

WR-DA+A

To: Bruce Reed, Kathi Way and Jeremy Ben-Ami

From: Stan Herr

Date: May 27, 1994, 3:34 p.m.

Re: Minimizing Adverse Consequences of the Three-Year Time Limit on SSI recipients with substance addiction disorders as well as other disabilities

I share with you two similar comments on the above topic that appear to offer reasonable suggestions to avoid the risk of added homelessness and other ills.

I particularly draw your attention to pages 3 and 4 of the Bazelon Center letter and legitimate concerns about the dual diagnosed segment of this population. The shortage of drug treatment slots certainly should influence when the time limits start.

Thanks for your review of these materials.

Have a fine Memorial Day weekend.



Civil Rights and Human Dignity

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May 27, 1994

Mr. Stan Herr  
Domestic Policy Staff  
Old Executive Office Building  
Washington, D.C. 20500

Dear Stan:

Thank you for agreeing to read and circulate my analysis and recommendations of the substance abuse provisions in the SSA independent agency bills enacted by both Houses. I suggested to Susan Galbraith of the Legal Action Center that she also send you comments on the legislation. Her views and mine are in synch. I apologize for the length of the comments. I didn't have time to be brief.

Defining the current population.

To be awarded disability benefits because of "substance addiction disorders," SSI and DI applicants must meet one of the following standards:

- a. Adults must meet or equal another condition such as organic mental disorder, chronic depression syndrome, anxiety disorders, personality disorders or organ damage which is related to or results from alcoholism or drug abuse. (Section 12.09 of the Listing of Impairments); or
- b. Children applying for SSI must meet one of the standards in the psychoactive substance dependence disorder listing (Section 112.09 of the Listing of impairments); or
- c. Adults and children with drug- or alcohol-related impairments that differ from those described in the two Listings are given an individual functional assessment and may be granted benefits on the basis of substantially reduced functional capacity.

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SSA classifies applicants as a drug addict or alcoholic (DA&A) if the "drug addiction or alcoholism is a contributing factor material to the finding of . . . disability"—i.e. they would not be disabled were they cured of their addiction. Applicants found disabled because of a condition related to or resulting from substance abuse are not classified as DA&A.

Note that almost no adult in the DA&A category has only an addiction problem. They have other medically determinable physical or mental impairments which are not severe enough to qualify them on the basis of the Listing standard alone.

To receive benefits, SSI recipients who are DA&A (1) must participate in a substance abuse treatment program approved by SSA, if available, and (2) must have their benefits paid to a "representative payee" who is responsible for managing their finances.

The DA&A classification does not apply to the DI program.

Who is affected by the legislation:

- a. Both the House and Senate bills would extend the DA&A classification to the DI program and with it treatment and representative payee requirements. Under the current definition in the regulations, the extension might double the existing 79,000 DA&A recipients. *Generally, advocates believe extending the treatment requirement to DI program is salutary.* However, we acknowledge the extensive administrative burden on SSA in reviewing the files of the existing 3.2 million DI beneficiaries to determine DA&A status.
- b. The House bill would continue to apply the DA&A definition currently in the regulations, i.e. "contributing factor material to their disability. The Senate bill would expand the DA&A definition to cover SSI/DI recipients who are "in whole or in part" substance abusers. This is a major expansion of the DA&A population--perhaps tripling the number under SSI alone. It would require SSA to review all current SSI recipients to determine whether substance abuse is a factor--material or not--in their eligibility determination.

*We oppose the Senate enlargement of the DA&A population, principally because it puts people under the three year eligibility limit (discussed below) who have qualified under related impairments standards. Further, the administrative*

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burden placed on SSA would interfere with its ability to reduce the growing backlogs of initial determination cases. Finally, expanding the treatment requirement to additional people without regard to the availability of slots is a travesty.

- c. Both the House and Senate bills place a three year lifetime limit on eligibility for benefits. The limit applies regardless of whether the individual is in treatment, or whether treatment is available. The Senate bill applies to people who are in whole or in part substance abusers. The House applies the limit to people whose alcoholism is a contributing factor material to their disability. Under both provisions, people with other significant disabilities will be terminated from the roles without concern for their survival.

With both Houses having hastily enacted the three year limit, we recognize its elimination is unlikely. However, we urge consideration of modifications to lessen the impact on the most vulnerable.

- ◆ The intent of the three year limit is to encourage people whose drug or alcohol addiction is their primary disabling condition to get into treatment, get cured and get on with their lives as independent, working taxpayers. However, the net cast is overly broad. It includes mostly people dually diagnosed with other chronic physical and mental illnesses. For example, the time limits makes no allowances for people whose cognitive or mental impairments make them incapable of initiating or continuing treatment. These people are not the ones abusing the program. When terminated, they are most likely to become part of the expanding homeless population. *We recommend restricting the three year limit to those whose primary diagnosis is alcoholism or drug addiction.*
- ◆ Further, under 1000 children receive SSI by meeting the psychoactive drug dependency listing or the reduced functional capacity standard. Of all those in the DA&A classification, they have the best potential for rehabilitation through effective treatment. But it may take longer than three years. *We recommend children be exempted from the three year limit if they are actively in treatment and staying drug free.*

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- ◆ The White House plan for addressing drug addiction released in February, 1994, identifies 2.5 million addicts and a national shortage of 1.1 million treatment slots. Assuming three years is enough time to be "cured" when there isn't treatment available is a public policy hypocrisy. *We recommend the three year clock not start ticking until the individual has been placed in a treatment setting that meets current SSA requirements. The Referral and Monitoring Agency, required in each state by both bills, can be given the responsibility for determining when a legitimate treatment slot is available.*
- ◆ Termination of SSI or DI benefits almost invariably ends eligibility for Medicaid and Medicare. These are major payment sources of substance abuse treatment for people with disabilities. *We recommend that the legislation permit continuation of Medicaid and Medicare eligibility for people terminated from the cash programs solely because of the three year limit.*

These are our positions on the major elements of the two bills. On other provisions:

We support the House provision on proceeds from illegal activities; the provisions in both bills to establish RMAs in each state; the House provision on pro-rating lump sum payments (although this would have to be accompanied by a change in the rule requiring lump sum payments to be spent down to the resource limit within 6 months); and generally support the Senate provisions on representative payees. We oppose the House provisions establishing progressive sanctions for non-compliance unless the three year limit is modified as we recommend.

Thanks for reading and sharing this paper with others. If you or they want to discuss any of the recommendations further, please call.

Respectfully submitted,



Joseph Manes

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## MEMO

**To:** Stan Herr, Domestic Policy Council

**From:** Susan Galbraith

**RE:** SSI Payments for Individuals with Alcoholism and Drug Addictions

**Date:** May 27, 1994

Joe Manus from the Bazelon Center suggested that I send you these recommendations for improving the provisions in the Social Security Administrative Reform Act of 1994 related to restrictions on the payment of benefits to alcoholic and drug dependent individuals.

Please feel free to call me at 202-544-5478 if you have any questions or if you need more information.

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## RECOMMENDATIONS FOR IMPROVING THE PROVISIONS IN THE SOCIAL SECURITY ADMINISTRATIVE REFORM ACT OF 1994 RELATED TO RESTRICTIONS ON PAYMENT OF BENEFITS TO ALCOHOLIC AND DRUG DEPENDENT INDIVIDUALS 5/94

### (I) 36 Month Time Limit on Benefits

The most problematic provision in both bills is the time limitation on benefits to 36 months for individuals whose alcoholism or drug addiction is a contributing factor to their disability. This restriction is arbitrary and will not fix the problem of managing individuals disabled due to addictions. In fact, it will probably have the unintended consequence of eliminating the fragile safety net for this population, shifting the costs of this population to states, localities, the criminal justice system and the health care system and increasing the homeless population.

If time limits are applied, we recommend (a) a continuing disability review be conducted at 36 months to determine the individual's treatment and disability status, and (b) time limits apply only to individuals who are disabled due to their alcoholism or drug addiction not those dually diagnosed with other chronic physical and mental illnesses. If a continuing disability review is not acceptable, we recommend the following changes to improve the implementation of the 36-month termination policy:

(a) Establish that the 36 month time period begins when an individual is actually in treatment. Individuals should not be penalized because they have not been appropriately processed through the SSA system or they do not have access to drug and alcohol treatment services. In some localities, SSA field offices are having difficulty processing individuals in the DA&A program and referring them to the Referral and Monitoring Agency (RMA). When an individual reaches the RMA, treatment is often not readily available.

Thus, at a minimum, the 36 month time period should begin when the individual actually enters treatment. Since RMA's are responsible for monitoring whether individuals are in drug and alcohol treatment, they can simply provide the SSA field office with this date as part of its monitoring responsibility.

(b) Define treatment as the delivery of the appropriate level and intensity of care necessary for the DA&A population. Individuals on SSI and SSDI who are disabled due to their alcoholism or drug addiction are severely incapacitated. They have chronic physical and mental health problems, few social or family supports and little or no employment history. Most require comprehensive and long-term addictions

treatment to recover. Very few of these individuals can be adequately treated on a once or twice a week outpatient basis. It would not be appropriate or adequate to simply require that individuals in the DA&A population be in treatment. Treatment must address the multiple and complex needs of this population for it to be successful.

The House bill requires that the Secretary issue regulations: (1) defining appropriate treatment for alcoholics and drug addicts who are subject to required medical or psychological treatment; and (2) establish guidelines to be used to review and evaluate their compliance, including measures of their progress in treatment. These regulations are critical and should be in place before the 36-month time limit requirement is implemented. In addition, steps must be taken to ensure that appropriate services have been delivered to an individual before he or she is terminated.

(c) Require a continuing disability review at 36 months for individuals who are actively engaged in alcoholism or drug dependencies treatment. It makes no sense to arbitrarily cut off an individual's benefits if they are actively engaged in treatment and succeeding in staying drug free and rebuilding their lives. There must be a mechanism for evaluating individuals who are in recovery but not yet self supporting. It would be short-sided to cut off financial support for individuals who are committed to recovery and making progress. For example, individuals who are in methadone maintenance programs may be stabilized and in recovery at 36 months but in need of continuing support. If a continuing disability review at 36 months is considered administratively costly or burdensome, the RMA's should be given the authority to review an individual's treatment status and provide a recommendation for a continuation of benefits.

(d) Require that individuals be assessed for vocational rehabilitation services and that an individualized written rehabilitation plan be developed and implemented. The majority of individuals in the SSI program who are disabled due to their alcoholism or drug addiction have little or no work history. We know from both research and experience that these individuals will need both intensive treatment and vocational rehabilitation services in order to be self-supporting.

Therefore, it will be critical to provide vocational rehabilitation services for alcoholic and drug dependent individuals on SSI and SSDI if they are going to be successful in supporting themselves after the 36 month time limit expires. RMA's should be given the authority and resources to oversee this process.

(e) Continue health care coverage through Medicaid and Medicare until an individual is able to establish health benefits through another mechanism. The majority of alcoholic and drug dependent individuals receiving SSI and SSDI benefits have their health care covered through Medicaid or Medicare. Medicaid and Medicare coverage are essential for preserving access to health care services and ongoing medical care.

Indeed, the current health care reform discussion is motivated by the serious gaps in health insurance coverage for millions of Americans.

The House bill recognizes the importance of continuing health care coverage when an individual's benefits are suspended for failure to comply with the treatment requirement. We recommend extending Medicaid and Medicare coverage after benefits are terminated until an individual is covered through another health care plan.

**(II) Proceeds from Illegal Activities Demonstration of Substantial Gainful Activity**

**(a) Adopt the House language on proceeds constituting Substantial Gainful Activity.**

Both the Senate and House bills contain provisions that define how proceeds from illegal activity should be addressed. The Senate bill would substantially revise current law by defining any illegal activity as evidence of an individual's ability to engage in substantial gainful activity and thus be ineligible for benefits. This policy would go way beyond current practice by giving SSA the authority to determine whether an individual has engaged in illegal activity, without any adjudication of guilt or innocence, and then deny all benefits solely on the basis of the alleged illegal activity rather than take the proceeds into account in determining SGA. Furthermore, this policy contradicts the national goal of getting individuals into treatment in an effort to reduce future criminal activity.

The House bill adopts the current practice by granting the Secretary the authority to make eligibility determinations without regard to the legality of the activity.

We do support the provisions in both bills that establish RMA's in each state (and, in fact, this is already being implemented by the SSA), the provision in the House bill that would pro-rate lump sum payments and the provisions in both bills that would increase reliance on agencies rather than individuals as representative payees. While we do support extending the requirements for treatment involvement and a representative payee to the SSDI population, we are very concerned about the feasibility of providing treatment to this population without additional resources.

WR-DA-A

MEMORANDUM

TO: Bruce

FROM: Jofi

RE: SSI Benefits for Drug and Alcohol Addicts

DATE: May 18, 1994

The current system of Supplemental Security Income (SSI) benefits for drug and alcohol addicts (DA&As) is riddled with abuse and corruption. Eligibility for these benefits are determined like any other medical disability; a person who cannot work and whose physical/mental impairment will last for at least 12 months are awarded benefits. The number of DA&A addicts has sharply risen in recent years. Whereas only 4021 individuals received benefits under this program in December 1984, 72,137 individuals received benefits in September 1993. Several reasons explain the sharp rise. Foremost is the administrative change in coding cases under the SSI automation system; addiction cases which previously were filed under other disabilities now are attributed to their proper causes. In addition, doctors are now more willing to classify their patients as drug and alcohol addicts. Second, the SSI established outreach programs for the homeless and veterans populations; subsequently, more individuals from these chronic-problem populations applied for and received benefits.

20x in decade

One of the key problems in the DA&A program revolves around the issue of representative payees. DA&A's are not allowed to receive their payments directly; they must designate representative payees who will collect the payments for them. This requirement is intended to prevent DA&A's from spending their benefit payments on drugs or alcohol. The breakdown of representative payees (who serve on a voluntary basis) are as follows (out of the 78,000 overall DA&A recipients at the end of 1993):

- Parents: 22.6%
- Spouses: 6.5%
- Other Relatives: 34.1%
- Institutions (Hospitals, etc.): 1.9%
- Agencies: 3.9%
- Other: 33.7% (Churches, professionals, friends, etc.)

However, the relatives and friends of the recipients who serve as representative payees are often subject to intimidation, abuse, and even violence. In the face of such pressure, the representative payees often cave in the recipient, and allow him/her to take the money and spend it in whatever fashion.

When recipients are unable to find representative payees (a not uncommon occurrence, given that DA&A's are likely to be alienated from friends and family), the government simply places the recipient on suspension. At any given time, there are 1000 cases placed on suspension, out of the total pool of roughly 80,000 DA&A cases.

Another problem centers around the lack of available treatment services for DA&As. Under the SSI program, the recipients must receive treatment services if available in order to maintain eligibility in the program. But because there are not enough treatment spaces open around the nation, many DA&As receive their benefits without access to treatment services. According to Social Security Administration (SSA) records, only about 9% of the DA&As are in treatment, while 7% are not; due to poor data collection, the SSA simply does not know the treatment status of 84% of the population. This situation effectively encourages the continuation of the disability problem; for the recipients are unlikely to recover without the aid of treatment. At the end of 1993, only 18 states maintained referral and monitoring agencies (RMAs), which are government or private organizations that arrange treatment for the DA&As, monitor treatment participation, and report to SSA on treatment status. However, the SSA is currently establishing RMA monitoring in all 50 states and the District of Columbia.

The House Ways and Means Committee reported out a comprehensive bill entitled "The Social Security Administrative Reform Act of 1994" on May 4th. The bill includes specific reforms of the DA&A program:

- (1) Organizations, rather than family or friends, would be designated to serve as representative payees. This provision stems from a February 1994 GAO study, which found that organizational payees such as RMAs and treatment facilities exercise the greatest amount of control over the benefit payments.
- (2) Mandatory, progressive sanctions would be established for non-compliance with treatment requirements.
- (3) An overall time limit of three years would be placed on benefit payments.
- (4) Retroactive DA&A payments, now paid in the form of a lump sum, would instead be prorated and paid gradually over a period of months.

The bill was passed by a unanimous vote by the full House yesterday, according to Sherry Wood of the Ways and Means Committee (225-1025).

The Senate also passed a similar bill, the "Social Security Disability and Rehabilitation Act of 1994" on March 2nd. The primary provisions of this bill include:

- (1) Continuous monitoring, including random drug tests, of the DA&A recipient to ensure the individual is complying with the requirements of the program, including participation in a treatment program if available. Failure to comply may result in suspension of benefits.
- (2) Time limit of three years on receipt of benefits related to a drug or alcohol disability, unless the recipient can demonstrate a disability not related to his/her addiction problem.
- (3) Requirement that representative payees constitute an agency or instrumentality of a state, or a political subdivision of a state.

Because the House bill has been deemed a revenue raiser, the Senate must act on the House version of the bill. A conference committee is scheduled to meet; any action will only take place after the May recess. CONTACT: Margaret Malone  
Senate Finance Committee  
224-4515

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DATE: 5/17/94

TO: Goffe Joseph

FROM: Sherr Wood

FAX NUMBER: 456-7431

NUMBER OF PAGES FOLLOWING THIS COVER PAGE: 5

REMARKS: A copy of the Committee report can be secured from the House Documents office. The report no. is 103-506.

PLEASE CALL IF YOU DO NOT RECEIVE THE FOLLOWING TRANSMISSION IN ITS ENTIRETY.

X SUBCOMMITTEE ON HUMAN RESOURCES (202) 225-1025

\_\_\_\_\_ SUBCOMMITTEE ON SOCIAL SECURITY (202) 225-9263

FOR IMMEDIATE RELEASE  
THURSDAY, MAY 5, 1994

PRESS RELEASE #21-A  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
1102 LONGWORTH HOUSE OFFICE BLDG.  
WASHINGTON, D.C. 20515  
TELEPHONE: (202) 225-3625

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN,  
COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES,  
ANNOUNCES COMMITTEE ACTION ON H.R. 4277,  
THE "SOCIAL SECURITY ADMINISTRATIVE REFORM ACT OF 1994"

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The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, today announced that on Wednesday, May 4, 1994, the Committee, by voice vote, approved and ordered favorably reported to the House of Representatives H.R. 4277, the "Social Security Administrative Reform Act of 1994."

A summary of the legislation, as approved by the Committee, follows:

1. Establish the Social Security Administration (SSA) as an Independent Agency

SSA would be separated from the Department of Health and Human Services (HHS) and established as an independent agency with administrative responsibility for the Social Security and Supplemental Security Income (SSI) programs. The new agency would be governed by a full-time, bipartisan Board with staggered terms. An Executive Director, appointed by the Board, would manage the day-to-day operations of the agency.

2. Restrict Disability Insurance (DI) and SSI Disability Payments to Substance Abusers

Restrictions would be placed on DI and SSI disability payments to alcoholics and drug addicts, and safeguards would be established to insure that benefits, when paid, are not used to support an addiction. Specifically: (a) DI benefits to substance abusers would be paid to a representative payee, as is presently required in the SSI program; (b) organizations, rather than family members or friends, would be designated to serve as representative payees for DI and SSI substance abusers, unless the Secretary of HHS deemed this preference inappropriate; (c) substance abusers' eligibility for DI benefits would be conditioned on participation in treatment, if available, as is presently the case in the SSI program; (d) mandatory, progressive sanctions would be established for non-compliance with treatment for both DI and SSI substance abusers, and an overall time limit of three years would be placed on benefit payments to these individuals; (e) retroactive DI and SSI benefits to substance abusers, now paid in a lump sum, would instead be prorated and paid gradually over a period of months; and (g) SSA would be required to consider illegal, as well as legal, activity in determining whether an individual alleging disability is engaging in substantial gainful activity. (GSA)

3. Require Issuance of Physical Documents in the Form of Bonds, Notes, or Certificates to the Social Security Trust Funds

Bonds, notes, and certificates of indebtedness issued to the Social Security Trust Funds would be evidenced by physical documents. Each such document would state the principal amount, date of maturity, and interest rate of the obligation and pledge the full faith and credit of the U.S. to its repayment.

(MORE)

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4. Increase Explicitness of Requirement for Public Telephone Access to Local Social Security Offices

The existing requirement that SSA maintain public telephone access to local Social Security offices at the level generally available on September 30, 1989, would be made more explicit by requiring that the agency reestablish and maintain the same number of public inquiry telephone lines to the offices as were in service on that date, including telephone sets for the lines. Public access to SSA's 800 number would also be maintained at current levels.

5. Increase Social Security Exclusion for Election Workers

The Federal Insurance Contributions Act (FICA) tax exclusion for election workers would be raised from \$100 to \$1,000 annually, beginning on January 1, 1994, and would be indexed thereafter.

6. Permit Use of Social Security Account Numbers for Jury Selection

States and Federal District Courts would be permitted to use Social Security numbers, which have been collected for purposes permitted under current law, to eliminate duplicate names and names of convicted felons from jury source lists.

7. Authority for Optional Social Security Coverage of Police and Firefighters

The option currently available in 24 States for the State to cover under Social Security police and firefighters who participate in a public retirement system would be expanded to apply to all States.

8. Provide Limited Exemption from SECA for American Ministers Living and Working in Canada

Limited relief from Social Security taxes would be provided for American citizens who are ministers residing and working in Canada. The relief would be from double taxation (taxation under both the U.S. and Canadian social insurance systems on the same work) for years just prior to the U.S. totalization agreement with Canada, which eliminated such double taxation.

9. Totalize the Windfall Elimination Provision

Under current law, the U.S. can enter into "totalization" agreements with foreign countries in order to provide Social Security benefits to individuals who have split their careers between the two countries. The inappropriate application of the "windfall elimination" provision (which reduces benefits to an individual who also receives a pension from work not covered by the U.S. Social Security system) in certain totalized cases would be repealed.

10. Exclude Military Reservists from Application of the

Government Pension Offset and the Windfall Elimination  
Provision

Military retirees who receive a pension based on inactive duty between 1956 and 1988 would be exempted from the "government pension offset" and the windfall elimination provision, thus conforming their treatment with that of other military retirees.

(MORE)

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**11. Repeal Facility-of-Payment Provision**

When a dependent beneficiary has benefits withheld (e.g. due to the earnings test), the withheld benefits would be redistributed and paid directly to the remaining beneficiaries, rather than being paid to the working beneficiary, with the understanding that they were for the use of the other dependent beneficiaries under the facility-of-payment provision of current law.

**12. Application of Subsequent Entitlement Guarantee to Maximum Family Benefits**

A worker who received disability benefits for a period of time, then returned to work, and subsequently became reentitled to benefits would be guaranteed the maximum family benefit applicable during the period of his or her earlier entitlement to disability benefits.

**13. Disclosure of Social Security Administration Information for Epidemiological Research**

SSA would be permitted to disclose, subject to safeguards, whether its records showed an individual to be alive or deceased for epidemiological research purposes, if the information could reasonably be expected to contribute to the national health interest.

**14. Prohibit Misuse of Symbols, Emblems, or Names Related to the Social Security Administration, the Health Care Financing Administration (HCFA) and the Treasury Department**

The civil monetary penalties against misusing the names and symbols of SSA and HCFA would be strengthened by including in the protections the names and symbols of HHS, eliminating the annual \$100,000 cap on civil monetary penalties, providing that a disclaimer on the material is no defense against an action, and making other improvements.

The use of Treasury and Internal Revenue Service (IRS) related words, letters, symbols, and emblems in a manner that could reasonably be construed as conveying a false impression that an activity is connected with Treasury, IRS, or any subsidiary agencies would be prohibited. Violations would be subject to civil and criminal penalties.

**15. Increase Penalties for Unauthorized Disclosure of Social Security Information**

Disclosure of confidential information by the employees of HHS from Social Security files without authorization would be made a felony, punishable by a fine not exceeding \$10,000, or imprisonment not exceeding five years, or both.

**16. Coordinate Dates for Filing Annual Earnings Reports**

The authorized extension of time for filing the required annual report of earnings by a Social Security beneficiary would be increased from three months to four months.

17. Extend Disability Insurance Program Demonstration Projects

The authority of the Secretary of HHS to conduct work-incentive demonstration projects would be extended to June 10, 1996.

(MORE)

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18. Authorize Cross Matching of Social Security Account Numbers and Employer Identification Numbers of the Department of Agriculture

The Department of Agriculture would be permitted to share its list of the Social Security numbers and employer identification numbers of owners and officers of stores which redeem food stamps, with other Federal agencies for purposes of investigating food stamp fraud and violations of other Federal laws.

19. Extend on Permanent Basis General Fund Transfer to Railroad Retirement Account

The transfer of proceeds from the income taxation of Railroad Retirement Tier 2 benefits from the General Fund of the Treasury to the Railroad Retirement Account would be made permanent.

20. Authorize Use of the Social Security Number as the Claim Identification Number for Workers' Compensation Claims Filed with the Department of Labor

The Department of Labor would be permitted to use the Social Security number as the claim identification number for Workers' Compensation claims in order to prevent the payment of duplicate and fraudulent claims.

21. Retirement Eligibility for Federal Employees Transferred to International Organizations

Federal Government employees participating in a retirement program which provides Social Security coverage would be permitted to continue to pay into Social Security while on temporary assignment to an international organization.

22. Extend the FICA Tax Exemption to Individuals who Enter the U.S. under a Visa Issued Under Section 101 of the Immigration and Nationality Act

The proposal would reinstate the exemption from FICA taxes for individuals participating in short-term cultural exchanges who were inadvertently eliminated due to the recategorization of Visas under the Immigration and Nationality Act of 1990.

23. Study of Rising Cost of Disability Insurance Benefits

By December 31, 1994, the Secretary of HHS would be required to complete a study of the underlying social, economic, demographic, programmatic, and other trends responsible for recent increases in DI program costs.

24. Commission on Childhood Disability

The Secretary of HHS would be directed to appoint a Commission on the Evaluation of Disability in Children to conduct a study, in consultation with the National Academy of Sciences, on the effect of the current SSI definition of disability as it

applies to children under the age of 18 and their receipt of services, including the effect of using an alternative definition. The study would be due on November 30, 1995.

25. Disregard Deemed Income and Resources of Ineligible Spouse When Determining Continued Eligibility under Section 1619(b)

An SSI recipient benefiting from the section 1619(b) work incentives would be allowed to retain Medicaid eligibility through disregarding his or her ineligible spouse's net income up to twice

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the eligible spouse's "threshold amount." The "threshold amount" would be the eligible spouse's personal average Medicaid cost, if available, or the average State Medicaid cost.

26. Plans for Achieving Self-Support (PASS) Not Disapproved Within 60 days to be Deemed Approved

PASS under the SSI program would be deemed to be approved within 60 days of application for PASS if SSA has not acted. SSA could disapprove the PASS prospectively if it has been automatically approved under this provision.

27. Expansion of PASS

PASS would be expanded to include housing goals in a five-year demonstration project.

28. Regulations Regarding Completion of PASS

Under current regulations, plans for achieving self-sufficiency cannot exceed four years. The provision would require SSA to take into account individual needs in determining the time limit.

29. Treatment of Certain Grant, Scholarship, or Fellowship Income as Earned Income

Any grant, scholarship, or fellowship income, not used to pay for tuition and fees, would be treated as earned income.

30. SSI Eligibility for Students Temporarily Abroad to Fulfill Degree Requirements

SSI recipients who are fulfilling an educational requirement which will result in improved employment potential would be exempt from the 30-day time limit on persons living outside the United States.

31. Disregard of Cost-of-Living Increases for Continued Eligibility for Work Incentives

The current SSI law protection against the loss of Medicaid eligibility because of a cost-of-living increase in Social Security benefits would be applied to SSI recipients who are working and using the benefits of the section 1619(b) work incentives.

32. Expand the Authority of SSA to Prevent, Detect, and Terminate Fraudulent Claims for SSI Benefits

Additional authority and clarification of existing authority would be provided to SSA to prevent, detect, and terminate the payment of benefits to ineligible recipients, and to impose penalties on middlemen and medical professionals who defraud the SSI program.

33. Disability Reviews for Children Reaching 18 Years Old

SSA would be required to reevaluate under adult disability criteria the eligibility of children receiving SSI after they reach 18 years old and before they are 19 years old.

34. Technical Corrections

Technical errors would be corrected.

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Independen

103D CONGRESS  
2D SESSION

S. \_\_\_\_\_

This bill passed the floor

IN THE SENATE OF THE UNITED STATES

Mr. COHEN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

Get back from May recess

**A BILL**

To amend title II of the Social Security Act to institute certain reforms relating to the provision of disability insurance benefits based on substance abuse and relating to representative payees, and for other purposes.

Revenue source

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Social Security Disabil-  
5 ity and Rehabilitation Act of 1994".

6 **SEC. 2. REFORM OF MONTHLY INSURANCE BENEFITS**

7 **BASED ON DISABILITY INVOLVING SUB-**  
8 **STANCE ABUSE.**

9 (a) SOCIAL SECURITY DISABILITY INSURANCE.—

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1 (1) IN GENERAL.—Section 223 of the Social  
2 Security Act (42 U.S.C. 423) is amended by adding  
3 at the end the following new subsection:

4 “Limitation on Payment of Benefits by Reason of  
5 Substance Abuse

6 “(j)(1)(A) Notwithstanding any other provision of  
7 this title, no individual whose disability is based in whole  
8 or in part on a medical determination that the individual  
9 is a drug addict or alcoholic shall be entitled to benefits  
10 under this title based on such disability with respect to  
11 any month, unless such individual—

12 “(i) is undergoing, or on a waiting list for, any  
13 medical or psychological treatment that may be ap-  
14 propriate for such individual’s condition as a drug  
15 addict or alcoholic (as the case may be) and for the  
16 stage of such individual’s rehabilitation at an insti-  
17 tution or facility approved for purposes of this para-  
18 graph by the Secretary (so long as access to such  
19 treatment is reasonably available, as determined by  
20 the Secretary), and

21 “(ii) demonstrates in such manner as the Sec-  
22 retary requires, including at a continuing disability  
23 review not later than one year after such determina-  
24 tion, that such individual is complying with the  
25 terms, conditions, and requirements of such treat-

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1       ment and with the requirements imposed by the Sec-  
2       retary under subparagraph (B).

3       “(B) The Secretary shall provide for the monitoring  
4       and testing of all individuals who are receiving benefits  
5       under this title and who as a condition of such benefits  
6       are required to be undergoing treatment and complying  
7       with the terms, conditions, and requirements thereof as  
8       described in subparagraph (A), in order to assure such  
9       compliance and to determine the extent to which the impo-  
10      sition of such requirements is contributing to the achieve-  
11      ment of the purposes of this title. The Secretary may re-  
12      tain jurisdiction in the case of a hearing before the Sec-  
13      retary under this title to the extent the Secretary deter-  
14      mines necessary to carry out the preceding sentence. The  
15      Secretary shall annually submit to the Congress a full and  
16      complete report on the Secretary's activities under this  
17      paragraph.

18      “(C) The representative payee and the referral and  
19      monitoring agency for any individual described in subpara-  
20      graph (A) shall report to the Secretary any noncompliance  
21      with the terms, conditions, and requirements of the treat-  
22      ment described in subparagraph (A) and with the require-  
23      ments imposed by the Secretary under subparagraph (B).

24      “(D)(i) If the Secretary finds that an individual is  
25      not complying with the terms, conditions, and require-

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1 ments of the treatment described in subparagraph (A), or  
2 with the requirements imposed by the Secretary under  
3 subparagraph (B), or both, the Secretary, in lieu of termi-  
4 nation, may suspend such individual's benefits under this  
5 title until compliance has been reestablished, including  
6 compliance with any additional requirements determined  
7 to be necessary by the Secretary.

8       “(ii) Any period of suspension under clause (i) shall  
9 be taken into account in determining any 24-month period  
10 described in subparagraph (E) and shall not be taken into  
11 account in determining the 36-month period described in  
12 such subparagraph.

13       “(E)(i) Except as provided in clause (ii), no individ-  
14 ual described in subparagraph (A) shall be entitled to ben-  
15 efits under this title for any month following the 24-month  
16 period beginning with the determination of the disability  
17 described in such subparagraph.

18       “(ii) If at the end of the 24-month period described  
19 in clause (i), the individual furnishes evidence in accord-  
20 ance with subsection (d)(5) that the individual continues  
21 to be under a disability based in whole or in part on a  
22 medical determination that the individual is a drug addict  
23 or alcoholic, such individual shall continue to be entitled  
24 to benefits under this title based on such disability.

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1           “(iii) Subject to clause (iv), if such an individual con-  
2 tinues to be entitled to such benefits for an additional 24-  
3 month period following a determination under clause (ii),  
4 clauses (i) and (ii) shall apply with regard to any further  
5 entitlement to such benefits following the end of such ad-  
6 ditional period.

7           “(iv) In no event shall such an individual be entitled  
8 to benefits under this title for more than a total of 36  
9 months, unless upon the termination of the 36th month  
10 such individual furnishes evidence in accordance with sub-  
11 section (d)(5) that the individual is under a disability  
12 which is not related in part to a medical determination  
13 that the individual is a drug addict or alcoholic.

14           “(2)(A) Any benefits under this title payable to any  
15 individual referred to in paragraph (1), including any ben-  
16 efits payable in a lump sum amount, shall be payable only  
17 pursuant to a certification of such payment to a qualified  
18 organization acting as a representative payee of such indi-  
19 vidual pursuant to section 205(j).

20           “(B) For purposes of subparagraph (A) and section  
21 205(j)(4), the term ‘qualified organization’—

22           “(i) shall have the meaning given such term by  
23 section 205(j)(4)(B), and

24           “(ii) shall mean an agency or instrumentality of  
25 a State or a political subdivision of a State.

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1       “(3) Monthly insurance benefits under this title  
2 which would be payable to any individual (other than the  
3 disabled individual to whom benefits are not payable by  
4 reason of this subsection) on the basis of the wages and  
5 self-employment income of such a disabled individual but  
6 for the provisions of paragraph (1), shall be payable as  
7 though such disabled individual were receiving such bene-  
8 fits which are not payable under this subsection.”

9       (2) CONFORMING AMENDMENTS.—

10       (A) Section 205(j)(1) of such Act (42  
11 U.S.C. 405(j)(1)) is amended by inserting “, or  
12 in the case of any individual referred to in sec-  
13 tion 223(j)(1)(A)” after “thereby”.

14       (B) Section 205(j)(2)(D)(ii)(II) of such  
15 Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended  
16 by striking “legally incompetent or under the  
17 age of 15” and inserting “legally incompetent,  
18 under the age of 15, or a drug addict or alco-  
19 holic referred to in section 223(j)(1)(A)”.

20       (b) SUPPLEMENTAL SECURITY INCOME.—Paragraph  
21 (3) of section 1611(e) of the Social Security Act (42  
22 U.S.C. 1382(e)) is amended to read as follows:

23       “(3)(A)(i) No person who is an aged, blind, or dis-  
24 abled individual solely by reason of disability (as deter-  
25 mined under section 1614(a)(3)) shall be an eligible indi-

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1 vidual or eligible spouse for purposes of this title with re-  
2 spect to any month if such individual's disability is based  
3 in whole or in part on a medical determination that the  
4 individual is a drug addict or alcoholic, unless such  
5 individual—

6           “(I) is undergoing, or on a waiting list for, any  
7           medical or psychological treatment that may be ap-  
8           propriate for such individual's condition as a drug  
9           addict or alcoholic (as the case may be) and for the  
10          stage of such individual's rehabilitation at an insti-  
11          tution or facility approved for purposes of this para-  
12          graph by the Secretary (so long as access to such  
13          treatment is reasonably available, as determined by  
14          the Secretary), and

15           “(II) demonstrates in such manner as the Sec-  
16          retary requires, including at a continuing disability  
17          review not later than one year after such determina-  
18          tion, that such individual is complying with the  
19          terms, conditions, and requirements of such treat-  
20          ment and with the requirements imposed by the Sec-  
21          retary under clause (ii).

22           “(ii) The Secretary shall provide for the monitoring  
23          and testing of all individuals who are receiving benefits  
24          under this title and who as a condition of such benefits  
25          are required to be undergoing treatment and complying

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1 with the terms, conditions, and requirements thereof as  
2 described in clause (i), in order to assure such compliance  
3 and to determine the extent to which the imposition of  
4 such requirements is contributing to the achievement of  
5 the purposes of this title. The Secretary may retain juris-  
6 diction in the case of a hearing before the Secretary under  
7 this title to the extent the Secretary determines necessary  
8 to carry out the preceding sentence. The Secretary shall  
9 annually submit to the Congress a full and complete report  
10 on the Secretary's activities under this subparagraph.

11       “(iii) The representative payee and the referral and  
12 monitoring agency for any individual described in clause  
13 (i) shall report to the Secretary any noncompliance with  
14 the terms, conditions, and requirements of the treatment  
15 described in clause (i) and with the requirements imposed  
16 by the Secretary under clause (ii).

17       “(iv)(I) If the Secretary finds that an individual is  
18 not complying with the terms, conditions, and require-  
19 ments of the treatment described in clause (i), or with the  
20 requirements imposed by the Secretary under clause (ii),  
21 or both, the Secretary, in lieu of termination, may suspend  
22 such individual's benefits under this title until compliance  
23 has been reestablished, including compliance with any ad-  
24 ditional requirements determined to be necessary by the  
25 Secretary.

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1       “(II) Any period of suspension under subclause (I)  
2 shall be taken into account in determining any 24-month  
3 period described in clause (v) and shall not be taken into  
4 account in determining the 36-month period described in  
5 such clause.

6       “(v)(I) Except as provided in subclause (II), no indi-  
7 vidual described in clause (i) shall be entitled to benefits  
8 under this title for any month following the 24-month pe-  
9 riod beginning with the determination of the disability de-  
10 scribed in such clause.

11       “(II) If at the end of the 24-month period described  
12 in subclause (I), the individual furnishes evidence in ac-  
13 cordance with section 223(d)(5) that the individual contin-  
14 ues to be under a disability based in whole on a medical  
15 determination that the individual is a drug addict or alco-  
16 holic, such individual shall be entitled to benefits under  
17 this title based on such disability for no more than an ad-  
18 ditional 36 months.

19       “(III) Subject to subclause (IV), if such an individual  
20 continues to be entitled to such benefits for an additional  
21 24-month period following a determination under  
22 subclause (II), subclauses (I) and (II) shall apply with re-  
23 gard to any further entitlement to such benefits following  
24 the end of such additional period.

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1       “(IV) In no event shall such an individual be entitled  
2 to benefits under this title for more than a total of 36  
3 months, unless upon the termination of the 36th month  
4 such individual furnishes evidence in accordance with sec-  
5 tion 223(d)(5) that the individual is under a disability  
6 which is not related in part to a medical determination  
7 that the individual is a drug addict or alcoholic.

8       “(B)(i) Any benefits under this title payable to any  
9 individual referred to in subparagraph (A), including any  
10 benefits payable in a lump sum amount, shall be payable  
11 only pursuant to a certification of such payment to a  
12 qualified organization acting as a representative payee of  
13 such individual pursuant to section 1631(a)(2)(A)(ii).

14       “(ii) For purposes of clause (i) and section  
15 1631(a)(2)(D), the term ‘qualified organization’—

16               “(I) shall have the meaning given such term by  
17 section 1631(a)(2)(D)(ii), and

18               “(II) shall mean an agency or instrumentality  
19 of a State or a political subdivision of a State.”

20       (c) EFFECTIVE DATES; AUTHORIZATIONS.—

21               (1) IN GENERAL.—Except as provided in para-  
22 graph (2), the amendments made by this section  
23 shall apply to benefits payable for determinations of  
24 disability made 90 or more days after the date of  
25 the enactment of this Act.

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## 1 (2) CURRENT DETERMINATIONS.—

2 (A) IN GENERAL.—With respect to any in-  
3 dividual described in subparagraph (B), the  
4 Secretary of Health and Human Services shall  
5 provide during the 3-year period beginning after  
6 the date of the enactment of this Act for the  
7 application of the amendments made by this  
8 section to such individual with the time periods  
9 described in such amendments to begin upon  
10 such application.

11 (B) INDIVIDUAL DESCRIBED.—An individ-  
12 ual is described in this subparagraph if such in-  
13 dividual is entitled to benefits under title II or  
14 XVI of the Social Security Act based on a dis-  
15 ability determined before the date described in  
16 paragraph (1) to be based in whole or in part  
17 on a medical determination that the individual  
18 is a drug addict or alcoholic.

## 19 (3) AUTHORIZATION OF APPROPRIATIONS.—

20 There are authorized to be appropriated such sums  
21 as may be necessary to carry out the purposes of the  
22 provisions of, and the amendments made by, this  
23 section.

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**1 SEC. 3. PRIORITY OF TREATMENT.**

2 The Secretary of Health and Human Services,  
3 through the Administrator of the Substance Abuse and  
4 Mental Health Services Administration, shall assure that  
5 every individual receiving disability benefits under title II  
6 or XVI of the Social Security Act based in whole or in  
7 part on a medical determination that the individual is a  
8 drug addict or alcoholic be given high priority for treat-  
9 ment through entities supported by the various States  
10 through any substance abuse block grant authorized under  
11 law.

**12 SEC. 4. ESTABLISHMENT OF REFERRAL MONITORING  
13 AGENCIES REQUIRED IN ALL STATES.**

14 The Secretary of Health and Human Services shall,  
15 within 1 year of the date of the enactment of this Act,  
16 provide for the establishment of referral and monitoring  
17 agencies for each State for the purpose of carrying out  
18 the treatment requirements under sections 223(j)(1) and  
19 1611(e)(3)(A) of the Social Security Act (42 U.S.C.  
20 423(j)(1) and 1382(e)(3)(A)).

**21 SEC. 5. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES  
22 CONSTITUTE SUBSTANTIAL GAINFUL EM-  
23 PLOYMENT.**

24 (a) SOCIAL SECURITY DISABILITY INSURANCE.—  
25 Section 223(d)(4) of the Social Security Act (42 U.S.C.  
26 423(d)(4)) is amended by inserting the following after the

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1 first sentence: "If an individual engages in a criminal ac-  
2 tivity to support substance abuse, any proceeds derived  
3 from such activity shall demonstrate such individual's abil-  
4 ity to engage in substantial gainful activity."

5 (b) SUPPLEMENTAL SECURITY INCOME.—Section  
6 1614(a)(3)(D) of the Social Security Act (42 U.S.C.  
7 1382(a)(3)(D)) is amended by inserting the following  
8 after the first sentence: "If an individual engages in a  
9 criminal activity to support substance abuse, any proceeds  
10 derived from such activity shall demonstrate such individ-  
11 ual's ability to engage in substantial gainful activity."

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to disability determinations con-  
14 ducted on or after the date of the enactment of this Act.

15 **SEC. 8. CONSISTENT PENALTY PROVISIONS FOR SSDI AND**  
16 **SSI PROGRAMS.**

17 (a) FELONY PENALTIES FOR FRAUD.—

18 *J* (1) IN GENERAL.—Subsection (a) of section  
19 1631 of the Social Security Act (42 U.S.C. 1383a)  
20 is amended by striking "shall be guilty of a mis-  
21 demeanor and upon conviction thereof shall be fined  
22 not more than \$1,000 or imprisoned for not more  
23 than one year, or both" and inserting "shall be  
24 guilty of a felony and upon conviction thereof shall

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1 be fined under title 18, United States Code, or im-  
2 prisoned for not more than five years, or both".

3 (2) REPRESENTATIVE PAYEES.—

4 (A) SSDI.—Subsections (b) and (c) of sec-  
5 tion 208 of such Act (42 U.S.C. 408) are  
6 amended to read as follows:

7 "(b)(1) Any person or other entity who is convicted  
8 of a violation of any of the provisions of this section, if  
9 such violation is committed by such person or entity in  
10 his role as, or in applying to become, a certified payee  
11 under section 205(j) on behalf of another individual (other  
12 than such person's spouse or an entity described in section  
13 223(j)(2)(B)(ii)), shall be guilty of a felony and upon con-  
14 viction thereof shall be fined under title 18, United States  
15 Code, or imprisoned for not more than five years, or both.

16 "(2) In any case in which the court determines that  
17 a violation described in paragraph (1) includes a willful  
18 misuse of funds by such person or entity, the court may  
19 also require that full or partial restitution of such funds  
20 be made to the individual for whom such person or entity  
21 was the certified payee.

22 "(3) Any person or entity convicted of a felony under  
23 this section or under section 1632(b) may not be certified  
24 as a payee under section 205(j).

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1           “(c) For the purpose of subsection (a)(7), the terms  
2 ‘social security number’ and ‘social security account num-  
3 ber’ mean such numbers as are assigned by the Secretary  
4 under section 205(c)(2) whether or not, in actual use, such  
5 numbers are called social security numbers.”

6           (B) SSI.—Subsection (b)(1) of section  
7 1632 of such Act (42 U.S.C. 1383a) is amend-  
8 ed by striking “(other than such person’s  
9 spouse)” and all that follows through the period  
10 and inserting “(other than such person’s spouse  
11 or an entity described in section  
12 1611(e)(3)(B)(ii)(II)), shall be guilty of a fel-  
13 ony and upon conviction thereof shall be fined  
14 under title 18, United States Code, or impris-  
15 oned for not more than five years, or both.”

16           (b) CIVIL ADMINISTRATIVE PENALTIES.—

17           (1) SSDI.—Section 208 of the Social Security  
18 Act (42 U.S.C. 408) is amended by adding at the  
19 end the following new subsections:

20           “(e) For administrative penalties for false claims and  
21 statements with respect to which an individual or other  
22 entity knows or has reason to know such falsity, see chap-  
23 ter 38 of title 31, United States Code.

24           “(f) In the case of the second or subsequent imposi-  
25 tion of an administrative or criminal penalty on any per-

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1 son or other entity under this section, the Secretary may  
2 exclude such person or entity from participation in any  
3 program under this title and titles V, XVI, XVIII, and  
4 XX, and may direct that such person or entity be excluded  
5 from any State health care program (as defined in section  
6 1128(h)) and any other Federal program as provided by  
7 law.”

8 (2) SSI.—

9 (A) IN GENERAL.—Section 1632 of such  
10 Act (42 U.S.C. 1383a) is amended by adding at  
11 the end the following new subsections:

12 “(c) For administrative penalties for false claims and  
13 statements with respect to which an individual or other  
14 entity knows or has reason to know such falsity, see chap-  
15 ter 38 of title 31, United States Code.

16 “(d) In the case of the second or subsequent imposi-  
17 tion of an administrative or criminal penalty on any per-  
18 son or other entity under this section, the Secretary may  
19 exclude such person or entity from participation in any  
20 program under this title and titles II, V, XVIII, and XX,  
21 and may direct that such person or entity be excluded  
22 from any State health care program (as defined in section  
23 1128(h)) and any other Federal program as provided by  
24 law.”

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1 (B) CONFORMING AMENDMENT.—The  
2 heading for section 1632 of such Act (42  
3 U.S.C. 1383a) is amended by striking “FOR  
4 FRAUD”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall be effective on or after the date of the  
7 enactment of this Act.

GAO

Testimony

Before the Subcommittees on Social Security  
and Human Resources  
Committee on Ways and Means  
House of Representatives

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For Release on Delivery  
Expected at 11 a.m., EST  
Thursday, February 10, 1994

SOCIAL SECURITY

Disability Benefits for Drug  
Addicts and Alcoholics Are  
Out of Control

Statement of Jane L. Ross  
Associate Director, Health, Education and Human Services  
Division



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House of Representatives  
Washington, D.C. 20515

MEMORANDUM

12/15/93

Bruce,

Rep. Kleczka is extremely interested in including the SSI program in the President's welfare reform proposal. I have attached relevant information for you and will give you a call to follow up.

Best wishes,

Orlando Knauss



ORLANDO KNAUSS  
Legislative Director

GERALD D. KLEczKA  
Member of Congress  
4th District, Wisconsin

2301 Rayburn Building  
Washington, D.C. 20515  
(202) 225-4572

GERALD D. KLECZKA  
4TH DISTRICT, WISCONSIN

COMMITTEES:  
WAYS AND MEANS  
HOUSE ADMINISTRATION  
DEMOCRATIC STEERING  
AND POLICY



Congress of the United States  
House of Representatives

December 8, 1993

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WR-DA+A

The Honorable Donna E. Shalala  
Secretary  
Dept. of Health and Human Services  
200 Independence Avenue SW Rm 614-G  
Washington, D.C. 20201-0004

Dear Secretary Shalala:

As you may know, I have been active in seeking reform of the Supplemental Security Income program (SSI). In light of Wisconsin's history of innovation and interest in welfare programs, this program is of particular concern to me and my constituents.

I appreciate the positive role that the SSI program can have in the lives of deserving recipients. SSI benefits are often used to substantially increase the quality of life for low-income, disabled Americans who would be severely affected by a loss of these payments.

However, I am greatly concerned by the growing reports of abuse of benefits by certain recipients. It is my desire to see the SSI program reformed to ensure that it is properly used for its intended purposes. Today, I am writing to urge you to investigate the growing allegations of problems with the SSI program as it relates to drug and alcohol-addicted benefit recipients. As I am sure you are aware, this facet of SSI appears to be open to particularly egregious abuse.

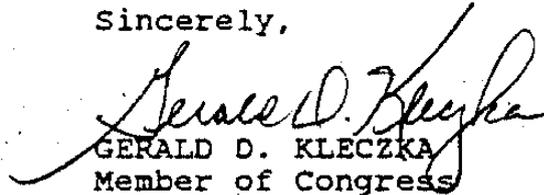
I have heard reports of SSI benefits being used by substance abusers to support their addictions or being misused by representative payees. Also, it appears that some of the program's current procedures may provide a disincentive for seeking treatment, as successful treatment can lead to a loss of benefits.

I urge you to investigate the procedure and regulations for the payment of SSI benefits to substance abusers. A better system is necessary to ensure that these monies are used properly and administered correctly by the designated payee.

The Honorable Donna E. Shalala  
December 8, 1993  
Page 2

As a member of the House Ways and Means Committee, I look forward to working with you as we seek to reform our nation's welfare programs and to achieve the President's pledge to "end welfare as we know it."

Sincerely,



GERALD D. KLECZKA  
Member of Congress

GDK/dr

# SSI reforms are sought by Kleczka

## Calls program rife with abuse

BY JEFF COLE  
Sentinel staff writer

*MS Page 1* 12/9/93

The federal Supplemental Security Income program is so rife with abuses that radical changes are needed, U.S. Rep. Gerald D. Kleczka (D-Wis.) said Wednesday.

In a telephone interview, Kleczka said revelations that some drug addicts and alcoholics use their SSI payments to further their habits are an example of the program's problems.

Kleczka Wednesday asked Donna E. Shalala, secretary of health and human services, to investigate the reported abuses.

"Taxpayers should not have to pick up the tab so drug addicts and alcoholics can continue to abuse themselves and the system," Kleczka said. "This program should help addicts kick their habits, not prolong them."

Kleczka emphasized that he believes SSI is an important program. It shouldn't be abolished, he said.

"It is a good idea to provide some supplemental income to the blind, the disabled, the aged," he said.

In Wisconsin, 2,544 people who are being treated for either alcoholism or drug addiction receive supplemental security income, a spokesman for the Social Security Administration said.

In all, 102,101 people in Wisconsin receive SSI payments, the spokesman said. Of that number, about 80,000 are disabled and 20,000 are elderly, the spokesman said.

The most common reason for receiving the payment is a mental disorder. The second most common is a nervous system problem.

"Nationally, only about 1% of the people who receive SSI are either drug addicts or alcoholics," the spokesman said.

The average federal SSI payment is \$405 a month, the spokesman said. That means about \$1 million in federal money annually is paid to alcoholics and drug addicts in Wisconsin, the spokesman said.

The State of Wisconsin supplements the federal payment by about \$100 a month on average. That means the average annual SSI recipient in the state gets about \$8,000.

Kleczka said he has received reports of children being coached how to obtain SSI payments. He said he knows of one family that collected almost \$18,000 a year in SSI money.

The program's safeguards can be subverted, he said. For instance, an alcoholic will be adjudged incompetent and a representative will be appointed. But the representative may be a friend or family member who turns the money over to the addict.

One solution could involve providing vouchers instead of cash, Kleczka said.

From the Milwaukee Sentinel  
12/09/93

## Commentary

# SSI for children: We can do better

By Rep. Gerald D. Kleczka

There's been a lot of talk lately about streamlining federal programs and that's a good sign. Unfortunately, not enough has been said about the Supplemental Security Income (SSI) program for disabled children.

Well intentioned as it is, this Social Security program is just not working. The SSI benefit is supposed to help children cope with severe disabilities but instead it has turned into a frequent target of abuse.

Making matters worse, the Social Security Administration (SSA) is so overwhelmed with applicants that it cannot adequately monitor the program. The result is that not only is SSI failing many of the children it aims to serve, but it is also cheating taxpayers.

The time has come to take a long, hard look at finding a way we can meet the needs of poor, disabled children without wasting tax dollars.

Now, I am not for one moment suggesting that the government's role is not to care for those children with disabilities who need our help. I firmly believe it is. But I question whether the program in its current form, despite its noble goals, is appropriate and whether it cannot be modified or replaced.

To help get people talking about this issue, I recently testified before the House Ways and Means Human Resources Subcommittee. I told the subcommittee that one of the prime problems with SSI is that under current guidelines, parents don't necessarily have to spend the benefits on costs arising from



Gerald D. Kleczka

the child's disability. As a result, we're hearing many reports of parents spending SSI money on frivolous items instead of on the children's medical needs.

One particularly startling case is that of a local child whose family used a lump-sum payment of \$18,000 to buy a car, new furniture and take an expensive vacation. They have since been evicted from their home because they did not pay their rent for six months.

Another problem with the system's current set up is that a disturbing number of parents are refusing to allow their children treatment, fearing that improvements in their condition will cost them benefits. In one blatant example, a counselor quoted parents of a child with attention deficit disorder as saying, "We don't want medication, that will screw up his SSI."

Adding to these flaws is the lack of a cap on the amount of SSI benefits one family can receive. Some Wisconsin fami-

lies take advantage of the state's high benefit levels. Multiple recipients can get more than \$40,000 per year in tax-free benefits in addition to Medicaid coverage.

Then there is the recent explosion of SSI applications that occurred after a 1990 Supreme Court decision changed the criteria for receiving benefits. From December 1989 to December 1992, the number of children receiving SSI payments nationally jumped from 293,320 to 614,190, a 109 percent increase.

In Wisconsin, the number has grown from 6,010 to 14,070, a 134 percent increase. In terms of money, the Social Security Administration has spent \$2 billion on retroactive payments to some 100,000 children since the new criteria went into effect.

The rapid growth has created a steep backlog of cases and severely limited SSI's ability to prevent abuse from happening. In Wisconsin, most suspect cases have not been reviewed for disability determination in five years.

Again, let me stress that I am against cutting services to SSI children. I just believe we can and must improve the program. After I have examined a report pending from the Department of Health and Human Services Inspector General, I will consider offering legislation that will better meet the needs of children on SSI with less room for abuse.

The bottom line is there has to be a way to take care of our poor, disabled children without leaving the government open to abuse and fraud.

# Fraud seen in SSI for children

## Families abuse aid, Klecza testifies

By KAREN J. COHEN  
States News Service

Washington, D.C. — Giving disabled children cash benefits through the Supplemental Security Income program has fostered cheating and lying by unscrupulous families, Rep. Gerald D. Klecza (D-Wis.) told a House panel Thursday.

Klecza, testifying before the House Ways and Means Human Resources Subcommittee, said he has doubts about whether the federal program aimed at keeping the low-income elderly and disabled out of poverty, is the right approach for disabled children.

"In most states, including Wisconsin, child SSI recipients also qualify for Medicaid," he said, adding that Medicaid covers medical and rehabilitation costs for children with disabilities.

"The cost of raising a child with a disability is not significantly different than the cost of raising a child without one," Klecza told the subcommittee. "We need to provide them with medical, rehabilitative and special education benefits, but not necessarily income."

Klecza said his major concerns about the program include: Some families pressure their children to lie about disabilities and conditions to get on the program, and some parents refuse to give their children medical treatment that would result in their children losing benefits.

There is no limitation on how many family members could receive such funds, Klecza added.

A 1990 U.S. Supreme Court ruling, known as the Zebly decision, entitled thousands of children to back benefits. That, said Klecza, has resulted in a enormous backlog of cases: The awarding to families of lump-sum compensation as a result of Zebly has led to families spending the money frivolously, he said.

The Milwaukee congressman told of a case reported to his district office in which a child, suspected of enduring sexual and physical abuse, began coming to school dirty and disheveled, disrupted the classroom and let her grades sink once her father learned about the Zebly decision.

The child was then approved for SSI and received close to \$18,000 in retroactive benefits.

"The family purchased a car, new furniture and clothes, and took a vacation to Florida," Klecza said.

Wisconsin has one of the most generous benefit packages, with participating children being eligible for up to \$526.72 a month, Klecza said.

"Since the Supreme Court's Zebly decision, the Social Security Administration has spent \$2 billion on retroactive payments to 100,000 children," he said, adding that nationally the number of children on SSI grew from 293,320 in 1989 to 514,150 in 1992.

"In Wisconsin, the number was up 134.1%, from 6,010 to 14,070," he said.

From the Milwaukee Sentinel  
10/15/93

Statement of Gerald D. Kleczka  
Member of Congress  
Before the Subcommittee on Human Resources  
Committee on Ways and Means  
October 14, 1993

Good morning, Mr. Chairman, and thank you for this opportunity to appear before the Human Resources Subcommittee regarding the Supplemental Security Income (SSI) program.

With a maximum combined state and federal monthly benefit of \$526.72 for an individual living independently, my state of Wisconsin has one of the largest SSI programs in the country.

In general, I have some doubts about whether the SSI program for children is necessary; and, most of my testimony will focus on this area.

I would like to clarify that I am not, for one moment, suggesting that the government's role is not to care for those children with disabilities who need our help. It is our role to assist them. However, we must place proper safeguards to ensure that these benefits are not abused.

Having said that, I question whether this program, despite its noble goals, is appropriate. SSI is designed as a welfare program to supplement income for those who are blind, disabled, or aged. Therefore, I question why children, who are dependents, need to receive it. In most states, including Wisconsin, child SSI recipients also qualify for Medicaid (Title 19). Besides medical and rehabilitation costs, which are covered under Title 19, and special program costs, which could be covered under an expanded Title 19, the cost of raising a child with a disability is not significantly different than the cost of raising a child without one. We need to provide them with medical, rehabilitative, and special education benefits, but not necessarily income. Some professionals in my district suggest that the benefits currently given directly to families could be more productive if they were channeled in some fashion directly to schools or special programs. This would ensure that the benefits are used to advance the child's situation and physical condition.

The current situation begs the question: is there a better way than SSI to provide the necessary services to low-income, disabled children?

Let me share four major concerns I have with the current program.

First, I am concerned that the SSI program for children is abused by the families of some recipients.

Reports of such abuses abound. Some have surfaced of children being "coached" on actions that will help them maintain benefits or gain acceptance into the program.

A particularly startling case is that of a child whose father was also on Social Security Disability and SSI. There were reports of both sexual and physical abuse of the child. According to local claims representatives, once the father learned of the Zebley decision, the child began showing up to school with gum in her hair, began acting up, and her grades dropped. She was then approved for SSI and received nearly \$18,000 in retroactive benefits. The family purchased a car, new furniture, and clothes and took a vacation to Florida. They have since been evicted, because they had not paid their rent in six months. The child had a job but was instructed by the father "not to take too many hours, because it will make us lose your benefits."

Additionally, there are several examples of counselors reporting parents who refuse to allow their children treatment, fearing that improvements in their conditions would cost them benefits. One particularly blatant example is a counselor who quotes parents of a child with attention deficit disorder as saying, "We don't want medication, that will screw up his SSI."

Thus, a cycle of dependency is perpetuated that only hurts many of these young recipients in the long run. Some benefits are reportedly not used to help meet the disability needs of children, but are instead being spent frivolously by parents. Under the current guidelines, the benefits a child receives are not necessarily linked to improving the child's situation.

I cite the case of a woman who repeatedly called my Milwaukee office asking for updates on "her benefits." These were in fact her daughter's SSI benefits. After SSA received several calls from her that her checks were lost in the mail or her children were robbed while going to the store with her money, the case was investigated. The child was placed in a foster home when it was determined that the mother had been using the SSI money to purchase drugs for herself.

Clearly, we cannot permit these abuses to continue.

Second, there is no family limit for SSI. This means that some Wisconsin families, with multiple members qualified for SSI, can receive over \$40,000 per year in tax-free benefits plus Medicaid coverage. Clearly, the program should have a family maximum as there is for Social Security Disability.

Third, a major problem with the entire SSI system is the enormous backlog of cases, which is due in part to the increase in child applicants. Since the Supreme Court's *Zebly* decision in February 1990, SSA has spent \$2 billion on retroactive payments to 100,000 children. Nationally, the number of children on SSI grew 109.4% from December 1989 to December 1992, up from 293,320 to 614,190. In Wisconsin, the number was up 134.1% from 6,010 to 14,070.

SSA is doing the best it can with its limited resources. But, the saturation of the SSI system also prevents the agency from fully reviewing financial accounts and actively overseeing the program. For example, reviews of the determination of disability for most cases in Wisconsin have not been performed for five years, even in cases where the claims representative had marked the case as questionable.

Fourth, although recipients may not have experience in handling large amounts of money, they generally receive *Zebly* settlements as lump-sum retroactive payments. This often leads to more frivolous spending by the parents of some child recipients.

The subcommittee may wish to consider installments to help control this problem. If it works for state lotteries, it can work for SSI. Other possible alternatives are vouchers and "packaged" trusts, which could be put together at little expense.

Mr. Chairman, the bottom line is that the basic premise of SSI is noble. I'm just not certain whether this program is the best program for low-income, disabled children. The current program needs to be modified or other programs substituted. We should continue to assist those who are in severe need and cannot turn elsewhere. However, we must curb the abuses which constitute freeloading and ultimately only hurt the U.S. taxpayer and fail the recipients.

Again, thank you Mr. Chairman for this opportunity, and I look forward to working together to reform our nation's SSI program. I would be happy to answer any questions you or the other members of the subcommittee may have.