NLWJC - Kagan

Counsel - Box 036 - Folder 006

Children's SSI Cuts

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-Oct-1996 10:54am

TO: (See Below)

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: SSA's notice to families with children with disabilities

Regarding the notice that SSA is going to send to 200,000+ families with children on SSI in November/December notifying them that their child is going to be reevaluated next year to see if they meet the new definition:

I had always assumed that this notice was something we would take a look at before it went out, just to make sure it is written in clear language. I also wondered whether we should tell families that they should start to get their medical records in order, perhaps even direct them to resources that can help. From SSA's perspective, there is nothing for the family to "do" until the time of the reevaluation; but from the advocates' perspective this is a time that can be used to get the families ready by marshalling their documentation. Not sure if this fits in such an official document as a notice, but it seems a shame to miss an opportunity to help these families prepare themselves.

On Friday, Jonathan Stein called me to complain that he has been asking for this for weeks, and he just heard that it has "gone to the printers." Turns out he's right. Carolyn Colvin apologized for not drawing it to our attention, but she signed off on it in August.

Then, while I was trying to track this down, someone at SSA gave Stein a copy, and he has a million comments on it. I am sending a copy of his comments to Jeremy, Ken, and Richard.

So we have to decide whether Stein's comments are useful, and whether to ask SSA to stop the presses, or reprint them if necessary. I will be taking a look at this, so let me know if you have an opinion. Carol, I will follow up with a note to you when I have looked at the letter and Stein's comments more carefully.

Distribution:

Copies to: Keith Fontenot
Richard Green
Jack Smalligan
OMB
Steve Warnath
✓ Elena Kagan

cc: Jeremy Ben-Ami
Emily Bromberg

From: Diana Fortuna

Date: 9/11/96

Attached are two documents forwarded to us by Brian Coyne of SSA. Please let me know if you have any problems with it asap, or if you think you are going to need more than a few days to sign off on it.

Thanks.

SOCIAL SECURITY

Office of the Commissioner
1825 Connecticut Avenue, NW, Suite 714
Washington, DC 20254

Date: 9/10

Number of Pages: 6

From: Brian D. Coyne
Chief of Staff
Telephone Number: (202) 482-7128
Fax Number: (202) 482-7105

To: Emily Bromberg
Location/Organization:
Telephone Number:
Fax Number: 456-2889

Message:

Attached is a revised letter from SSA to states. Rather the sending letters from the Commissioner to Governors, letter is to HHS directors from our deputy for Policy. Let me know if ok to send. Thks.

Brian Coyne

CC: Diane Fortuna (456-7431)

Dear HHS Director

This letter provides you with information about the potential impact of the recently passed welfare reform bill as it relates to the Supplemental Security Income (SSI) program. As you are no doubt aware, both houses of the Congress have passed the conference agreement on H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and the President has signed the bill into law.

This legislation contains provisions that will dramatically affect the SSI program. It will tighten restrictions on children's eligibility for disability benefits and place broad prohibitions on the eligibility of noncitizens for SSI payments. Other provisions that may be of interest to you include those that will:

- provide for incentive payments from SSI program funds to some correctional institutions for furnishing information to SSA that results in the suspension of SSI benefits to prisoners, and
- deny eligibility for SSI to an individual who is fleeing prosecution, or is a fugitive felon, or is violating a condition of probation or parole imposed under State or Federal law.

I have enclosed a fact sheet that provides additional information about these and other provisions. Please feel free to contact me with any comments or questions you may have. I can be reached at (410) 965-0100.

Sincerely,

Carolyn W. Colvin
Deputy Commissioner
for Programs and Policy

Enclosure

FACT SHEET -- IMPACT OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (P.L. 104-188) ON THE SOCIAL SECURITY ADMINISTRATION AND THE STATES

On August 22, 1996, President Clinton signed into law P.L. 104-188. The law includes provisions affecting programs administered by several agencies of the Executive Branch of Government. This fact sheet describes those provisions having an impact on both the Social Security Administration and States and Jurisdictions of the United States.

Childhood Disability

SSI Eligibility Based on Childhood Disability

- Eliminates the comparable severity standard and provides instead that a child under age 18 would be considered under a disability if he/she has a medically determinable impairment which results in marked and severe functional limitations and 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 12 months. The child may not be considered disabled if he or she is working at a job that is considered to be "substantial" work.

- Directs SSA to eliminate references to maladaptive behavior in the domain of personal/behavioral function in the Listing of Impairments for children, and to discontinue the use of an individualized functional assessment in evaluating a child's disability.

These provisions would be applicable to any individual who applies for SSI disability benefits, or whose claim is finally adjudicated, on or after the date of enactment, without regard to whether implementing regulations have been issued.

Current Recipients

- Requires SSA to notify, no later than January 1, 1997, recipients eligible for SSI disability benefits on enactment date and whose eligibility may be affected by the new childhood disability eligibility criteria.

- Requires SSA to redetermine the eligibility of such recipients, using the new childhood disability eligibility criteria no later than one year after the date of enactment.

Benefits for those recipients who do not meet the new childhood disability eligibility criteria would terminate for the month beginning on or after July 1, 1997, or the date of the redetermination, whichever is later.

Limited Eligibility of Noncitizens

Social Security Benefits

o Prohibits the payment of Social Security benefits to any noncitizen in the U.S. who is not lawfully present in the U.S. (as determined by the Attorney General).

Effective for benefits based on applications filed after the month of enactment.

SSI Benefits

o Prohibits SSI eligibility for all noncitizens except:

- refugees (eligibility limited to the 5-year period after their arrival in the United States);
- asylees (eligibility limited to the 5-year period after the date they are granted asylum);
- noncitizens who have had deportation withheld under INA-section 243(h) (eligibility limited to the 5-year period after the date their deportations are withheld);
- certain active duty Armed Forces personnel, honorably discharged veterans, and their spouses and dependent children;
- lawful permanent residents who have earned 40 quarters of coverage for Social Security purposes. An individual would be credited with all quarters of coverage earned by his or her parent and before the individual's attainment of age 18, and a married individual (including widow(er)) would be credited with all quarters of coverage earned by his or her spouse during the marriage. However, for quarters earned after December 31, 1996, a quarter would not count as one of the required 40 if the noncitizen or person whose quarters are being credited to the noncitizen received federally funded public assistance during the quarter the work was done.

Effective upon enactment. However, with regard to individuals on the SSI rolls at the time of enactment, requires the Commissioner to redetermine the eligibility of all noncitizens who do not meet the new eligibility categories within one year after enactment. Noncitizen beneficiaries must receive a notice about these changes by March 31, 1997. If a noncitizen is not in one of the new categories, his or her eligibility would end with the month following the date of the redetermination.

Prisoner Reporting

o Provides for incentive payments from SSI program funds to some correctional institutions for furnishing information to SSA that results in suspension of SSI benefits. Incentive payments will be made only to correctional institutions whose primary purpose is to house individuals who have been convicted of a crime punishable by imprisonment for more

than one year. Incentive payments will provide for payment of up to $400 for information received within 30 days of confinement or up to $200 for information received from 31 to 90 days after confinement.

Applies to individuals whose period of confinement commences on or after the first day of the seventh month beginning after the month of enactment.

Denial of Benefits for Fugitive Felons and Parole Violators/ Exchange of Information with Law Enforcement Officers

- Denies eligibility for SSI with respect to any month in which an individual is fleeing prosecution, a fugitive felon, or violating a condition of probation or parole imposed under State or Federal law.

- Requires SSA to provide upon written request of any law enforcement officer, the current address, SSN, and photograph of any SSI recipient, provided that the request includes the name of the recipient and other identifying information and notifies SSA that the recipient:

  -- is fleeing to avoid prosecution, or custody or confinement after a felony conviction;
  -- is violating a condition of probation or parole; or
  -- has information that is necessary for the officer to conduct the officer's official duties and the location or apprehension of the recipient is within the officer's official duties.

Effective upon enactment.

Denial of Benefits for 10 Years to Individuals Who Have Misrepresented Residence in Order to Obtain Benefits in Two or More States

- Denies SSI benefits for a period of 10 years to an individual convicted in Federal or State court of having made a fraudulent statement with respect to his or her place of residence in order to receive assistance simultaneously from two or more States under programs funded under title IV, title XIX, or the Food Stamp Act of 1977, or SSI benefits.

- An official of a Federal or State court shall notify SSA as soon as practicable of the conviction of a person as described above.

Effective upon enactment.

Dedicated Account for Large Underpayments

- Requires representative payees (including State and local agencies and institutions) of children entitled to SSI disabled child benefits, and who are due benefits greater than six times the Federal Benefit Rate and any applicable

State Supplement, to establish a separate account in a financial institution. The funds in this account may be used only for specific expenses related to the child's impairment (i.e., personal needs assistance, special equipment, housing modification and therapy or rehabilitation) and for medical treatment or job skills training.

- This section also provides penalties for representative payees who spend these funds for any other purpose, and requires SSA to monitor the use of these funds.

Expansion of the $30 payment limit

Expands the application of the $30 payment limit for SSI benefits to children under age 18 who are in medical treatment facilities which are receiving payments for the cost of the children's care under any health insurance policy issued by a private provider of such insurance.

Effective for months beginning 90 days after enactment.

Installment payments of Large Past-Due SSI payments

- Establishes a schedule for paying retroactive SSI benefit amounts that exceed 12 times the monthly SSI Federal Benefit Rate plus monthly State supplement level. Payments will be made at six-month intervals.

Effective with payments made after the third month following the month of enactment.

SOCIAL SECURITY

Office of the Commissioner
1825 Connecticut Avenue, NW, Suite 714
Washington, DC 20254

Date: 9/10

Number of Pages: 7

From: Brian D. Coyne
Chief of Staff
Telephone Number: (202) 482-7128
Fax Number: (202) 482-7105

To: Emily Bromberg
Location/Organization:
Telephone Number:
Fax Number: 456-2889

Message:

Attached is a proposed information handout SSA will use in its 1,300 field offices. This is similar in format and style to the dozens of other issue handouts we stock in those offices.

We plan to print about 1 million copies. Please review and provide any comments asap. Thks.

Brian Coyne

cc: Diana Fortuna (456-7431)

(A similar handout on kids will be coming shortly)

Social Security

DRAFT

Supplemental Security Income For Noncitizens

A new law changes the way we pay Supplemental Security Income (SSI) benefits to noncitizens. The new law is effective August 22, 1996, and applies to people who are already receiving SSI benefits and to people who are applying for benefits.

What The Law Says

Under the new law, only United States (U.S.) citizens and nationals and certain noncitizens can get SSI benefits. And, if your noncitizen status is based on certain sections of the Immigration and Nationality Act, you can get SSI benefits for only the first five years you are in this country.

Who may get SSI on or after August 22, 1996:

- Citizens or nationals of the U.S.;
- Noncitizens who were admitted into the U.S. as refugees under Section 207 of the Immigration and Nationality Act, for five years after the date of admission as a refugee;
- Noncitizens who were granted asylum under Section 208 of the Immigration and Nationality Act, for five years after the date they were granted asylum;
- Noncitizens whose deportation has been withheld under Section 243(h) of the Immigration and Nationality Act, for five years after the date the deportation is withheld;
- Noncitizens who have been lawfully admitted to the U.S. for permanent residence and have a total of 40 Social Security work credits.
  - Work credits that a spouse or parent earns may also count toward the 40 credits. (These work credits count for SSI eligibility, but not for Social Security benefit purposes.)
  - Work credits earned after December 31, 1996, **cannot be counted if the noncitizen, spouse, or parent received certain types of federally funded benefits based on limited income and resources during that period.**
- Most noncitizens who are active duty members, or who are honorably discharged veterans, of the U.S. Armed Forces. Spouses and unmarried dependent children of military personnel or veterans may also be eligible.

Your local Social Security office can tell you whether you are eligible.

Proof Of Your Status Is Required

If you file a new application for SSI benefits, you must give us proof of your U.S. citizenship or noncitizens status. Noncitizens who have served in the U.S. Armed Forces may also need to give us proof of military service. Here are some examples of the kind of information you should bring us:

- As proof of citizenship–a U.S. birth certificate or naturalization papers;
- As proof of your noncitizen status–an unexpired Form I-94 or I-551 from the Immigration and Naturalization Service (INS); or
- As proof of military service–U.S. military discharge papers (DD Form 214) showing honorable discharge–not based on your noncitizen status.

If you were receiving SSI as of August 22, 1996, you may also need to give us proof of citizenship or noncitizen status.

When Will Your Benefits Stop?

For noncitizens who are getting SSI as of August 22, 1996, the new law requires that we look at your case within 12 months to make sure that you are eligible under the new

DRAFT

law. Your SSI benefits will stop if you are unable to prove that you are in one of the eligibility categories. We will send you a letter before we plan to stop your SSI benefits.

If you can receive SSI benefits for only five years because of your particular noncitizen status, we will send you a letter telling you when the five-year period ends. You will also receive another letter before we stop your benefits.

Information About Medicaid

If you are getting Medicaid based on your SSI, your Medicaid should continue as long as you are eligible for SSI. If we find that you are not eligible for SSI under the new law, the letter we send you about that decision will tell you more about your Medicaid.

You Can File A New Claim

If your SSI benefits stop because you are not an eligible noncitizen, you can apply again. Contact us right away if you become a naturalized U.S. citizen, or your noncitizen status changes and you are now an eligible noncitizen. You will need to bring us proof of your status. This could be your naturalization papers or other papers that show your status.

If You Have A Sponsor

When you entered the U.S., you may have had a sponsor who signed an agreement to provide support for you. This agreement is called an affidavit of support.

If your sponsor has signed an affidavit, we will count his or her income and resources (and his/her spouse's) as your income and resources for a certain period of years from the time you arrive in the U.S.

Your local Social Security office can give you more information about these rules and how they apply in your case.

In the future, the affidavit of support will be treated as a legal contract, and at the same time, how long we count the income and resources of sponsors will also change. Under the new rules, all of the income and resources of the sponsor and his or her spouse will be treated as the immigrant's income and resources until:

- he or she becomes a naturalized U.S. citizen; or
- he or she earns or can be credited with 40 Social Security work credits.

Becoming A Citizen

You can get more information about becoming a citizen by contacting the Immigration and Naturalization Service (INS) at _____.

For More Information About SSI

You can get more information 24 hours a day by calling Social Security's toll-free telephone number **1-800-772-1213**. If you want to speak to a representative, you should call between the hours of 7 a.m. and 7 p.m. on Monday through Friday. Our lines are busiest early in the week and early in the month, so it's best to call at other times. Please have your Social Security number handy when you call. Our representatives can give you the address and telephone number of your local Social Security office if you would like to visit the office.

If you have a touch-tone phone, recorded information and services are available 24 hours a day, including weekends and holidays.

People who are deaf or hard of hearing may call our toll-free "TTY" number, 1-800-325-0778 between 7 a.m. and 7 p.m. on Monday through Friday.

The Social Security Administration treats all calls confidentially—whether they're made to our toll-free numbers or to one of our offices. We also want to be sure that you receive accurate and courteous service. That is why we have a second Social Security representative monitor some incoming and outgoing telephone calls.

Social Security Administration
SSA Publication No. 05-11051
September 1996
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Printed on recycled paper

Social Security

Military Service And Social Security

People who serve in the military services on active duty or on active duty for training have paid into Social Security since 1957. Inactive duty service in the armed forces reserves (such as weekend drills) has been covered by Social Security since 1988. People who served in the military before 1957 did not pay into Social Security directly, but their records are credited with special earnings for Social Security purposes that count toward any benefits that might be payable. Additional earnings credits are given to military personnel depending on when they served. This factsheet explains how and when these special earnings are credited and provides other general information military personnel need to know about the benefits available from Social Security.

Paying Social Security And Medicare Taxes

While you're in the military service (from 1957 on), you pay Social Security taxes the same way civilian employees do. Those taxes are deducted from your pay and an equal amount is paid by the U.S. government as your employer. In 1996, the tax rate is 7.65 percent up to a maximum of $62,700. If you earn more than that, you continue to pay the Medicare portion of the tax, 1.45 percent, on the rest of your earnings.

Social Security "Credits"

You must have credit for a certain amount of work covered by Social Security before any benefits can be paid on your record. In 1996, you earn four credits (the maximum) if your annual earnings are $2,560 or more. (You earn one credit for each $640.) The amount needed for each credit will increase in future years to reflect increases in average wages. The number of credits you need to qualify for Social Security depends on your age and the type of benefit you might be eligible for. Nobody needs more than 40 credits (10 years of work or military service) to be eligible for Social Security. In some situations, you can qualify with less than 40 credits.

Earnings Added To Military Records For Social Security Purposes

The "credits" mentioned in the previous section determine if you are eligible for Social Security. The amount you get from Social Security depends on your earnings averaged over much of your working lifetime. Generally, the higher your earnings, the higher your Social Security benefit.

Under certain circumstances, special earnings can be credited to your military pay record for Social Security purposes. These extra earnings may help you qualify for Social Security or increase the amount of your Social Security benefit. The extra earnings credits are granted for periods of active duty or active duty for training. (No additional earnings are granted for inactive duty training, and Social Security cannot add extra earnings credits to your earnings record until you file for Social Security benefits.)

Here's when the additional earnings are granted:

Service In 1978 And Later

For every $300 in active duty basic pay, you are credited with an additional $100 in earnings up to a maximum of $1,200 a year. If you enlisted after September 7, 1980, and didn't complete at least 24 months of active duty or your full tour, you may not be able to receive the additional earnings. Check with Social Security for details.

Service 1957 Through 1977

You are credited with $300 in additional earnings for each calendar quarter in which you received active duty basic pay.

Service 1940 Through 1956

If you were in the military during this period, including attendance at a service academy, you did not pay Social Security taxes. However, your Social Security record may be credited with $160 a

month in earnings for military service from September 16, 1940, through December 31, 1956, under the following circumstances:

- you were honorably discharged after 90 or more days of service or you were released because of a disability or injury received in the line of duty; or
- you are still on active duty; or
- you are applying for survivors benefits and the veteran died while on active duty.

You **cannot** receive these special earnings if you're already receiving a federal benefit based on the same years of service. But there is one exception to this rule: If you were on active duty after 1956, you can still get the special earnings for 1951 through 1956 even if you're receiving a military retirement based on service during that period.

Applying For Social Security Benefits

There are many kinds of benefits available from Social Security, including retirement and disability payments, benefits for your dependents, and survivors benefits for members of your family if you should die. There's also Medicare coverage and Supplemental Security Income (SSI) payments. For more information about these benefits, ask Social Security for a copy of the publication *Understanding Social Security* (Publication No. 05-10024).

When you apply for Social Security benefits, you'll be asked for proof of your military service (DD Form 214), or information regarding your Reserve or National Guard service.

If You Get Both Social Security And Military Retirement

You can get both Social Security benefits and military retirement. Generally, there is no offset of Social Security benefits because of your military retirement. You'll get your full Social Security benefit based on your earnings. However, your Social Security benefit may be reduced if you also receive a government pension based on a job in which you didn't pay Social Security taxes. Ask Social Security for a copy of the factsheet *A Pension From Work Not Covered By Social Security* (Publication No. 05-10045).

Social Security survivors benefits may affect benefits payable under the optional Department of Defense Survivors Benefit Plan. Check with the Department of Defense or your military retirement advisor for more information.

SSI For Children

SSI pays monthly benefits to people with low incomes and limited assets. If you have a child who gets SSI, those payments may continue if you're stationed outside the United States (including Puerto Rico and U.S. territories and possessions) while in military service and the child lives with you. Your child must have received SSI the month before you reported for duty.

A Word About Medicare

If you have health care protection from the Veterans Administration (VA) or under the CHAMPUS or CHAMPVA program, your health benefits may change or end when you become eligible for Medicare. You should contact the VA, the Department of Defense, or a military health benefits advisor for more information.

For More Information

You can get more information 24 hours a day by calling Social Security's toll-free number, **1-800-772-1213.** You can speak to a service representative between the hours of 7 a.m. and 7 p.m. on business days. Our lines are busiest early in the week and early in the month, so if your business can wait, it's best to call at other times. Whenever you call, have your Social Security number handy.

If you have a touch-tone phone, recorded information and services are available 24 hours a day, including weekends and holidays.

People who are deaf or hard of hearing may call our toll-free "TTY" number, 1-800-325-0778, between 7 a.m. and 7 p.m. on business days.

The Social Security Administration treats all calls confidentially—whether they're made to our toll-free numbers or to one of our local offices. We also want to ensure that you receive accurate and courteous service. That's why we have a second Social Security representative monitor some incoming and outgoing telephone calls.

Social Security Administration
SSA Publication No. 05-10017
January 1996 *(Destroy prior editions)*
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Social Security

When You Retire From Your Own Business: What Social Security Needs to Know

If you own and operate a business and you're getting ready to retire, Social Security will need to know whether you'll be completely retired or whether you plan to continue some involvement in the business.

To get all of your Social Security retirement benefits, you must retire, or at least reduce your 1996 earnings below $8,280 if you're under age 65, or below $11,520 if you are 65-69. And if you reduce your earnings, you must also reduce your involvement in the business so that it corresponds with the amount of your earnings.

When you work for wages, it's easy to determine whether you're "retired." Your earnings tell the whole story. But when you work in a business that you or your family owns, or you are an officer in a corporation, it's not as simple. Because you could be in a position to control your earnings, you may need to furnish us with additional information—such as tax returns or corporate records—when you file for benefits. This will help us to decide whether you have reduced your services in the business to match the reduction in your income. In other words, your earnings must match the work you do. You cannot simply pay yourself a smaller salary to stay under Social Security's earnings limits.

This factsheet provides you with information on how we decide whether a person meets Social Security's definition of retirement and describes the types of evidence that we need to make that decision.

How Earnings Reduce Your Social Security Benefit

In 1996, if you are under age 65, you can earn up to $8,280 and still receive full benefits. For every $2 you earn over this limit, $1 is withheld from your benefits. For people age 65 through 69, the 1996 limit is $11,520. For every $3 you earn over this limit, $1 is withheld from your benefits. There is no earnings limit after you reach age 70.

Are You Really Retired?

When you apply for Social Security benefits, there are several situations requiring additional information and evidence to help us decide **your level of retirement.** For example, additional questions would be appropriate if you are —

- involved in a family business or another family member is assuming some, or all, of your duties.
- continuing to render services for the business at a reduced rate of compensation.
- in a position to control your earnings in order to receive Social Security retirement benefits.
- still the owner or part-owner of a business and own stock in the business.
- splitting wages with others (dividing former salary between you and your spouse or children, for example).

What Additional Evidence May Be Needed?

In addition to the retirement benefit application, we will want you to tell us about your retirement plans. And we may ask you to complete a *Self-Employment/Corporate Officer Questionnaire* (Form SSA-4184) to provide us with information needed to determine whether you are retired. You also may be

asked for additional documentation such as personal and business tax returns, corporate resolutions, stock transfer agreements and resignations. We pay particular attention to situations in which your salary has been reduced but you are compensated through another form of payment. These may include an increase in dividends, an increase in salary to another family member (with no change in responsibility) excessive rent or loan repayments, and unexplained business expenses.

What We Count As Earnings

When you continue to receive compensation, we consider the work you performed and the amount you earned while working and compare it with your work and earnings after "retirement." We determine the reasonable value of the services you perform for the business, based on the time spent and nature of the services, and compare it to the income you receive. If we decide the value of your services exceeds your income, we must determine a dollar amount for those services and count it against Social Security's annual earnings limits.

Also, if we determine that you are not retired and that your earnings have been underreported, we have the right to adjust your Social Security earnings record. We also may notify the Internal Revenue Service so that it may determine whether your tax liability needs adjustment.

An Example

The following example describes a situation that would require an extensive interview and documentation because the person is retiring from a family business or corporation. Let's say Mr. Davenport owns and manages a furniture store and he is about to file for Social Security benefits. He decides to name his wife as manager even though he intends to continue to control and manage the business. We will need to compare his earnings to the level of work he performed before he named his wife manager.

If we learn his "retirement" is merely a paper transaction transferring earnings to his wife with no reduction in his services, we would adjust his earnings to reflect his involvement in the business and pay benefits based on those adjusted earnings. We would not suggest that Mr. Davenport completely discontinue his involvement with the business. Instead, we would remind him that if he wants to continue to work, the amount of his earnings must match the amount of work he does.

Early Contact With Social Security Office Is Important

We encourage you to check with us well before filing for benefits to make sure you are aware of the documentation you will need to furnish for the interview. Remember—you have to "retire" to collect "retirement" benefits—or at least significantly reduce your involvement in business and keep your earnings within the income range (explained on the front of this factsheet). That will permit us to pay some or all of your Social Security benefits.

Social Security's Toll-Free Number
1-800-772-1213
Call 24 hours a day,
including weekends and holidays.
To speak to a representative,
call between 7 a.m. and 7 p.m.
any business day.

Social Security Administration
SSA Publication No. 05-10038
January 1996 (*Destroy prior editions*)
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Unit of Issue – HD (one hundred)

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Sep-1996 04:16pm

TO: Kenneth S. Apfel

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Keith J. Fontenot
CC: Elena Kagan

SUBJECT: Resolution of SSI timing issue

I was pleased to hear about your conversation with Chater. I have sent Carol a note advising her, and asking whether she still wants to convey a short information item up the chain, and, if so, how.

Elena: SSA agreed with the later cut-off date.

Looks like SSA wants to sit on announcing this for a bit, to see if we can figure out the definition issue by next week or soon after and announce the two together. I think that is sensible if we can pull it off. So Brian will be trying to set up a meeting with us for Wednesday/Thursday next week to make progress on that.

Chater is trying to talk to Carol Monday am before a long trip about implementation issues generally, fyi.

E X E C U T I V E O F F I C E O F T H E P R E S I D E

05-Sep-1996 03:56pm

TO: Kenneth S. Apfel
TO: Elena Kagan
TO: Keith J. Fontenot

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Jeremy D. Benami

SUBJECT: Draft memo on SSI kids cutoff date

I know we are not yet agreed between us on the need for this memo, but I believe Carol wants it, at a minimum if we end up deciding on the earlier cut-off. So I thought I would send you the draft I am sending to Carol for her review, just so we are keeping in touch.

I was hoping to use whatever SSA is drafting on this, but I haven't received it yet. Maybe it is just as well.

Obviously I am interested in any comments. This will just barely fit on 1 page; so if you think I should add things (and the draft is a bit oversimplified), it will go over a page unless we cut.

DRAFT -- doesn't (yet) lay out a recommendation

September -, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

SUBJECT: When to Cease SSI Benefits for Disabled Children

A decision must be made in the next few days about when to stop benefits for disabled children whose families are appealing SSA's decision to drop them from the rolls.

Background: Under the welfare reform statute, 190,000 disabled children will lose eligibility for SSI benefits because their impairments are not severe enough to qualify under the new law. The families of these children will get notices this December that they will lose benefits unless they can prove that they meet the new, tougher standards. SSA will then review all these cases, with the goal of making decisions within one year of enactment.

These children have the right to appeal SSA's decision, and are guaranteed continued benefits during the appeals process until they have a "face to face interview." However, from a legal perspective that interview could take place either at the point when a state reviews the case, or at a later point when an SSA administrative law judge issues a ruling. The first choice cuts kids off in late 1997 or early 1998; the second choice pushes it off to 1999.

Arguments Favoring Earlier Cut-off:

- We reluctantly supported the tougher eligibility standards, and included savings in our budget based on kids being dropped at the earlier point. This could create a credibility problem with Congress if we go with the later date.

- If they lose on appeal, families would be liable for substantial overpayments. However, SSA can waive this debt on a case by case basis. (Budget Implications?)

- SSA's workload will be far greater if the later date is chosen. The large backlog in initial applications could get worse. It will encourage more families to appeal.

Arguments Favoring Later Cut-off:

- Losing these benefits will be difficult for these families, with many of them affected by other parts of welfare reform. We should give them more time to adjust, and ensure continued benefits for the 50% who will win their appeals. Although this change arose out of reports that families were

abusing the system by having children feign mental disabilities, such abuse was never shown to be widespread, and many of the families losing benefits have compelling stories.

- Advocates will definitely sue if we choose the earlier date, and could win.

cc: Jack Lew
Jack Quinn

Social Security – Childrens' Disability 9-4-96

Timing of redetermination notices – have to be out by Jan 1
will do in December – children

Feb + March – notices to immigrants

Benefit continuation

Face-to-face hearing – entitled to.
What level should it be?

state DDS level
end of 97
~~[illegible]~~
~~[illegible]~~

ALJ
will take until mid-99
18 mos. later.
(if no priority given)

Everyone will appeal.

Legal analysis – can go either way.

Leg doesn't make clear – do we take the pos. that keeps kids on rolls (fear of Cong response?) or kicks them off?

Budget assumptions – based on ~~earlier~~ decision to throw off earlier.

Have to pay back if appeal goes agt kid
But his reversal rate – as much as 50%
And can be waived – or just not paid.

SS – wants to do at DDS level

Conv Shirley / Jack Lew / Carol

COMMUNITY LEGAL SERVICES, INC.

1424 CHESTNUT STREET
PHILADELPHIA, PA 19102
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AN ANALYSIS AND IMPLEMENTATION RECOMMENDATIONS FOR THE NEW SSI CHILDHOOD DISABILITY LAW

The new SSI childhood disability provision of the recently enacted welfare bill, H.R. 3734, signed into law by the President on August 22, 1996, will bring about a number of changes in the program.[1] A careful analysis of the statute and legislature history shows that harm to deserving, eligible disabled children can be minimized if implementing policies of the Social Security Administration fairly track the new law and SSA wisely uses the considerable discretion granted by Congress in this new law.

In summary the new SSI law:

1. Explicitly mandates - and for the first time ever in the Act - a functional evaluation of the impact of disabilities on children's lives.

2. The law does not call for a medical Listings-only evaluation of childhood, nor an equivalent-to-the-Listings evaluation.

3. The law anticipates a somewhat more restrictive severity test, but clearly not one set at the extremes of Listings-level, or equivalent-to-Listings level severity.

4. The law does not mandate that the new provisions be retroactive for months prior to enactment for pending claims, appeals or Zebley class rejudications.

5. The law and basic fairness requires that in the redetermination process

[1]The SSI childhood provisions appear as Secs. 211-215 to H.R. 3734 and were published in Cong. Rec. H8852-54 (July 30, 1996).

families with children should be assisted by SSA, and those appealing should have benefits continue until a hearing and decision by a SSA Administrative Law Judge.

Functional Test Mandate

For the first time, and as a validation of Zebley Supreme Court decision, Congress has mandated a functional criteria test for disabled children. A child remains eligible or will be eligible in the future if the physical or mental impairment "results in marked and severe functional limitations." (Sec. 211(a)(4) amending 42 U.S.C. §1382c(a)(3)) (emphasis added).

The law "discontinues" the specific IFA functional test SSA had been utilizing along with its adjudication guidelines by rescinding 20 C.F.R. §§416.924d and .924e (Sec. 211(b)(2)), as well as rescinding "references to maladaptive behavior in the [Listings] domain of personal/behavioral functioning" of 20 C.F.R., App.1, §§112.00 C.2 and 112.02B.2.c(2). But the law significantly leaves standing in the existing SSA functional assessment regulations the sections on "functioning in children," 20 C.F.R. §416.924b, e.g. evaluating whether the child "engages in age-appropriate activities in an independent, appropriate and effective manner," §416.924b(a), and evaluating "developmental milestones," "domains of behavior," and "activities of daily living," and leaves intact the "other factors" regulation that insured a holistic, realistic evaluation, §416.924c, e.g. evaluating effects of chronic illness, structured settings ameliorating symptoms, effects of medications, etc.

Indeed, the former Senate Majority leader and key player in fashioning the final provisions enacted, Senator Bob Dole, described the new law as providing a "tune-up" of the program, a description far short of a radical overhaul of the test or new severity levels contemplated. Remarks of Senator Dole, Cong. Rec., S 13613, (Sept.14, 1995) (2d col.) In

this critical floor colloquy among the sponsors of the Senate SSI child provisions that became the final law, Senator Dole further affirmed the intent of Congress as insuring that the program "obtain a realistic picture of how an impairment affects each child's abilities." Id. (3d col.). (emphasis added). There is thus little doubt that Congress has mandated that a functional test must be provided, that it be broad and all-encompassing, and one also personalized to measure impacts on each child applying.

No Listings-Only, or Listings Equivalency Evaluation Test is Required by Congress

Congress, after multiple hearings, G.A.O. and HHS I.G. Reports, and a congressionally ordered National Commission on Childhood Disability Report, fully understands this program, including the narrow limits of a Listings-only or Listings equivalency evaluation of children--the approach fully critiqued in the original Zebley v. Sullivan decision, 493 U.S. 521, 531-542 (1990). The rigid, pigeon-hole scheme of the Listings could never address the personal-to-the child impacts of an impairment, children with multiple problems, or children with impairments not "listed" there. Thus Congress in the new law refused to direct in the "tune-up" anticipated that the new test revert to a pre-Zebley Listing or equivalency to the Listings test.

Indeed, the Conference Report in two key descriptive paragraphs refers to children who are eligible through the Listings of Impairments "and other determination" regulations or procedures, clearly implying that a test beyond the Listings is anticipated. Cong. Rec., H. 8913 (July 30, 1996) (2d and 3d cols.) (emphasis added). The only references to functional equivalency in this conference agreement are citations to this evaluation tool only as one example of a way to evaluate children too young to test and those with rare disorders. Id. (3d col.). The agreement never even suggests that functional equivalence be the new test for children.

A new and complete functional test beyond the Listings is clearly in order.

Severity Levels: A Somewhat More Restrictive Test is Suggested

Where Congress is very directive and specific that a revised, yet broad and fair functional test be provided children, Congress is less clear about the degree of severity to be required in a new test. Congress nowhere defines in the statute or legislature history what "marked and severe" mean, which necessarily requires SSA to use its discretion to give meaning to these terms. "Marked" degree of severity has been a term used in Listings and IFA evaluations where two marked functional limitation, primarily in the Mental Disorder Listings qualified a child, and where in the IFA test, one marked and one moderate limitation as well as three moderate limitations, could qualify a child. 20 C.F.R. §416.924e. Arguably a child with three moderate limitations may no longer be intended to qualify, but this is only a speculation given the paucity of legislative direction (as conceivably three moderates might have the impact of one marked limitation). The conference agreement only confirms the understanding that where functioning is set out "in...the Listings," then "no less than two marked limitations" is the standard. Cong. Record, H.8913 (July 30, 1996) (2d col.). But this only confirms the commonly understood Listings severity level; it plainly does not extend this Listings level severity of two marked limitations to the "other" disability determination regulations and procedures that the same conference agreement additionally contemplates beyond the Listings. Id.

And, although the new law utilizes the term "severe," which the conference agreement states means more than simply "'other than minor'", the conferees do not offer much further

guidance by stating that the term "severe" is used in "its common sense meaning." Id.[2]

Perhaps more illuminating is the Senate floor colloquy where Senator Dole acknowledged to Senator Conrad, the Democrats' chief sponsor, that the eligibility criterion of "pervasive" in the prior version of the bill, H.R.4, had been dropped for the final version leaving the enacted terms "marked and severe." The more extreme modifier of "pervasive" was dropped, according to Senator Dole, because it was a term implying "some degree of impairment in almost all areas of a child's functioning or body systems." Cong. Rec., S 13613 (Sept. 14, 1995) (2d col.). Senator Dole's statement rejects a Listings-level severity standard because Senator Dole was in effect here describing Listings-level severity where the impairments are usually so severe as to have such "pervasive" impacts as rendering the child almost or totally dysfunctional.[3] Senator Dole's statement also rejects Listings-equivalency levels of severity because similarly the functional equivalency regulations also embody "pervasive" type impacts of extreme disability such as a child needing an organ transplant, ventilator dependence, or a child incapable of

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[2]"Severe" has itself multiple meanings, including at least seven common meanings offered in the Random House Dictionary (rev.ed.). One relevant meaning of severe, "accurate or methodical," for example, would suggest that SSA be more (cont'd) precise in its functional limitations assessment, such as by using more standardized testing, a recommendation made by many including G.A.O. in reports to Congress.

[3]See, e.g., Hypoglycemia Listing, §109.12 (child in convulsions or a coma); Hypertensive cardiovascular disease Listing, §104.03 (requiring impaired renal function, cerebrovascular damage or congestive heart failure); Neurological Motor dysfunction Listing, §111.06 (persistent disorganization or deficit of motor function involving two extremities which interferes with major daily activities and results in disruption of fine and gross movements or gait and station); Juvenile diabetes Listing, § 109.08 (despite prescribed therapy child has recent, recurrent hospitalizations with acidosis or recent, recurrent episodes of hypoglycemia).

walking. 20 C.F.R. § 416.916a(d).

Thus Congress knew quite well how extreme the severity levels of the Listings were.[4] And Congress refused to impose this high level of severity upon children (and by so doing also avoided an SSI test that would discriminate against and impact much more harshly upon children than adults applying for SSI). Congress left to the discretion of SSA the devising of a new severity standard that can best be described as one somewhat stricter than the current one, a change reflecting the "tune-up" Senator Dole referred to, but also one substantially less than the known extremes of the Listings and Listings equivalency.

The New Law is Not Retroactive to Months Before August 22, 1996

Congress chose not to make the new SSI child disability criteria retroactive to payments for months of eligibility before the date of August 22, 1996 when it was signed by the President. The new law only states that the new provisions "shall apply to any individual" who applies or has an unadjudicated claim on the date of enactment (Sec. 211(d)(1)(A)(i)), and that those with pending appeals or pending class action readjudications are not final adjudicated claims (Sec. 211(d)(1)(A)(ii)). Without an express mandate that the law is retroactive for months before enactment, these provisions only mean that these pending claims will receive bifurcated decisions relating to payment for months before or after date of enactment.

This interpretation is consonant with other provisions which are generally prospective in

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[4]The Supreme Court had earlier observed in the most thorough analysis of the Listings ever compiled, that in the childhood Listings, the Secretary set medical criteria "at the same level of severity as that of the adult listings," and that these medical criteria always defined listed impairments "at a higher level of severity than the statutory standard." Zebley, 493 U.S. 521, 532-33 (1990).

nature such as future promulgation of regulations and continuing benefits for current beneficiaries until January 1, 1997 or date of redetermination.

Children Up for Redeterminations Should Receive Affirmative Assistance From SSA, and Benefits Continuing Until an ALJ Hearing and Decision If Timely Appeals are Requested

Congress continues to afford SSA wide discretion to protect disabled children against erroneous decisions, especially redeterminations applying very new, untested and complex criteria. SSA has a duty compelled by Due Process, the Act and sensible policy to afford children and their families assistance and procedures to avoid errors. Grave issues of life and health for vulnerable children are at stake in each decision.

Thus SSA should first do a thorough internal screening to determine if IFA children can alternatively qualify under the Listings or the new test.

SSA should also affirmatively assist families through the ready and stated availability of state Consultative Examinations and referrals to local agencies to provide additional medical and functional evidence for the new eligibility redeterminations contemplated by the law.

When an adverse redetermination decision is issued, after an opportunity to provide additional evidence, these must be information in the notice providing the name and telephone of (a) the local Legal Services/Legal Aid office; (b) the "800" number of the National Organization of Social Security Claimants' Representatives (NOSSCR) of private disability lawyers; and (c) the "800" or local number of the state's Protection and Advocacy office.

Finally, although SSA may wish to provide for reasons of efficiency a state DDS hearing as an appeal step, a step which we strongly advise, it must be SSA policy that an appeal requires benefits to continue until an ALJ hearing and decisions.

The Act currently provides that payment of benefits continue until a decision is made

after a hearing is timely requested. 42 U.S.C. §1383(a)(7)(A). It is only at the ALJ hearing where there are sufficient procedures in place, such as the subpoena power, to insure a full and fair hearing. Given the especially high risk here of error in mass reviews of tens of thousands of children under totally new criteria and procedures that have not stood the test of time, scrutiny, and, undoubtedly, SSA refinement and adjustment, due process of law demands that the ALJ hearing and decision be the minimal threshold for Goldberg v. Kelly protection.[5] Disabled children, already determined eligible to date, deserve no less protection.

* * * * * * * * * *

Questions concerning the above points may be directed to Jonathan Stein, General Counsel, (215) 981-3742.

September, 1996

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[5]Sec. 211(d)(2)(A) requires during the first year after date of enactment SSA to "redetermine the eligibility" of children whose benefits "may terminate" from the elimination of the IFA and maladaptive behavior provisions. SSA has estimated that as of April 1996 enrollment figures, 275,727 of 968,660 children on SSI would have to be reviewed.

COMMUNITY LEGAL SERVICES, INC.

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August 23, 1996

BY FAX: (410) 965-3213

Arthur J. Fried
Chief Counsel
SSA OGC
R.611 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235

Re: New SSI Child Disability Law

Dear Arthur:

Thank you again for getting us together yesterday with SSA staff to begin our dialogue. I am enclosing the Senate, September 1995 floor colloquy between the chief sponsors of the Senate SSI child disability amendments which largely became the amendments in the final bill signed into law by the President yesterday.

The remarks of the former Majority Leader, Senator Dole, that I referred to in our meeting are significant.

At page S.13613 (Sept. 14, 1995) (2d col.), Senator Dole describes the bill as providing a "tune up" for the program, a description falling far short of a radical overhaul that would significantly alter the evaluation or degree of severity under the new law. In the same paragraph Senator Dole affirms the need to have a program where Congress can "obtain a realistic picture of how an impairment affects each child's abilities." Id. (3d col.) (emphasis added). This succinct statement is a ringing affirmation that a broad functional evaluation of the child be provided and that it be personalized for each child--evaluations that Listings or Listings-equivalence are impossible to render.

Indeed, when one compares Senator Dole's statement with SSA's regulations left standing by the new Act, especially § 416.924b (functioning in children) and § 914.924c (other factors we will consider) we see striking parallels, e.g. "...we will consider all of your mental and physical limitations that result from your impairment(s). We will evaluate the extent to which you can engage in age-appropriate activities in an independent, appropriate and effective manner...." § 914.924b(a).

Finally, with regard to the area of degree of severity to be intended, Senator Dole additionally stated that the Senate was eschewing a too severe standard by avoiding a statutory criterion that the functional limitations be "pervasive." S.13613 (2d col.). He made clear that the Senate did not want to use a term like "pervasive" that would imply "some degree of impairment in almost all areas of a child's functioning or body systems."

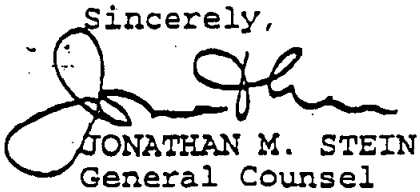
Although this statement is not totally dispositive of what the severity test should be, it nonetheless clearly in our view rejects a Listings-level severity standard because Senator Dole was in effect describing Listings-level severity where the impairments are usually so severe as to have such a "pervasive" impact rendering the child almost or totally dysfunctional, see e.g. Hypoglycemia Listing, § 109.12 (child in convulsions or a coma); Hypertensive cardiovascular disease Listing, § 104.03 (requiring impaired renal function, cerebrovascular damage or congestive heart failure); Neurological Motor dysfunction Listing, § 111.06 (persistent disorganization or deficit of motor function involving two extremities which interferes with major daily activities and results in disruption of fine and gross movements or gait and station); Juvenile diabetes Listing, § 109.08 (despite prescribed therapy child has recent, recurrent hospitalizations with acidosis or recent, recurrent episodes of hypoglycemia).

We trust these colloquy remarks will be utilized by SSA, bearing in mind that Senator Dole and his staff were the primary architects of the compromises and final version of the law that emerged.

We look forward to getting together in the third week of September. Our preferred days are September 17-19 (Tuesday - Thursday).

As I do not have a complete list of attendees at our meeting on August 22, could you or John distribute this letter and enclosure to all those present.

Sincerely,



JONATHAN M. STEIN
General Counsel

JMS:jmp

Enclosure

cc: Susan Daniels, Associate Commissioner, OD
Judy Chesser, Associate Commissioner, Legislation
Randy Gains, OGC
John Watson, OGC
Marty Ford, The Arc
Rhoda Schulzinger, Bazelon Center for Mental Health Law
Ethel Zelenske, NOSSCR

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neglect will no longer be protected by CAPTA's immunity for reporting. Only good-faith reports will be protected.

Finally, we have clarified the definition of child abuse or neglect to provide additional guidance and assistance to States as they endeavor to protect children from abuse and neglect.

Let me briefly mention the other programs authorized in the 1995 CAPTA amendments: the new Community-Based Family Resource and Support Grants represent the result of nearly a full year's effort to consolidate the Community Based Prevention Grant, Respite Care Program, and Family Resource Programs; the Family Violence Prevention and Services Act which provides assistance to States primarily for shelters; the Adoption Opportunities Act which supports aggressive efforts to strengthen the capacity of States to find permanent homes for children with special needs; the Abandoned Infants Assistance Act which provides for the needs of children who are abandoned, especially those with AIDS; the Children's Justice Act; the Missing Children's Assistance Act and section 214 of the Victims of Child Abuse Act.

Mr. President, I would like to thank the members for their attention. These are important programs and they will affect many children and families. I urge the adoption of the 1995 CAPTA amendments.

STUDENT AID

Mr. MACK. Mr. President, with regard to title V of H.R. 4, the Work Opportunity Act, I am interested in clarifying an issue regarding the applicability of the term "assistance * * * for which eligibility is based on need" to various student loan programs. As I understand this legislation, eligibility for needs-based public assistance will either be subject to a deeming period or will be forbidden for a period of five years for most non-citizens. At this time, there seems to be an erroneous public perception that all student financial aid programs will be subject to these provisions. This is not the case. In the interests of responsible legislating, I think it is important to clarify that unsubsidized student loans are not needs-based and should therefore not be subject to the requirements of title V.

Mr. SIMPSON. Mr. President, Senator MACK is correct. Although the term "assistance * * * for which eligibility is based on need" in title V of H.R. 4 would apply to most forms of student financial aid, the unsubsidized student loan program is indeed a financial aid program which is not based upon need. Therefore, this particular program would not be subject to the deeming period or 5-year ban established in title V of this bill.

Mr. DOLE. Mr. President, I would like to offer my support of the comments made by Senators MACK and SIMPSON on this issue.

CHILDREN'S SSI

Mr. CONRAD. Mr. President, I have a series of clarifications concerning the children's SSI program that I would like to discuss with the majority leader.

But first, let me express my appreciation to Senator DOLE for his leadership in helping us reach a compromise on this issue. The SSI agreement is not everything I had hoped to achieve when Senator CHAFEE and I introduced the Children's SSI Eligibility Reform Act, but it is clearly an improvement over the House bill.

In addition, I believe the agreement includes a number of extremely important provisions to both address criticisms that have been leveled against the Children's SSI program and protect children with severe disabilities. I am extremely pleased we were able to reach a bipartisan compromise on this issue, and thank Senator DOLE, Senator SANTORUM, Senator DASCHLE, Senator CHAFEE, Senator SIMPSON, Senator JEFFORDS, and others who were so deeply involved.

Mr. President, I would like to clarify for the RECORD the intent surrounding several of the provisions in the amendment. First, the amendment deletes the word "pervasive" from the definition of child disability that was included in the welfare reform bill reported in May by the Finance Committee. This is an important change, and one that I fully support. Would the majority leader clarify his understanding of the intent of this change?

Mr. DOLE. I want to thank the Senator from North Dakota for his leadership and hard work on this issue. Children with disabilities are certainly among those most at risk in our society, and we want to make sure we are doing the right thing by them. He and Senator CHAFEE have worked extremely hard to bring the Senate to this point.

As for the Senator's question, I understand that the Senator from North Dakota was concerned that the term "pervasive" included in the earlier definition implied some degree of impairment in almost all areas of a child's functioning or body systems. That was not the intent of the earlier proposed change to the statute. It is expected that the children's SSI program will serve children with severe disabilities. Sometimes children will have multiple impairments; sometimes they will not.

Mr. CONRAD. I also understand that the amendment is designed to facilitate expert analysis of the SSI program for children by the National Academy of Science, to ensure that program changes, including determination of disability, are based on the best possible science.

Mr. DOLE. Yes, I think we can all agree that the children's SSI needs a tune up. The provision for a study by the National Academy of Sciences of the disability determination procedures used by the Social Security Administration will help accomplish this goal, and help us obtain a realistic picture of how an impairment affects each child's abilities.

No doubt about it, the children's SSI program is extremely important for some children with disabilities. But as the Senator from North Dakota made mention, there have been widespread allegations that some children on SSI are not truly disabled, or money is spent in ways that do not benefit the child. I hope this study—in addition to the changes we have made in the law—will help restore confidence in this program.

Again, it is my expectation that this program will continue to serve children with severe disabilities, and that includes properly evaluating children too young to test, children with multiple impairments, and children with rare or unlisted impairments which nevertheless result in marked and severe functional limitations.

Mr. CONRAD. Is it expected that the Social Security Administration and the Congress will rely heavily on the expert advice of the National Academy of Science when engaging in future regulatory activity and deliberations regarding impairments of children in the SSI program?

Mr. DOLE. Yes. But I also hope we hear from many others as well with good information to offer, including other experts, parents, and advocates.

Mr. CHAFEE. If I might also ask the majority leader a question. The leadership amendment and the Finance Committee proposal are both silent about the purpose of children's SSI. However, unlike the House proposal, both retain the cash benefit nature of the program. This is a concept that Senator CONRAD and I thought was extremely important when we introduced the Childhood SSI Eligibility Reform Act, and I am pleased that the majority leader's proposal retains flexibility within the SSI program by retaining the cash nature of the program. It is important for the SSI program to reflect the impact a disability has on families faced with a variety of circumstances. SSI often provides important assistance to families by replacing a portion of the income that is lost when a parent must care for a disabled child. The flexible nature of SSI is indispensable for many parents who are rendered unable to work because they must stay at home to provide care and supervision to their children with disabilities. Does the majority leader share our assessment?

Mr. DOLE. No doubt about it, for some families with a severely disabled child, SSI can be a lifesaver. It allows them to care for their child at home—who might otherwise be institutionalized at much greater cost to the government—or obtain services they could not otherwise afford. If a small payment can help a disabled child stay with his family, or grow into a productive adult, it is better for the child and better for society. SSI benefits provide the greatest flexibility, and the least amount of bureaucratic redtape.

But I think there may be some difference of opinion about the purpose of the program. The SSI program was originally started to provide a small cash income to individuals who cannot work because of age or disability. But the children's SSI program had a somewhat different purpose—to help poor families with the extra costs of having a child with a disability. It seems the program has expanded without much Congressional attention. In my view, we need to revisit the purpose of the SSI program. The Finance Committee has not tackled this problem yet, but it should and I believe it will. But the Senate decision to retain the cash benefit is clearly an important difference from the House.

Mr. CONRAD. I would like to join in the comments of both of my colleagues regarding the cash benefit nature of the SSI program. This provision is critically important, and I commend the Majority Leader for including it in the amendment. If I might address one additional question to the majority leader, it is the intent of this Senator and other supporters of this amendment on both sides of the aisle that this amendment is the position of the Senate, and that it will be vigorously defended in conference with the House of Representatives. Will the majority leader insist on this provision during conference with the House?

Mr. DOLE. This is a bipartisan compromise with broad support, and in my view it should be a position to which the Senate should firmly hold in conference.

Mr. CONRAD. Base on these assurances, I am pleased to support the compromise we have developed on children's SSI. This is not everything I had hoped to achieve, but it is critically important that the Senate enter conference with a solid, unified position.

Mr. WARNER. Mr. President, I am pleased to rise as one of the original cosponsors of the Republican leadership welfare reform bill.

We have entered this historic debate because the 30-year War on Poverty remains a war, but the nation is losing. According to recent analysis, aggregate government spending on welfare programs over the last 30 years has surpassed $5.4 trillion, an expenditure that exceeds our national debt.

Despite this spending, America's national poverty rate remains at about the same level as 1965, the year that President Johnson launched the War on Poverty.

Despite the best of intentions, we have a welfare system that "traps" children and families in a cycle of dependency, and that encourages behavior leading to indefinite reliance on welfare. It fosters a lifestyle that is in direct opposition to the motivators that propel others to get up and go to work every day.

The Republican leadership's bill emphasizes work, families and genuine hope for the future while giving the States greater responsibility—and flexibility—for managing welfare.

This measure has been a long time coming, and I do not just mean this summer. Our distinguished colleague from Colorado, Senator HANK BROWN, did an outstanding job in 1993 and 1994 as chairman of the Republican Welfare Reform Task Force. Health Care Reform diverted the Senate, but it did not diminish the value of their work. Much of what we are considering today is built directly on the strong foundation of Senator BROWN's early proposals.

I also think back to the 1986 State of the Union Address of President Ronald Reagan. That year he proposed Welfare Reform. This was another step. The Reagan welfare reform plan, the Family Security Act of 1988, was guided to enactment by the fine hand of the then Finance Committee Chairman, Senator MOYNIHAN of New York, who is now serving with such distinction as the comanager of this bill.

The Family Security Act of 1988 served as a laboratory for S. 1120. In 1988, we first dealt with the issues of workfare versus welfare, the dilemmas of teen pregnancy and illegitimacy, the high costs of work requirements, and the need for broad federal waiver authority. It is the State and local levels of government which administer the American welfare system, not the Department of Health and Human Services.

I am proud that under the waiver authority established by the Family Security Act, the Commonwealth of Virginia has been in the vanguard of welfare reform initiatives.

While we are struggling to come together in the Senate to pass S. 1120, my State has already enacted and is now implementing what we call the Virginia Independence Program or "VIP" for short.

VIP is the visionary welfare reform program brought to the people of Virginia under the outstanding leadership of Gov. George Allen. It was no easy task to battle a sometimes hostile state legislature, dominated by the other political party, as well as the mountain of redtape required in securing the necessary Federal waivers. He succeeded splendidly, however, in achieving his goals, and now Virginia is in the careful, watchful, early stages of actual reform.

Governor Allen, with his great courtesy, personally journeyed to Washington on September 13 to deliver a thoughtful and, in my judgment, immensely helpful letter on what he believes the Senate should accomplish in welfare reform.

Mr. President, I ask unanimous consent that my letter from Governor Allen be printed in the RECORD at this point for the benefit of all of my colleagues.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
September 13, 1995.

Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR JOHN, As the United States Senate continues to debate welfare reform this week, I believe that our experiences in the Commonwealth of Virginia can be instructive.

I hope you will consider Virginia's plan to be a model for the nation. The comprehensive Virginia plan is based upon the principles of the work ethnic and personal responsibility. Our experiences support the need for an overall block grant approach, that will give States the flexibility to appropriately design programs that address the individual needs of the citizens of their State, return AFDC to a program of temporary assistance for those in need, and require work for all able-bodied recipients.

I understand that there will be attempts to amend S. 1120 by attaching new chains on the block grants to the States. As a staunch proponent of federalism and self-determination, I oppose such choke chains, *whether they are "conservative" or "liberal" ones*, and respectfully encourage and request that you to do likewise for Virginians.

Experience shows that the States are perfectly capable of taking this responsibility and exercising it wisely for our citizens. Virginia's landmark welfare reform legislation is a prime example. Our plan applies to the entire AFDC caseload, with a work requirement for 48,000 of our 74,000 cases. It incorporates common-sense principles into the welfare system by rewarding responsible behavior and providing compassionate, but temporary, assistance for those in need.

In addition to providing opportunity and support to recipients, the program is expected to save the taxpayers more than $130 million over the first five years. Already, we have had a significant drop in our caseload. Restrictive maintenance-of-effort requirements rob States of the ability to share in these savings and the incentives to achieve them. They should be opposed.

As you know, Virginia received a waiver to begin implementing this landmark welfare reform plan on July 1 of this year. You also should be aware that, before this waiver was granted, we spent the better part of two months fending off efforts by the Clinton Administration to completely rewrite our plan. The administration proposed literally hundreds of changes or conditions in the waiver process. Many of them involved very fundamental things; if agreed to, they would have raised the cost of the program significantly and changed essential provisions.

We had a tough fight in our state legislature—with a final bill clearing the General Assembly only in the last hour of the 1995 legislative session. At issue were questions such as whether we would have a real work requirement and a real time limit; whether there would be a child cap and strong requirements for paternity establishment; and whether we would require minor recipients to stay in school and live at home with a parent or guardian.

This spirited debate was expected, given the fundamental nature of the changes and reforms we were proposing. We did not expect, however—after the legislative process was completed at the state level and we had decided what state law and state policy were going to be—that we would have to turn around and refight all those battles with the federal bureaucracy through the waiver process. A good example was the time limit. We went to the wall with HHS over the issue of whether we in Virginia would be able to define the circumstances that would allow

THE SSI COALITION
FOR A RESPONSIBLE SAFETY NET

SUPPLEMENTAL SECURITY INCOME FOR LOW INCOME ELDERLY AND PEOPLE WITH DISABILITIES

DRAFT--SEPTEMBER 4, 1996

Proposal For A New Children's SSI Disability Standard

By Thomas Yates

Set forth below is a proposed standard for determining children's SSI disability that integrates the changes mandated by the welfare reform bill.

The standard, set forth in section C below, uses the present disability sequential evaluation, set forth at 20 C.F.R. §§ 416.924(b)-(f), as the starting point. The proposed standard keeps the current first three steps and adds a new fourth step that requires assessment of functioning in several areas, and then applies a threshold standard that is stricter than the standard embodied in the Individualized Functional Assessment ("IFA"). Specifically, the new test will deny disability to children with only moderate functional limitations. The current disability standard allowed children with only moderate functional limitations to qualify for SSI disability benefits.[1]

A. The Definition of Children's Disability

1. New Statutory Definition of Childhood Disability:

Section 211 of the welfare reform bill replaces the current definition of childhood disability which read:

> An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve months **(or in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).**

with the following:

> (i) An individual under the age of 18 shall be considered disabled for the

[1] See 20 C.F.R. § 416.924e(c)(1)(ii) & (2)(ii)(children with moderate impairments in three domains could be found disabled under the IFA).

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purposes of this title if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted for a continuous period of not less than 12 months; and

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled."

2. **Changes to Regulatory Childhood Disability Standard:**

In addition to the change in the statutory standard, the new law requires the Commissioner to:

i) eliminate references to maladaptive behavior in the domain of personal/behavioral function in §§ 112.00C.2 and 112.02B.2.c.(2)(""B" criteria") in Appendix 1 to subpart P of part 404, Title 20 of Code of Federal Regulations; and

ii) discontinue the IFA set forth in 20 C.F.R. §§ 416.924d and 416.924e.

B. Congress Affirmed Use Of Almost All Of The SSI Regulations Governing Determination Of Children's Disability

As noted above, Congress let stand all of the SSI children's disability regulations finally adopted in 1993 except for the reference to maladaptive behavior in the personal/behavioral domain in the "B" criteria in the Listings, and the IFA test. These modest changes reflect Congress' intent to fine tune, rather than radically overhaul the SSI children's disability program.

Indeed, during the Senate's consideration of welfare reform, Senator Dole stated on the floor of the Senate that "I think that we all agree that the children's SSI needs a tune up...." and that the changes were made to respond the "allegations that some children on SSI are not truly disabled." Congressional Record ("Cong. Rec.") at p. S.13613 (Sept. 14, 1995).

Senator Dole concluded his remarks by noting that:

It is my expectation that this program will continue to serve children with severe disabilities, and that includes properly evaluating children too young to test, children with multiple impairments, and children with rare or unlisted impairments that nevertheless result in marked and severe functional

limitations.

Id.

As noted, Senator Dole describes the bill as providing a "tune up" for the program, a description falling far short of the radical overhaul that would significantly alter the evaluation process or degree of severity required to show disability under the new law. In those same remarks on the Senate floor, Senator Dole affirmed the need to have a program in which Congress can "obtain a realistic picture of how an impairment affects each child's abilities." Id. This succinct statement is a ringing affirmation that a broad functional evaluation of a child be provided and that it be personalized for each child--evaluations that the Listings or Listings-equivalence are impossible to render.

Indeed, Senator Dole's statements are consistent with the Social Security regulations left standing by the new Act, especially 416.924a (age as a factor of evaluation); 416.924b(functioning in children), 416.924c (other factors that we will consider), e.g. "... we will consider all of your mental and physical limitations that result from your impairment(s). We will evaluate the extent to which you can engage in age-appropriate activities in an independent, appropriate, and effective manner...." 20 C.F.R. § 416.924(a).

Finally, with regard to the degree of severity required to show that a child is disabled, Senator Dole additionally stated that the Senate was eschewing a much higher severity level by avoiding a statutory criterion that the functional limitations be "pervasive." Cong. Rec. at S. 13613. He made clear that the Senate chose not to use a term like "pervasive" that would imply "some degree of impairment in almost all areas of a child's functioning or body systems."

Although this statement is not totally dispositive of what the disability threshold test should be, it nonetheless clearly rejects sole reliance on Listings-level severity standard. The Social Security POMs, which provide interpretative support to the regulations states as follows:

> The Listing of Impairments describes, for each of the major body systems, examples of impairments which are considered ... severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner.

POMS § DI 25215.010.B.

This is analogous to the threshold that Senator Dole made clear was rejected--disability based on "some degree of impairment in almost all areas of a child's functioning or body systems."

C. A Proposed New Children's SSI Disability Sequential Evaluation

As is set forth below, the Social Security Administration ("SSA") should change its present children's disability sequential evaluation by discarding the IFA and replacing it with a new fourth step that requires assessment of functional limitations caused by medical impairments and sets a disability threshold that is stricter than that embodied in the IFA. The new standard should be as follows:

1. Is the child engaging in substantial gainful activity? If yes, the claim is denied. If no, proceed to step two.[2]

2. Does the child have a severe impairment or combination of impairments? If no, the claim is denied. If yes, proceed to step three.[3]

3. Does the child have an impairment(s) that meets, or medically or functionally equals, the impairments described in the Listings of Impairments at 20 C.F.R. Part 404, Subpart P, App. 1? If yes, the child is disabled. If no, proceed to step four.[4]

4. Does the child otherwise have an impairment(s) which results in marked and severe functional limitations? If yes, the child is disabled. If no, the child is not disabled.

   In determining whether the child has marked and severe functional limitations, follow the following three steps:

   a. Assess all medical and nonmedical evidence of the child's medically determinable impairments, including assessment of the factors set forth at 20 C.F.R. § 416.924c, and pain and other symptoms as required by 20 C.F.R. § 416.929;[5]

   b. Determine if the child has deficits in development or functioning

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[2] This step remains the same as the current first step of the children's sequential evaluation.

[3] This step remains the same as the current second step of the children's sequential evaluation.

[4] This step remains the same as the current third step of the children's sequential evaluation.

[5] These factors must likewise be assessed at steps two and three. Their inclusion here is not meant to imply that they are not relevant at the two previous steps.

as follows:

i. For a child from birth until attainment of age 1, determine if the child has deficits in development or functioning attributable to an impairment(s) in any of the following areas:[6]

A. age-appropriate cognitive functioning;

B. age-appropriate communicative functioning;

C. age-appropriate ability to sustain social interaction on an ongoing reciprocal fashion;

D. age-appropriate motor development;

E. age-appropriate physical stamina and basic physical functioning (including, but not limited to, breathing, digestion, and elimination); and

F. age-appropriate responsiveness to stimuli.

ii. For a child from age 1 to attainment of age 3, determine if the child has deficits in development or functioning attributable to an impairment(s) in any of the following areas:[7]

A. age-appropriate cognitive functioning;

B. age-appropriate communicative functioning;

C. age-appropriate social functioning;

D. age-appropriate gross and fine motor development; and

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[6] These criteria are drawn from 20 C.F.R. Part 404, Subpart P, App. 1, § 112.12 with the exception of the criterion covering physical stamina and basic physical functioning.

[7] These are drawn from the "B" criteria contained in the mental impairment listings for children age 1 to attainment of age 3, 20 C.F.R. Part 404, Subpart P, App. 1, § 112.02, with the addition of a physical impairment criterion to assess physical stamina and basic physical functions.

E. age-appropriate physical stamina and basic physical functioning (including, but not limited to breathing, digestion, and elimination).

iii. For a child from age 3 until the attainment of age 18, determine if the child has deficits in development or functioning attributable to an impairment(s) in any of the following areas:[8]

A. age-appropriate cognitive functioning;

B. age-appropriate communicative functioning;

C. age-appropriate social functioning;

D. age-appropriate personal/behavioral functioning, as evidenced by restrictions in activities of daily living;[9]

E. age-appropriate gross and fine motor functioning;

F. age-appropriate physical stamina and basic physical functioning (including, but not limited to breathing, digestion, and elimination); and

G. age-appropriate concentration, persistence, or pace.

c. A child shall be considered to have "marked and severe functional limitations" if she or he has:

1. impairments that prevent the child from performing substantially any function (e.g. walking, breathing, taking care of personal needs) contained in any one of the criteria set forth above in Nos. 4(b)(i), (ii), or (iii)(depending on the

[8] These are drawn from the "B" criteria contained in the mental impairment listings for children ages 3 to the attainment of age 18, 20 C.F.R. Part 404, Subpart P, App. 1, § 112.02B, with the addition of two criteria for assessment of physical impairments.

[9] Maladaptive behavior can no longer be considered in assessing functional limitation in the personal/behavioral domain.

age of the child);[10] or

2. a marked impairment in one of the areas in 4(b) above and a moderate impairment[11] in another;[12] or

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[10] This threshold criterion is consistent with SSA's approach in the listings that makes impairment in one area, if severe enough, disabling. Numerous listings base disability on functional impairment in one area, e.g.: **Listing 101.03** (inability to walk or stand is markedly reduced); **101.03C** (inability to perform age-related personal self-care activities); **102.08B3 and Disability Digest 94-6** (Communicative impairment attributed to hearing impairment in children under age 5); and **110.07D** (multiple body system impairment with significant interference with communication due to speech, hearing, or visual impairments).

[11] "Marked" and "moderate" impairments remain the same as they are currently defined in the children's disability regulations. For children from birth to attainment of age 3, "marked" and "moderate" are defined in terms of the ratio of developmental milestone age to chronological age. 20 C.F.R. Part 404, Subpart P, App. 1, §§ 112.02(B)(1)(a)-(d); and 112.12. For children age 3 to the attainment of age 18, the terms are defined in terms of the number of activities affected and the severity of the limitations in affected activities. 20 C.F.R. Part 404, Subpart P, App. 1, § 112.00(C).

[12] Use of the one marked impairment and one moderate impairment test is consistent with Congress' goal to fine tune the SSI children's disability standard. See p. 2, supra. In amending the statutory standard to limit SSI payments to children with an impairment which results in a marked and severe functional limitation, Congress sought to eliminate payments to children with only moderate impairments. Here, a child cannot qualify unless she or he at least has a marked impairment in functioning.

Moreover, in amending the SSI children's disability standard, Congress approved of the use of the Listings at step three in the disability process. And the one marked impairment and one moderate impairment test is a disability severity threshold that is consistent with that used, in some instances, in individual Listings.

For example, a child can meet or equal **Listing 112.05(C)** with the equivalent of one marked impairment and one moderate impairment. Under Listing 112.05(C), a child is considered disabled if s/he has an IQ of 70 or less and another significant physical or mental impairment. The IQ of 70 is considered a marked impairment--the POMS provide that when standardized tests are used as the measure of a child's functional abilities, a valid score that is two standard deviations below the norm for the test (e.g. an IQ score of 70 on the WISC-R) will be considered a marked restriction. 20 C.F.R. Part 404, Subpart P, App. 1, § 12.00C & POMS § DI 25220.020.C.1.b. In addition, a child need only show another significant physical or

3. a combination of impairments in the various areas set forth in No. 4(b) above that causes substantial reduction in the child's ability to function independently outside of the home within age-appropriate norms; or causes substantial reduction in the ability to function independently, appropriately, and effectively in an age-appropriate manner.

With this proposal, children who have only moderate functional limitations are excluded from SSI eligibility, e.g. children who qualified with moderate functional limitations in three domains in the IFA test. See 20 C.F.R. § 416.924e(c)(1)(ii) & (2)(ii)(children with moderate impairments in three domains could be found disabled under the IFA).

D. This Proposed Standard Satisfies Congress' Goal Of Fine Tuning The SSI Children's Disability Standard.

1. Congress intended only to "fine tune" the children's SSI program, not completely revamp it. Moreover, the new law continues to require a functional assessment of the child in determining disability.

2. Reliance solely on the Listings does not satisfy Congress' mandate that a functional assessment in necessary in determining disability. Many of the individual listings do not include a description of the functional limitations caused by the impairments described in those listings. Without such functional limitations defined, there is no way for adequate assessment of those children who have disabling

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mental impairment, which is defined to be an impairment with at least moderate effects on the child's functioning.

See also **Listings 101.03** (Walking is markedly reduced in speed or distance with deficits in musculoskeletal function (of no set severity level)); **110.07** (Marked interference with communication due to speech, hearing, or visual impairment with a serious hereditary, congenital, or acquired disorder (of no set severity level)); **111.07B** (Cerebral palsy with more than slight limitation in motor dysfunction (moderate impairment), and IQ of 70 or less (marked impairment); **111.09 & Disability Digest 93-11** (Marked communication impairment (functioning at two-thirds of chronological age) and documented causally-related neurological disorder (of no set severity level)); **112.05(F)(1)**(for children age 1 to attainment of age 3, marked deficit in cognitive/communicative function (two-thirds of chronological age) and other significant physical or mental limitation (moderate impairment); and **112.05(F)(2)**(for children age 3 to attainment of age 18, marked impairment in age-appropriate cognitive/communicative function and other significant physical or mental impairment (moderate impairment)).

functional limitations unless there is a fourth step that requires assessment of functional limitations for all types of impairments.

3. SSA has already tightened up the disability allowance rates for children seeking SSI disability benefits. As the data below demonstrates, allowance rates are already so low that a de facto fine tuning has been achieved.

INITIAL DISABILITY DETERMINATIONS FOR SSI CHILDREN

FISCAL YEAR	ALLOWED CLAIMS	DENIALS	TOTAL	%
1991[13]	93,991	38,414	132,405	70.99%
1992	180,597	119,933	300,530	60.09%
1993	214,393	215,807	430,200	49.84%
1994	205,395	321,380	526,775	38.99%
1995	172,433	364,272	536,705	32.13%
1996[14]	83,004	186,932	269,936	30.75%

From statistics from SSA Office of Disability, May 1996.

Indeed, the 1996 allowance rate at the initial level, 31%, falls far below the allowance rate, 43%, in 1989,[15] the year before the Supreme Court decision in Sullivan v. Zebley, which led to the creation of the IFA. Prior to Zebley, a child could only be found disabled if she or he had a listings-level disability.

The 1996 31% allowance rate, when compared to 1989 43% allowance rate, is the clearest evidence that the Social Security Administration has already fine tuned the SSI children's disability program to ensure that children with less severe disabilities are denied benefits. To now restrict disability only to those children who can show listings-level disabilities will push the allowance rate far lower, perhaps below 20%.

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[13] The data covers the period from 1/1/91 to 9/30/91.

[14] The data covers the period from 10/1/95 to 4/26/96.

[15] Data from the Report to Congress of the National Commission on Childhood Disability, October 1995, at p. 23.

For more information, contact Thomas Yates at the SSI Coalition For A Responsible Safety Net, 205 W. Monroe Street, Chicago, IL 60606-5013, 312-460-8402.

Telecon Arthur Fried 8/26/96
SSA GC

2 issues - support for either option. Policy call.

1. What process do you use for kids once determined ineligible?

Send rel. staff sections.

- current - they get hearing at ALJ level / ass. continues until then.

new leg - unclear.

End assistance at ALJ level or st. redeterm level?

2. What std to be applied?

Current std too broad - clear

Double-counting - inapprop.

But - what std now?

- go back to pre-Zebley standards (some ev in leg hist)

"listing of impairment" or

- someplace b/w current std + listing std - still a functional assessment (unlike listing std)

Get WH signals - more or less stringent?

Timetable: Need to send notices out.

Second wk in September - have to close this out.

Decisions - next wk at latest.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Aug-1996 11:08am

TO: Elena Kagan

FROM: Carol H. Rasco
Domestic Policy Council

SUBJECT: RE: Decisions on implementation of childrens' SSI cuts

Elena, Diana and Jeremy are both out until the day after Labor Day. I do not know at this point how they left it as to development of the memo that I asked to see on Tuesday afternoon after Labor Day when I return. I believe unless things changed that Diana left for Europe yesterday so I can't reach her to answer this question of status. Hopefully the persons cc/d at OMB are in the middle of preparation...thanks.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Aug-1996 01:21pm

TO: Carol H. Rasco

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Barry White
CC: Richard E. Green
CC: Jeremy D. Benami
CC: Elena Kagan

SUBJECT: Decisions on implementation of childrens' SSI cuts

The issue that Susan Daniels raised to us -- when should kids who are appealing a decision to be cut off from SSI be dropped from the rolls -- continues to percolate.

It can be done at the point of a DDS face to face interview, but there is apparently a legal argument it could be done later, after the ALJ makes a decision. The first choice cuts kids off in late 1997; the second extends it to 1999.

SSA is inclined to pick the earlier date.

Given that we ended up reluctantly supporting this provision, and included savings in our own budget based on kids being dropped at the earlier point, I think we would have a credibility problem with Congress with the later date. Also it would be inconsistent with the approach we took with the drug addicts/alcoholics who will start being removed in January. I need to learn more about the legal analysis here.

Brian Coyne says they need to decide this by Labor Day, given their workload and training requirements, along with the need to tell state DDS units about their workload.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Aug-1996 02:41pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
Domestic Policy Council

CC: Barry White
CC: Richard E. Green
CC: Jeremy D. Benami
CC: Elena Kagan

SUBJECT: RE: Decisions on implementation of childrens' SSI cuts

It is my feeling that a very thorough briefing options memo should be prepared to go into POTUS the day after Labor Day. I will work closely with Leon to see that we get a speedy decision. If the memo makes a strong argument one way or the other that is fine but I believe this is one to at least run by the POTUS...even if we have to do it while he is on road. I will be here late afternoon that Tuesday the day after Labor Day and will be prepared to push hard starting at that point. I would like to read it that day before it goes in....I realize this makes the decision a few days after Labor Day, but again I will pledge to push hard.

Reaction?