually speed up processing times for attorney payments. The Ticket to Work Act eliminated a compulsory 15-day waiting period that had been in place to permit the beneficiary, SSA, or the attorney to protest the attorney fee amount. While these affected parties still have the option to protest a fee, SSA is no longer required to wait to process the attorney's fee. NOSSCR and some individual attorneys told us that that it appears SSA's fee processing has been faster since February 1, 2000, when the agency began implementing this change; however, data are not available to compare the current time frames with the ones shown in figure 2.

[7]Before the Senior Citizen's Freedom to Work Act of 2000, when retired beneficiaries worked, benefits were lowered according to a formula based on their earnings. Under the new law, beneficiaries at the full retirement age of 65 can earn any amount without reductions in their benefits. Adjusting benefits and notifying affected beneficiaries created a temporary surge in SSA's workload.

Linking the User Fee to the Timeliness of Attorney Fee Payments

To address timeliness concerns, a recent legislative proposal (H.R. 4633) would permit the user fee to be assessed against attorneys only if SSA pays attorneys within 30 days from the time of initial certification of benefits. Figure 2 above shows that from 1995 to the present, SSA has only been able to meet this timeframe in 10 percent of the cases. However, certain issues related to this proposal should be clearly understood by both SSA and the attorneys. All parties involved must clearly understand at what point in the process the clock starts ticking, when it stops, and what activities are performed during this period. When considering the current legislative proposal or contemplating other options, concerned parties need to weigh the attorneys' right to be paid in a timely manner with SSA's need to ensure the accuracy of its payments.

While SSA's current process is inefficient and the agency can make some improvements, not all factors are within SSA's control, such as awaiting fee petition information from attorneys and coordinating workers' compensation offsets. The current legislative proposal states that the clock starts ticking with initial certification of benefits—also referred to as the point when the beneficiary is put in current-pay status. At this point, SSA might be developing the case for final calculation of past-due benefits and might not have control over processing times. Attorneys need to realize that because the proposal starts the clock with initial certification, and additional work may still need to be done to develop the case, the total elapsed time from favorable decision to attorney fee payment might not actually be decreased. Information on these issues needs to be clearly communicated or the frustration and complaints with the process are likely to continue. In addition, having the clock start before SSA has complete control over the process could create perverse incentives that may actually delay payments to attorneys. Because SSA does not have control over all the activities that occur following initial certification of benefits, it is conceivable that some attorneys might view this as an opportunity to delay providing needed information to SSA in hopes of avoiding the user fee.

Further Efficiencies Are Possible

Aside from the delays that are outside its control, SSA is aware that there are steps it could take to make the process more efficient. For example, agency officials have said that instituting direct deposit of attorney fees is more efficient; it could shorten the time it takes for the fee payment to reach the attorney, and could eliminate delays that result when attorneys

change their addresses without notifying SSA.[8] SSA currently pays 65 percent of beneficiaries by means of direct deposit and wants to expand this approach to all its transactions.

Possible improvements to SSA's information systems may also help reduce processing times. For instance, enhancements to SSA's information systems could eliminate much of the manual workload involved in processing and certifying attorney fees. As stated earlier, various information systems are currently used to process SSA's attorney fee workload associated with DI cases. These systems capture data on various aspects of the disability claims process, but are not linked to one another and, thus, require some manual intervention. As a result, without linked systems or a more streamlined process it is difficult for SSA to capture the data required to measure the timeliness of the total range of activities involved in paying attorneys. To efficiently administer user fees that are based on timeliness of fee payments to attorneys, SSA will need to develop new software code to link these stand-alone information systems, or develop a new system to process the entire attorney fee workload.

SSA currently has plans for systems enhancements to improve the attorney fee process, which should help improve case processing time. According to SSA, these enhancements would automate the steps in order for systems to recognize attorney fee agreement cases, compute and withhold the 6.3 percent user fee, pay the actual attorney fee, and release the remainder of the past-due benefits immediately to the beneficiary.[9] If SSA were to make the proposed system enhancements to process attorney fees, it may be advisable to revisit requirements for how quickly the agency could be expected to process an attorney fee.

Expressing the User Fee as a Fixed Amount Instead of a Percentage

A number of issues surround the question of whether the user fee should be expressed as a fixed amount or as a percentage, and these are linked in large part to the question of what costs the user fee should cover. On one hand, expressing the user fee as a percentage of the attorney fee, as is currently the case, assumes that the costs SSA incurs in processing user fees grow in proportion to the fees. This could be the case, for example, if an ALJ spends extra time reviewing a fee petition in cases involving more

[8]SSA would need information such as attorneys' Social Security numbers or tax identification numbers to make direct deposit payments to attorneys.

[9]The Office of Systems is in the early planning and analysis phase for this modification effort. Therefore, the extent of the actual modifications and when the work will be completed have not yet been determined.

activity and larger fees. On the other hand, expressing the user fee as a fixed amount assumes that the costs of processing the attorney fees are relatively the same and, therefore, a higher attorney fee does not translate into higher processing costs. This could be the case if the costs are fixed and do not vary from case to case.

To adequately weigh the relative merits of both options, we need to further study the cost estimate information SSA used to develop the 6.3 percent user fee, the cost data that SSA is currently capturing, and the percentage of DI versus SSI cases processed. This analysis will be included in our final report, due to the Congress by the end of this year.

Changes Being Considered for Paying Attorney Fees

Attorneys, NOSSCR, and advocates have discussed various changes related to attorney fees: issuing joint checks for past-due benefits to both the attorney and the beneficiary, raising the $4,000 limit on attorney fees allowable under the fee agreement process, and extending the statutory withholding of attorney fees to the SSI program. Each of these proposals involves trade-offs that should be considered before its implementation.

Joint Checks: Attorneys May Get Payments Sooner, but Policy and Practical Issues Arise

Under the current process, when an individual receives a favorable DI decision, SSA makes an effort to issue the beneficiary's past-due benefits as soon as possible and withholds the amount of the attorney fee. After the fee is processed, Treasury issues a check to the attorney. Individual attorneys have suggested changing this process from one in which two separate payments are made to one in which a single check for the total amount of the past-due benefits—made out jointly to the beneficiary and the attorney—is sent directly to the attorney. The attorney would deposit the check into an escrow account and pay the past-due benefits, minus his or her fee, to the beneficiary. Attorneys told us that joint checks would help expedite the attorney fee process because the beneficiary's money and attorney fees would be linked, and SSA views paying beneficiaries as a priority.

Such a change could have serious policy implications, however. For instance, SSA currently attempts to pay the beneficiary as soon as possible following a favorable decision. Issuing joint checks might delay payment to the beneficiary because the beneficiary would have to wait until after the attorney deposited the money into an escrow account to receive benefits. In addition, when SSA controls the payment, it is assured that no more than 25 percent is deducted from the past-due benefits. Sending joint checks to the attorney would reduce SSA's ability to enforce attorney fee limits and could increase the risk that attorneys would short change

beneficiaries. In turn, control over payment to the beneficiary would shift to the attorney, while accountability for the payment would remain with SSA.

In addition, a number of administrative issues dealing with the implementation of joint checks would need to be addressed. First, SSA needs to know when the beneficiary receives his or her benefits. SSA is responsible for sending out benefit statements, SSA-1099s, to beneficiaries because sometimes Social Security benefits are taxable. With joint checks, SSA might have difficulty tracking when beneficiaries received their benefits. If attorneys were responsible for paying the past-due benefits from their escrow accounts, SSA would need a system certifying when—in which tax year—the beneficiary was paid. This reporting system would be needed to ensure the accuracy of the SSA-1099s.

Another administrative consideration is that the current information system used for processing DI cases—MCS—would need to be modified so that joint payments could be issued. As noted earlier, this system is designed to effectuate payments to the beneficiary or his or her representative payee only.

Adjusting the $4,000 Cap on Attorney Fees in Fee Agreements

Another change being discussed is raising the $4,000 cap on attorney fees for the fee agreement process. As I explained earlier, under the fee agreement process, attorneys can receive 25 percent of the past-due benefits up to $4,000, whichever is less. By statute, the Commissioner of SSA has the authority to adjust the cap at his or her discretion.

Debate on this issue centers around how legal representation for DI applicants might be affected. Attorneys we spoke with told us that higher fees would increase the attractiveness of DI claims. According to this argument, attractive fees could result in more attorneys for DI cases, which could increase the rate of representation for this population. Further, an increased rate of representation might result in more favorable decisions for DI applicants.

The opposing argument is that representation is readily available to DI applicants. According to an SSA official, the agency has not raised the cap because it determined that a higher cap was not needed to support representation.

In either case, evaluating this issue is difficult in the absence of such data as historical and current representation rates and without knowing the proportion of applicants who could not secure representation and why.

Issues With Expanding Withholding of Attorney Fees to SSI Cases

A final change being discussed would be to expand withholding to the SSI program. SSA currently calculates the amount of attorney fees due in SSI cases but does not withhold the fee from beneficiaries' past-due benefits. Current law explicitly differentiates between DI and SSI regarding attorney fees, stating that withholding and paying attorney fees is only permissible for DI cases.

Many believe that extending withholding to SSI is appropriate because it would increase representation for SSI applicants and alleviate a perceived equity imbalance for attorneys who represent both DI and SSI applicants. Because there is no guarantee that attorneys will receive fees due to them for SSI cases, some attorneys told us that they are reluctant to accept SSI cases. The attorneys maintained that expanding withholding to SSI would increase the attractiveness of the cases, and representation would increase. In fact 1999 data show that at the hearing level, applicants for DI and combined DI/SSI benefits were more likely to be represented by an attorney than those applying for SSI only. Additionally, according to an official from an association of ALJs, expanding withholding to SSI would be beneficial to the applicants because cases with representation are better presented and have a better chance of receiving a favorable decision than nonrepresented cases.[10]

Proponents of extending withholding to SSI also told us that the current situation is unfair to attorneys representing SSI applicants. According to this view, it is inequitable for attorneys to be guaranteed payment for DI cases but not for SSI cases. As with the DI cases, the SSI recipient has an obligation to pay for his or her legal services; however, in DI cases, SSA ensures that this happens. For SSI cases, the attorney must obtain payment directly from the beneficiary.

The opposing view of extending withholding to SSI is based on the relative economic status of DI beneficiaries and SSI recipients. SSI recipients tend to be poorer than DI beneficiaries, and some advocates have expressed concern that taking money from a recipient's past-due benefits to pay attorneys would be detrimental to the recipient's economic well-being. SSI recipients often have many financial obligations, such as overdue rent and utility bills that need to be paid. Advocates maintain that deducting the attorney fee from the past-due benefits might make it impossible for recipients to pay these bills. However, if an attorney successfully appeals a

[10]The Association of Administrative Law Judges represents about 700 of the 1,100 administrative judges at SSA.

case for an SSI recipient, the recipient should be in a better position financially.

From an administrative standpoint, if SSA was required to withhold attorney fees for SSI cases, it will need to develop new information systems or significantly modify existing systems to process this new workload. However, as with any system effort, SSA's ability to carry out this task will depend on its available resources and the priority that it gives to this initiative.

Mr. Chairman, this concludes my prepared statement. At this time, I will be happy to answer any questions you or other Members of the Subcommittee may have.

GAO Contact and Staff Acknowledgments

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