

Legal Report

www.jeffreyfreedman.com

January 2012 Will See First Social Security COLA Increase Since 2009

Recipients of Social Security benefits will receive a cost-of-living adjustment (COLA) of 3.6 percent as of January 2012, according to the Social Security Administration. Approximately 55 million retirees, recipients of Social Security Disability, and Social Security Supplemental Income will benefit.

Those who receive Social Security may only see a small increase in their checks, however, because their Medicare B premiums are also expected to go up. Most Medicare B premiums are paid through automatic deductions from Social Security checks.

It is estimated that with the 2012 COLA, a person receiv-

ing the average monthly Social Security benefit -- currently \$1,177 -- should receive a check for \$1,218. Although the actual



amount of the increase in Medicare Part B premiums has not yet been announced, it is predicted they will rise by at least \$10.20 a month, reducing the actual COLA increase from 3.6 percent to 2.63 percent for a person receiving the average check.

"When you consider that Social Security beneficiaries have not had an increase in two years

and during that time gas prices have skyrocketed so the cost of everything which has to be delivered to a store has also gone up, the COLA increase is definitely needed," said Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law.

"However, it's unfortunate there has to be a corresponding increase in the Medicare premium. If you are solely dependent on your Social Security check you're barely scraping by to begin with -- \$10 could mean the difference between being able to make a co-pay for a much-needed medication -- or going without."

David Certner, legislative policy director for AARP said the majority of people receiving Social Security checks live on modest incomes to begin with, and every dollar counts.

Inside

November 2011

Congress Looks at Administrative Law Judges in Reaction to Increases in SSD Backlogs and Awards.....2

Important Advice We Provide All Our SSD and SSI Clients:.....3

SSA's New Regulation Change May Mean a Loss of Benefits for Claimants ...4



facebook.com/JeffreyFreedmanAttorneys

Administrative Offices:

424 Main Street, Suite 622, Buffalo, NY 14202
3445 Winton Place, Suite 104, Henrietta, NY 14623
1-800-343-8537 • info@jeffreyfreedman.com

Congress Looks at Administrative Law Judges in Reaction to Increases in SSD Backlogs and Awards

The House Ways and Means Committee and House Judiciary Subcommittee on Courts, Commercial and Administrative Law, recently held a joint hearing regarding the role of the Administrative Law Judges (ALJs) who preside over Social Security Disability claims. In an opening statement, Chairman Rep. Sam Johnson (R-TX) expressed concerns about the viability of the Disability Insurance Trust Fund in view of the increasing number of awards. In 2010, awards increased by 18 percent over 2009.

Two witnesses were interviewed: Michael Astrue, Social Security Administration Commissioner; and Christine Griffin, Deputy Director of the U.S. Office of Personnel Management (OPM). OPM establishes ALJ qualifications, administers the ALJ exam, and maintains the register of qualified candidates for the positions.

“Any changes made in the decision-making processes of ALJs will directly affect Buffalo and Rochester, which currently suffer under high backlogs of cases,” said Jeffrey Freedman, senior partner, Jeffrey Freedman Attorneys at Law. “Claims in Buffalo take about 460 days from the time the hearing is requested to receive a hearing date, and in Rochester the wait is 422 days.

“For disabled individuals who are living without income, these time periods are financially devastating.”

Nationwide, the average processing time for SSD claims at the hearing level was 353 days as of June 24, 2011. The joint committees looked at four areas affecting ALJs:

- Why ALJs are not subject to use of the Administrative Procedure Act (APA) in decision-making: Commissioner Astrue answered that the Social Security Act does not require ALJs to use the APA.
- How SSA uncovers incorrect awards, since claimants don't appeal awards that may have been



made in error: Astrue responded that the SSA conducts random quality assurance procedures to ensure benefits have only been awarded to claimants who qualify as disabled.

- The SSA recently set goals stating ALJs should process 500 to 700 cases each year. The Committee asked how those figures were arrived at, and Astrue said after consulting former Chief ALJ Frank Cristauda, the agency calculated this was a reasonable expectation.
- Committee members questioned why ALJ hearings are not adversarial: Astrue replied a pilot program had been conducted in the 1980s that proved a non-adversarial approach with claimants was the most effective.

Finally, highlights of Commissioner Astrue's written statement regarding funding of the SSA were read to the committee.

“Astrue said that the agency's goal of reducing the backlog to 270 days by fiscal year 2013 is ‘fragile,’ and without full funding of the President's 2012 budget, that goal will never be met,” Freedman said. “To our clients, the most important piece is how long it takes for them to receive benefits, because their financial security depends on having their claim settled as quickly as possible.

“The current waiting periods in Buffalo and Rochester are untenable for our clients, and that's not going to go away unless Congress gives the SSA the money it needs to operate efficiently.”

“For disabled individuals who are living without income, these time periods are financially devastating.”

Important Advice We Provide All Our SSD and SSI Clients

The process for appealing a social security disability (SSD) or supplemental security income (SSI) claim to the hearing level can be overwhelming. For our clients, retaining an attorney to handle the appeal alleviates most of the stress associated with the paperwork needed to prepare the appeal. However, the long wait for a hearing before an Administrative Law Judge (ALJ) without income, combined with physical or mental health impairments causing the disability can still leave claimants feeling stressed and concerned about the outcome of the case.

Many of our clients ask what they can do to help their claim.

- Continue treating with your doctors and be compliant with prescribed care. This is the first and best thing you can do. It is important to keep all appointments, whether with a specialist, a primary care physician, mental health counselor, physical therapist or any other treating physician. The records and opinions of your treating physician are the best evidence to support a disability claim. If you are referred to therapy or a specialist, be sure to follow up on that referral, schedule the appointment and let your attorney know about the new care provider so we may obtain the records to submit to the ALJ.
- Be sure to discuss your claim for disability with your doctor. Tell your doctor about your



symptoms, and how they affect you on a day to day basis. This is not the time to minimize, nor to exaggerate. For not only your claim—but for your health—be honest with your physician about your impairments and limitations.

- Bring a list of your doctors, therapist, and other caregivers, to the appointment. This allows your attorney to obtain records from all of your care providers, and provide the ALJ with all the evidence.
- Try to relax as much as possible about your hearing. While clearly the hearing is the most important part of your claim, as it is a chance to tell the Judge in your own words about why you think you cannot work, it is an informal, relatively private proceeding. The rules of

evidence do not apply, nor do other courtroom formalities. It is not adversarial, there will not be an attorney there for SSA. In fact a hearing is like a conversation with some questions and answers. It is not like a television court room drama. Be honest about your impairments and how they affect your ability to go about your daily activities, and why it is you are unable to work. And remember, your attorney will be there with you to guide you through the hearing.

Pursuing a Social Security Disability claim can be a long process. The timeframe and importance of the claim are all the more reason why claimants, their doctors and attorneys should work together to best prepare the case presented to the ALJ at the hearing.

SSA's New Regulation Change May Mean a Loss of Benefits for Claimants

Sometimes a Social Security Disability (SSD) or Supplemental Security Income (SSI) claim is wrongfully denied after a hearing and must be appealed to the Appeals Council. Our practice at Jeffrey Freedman Attorneys at Law has been to submit that appeal, and to file a new application at the same time. This is done to protect the rights of our clients.

"Quite often the amount of retroactive benefits a person can receive from a SSD or SSI claim is based upon the application date," said Courtney L. Quinn, an attorney with Jeffrey Freedman Attorneys at Law. "So to preserve the benefits that a disabled person might be entitled to, a new application is made, while we appeal the denial to the Appeals Council. That way, if the first claim is unsuccessful on appeal to the Appeals Council, at least



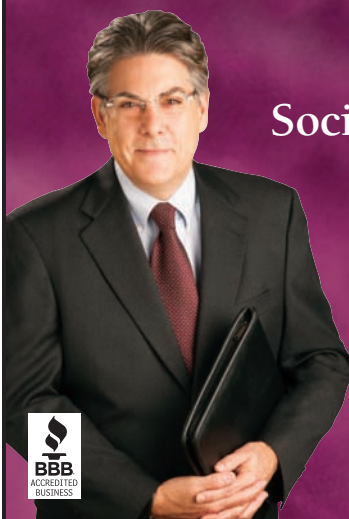
the claimant has already filed that new claim, and we know his or her rights are protected under the new application," said Quinn.

However, a new regulation enacted by the Social Security Administration has eliminated this practice, as claimants are no longer permitted to file a new claim if an older

claim is still pending on appeal to the Appeals Council. Unfortunately, this new rule will force claimants to decide between appealing the claim that has already been pending, in some cases for two years or more, or starting over at the very beginning. Often whether a claimant abandons the appeal, or instead chooses not to file a new application so that the appeal may be heard, the disabled person may be missing out on payment of back benefits.

Social Security claims that the practice of appealing and filing a new claim creates double the work for the Administration and conflicting decisions. Now that there is a freeze on funds for administrative tasks such as processing claims and considering appeals, the argument is that this will save the Administration money. "The problem is," said Quinn, "is that this new regulation doesn't take into account its impact on the people behind these applications or appeals. These are people who are dealing with debilitating health problems, and who are often struggling to make ends meet themselves."

We Get Results!



Serious Injury & Accidents
Social Security Disability & SSI
Bankruptcy & Debt Relief

We sue debt collectors
under FDCPA and get
money for you

Call today for a Free Consultation
1-800-343-8537

14 Conveniently Located Offices Throughout New York & Pennsylvania
Administrative Office: 424 Main St., Suite 622, Buffalo, NY 14202 • www.jeffreyfreedman.com