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NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS

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To: The Social Security Administration, National Disability Forum of November 2018

From: Trudy Lyon-Hart, NCDDD Board Member and Policy/Quality Committee Chair TLH

RE: Recommendations for Enhancing the Reconsideration Process

Date: November 21, 2019

The National Council of Disability Determination Directors (NCDDD) is a voluntary professional association composed of many of the Directors and Managers of the Disability Determination Services agencies located in each state. Collectively, members of NCDDD are responsible for directing the activities of over 13,000 employees who process and adjudicate over four million cases a year, including over two million initial claims and almost 500,000 reconsiderations, along with continuing disability reviews. NCDDD's goals are to provide the highest possible level of service to persons with disabilities and to ensure program integrity, through fair, accurate, timely and cost-efficient disability determinations.

On behalf of NCDDD, I am honored to participate in the upcoming panel discussion at the National Disability Forum on November 28, and to submit the following responses to your questions with our recommendations for enhancing the reconsideration process.

1. **Where do you see areas for enhancement in the reconsideration process?**
   - **What would you recommend in each area?**

A. SSA has no comprehensive training package for reconsiderations, as they do for initial cases, CDRs and Disability Hearings.

Recommendation: Develop more substantive Reconsideration POMS guidance and a companion training package that speaks to

- The larger programmatic purpose of this step
- The important public service it is designed to provide
- The critical roles, responsibilities and ethical considerations of the reconsideration examiner and the medical or psychological consultant
- The purpose of (and expectations for) assisting the claimant with the process
- Reasons and expectations for "perfecting the file" – these need to be clear and reasonable
- Guidance/best practices for giving each case a new and thorough, independent review
- Guidance/best practices for addressing allegations of worsening and/or new impairments
- Guidance/best practices on eliciting claimant involvement and cooperation in the process
- The role of the representative and expectations for examiner/representative/claimant interactions
- Desk guides and training on the most effective techniques for interviewing reconsideration claimants
- Examples of sets of case facts (data driven) that are most likely to warrant a reconsideration reversal or to result in a subsequent OHO reversal

B. Policy that streamlines affirmation of the initial determination encourages the perception of "rubber stamping" the previous decision

Recommendations:

- Change POMS DI 27021.010 Affirmation of a Prior Disability Determination so that the reconsideration is always a truly new determination
- Change eCAT to not copy the initial assessment automatically into the reconsideration eCAT assessment

C. Ongoing continuing and refresher training is important in disability case adjudication, as it is in many professions.

Recommendations:

- Do a deep dive analysis of the data from Recon QA, PER, Decisional and TDR reviews
- Share the data with the DDSs to help them target in-line quality reviews and other continuous quality improvement activities
- Use the data to identify national training needs and create continuing education training videos, similar to the Policy in Practice CME VODs, but specific to reconsideration case issues
- Use the data to identify areas where policy needs to be clarified, simplified or revised
- Systematically update the data to track improvement, adjust the targeted factors, and reassess training needs on an annual basis

D. Neither the FO nor the DDS is positioned, staffed or funded for regular face-to-face or other individualized communication activities to support claimants through a complex process. The amount of medical, ADL and vocational information requested on the forms is overwhelming to many claimants, and they often need extra support to attend consultative exams that we are not funded or positioned in the community to provide. These issues can result in denials of claims for insufficient evidence, failure to cooperate and whereabouts unknown.

Recommendations:

- Fund, staff, and set policy expectations for the FO to help the claimant thoroughly complete the SSA 3441 and SSA 827; provide the claimant detailed information about the process and claimant rights and responsibilities; and answer the claimant's questions at the beginning of the reconsideration process

- Fund, staff, and set policy expectations for DDS examiners to contact reconsideration claimants (and/or their representatives) at the time the case has been assigned and reviewed to verify that all information is complete; obtain any missing information that was not provided for the initial claim or that needs to be updated on reconsideration; get answers to any additional questions (about treatment, symptoms, function, work activity, etc.); prepare the claimant for necessary future actions; and set the foundation for communication throughout the claim process

- Simplify the application process as much as possible without making it harder for FOs and DDSs to obtain the information that is critical to determining the claims

- Make it easier for claimants to cooperate. Reduce the amount of paper we send them to complete and return.

- Give claimants more choice in how they receive communications such as reminders about forms, CEs, and other actions they need to take. SSA/DDS communication channels with claimants have not kept up with changing times. In the 21st century, people do not answer calls from telephone numbers they do not recognize. They expect to get text or email reminders from their doctors about appointments. Important information is more likely to be sent via email or made accessible electronically than through regular mail. The limitations on electronic communications, while meant to protect claimant confidentiality, have the unintended consequence of making it harder for the claimants and the DDS to stay in touch and work together in the claim process.

E. Representatives who are active in assisting their clients in getting relevant evidence to the DDS and attending consultative exams are very helpful. However, when representatives are not active participants at the reconsideration step, unnecessary delays and denial determinations occur that could have been avoided. Lack of representative response is especially problematic when the DDS has been instructed not to contact the claimant directly, only through the representative, but the representative does not get the needed information to the DDS or ensure that the claimant attends a needed examination.

Recommendations:

- Consider policy changes to better define the responsibilities of an authorized representative from the perspective of improving service to the claimant and the overall quality and efficiency of the claims process.
- Develop incentives to align representative actions with the best possible accuracy and timeliness of the decision for the claimant.
- Recognize and minimize unintended disincentives to participate at the reconsideration level.
- Develop appropriate consequences for representatives who fail their claimants through lack of participation. In most situations, these actions (or inactions) would not warrant professional sanction; however, the consequences should encourage non-participating representatives to reexamine their responsibilities on behalf of their disability claimants.

F. In lieu of providing the real supports that some claimants need, SSA provides multiple "second chances" (without those supports). FO and DDS workers spend a great deal of time repeating the same steps, while the public has no reason to take the requirements seriously since the perception becomes that there will always be another chance, or that there will eventually be a positive case outcome regardless of compliance.

Recommendations:

- Tighten up on interpretations of "good cause for late filing"
- Simplify and shorten the process of giving claimants additional chances to submit evidence or go to a CE
- When a case is denied for insufficient evidence or failure to cooperate, consider requiring the claimant to provide the needed evidence before processing a request for an appeal.

G. SSA's workload targets in recent years have tended to prioritize CDR and initial case processing over reconsiderations. With high workloads, along with funding and staffing restrictions, and the length of time it takes to fully train examiners, achieving both quality and timeliness is a continuous challenge.

Recommendations:

- Dedicate funds to rebuild and maintain consistent, sufficient staffing levels for each DDS to do their own State's disability determination work, as per Federal Regulation.
- With CDRs current, it is a good time for SSA to reassess workload and policy priorities, and better align those priorities with operational realities and funding availability.

H. SSA policy is complex and open to differing interpretations. The intent behind the policy choices has generally been to ensure claimants' get full, fair consideration of all the unique aspects of their individual claim, given that different people have different symptomatic and functional responses to similar impairments. This approach is labor intensive and not aligned with limited funding and high volume production expectations.

Recommendations:

- Simplify policy as much as possible, especially in such areas as failure to cooperate procedures, vocational analysis, and documentation requirements that are time and labor intensive but rarely make a difference in the decision. Collect and analyze data to determine where policy simplification would be most effective.

- Pursue and expand use of predictive modeling and intelligent systems tools, such as duplicate evidence extraction, medical language analysis, decision-pathing, and error proofing. Automating as much of the case processing and sequential decision-making as possible would enable DDS examiners and medical consultants to focus more of their time on the case specifics that need their expert knowledge and analytical abilities.
- Realign documentation policy that is out of step with the effects of the expansion of HIT vendors and healthcare facility consolidation. With modern healthcare delivery and electronic healthcare record systems, it has become increasingly difficult to obtain the detailed medical reports, opinions, and answers about function, on which much of SSA policy is based.
- Clarify the concepts of probability of reversal and substitution of judgment for greater consistency and uniformity across DDSs, OQR, and ODP.

I. Different perspectives and knowledge silos create conflicting opinions and recommendations.

Recommendations:

- SSA should collect and analyze data to determine the accuracy of underlying assumptions before moving forward on any recommendations, including those of NCDDD.
- In particular, we recommend studying the data to answer the question: What are the reasons for ALJ reversals of DDS reconsiderations, and reconsideration reversals of initial determinations? Answers might be as varied as
  - Error on the face of the evidence
  - New impairments and/or new evidence
  - The additional time elapsed results in different assessment of impairment severity, duration and/or vocational factors
  - Differences between CFR, SSRs and POMS that guide decisions at the different levels
  - Different interpretations of the same policy
  - Different adjudicative standards (preponderance of the evidence vs. substantial evidence)
- Gather data and study the reasons that underlie failure to cooperate and insufficient evidence determinations.
- SSA should transparently share the data and make clear, reasonable, data-driven decisions about the direction they choose to take with these recommendations.
- SSA should decide and transparently communicate the goal(s) to ensure consistency and clarity of direction. It is sometimes difficult to tell what the desired outcomes are:
  - To improve accuracy?
  - To reduce program (benefit) costs?
  - To allow more cases earlier in the process?
  - To limit the number of cases going to OHO?
  - To shorten processing time for OHO? For DDS?
  - To simplify the process to make it easier for the claimant?
  - To provide the claimant more individualized support for the process?
  - To streamline adjudicative processes for administrative cost savings?

2. What are the expected outcomes from any recommendations?

- A shift in organizational culture and direction for reconsideration adjudicative staff, providing stronger support for thorough, claimant service-focused case processing and decision making
- Increased reconsideration accuracy
- Improved service delivery

- Better claimant (and representative) participation in the process, better communication, higher levels of satisfaction with the process.
- All components and stakeholders have a common understanding of the reconsideration process and its purpose
- Cost savings and/or additional benefits that are worth any additional cost

3. Do you have suggestions for how SSA can measure the effectiveness of your recommendations?

- Measure changes in reconsideration accuracy rates, allowance rates, processing time
- Satisfaction surveys of claimants, examiners, representatives, etc.
- Measure changes in frequency of insufficient evidence and failure to cooperate denials at all levels

4. What obstacles do you believe we will encounter in implementing enhancements to the reconsideration process?

- The very long time it takes a government entity to achieve any substantive change
- Administrative funding limitations may constrain implementation and reduce the positive outcomes that might result if fully implemented.
- Challenges of reaching consensus and coordinating project work among multiple components and stakeholders
- Need to test ideas for effectiveness on the front lines
- If increased allowance rates and program costs may be a result, it will be harder get high level approval for implementation
- Different experiences and approaches to reconsideration in the DDSs mean that we are not all starting the reconsideration enhancement initiative from the same place. This may cause statistical variations in the data measured and the outcomes.

5. What recommendations can you share that may enhance the initial disability process?

6. Do you have suggestions for policy clarification or simplification that would enhance the entire process?

Many of the recommendations we have listed in #1 above would enhance all steps of the disability process, in particular those that relate to

- Continuing education/training
- Reinforcing the need for thorough development and review
- Data-driven quality feedback
- Funding the FO/DDS for better public service
- More claimant choice in ways to communicate with SSA/DDS
- Enhancing representative participation
- Simplifying process and policy
- Use of electronic system tools for predictive modeling, case analysis, and error-proofing

7. Are there improvements to the consultation examination (CE) process that would strengthen the determinations at both the initial and reconsideration levels?

A. It can be difficult for DDSs to recruit CE providers. Shortages of qualified medical providers, high patient/doctor ratios in many communities, limits in DDS fee schedules based on Medicare or State-approved rates, and claimant no-show rates are some of the factors.

Recommendations:

- Recent regulatory changes that qualified additional providers as acceptable medical sources (AMS) was a great help. Any further additions to the AMS list would be helpful.
- Many insurance companies and rehab programs pay much higher rates for examinations that DDSs can under current SSA guidelines. With provider time a scarce resource, we cannot compete. Loosening fee schedule restrictions would increase CE costs but

provide better claimant service. The cost/benefit of this recommendation should be assessed in light of SSA priorities.

B. Consultative examinations are useful in providing objective exam findings, but their value in assessing a claimant's functional capacities over time and in work settings is limited, since they are by nature a one-time snapshot of the claimant in the doctor's office. Managing the CE process is labor intensive for DDSs. CE provider shortages make claimants travel long distances and wait longer for appointments and determinations. The fewer CEs the program requires for documentation the better.

Recommendation:

- SSA should study the documentation needs that lead to CEs and take a fresh look at whether the documentation is truly critical to the accuracy of the resulting determinations. This data might lead to simplifying some documentation requirements as well as data-driven best practices for avoiding unnecessary CEs.

C. The Federally Qualified Healthcare Centers established under HHS serve a clientele very similar to our SSI population. They qualify for higher reimbursement rates because of the population and communities they serve. Our CE needs are often greatest in those communities, but the FQHCs may not agree to do CEs, given their workload and the low rate of compensation.

Recommendation:

- SSA might work with HHS to develop a partnership that adds disability CEs (at least for the local SSI population) to the FQHC mandate.

8. Other suggestions?

It should be noted that NCDDD as an organization is not recommending a pre-decision conference with the claimant at reconsideration. We are aware that others have recommended this idea; however, 71% of NCDDD members who responded with input for this presentation made a special point of saying they were against it. Only one member was unequivocally for it. The remainder either wanted more data on its cost/benefit and operational impact, or felt that resources were insufficient for implementation.

Members made the following points, many from their experience as Prototype states:

In favor:

- Helped ensure we covered all allegations and medical sources, gave claimants the opportunity to provide input before receiving an adverse decision, helped negate the perception of "rubber stamping" the initial determination, and resulted in a "slight uptick" in our allowance rate and in claimant satisfaction

Opposed:

- Claimant conferences were adversarial from start to finish, very stressful for both examiners and claimants
- Added processing time, especially when claimants did not attend, without reversing the decisions
- The additional time required for these conferences led to overloaded caseloads, processing time delays, and difficulty meeting production targets
- Morale dropped, attrition skyrocketed, and there were numerous union complaints
- For claimant conferences to be effective, examiners need special training
- The process would need to be structured more like the DHU hearings to support examiners in this role and provide a good experience for the claimant. This would be expensive to implement, given that the number of reconsideration denials is roughly five times the number of DHU decisions, and nationally the DDSs employ nearly 500 Hearing Officers for the DHU workload (FY 2018 SAOR).