

Social Security

A Publication of the Social Security Section of the State Bar of Michigan

Fall 2002

Editor: Lewis Seward

Message from the Chairman

We begin our fifth year in the Social Security Section entering a new era in representation of the disabled. As you know, SSI claimants are on the lowest rung of the poverty level. As you are also aware, due to their financial needs, attorneys are often paid last (or not paid at all) on SSI cases. As I write this the Senate version of the Bill allowing SSI attorney fee withholding is being tweaked. There is optimism that SSI attorney fee withholding will become a reality prior to the time that Congress ends their term this year. This Bill will eliminate the number one headache in representing claimants. Say your prayers and let's hope for the best.

We have a Winter and Spring Seminar scheduled at the State Bar in Lansing. Please mark on your calendar **January 24, 2003** and **May 16, 2003**. Both are on Friday and both will start at 10 a.m. with the usual two-hour morning session to talk about current developments, followed by lunch and a speaker in the afternoon.

During our annual meeting with the State Bar in Grand Rapids, we have had our largest audience ever. We had 87 reg-

istered guests. This was mainly due to our partnership with the Grand Rapids Hearing Office and SSA. Sue Gilbert, OHA Office Manager and Vonda VanTil, Public Affairs Manager, were instrumental in organizing the program.

This is the first newsletter we have had since 1999. One of my first exercises of the wide executive discretion that the chairperson holds is to make the chairperson responsible for getting out the newsletter. I have already warned Tom Stellard our vice-chairman and next year's chairman. I am going to set everything in place so that there will hopefully be a smooth transition in getting out this newsletter.

Basically the chairperson is going to be the conduit for the information in the newsletter which will be forwarded on to the State Bar. Therefore if you want anything published, if you would like to advertise or have any practice pointers, please send them to my office. If you have an article that you want published, send it to my office on a floppy disc. If it is anything voluminous I will most likely have it posted on our website.

If you want to send me anything, my address is:

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The seminar that we had in cooperation with the Social Security Administration was such a success that we plan on having the same type of seminar every annual meeting. Therefore during September 2003 when the meeting is in Detroit, our Section will work in conjunction with the Detroit and Oak Park Hearing Offices as well as a representative from DDS and a representative from one or more of the field offices. When the annual meeting moves to Lansing in 2004, we will do the same thing and involve the Lansing and Flint Hearing Offices.

Hope to see you on January 24, 2003
Lew Seward, Chairman

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2002-2003

Section Seminar—Grand Rapids

We really started out our fifth year on the right foot with the largest gathering of representatives for a statewide meeting. We had Julie Meyers-Lawrence, the District Manager for the Grand Rapids Field Office, Jim Jennette, a Field Office Management Support Specialist, Tom Ward, the Publication Relations Officer for DDS. OHA was represented by Sue Gilbert and ALJ Douglas Johnson. We also received a lot of help from Vonda VanTil who kept things moving smoothly during the two hour seminar.

During the seminar, things were put into perspective looking at some of Michigan statistics. We have 35 ALJs who decided 14,000 cases last year. The case load in Michigan per ALJ at this time is 653. The cases pending have increased 145% in only two years. This is during the same time when there has been a reduction in personnel, i.e., 130 employees in three years, *and* a decrease in the amount budgeted per office.

There has also been a significant disruption of work load due to the changes in the review process both at DDS and more recently HPI at the OHAs. Grand Rapids is fourth in the nation with cases per ALJ at 700. Grand Rapids has already had over 670 video conferences with ALJs in Chicago. The feedback from practitioners in this area for the most part has been overwhelmingly positive.

SSA discussed some ways to reduce the backlog. One of those is to resurrect the old senior attorney program. This worked very well eliminating the backlog in the past. However, because it worked so well, the backlog was pretty much caught up and rather than continue the program to keep the momentum going, the government in its wisdom, discontinued it. Other ways to reduce the backlog are a short form decision and early screening procedures for claimants 55 and over for a possible fully favorable decisions, i.e., OTRs.

There was quite a bit of discussion regarding the problems that have arisen now that the attorney fee cap has been increased to \$5,300. This is especially problematic when the fee agreement pro-

vides for \$4,000 or the maximum allowable by SSA. Basically it is very inconsistently applied whether \$4,000 is withheld or whether the maximum is withheld if it exceeds \$4,000. Please see our Section website for posted information from the Regional Office regarding this issue. We posted the directive from the Chicago Regional Office which was sent to all OHAs in Michigan.

There were 120,000 new filings at DDS in Michigan, with 43% allowed at the initial level. There were also 30,000 CDRs of which 86% were re-approved. The processing for a claim is averaging 110 days which is down from 120 days when the pilot project began. 42% of all cases have at least 1 CE and this percentage is decreasing. This is due to pressure from the administration to reduce costs and also a more willingness to use the treating source.

Regarding the elimination of the claimant conference, DDS found that the claimant conference actually encouraged more claimants to appeal. According to the DDS representative, "appeals went through the roof" which of course is counter productive to the OHA backlog. Elimination of the claimant conference will reduce the number of claimants appealing, thereby reducing the burden on the administration.

DDS now has document scanning capability with the eventual goal of having as much information as possible in one central data base.

Regarding Quality Review, 50% of all approved cases go to this department in Chicago while only 25% of denials go to Quality Review. QR agrees with 95% of all Michigan decisions.

OHAs have now contracted the work of putting a file together. The workers are paid by the file. Basically they assemble the file and number the exhibits. This is one of several attempts by OHA to reduce the backlog. Also, OHA had some funds earmarked for contract photocopying. That money has been exhausted but apparently there is some more on the way. If you need exhibits photocopied, contact the docket clerk or office manager at your local OHA for more information on this.

In order to track files as they move through different departments at OHA, they are now utilizing bar coding.

On the horizon, OHA has a goal of having an electronic file. They envision reviewing the file by computer screen. However there are a number of issues to be resolved such as what to do with the medical records that come in, i.e., will they be shredded, major concerns about security, and concerns about making the file readily available to representatives and claimants (especially claimants who are not computer literate). One of the goals is to eliminate the re-keying of basic information into the computer which is done multiple times throughout the review process, i.e., from DDS to OHA to ODO.

The old four-track recorders are falling in disrepair and unfortunately there are no spare parts made for these machines. Therefore OHA is slowly moving towards digital recording which will allow representatives to obtain recording of the hearing digitized through the Internet. The recording will be on a CD Rom that will be easily placed in the file.

There is a major problem with tapes being lost as I am sure you have already experienced. Sue Gilbert indicated that remands by the Appeals Council just for lost tapes totalled 4,600 last year. She said it cost the administration an extra \$1,850 per remand due to a lost tape so obviously there is also a financial incentive to convert to a digital recording system.

Social Security has expanded the voice recognition process. Also as part of the overall automation scheme, OHA is working with setting up an appointment reminder system by phone or mail reminding the claimant of the hearing. Also in the works is an automatic routing of the file with the computer telling where the file should go next (really I am not making this up).

Practitioners need to aware of a new program called the Pre Effectuation Review. This is a review of favorable decisions which is going to be combined with the existing Own Motion Review by the Appeals Council. Basically profiles are set to select cases which may be identified for possible problems. The speaker did not know what those certain profiles are but even if they did know, I am sure that

would not be divulged to representatives. The administration estimates there will be reviewing approximately two percent of the favorable decisions.

If a case falls under the profile, it will be mailed to the Office of Quality Assurance (OQA) which apparently is in Baltimore. If OQA disagrees with the ALJ, the case goes to the Appeals Council under its Own Motion Review. Then that process takes over which really has not changed. The Appeals Council has 110 days to make a decision. If no decision is made, they begin payment of interim monthly benefits to the claimant. Make sure as a practitioner that you hawk this closely.

You want to make sure that the claimant is being paid their timely benefits if no decision is made by the Appeals Council. As per the Own Motion Review procedures, these interim benefits do not have to be repaid if the case is called back and the ALJ ultimately issues a denial. If you have had cases remanded due to an Own Motion Review, it goes back to the same judge mostly for a procedural error such as credibility, articulation or vocational issue. It is pretty rare for an ALJ to reverse his/her prior decision and the review is more of an annoyance to the ALJ than anything.

Regarding fee approval cases in this transition stage from the \$4,000 to \$5,300, if your case has the fee agreement that provides for \$4,000 or the maximum set by the administration, you are guaranteed to run into problems. The best solution is to either have the client sign a new fee agreement providing for the increased cap or draft an amendment to the fee agreement which clearly states the sole purpose is to conform with the law allowing for an increase in the cap from \$4,000 to \$5,300. If you have one of those cases where you receive only \$4,000 and you are allowed to charge more, you can file an objection to the fee within the prescribed time or try to fix the problem with Baltimore.

There was also discussion on use of the SSA websites. Two sites to bookmark if you have not done so already are ww.ssa.gov and ww.ssa.gov/rep. These sites will get you to the POMS Rulings, addresses and phone numbers of all Social Security Offices, etc.

Fast Facts

New medical release forms

Please be advised that SSA has revised their medical release forms. When you are filing a request for hearing, the claimant needs to sign three of these forms. New forms can be obtained at your local field office. The form number is SSA-827 (revised 2/02).

New ODO phone numbers

The phone numbers for ODO in Baltimore have changed and the MODS have been rearranged slightly. Please see our Section website for information on this.

Summer seminar—Frankenmuth

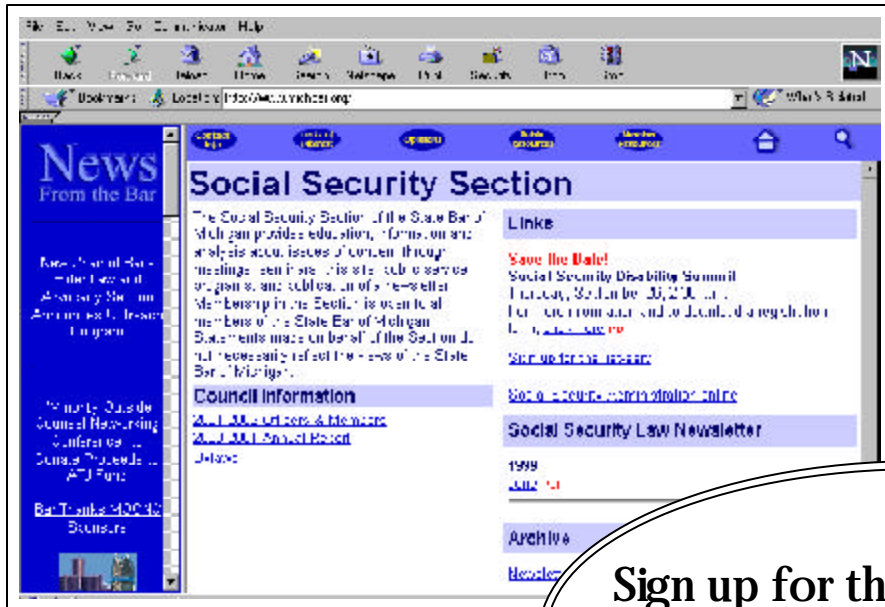
We were again fortunate to have three very good speaker for our Summer Seminar which was held in Frankenmuth Bavarian Inn this year. We had two neurosurgeons from the Field Neurological Institute from Saginaw. Dr. Malcolm Field, founder of the Nationally recognized treatment and research institute, talked about the anatomy of the spine. Dr. Field showed slides of common neurosurgical cases such as spinal stenosis, herniated and bulging discs.

Dr. Gerald Schell, a legend in his own right, also gave an excellent presentation on the history and current use of the pedicle screw fusion. Saturday morning Elaine Trippi, Ph.D., talked about treating veterans with PTSD. All three speakers were very informative. You could gauge the interest by the numerous questions that were asked of all three speakers.

The turnout was light which historically has been with every summer seminar. We thought that if we moved it to Frankenmuth this year, we would get more of a turnout being closer to the metropolitan areas. Therefore, we are looking into the possibility of partnering with the Worker's Compensation Section since we have been informed they also have a summer seminar. We will keep you posted as we obtain some more information about this.

New ruling on obesity

On September 12, 2002 SSR 02-01p took effect to reflect the new changes to the rules since the obesity listing was deleted. The new ruling discusses the relation between Body Mass Index (BMI) and diagnosing obesity. It provides guidelines for evaluating obesity in the Sequential Evaluation Process at Steps 2-5. For more information, visit our website for the entire nine page ruling.



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Future Events

Mark your calendar

Winter Seminar
Friday, January 24, 2003
10:00 a.m.
State Bar of Michigan, Lansing

Spring Seminar
Friday, May 16, 2003
10:00 a.m.
State Bar of Michigan, Lansing