

STATE BAR OF MICHIGAN  
**SOCIAL SECURITY**

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



Spring 2007  
 Editor: Lewis M. Seward

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## We Need You!

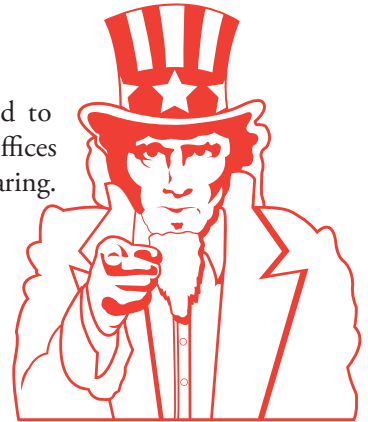
The Michigan hearing office has continued to be ranked at the bottom of the list of hearing offices throughout the United States in days awaiting a hearing. The main culprit is the lack of manpower necessary to prepare and process claims for adjudication.

The House Ways and Means Social Security Subcommittee held a hearing in February to discuss this growing problem. The goal is to obtain enough information on the backlog crisis to convince Congress (and the president) that more funds are needed for staff at all levels of SSA. Nancy Shor addressed the committee and presented a list of examples of claimants who have lost their homes, their marriages, and even their lives while waiting for their cases to be adjudicated.

The Social Security Section is asking the members to write or call your congressman. If possible, a real-life example would be helpful to have the Congressional Office understand the impact on the voting public. The goal is to lobby your congressman for more appropriations for increased manpower, especially in areas such as Michigan, which is in a critical staffing shortage.

Four thousand cases were recently transferred to Region 9, mostly to Nevada and California. These are cases going to judges whom you know very little about, and the judge knows very little about you. Attorney credibility is just as important as claimant credibility in Social Security hearings. Out-of-region transfers not only hurt our clients but actually increase the delay, as occurred during the last wave of transfers.

Please contact your local congressman's office or one of our two senators listed below today so the 2008 budget can adequately fund staffing additions in Michigan.



**U.S. Sen. Carl Levin**  
 269 Russell Office Building  
 U.S. Senate  
 Washington, D.C. 20510-2202  
 (202) 224-6221; fax (202) 224-1388  
 e-mail [www.levin.senate.gov/contact/index.cfm](http://www.levin.senate.gov/contact/index.cfm)

**U.S. Sen. Debbie Stabenow**  
 702 Hart Senate Office Building  
 Washington, D.C. 20510  
 (202) 224-4822  
 e-mail [senator@stabenow.senate.gov](mailto:senator@stabenow.senate.gov)

**District office**  
 515 N. Washington Avenue  
 Suite 402  
 Saginaw, MI 48607-1370  
 (989) 754-2494; fax (989) 754-2920

**District office**  
 2503 South Linden Road  
 Flint, MI 48532  
 (810) 720-4172

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**2006-2007**

# Confusion Abounds on New Retro Fee Process

As you are aware, as of January 1, 2007, all attorneys accepting direct payment of attorney fees from Social Security must register, completing a SSA-1699 or SSA-1694. The 1699 is principally used for those who are solo practitioners, while the 1694 is more appropriate for use by multi-member attorney firms. Information on the difference between these initial, one-time forms can be found at the SSI website [www.ssa.gov](http://www.ssa.gov). At the home page, click on the scroll down button under "Information" and click on "Attorneys and Representatives." From there, click on "Registration Requirements for Representatives to Receive Direct Payment of Approved Fees and Forms 1099-MISC."

Perhaps the source of most confusion has been filing the other mandatory form, SSA-1695. This form must be completed for all new clients signed up on or after January 1, 2007. On this form, it is mandatory to provide your Social Security number. Apparently, the only way the IRS can track attorney fees is with the individual's Social Security number. There is obviously great concern over filing a form with your Social Security number on it for every new client. Your employees will now have access to your Social Security number.

You can file any of these forms either by hard copy or online. If you file the forms online, you must register under "Business Services Online" before you can use the service.

For more information, NOSSCR has published a list of frequently asked questions about the confusion surrounding these forms in the January 2007 newsletter.

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## Waiving the Preparation of the Exhibit List

The Flint hearing office is looking into scheduling cases without specifically numbering the medical exhibits. This is actually done in many hearing offices throughout the country because of the acute manpower shortage. Through attrition, SSA is only allowed to replace one in four employees at the hearing office, which is creating havoc in preparing cases for a hearing.

The Flint hearing office is in the process of creating a form to allow their office to pull a case and set it for hearing without specifically labeling and numbering the medical exhibits. If the case ultimately results in a denial, then the medical exhibits will be listed and numbered.

Since the majority of cases are favorable decisions, this could save a tremendous amount of time at the hearing office. This practice will be optional and not compulsory. Each attorney or representative will have the option of waiving all of their future cases to be pulled without specifically labeling and numbering the medical exhibits. The waiver will also indicate that the representative can rescind the waiver or allow the representative to request that a specific file be pulled and the medical exhibits labeled and numbered.

# Sixth Circuit Court of Appeals Case

*Bowen v Commissioner*, 473F. 3d 742 (6th Cir. 2007)

The Sixth Circuit published another case on the Treating Source Rule. Following *Wilson v Commissioner*, 478 F.2d 742 (6th Cir. 2000), another case has been published that requires the ALJ to follow the regulations when evaluating treating source statements.

As usual, the Commissioner defended the ALJ's failure to discuss the treating source's opinion using the "harmless error" defense. However, like the *Wilson* case, the ALJ in *Bowen* failed to acknowledge the expert opinion of Dr. Holean, Mr. Bowen's treating psychologist. The Sixth Circuit noted that "nowhere in

the ALJ's 12-page opinion does the ALJ mention Dr. Holean's name, the fact that he treated Bowen for over three years, or the fact that she submitted an RFC assessment in this case that corresponds with a 'severe' limitation assessed by Dr. Holean. Dr. Holean's opinion is noted only in a long listing of medical records appended to the ALJ's decision, that any mention of her assessment is totally absent from the decision itself."

The Sixth Circuit found that the failure for the ALJ to address Dr. Holean's opinion violates the Treating Source Rule under 20 CFR 404.1527(d)(2).

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## Electronic Filing Update

By Sue Gilbert, Grand Rapids Hearing Office Director

### Electronic Record Express

On December 29, 2006, the Michigan ODAR offices were certified for fully-electronic file processing. At this time, approximately 90 percent of all new receipts in the Michigan ODAR offices are fully electronic claims. You will start receiving fax cover sheets with the appropriate bar code on those electronic files which can be used to submit subsequent information electronically through the fax machine. You still have the option to mail or deliver records to the ODAR office. Additionally, information can be submitted in electronic format which is beyond the scope of this article. If you are interested in sending information electronically at this early stage, contact your local ODAR office. A user name and password are needed in order to submit electronic information.

### Viewing a File on the CD Rom

If you are having a problem viewing more than one page of a CD, then you probably have a single page TIFF viewer and not a multipage viewer.

How to check/change default viewer for TIFF images:

- Go to My Computer
- Control Panel
- Tool (on the toolbar)
- Folder Options
- File Types
- Find TIF and TIFF—change the default to Microsoft Office Document Imaging or any of the other multipage TIFF viewers.

### Faxing Documents to be Included in the File

When faxing documents to an ODAR server, please limit the size of each submission to approximately 100 pages. If the document is larger than 100 pages, please divide it into multiple submissions (e.g., 1 of 20, 2 of 20, etc.). If you fax documents that are larger than approximately 100 pages, it can cause an error in the electronic file, and we then have difficulty retrieving the document.

### Filing the Disability Report with the Request for Hearing

When filing a Request for Hearing (Form HA-501), please complete a Disability Report-Appeal (Form SSA-3441 or i3441) at the same time you submit the 501. Under the electronic process, the field offices cannot transfer a claim to a hearing office unless they have a completed 3441.

The field office instructions also indicate that they must obtain and supply to the hearing office numerous signed Authorization to Disclose Information (SSA-827) forms at the time they take a hearing request. SSA is hoping to eliminate this requirement, but if you are asked to supply these forms, please do so promptly so that the hearing you have requested will be promptly transferred to the hearing office.

# News of Note

## Federal Court Filers – A Step Backward

For the Eastern District of Michigan, a new policy was approved January 8, 2007. It requires a “courtesy” copy to the district judge of all dispositive motions defined under E.D. Mich LR 7.1(d)(1)(A). This includes all responses and replies. All accompanying exhibits must be submitted directly to the judge’s chambers on paper. Any exhibits must be properly tabbed and all papers firmly bound along the left margin. A printed copy of the notice of electronic filing must also be attached to the front of the document.

The rules indicate that a chamber copy must be sent via first-class mail the same day the document is e-filed. Thank you for taking a step backward in the e-filing process.

*Editor - Lewis M. Seward*



## Michigan DDS -FY 2006 Statistics

During the fiscal year 2006, there were 105,639 new filings at DDS in Michigan. The DDS also completed 15,446 CDRs. The average processing time for an initial claim was 90.5 days. This was 5 days under agency goal and almost 20 days fewer than the prior year. 56.6 % of all cases had at least one CE. The PD (presumptive disability) rate was 20.7% with a 6% reversal rate. The Michigan DDS allowance rate was 36%. On a national level, 73% of all claims ultimately allowed disability benefits in FY 06 were allowed by the DDS.

The reduction in processing time in Michigan was due to the electronic processing of all initial claims which became effective in June of 2005. DDS is also continuing to use electronic transfer methods including fax and the SSA website by the health information provider community. Currently all CE reports are electronically transmitted to the DDS. Additionally, 34% of all medical records are received electronically.

*Vonda Van Til, Public Affairs Specialist - SSA*



## Workers' Compensation Offset Errors

A recent report by the Office of the Inspector General found that there were a high level of errors when computing the Workers' Compensation offset. Most of the errors fell in favor of the government and were detrimental to the claimant. The following is a chart of errors found by OIG:

| Error Category | Error Category Claims | Extrapolation to Disability Population |
|----------------|-----------------------|--|
| Underpayments  | 19 claims - \$118,386 | 17,858 claims - \$111,268,000          |
| Overpayments   | 8 claims - \$ 40,200  | 7,519 claims - \$ 37,786,000           |
| Total          | 27 claims - \$158,586 | 25,377 claims - \$149,054,000          |

## Cost-of-Living Adjustments

| Quarter of Coverage:                          | 2006          | 2007          |
|---|---------------|---------------|
|   | \$970         | \$1,000       |
| <b>Social Security Disability Thresholds:</b> |               |               |
| Substantial Gainful Activity:                 |               |               |
| Non-Blind                                     | \$ 860/month  | \$ 900/month  |
| Blind   | \$1,450/month | \$1,500/month |
| Trial Work Period (TWP)                       | \$ 620/month  | \$ 640/month  |
| <b>SSI Federal Payment Standard:</b>          |               |               |
| Individual                                    | \$603/month   | \$623/month   |
| Couple  | \$904/month   | \$934/month   |
| <b>SSI Resources Limits:</b>                  |               |               |
| Individual                                    | \$2,000       | \$2,000       |
| Couple  | \$3,000       | \$3,000       |



### Kick up your heels!



You can find back issues of the Social Security newsletter at  
[www.michbar.org/socsecurity/newsletter.cfm](http://www.michbar.org/socsecurity/newsletter.cfm)

# Scheduling Cases in Grand Rapids

*The following is an article from the Grand Rapids ODAR Hearing Office Director Sue Gilbert, with the usual disclaimer that this is not a policy of the agency.*

In general, we are scheduling requests from November 2004 through January 2005 for the months of February 2007 through April 2007.

There are many exceptions to this, including:

- Remands (both appeals council and district court)
- Critical (dire need) cases
- Cases that have been screened and worked up by the central screening unit (CSU)
- Cessation cases (claimant was drawing disability benefits and was then found no longer disabled)
- A sampling of electronic folder cases (approximately 12 per month)
- Cases for claimants that have been identified during our screening process as likely awards

As most of you are aware, Grand Rapids ODAR has the highest number of cases pending per ALJ of any office in the country, and most other Michigan offices are close behind. We have made changes to our exhibiting procedures to free up some of our legal assistants' time to enable them to perform other critical duties, including working up more cases for our judges to hear. This would improve our service to the public.

The plan is to add evidence that is submitted after a case has been worked up directly into the file without first removing duplicates or otherwise breaking down the material submitted. We will implement this change immediately, but we will monitor the impact on our overall process to determine if it is wise to continue the practice.

When an additional document is received after a case has been worked up, the legal assistant (LA) will enter the document into the record as one exhibit regardless of the content of the document. If multiple documents are submitted under separate covers, the LA will enter each document into the record as a separate exhibit.

It is now more important than ever that you be diligent in your submission of evidence to our office. All evidence submitted before case work up (and creation of the exhibit list) will receive the same scrutiny as always and will be identified as exhibits in the usual manner. However, documents submitted after the exhibit list has been created will be entered into the record in the form in which they are received. Representatives will be expected to:

- Eliminate duplicates (do not submit them)
- Place evidence that is being submitted in reverse chronological order if more than one date of treatment is covered
- Divide and itemize the evidence if more than one date of treatment or more than one source is covered
- Provide an index and summary of the evidence submitted

Doing so will further the efficient, fair, and orderly conduct of the administrative decision-making process and will help prevent claim processing delays.

Thank you for your cooperative efforts that improve our ability to provide quality public service. We will continue to do everything we can to gain efficiency in our process in these times when resources are tight and demand is great. We care deeply about the public we serve and appreciate the important roles you play.

"We have made changes to our exhibiting procedures to free up some of our legal assistants' time to enable them to perform other critical duties, including working up more cases for our judges to hear."



# Final Rules for Vision Disorders Effective February 20, 2007



This is to advise you that the agency published final rules for vision disorders in the Federal Register (71 FR 67037) on November 20, 2006. These rules will be effective on February 20, 2007.

These final rules reflect advances in medical knowledge, treatment, and methods of evaluating vision disorders. These final rules contain major policy revisions related to the evaluation of visual field loss. We also made other minor changes that update the medical criteria and provide more detailed information about how we evaluate these impairments. Additionally, the changes include streamlined procedures for evaluating impairments of vision that will enable adjudicators to more quickly develop evidence of disability. Some of the changes that we made in these final rules include:

- Reorganizing, revising, and expanding the introductory text to provide more guidance for our adjudicators and the public about how we evaluate visual disorders
- Providing that we will accept visual acuity measurements made with charts that are comparable to Snellen charts, and clarifying how to use these measurements
- Adding listing 2.03B for visual disorders that result in a mean deviation of -22 or worse on an acceptable test of the central 30 degrees of the visual field
- Clarifying that listings 2.03C and 2.04 must be based on kinetic visual field testing
- Providing additional guidance on how to evaluate visual acuity for children who cannot participate in Snellen or other comparable testing
- Adding criteria in listing 102.023B for determining statutory blindness in children who cannot participate in Snellen or other comparable visual testing
- Adding listing 102.03 for evaluating visual field loss in children
- Adding listing 102.04 for evaluating visual efficiency in children

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## Creativity Keeps the Money Train Rolling

In a case where fact is sometimes stranger than fiction, family members admitted burning their father's body more than a decade ago so they could continue to cash his Social Security disability checks. The father, Larry McWilliams, died of natural causes on January 13, 1997, in the family's home near Lewiston, Missouri. The family burned his body to hide any evidence that he had died. In fact, the wife, Debbie McWilliams, tended the fire to make sure that no bones were left unburned. The wife, son, and a daughter-in-law all pled guilty to theft of government funds. Given her PRW, it looks like mom will be working at the prison crematorium. The son was sentenced to five years in prison and ordered to pay \$133,000 in restitution.

*Editor - Lewis M. Seward*

# The Opportunity to Represent Our Veterans

*The following is an article submitted by James Fausone and Michael Viterna, attorneys in Northville, Michigan on representing veterans.*

In the final hours of the last Congress, S. 3421 was passed and sent to the president, who signed it. The "Choice of Representation Act" allows veterans to retain legal counsel of their choosing after they have filed a Notice of Disagreement (NOD) with the Veterans Administration. This change allows a veteran to hire legal counsel much earlier in the process, although not at the commencement of a claim.

After the effective date, June 22, 2007, there will be very little change in the initial processing of claims. A veteran will file a claim with the regional office. If that claim is granted, no further action will be necessary. However, if the claim is denied by the Regional Office, or the rating (percent of disability) is disputed, a NOD will be filed, and the decision appealed to the Board of Veterans Appeal (BVA). If the veteran loses at the BVA, that decision can be appealed to the U.S. Court of Appeals for Veterans Claims (CAVC). Historically, the veteran could engage counsel after a denial at BVA.

In Michigan, it is estimated that there are approximately 800,000 veterans. A majority of Michigan's veterans are World War II era vets who are, unfortunately, dying off at a rapid rate. There are approximately 65,000 veterans receiving service-connected disability in Michigan.

How does this compare to the Social Security universe? There are approximately 10,100,000 residents in this state. Based on Census Bureau statistics, 15 percent of the population in the state is disabled, creating a pool of approximately 1,500,000-plus potential Social Security claimants.

The VA system, upon awarding service connection, rates claims between 10 percent and 100 percent. In Michigan, 74 percent of the veterans receiving service-connected disability are rated 50 percent or below. A 50 percent rating results in a \$712 monthly check. If the veteran has a 100 percent disability rating, then his monthly compensation is \$2,471. As you can see from these statistics, it is economically difficult for lawyers to represent veterans with limited disability claims.

The practice area of veterans disability law is small and collegial. Those of us who practice in the area encourage others to assist veterans in obtaining their deserved benefits. We are always available to take a phone call to discuss the validity of a claim and how one should proceed. A more detailed version of this article can be found at [www.fbfirm.com/cm/custom/TOCFirmArticles.asp](http://www.fbfirm.com/cm/custom/TOCFirmArticles.asp).



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"Let us remember that, as much has been given us, much will be expected from us, and that true homage comes from the heart as well as from the lips, and shows itself in deeds."

—Theodore Roosevelt

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# Social Security Lawyers Seminar

Friday, May 18, 2007

State Bar of Michigan  
306 Townsend St, Lansing, MI 48933  
10 a.m. - 4 p.m.  
(cost - TBD)

Watch the mail for registration information

**Topic: Ethics & Evidence**

What you need to know about presenting evidence before the  
ODAR administration

**SBM**

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