

**SSA Final Rule, Hearings Held by Administrative Appeals Judges of the Appeals Council:
Listening Session (Conducted Via Teleconference)**

September 8, 2020

Participants:

Members of the Public

Stacy Cloyd (Consortium for Citizens with Disabilities Social Security Task Force/NOSSCR)

Tracey Groninger (Justice in Aging)

Bethany Lilly (The Arc of the United States)

Jeanne Morin (National Association of Disability Representatives)

Office of Management and Budget

Jamie Dickinson (Office of Information and Regulatory Affairs/OIRA)

Kyle Gardiner (OIRA)

Michael McManus (OIRA)

James Hurban (Resource Management Office/RMO)

Social Security Administration:

Marianna LaCanfora (Office of Analytics Review and Oversight)

Jebby Rasputnis (Office of Analytics Review and Oversight)

Debra Sundberg (Office of Analytics Review and Oversight)

Dennis Foley (Office of Legislation and Congressional Affairs)

Faye Lipsky (Office of Legislation and Congressional Affairs)

Summary of Participant Comments:

Kyle Gardiner (OMB/OIRA):

- Mr. Gardiner explained the parameters for the listening session-- specifically, that the public participants could express their thoughts to SSA but that there would be no actual discussion of the final rule, since it was still in its deliberative phase.
- He also explained that the list of participant names and affiliations, as well as notes documenting the session, would be posted publicly on regulations.gov.

Jeanne Morin (National Association of Disability Representatives):

- Ms. Morin stated that her organization strongly opposes the rule, and is asking that SSA withdraw it rather than publishing in final.
- Ms. Morin said that the disability process is very stressful for claimants, and that when they are denied disability payments or benefits at earlier levels of the claims process, they are entitled to an impartial hearing from a “dispassionate adjudicator.” Ms. Morin relayed that the Administrative Procedure Act requires the use of impartial judges in a hearing. Ms. Morin expressed the belief that since Appeals Council judges are SSA

employees who are subject to agency performance reviews, they would be more likely to be “biased toward the agency.”

- Ms. Morin also conveyed that SSA had not said why or how they plan to use this authority.

Bethany Lilly (The Arc of the United States):

- Ms. Lilly stated that she understood the rule’s justification to be a discrepancy in processing time across Hearings Offices. Ms. Lilly said that this discrepancy could be resolved using other methods besides the rule. Ms. Lilly also conveyed that these disparities were decreasing before the COVID-19 pandemic, further indicating the rule might not be needed.
- Ms. Lilly mentioned that SSA had offered temporary flexibilities and alternatives to its standard processes during the COVID-19 period, and that the agency should continue using these alternatives, which “do not harm the claimant’s right to due process.”

Stacy Cloyd (Consortium for Citizens with Disabilities Social Security Task Force/NOSSCR):

- Ms. Cloyd opined that Administrative Law Judges (ALJ) and Administrative Appeals Council (AAJ) judges are not interchangeable – they have different hiring standards, training, skill sets, and experiences.
- Ms. Cloyd expressed that this proposal would not be the most efficient way to conduct hearings or to protect due process.
- She also said it might actually add to the existing backlogs for the Appeals Council. She cited a past figure stating there were 1200 ALJs versus 53 AAJs.
- As well, she asserted that the regulation would not help bottleneck issues for decisions writers, translators, transcriptionists, etc., all of whom are needed regardless of whether an ALJ or an AAJ conducts a hearing.
- Ms. Cloyd also stated that the regulation would lead to inconsistency in rulings, and that it had “logistical flaws.”

Tracey Gronninger (Justice in Aging)

- Ms. Gronninger expressed the belief that the primary purpose of the Notice of Proposed Rulemaking for this final rule was to clarify when SSA would exercise the authority. Ms. Gronninger said that the rule does not go through the circumstances when this would happen, how many cases would be assigned, how SSA would make that decision, or what would happen if claimant wants an in-person hearing. Because of this, the rule is too vague in how it would work in practice.
- Ms. Gronninger stated that her organization also wants the rule to be rescinded. However, if SSA does not rescind the rule, at minimum the agency should provide more

clarity in implementation so the public can make “more meaningful comments” on the changes.

Follow-Up Clarifying Question from Mr. Gardiner:

What level of specificity would make the commenters comfortable with the final rule?

Ms. Cloyd:

Regardless of the specificity level, her organization believes the rule would still be inadequate because of due-process concerns.

However, if SSA continues with the rulemaking, then her organization would want more information on the types of cases AAJs might conduct hearings for.

Ms. Groninger:

Her organization would want to know if there is a threshold –i.e., a specific number-- that would be the trigger point for using AAJs to conduct appeals hearings.

The session concluded at this point.