

Social Security

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

Spring 2004
Editor: Lew Seward

Two Key Bills Passed

Good News for All Social Security Practitioners

In the six plus years of this fledgling Section, the Editor has never had such good news to pass on to the membership before. First of all, SSI attorney fee withholding will become a reality beginning in March, 2005 in a Bill signed by the President. Additionally, a Bill is currently before Governor Granholm that was passed by the House and Senate to allow our indigent clients a free copy of their medical records. We have fought long and hard for a Bill containing the costs of medical records, which have currently gotten out of hand.

Lew Seward, Editor

Social Security Protection Act Becomes Law

The Bill that was signed by the President provides for SSI attorney fee withholding and a user fee cap on March 2, 2004. The user fee will be capped at \$75.00 with a COLA adjustment, which will come into effect on September 1, 2004. This certainly beats the \$300 plus charge that is currently in place when the fee caps out at \$5,300.

Regarding the SSI attorney fee withholding, this will be implemented no later than March 2, 2005. It will probably apply to those cases that have been adjudicated after that date.

To satisfy the non-attorney reps that have requested fee withholding, the Bill also allows for direct payment on SSI and Title II cases. However the non-attorneys must meet criteria, which is yet to be determined by the Commissioner

of Social Security. It is thought that this will include an exam, an education requirement of some sort, proof of professional liability insurance, completion of continuing legal education courses and most importantly, a criminal background check.

According to the language of this new legislation, there is a five year sunset provision. According to NOSSCR, the exact date has not been set yet as far as when this law will come into effect, once signed by the President. However, the legislation specifically indicates that the Commissioner is to implement this "demonstration project" no later than February 11, 2005.

The legislation also requires the GAO to study the results of this demonstration project and recommend

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Protection Act
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any legislative or administrative changes within three years of the implementation of the new law. By requiring the GAO to perform an ongoing study and report, it should help prevent the expiration of this Bill.

Finally, Social Security practitioners will be able to focus their practice on Disability Law rather than Collection Law.

Medical Records Protection Act

The Bill that allows for an indigent claimant to receive one free copy of their medical records from all sources is now in the Governor's Office. Lew Seward was asked to testify at the Senate Committee Hearing on February 11, 2004. Mr. Seward explained to the Committee that due to HIPPA, the cost of medical records has increased due to many physician offices refusing to send copies of other practitioner's records, such as specialists or hospital records.

Some members on the Senate Committee were genuinely surprised that the HIPPA law precludes patients from obtaining records from specialists to whom they were sent by their own treating family physician. It was explained that if patients wish to obtain a complete set of their own records, they must also make requests to all of these specialists and also to the hospitals where they were sent. Mr. Seward also explained how outrageous the medical record charges have become now that the third-party copy companies are firmly entrenched in hospitals and many medical clinics.

The hearing reconvened a week later in Lansing with a large number of special interest groups.

It included the record copy service companies, hospital associations, Legal Aid, the Medical Society, etc. There was a lot of debate over who should have authority to request records. Mr. Seward explained the importance of the special interest groups not losing sight of the main purpose of this Bill, which is to allow indigent claimants to obtain a free copy of their records in order to document their disability or Medicaid claim.

In any event, following this special interest group meeting, the Bill was redrafted and unanimously approved by the Senate Committee (without any public hearing). This Bill still keeps in place attorney and non-attorney representatives having the ability to request records on behalf of the medically indigent clients free of charge.

The amendment also included a copy fee schedule for the non-indigent, which is basically what we have been paying right now if not a little bit more; i.e., \$20 for the initial request plus \$1.00 a page for the first 20 pages plus a postage charge. Mr. Seward explained at the group meeting that the record company services are headed towards electronic processing of

(See Medical Records, page 6)

Winter Section Meeting -Electronic Filings of New Claims

We started off on the right foot with a large attendance to our first Section Meeting in the year 2004. Clifford Weisberg did an excellent presentation on Electronic Filing of the Initial Claim, more commonly known as e-dib. Before Cliff even got started talking about the subject, he shared with us some of his "pearls of wisdom" regarding Social Security practice in general.

Cliff stressed the importance of working with the disability examiners at the initial claim level. Since Michigan has become a pilot study state (there are now 12 states in the nation that have eliminated the recon stage), the allowances at the initial level have gone from 35 to 42%. It is important to also note that a disability examiner has authority to grant an allowance if there is no mental impairment involved and it is not a children's case.

We have been informed by the administration that the Commissioner of Social Security is devoting extra resources towards the e-dib Program. What this means in plain English is that at the local office, when a claims rep has two stacks of applications, one for electronic filings and the other which are paper filings, the claims rep has a built-in incentive to process the electronic e-dib applications first as a priority.

You can only file an initial application electronically if you have a Title II claim. If it is a dual claim, i.e., Title II and XVI, then you cannot file it. Obviously you have to have an Internet connection and more preferably a high-speed connection. When making the appoint-

ment with clients to file the claim in your office, request that they bring a certified copy of their birth certificate and military discharge papers, if applicable. If the client already has an appointment with Social Security to take the claim, this appointment needs to be canceled and taken off the system, otherwise you will be prevented from filing the claim electronically.

Cliff went through the various screens in the initial application process and discussed the critical importance of making sure you have the client also sign a 1696 and the initial application.

When you file the claim, you will receive a confirmation number to prove you have done so and the claim is completed once you mail your 1696 and signed application to the District Office. It is also critical that you indicate in the comments section of the application that you are representing the claimant with your address and phone number, and indicate that you are an attorney. This is all critical information to be input into the system to make sure that you receive notice of correspondence from DDS, not to mention getting paid for your work done.

You will receive proof that the claims representative has processed your application once you receive a receipt. Sometimes the claim will be sent to the local office where it

"We have been informed by the administration that the Commissioner of Social Security is devoting extra resources towards the e-dib Program."

may sit there for several weeks. It could be that the claims rep who is handling that part of the alphabet is on vacation, or on sick leave. If you have not received this receipt and

cannot obtain any satisfaction from the local hearing office on moving this claim along, contact the District Manager. For the Southern District, it is Jennie Lighthizer, phone

number (313) 885-5417. For the Northern District, it is Skip Kruse, phone number (517) 347-7551. Also call if you have an unresolved problem in a local office and have already gone up the chain of command from the person working on the file to the field office manager.

An interesting tidbit of information shared by Cliff is that on Title II and XVI claims if you allege an onset date beginning on the *first* of the month, the Title II claimant will receive benefits for that entire month once the five-month waiting period is satisfied. If you allege an onset date on the second of the month, benefits are not payable until the following month once the five-month waiting period is met.

In our afternoon session, we were fortunate to have as a guest speaker The Honorable Douglas W. Johnson, Chief ALJ of the Grand Rapids Hearing Office. He gave the group some valuable pointers

(See Electronic Filing, page 4)

on evidentiary issues at the hearing level, as well as some practice tips. For instance, when reviewing files in Grand Rapids, you need to give the hearing office 24-hour notice prior to reviewing a file so it can be pulled.

Also unique to Grand Rapids is a pre-hearing statement of facts form. This is sent out several weeks before the hearing to be completed and returned.

Grand Rapids is going to begin using a post-hearing order that instructs either the claimant's representative or the administration what particular post-hearing evidentiary records are needed and the time frame that this evidence needs to be submitted. There is a strong disincentive to postpone a hearing due to medical records that have not been obtained or submitted. Grand Rapids prefers to hold the hearing and then keep the record open to obtain this evidence rather than postponing the hearing altogether. Therefore, a post-hearing form has been created, which will be implemented shortly. This is an excellent idea that hopefully will be successfully used eventually in all Hearing Offices. It makes it clear to the representative exactly what needs to be obtained and the deadline so that there is no misunderstanding as to who is to obtain the information and when.

Judge Johnson discussed the current state of pending cases. Grand Rapids is #1 in the Nation for the

number of cases received per day as well as the number of cases assigned per ALJ (currently at 1,657). Detroit and Flint are also in the top 10 with 1,093 cases and 1,054 cases respectively.

Video conferences were also discussed. There is actually a POMS on video teleconferencing (I-5-1-16). Please keep in mind that the rule has slightly changed regarding objecting to a video conference. The rule used to be that you were given an opportunity to object when you were informed of a video conference, and now the rule is that the hearing will be set by video conference and the burden is on the claimant to file an objection, otherwise the case will be heard by video conference versus an in-person hearing.

Please be aware that if you are faxing records to an ALJ who is assigned to a hearing held by video conference within a few days of the hearing, you are going to have to confirm that the ALJ actually received those records. Otherwise they may not get associated with the file. During the video conference, make sure that you ask the ALJ if they have received those currently faxed records. It is believed that each video conference hearing room has a fax machine and therefore, if the ALJ has not received those records into the file, you may be able to fax them to the ALJ during the hearing.

Judge Johnson talked about some evidentiary issues, the most popular of which is the substantial

increase in the number of physician assistants and nurse practitioners who now give statements or fill out RFC forms. It is interesting to note that the Social Security regulations have not kept up with the changing medical landscape on this issue. As the members are well aware, many HMO plans are now encouraging the widespread use of nurse practitioners and physician assistants as a way of keeping costs down. Additionally, as you may have noticed, some County Health Plans are reimbursing doctors' offices such paltry amounts that larger family practices and clinics are heavily dependent upon nurse practitioners and physician assistants to perform most of the medical care. This is sure to be a nationwide trend and our section is bringing this up as a concern to NOSSCR.

The problem that has evolved due to tightening insurance reimbursement is that the physician in offices that are staffed with nurse practitioners or physician assistants no longer see the patient even though "on paper" they are the supervising physician. When it comes to taking a statement, a nurse practitioner and physician assistant who give statements fall under the category of "other sources" of which the administration is not required to give significant weight to, though they must still consider the evidence.

We are witnessing with greater frequency physicians who will not fill out forms for their patients (or even countersign those completed by the nurse practitioner or physician assistant) because they have never seen the patient for treatment. The representative then is forced in

a "Catch -22" situation and their client could be at risk of not being granted benefits merely because they have the misfortune of being treated at an office that is set up where a physician does not routinely treat the patient. If a doctor does not agree to countersign a form, the only remedy is to have the client pay for a physician examination to complete the form by the physician or be forced to take the less desirable route of having an independent physician perform an evaluation and complete the form.

Another problem discussed by Judge Johnson are earnings beyond the onset date. Grand Rapids will begin sending the earnings statement to all representatives where earnings show up beyond the onset date. Since the earnings are only reported annual-

ly, most of these are easily explained but they still must be addressed to prevent the Appeals Council taking on Own Motion Review on the case needlessly. Judge Johnson also pointed out the fact that earnings posted for the year following the onset date are oftentimes explained by paid disability, vacation or other benefits to the employee that is not earned income.

One of the members asked about getting the written decision out and what the procedures were for the hearing office. Judge Johnson explained that after he drafts his

"Grand Rapids will begin sending the earnings statement to all representatives where earnings show up beyond the onset date."

directions on a case, it goes to the writing unit where it is assigned to a writer. Once the decision is written, it goes back to the ALJ to edit and it may be re-edited if necessary by the ALJ. The order in which cases

are written are: (a) dire need cases; (b) remands; (c) favorable decisions; and (d) unfavorable decisions.

If you have one of those cases strong enough to request an OR (do not be like the few minority of attorneys who think every case is an OR), address your request to Susan Gilbert, the Hearing Office Manager in Grand Rapids, where she will route it to the appropriate person.

SSA Yearly Changes

The following is some pertinent information regarding cost of living increases for some of the items that are common to the Social Security Disability Section for year 2004:

- Earnings for one quarter of coverage \$900.00
- COLA Social Security increase 2.1%
- Part B Medicare premium (per month) \$ 66.60
- SGA threshold amount \$810.00
- Trial work period \$580.00
- SSI individual (per month) \$564.00
- SSI couple (per month) \$846.00
- SSI AFC rate \$721.50
- One-third reduction for free housing \$188.00

SBM Partners With ICLE To Launch Michigan Law Online

Michigan Law Online - a new and free research service will soon be available to all active State Bar members. To be launched in March 2004, Michigan Law Online is the result of a collaborative endeavor between the State Bar of Michigan and the Institute of Continuing Legal Education. The new service will feature convenient round the clock daily access from any desktop to the following:

- Michigan Supreme Court opinions from 1942 to the present
- Michigan Court of Appeals published opinions from 1965 to the present
- Michigan Court of Appeals unpublished opinions from 2003
- Michigan Supreme Court orders from 1966 to the present
- Current Michigan Court Rules, and amending orders from 1995 to the present
- Michigan Rules of Professional Responsibility.

Cases will be searchable by keyword, date, docket number, case citation, party name and opinion author. Other features include links to the most recent cases as well as official citations.

“I’m very pleased that we can offer this new service to our members. This should be a cost effective research tool for many lawyers, especially small firm and solo practitioners, in their day-to-day practices,” said Scott S. Brinkmeyer, president of the State Bar of Michigan.

John T. Berry, the executive director of the State Bar, said the collaboration with ICLE significantly enhances the range of services that the Bar provides to its members. “Michigan Law Online is a timely, cost-effective and valuable tool that will help lawyers at their desks. It’s a service that reflects the central theme of the Bar’s strategic plan, which is to support and help our members in their practices,” Berry said.

The Institute of Continuing Legal Education is a not-for-profit organization based in Ann Arbor that has served the educational needs of the Michigan bench and bar for well over 40 years. The institute’s director Lynn P. Chard said the organization was “excited to collaborate with the Bar to bring members Michigan Law Online, a significant expansion of our existing electronic practice

resources. Collaboration allows us to offer this rich database free to Bar members — something only possible with the Bar’s support. We look forward to continued collaboration on behalf of Michigan Bar members.”

The University of Michigan Law School, Wayne State University Law School, and the State Bar of Michigan founded ICLE in 1959. It is also sponsored by Thomas M. Cooley Law School, Michigan State University Detroit College of Law, University of Detroit Mercy School of Law and Ave Maria School of Law.

More details about Michigan Law Online, including information on how to register, will be available soon. To review a sample page, please visit www.icle.org/mlo. For further information, please contact the State Bar Member Services Representative, Amy Pierce, toll-free at (800) 968-1442 or (517) 346-6322 or apierce@mail.michbar.org

Medical Records
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medical records; i.e., scanning the records in at the hospital and e-mailing them to the person requesting those records. This Bill was changed to specifically provide that if the medical record is in some form or medium other than paper, the charge of the request is the “actual cost of preparing a duplicate.”

Note: Just as this newsletter went to print, the Senate approved this Bill and sent it to Governor Granholm for her signature. We will keep the membership posted when this Bill becomes effective.

Social Security Section

2004 SSI Break-Even Chart

As this is such a widely used reference, listed below is the Table of Deeming Break-Even Points:

Effective January 2004	Parent to Child				Spouse to Spouse	
	EARNED		UNEARNED		EARNED	UNEARNED
	One Parent	Two Parents	One Parent	Two Parents		
0						
Reduction Begins	\$1,253	\$1,817	\$ 604	\$ 886	\$ 649	\$ 302
Payment Stops	\$2,381	\$2,945	\$1,168	\$1,450	\$1,777	\$ 866
1						
Reduction Begins	\$1,535	\$2,099	\$ 886	\$1,168	\$ 931	\$ 584
Payment Stops	\$2,663	\$3,227	\$1,450	\$1,732	\$2,059	\$1,148
2						
Reduction Begins	\$1,817	\$2,381	\$1,168	\$1,450	\$1,213	\$ 866
Payment Stops	\$2,945	\$3,509	\$1,732	\$2,014	\$2,341	\$1,430
3						
Reduction Begins	\$2,099	\$2,663	\$1,450	\$1,732	\$1,495	\$1,148
Payment Stops	\$3,227	\$3,791	\$2,014	\$2,296	\$2,623	\$1,712
4						
Reduction Begins	\$2,381	\$2,945	\$1,732	\$2,014	\$1,777	\$1,430
Payment Stops	\$3,509	\$4,073	\$2,296	\$2,578	\$2,905	\$1,994
5						
Reduction Begins	\$2,663	\$3,227	\$2,014	\$2,296	\$2,059	\$1,712
Payment Stops	\$3,791	\$4,355	\$2,578	\$2,860	\$3,187	\$2,276
6						
Reduction Begins	\$2,945	\$3,509	\$2,296	\$2,578	\$2,341	\$1,994
Payment Stops	\$4,073	\$4,637	\$2,860	\$3,142	\$3,469	\$2,558

Individual FBR \$564

Couple FBR \$846

Ineligible Child Allocation \$282

All rates assume an Fla of A or C, that all children have no income, and only one eligible child is in the household. The chart does not apply when there is a combination of earned and unearned income. REDUCTION BEGINS when income exceeds amounts shown. PAYMENT STOPS with amounts shown. Reference: SI 01320ff

Mark Your Calendars!

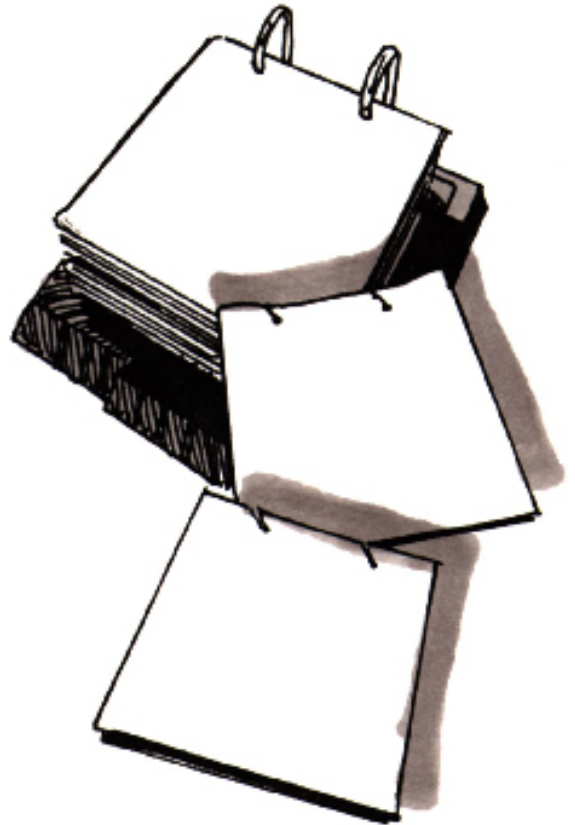
General Section Meeting

June 4, 2004

10 a.m. - 3 p.m.

State Bar Building, Lansing

Topic to be announced



SBM

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