

# Resources in Social Security Cases

By Ryan K. Seale

**N**ext year, the Social Security Act and the Social Security Administration will turn 80. From a brand new agency with no staff, no facilities, and no budget,<sup>1</sup> the Social Security Administration now employs more than 60,000 people,<sup>2</sup> has more than 1,200 local field offices,<sup>3</sup> and comprises approximately 24 percent of the federal budget with expenditures totaling in excess of \$800 billion.<sup>4</sup> In 2013, more than 63 million people received benefits from programs administered by the Social Security Administration.<sup>5</sup> In Michigan alone, approximately 2 million people receive benefits<sup>6</sup> totaling more than \$30 billion.<sup>7</sup> Social Security law is relatively narrow and nuanced, and draws few parallels to other areas of the law. This article highlights helpful practice tools that can benefit new and experienced practitioners alike.

## Practice at the administrative level

The vast majority of Social Security practice is done before the Offices of Disability Adjudication and Review and the Appeals Council. The two primary sources of law at the administrative level are the Social Security Regulations<sup>8</sup> and the Social Security Rulings.<sup>9</sup> Knowledge of both is essential to effectively represent and advise Social Security claimants. The regulations constitute the official, fundamental interpretation of the Social Security Act. Federal Old-Age, Survivors, and Disability Insurance programs are governed by part 404 and Supplemental Security Income is governed by part 416 of the Code of Federal Regulations. Social Security Rulings interpret, clarify, and elaborate on the regulations. These are published in the Federal Register and are binding on all components of the Social Security Administration.<sup>10</sup>

Two excellent nonlegal resources for use at the administrative level are the Program Operations Manual System<sup>11</sup> and the Hearings, Appeals, and Litigation Law Manual.<sup>12</sup> These are informal internal manuals that provide guidance to Social Security employees, including administrative law judges. They are official statements of Social Security policy and procedures, and provide invaluable insight into the handling of various issues. While both resources can be persuasive at the administrative level, it should be noted they do not carry any legal force, and federal courts will likely not require Social Security to adhere to the specified procedure or process.<sup>13</sup>

Noticeably absent from this discussion thus far is federal caselaw. Social Security is a federal program and clearly falls within the province of the federal court, so most practitioners would instinctively begin by researching federal caselaw in preparation. An interesting and sometimes tenuous relationship exists between the Social Security Administration and the federal courts, which can't begin to be described and discussed in this short column.<sup>14</sup> At the administrative level, federal district court decisions hold no precedential value and circuit court decisions are given no significant weight unless they are adopted as an acquiescence ruling.<sup>15</sup>

In addition to the resources produced by Social Security, there are a number of

accessible, well-informed tools available for practicing at the administrative level. For a general practice guide, *Social Security Disability Practice* is a great two-volume series<sup>16</sup> covering everything from initial client contact to the administrative hearing and appeals to the Appeals Council. It also includes a number of sample forms, questionnaires, and checklists to assist in preparing cases before the Social Security Administration. A great practice tool specifically covering appealing cases to the Appeals Council is *Winning Appeals Council Arguments* by Sarah Bohr.<sup>17</sup> This publication surveys many common legal issues that are grounds for appeals and contains many actual redacted legal briefs that were submitted to the Appeals Council and the corresponding orders of the council. It serves as a helpful framework for not only writing appellate briefs, but also learning the law and posturing cases for potential appeals.

## Practice in federal court

An individual may file a civil action in federal district court after exhausting all available administrative remedies and receiving a final decision from the Social Security Administration.<sup>18</sup> In recent years, the number of people denied Social Security benefits—particularly at the administrative law judge level—has significantly increased.

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In fiscal year (FY) 2007, the national average allowance rate at the administrative law judge level was 62 percent.<sup>19</sup> In FY 2012, this had fallen to 52 percent.<sup>20</sup> In Michigan, the most recent data shows an average allowance rate of 47 percent, with the Livonia Office of Disability Adjudication and Review approving the most cases (52 percent) and the Grand Rapids Office of Disability Adjudication and Review approving the fewest cases (37 percent).<sup>21</sup> The growing number of denials at the administrative level has resulted in an increasing number of practitioners appealing cases to federal district court and an increasing number of reversals and remands of unfavorable administrative law judge decisions. In FY 2012, 14,575 federal court decisions were issued in Social Security cases; the claimant prevailed in a staggering 48 percent of these cases.<sup>22</sup>

When appealing cases to federal court, the best resource available is *Social Security Issues Annotated*,<sup>23</sup> a two-volume summary of federal court decisions organized by legal issue and circuit. It is an excellent starting point for researching a legal issue in a federal case. A second resource for federal court cases is *Social Security Practice Advisory*.<sup>24</sup> This is a subscription newsletter that contains recent federal district and circuit court case summaries. While not necessarily a useful research tool, it is a great way to stay up to date on recent decisions and trends in the law.

Outside of legal and practice resources, the best way to stay apprised of issues in Social Security law is to become involved in the National Organization of Social Security Claimants' Representatives.<sup>25</sup> This organization produces monthly newsletters and holds two annual conferences specifically covering Social Security law issues. It not only works tirelessly to keep practitioners updated, but also advocates on behalf of the millions of individuals who rely on the numerous social welfare and insurance programs overseen by the Social Security Administration. Participation in the organization and use of the other resources described in this article will provide a solid foundation for successfully representing Social Security claimants at the administrative level and in federal court. ■

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## ENDNOTES

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2. Social Security Administration, *Organizational Structure of the Social Security Administration* <<http://www.ssa.gov/org/>>.
3. *Id.*
4. Congressional Budget Office, *Monthly Budget Review—Summary for Fiscal Year 2013* <<http://www.cbo.gov/publication/44716>>.
5. Social Security Administration, *Fast Facts & Figures About Social Security, 2014* <[http://www.ssa.gov/policy/docs/chartbooks/fast\\_facts/2014/fast\\_facts14.pdf](http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2014/fast_facts14.pdf)>.
6. Social Security Administration Office of Retirement and Disability Retirement, *OASDI Beneficiaries by State and County, 2012* <[http://www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/2012/table02.html](http://www.ssa.gov/policy/docs/statcomps/oasdi_sc/2012/table02.html)>.
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8. Social Security Administration, *Code of Federal Regulations* <[http://www.ssa.gov/OP\\_Home/cfr20/cfrdoc.htm](http://www.ssa.gov/OP_Home/cfr20/cfrdoc.htm)>.
9. Social Security Administration, *Rulings* <[http://ssa.gov/OP\\_Home/rulings/rulings.html](http://ssa.gov/OP_Home/rulings/rulings.html)>.
10. 20 CFR 402.35(b)(1).
11. Social Security Administration, *Social Security Handbook* <[http://www.socialsecurity.gov/OP\\_Home/handbook/handbook.html](http://www.socialsecurity.gov/OP_Home/handbook/handbook.html)>.
12. Social Security Administration, *Hearings, Appeals, and Litigation Law Manual* <[http://ssa.gov/OP\\_Home/hallex/hallex.html](http://ssa.gov/OP_Home/hallex/hallex.html)>.
13. See *Schweiker v Hansen*, 450 US 785, 789; 101 S Ct 1468; 67 L Ed 2d 685 (1981).
14. I would recommend referring to *Social Security Law and Practice* by Thomas E. Bush, which has a section covering the role of federal court decisions in Social Security cases, to provide some clarity but likely provoke even more questions on this topic. See Bush, *Social Security Law and Practice* (Costa Mesa: James Publishing, 2013).
15. See Social Security Ruling 96-1p <[http://www.socialsecurity.gov/OP\\_Home/rulings/di/10/SSR96-01-di-10.html](http://www.socialsecurity.gov/OP_Home/rulings/di/10/SSR96-01-di-10.html)>.
16. Bush, *Social Security Disability Practice* (Costa Mesa: James Publishing, 2014).
17. Bohr, *Winning Appeals Council Arguments* (Atlantic Beach: Sarah Bohr Publications, 2014).
18. 42 USC 405(g).
19. See Testimony of Thomas Sutton, before the U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Energy Policy, Health Care & Entitlements, June 27, 2013.
20. *Id.*
21. Administrative Law Judge Case Statistics, *Michigan ODAR Offices* <<http://www.disabilityjudges.com/state/Michigan>>.
22. Social Security Administration, *Fiscal Year 2012 Workload Data: Disability Decisions* <<http://www.ssa.gov/foia/resources/proactivedisclosure/FY12%20Workload%20Data-Total.pdf>>.
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24. *Social Security Practice Advisory* (Minnesota: Thomson Reuters/West, 2014).
25. More information available at <<http://www.nosscr.org/>>.



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