



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

July 16, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Democratic Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Speaker Pelosi and Leader McCarthy:

The undersigned organizations write in response to a recent change made by the Social Security Administration (SSA) to restart Continuing Disability Reviews (CDRs) in the middle of this global pandemic. The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

On June 29, 2020, SSA updated the webpage entitled Social Security & Coronavirus Disease (COVID-19) where details of the agency's response to the pandemic are detailed. The update removed CDRs from the list below the question: "What workloads is SSA not doing during the COVID-19 pandemic?" This was not accompanied by any public announcement or additional details on the agency's plans for resuming this workload.

We are extremely concerned by this abrupt and unexpected decision. CDRs ask for detailed summaries of the medical treatment received over the past 12 months, information that the individual themselves is unlikely to know in the detail required and thus necessitating assistance from health care professionals or other service providers. In the middle of a pandemic, asking people with disabilities, many of whom are at higher risk of complications and death from COVID-19, to visit their treatment professionals creates a serious risk of exposure that is unacceptable.

CDRs are also costly to beneficiaries, who often need to pay for medical records or appointments with their doctors and other providers to fill out forms. Although some states require medical records be provided free to Social Security disability claimants, this does not extend to beneficiaries undergoing CDRs. Beneficiaries may need to hire representatives to assist them in completing CDR paperwork or proceeding through multiple levels of appeals.

It can be difficult for the many people with disabilities living in poverty who rely on Supplemental Security Income or Social Security Disability Insurance to find legal assistance and many rely on legal services providers who are under-resourced for this work.

Not completing CDR paperwork or doing so incorrectly can jeopardize benefits that are a matter of life and death to people with disabilities—not only Social Security benefits, but also other critical benefits such as Medicare, Medicaid, housing assistance, and food assistance that are tied to SSA’s finding of disability. Those who are found to have medically improved, and those who were deemed noncompliant with the CDR process, have only 10 days to elect continuation of benefits while they appeal. If they don’t, they can be without income or health insurance for months or years; receiving retroactive benefits once appeals are completed does not fix the problems of people with disabilities who will go without needed medication and health care, lose their housing, go into debt, or declare bankruptcy. Those who do elect continuing benefits may be faced with overpayments withheld from future Social Security benefits, tax refunds, or other sources. These risks are always serious and should be weighed against the frequency of CDRs, but now, especially as the number of COVID-19 cases are increasing in many states, these risks are even more dire for beneficiaries.

We understand from our communications with SSA that the agency does not intend to process any CDR cessations and plans to issue further guidance “once the pandemic ends” on how to proceed on claims that cannot be adequately developed due to the pandemic and claims with insufficient evidence including failure to cooperate cases. But it is not enough for SSA to say that they plan to issue guidance—people with disabilities are currently making decisions about risking exposure to COVID-19 in order to comply with CDRs, especially since this announcement was made without any public statement of SSA’s intention to not process any cessations, leaving beneficiaries with no information otherwise. It is unclear if evidence cannot be developed now because of the pandemic, if beneficiaries will have the option to develop additional evidence later. In addition, we are extremely concerned that SSA will process these held cessations all at once, creating a workload for SSA that will not allow for careful analysis of claims and that will overburden the legal services system.

This change also makes us concerned about the other workloads that SSA has currently suspended. We have advocated for SSA to resume hearings on cases without electronic files and on non-disability matters (including SSI non-disability hearings where the law sets out a 90-day deadline for SSA to make determinations) and continue to believe that they should do so.

But our concerns regarding overpayments mirror our concerns about CDRs. Suspending the overpayment workload has been crucially important to ensuring that people with disabilities on SSI and SSDI have their full benefits available to them in this time of financial and public health crisis, but it has and will continue to result in a backlog. In addition, because of the suspension, the amount of the potential overpayment will be substantially more than it might otherwise be. Through no fault of their own, people with disabilities who should have been issued overpayment notices now face overpayments that have grown over the course of the pandemic. SSA was correct to suspend the overpayment workload and we do not believe that this workload should be restarted until the pandemic subsides, but people with disabilities should not be penalized for a necessary decision by the agency.

As with CDRs, a beneficiary may need to hire a representative or seek out assistance from a legal services organization to help them in completing a waiver request or proceeding through multiple

levels of appeals. Overpayments also have a very short window during which beneficiaries can request waivers and payment plans. Without assistance, SSDI beneficiaries may face the loss of their entire benefit for months, a particularly concerning risk in this time of financial crisis for many. SSA will need substantial resources to process these overpayments and the waivers that some may request. SSA will also need to re-start non-disability hearings if they wish to begin processing overpayments to allow for appeals.

We believe that Congress should legislatively address these issues in the next COVID-19 relief package and clarify that SSA should not be processing CDRs or overpayments until the pandemic is over. We also believe that Congress should take steps to ensure that SSA has the resources the agency needs to be careful and thoughtful as these workloads restart. Congress should also ensure that beneficiaries have relief from overpayments that increased due to the pandemic through no fault of the beneficiary and that SSA broadly grant waivers to address as much of this workload as possible.

Thank you for your attention to these important issues. Please contact Bethany Lilly (lilly@thearc.org) with questions or to arrange for a meeting to discuss.

Sincerely,

American Association on Health and Disability
Association of People Supporting Employment First (APSE)
Center for Public Representation
Community Legal Services of Philadelphia
Easterseals
Justice in Aging
Lakeshore Foundation
National Alliance on Mental Illness
National Association of Disability Representatives (NADR)
National Committee to Preserve Social Security and Medicare
National Organization of Social Security Claimants' Representatives
The Arc of the United States
United Spinal Association