TESTIMONY OF

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NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS

to the

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

March 20, 2012

Chairman Johnson, Ranking Member Becerra, and Members of the Subcommittee:

I am honored to have this opportunity to appear on behalf of the National Council of Disability Determination Directors (NCDDD) to comment on issues of concern regarding the Social Security Disability Program. My name is Trudy Lyon-Hart. I am President-Elect of NCDDD and the Director of the Vermont Disability Determination Services (DDS).

NCDDD is a professional association composed of the Directors and managers of the DDS agencies located in each state, the District of Columbia, and Puerto Rico. Collectively, members of NCDDD are responsible for directing the activities of approximately 14,800 employees who process nearly 4.8 million cases per year for disability benefits under the Social Security Act. NCDDD's goals focus on establishing, maintaining and improving fair, accurate, timely, and cost-efficient decisions to persons applying for disability benefits. The mission of NCDDD is to provide the highest possible level of service to persons with disabilities, to promote the interests of the state operated DDSs and to represent DDS directors, their management teams and staff.

The DDSs work in partnership with the Social Security Administration (SSA) to provide public service to individuals applying for disability benefits and to help ensure the integrity of the disability program. The DDSs make complex medical determinations for the Social Security disability programs pursuant to Federal law and

regulations. The majority of DDS staffs are state employees subject to the individual state personnel rules, governor initiatives and state mandates, with the remainder of staff under state contract to provide services to the DDS. The DDSs adjudicate various disability cases including initial claims, reconsiderations, continuing disability reviews (CDRs), and disability hearings.

The Disability Determination Process

The DDSs provide high quality service at the front end of the process. In fact, for many applicants the front end is the entire process. The vast majority of allowance determinations are made at the DDS at the initial and reconsideration steps. For example, in 2010, DDS determinations at the initial and reconsideration steps accounted for 77% of all allowance decisions made that year (Title II, Title XVI and concurrent claims), while only 23% were made at the Administration Law Judge and Appeals Council steps. DDS allowance accuracy as measured by Social Security's review is very high at over 97% for all programs. In FY 2011, DDS processing time was 90 days for initial cases, and 73 days for reconsideration cases.

There is also a small subset (about 5.5% of the initial workload) of "Quick Disability Determination" and "Compassionate Allowance" (QDD/CAL) cases, for which DDS processing time is 9.7 days currently. These cases are identified by Social Security's predictive modeling software (software that scores each initial case on factors related to probable allowance with quick case processing and flags those with the highest scores for expedited processing).

DDS case processing time overall is quite fast considering that processing cases involves obtaining healthcare records, sending claimants as needed to consultative examinations, analyzing a large volume of medical, functional, and vocational evidence, evaluating individuals' symptoms, weighing different medical opinions, and determining individuals' remaining function and ability to perform work in the national economy. Determinations require applying complex law, regulations and policy in each case and making correct denials as well as allowances. Outcome measures show that the DDSs have historically given the American public

prompt, accurate, and cost effective service, providing over one million disability applicants with accurate allowance determinations each year.

The DDSs also provide stewardship oversight by determining continuing medical eligibility and by holding disability hearings for the appeals of those whose benefits are ceased. As initial claims increased substantially from FY 2008 through FY 2011 (due to demographic and economic factors), balancing both workloads with limited resources has become much more challenging.

Fragility of the Front End

The DDSs have historically provided the American public with timely, high quality service, even during hard economic times when resources are fewer and public need greater. However, our ability to continue to do so right now is increasingly threatened. Funding in the FY 2012 budget will not cover all the cases that the DDSs will receive, and cuts now scheduled by law to occur in FY 2013 will dramatically worsen the situation.

In early FY 2011, SSA imposed a hiring freeze on all DDSs due to funding limitations. This freeze extends even to replacement hiring. Nationally, the DDSs lost 2194 employees from October 2011 through February 2012. Even more critical to the ability to process cases, 1591 of these losses were examiners, which equates to a lost capacity of over 900,000 case determinations a year. With the recent release of the FY 2012 budget, SSA gave the DDSs authority for 200 hires, but without replacement hiring for nearly a year and a half, these hires – while appreciated – are but a drop in the bucket to prepare the DDSs for the future.

For as long as they can, DDSs will continue to do whatever it takes to keep the cases moving and meet workload targets. DDS staffs are highly skilled and extremely elastic. In the short term, many DDSs are handling the challenge by shifting resources (such as training, mentoring, quality assurance, professional medical relations, consultative examination oversight, supervision, and management) to case processing. However, the DDSs cannot sustain these resource shifts for the long term without serious detriment to important staff development and program integrity outcomes. With insufficient funding for the incoming cases, along

with continued attrition and only minimal replacement hiring, the DDSs will reach a tipping point with burgeoning backlogs and case processing delays.

On top of staffing losses, SSA recently shifted most federal resources from DDS assistance to ODAR. Now these resources are no longer available to help some DDSs. DDS cases that were pending at the federal sites were returned to the DDSs with minimal notice or planning, adding to the many thousands of cases already in growing DDS backlogs and further lengthening the wait time of those claimants.

With the DDS situation so fragile, the prospect of further increases in the CDR workload is of concern. Any increase must come with additional funding, but funding alone will not be sufficient to enable the DDSs to process the additional workload unless it includes advance-hiring authority. The fact that the DDSs have not been able to hire for the past year and a half is a critical factor in our ability to process CDRs. DDS examiners are not quickly replaceable cogs in a wheel. It takes time and resources to hire the right employees for the job and then a minimum of several years and considerable training/mentoring before those employees have the knowledge and expertise to handle all case types independently at full production levels. CDRs in particular require experienced examiners with the capacity for expert judgment in comparing medical findings and function over different periods of time and determining medical improvement following complex legal guidelines. Appeals of CDR cessations must be handled by state Disability Hearing Officers, the highest level of DDS adjudicator, with many years experience and specialized training in holding administrative hearings and deciding legal findings of fact and conclusions of law. As veteran staff continues to leave, the DDSs need to keep a steady pipeline of trainees and a strong support infrastructure to keep the workload well managed while training the successors, not only for the examiners and hearing officers that have already left, but also for those that will leave in the next two years.

Recommendations to Address Immediate Issues

1. Sufficient resource allocation at the front end. Resources must support the front end of the disability claims process that serves all applicants and is for many all the service they require. While a small percentage

continues to be well served through the Quick Disability Determination (QDD) and Compassionate Allowance (CAL) process, most of the allowances are less obvious and take longer to determine. DDSs need sufficient resources to process cases timely; otherwise, the claims of many disabled applicants will wait in backlogs too big to manage, while DDSs may be unaware of their dire need, worsening impairments, and even death. Applicants who do not meet the criteria also deserve to receive accurate denial determinations without a long wait, so that they can take appropriate next steps in managing their medical and financial situation. The longer a case sits in a backlog, the more expensive it becomes to process, as medical records age and updated records much be purchased. In addition, the DDSs need sufficient resources to handle medical CDRs, so that they can keep all workloads in balance.

2. Increased SSA/DDS collaboration. We recognize that in the current economic situation, resources are scarce and cannot always cover all the service needs of all our applicants. We also recognize the challenge of balancing scarce resources across the entire system from the Field Offices to the DDSs to ODAR. SSA and the DDSs have a long history of working together to serve the American people to the best of our ability. This collaboration is very important and would be further improved in the current situation with joint operational strategizing. DDSs can provide the best service when the workflow and hiring flow are steady and balanced, with SSA and the DDSs in partnership proactively and strategically planning for workload and resource changes. This process should include deliberative risk assessment with mitigation and transition planning. Turning the "faucet" on and off, as has been done with hiring, changing workload priorities, the medical CDR workload, and federal assistance resources for the DDS, causes bulges in the workflow – these bulges will inevitably work their way through the system causing backlogs and delaying claims at each future step. It also causes critical gaps in the expertise of the DDS staff, which compromise our current and future capacity to adjudicate all cases accurately and promptly.

3. Further expansion of SSA's use of predictive modeling software. The QDD software now serves a small percentage of applicants very well, with the system working behind the scenes automatically flagging claimants with extremely severe impairments for expedited case processing. The scoring threshold for QDD

flagging might be expanded to include more claimants. This must be done carefully so as not to dilute the subset with cases that cannot be allowed quickly. The scoring of claims that do not reach the threshold for QDD flagging could provide useful information to assist the DDSs in further triaging their front-end backlogs for other claims that are likely to meet the disability criteria.

We understand that SSA is also developing similar predictive modeling software to help identify ODAR cases that would most likely be allowed through the informal remand process. Perhaps predictive modeling software along these lines might be adapted or developed for use with reconsideration cases, to help DDSs better identify those reconsiderations that might be allowed, and therefore, avoid a lengthy appeal to ODAR. Two examples are cases that were originally denied because the impairment was not expected to last a full year and cases where the claimant's age is approaching the borderline for a medical/vocational allowance.

4. Simplification of disability program policy. Another recommendation is to make disability program policy simpler, easier and quicker to apply in real cases. SSA is to be commended for recently extending to all DDSs a vocational analysis expedient used in Prototype DDSs for many years. This saves a great deal of time that was previously spent obtaining and evaluating past work information that would not make a difference to the final determination.

   The DDSs have provided SSA with ideas for other expedients, and we recommend that they be fast-tracked to implementation. One example is extending SSA's regulatory definition of an "acceptable medical source" to include more of the professionals most commonly seen by claimants, such as nurse practitioners, physician assistants, licensed social workers, licensed mental health clinicians, and physical therapists. We believe that this could save considerable time and money that is currently spent on sending claimants to consultative examinations with acceptable medical sources merely to replicate the findings of their regular treating (but not SSA-acceptable) sources.

5. Changes to the criteria for relevancy of past work. Currently, substantial work that claimants have performed up to fifteen years ago is considered relevant when adjudicators are determining whether

claimants can do any of their past jobs. We recommend shortening this period to ten years. Given the rapid changes in technology, the relevance of work last performed more than ten years ago or the continued existence of the work in the national economy is very questionable. Obtaining and evaluating such old information is problematic, as claimants and even employers have difficulty remembering exactly how the work was done that long ago. Different ways of obtaining and evaluating this past work information may be one of the differences in decision making at the DDS and ODAR appeal steps, since DDSs do not have the same access as ODAR to vocational experts with knowledge of the current local and national economy.

6. Continued enhancement of the Electronic Case Analysis Tool. SSA has developed an electronic case analysis tool (eCAT) for DDS examiners, which has recently been made mandatory by SSA. This software tool assists examiners in writing an explanation of their determination, prompting them to address each step of sequential analysis and critical issues such as credibility and medical opinions. It provides quick links to related policy. It still requires the examiner to use critical thinking and judgment. In other words, the tool does not "make the decision". Many DDSs have found it to be a useful training tool, especially for newer examiners, and SSA reports the resulting explanation of the determination is helpful to quality reviewers and administrative law judges. Concerns remain about the significant learning curve that may affect staff productivity and morale. The tool should continue to be further enhanced to be more intuitive, to streamline the formulation of the examiners' analysis, and to provide a better presentation of the analysis in the written explanation document.

Longer-term Recommendations

1. Single Disability Case Processing System (DCPS). We recommend continued funding and development of the DCPS to replace the individual DDSs' various case-processing computer systems. DCPS is needed to support nationally consistent, efficient, cost-effective disability case processing, since multiple different systems do not talk to one another very well. The single system should include improved tools to support

accurate case analysis. SSA and the DDS community are working together on the management of this project.

2. Further expansion of disability examiner authority. Currently examiners have the authority to decide fast-tracked cases independently, in consultation with medical and psychological doctors only as needed but not required. In addition, experienced Single Decision Maker (SDM) examiners in nineteen DDSs for nearly fifteen years have decided initial cases independently, incorporating medical consultation as needed. These SDM examiners have the authority to make independent decisions on initial claims, not just QDD/CAL cases, within certain legal parameters. Ongoing quality data has not been made available to the DDS community but we hope to see it in the coming months. Based on experience, the DDSs believe that independent examiner determinations have maintained high accuracy standards with a streamlined case process and cost-effective use of medical consultant time and expertise. Expanding this examiner authority to all DDSs and to additional types of cases (such as reconsideration allowances and CDR continuances) would be appropriate and would enable better service overall to the American public.

3. Expansion of the Medical Listings. The percentage of allowances based on claimants' condition(s) meeting or equaling a Medical Listing has been steadily decreasing for many years, even as SSA has instituted more Listing updates. These Listing updates appropriately incorporate advances in medical diagnosis and treatment outcomes. The Listings also need to be expanded to include the medical findings typical of claimants who through our current medical-vocational analysis are found unable to sustain basic work activities. Medical-vocational analysis is complex and often subject to considerable variation in individual adjudicators' evaluation and at different appeal steps. The Listings are paramount for providing parity and consistency in the evaluation of impairment severity nationwide. Making the criteria as objective as possible will promote greater accuracy and consistency. The Listings must include some functional requirements, since two people with the same diagnosis and exam/test findings may have very different functional effects, but these requirements should be described as objectively and clearly as possible, so that they can be applied consistently and fairly.

4. New Occupational Information System. We also recommend continued funding and faster development of a new Occupational Information System, to replace the outdated Dictionary of Occupational Titles with one that meets the specific needs of Social Security disability determination, and that provides current information about occupations in the national economy. SSA is pursuing research and development of this new system; however, the completion of a useable, updated occupational informational system is still many years away. The length of the timeline is discouraging to DDS adjudicators, and lack of updated occupational information continues to contribute to the differences in DDS and ODAR decision outcomes.

5. Reinstatement of reconsideration in all states. While budget constraints continue to dictate the status quo, we continue to recommend consistent policy application across the nation. We ask that Congress give further consideration to providing sufficient funding and staffing to reinstate and strengthen the reconsideration step in the ten Prototype states. The cost would be an investment that would be paid for in part by having fewer appeals that must be processed at ODAR. For example, in FY 2011 alone, over 92,000 claimants were allowed at the reconsideration step, an invaluable service to these claimants. Reinstating the reconsideration step in the Prototype states would give those states' citizens the same opportunity to get benefits sooner at less cost to the system, while allowing the administrative law judges to focus on a smaller subset of cases that truly needs their attention. For those cases that are not allowed at reconsideration, the additional DDS case development provides greater longitudinal evidence to support better decision-making at the ODAR appeal.

Conclusion

The DDSs have a long record of collaboration and accomplishment working with SSA to provide high quality service and careful program stewardship. Insufficient funding and the resulting freeze on replacement hiring are jeopardizing front-end public service for this important program in both the short and long term. Policy changes and technology tools can further improve program efficiency and consistency of public service, but

most importantly, adequate funding for the hiring and training of highly skilled staff are crucial to continuing this front line service, on which the American public relies.

We would be remiss if we did not acknowledge the outstanding support Commissioner Astrue has provided the DDS community in the past five years. His collaboration and partnership have been invaluable in identifying solutions and achieving successes in the disability process. With the underlying fragility of the DDS budget and staffing situation, we hope to extend this collaboration and contribute even more to SSA's future strategic operational planning to ensure our continued ability to serve the American public well.

Mr. Chairman, on behalf of NCDDD, I thank you again for the opportunity to provide this testimony. We will be happy to provide any additional information you need and answer any questions you have.