



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

WR-SSI

THE DEPUTY DIRECTOR

August 15, 1997

MEMORANDUM TO SYLVIA MATHEWS  
JOHN PODESTA  
JOHN HILLEY  
GENE SPERLING  
BRUCE REED  
ANN LEWIS  
MARIA ECHAVESTE  
MICKEY IBARRA  
JENNIFER KLEIN  
THURGOOD MARSHALL, JR.

FROM: JACK LEW 

SUBJECT: Talking Points re: *New York Times* article on SSI children's regulations

Per our discussion this morning, attached are talking points on the *New York Times* article regarding SSI children's regulations. The talking points were jointly developed by OMB and DPC. We hope they are useful if you receive any calls over the next few days.

CC: ERSKINE BOWLES

## Talking Points

### New York Times Article on SSI Children's Regulations

August 15, 1997

#### Main Points

- As the New York Times noted today, 95,000 children are no longer eligible for SSI benefits under the Social Security Administration's regulations.
  - The 95,000 is about half of the 180,000 cases that SSA has reviewed as of August 2, 1997
  - SSA still needs to review another 85,000 cases.
  - The initial reviews should be completed by early October.
- Those SSA regulations are designed to implement last year's welfare reform law.
- While these early figures suggest that SSA's initial estimate that 135,000 children would lose their benefits may be exceeded, you have to remember:
  - SSA cautions that this early data is not representative and should not be used for projections.
  - Moreover, a portion of these children will appeal their cases and be found eligible once their cases have gone through SSA's normal appeals process.
- To minimize the adverse effects of the law (and its regulations), the Administration convinced Congress in the recent balanced budget law to retain Medicaid coverage for those disabled children who are kicked off the SSI rolls.
  - Without such action, many of these children would have lost Medicaid as well.

## Background

- Last year's welfare law, enacted on August 22, 1996, tightened the eligibility standards for childhood disability benefits in the Supplemental Security Income (SSI) program.
  - The legislation could have been much worse.
    - Initial Republican proposals in early 1995 would have eliminated cash benefits for 80 percent of future applicants, replacing the cash with State block grants to provide services at much reduced funding levels.
    - In the final bill, the Administration managed to maintain the SSI childhood disability program as a cash benefit program for all those children found eligible.
- SSA released regulations on February 6, 1997, to implement the new law.
  - These regulations were prepared by SSA under the supervision of then-Commissioner Shirley Chater.
  - They were reviewed by OMB and the DPC as part of the normal regulatory review process.
- Soon thereafter, SSA notified 264,000 children of the nearly 1 million children receiving SSI benefits that they might be affected by the new law and that their cases would be reviewed.
- At the time the regulations were issued, SSA estimated that 135,000 children would have their benefits terminated as a result of the tighter eligibility standards.
- SSA's regulations adhered to its reading of Congressional intent, but also provided several new procedures (that the law did not specify) to ensure continued eligibility for severely disabled children.
  - SSA estimated that, without these new procedures, approximately 190,000 children would lose benefits.
- As the New York Times noted today, 95,000 children have been found no longer eligible as a result of initial determinations.
  - About 180,000 cases have been reviewed as of August 2, 1997, with another 85,000 cases still to be reviewed.
  - The initial reviews should be completed by early October.
- While the majority of cases involve mental impairments, it is too early to definitively

classify the nature of the disabilities of the children being effected.

-- However, SSA is monitoring the results of these redeterminations.

-- No children who are mentally retarded as that term is clinically defined are losing benefits.

-- Children with mild learning disabilities and attention deficit disorder appear to be the types of children most affected.

# DISABILITY CHECKS OF 95,000 CHILDREN ARE TO BE CUT OFF

REVIEW UNDER 1996 LAW

Most to Lose Benefits Suffer  
'Mental Problems' Whose  
Severity Is in Question

By

ROBERT PEAR

WASHINGTON, Aug. 14 — The Government has decided to cut off disability benefits for 95,180 children, representing more than half of those whose cases have been reviewed under strict new standards established by the 1996 welfare law. Federal officials said today.

The denials are running somewhat higher than the White House had expected, and if the rate continues as more cases are reviewed, 15 percent of the one million children in the program could lose their cash benefits.

Data compiled by the Social Security Administration show that most of the children losing disability benefits — 78,600 of the 95,180 — have "mental disorders."

But Susan M. Daniels, the Associate Commissioner of Social Security in charge of disability programs, said she did not know how many of the children were mentally retarded, how many had personality disorders and how many had learning disabilities or behavioral problems.

Members of Congress, parents and other advocates said children with major disabilities, including some with I.Q.'s in the 60's, with uncontrolled diabetes or with AIDS, had been notified that their benefits would end even though they clearly seemed to meet the new standards.

The cash benefits, averaging \$438 a month for a child, are paid under the Supplemental Security Income program. The children are all from low-income families. Social Security officials say the changes in the program will save \$4 billion to \$5 billion from 1997 to 2004.

The changes in the disability program provoked fierce debate in Congress in 1993 and 1994.

Republicans said they were tightening the eligibility criteria to curtail fraud and abuse and they had evidence that some parents were coaching children to misbehave in school or fake disabilities to get benefits.

Several Democrats said that the Republicans, in an effort to balance the budget, were being cruel to children.

Defending the Republicans' proposal in 1995, Representative Jim McCrery of Louisiana said, "The lethal combination of generous cash benefits, loose eligibility criteria and the lack of proper Congressional oversight inherent in all welfare entitlement programs has resulted in explosive program growth and widespread abuse."

But Representative Sander M. Levin, Democrat of Michigan, told the Republicans, "You're being hard-hearted." He implored them to

Continued From Page A1

remember that "we're talking about the most vulnerable children in America."

Before 1996, children could qualify for benefits if they had impairments that seriously limited their ability to perform activities normal for their age. Under the new law, children can get benefits only if they have "marked and severe functional limitations." Congress did not say precisely how severe the disability must be, letting the President and other officials answer that question by issuing regulations.

Federal officials notified 264,000 of the one million children on the disability rolls that they might be affected by the law and that their cases would be reviewed. Those children did not have impairments that exactly matched the criteria for automatic eligibility, but had qualified through an assessment of their overall ability to function normally.

Benefits have been cut off in 56 percent of the 170,300 cases reassessed so far.

Phillip A. Gambino, a spokesman for the Social Security Administration, said, "We have done everything in our power to lessen the impact of the new law on children with disabilities."

But critics of the cuts faulted the Clinton Administration for these reasons:

They asserted that the Government was using stricter standards than required by the 1996 law.

They said Federal officials were discouraging children and parents from challenging the termination of benefits.

They observed immense variation in the results of reviews around the country. Children are losing benefits to more than 75 percent of all cases reviewed in Iowa, Kansas, Louisiana, Mississippi, Montana and Texas. But the comparable figures are less than 35 percent in Hawaii, Michigan, Minnesota and Nevada.

Ms. Daniels rejected the criticism, saying, "We monitor the quality of decisions. We have no indication that they are inaccurate."

President Clinton, who signed the welfare bill on Aug. 22, 1996, recently persuaded Congress to soften some provisions, including restrictions on benefits for legal immigrants. But he did not resist the new standards for children's disability benefits.

Kenneth S. Apfel, associate director of the White House Office of Management and Budget, supervised preparation of the rules setting stricter standards. In May, Mr. Clinton nominated him to be Commissioner of Social Security. Senators of both parties said they would question Mr. Apfel about the disability program at his confirmation hearing.

In a recent letter to the President, Senators John H. Chafee of Rhode Island, a Republican, and Kent Conrad of North Dakota, a Democrat, said the eligibility criteria being used to evaluate children's disabilities were "far more severe than is required" by the 1996 welfare law. They asserted that "the Administration has misinterpreted the intent of Congress in reforming the Supplemental Security Income program for children."

The Federal benefit payments are used to pay for treatment and social services, to make structural changes in houses and offset wages lost by parents who stay home in care for disabled children.

Administration officials said savings to the Federal Treasury would fall far short of projections if the disability rules were as lenient as opponents of the cuts have proposed.

Most of the decisions to terminate benefits were made by state officials who work under contract with the Federal Government, using Federal standards. They do not see or interview the children getting benefits.

Nancy Goodwin, a paralegal who has worked on disability cases for 15

## IN THE STATES

### Losing Benefits

Children losing disability benefits: the total number, and as a percentage of those whose cases have been reviewed under strict new standards.

RANK	STATE	NO. OF CHILDREN	% LOSING BENEFITS
1	Mississippi	4,076	82.1%
2	Montana	293	79.6%
3	Texas	6,037	77.7%
4	Louisiana	6,892	76.1%
5	Iowa	845	75.8%
6	Kansas	1,597	75.7%
7	Arkansas	2,924	74.4%
8	Oklahoma	730	72.9%
9	Illinois	6,461	67.0%
10	Missouri	3,367	70.1%

Source: Social Security Administration

46	Oregon	201	33.2%
47	Minnesota	752	34.3%
48	Michigan	2,275	33.0%
49	Nevada	125	32.8%
50	Hawaii	17	29.3%

Source: Social Security Administration

years at Acadiana Legal Service Corporation, a legal aid program in Lafayette, La., said: "Children are not being evaluated fairly, not in this state. Almost as soon as parents submit information requested by the Social Security Administration, they get back letters saying their children are no longer disabled."

The New York Times

FRIDAY, AUGUST 15, 1997

THE WHITE HOUSE  
OFFICE OF DOMESTIC POLICY

JUN 26 1985

CAROL H. RASCO  
Assistant to the President for Domestic Policy

To: Ruze Carroll  
Diana

Draft response for POTUS  
and forward to CHR by: \_\_\_\_\_

Draft response for CHR by: \_\_\_\_\_

Please reply directly to the writer  
(copy to CHR) by: \_\_\_\_\_ ~~XXX~~

Please advise by: \_\_\_\_\_

Let's discuss: \_\_\_\_\_

For your information: \_\_\_\_\_

Reply using form codes: \_\_\_\_\_

File: \_\_\_\_\_

Send copy to (original to CHR): \_\_\_\_\_

Schedule ? :  Accept  Pending  Regret

Designee to attend: \_\_\_\_\_

Remarks: \_\_\_\_\_

File

JUN 26 1995

United States Senate  
WASHINGTON, DC 20510-4802

WR-SSI

June 20, 1995

Dear ~~Leon~~,  
*Sam*

I am writing to ensure that you and the President are reminded of the importance of protecting federal programs for abused and neglected children during any negotiations or discussions of welfare reform. Having worked closely with NHS officials on this objective, I appreciate the Clinton Administration's efforts so far.

We achieved one victory for children when the Republican members of the Senate Finance Committee retained the current law for child welfare and family preservation in its welfare reform package, which preserved the entitlement status of foster care and adoption assistance for children with special needs. Senator Chafee and I viewed this as a priority, and this part of an otherwise seriously flawed bill would maintain at least part of the safety net for abused and neglected children.

Maintaining current law in this specific area also protects the provisions promoted by President Clinton in 1993 to make new investments in family preservation and family support through the historic budget and economic plan. This made a very important step in help to children and families and is popular among state officials and child advocates across the country.

Leon, as the process unfolds to attempt to enact effective, worthwhile welfare reform; I am writing to highlight the vital importance of sustaining these crucial programs for our most vulnerable children. This will build on President Clinton's strong record of achievement for America's children and families facing some of the toughest problems.

We must not allow anyone to use welfare reform as a vehicle to unravel our work on family preservation or as a means of eliminating the entitlement status of foster care and adoption assistance. The basic federal guidelines regarding child abuse and neglect must be preserved for vulnerable children. One point to constantly make is that there is a fundamental difference between cash assistance to low-income families with dependent children and our moral obligation to protect vulnerable children from abuse and neglect, who are unsafe in their own homes.

The Honorable Leon E. Panetta  
June 20, 1995  
Page 2

In fact, I believe that the need for the complete range of services to abused and neglected children will increase in the future for a variety of reasons, including the potential changes that welfare reform will cause for many poor households. Foster care placements have doubled in the decade between 1983 and 1993, from 97,370 to 232,668, with this rise expected to continue. About 48 percent of children are currently in foster care because of neglect, which tends to increase as family poverty increases. If only five percent of the children who may be cut-off from AFDC under the house welfare reform plan suffer from neglect, as many as an additional 280,000 children may need child protection. A significant increase would overwhelm a system that is already stretched beyond its means.

Attached is a chart illustrating the potential growth in the need for protective services prepared by Peter Digre, Director of the Los Angeles County Department of Children and Family Services, who testified before the Finance Committee.

As you know, the courts have had to intervene in foster care systems in 22 states in order to assure the basic protection of children. Given the current record of states, it is essential to maintain federal support and federal standards for abused and neglected children.

In order to fully protect children, adequate funding for both prevention, protective services, and family preservation as authorized currently under Title IV-B must be maintained. It would be common sense to continue the community-based planning started under the Family Preservation provisions of 1993 and to allow the Department of Health and Human Services to push ahead with its planned 10-state demonstration for greater flexibility among child welfare services.

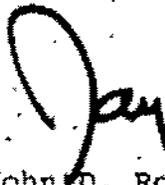
These children are vulnerable and deserve our compassion and support, and I again urge the Administration to pay special attention to this set of issues and programs when any negotiations take place with Congress on welfare reform. Funding and federal standards must be protected for child welfare programs, along with the entitlement status for foster care and adoption assistance.

The Honorable Leon E. Panetta  
June 20, 1995  
Page 3

I was proud to work with President Clinton in 1993 to help abused and neglected children, and I want to work with all of you again to ensure that these distinct programs are not abandoned when we work out the course for welfare reform.

Thank you very much, and best wishes.

Sincerely,



John D. Rockefeller IV

Enclosure

The Honorable Leon E. Panetta  
Chief of Staff to the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Leon, we need the White House  
to be very firm about protecting  
programs for abused and  
neglected children. Please help  
send a clear signal about this —  
just as you have on child nutrition.



WR-SSI

EXECUTIVE OFFICE OF THE PRESIDENT

26-Apr-1995 03:26pm

TO: Bruce N. Reed  
FROM: Diana M. Fortuna  
Domestic Policy Council  
CC: Jeremy D. Benami  
SUBJECT: SSI kids: Conrad vs. Slattery

I sent you a copy of my e-mail to Carol yesterday on children's SSI, but I wanted to flag the issue for you a bit more. As you know, we have been urging folks to wait for the Slattery Commission, but now Slattery has come up with some preliminary recommendations. He would grandfather in all the current kids, but take a tougher approach prospectively. We are urging him to do numbers, so we can get a better handle on how tough this is, and make sure that we are absolutely comfortable denying eligibility to the types of kids who would be cut off in the future before we endorse any specific recommendations. Social Security has been working with Slattery, and thinks, at least at the staff level, that he is doing the "right" thing programmatically -- in fact, they've been working on a very similar proposal. I have urged them to keep it quiet, but Slattery knows that SSA agrees with him -- a point that Slattery made to Carol yesterday.

Carol and Slattery spoke yesterday so he could update her on his ideas. He is clearly nervous that we should stand behind him. He thinks his proposal is not that far from Conrad and very, very far from the House bill.

Now the advocates are trying to build momentum for the Conrad bill, which wouldn't do much of anything except require SSA to study and revise how they do things -- so kids wouldn't be knocked off directly by the bill unless SSA then revised its regulations. I think SSA believes it wouldn't give them enough to fix the program.

I got a call today from a Daschle staffer named Jonathan Adelstein who said that he is trying to make Conrad the Democratic alternative and that they are building support, but that Slattery is undermining their efforts, characterizing Slattery as almost as bad as the House bill. I told him I thought he was exaggerating Slattery's proposals, and he backed off a bit and said he hadn't finished studying it yet, but he is concerned. He wants a meeting this week with me, advocates, and Senate staffers to talk this

through.

The strategy I am following at Carol's direction is that we should not spend all our time fighting each other (Slattery vs. Conrad), and that we are all trying to fight the House bill. Clearly this strategy depends on being able to define a clear difference between Slattery and the House bill. I have told Slattery's staff and Social Security that they have to do this.

(One area where there clearly is a HUGE difference between Slattery and the House bill is the issue of cash: Slattery preserves it, while the House bill would eliminate it for all kids except those in danger of institutionalization. (Estimates of what % of kids would be judged in danger of institutionalization range from 3-25%.) This is truly a big difference. The area where Slattery is vulnerable to charges that he is close to the House bill is in the IFA test, or the functional assessment test that is an easier way to qualify for SSI. There is a lot of semantics here, but the House bill eliminates it while Slattery modifies it -- but it's possible to argue that Slattery eliminates it, too.)

Another question is whether we are trying to save any particular amount of money on our side in order to be credible, or whether we don't care about that.

SSA is presenting numbers to me and Ken Apfel on Monday, so we should know more then. But I wanted to check in with you since I know this plays into the larger politics of welfare reform. I have calls in to Wendell Primus, Rich Tarplin, Judy Feder, and others, but wanted you to be aware of all this.

THE WHITE HOUSE  
WASHINGTON

April 27, 1995

Bruce - FYI  
WR-SSI

MEMORANDUM FOR LEON PANETTA

FROM: Diana Fortuna **DF**  
Domestic Policy Council

SUBJECT: Children's SSI Program

Carol Rasco has asked me to update you in her absence on some recent developments in the SSI program for disabled children. Disability advocates, with some help from the Hill, are pressuring us to back away from our general support of a commission established to reform this program.

Background: As you know, there has been considerable press attention in recent months to stories that some parents coach their children to "act crazy" in order to qualify for over \$400 a month in SSI cash benefits. The Social Security Administration does not believe that such incidents are widespread based on a search of case records. However, the stories have raised questions about whether the current eligibility rules are strict enough for children with mild behavioral problems, especially since the cash payment is based not on the child's need, but on the family's income.

Since 1989, the number of children qualifying for SSI has tripled, with almost 900,000 children now on the rolls at a cost of \$5 billion. This growth has been fueled by three factors: the addition of several behavioral disorders to the list of qualifying disabilities; a major outreach program; and the 1990 Supreme Court "Zebley" decision requiring a test of whether a child functions in an age-appropriate manner (the "IFA test"). Prior to the IFA test, children could qualify only if their condition was one of those enumerated in a set of "medical listings." Advocates argued that the medical listings exclude many rare conditions or combinations of conditions.

To address the problem and identify reforms, Congress last year created the National Commission on Childhood Disability, chaired by former Rep. Jim Slattery of Kansas. Slattery's report was originally scheduled for November, but he has accelerated his work because the Hill is moving without him. Our position has been that we should wait for Slattery's report before making wholesale changes to the program. Expecting, however, that the Hill would not wait for his report, we have been working with SSA and HHS to formulate our own proposal to reform the program.

As part of its welfare reform bill, the House made two significant changes to the program that we have criticized as too severe. First, 200,000 children who qualified for benefits based on the IFA test would be cut from the rolls. Second, the House

bill would eliminate cash benefits for all the remaining children who are not in danger of institutionalization; 75% of the funds saved would be plowed back into a new state block grant. States could then choose what services to provide these children.

(Cash benefits have come under attack because families are not required to account for how they use them. On the other hand, cash gives families the flexibility to meet their children's needs, such as allowing a parent to stay home and take care of a disabled child.)

Recent Developments: The Senate is beginning to formulate its position; it is not yet clear what the Republicans will do. On the Democratic side, Senator Conrad is attempting to build support for a bill backed by the advocates that calls for minimal change to the program. There are rumors that Senator Chafee may support his bill.

Jim Slattery just got preliminary (and very tentative) support from his Commission for a plan to cut back very significantly on the IFA test (with children currently in the program grandfathered in). Slattery's plan would preserve cash benefits for all eligible children, and make other positive changes to the program. (In addition, he has proposed moving the program from SSA to HHS, a plan that may or may not make sense, but has created a somewhat unproductive side issue.)

We are trying to learn more about Slattery's proposal on the IFA test. It is particularly critical for us to know the number of children who would be denied eligibility under his plan, and the types of disabilities involved. In a further complication, his proposal is very similar to the plan SSA is drafting, at least in part because they have been working together. Some SSA staff believe that the agency overreacted to the Zebley decision in letting children onto the rolls and that Slattery's approach is the right one.

The advocates are attacking Slattery's plan, arguing it is almost as bad as what the Republicans passed in the House. Working with Senator Daschle's staff, they are trying to unravel his Commission's consensus and urging us to support Conrad over Slattery. We are endeavoring to keep all the parties focused on how to fight the House bill most effectively, rather than fighting among ourselves. In particular, we would be concerned if the advocates discredited Slattery, only to have their proposal rejected by the Republicans as too mild, with the resulting bill very tough on children. We will keep you informed of future developments.

cc: Carol Rasco  
Alice Rivlin  
Pat Griffin

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

LRM NO: 1404

FILE NO: 15

5/22/95

## LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 4

TO: Legislative Liaison Officer - See Distribution below  
 FROM: Janet FORSGREN (for) *C. Mustain* (for)  
 Assistant Director for Legislative Reference  
 OMB CONTACT: Chris MUSTAIN 395-3923  
 Legislative Assistant's line (for simple responses): 395-7362  
 SUBJECT: Social Security Administration Proposed Report on Supplemental Security Income Program

**URGENT****WR-SSI****DEADLINE: TODAY 4:00 pm Monday, May 22, 1995**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Senate Finance Committee will mark up welfare reform legislation on Wednesday, May 24th.

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**URGENT**

**RESPONSE TO  
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 1404  
FILE NO: 15**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

**TO: Chris MUSTAIN 395-3923**  
**Office of Management and Budget**  
**Fax Number: 395-6148**  
**Branch-Wide Line (to reach legislative assistant): 395-7362**

**FROM:** \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

**SUBJECT: Social Security Administration Proposed Report on Supplemental Security Income Program**

The following is the response of our agency to your request for views on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

**DRAFT**

The Honorable Robert Packwood  
Chairman, Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Chairman Packwood:

As you are aware, the welfare reform bill passed by the House of Representatives would severely cut Supplemental Security Income (SSI) benefits for poor disabled children and replace cash payments with services for most disabled children who become eligible in the future. Under the House plan, too many severely disabled children would no longer be eligible for cash benefits. The House plan would eliminate cash benefits for as many as 860,000 disabled children over the next five years. Furthermore, changing from cash to services managed by State bureaucracies gives families less flexibility, not more, in deciding how best to care for their disabled children. While the Administration supports efforts to tighten eligibility rules to raise the level of severity of children's impairments required for children to receive SSI benefits, we strongly believe that the program should continue to provide only cash benefits. The House plan to provide block grants to States for services should be rejected.

SSI benefits for disabled children supplement the income of some of the neediest, poorest families in our communities - families raising disabled children. Cash assistance is the purest way to help these families maintain self-sufficiency. With cash assistance, these needy families have the flexibility to determine for themselves how best to care for their disabled children in their own homes. Cash benefits may be used by the family to help provide basic necessities (such as food, clothing, and shelter) for a child with disabilities and to cover the additional costs of raising and caring for such a child; the government does not act as a middleman to define or regulate the needs of these children. The House bill simply goes too far in reducing benefits and represents a serious disservice to these children and their families. Of the estimated 1,075,000 children who would become eligible for benefits between FY 1996 and FY 2000 under current law, we estimate that as many as 860,000 would no longer be eligible for cash benefits under the House bill. For the SSI program, block grants to the States to establish programs for providing services would mean placing newly created bureaucratic mechanisms between the families in need and the benefits to be provided, as well as limit the services available for these children.

This is not to say that the rules of the SSI program do not deserve a re-examination. We believe the current eligibility rules permit some children who are only slightly disabled to receive benefits. The idea that legislation should be passed to increase the required level of severity of impairments for children to receive SSI benefits is worthy of serious consideration. In the process of this consideration, we are particularly concerned that ways be found to make subjective criteria used for determining the level of severity less susceptible to manipulation by applicants to the program. We are committed to creating the most rational statutory and regulatory framework to permit SSA, through our own offices and Federally-funded State

Disability Determination Services, to administer the SSI program efficiently and fairly. A lot of good work is being done on how best to address this issue, including the work of Senators Moynihan and Conrad, the National Childhood Disability Commission, and the National Academy of Social Insurance. We stand ready to work with you and your committee to make sure that only those who truly need assistance receive benefits.

In addition to our support for cash assistance and the need to tighten eligibility, we also believe that increased program accountability would improve the SSI program. SSA already has taken some actions that are intended to improve accountability within the SSI program. SSI benefits for minor children are paid on their behalf to a representative payee, generally the parent. The payee is given broad, discretionary authority for seeing that the payments are used in the best interests of the child. Nevertheless, not all representative payees execute their duties responsibly. SSA has undertaken several initiatives to improve accountability in this area. First, the Office of the Inspector General (OIG) is conducting a risk assessment study in an effort to determine those situations in which there is a greater risk that benefits will not be used appropriately. OIG will report its recommendations later this year, and any necessary changes to strengthen the accounting program will be implemented. Second, SSA has established a Representative Payment Advisory Committee, comprised of 13 outside experts in fields related to various aspects of representative payment. I will ask the Advisory Committee to specifically examine the representative payment program for children receiving SSI payment to assess its effectiveness. The Committee's report is due by July 1, 1996.

In addition, there are a number of ideas for statutory changes to improve accountability that we find worthy of further consideration. These include: expanding penalties for coaching children to act inappropriately in order to be found eligible to receive benefits; increasing the frequency of reviews of children with disabilities to determine whether they continue to be eligible for SSI benefits; and providing for temporary eligibility for certain children where medical improvement as a result of treatment could be expected. We also believe proposals should be pursued to provide for reduced payments for additional children when multiple children from the same family are found eligible for SSI.

On behalf of the administration, I want to reiterate that we are strongly opposed to the conversion of any part of this cash assistance program into a services program. As I have described above, we are intensely engaged in efforts to improve the quality and integrity of the program and look forward to discussions with you in the key areas of program eligibility and accountability.

Sincerely,

Shirley S. Chater  
Commissioner  
of Social Security

**SSI for Children:  
A Program Needing Direction  
PRELIMINARY WORKING PAPER**

Over the last few years, public attention has begun to focus on the enormous problems in the Supplemental Security Income (SSI) program. In the last session, we addressed abuses involving payments to drug addicts and alcoholics by requiring such recipients to be in treatment, by improving the representative payee program, by placing a lifetime limitation of 36 months on the amount of time they can receive benefits, and by tightening the monitoring of recipients with substance addictions.

This working paper is the basis for a legislative proposal to eliminate flaws and ambiguities in the current child SSI program.

***Background***

SSI was created as part of the 1972 amendments to the Social Security Act (P.L. 92-603). It began providing assistance to low-income disabled, blind, and aged individuals in 1974. Since then, SSI has grown into a \$24 billion program serving more than 6 million people. In 1995, individual SSI recipients will be eligible for up to \$458 per month in federal assistance plus an optional state cash supplement and Medicaid coverage.

**Inclusion of Children:** When the program was developed in 1971, there was significant debate over whether children should be eligible. The House thought so, and the Ways and Means Committee wrote that disabled children "are deserving of special assistance in order to help them become self-supporting members of our society." On the other hand, the Senate disagreed, stating that the lone difference between disabled and non-disabled children's needs was in medical costs. Despite this difference of opinions, the House prevailed and the enacted bill allowed child eligibility for SSI. However, despite the House Ways and Means Committee's clear intention that the funds be used to help qualifying children become self-supporting, the statute contained no requirement that the assistance be used to do so.

**Definition of Disability:** For SSI purposes, an adult is deemed disabled:

"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 result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months."

Substantial gainful activity (SGA) is generally defined as \$500/month. A child can qualify for SSI:

"if he suffers from any medically determinable physical or mental impairment of comparable severity" to that of an adult.

**Pre-1990:** For the first 16 years of the program, children were considered disabled if their impairments met or equalled the severity criteria listed in SSA's medical standards (called a listing). Adults who did not qualify under this test could still be found eligible under a residual functional capacity test based on their ability to engage in substantial gainful activity. This second level of evaluation was not applied to children because they generally do not work to support themselves. Thus, in December of 1989, only 296,000 children were in the program.

**The Zebley Decision and Post-1990:** However, in February of 1990, the Supreme Court, in Sullivan v. Zebley, issued a ruling which would have far-reaching implications for the SSI program for children. In it, the Court found that the evaluation for children violated the "comparable severity" portion of the statute. Thus, it ordered SSA to adopt a process for children analogous to the adult procedures. SSA responded by adopting a second tier whereby children whose impairments do not meet the listing could still qualify through an individualized functional assessment (IFA), which compares the child's behavior to that of unimpaired children of the same age. Since the adoption of the IFA and a revised listing of childhood mental impairments (which was issued in December 1990), the number of children on SSI has more than doubled.

### ***Rationale for Reform***

**SSI Now Provides Monthly Cash to Many Children with No Strings Attached:** The child SSI program is out of control. What began in 1974 with payments to just 71,000 children has grown to include more than 800,000 children at a cost of over \$4.4 billion each year. Most alarmingly, over half of this increase has come in the last four years, and the program continues to grow today.

**Needs Direction from Congress:** The HHS IG recently issued a report on this program. The IG found that the program lacked clear direction from Congress. Without a well-defined purpose, SSI provides cash to these children but does not require that the money be used constructively or for disability-related purposes. It is no wonder that so many problems have been reported, and that the public is demanding change. Specifically, the IG wrote that:

**\*\* SSI does not consider the added costs to a family created by an impairment in determining a child's eligibility.**

**\*\* neither the statute nor the regulations include a requirement that payments be used solely for the special needs of children with disabilities.**

**\*\* many of the children's needs are being addressed, at least in part, by other assistance programs (such as food stamps, AFDC, and a variety of special education services).**

In concluding its report, the IG wrote:

"We believe that the intent of the SSI program for children with disabilities, and the manner in which some children are determined eligible by individualized functional assessments need to be revisited by Congress."

**Moral Hazard:** With its lack of direction, the current system can create an awful dilemma for parents of disabled children. Should a child receive the treatment which could lead to self-sufficiency, his or her SSI eligibility would be threatened and the family could lose its monthly cash benefits. Thus, a system exists which provides a disincentive for receiving treatment. This disincentive fails the recipient and the program.

Additionally, the existence of cash benefits can create an incentive for seeking classification as disabled. Along with this classification often comes a stigma which a child cannot easily overcome. Thus, if a child with a condition that can be expected to improve is classified as disabled, this can create a cycle of dependency and hamper further development.

**Reports of Problems in the Program:** My office and many other congressional offices have heard from a variety of sources (parents, teachers, social workers, school officials, Social Security workers, and administrative law judges) who have numerous concerns about the current program and accounts of problems. Reports such as these are too prevalent for a taxpayer-funded program:

\*\* the parents of a child with oppositional disruptive disorder refuse to allow the child counseling due to fear that the child's condition might improve, and therefore the child would lose eligibility for benefits.

\*\* the parents of a child with attention deficit disorder refrain from giving the child Ritalin so as not to allow the medication to "screw up his SSI."

\*\* a 16-year-old child who had a childhood illness and had been on SSI for quite a few years came into a Social Security office to report income from a job she had gotten. When asked about her disability, she said that she had none and the SSI payments were simply money that her mother gave her.

**Flaws in the Program:** Reports abound of children with allegedly suspect disabilities qualifying for assistance. Behavior that could be addressed by parents or a school counselor can qualify a child for more than \$5000 a year in assistance (plus Medicaid in most states). In fact, GAO found that 13.3% of all child awards are for disabilities classified as behavior problems. Clearly, we should help families of low-income children with serious physical or mental disabilities. However, we should target

this assistance to ensure that it used appropriately.

**Few If Any Reviews:** The current system provides cash payments to children with behavioral problems, and, once a child gets on the program, even if he or she has a condition which could improve, the child often remains on it without a review of disability until age 18.

**Households Can Have Several Recipients:** Currently, a number of members of a single household can receive maximum benefits. An SSA study found that there are at least 60 households in this country with 12 SSI recipients. At 1994 levels, such a household would receive a potential federal benefit of over \$64,000 per year (plus the possibility of an additional state supplement and Medicaid coverage depending on the state).

**Attractive Benefits:** Some suggest there are those who move from the Aid to Families with Dependent Children (AFDC) program to SSI in order to take advantage of SSI's more generous benefit amounts. The HHS IG studied one sample of children on SSI in 1992 and projected that 58% were receiving AFDC benefits at the time of their SSI applications.

To illustrate, look at the State of Wisconsin using January 1994 benefit levels. A Wisconsin family of three (one mother and two children) on AFDC would receive \$6,204 annually. However, if one child qualified for SSI and the other child and mother remained on AFDC, the family would receive \$11,652 annually, or an increase of \$5,448. And, if both children qualify for SSI and the mother remained on AFDC, that family would receive \$15,720 annually, or an increase of \$9,516.

### *Summary and Goals of Reform Supplemental Needs Assistance For Disabled Children*

**Summary:** With this entitlement program growing rapidly, and with reports of abuse prevalent, it is imperative that Congress reform this program now. We must ensure that necessary assistance is targeted to seriously disabled children. At the same time, instead of providing monthly cash with no requirements, we have to target services directly to the needs of those children. And, while there are some disabled children whose circumstances cannot be expected to improve, our objective must be to make assistance constructive. In so doing, we should ensure that it plays a role in improving the long term outlooks of disabled children who could one day be self-supporting. Finally, we should only provide assistance to seriously disabled children.

Therefore, this working paper is focused on two central goals:

- (1) targeting the necessary assistance to seriously disabled children; and,
- (2) amending existing coverage to provide additional medical services, durable goods, and other necessary items (rather than cash payments) to disabled children to maximize their opportunities to become self-supporting.

The proposal achieves these two goals by building on existing resources. By supplementing Medicaid coverage, it constructively targets the necessary assistance to seriously disabled children.

### *Specifics*

**Eliminate Payment of Cash SSI Benefits to Children:** SSI payments are designed to replace income which a disabled, blind, or aged person cannot earn due to an impairment or age. Most children do not earn income to support themselves regardless of whether or not they are disabled. Therefore, for a child, there is generally no income to replace. Moreover, programs already exist to meet low-income children's needs which do not arise from their disability. Under this proposal, individuals under 18 years of age would no longer qualify for the SSI program.

**Supplemental Needs Assistance to Disabled Children Replaces SSI:** Assistance for supplemental needs would be provided to children determined disabled. This supplemental needs assistance would replace the relatively no-strings-attached cash currently provided by SSI. Qualifying disabled children would be provided with standard Medicaid coverage and supplemental coverage for disability-related items and services.

The objective of this supplemental needs assistance is to target resources to qualifying disabled children so that their disability-related needs are met in a way that allows them to maximize the chances that they will one day achieve independence and engage in substantial gainful activity. The coverage for low-income disabled children would then concur with the Senate Finance Committee's observation in 1972, that the needs of disabled children versus those of non-disabled children, "are generally greater only in the area of health care expenses."

**Supplemental Needs Services:** The expanded services would include those that the HHS IG has identified a majority of states now offer as optional under their Medicaid programs. They include rehabilitative, physical therapy, clinic, psychologist, speech, hearing and language disorder, diagnostic, and inpatient psychiatric services. In addition, other disability-related items considered to be necessary may be approved if

they are a part of the child's regular treatment plan. Examples could include wheelchairs, ramps, and other items to improve the child's quality-of-life.

**Operation of Supplemental Needs Assistance:** Responsibility for providing the supplemental needs assistance would rest with HHS, through HCFA. However, eligibility would continue to be determined by the state disability determination services (medical) and SSA (financial). The supplemental Medicaid coverage, like the standard Medicaid coverage, would be overseen by HCFA and administered by the states. Thus, the supplemental needs assistance would leverage existing resources and NOT create a new bureaucracy. The services covered under this supplemental assistance, that are not already provided for by a state's Medicaid program, would be paid for by federal funding to prevent additional mandates from being placed on the states.

The day a child qualifies, he or she would be provided with a treatment plan by a qualified medical specialist. This treatment plan, which must be approved by HCFA and adhered to as a condition of continuing eligibility, establishes the disability-related needs of the child and a strategy for meeting those needs and fulfilling the objective of the program. As such, the treatment plan may require services or items beyond supplemental coverage, which would be capped at \$3,000 annually. The cap could be waived only under exceptional circumstances and with the Secretary's approval.

**In Practice:** Once the plan is approved, the recipient is issued an eligibility card. The card allows those recipients who require disability-related items and beyond supplemental coverage that are part of the approved treatment plan to purchase them in the general marketplace. HHS will be charged with implementing the necessary outreach, verification, and security to support the eligibility card.

If the items are of a personal needs variety, they would be listed on the child's card along with the payee's name. They could then be purchased at stores, and the stores would be reimbursed by HCFA. For example, a qualifying child who is incontinent would receive diapers as follows:

- \* First, they would be part of his or her treatment plan.
- \* Second, the payee would present the eligibility card at a local store. The store, which sees that diapers are a reimbursable expense, would provide them to the payee, checking with an 800# for verification if necessary.
- \* Third, HCFA would reimburse the store on a monthly basis.

If the items are not monthly needs and are more capital-intensive (a ramp outside a residence, for example), the eligibility card would still be used and prior approval would be required. The 800# would assist providers with the procedures for gaining approval and reimbursement. Again, the treatment plan would have to specify that the

item is necessary to fulfill the objectives of providing supplemental assistance. Once the item is approved, the provider delivers the item and is then reimbursed by HCFA.

**Mandatory Redeterminations:** Before the 103rd Congress, there was no required review of continuing disability for SSI recipients. The result was a program that, for all practical purposes, provided possible life-time benefits regardless of improvement in a recipient's condition. In the last session, a mandatory review was instituted for child recipients at the age of 18. However, this is still not frequent enough to protect taxpayer funds.

This proposal includes a required redetermination for those children receiving supplemental needs assistance whose conditions might be expected to improve. This redetermination would require more regular examinations of recipients to determine whether a disability continues. Qualifying disabilities would be categorized into two designations of improvement: possible and not expected.

Children whose conditions are categorized as possible for improvement (such as a child classified as low birth weight or a child who has received a kidney transplant) would have their eligibility redetermined at least every five years. Children whose disabilities are not expected to improve (such as a child with severe Down's Syndrome) would not be required to have a redetermination. Upon reaching adulthood, children receiving supplemental needs assistance whose disabilities continue can apply for SSI benefits as adults.

**Eligibility for Supplemental Assistance and the Definition of Disability:** The financial requirements for the program would be the same as for the current SSI program, with Medicaid asset divestiture rules applying. However, the definition of disability would be altered to clarify that only seriously disabled children should be receiving this assistance.



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