

STATE BAR OF MICHIGAN  
**SOCIAL SECURITY**

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



Winter 2008  
Editor: Lewis M. Seward

## Winter Section Meeting

The section arranged to have Jan Pegg, the hearing office director; the Honorable Peter Dowd, chief judge in Flint; and representatives from the Lansing Field Office speak on a number of timely issues.

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#### Electronic Filing

Ms. Pegg talked extensively about electronic filing. When sending in records electronically, make sure that the cover sheet with the bar code is the top page. Do not put anything before this page. The bar codes are sent out when the hearing office enters the claimant's record into its system. A form letter is generated, and attached to it are the bar codes. Keep these bar codes in a convenient, readily accessible location. You can copy the bar codes as many times as you need. They are critical to ensuring that the records you submit ultimately end up in the client's file.

Please also be aware that there are several different cover pages on the bar codes for the types of evidence being submitted, i.e., medical, jurisdictional, and other attorney-supplied evidence.

Ms. Pegg indicated that if you have a case in which you have not received the bar codes, contact the Flint ODAR office. However, you will not get the bar codes right away because it takes awhile for the electronic file to be recognized on the ODAR computer system that generates the form letter and bar codes.

If you have any questions regarding the electronic filing or would like a tutorial on the use of the electronic file, the Flint ODAR office has an electronic record specialist, Margo. You may contact the hearing office in Flint to discuss questions you may have or for training.

#### On the Horizon

Ms. Pegg also talked about future developments in processing claims. Flint just recently re-fitted two conference rooms to be video hearing rooms. They are fitted with a large-screen TV and all of the hardware that goes with it.

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2007-2008

## Title II and Title XVI Issues

We were very fortunate to have experts in each field from the Lansing Field Office to discuss some of the more timely issues that come up in Title II and Title XVI.

Linda talked about the windfall offset provisions, which can be a very complicated issue and cause significant delays in payment. The general premise is that the SSI is always paid first. An offset occurs when the claimant is due both SSI and disability at the same time. The offset amount is usually calculated by the computer. Linda explained that there are two separate computer systems, one for SSI and one for Title II. When the offset calculation is computed, both programs interface, and the offset is calculated.

However, there are a lot of exceptions to the computer's calculations of the offset amount when interfaced. The computer will reject certain scenarios and then the offset needs to be computed manually. When this happens, significant delays can occur in processing the claim for payment of benefits.

Linda discussed retrospective monthly accounting, which means that income received in one month affects SSI *two months later*. This causes all sorts of problems, including being overpaid or underpaid.

One of the members asked about releasing additional SSI withheld. Linda indicated that this money can be released for medical purposes, housing, or other emergency needs. For these hardship-type cases, direct your client to the local district office to discuss.

Linda also discussed rental agreements where the claimant resides rent-free during the pendency of his claim. The issue is whether the claimant can still receive the full SSI amount during this time period. She indicated that it must be determined if there is a loan agreement to pay past-due rent at the time the application was filed. The claimant must agree to pay the fair market value of the rent.

Often, the living arrangement at the time of application differs by the time the case is paid. Frequently, the claimant moves three or four times in the course of a claim, which can easily last three years. This makes processing the SSI claim more difficult because the claims representative at Social Security must address each living arrangement during the adjudicated period, determine whether the claimant was paying rent or not, and whether there was a bonafide rental agreement with each living situation.

Amy from the Lansing Field Office talked about Title II issues. One of the members asked about procedures in contacting the Payment Center to determine when a claimant will be paid. Amy indicated that Baltimore is working on a set of procedures in this area to facilitate exchange of information between the Payment Center and the claimant or representative.

There was an extensive discussion regarding Workers' Compensation offsets. This also occurs when a claimant is simultaneously eligible for Workers' Compensation and Social Security disability. Workers' Comp offsets do not apply to claimants who receive just SSI or widows' benefits.

When a case is redeemed, i.e., settled, and the claimant is not receiving any benefits up to the time of the redemption, the date that the claimant receives

## **Title II and Title XVI . . .**

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the lump sum amount is the date used to determine the proration of the Workers' Comp award.

The Workers' Comp award is always the net amount after attorney fees and medical expenses are paid. There is language on the bottom of the Redemption Order that allows for the lump sum amount to be amortized over the claimant's expected lifetime.

If this award is not amortized, Social Security uses tables to determine the rate over the claimant's lifetime, which is usually much higher than the amortized amount. In other words, the disability benefit can be significantly reduced as a general rule when the lump sum amount is *not* amortized. ☆

*Editor, Lewis M. Seward*

## **Winter Section Meeting**

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There are now seven hearing rooms at the Flint ODAR office, and cases are being shipped out to Evanston and Chicago, Illinois. There are still cases that need to be heard from California and Phoenix.

Another recent initiative of SSA is to allow the local field offices to have video conferencing. Eventually, it is hoped that all field offices in Michigan will have this capability so that the hearings can be held locally for the claimant. In the Flint jurisdiction area, the judge will be in Flint, and the claimant and his representative will be at the field office.

The regulations also provide for video conferencing in the attorney's office, although the details still have to be worked out (not to mention the expense that would be incurred for the required hardware to conduct these hearings). ☆

## **Newly Redesigned SBM e-Journal Allows Readers to Directly Access Practice Area Summaries**

The State Bar of Michigan free daily online publication, e-Journal, has been newly redesigned with enhanced features. Readers can now directly access the opinions and practice area summaries they are interested in without sorting through the entire edition.

This new customization feature will make reading faster and easier. Current subscribers should choose the "Manage Your Subscription" link in the upper right-hand corner of the e-Journal to make their practice area selections.

The e-Journal, sent daily to more than 16,000 subscribers, is one of the most popular services provided by the State Bar. It summarizes all opinions as they are released from the Michigan Supreme Court, Michigan Court of Appeals (published and unpublished), the U.S. Sixth Circuit Court of Appeals (published), and selected U.S. District Courts.

Apart from case summaries, the publication also contains legal news and updates, public policy, classifieds, calendar of events, and fields of practice listings. To sign up for the e-Journal please visit [www.michbar.org/publications/signup.cfm](http://www.michbar.org/publications/signup.cfm).

## **Our Mission**

The Social Security Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, the website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan. Statements made on behalf of the Section do not necessarily reflect the views of the State Bar of Michigan.

# Important Tips in the Sequential Evaluation Process

Matt Taylor and Liz Warren addressed the group, discussing some of the more common issues that arise during the Sequential Evaluation Process.

Matt gave some practical advice: that all representatives should check the earnings record during the early part of the claim and then closer to the time of the hearing. Claimants often forget to advise of their past work or work attempts. It is very important to address earnings during the adjudication period as this can hold up a decision.

Unemployment is also an issue at Step 1. It is somewhat of a dichotomy for the claimant to be filing for disability and unemployment at the same time, i.e., indicating they are disabled and unable to work, and attempting to collect unemployment benefits indicating that they are ready and available to work. However, receiving unemployment does not per-se make the claimant ineligible for disability benefits. Rather, Matt indicated it is one of many factors in determining whether the claimant has the ability to perform SGA. Most claimants who draw unemployment benefits do so because it is a matter of survival to pay the bills.

At Step 2, some of the more common issues that arise are medical diagnoses that are not always recognized as

“severe” impairments. Examples are fibromyalgia, chronic fatigue, and obesity. If they are found to be “severe,” they need to be accounted for in the remaining steps of the Sequential Evaluation Process, including Steps 4 and 5 when determining the RFC.

At Step 3, when looking at whether the claimant has a listing level impairment or not, Mr. Taylor indicated that in his experience, adjudicators are somewhat hesitant on finding a listing level impairment unless all of the elements are clearly met due to potential for Own Motion Review. In other words, it has to be very clear in the record that all of the elements of the listing are met, or the case may be bounced back due to an Own Motion Review.

At Step 4, to determine whether the claimant can perform his past relevant work, the burden of proof is on the claimant. The burden shifts to the commissioner at Step 5. In other words, Social Security has the burden to show that the claimant can perform work within the RFC.

All in all, the seminar was well attended and very well organized. ☆

*Lewis M. Seward, Editor*

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## Death After DDS Denial

If a claimant dies during a pending appeal for an ALJ hearing, the case can be remanded back to DDS to have a second look for possible payment on the record. Under DI 27520.010, if the claimant died less than a year after the DDS denial and the death relates to the claimant’s impairment, which was present when DDS first adjudicated the claim, the case can be remanded to DDS rather than waiting a year or more for a hearing to be scheduled. Additionally, if a case is paid at DDS, it eliminates the

necessity of one or more of the claimant’s heirs testifying at the hearing, which can be quite emotional.

When the case is paid, ask the District Office to do a manual 101 A, also known as a DIB after death. Otherwise, the retro-benefits could be tagged to the representative rather than the estate even though the estate receives the retro benefits (minus the attorney fee). ☆

*Lewis M. Seward, Editor*

# Appeal Social Security Decisions Online

By Vonda VanTil, Public Affairs Specialist, SSA

Exciting news! You can now file Social Security appeals online. Doing it online can help speed the process and assist Social Security in serving you and your clients better.

The new iAppeal allows you to complete the Appeal Request Form online at the same time you complete the i3441, the electronic Disability Report-Appeal, eliminating the need for the HA-501.

The Internet appeal process is a fast, convenient, secure way to appeal a decision on a Social Security disability claim that your client does not agree with. The appeal can be filed online at [www.socialsecurity.gov/disability/appeal](http://www.socialsecurity.gov/disability/appeal).

More great news: Social Security has eliminated the signature requirement for appeals. The iAppeal is considered an official request for an appeal, as is a completed i3441 received without the HA-501.

To use the Internet appeal process, your client must have applied for Social Security or Supplemental Security Income disability benefits and been denied for medical reasons. Also, you will need your client's denial notice when you begin the process because you will need to refer to it.

There are two steps that need to be completed:

First, complete the Appeal Request (HA-501). It will require information about your client, such as updated information on his address, his disabling condition, and his work.

Second, complete the Appeal Disability Report (i3441). This section will ask detailed questions about your client's medical history, such as updates in his medications and doctor and hospital visits. In this section, we want to learn all we can about his disabling condition.

After you have completed the two sections of the Internet appeal, you are then ready to review and submit the information. You will have the opportunity to print a copy of the appeal for your records, but you will not have to mail a copy to us; just submit the appeal electronically.

Social Security has a link on its site specifically for attorneys and representatives. Check it out and save it as a favorite for future reference. The address is [www.socialsecurity.gov/thirdparties](http://www.socialsecurity.gov/thirdparties). ☆

## Educational Center

The PMRC Educational Center is a state of the art vehicle providing educational programs to State Bar members and their staff on a wide variety of practice management topics. The PMRC offers programs both at its Lansing base and at various sites throughout Michigan. The center is equipped with computer systems to facilitate "hands-on" software demonstrations and training. Whether you or a staff member are interested in "test driving" a particular software program on marketing your practice or learning about systems that can reduce your risk of liability, the Educational Center is the source to call.

The Educational Center and its resources are available to State Bar members and their staff on an informal, individual basis. For an appointment, call (800) 341-9715 or sign-up online at <http://www.michbar.org/pmrc/education.cfm>



# Nominations Open for 2008 Major State Bar Awards

Nominations are now open for major State Bar of Michigan awards to will be presented at the September 2008 Annual Meeting in Dearborn. Any State Bar member can propose a candidate for the following awards:

- **The Roberts P. Hudson Award** goes to a person whose career has exemplified the highest ideals of the profession. This award is presented periodically to commend one or more lawyers for their unselfish rendering of outstanding and unique service to and on behalf of the State Bar, given generously, ungrudgingly, and in a spirit of self-sacrifice. It is awarded to that member of the State Bar of Michigan who best exemplifies that which brings honor, esteem, and respect to the legal profession. The Hudson Award is the highest award conferred by the Bar.
- **The Frank J. Kelley Distinguished Public Service Award** recognizes extraordinary governmental service by a Michigan attorney holding elected or appointive office. Created by the Board of Commissioners in 1998, it was first awarded to Frank J. Kelley for his record-setting tenure as Michigan's chief lawyer.
- **The Champion of Justice Award** is given for extraordinary individual accomplishments or for devotion to a cause. Not more than five awards are given each year to practicing lawyers and judges who have made a significant contribution to their community, state, and/or the nation.
- **The John W. Cummiskey Pro Bono Award**, named after a Grand Rapids attorney, recognizes a member of the State Bar who excels in commitment to pro bono issues. This award carries with it a cash stipend to be donated to the charity of the recipient's choice.
- **The Liberty Bell Award** recipient is selected from nominations made by local and special-purpose bar associations. The award is presented to a non-lawyer who has made a significant contribution to the justice system.

All award nominations except for the Liberty Bell Award are due Friday, April 4 at 5 p.m. The deadline for Liberty Bell Award nominations is Friday, May 2.

An awards committee co-chaired by State Bar President-Elect Edward Pappas and attorney Francine Cullari reviews nominations for the Roberts P. Hudson, Champion of Justice, Frank J. Kelley Distinguished Public Service, and Liberty Bell awards. The SBM Pro Bono Initiative Committee reviews nominations for the Cummiskey Award. The committee's recommendations are then voted on by the full Board of Commissioners at its June meeting.

Last year's non-winner nominations will automatically carry over for consideration this year. Nominations must be submitted on SBM forms and should include sufficient details regarding the accomplishments of the nominee to allow the committees to make a judgment. Application forms may be downloaded from [www.michbar.org](http://www.michbar.org). Click on Media Resources, then Events and Awards.

Nominations can be submitted by mail to Ms. Naseem Stecker, State Bar of Michigan, 306 Townsend St., Lansing, MI 48933; via facsimile to (517) 482-6248; or online to [nstecker@mail.michbar.org](mailto:nstecker@mail.michbar.org). Cummiskey Award nominations should be directed to Gregory Conyers at (517) 346-6358 or [gconyers@mail.michbar.org](mailto:gconyers@mail.michbar.org). For more information, call (517) 367-6428 or (800) 968-1442.

# 2008 Social Security Fact Sheet

Cost-of-Living Adjustment (COLA): Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2006 through the third quarter of 2007, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 2.3 percent COLA for 2008. Other important 2008 Social Security information is as follows:

<b>Tax Rate</b>		<b>2007</b>	<b>2008</b>
Employee		7.65%	7.65%
Self-Employed		15.30%	15.30%
NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings.			
<b>Maximum Taxable Earnings:</b>		<b>2007</b>	<b>2008</b>
Social Security (OASDI only)		\$97,500	\$102,000
Medicare (HI only)		No Limit	No Limit
<b>Quarter of Coverage:</b>		<b>2007</b>	<b>2008</b>
		\$1,000	\$1,050
<b>Retirement Earnings Test Exempt Amounts:</b>		<b>2007</b>	<b>2008</b>
Under full retirement age NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.		\$12,960/yr. (\$1,080/mo.)	\$13,560/yr. (\$1,130/mo.)
The year an individual reaches full retirement age NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.		\$34,440/yr. (\$2,870/mo.)	\$36,120/yr. (\$3,010/mo.)
There is no limit on earnings beginning the month an individual attains full retirement age.			
<b>Social Security Disability Thresholds:</b>		<b>2007</b>	<b>2008</b>
Substantial Gainful Activity (SGA)	Non-Blind	\$ 900/mo.	\$ 940/mo.
	Blind	\$1,500/mo.	\$1,570/mo.
Trial Work Period (TWP)		\$ 640/mo.	\$ 670/mo.
<b>Maximum Social Security Benefit: Worker Retiring at Full Retirement Age</b>		<b>2007</b>	<b>2008</b>
		\$2,116/mo.	\$2,185/mo.
<b>SSI Federal Payment Standard:</b>		<b>2007</b>	<b>2008</b>
Individual		\$ 623/mo.	\$ 637/mo.
Couple		\$ 934/mo.	\$ 956/mo.
<b>SSI Resources Limits:</b>		<b>2007</b>	<b>2008</b>
Individual		\$2,000	\$2,000
Couple		\$3,000	\$3,000

# Social Security Offers Positions to 144 Administrative Law Judges

## New Hires a Key Step in Reducing Agency's Backlog of Disability Cases

Michael J. Astrue, Commissioner of Social Security, today announced that the agency has begun making offers to 144 of the 175 new administrative law judges (ALJs) it will hire this fiscal year. Due to litigation and budget cuts, the agency has about 10 percent fewer ALJs than it did a decade ago. During that same time, the number of cases waiting for a hearing decision has more than doubled.

"The hiring of these new ALJs is a critical step in our plan to reduce the backlog of disability cases," Commissioner Astrue said. "They represent one of the largest investments in ALJs this agency has ever made. When these ALJs are fully trained, and combined with the other steps we are taking, we will be able for the first time in this decade to reduce the number of cases waiting for a disability hearing. I can hardly wait for them to start."

The new ALJs will be brought on board in phases with the first hires reporting for duty in April, when they will begin an intensive orientation and training program. While initially handling a reduced docket, newly hired ALJs should be scheduling a full docket of cases by the end of the year.

"I have been very impressed with the caliber of the candidates eager to take on the challenging role of a Social Security ALJ," Commissioner Astrue noted. "These new

ALJs are top-notch legally and comfortable working in an electronic environment, which is of utmost importance as we strive to increase the efficiency and productivity of our ALJ corps."

Hiring of additional ALJs is only one component of the plan the agency has put in place to reduce the backlog of disability cases. The agency also continues to make progress in many other areas, including opening the National Hearing Center, completing the nationwide roll-out of the Quick Disability Determination process, implementing compassionate allowances, and eliminating aged cases. More information about Social Security's plan is available at [www.socialsecurity.gov/disability](http://www.socialsecurity.gov/disability) under the heading "What's New."

"In May of last year, I presented Congress with a detailed plan to reduce the backlog of disability cases," Commissioner Astrue said. "I am pleased to report that, with the strong support of the president and members of Congress from both parties, we have been able to move forward with that plan. I urge Congress to continue its support with timely action on the President's fiscal year 2009 budget request for Social Security. A delay in fully funding the President's request will undermine the many positive steps we have taken this year." ☆

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