

12. Transitional Benefits for a Subset of the Social Security Disability Insurance Population

Kim Hildred, Pamela Mazerski, Harold J. Krent, and Jennifer Christian

INTRODUCTION

The Social Security Disability Insurance (SSDI) program presents the Social Security Administration (SSA) with what in essence is a binary choice—either claimants are disabled or not. There is no middle ground. For individuals who receive a favorable determination, benefits continue indefinitely until one of the following events occurs: conversion to retirement benefits, death, medical recovery, or return to work. Only about one-half of 1 percent of beneficiaries leave the rolls annually because of a return to work (SSA 2014b, 128).

This paper addresses the small subset of new beneficiaries who are likely to experience medical recovery. These individuals need cash benefits and other support services as they recover sufficiently to transition back to work.

At the time of the benefit award, nothing turns on whether medical recovery is likely. Although beneficiaries are evaluated and categorized as to the likelihood of medical improvement when benefits are awarded, those with favorable prognoses are not required to actively pursue special rehabilitative or medical services to facilitate their return to work.

Later, through the statutorily required Continuing Disability Review (CDR) process, SSA may determine that beneficiaries have improved medically to the point at which they can resume gainful employment. In fact, each year 6 percent (SSA 2014a) of beneficiaries who undergo a full medical review pursuant to the CDR process are ultimately determined to have medically improved sufficiently that benefits are ceased. Yet when benefits end, these beneficiaries are not provided with medical supports or employment services that would facilitate their return to work. Further, because SSA has been unable to conduct the number of CDRs required each year, the length of time those who have medically improved have been detached from the labor market has increased, making finding work even more difficult.

In contrast, when Congress first considered adding a disability insurance component to the Social Security program, many contemplated a system of transitional benefits (Berkowitz 1987, 61-64) coupled with vocational services designed to get people back on their feet and into the workforce. Arthur Altmeyer, the first head of SSA, strongly advocated combining vocational and rehabilitation services with benefits whenever there was a hope that a claimant could reenter the workforce (Kearney 2005/2006, 5).¹ The 1948 Advisory Council on Social Security similarly recommended that

¹ “Thus, the social insurance disability program he proposed had a threefold purpose: medical care to prevent and cure chronic disease, rehabilitation for workers with chronic impairment, and cash benefits for the chronic invalid” (Kearney 2005/2006).

rehabilitation services should be provided to facilitate beneficiaries' return to work² (Challenges Facing Social Security 2000). Health, Education, and Welfare (HEW) Secretary Oveta Culp Hobby recommended during the first part of the Eisenhower administration that the trust funds be used to provide *only* rehabilitation services and not cash benefits to those who became disabled (Challenges Facing Social Security 2000): “no accountant can estimate the physical rewards, the sense of independence, pride and usefulness and the relief from family strains which accrue to one of the disabled when he returns to his old job or to a newly learned job suited to his limitations.” Assistant Secretary of HEW Roswell Perkins stated on behalf of the administration (Berkowitz 1987) shortly thereafter that “the first line of attack on disability should be rehabilitation, in order that people be restored to useful and productive lives” (Kearney 2005/2006, 1). The goal was to help individuals through a rough patch until they could work again.

Nonetheless, political winds shifted, and a majority in Congress coalesced on a program of permanent disability. The 1956 law that ensued confined disability payments to workers who were 50 years or older³ and presumed permanently disabled, severing the earlier connection between disability payment and rehabilitation services⁴ (Berkowitz 1987, 76-78).

Consistent with the SSDI Solutions Initiative to identify practical solutions to improve the SSDI program, this paper encourages lawmakers to revisit the link between rehabilitation services and disability and consider creating transitional benefits for the small subset of beneficiaries whose disability is not in question, but who have conditions expected to improve. SSA would administer a compassionate system of transitional benefits with employment supports with the goal of employment, financial independence, and better quality of life. As Chairman Sam Johnson (R-TX) stated in a February 25 Committee on Ways and Means Subcommittee on Social Security hearing, Congress should “mak[e] the disability insurance system work better, and promot[e] opportunity for those trying to return to work.”⁵

THE PROBLEM

The SSDI program is an essential financial safety net for those unable to perform substantial work due to disability, as well as for their families. As often highlighted by Representative Xavier Becerra, Ranking Member of the Committee on Ways and Means Subcommittee on Social Security (Opening Statement 2015) “[t]he eligibility rules are very strict, and only four out of every 10 applicants are found to have impairments which are severe enough to qualify for SSDI. Many disabled Americans do not live long enough to collect retirement benefits—death rates among disabled Social Security recipients are three to six times higher [than] among others their age.”

Through its own process of setting so-called diary dates (due dates for planned CDRs), SSA identifies those whose conditions are expected to last more than 12 months but who are expected to medically improve with treatment. Medical Improvement Expected (MIE) diary dates for these cases occur

² Statement of Edward D. Berkowitz, Ph.D., Professor and Chair, Department of History, George Washington University.

³ The Social Security Amendments of 1960, Pub. L. No. 86-778, 74 Stat. 924 (1960), extended disability benefits to workers under age 50.

⁴ Berkowitz critiques the decision to abandon a focus on rehabilitation services.

⁵ “Chairman Johnson Lays Out Principles for Disability Insurance Reform.” 2015. U.S. House of Representatives Committee on Ways and Means. February 25. Accessed July 9, 2015. <http://waysandmeans.house.gov/chairman-johnson-lays-out-principles-for-disability-insurance-reform/>.

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within three years or less. Examples include people who were in a catastrophic accidents, had major thoracic, abdominal, or reconstructive musculoskeletal surgeries, or have affective mood disorders—those with impairments arising out of conditions that respond well to medical and/or rehabilitative treatment (GAO 2006). According to data provided by the Office of the Chief Actuary, 2.7 percent of all disabled workers receiving benefits in 2011 had MIE diaries. These individuals need cash benefits and other support services as they recover sufficiently to transition back to work, yet they are not required to pursue the medical or rehabilitation support services they may need upon benefit award.

Further, these individuals face huge employment challenges given the length of time they have already waited for an SSDI award in addition to the length of time before a CDR occurs. And when the CDR occurs and they receive a notice that their benefits will cease because of medical improvement, they are not offered services to help them reenter the labor market with the ability to earn sustainable and substantial earnings.

The Inspector General has reported that 1.3 million CDRs were pending at the end of FY 2013 (SSA OIG 2014c, 3) and the agency conducted more CDRs 10 years ago than it does today (SSAB 2012, 11). According to a recent report (SSAB 2014, 6) to the bipartisan Social Security Advisory Board, “This backlog prevents SSA from taking timely action to discontinue payments to beneficiaries who are no longer eligible, thus causing misuse of program resources. It also harms beneficiaries by delaying return to work efforts, which become more difficult with time. Failure to perform CDRs may also create a misimpression that eligibility is permanent, regardless of disability status.”

The problems with CDR determinations run deeper. In conducting CDRs, the touchstone is medical improvement. If the decision supporting the initial disability finding is vague,⁶ (SSA OIG 2014a, 4-5) SSA may not be able to determine improvement even if the beneficiary is no longer disabled. SSA and congressional committees have critiqued administrative law judges (ALJ) in particular for writing conclusory decisions granting benefits (Social Security Disability Programs 2012). Worse, when CDRs result in beneficiaries leaving the benefit rolls, these individuals return to the SSDI rolls in substantial numbers. In a study on CDRs, SSA estimated that about 20 percent of former SSDI-only workers and about 21 percent of former concurrent workers will return to SSDI within eight years of the cessation decision (Hemmetter and Stegman 2013). While it is conceivable that some returns were due to deteriorating health, it is also conceivable that a portion of those who returned to the program were not prepared to reenter the labor market and could have benefited from services and employment supports.

Moreover, experts increasingly have highlighted other assistance that may benefit those who are expected to medically improve. Jeffrey Liebman and Jack Smalligan in their 2013 paper included the following as one of reason the SSDI program is in need of reform: “First, there is a sizable minority of the beneficiary population who would be better off with a form of assistance that is different from the one they are receiving today. These individuals need assistance that helps them back on their feet and returns them to employment, instead of receiving the current benefit package. . . .”

For those beneficiaries who are able, the value of work cannot be overstated. In his October 1, 2007, letter to the president transmitting the National Council on Disability report entitled, *Empowerment for Americans with Disabilities: Breaking Barriers to Careers and Full Employment*, Chairperson John R. Vaughn

⁶ A recent study by SSA’s Office of the Inspector General examined 275 sample grant decisions, concluding that 216 of the 275 had “quality” issues and, of those, SSA’s Division of Quality (Office of Appellate Operations) remanded half back to ALJs for correction.

summarized the benefits of work for those with disabilities: “There is a direct benefit to expanding employment opportunities for people with disabilities. For employers who are projected to face labor shortages as the baby-boom generation retires, non-employed people with disabilities represent a valuable tool of human resources to help fill those needs. For people with disabilities, employment has not just economic value, but important social and psychological value as well. For government, increased employment of people with disabilities helps increase tax receipts and decrease social expenditures. Finally, as recognized in the passage of the Americans with Disabilities Act, there are societal benefits from greater inclusiveness in mainstream society as the barriers facing people with disabilities are dismantled.”

Additionally, in his June 2013 Committee on Ways and Means Subcommittee on Social Security hearing questions for the record response regarding lessons learned from welfare reform, Mark Duggan said, “While the beneficiaries of the two programs differ in many ways and thus the effect of a specific reform may not be the same for the two groups, the results from AFDC/TANF show that simultaneously improving the financial incentive to work while reducing the incentive to remain enrolled can produce substantial changes in behavior that increase employment and improve economic well-being while reducing government expenditures and increasing tax revenues. Reforms to SSDI that incorporate these features and are tailored to the characteristics of program beneficiaries could improve the economic well-being of many individuals with disabilities while reducing program expenditures.” Later, in response to a question regarding time-limited benefits, Mr. Duggan added, “One potentially important benefit of such a change is that SSDI awardees who ‘just qualified’ would have an incentive to further their skills and remain connected to the labor market while on SSDI so that they could make the transition back to work if possible given the evolving nature of their health.”

Also, in aiming to prevent people from becoming permanently trapped on disability benefits, an increasing number of Organisation for Economic Co-operation and Development (OECD) countries are restricting new applicants to time-limited or temporary payments (OECD 2010, 113).

DETAILED PROPOSAL

Our proposal for transitional benefits would change the dynamic of disability in four respects:

- First, and most importantly, awarding transitional benefits would ensure that claimants have access to supports and services that will aid them in the medical recovery and work reentry process. That would make it more likely that beneficiaries would successfully recover and make the transition back to work as soon as practicable.
- Second, the fixed length of the benefits award for certain new applicants would send a clear message that they need temporary financial support to aid them during the transitional period while they are coping with their medical problems and recuperating. But, it would also signal the expectation that they will be returning to work.
- Third, beneficiaries receiving transitional benefits would not be subject to any limitation on earned income during the transitional benefit period.
- Finally, should beneficiaries believe they are unable to work at the end of their transitional benefit period, they would have to file a new application and demonstrate that they meet SSA’s definition of disability. Under current policy, the agency must schedule the CDRs, collect medical

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information, and then determine whether to terminate benefits based on the medical improvement review standard.

Proposal

1. Disability Determination Services (DDS) examiners and ALJs would first determine, as they do now, whether a claimant meets the statutory definition of disability.
2. To ensure accuracy and consistency, decision makers would use a newly developed predictive analytics model to determine whether the medical condition is expected to improve.
3. If so, transitional benefits would be awarded for a two- or three-year period. The default length would be specified by the predictive model. The decision maker would have the discretion to expand the transitional period predicted under the model up to the maximum three-year transitional term.
4. As soon as practicable, names and contact information of individuals receiving transitional benefits would be sent to their local community work incentives coordinators under the Work Incentive Planning and Assistance (WIPA) program, modified to prioritize services for transitional beneficiaries, including direct referral to a Ticket to Work service provider.
5. Under a modified Ticket to Work program for transitional beneficiaries, employment network or vocational rehabilitation agency service providers would provide customized services to increase medical and/or functional recovery,⁷ if necessary, in order to achieve employment.
6. There would be no cap on earned income during the transitional benefit period to encourage beneficiaries to experiment with gradual or intermittent return to productive paid work activity.

Implementation

1. *Predictive Analytical Model*

SSA has experience using predictive modeling in the CDR process. Currently, SSA's predictive model determines which cases with matured medical diaries should undergo full medical reviews. Based on statistical analysis, the model assigns a case a score of low, medium, or high likelihood of benefit cessation (SSA 2015a). Beneficiaries in the low category are sent a questionnaire designed to solicit key information about their medical conditions and recent treatment. Those in the high group are placed in the queue for a full medical review. Beneficiaries in the medium category may receive a mailer or undergo a full medical review based on budgetary and other factors. SSA's existing model considers age, types of impairments, and length of time on the SSDI program to determine statistically who will likely recover.⁸

⁷ Employment networks and state vocational rehabilitation (VR) agencies provide a wide array of services, some of which include services, supports and accommodations that assist in increasing medical and/or functional improvement. According to Section 103(a) of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973), and as amended, VR services are provided for purposes of eligible individuals achieving an employment outcome. Some examples of VR services include; vocational counseling, guidance and referral services; physical and mental restoration services; vocational and other training, including on-the-job training; personal assistance services and job placement services.

⁸ Given those correlates, it is doubtful that anyone over 55 would receive transitional benefits. Nonetheless, if the transitional benefits program is successful, everyone found disabled should be able to opt into the transitional benefits track to take advantage of the additional health and vocational advantages.

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SSA would need to update the current guidelines used to determine CDR diary designations, given advances in medical treatment since the mid-1990's when the medical improvement expected guidelines were last updated.

The modern approach to data-derived predictive analytics is to have the model continuously self-updating as new data become available. Therefore, we recommend data analytics to devise a model to predict the likelihood of medical recovery by leveraging data in the disability application, electronic medical evidence, and Centers for Medicare and Medicaid Services data.⁹ We also recommend the periodic convening of an advisory panel of medical and functional recovery specialists selected for their knowledge of clinical developments in this area for the purpose of updating the medical improvement criteria used by SSA decision makers.

2. Appeals

We propose making a DDS or ALJ decision as to transitional benefits non-appealable. Permitting an appeal in this context would undercut the proposal's goal of encouraging the beneficiary to take the steps needed to reenter the workforce instead of waiting for the appeal process to unfold. Congress has precluded appeal in analogous contexts in the past.¹⁰ Moreover, the five-month waiting period would not apply to beneficiaries who file a new application and are awarded benefits immediately after receiving transitional benefits.

3. Supports

SSA administers the Work Incentives Planning and Assistance¹¹ (WIPA) program. The WIPA program emerged out of the Ticket to Work and Self-Sufficiency Act and was created to provide beneficiaries with information about how earnings would affect benefits and about services available to assist with employment reentry (SSA 2015). The WIPA program is implemented through community work incentive coordinators (CWICs) available in each state. In 2006, SSA shifted the focus of the program to provide tailored assistance that included written plans surrounding job options, long-term supports necessary for employment success, and work incentive and benefit counseling expertise. The foundational shift involved integrating CWICs into the vocational services system, as opposed to solely providing benefit counseling (Schimmel 2011).

Under the Ticket to Work program, beneficiaries select an approved service provider called an employment network (EN) (a public or private entity or combination of entities who deliver or coordinate employment support services) (SSA 2012b) or a state vocational rehabilitation (VR) agency to help them obtain and maintain employment. ENs and VR agencies may provide training, vocational rehabilitation, and job placement, among other services. ENs are paid for employment outcomes

⁹ For an excellent proposal on how a data analytics model can be established, see Constantin et al. 2015.

¹⁰ Congress, for instance, has precluded judicial review of several categories of claims arising under the Medicare Act. See, e.g., 28 U.S.C.A. § 405(h) (WestlawNext through P.L. 114-25 (excluding P.L. 114-18)); see generally *United States v. Erika, Inc.*, 456 U.S. 201 (1982) (upholding preclusion of Medicare claim); *Webster v. Doe*, 486 U.S. 592 (1988) (upholding preclusion of review, at least of statutory claims, based on CIA Director's decision to terminate an employee.). As under current law, claimants would still be able to appeal DDS or ALJ determinations that otherwise are not considered favorable enough, such as those relating to date of onset or, in a closed period decision, the end date of disability.

¹¹ The WIPA program was originally entitled the Benefits Planning, Assistance, and Outreach in the Ticket to Work and Work Incentives Improvement Act.

achieved by the beneficiary. SSA pays state VR agencies for services provided to beneficiaries when those services result in nine months of earnings at the substantial gainful activity level (\$1,090/month).

Because transitional beneficiaries have great potential to medically improve, we strongly recommend that this group be provided with priority services throughout their transitional benefit period. To conserve resources and for administrative ease, the authors recommend that SSA deliver employment supports and services to transitional beneficiaries through the existing WIPA program in conjunction with the Ticket to Work program and VR agencies. The current process allows SSA through contractor staff to refer beneficiaries to CWICs (Schimmel et al. 2013).

We recommend that transitional beneficiaries receive expedited referral to CWICs and that the CWICs give priority to contacting newly awarded transitional beneficiaries as soon as possible following the benefit award. Early (and continued) contact with an impaired individual is a key concept in the rehabilitation to work process since it permits early action to assist with access to health care and return to work (Waddell and Burton 2004).

CWICs will play a key role by offering information and basic guidance to transitional beneficiaries. Currently, CWICs conduct initial intake interviews and develop work incentive plans. The intake interview for transitional beneficiaries will be modestly expanded to include eliciting beneficiaries' goals and expectations of the timeline for their medical recovery and return to work, along with any plans they have and specific obstacles they foresee along with potential solutions. The CWIC will make use of this information in performing an expanded preliminary assessment of potential service needs, such as physical or mental restoration services, job placement assistance, post-employment job supports, retraining, and rehabilitation technology services. Additionally, the CWIC will: 1) provide information about local ENs and VR agencies so that the individuals can select a provider of their choosing; and 2) facilitate connection to that provider. Since time is of the essence in instilling positive expectations and actually achieving recovery and return to work within the benefit award period, WIPAs will be required to report quarterly on the mean and median interval between notification of award by SSA and the conduct of these initial intake interviews.¹²

CWICs are currently required to be knowledgeable about beneficiary health care options, including Medicaid, Medicaid Buy-in, Medicaid waivers, the Affordable Care Act (ACA), and complex interactions between private health care coverage and public health care programs. While transitional beneficiaries will be required to meet the current statutory 24-month Medicare waiting period, we recommend that CWICs provide transitional beneficiaries with information about possible eligibility for subsidized coverage under the ACA or Medicaid and refer them to the appropriate agencies to access health care, and that state VR agencies be encouraged to prioritize expenditure of their physical and mental restoration funds on transitional beneficiaries. This will be particularly important so that transitional beneficiaries receive necessary medical treatment.

We believe that, with minor modifications, the existing foundation of the Ticket to Work program, supported by its experienced ENs and VR agencies, will be able to support the needs of transitional beneficiaries. ENs will maintain the flexibility to choose which beneficiaries to accept and maintain their working relationship with. ENs and VR agencies can provide many of the services most commonly needed by transitional beneficiaries, including: career planning; benefits counseling and

¹² The changes to the WIPA interview described in this paragraph are based on Dr. Jennifer Christian's knowledge of the medical and psychological literature as well as common operating practices in outcome-driven private and public sector programs.

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management; job training advice and assistance; job placement; and post-employment job retention supports to the end of the transition period. The Ticket's current process of allowing ENs and VRs to share outcome payments will especially assist those transitional beneficiaries who need those only a VR agency can provide, such as physical or mental restoration services.

We recommend modifying the Ticket to Work program payment system to ensure that transitional beneficiaries receive necessary services and supports for successful employment reentry and that providers are adequately incentivized both to serve them and find them jobs that pay commensurate or higher wages than transitional beneficiaries received before they were determined to be disabled. We also recommend that a study be conducted to determine the feasibility of amending the Rehabilitation Act to require that transitional beneficiaries be served on a priority basis.

4. Required Compliance

Beneficiaries must comply with prescribed treatment to improve their ability to engage in substantial gainful activity. Failure to do so will be grounds for terminating benefits, as is currently the case for any beneficiary who fails to abide by SSA guidelines for regaining the capacity to work.¹³ Additionally, transitional beneficiaries must take advantage of Ticket or VR services if needed to facilitate a workforce reattachment.

5. Notice of the Termination of Benefits

SSA should notify transitional beneficiaries in writing six months prior to expiration of benefits, so that beneficiaries may take any needed action, such as seeking supports and services and/or applying for benefits if they believe they are disabled.

Statutory Changes

Congress would amend the Social Security Act to direct the agency (at both the DDS and ALJ levels) to designate a transitional benefits term, wherever appropriate, including modified appeal rights as discussed above. Congress would also amend 223 (i) of the Act (Standard of Review for Termination of Disability Benefits) to require: 1) that transitional beneficiaries follow prescribed treatment that would be expected to restore their ability to engage in substantial gainful activity; and 2) to participate if employment supports are needed to return to work.

Additionally, Congress would amend the Social Security Act to allow transitional beneficiaries to work and earn above the substantial gainful activity level for each month during entitlement to transitional benefits without affecting their SSDI benefits. Congress would also amend the Act so that transitional beneficiaries would not be subject to a second five-month waiting period upon a reapplication and benefit award after transitional benefits terminate.

We also advocate either updating SSA regulations to prioritize state VR reimbursement for those beneficiaries receiving transitional benefits, or amending the Rehabilitation Act to require VR agencies to give the highest priority to SSDI beneficiaries receiving transitional benefits (contingent on the results of the study referred to previously). Currently, all SSDI beneficiaries are considered individuals with the most severe disabilities (Hager 2004, 23) for purposes of determining eligibility and order of

¹³ See *Need to Follow Prescribed Treatment*, 20 C.F.R. 404.1530 (2015).

selection for VR services. Because transitional beneficiaries will have income supports only for a limited time, we recommend they have the highest priority for services necessary to facilitate their reentry into the labor market. All second awards of transitional benefits for an additional period that are due to lack of access to essential VR services should be tracked and reported annually to the states and Congress to aid in budgeting decisions.

INTERMEDIATE STEPS

Although we believe the full implementation of transitional benefits is justified, the following are two intermediate steps that could be considered:

- Commission a study to analyze the CDR process, including longitudinal data on SSDI awardees regarding the diary code assigned, date of award, type of impairment, diary date, date actual CDR conducted and ultimate outcome for a five-year period that would provide baseline data to inform a well-designed transitional benefit program.
- Congress could authorize testing all elements of the transitional benefit program as outlined in the proposal section of the paper. We recommend that a pilot be first conducted in a few states or region. Pilots provide the ability to rigorously test policy changes to work out operational issues on a small scale and provide an opportunity to gather preliminary evidence to determine the merits before implementing a large-scale national demonstration project (Liebman and Smalligan 2012, 2). If preliminary results indicate positive outcomes, then the pilot could be rolled out more broadly to a sample size required to detect the effects of the policy change within a sufficient level of confidence.
- Currently, there is no SSDI demonstration authority available to conduct a transitional benefit test.¹⁴
- Should Congress reinstate SSDI demonstration authority, pilots and demonstrations of transitional benefits could be conducted several ways. Transitional demonstration projects could be conducted through an interagency arrangement consisting of agencies that touch the SSDI program: Departments of Health and Human Services (Assistant Secretary for Planning and Evaluation, Centers for Medicare and Medicaid Services), Labor (American Job Centers), Education (Vocational Rehabilitation) and SSA. Another option would allow state innovation and experimentation with partnerships among state disability determination services, state vocational rehabilitation agencies and ENs within the state. Such state projects could be funded by nonprofit foundations or by social impact bonds.¹⁵
- With either option, we would strongly recommend that demonstrations be conducted as randomized controlled trials with a strong experimental design to allow for a rigorous evaluation of a transitional benefits policy. These demonstrations could also provide the opportunity to allow

¹⁴ In 1980, Congress authorized SSA to conduct SSDI demonstration projects to test policy alternatives that would encourage beneficiaries to reenter the labor market. Historically, Congress has granted SSA SSDI demonstration authority on a temporary basis, the last of which expired in 2005. Under such authority, SSA can waive SSDI program eligibility rules and benefit administration for purposes of increasing beneficiary return-to-work rates (GAO 2008).

¹⁵ A social impact bond is a funding mechanism that allows government agencies to pay for outcomes. Investors providing the funding for administration of a program and a third-party evaluator determine whether results have been achieved (Costa 2014).

other beneficiaries the option of participating in a transitional benefit program, including possible incentives.

QUESTIONS OR CONCERNS

Objections will be raised by those who oppose the concept of time-limited benefits. However, we believe that establishing transitional benefits for the small subset of beneficiaries whose conditions are expected to improve, combined with employment support services and the ability to earn unlimited amounts during the transitional benefit period, is a compassionate solution that better serves these individuals. And, of course, those who fail to improve as expected during the transitional benefit period will be able to reapply.

With respect to the method for determining which individuals should be able to reenter the workplace in the near future, the proposed predictive analytics model veers away from an individualized determination of future medical improvement. Claims against the government rarely, if ever, are based on probabilistic outcomes. Yet, the massive size of the disability program warrants the probabilistic approach, and it would ensure more consistent outcomes nationally. Moreover, the predictive analytics approach does not rob an individual claimant of his or her ability to argue for disability at a later time: no claim is lost by dint of the predictive analytics. Claimants can refile and argue anew for disability at the end of the transitional term.¹⁶

With respect to costs, adoption of the transitional disability concept would impose greater administrative burdens on SSA, which might need to adjudicate more claims because transitional beneficiaries could reapply after their transitional term completes. Moreover, additional individuals might file for SSDI or Supplemental Security Income benefits to take advantage of the transitional supports we recommend. At this point, the costs are speculative, but we are confident that the costs would be eclipsed by the long-term savings to the SSDI trust fund.

First, SSA would face more DDS determinations as some beneficiaries reapply for benefits at the end of their transitional terms. For the sake of discussion, assume that, of the 800,000 decisions or so awarding benefits each year (at the DDS and ALJ levels combined), the agency determines that about 3 percent¹⁷ or 25,000 claimants a year fall within the transitional disability category (Morton 2014, 4). (The agency currently estimates that about 3 percent of beneficiaries carry an MIE diary, although that may shift as the agency's methodology is updated.) If all 25,000 later reapplied for benefits, SSA would over time face a 3 percent increase in applications. The more successful that transitional benefit supports are in helping individuals return to work, the more the number of reapplications would diminish. For example, if only 25 percent of transitional beneficiaries reapplied, the increase in the number of applications would be less than 1 percent.

A transitional term option would have even less impact at the ALJ level, where the hearings are far more expensive because of the court-type procedures followed. Of the 25,000 assumed cases in the

¹⁶ The change to transitional benefits would not affect the claimants' ability to attract counsel, which currently almost 80 percent do. The lure of back benefits would assure claimants counsel at the first step—attorney fees would be the same whether claimants ultimately receive full or transitional benefits. As is the case for beneficiaries facing a CDR hearing currently, claimants who receive transitional benefits might struggle to attract counsel should they wish to reapply for benefits at the end of the term, given that there are no back benefits from which to obtain attorney fees. Legislative action would be needed to provide incentive for counsel in either context.

¹⁷ SSA, Office of the Actuary.

worst-case scenario, ALJs would hear only those cases denied by DDS, which—using the current DDS denial rate of 64 percent for the sake of illustration—would reduce the potential pool of ALJ hearings from 25,000 to 11,000. Given that a substantial percentage of beneficiaries who are denied at the DDS level (including at the reconsideration stage) likely will not appeal to an ALJ (SSAB 2012),¹⁸ the expected increase should not be substantial. And, if instead of the worst case scenario of 25,000 transitional beneficiaries reapplying for disability, we assume as before that only 6,000 reapply at the end of the transition period, the number of those who are then denied at the DDS level and appeal to an ALJ would present an insignificant increase in the number of ALJ hearings a year. Moreover, if the claimant was denied at the DDS level and no evidence of new disability was presented, the hearing before the ALJ would be relatively straightforward given that much information concerning the claimant's condition had already been assessed and would be in the record. Finally, over time, there would be an offset because fewer CDR hearings (as currently constituted) would take place. The transitional term would obviate much of the need to schedule hearings for those presently placed on disability but who are expected to recover.

Second, revising the Ticket to Work payment system to accommodate transitional beneficiaries may increase Ticket to Work costs. But since SSA pays employment support service providers only when they successfully assist beneficiaries in securing and maintaining employment at certain earnings levels, overall cost increases should not be significant. We acknowledge that the additional responsibilities outlined above for CWICs may require an adjustment in administrative funding for the WIPA program, but believe that the benefits would offset the costs.

Third, some may worry that the more supports SSA offers to transitional beneficiaries to help them recover, the more new applications for disability there will be. We are skeptical. Current law already permits a nine-month trial work period that allows earnings up to any level for SSDI beneficiaries. Moreover, Ticket to Work services are available to beneficiaries today, and individuals would still have to meet the statutory definition of disability. Although we cannot rule out an incentive effect, we doubt that the move to a transitional benefit as proposed would result in a significant increase in additional filings.¹⁹

In short, the transitional term would increase the number of DDS determinations somewhat, and the number of ALJ hearings even more modestly. The increase in transition services would be manageable.

In contrast, consider that the SSA Inspector General recently estimated that, in light of SSA's backlog of over 1 million CDRs, roughly \$2 billion was overspent (SSA OIG 2014b). That estimate addresses only CDRs in the current backlog, and so does not factor in overpayment from future delays.²⁰ The transitional disability concept would result in a return to work or a new application for disability much sooner than under the current continuing disability review process. In contrast to such savings, the additional process and rehabilitation costs assumed by SSA seem quite modest.

¹⁸ Indeed, a significant number of claimants currently decline to pursue appeals at each stage of the process—at the DDS, ALJ, and agency levels; see, e.g., (Krent and Morris 2013, 76). Krent and Morris note the substantial percentage of claimants who decline to appeal denials at ALJ and Appeals Council levels.

¹⁹ Nor should there be any concern that DDS or ALJ decision makers in close cases will find more claimants disabled in light of the potential lesser cost to the trust fund arising from designation of a transitory term. Under our proposal, the transition term can only be determined via a computerized system after a finding of disability has already been made, thus taking discretion out of hands of DDS and ALJ decision makers.

²⁰ A similar estimate was made by the CBO in 1997, see (CBO 1997).

Some may contend that a transitional benefit program would be unnecessary if SSA were to receive additional funding to conduct the statutorily required number of CDRs each year. There are several reasons why additional funding would not solve the issues this paper addresses. As mentioned elsewhere in this paper, SSA has not updated its medical improvement expected criteria for CDR diaries since the early 1990s, which could result in under-identifying individuals likely to medically recover. Additionally, a GAO study (2006) indicated that limitations in SSA's instructions in defining the degree to which improvement meets the required standard poses challenges in determining continuing eligibility. Moreover, the transitional term, unlike the uncertain prospect of a CDR, would put beneficiaries on notice of the pressing need to pursue steps to reenter the workforce. Most importantly, under the current CDR process, beneficiaries determined to have improved lose benefits without the offer of employment supports and services to prepare themselves to reattach to the labor market as provided for in this proposal.

CONCLUSION

According to the Department of Health and Human Services, the 2015 poverty guideline for a household of one is \$11,770 per year. The average SSDI benefit at \$13,980 a year is only slightly higher than what constitutes the poverty threshold for an individual living alone. We believe individuals with disabilities deserve better outcomes that are consistent with the Americans with Disabilities Act, i.e., inclusion of individuals living with disabilities in all aspects of life, particularly employment.

As mentioned throughout this paper, there is a small subset of individuals who enter the SSDI program and who have medical impairments that are expected to improve. While the CDR process conducts full medical reviews of some of these individuals, benefits are often terminated without the provision of employment supports and services. The crucial safety net of the SSDI program must be preserved for those who cannot work, but services and supports should be provided to those who are able to medically improve and transition from public support to gainful employment and financial independence.

Studies by Mathematica have indicated that age, health, and time on the rolls are characteristics associated with beneficiary work-related activity and employment success (Livermore 2011). The authors believe that limiting time on the rolls for the small subset of SSDI beneficiaries who have a high likelihood of medical improvement, coupled with supports and services aimed at improving health and increasing employment reentry, will result in better economic outcomes and overall improved quality of life for a portion of SSDI beneficiaries.

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