Empire Justice Center

October 2021
Issue 4 2021

DISABILITY LAW NEWS

SSI Eligibility in Puerto Rico to Be Argued in Supreme Court

On November 9, 2021, the Supreme Court will hear oral argument in *U.S. v. Vaello-Madero*, a case challenging the constitutionality of the exclusion of residents of Puerto Rico from the Social Security Administration's Supplemental Security Income (SSI) program. Live audio of the argument can be streamed here. The Court will convene at 10 a.m.; transcripts and recordings will be available afterwards on the Court's webpage.

In *Vaello-Madero*, the First Circuit had ruled that the exclusion was an equal protection violation under the due process clause of the Fifth Amendment to the U.S. Constitution. In addition to affecting an estimated 700,000 residents of Puerto Rico, the Supreme Court's decision is expected to also impact eligibility in other territories excluded from SSI: Guam, the Virgin Islands, and American Samoa.

There were over 20 *amicus* briefs filed in support of the respondent; *amici* included NOSSCR, Justice in Aging, and AARP, which submitted a joint brief highlighting the heightened poverty and hunger in Puerto Rico, particularly among the older population. The governments of several states and U.S. territories, including New York, submitted an *amicus* brief urging the Court to view with suspicion any policy that discriminated against a state or territory in the context of a government aid program.

Some of the *amici*, including LatinoJustice PRLDEF urge the Court to overrule the Insular Cases. The Insular Cases is a line of caselaw that sanctioned the colonial relationship of the U.S. to the territories. The cases are considered to be racist and the government's reliance on the cases has been previously criticized. An *amicus* brief by the ACLU described the cases as "reflect[ing] the unfortunate reality that the United States' relationship with these Territories was forged in a spirit of bigotry and subordination."

Other *amici* included the SEIU, National Disability Rights Network, the American Bar Association, and the Medicaid and Medicare Advantage Products Association of Puerto Rico.

Our last update on this case appeared in the July 2021 edition of this newsletter.

INSIDE THIS ISSUE:

Disability Law News© is published four times per year by:

Empire Justice Center
1 West Main Street, Suite 200
Rochester, NY 14614
Phone: (585) 454-4060

The newsletter is written and edited by:
Catherine M. Callery, Esq.
Emilia Sicilia, Esq.
Ann Biddle, Esq.

October 2021 issue.
Copyright© 2021,
Empire Justice Center
All rights reserved.
Articles may be reprinted only with permission of the authors.

Available online at:
www.empirejustice.org

SSA Increases 2022 COLA

Monthly Social Security and Supplemental Security Income (SSI) benefits will increase a whopping 5.9 percent in 2022, compared with last year's 1.3 percent and 2020's 1.6 percent increases in the cost-of-living adjustment (COLA). It will be the largest COLA increase in four decades.

The monthly SSI federal benefit rate for an individual will go up $47, from $794 to $841, compared to last year's $11 increase. The monthly rate for a couple increases $70 to $1,261. Unfortunately, the SSI resource limits remain unchanged at $2,000 and $3,000, respectively, for individuals and couples. The New York State supplement (SSP) will continue at $87 for individuals and $104 for couples living alone; the living with others supplements remain at $23 and $46, respectively. We will post the 2022 New York State SSI benefit chart when it becomes available.

With this COLA, other of SSA's benchmarks will also see some increases. The Substantial Gainful Activity (SGA) threshold for Non-Blind has increased from $1,310 to $1,350 per month. The SGA level for blind workers goes to $2,260. The Trial Work Period (TWP) threshold will increase to $970 per month (from $940). The quarter of coverage amount has increased to $1,510. The maximum taxable earnings for OASDI (old-age, survivors and disability insurance) purposes will increase to $147,000/year in 2022.

Each year, the Centers for Medicare & Medicaid Services (CMS) set the following year's Part B premium. Specific information about 2022 Medicare changes will be available at www.medicare.gov.

These changes will go into effect in January 2022. See SSA's Fact Sheet on 2022 Social Security Changes.

Register for Upcoming Mental Disorders Training

Disability Advocacy Program (DAP) Coordinator Ann Biddle of LSNYC, DAP Senior Staff Attorney Shandanette Chase of Bronx Legal Services, and DAP Coordinator Emilia Sicilia of the Empire Justice Center will present a CLE session on "Presenting DAP Claims with Mental Disorders" on October 28, 2021, from 2 - 4 p.m.

Learn how to pull relevant signs and symptoms of mental illness from the medical and other records, to build a solid and detailed RFC, and to make effective Step 5 arguments. The session will also cover how to create persuasive DA&A arguments, how to bolster credibility, how to defend "failure to follow prescribed treatment" issues, and the impact of trauma in mental health claims.

Please use this ***Zoom Webinar Registration Link*** to register for the session. Note that you must have a Justice Learning Center Account to receive a CLE Certificate or Certificate of Attendance for attending this training. Register for an account at: *https://www.learningcenter.legalservicesnyc.org/*

SSA Offices Remain in a COVID-19 Status Quo

Although the Social Security Administration (SSA) was required by the White House to submit a reopening plan in July, no details have been made available and the agency's stance towards the public remains relatively unchanged.

SSA has attempted to address some access issues via new emergency messages (EMs). EM-20028 REV 3, issued August 9, 2021, provides additional guidance to field office (FO) staff in how to schedule in-person appointments, including procedures for screening claimants for symptoms and mask requirements. In person appointments can be scheduled only by managers or designated staff.

Additional guidance was issued on September 8, 2021, in EM-21056, addressing two ongoing problems: inconsistency with the in-person appointment availability and requests for original documentation. This EM clarifies that in-office appointments are designed to "address a limited, critical need and the customer is unable to use our automated services to meet that need," or if "SSA needs to review original documents."

SSA had previously clarified that individuals should not mail original green cards. EM-21056 states that staff "must discourage customers from mailing important documents that they should keep secure and maintain in their possession, such as driver's licenses, passports, or immigration documents." The EM provides two options: mailing secondary evidence of identity that is considered less sensitive, or an in-office appointment if appropriate "based on customer needs, workloads, and local in-office staffing support."

In another effort to reduce reliance on in-person appointments, SSA worked with U.S. Citizenship and Immigration Services (USCIS) to revise Form I-485, Application to Register Permanent Residence of Adjust Status, to include additional questions so that applicants can apply for an original or replacement Social Security card without visiting a field office.

SSA has also changed some of the systems used to process requests for reconsideration (in non-disability appeals) and waivers. See page 12 of this newsletter.

Ongoing Challenges at the FOs

While these changes may yield some improved efficiency, systemic problems persist in obtaining service at the FOs. Recently, SSA's operations failures during the pandemic caught the attention of the SSA's Office of Inspector General (OIG). As discussed in greater detail on page 13, the OIG recently issued a highly critical report on SSA's failures with its mail processing, a problem considered by advocates to be long-standing but that has worsened exponentially during the pandemic. SSA has since reported to advocates that the status of mail processing has improved dramatically in the past month, but advocates continue to report problems.

Underpayments Due to Pandemic-related Financial Assistance

SSA has made some progress with Supplemental Security Income (SSI) claims involving pandemic-related financial assistance. Claimants whose retroactive benefits were on hold or who had incurred overpayments due to the receipt of such benefits saw their claims processed and paid after having the claims on hold until SSA updated its policy governing disaster relief. (See July 2021 newsletter for details.) Senior staff at SSA recently reported to advocates that the agency has automatically processed and issued retroactive benefits to claimants previously underpaid due to receipt of pandemic assistance. It has also identified individuals whose benefits were terminated for such income but the agency states that those claims have not been completed as they require manual processing.

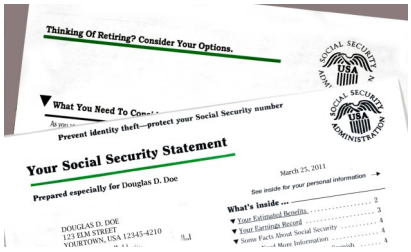
Lawsuit Filed Re Overpayments

SSA's failures to deal with overpayments during the pandemic, however, are the subject of new litigation. A class action lawsuit filed on September 12, 2021, in the United States District Court Eastern District of New York by five SSI mvrecipients challenges SSA's failures during the pandemic. The case was brought on behalf of a class of current and future SSI recipients who were assessed an overpayment debt since the onset of the pandemic in March 2020.

The class action, *Campos v. Kijakazi,* asks SSA to fix the streamlined waiver process it created to address overpayments related to the COVID-19 pandemic, so

(Continued on page 4)

Social Security Statements Streamlined


Thinking Of Retiring? Consider Your Options.

What You Need To Consider

Prevent identity theft—protect your Social Security number

Your Social Security Statement

Prepared especially for Douglas D. Doe

March 25, 2011

See inside for your personal information

What's inside ...

DOUGLAS D. DOE
123 ELM STREET
YOURTOWN, USA 12345-4210

The Social Security Administration (SSA) has announced revisions to its Social Security Statement, which gives potential applicants and claimants information about their earnings and future Social Security benefits. Historically, this document was mailed to workers yearly, although in recent years, SSA has cut back on mailings. Currently, only people 60 or older who do not receive benefits receive a statement by mail. Others are encouraged to sign up for a "my Social Security" account at www.socialsecurity.gov/myaccount to see their statements.

According to SSA, the agency conducted extensive research, review, and testing to make changes to the statement. It is now shorter, uses visuals and plain language, and fact sheets tailored to a person's age and earning history. Examples of the new *Statement* and fact sheets are available at www.socialsecurity.gov/myaccount/statement.html.

Accounts in Spanish can be requested. Apparently, they will automatically be made available in Spanish to individuals in Puerto Rico.

SSA Offices Remain in a COVID-19 Status Quo - Continued

(Continued from page 3)

that the process is applied to everyone impacted by the pandemic. In August 2020, SSA issued an interim rule creating an easier process to waive certain overpayments during the early months of the pandemic. However, the agency didn't inform people of the process, and the waiver only covered the first six months of a pandemic that is still ongoing.

Plaintiffs also seek a pause on overpayment recoupment during the time SSA's field offices are closed and for SSA to ensure that all recipients have an effective way to engage with the agency. Plaintiffs also want SSA to stop imposing penalties during this period in which recipients have no effective way to reach SSA.

The case was filed by New York Legal Assistance Group, Justice in Aging, and Arnold & Porter.

Ongoing Challenges with Evidence Development

SSA and advocates alike continue to face challenges developing and collecting evidence due to the pandemic. Attorney Kevin Liebkemann and intern Steven Mirsen of Legal Services of New Jersey (LSNJ) recently published an article with Dr. Alyssa Scher regarding the impact of the COVID-19 pandemic on disability claims. It focuses on the challenges of obtaining medical treatment and developing adequate medical evidence.

Challenges in providing and obtaining medical care during this time include disruption in treatment, limited ability to use telehealth, and constraints on the ability of telehealth to capture all the information needed. The authors noted the inability of SSA's current rules to fully and fairly take into account these issues.

Advice for advocates to mitigate some of these harmful effects include: (1) promptly and proactively identify continuity of care issues and urge clients to report such problems; (2) improve medical documentation to address any gaps by obtaining evidence from other sources and/or encouraging clients to keep symptoms diaries; (3) affirmatively document and explain reasons for gaps in treatment; (4) when appropriate, solicit opinions from treating sources when symptoms might be related to COVID-19; and (5) carefully consider the timing of claim and choice of hearing, taking into account the need to develop more evidence.

The article, *Diagnosing COVID-19's Effects on Social Security Disability Programs*, appears in the October 2021 issue of the LSNJ Report.

SSA Holds Forum on Hidden Barriers

The Social Security Administration (SSA) held a National Disability Forum (NDF) on September 15, 2021, on "Equity in SSA Programs: Hidden Barriers." This NDF, one of a series sponsored by SSA, was in response to President Biden's January 20th "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." The Executive Order tasked all government agencies with creating "a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

The morning panelists, whose biographies are available here, discussed barriers that individuals in underserved communities face in accessing benefits, including lack of interpreters, lack of consistent medical care, poor internet availability, and vast distances between medical providers with little access to transportation. The panel provided recommendations for SSA to implement to assist this population.

The afternoon session, moderated by NOSSCR Executive Director Barbara Silverstone, focused on policies and procedures that limit access to representation, including SSA's failure to increase the fee cap since 2009, the closure of local offices, the need for an in person hearing option, and use of technology that many individuals in underserved communities cannot access. Panelists also addressed much needed reforms to the Supplemental Security Income (SSI) program. The panelists included DAP advocates Rez Islam from Nassau Suffolk Law Services and Doris Cortes of the Empire Justice Center among others.

ERE/ARS Updated

The Social Security Administration (SSA) has made updates to its Electronic Records Express/Appointed Representative Services (ERE/ARS). The RQIDs associated with barcodes in certain documents sent out under SSA's new Hearings and Appeals Case Processing System (HACPS) are different than the ones sent out currently from the Document Generation System (DGS) or SSA's legacy Case Processing and Management System (CPMS). The HACPS non-decisional barcodes will now have "DCPS" as a prefix. If a representative uploads documents with one of these HACPS barcodes, whether by fax, contract scanner, or ERE upload, the document should still be uploaded to the electronic folder. Barcodes, however, are not needed to upload to ERE.

In other ERE developments, the COVID Hearing Agreement Form was added to the document type dropdown menu in both Appointed Representative Services (ARS) and Electronic Records Express (ERE). It can be found at the bottom of the document type dropdown list. OHO staff should be able to locate this form, which indicates to which type of remote hearing, if any, a claimant has consented. This should reduce any scheduling errors.

REGULATIONS

Automatic Discharges Announced for Student Loans

On August 19, 2021, the U.S. Department of Education announced that over 323,000 borrowers who have a total and permanent disability (TPD) will receive more than $5.8 billion in automatic federal student loan discharges. Advocates will recall that in 2012, the Department of Education amended its regulations governing discharge of federal student loans based on total and permanent disability. But not all disabled borrowers were aware of or able to take advantage these provisions. See the December 2012, June 2016, and April 2021 editions of the Disability Law News.

There have been significant challenges to qualifying for discharge as the borrower must submit either a physician's certification, or an SSA notice of an award for SSDI or SSI benefits indicating that the borrower's scheduled disability review will be within five to seven years. Advocates familiar with the Social Security Administration's (SSA's) Continuing Disability Review (CDR) process will recognize these time frames as associated with the classification of the impairment for which benefits were granted. See 42 U.S.C. §§421(i) & 1382c(a)(3)(H)(ii); 20 CFR §§ 404.1590(c) & (d), 416.990(c) & (d).

Although these eligibility criteria have not been changed, the new regulation will allow the Department of Education to provide automatic TPD discharges for borrowers who are identified through administrative data matching. They remove the requirement for these borrowers to fill out an application before receiving relief. The change was to go into effect with the Department's next quarterly data match with SSA in September. Borrowers will receive notices of their approval for a discharge in the weeks after the match. The Department expects that all discharges will occur by the end of the year. Borrowers who wish to opt out of their discharge for any reason will have an opportunity to do so. All discharges will be free from federal income taxation but there may be some state income tax consequences.

The Department of Education also announced a permanent change through negotiated rulemaking to requirements that caused borrowers to lose their discharges. Under the regulations, a borrower who receives a TPD discharge through the SSA match or the physician's certification process is subject to a three-year income monitoring period. During this period the borrower may lose their discharge if their earnings are above a certain threshold, or they do not respond to a request for earnings information. A 2016 report by the Government Accountability Office found that 98 percent of reinstated disability discharges occurred because borrowers did not submit the requested documentation, not because their earnings were too high. In late March, the Department restored $1.3 billion in loan discharges for 41,000 borrowers who had seen their loans reinstated after not responding to requests for earnings information.

The Education Department will indefinitely stop sending automatic requests for earnings information, continuing a practice that the Department announced in March 2021 for the duration of the national emergency. And the Department has proposed eliminating the monitoring period entirely as part of on-going negotiated rulemaking.

Negotiations are also on-going to broaden the definition of total and permanent disability for federal student loan discharges. For more on student loan debt, see Delivering on Student Debt, in particular the section on Relief for Borrowers with Disabilities authored by John Whitelaw, Advocacy Director, Community Legal Aid Society, Inc. (Delaware) and Bethany Lilly, Director of Income Policy, The Arc.

New POMS Issued

The Social Security Administration (SSA) regularly revises sections of its Program Operations Manual System (POMS), which governs many of the day-to-day policies and operations of SSA field offices and disability determinations. Notification of recent changes can be found on SSA's website.

ISM and $5 Tolerance Rule

Of note, SSA recently announced a change of policy to the $5 tolerance applied when calculating whether an SSI beneficiary is contributing their pro rata share of food and shelter expenses in the household. This calculation can determine whether the value of the one-third reduction (VTR) will be applied to reduce the beneficiary's monthly SSI, pursuant to the In-kind Support and Maintenance (ISM) rules. As of October 1, 2021, the tolerance has been increased to $20. If the beneficiary's contribution is within $20 of the pro rata share, the VTR will not be applied. See POMS SI 00835.160. In its Spring 2021 regulatory agenda, SSA announced a proposed rule to stop counting food when calculating ISM - an even bigger and better change than this increase in the $5 tolerance.

Prior Folder Instructions

SSA has also revised its POMS pertaining to prior folders. Advocates have long complained about SSA's failure to bring forward evidence to new applications or even basic information about prior claims an applicant may have had. Particularly egregious are claims where the applicant previously received benefits that were terminated for non-disability reasons such as incarceration. Evidence from a prior approval could obviously be very relevant to a new claim. So too, prior findings of disability in, for example, an SSI claim, should be relevant if the beneficiary becomes eligible and applies for Title II benefits. Recent changes to SSA's collateral estoppel rules have made this issue even more important. See the October 2020 issue of this newsletter for more on collateral estoppel and related administrative decision article on page 8.

SSA's new POMS set forth new procedures for ensuring that the Field Office and the Disability Determination Service are aware of and obtain prior folders and evidence in both electronic and paper claims. See POMS DI 20505.010 and DI 11005.085. Advocacy continues for better rules at the hearing level.

ALS Regulation Promulgated

In the April 2021 edition of this newsletter, we reported on the Social Security Administration's (SSA's) Emergency Message (EM)-21003 REV 2 implementing the statutory elimination of the five-moth waiting period for claimants diagnosed with amyotrophic lateral sclerosis (ALS). Those provisions have now been incorporated into 20 C.F.R. §§ 404.315 & 404.317 by publication in the Federal Register. SSA found good cause to publish the regulatory changes as a final rule without prior public comment.

In the meantime, advocacy continues to eliminate the five-month waiting period in all disability claims. NOSSCR and others are hoping to get the Stop the Wait Act re-introduced in Congress, which would address both the disability five-month waiting period and the Medicare twenty-four month waiting period.

SSA Expands List of Compassionate Allowances

On August 16, 2021, the Social Security Administration (SSA) announced 12 new Compassionate Allowances conditions. Under SSA's compassionate allowance initiative, claims are identified early in their pendency and are typically allowed based on medical confirmation of the diagnosis alone.

The new conditions added to the list include: Charlevoix Saguenay Spastic Ataxia (ARSACS), Choroid Plexus Carcinoma, CIC-rearranged Sarcoma, Congenital Zika Syndrome, Desmoplastic Mesothelioma, Duchenne Muscular Dystrophy - Adult, Pericardial Mesothelioma, Refractory Hodgkin Lymphoma, Renpenning Syndrome, SCN8A Related Epilepsy with Encephalopathy, SYNGAP1 - related NSID, and Taybi-Linder Syndrome. The full list of all conditions that can qualify as a compassionate allowance is here.

ADMINISTRATIVE DECISIONS

Child Disability Benefits Awarded

The importance of evidence from prior folders is discussed on page 7 of this newsletter. Its importance is even further illustrated by a recent Administrative Law Judge (ALJ) decision that Attorney Betsy Lombardi of the Legal Aid Society of Mid-New York in Syracuse obtained. Betsy's case involved old evidence, potential collateral estoppel, and much hard work and creative advocacy.

Betsy's client was born in 1980 and had been found eligible for Supplemental Security Income (SSI) in 1992 based on his intellectual disability and ADHD. In 1998, he underwent an Age 18 Review, and his SSI benefits were continued. In 2013, the claimant was found eligible for Title II - Social Security Disability Insurance benefits - based on his own earnings record. His earnings were significant enough to qualify for Title II coverage but below the relevant Substantial Gainful Activity (SGA) levels.

Meanwhile, in 2011, the claimant's father had filed his own Title II claim and had named his son as a potential auxiliary beneficiary. As the claimant was disabled before age 22, he would be eligible for Child Disability Benefits (CDB – formerly known as Disabled Adult Child Benefits or DAC) based on his father's earnings record. His father's 2011 application constituted a protective filing for the CDB claim. Monthly benefits under the father's account would be higher than those under the claimant's own account. This is not unusual in claims like this. And prior to recent changes in SSA's collateral estoppel rules, the transition from the benefits under the claimant's account to that of his father should have been fairly smooth.

In 2019, however, the Social Security Administration (SSA) amended its policies governing collateral estoppel. See the October 2020 edition of this newsletter for more on collateral estoppel and changes to SSA's POMS. In short, SSA decreed that a prior favorable disability finding such as the one obtained by Betsy's client way back when will not be given collateral estoppel effect on a new application if the earlier claim was based on meeting or equaling a mental impairment listing in effect prior to January 17, 2017 – the date the mental listings underwent a revision.

In fact, Betsy's client had been found disabled under Listing 12.05 for intellectual disorders then in effect back in 1992, and again when his SSI benefits were continued in 1998. But because of the changes to the collateral estoppel provisions, instead of the transition being automatic, Betsy had to demonstrate that the client is currently disabled and has been disabled since before age 22 in 1998. As the ALJ noted in his decision, "This period is extremely remote, and, unfortunately, most contemporaneous educational, treatment, and Agency records are no longer available. Nevertheless, the existing evidence establishes that the claimant's intellectual disorder met the criteria of listing 12.05 during this period."

In 2020, Betsy argued that a fully favorable decision was warranted as the claimant met listing 12.05(B) under the current listings. Further, she highlighted evidence that the claimant was disabled prior to age 22 by emphasizing the report of the state agency consultant who reviewed the claimant's case at the time of the Age 18 Review in 1998, which referenced teacher reports and included a consultative examiner's IQ test reports revealing scores below 70.

Finally, Betsy requested that if the ALJ could not issue a fully favorable decision on the record, SSA should locate and enter into the record all documents found pertaining to the claimant's disability. She pointed out that since the claimant had been receiving benefits since 1992, SSA should have medical and school records on file from the 1992 application and 1998 review. Since the claimant's school records had been destroyed by the district, the only copies available would be any records SSA had on file previously.

The ALJ refused to find the claimant disabled on the record and scheduled a hearing. Due to the COVID-19 pandemic, however, the claimant was offered a phone hearing, which he refused. The case was postponed until 2021. In the meantime, Betsy made two

(Continued on page 9)

Looking for Bedtime Reading?

The Social Security Administration (SSA) has recently updated its FOIA (Freedom of Information Act) Reading Room. FOIA amendments signed into law in 1994 added a requirement that agencies must establish an Electronic FOIA (EFOIA) Reading Room. According to SSA, information sought under FOIA may already be available in its Reading Room. Are you looking, for example, for the most recent list of sanctioned representatives? Or to confirm that SSA spend $344,299,629 on consultative examinations in 2019? Or maybe training for Administrative Law Judges (ALJs) on the new opinion evidence regulations? Look no further. That information and much more is in the Reading Room.

Child Disability Benefits Awarded - Continued

(Continued from page 8)

additional requests that the ALJ ensure that SSA had all the records on file for the claimant. Documents from the claimant's SSA file were added for the period of 2013 through 2018, but nothing prior to the claimant reaching age 22.

At the video hearing, Betsy emphasized to the ALJ that SSA had failed to provide any records from the claimant's case prior to 2013. The ALJ stated during the hearing that he would make another request to the field office for these records. The ALJ, however, did not add any additional records from the claimant's previous SSA files. Instead, the ALJ relied on the evidence from the 1998 review, along with a third-party function report from a brother-in-law who has known the claimant for 24 years, to find that the claimant's impairments meet the new, post 2017 "B criteria" for Listing 12.05. Accordingly, he found the claimant met the criteria for Listing 12.05(B) between the date in 1998 when he turned 18 and before he turned 22 in 2002.

The ALJ acknowledged that evidence postdating the claimant's 22nd birthday rarely if ever mentioned his intellectual impairment. Nor were there more recent IQ scores. But the ALJ, at Betsy's urging, extrapolated limitations from mental health treatment notes to fit the B criteria of Listing 12.05B. He also relied on POMS DI 24583.055 to find that IQ scores obtained at age 16 or older should be considered reliable, as the 1998 scores were consistent with current functioning. The ALJ thus concluded that the claimant met the criteria of the listing throughout the relevant period. The ALJ went on to find that based on a limited residual functional capacity, there was no other work the claimant could perform, and was thus disabled.

A great decision for Betsy's client, who is now eligible for higher monthly Title II benefits on his father's account retroactive to his father's protective filing date in 2011. But what a lot of work and aggravation for both Betsy and ALJ to reach a result that should be obvious. Isn't that what collateral estoppel is supposed to avoid?

Send Us Your Decisions!

Have you had a recent ALJ or court decision that you would like to see reported in an upcoming issue of the *Disability Law News?*

We would love to hear from you!

Contact Kate Callery, kcallery@empirejustice.org or Emilia Sicilia, esicilia@empirejustice.org

Court Decisions

Northern District Remands Claim

William Holland of the Canton office of the Legal Aid Society of Northeastern New York (LASNNY) is celebrating his first federal court victory. He convinced U.S. District Court Judge Lawrence Kahn to remand his client's case based on errors made by the Administrative Law Judge (ALJ).

In *Lianna M.D. v. Kijakazi,* 2021 WL 4150102 (N.D.N.Y. Sept. 13, 2021), the court agreed the ALJ erred in finding the nurse practitioner's assessment that the claimant would miss significant amounts of work due to her physical impairments was not supported. As Will pointed out, although the ALJ claimed the record only noted "slight" issues of pain in the plaintiff's right shoulder and left foot, the treatment notes actually indicated severe foot pain. The Commissioner agreed the ALJ had erred but argued the error was harmless because the decision was supported by substantial evidence. The court, however, agreed with Will. It rejected the Commissioner's argument that the ALJ had the right to resolve conflicts in the evidence. Because the ALJ's assessment of the nurse practitioner's opinion was based on an erroneous interpretation rather than any conflict of the evidence, it was not supported by substantial evidence. Judge Kahn also found that the ALJ erred in failing to explain sufficiently how the plaintiff's past improvement with physical therapy contradicted the nurse practitioner's assessment.

Although not outcome determinative, the court agreed with the ALJ that several of the plaintiff's foot and knee problems were not "medically determinable impairments" (MDIs) and thus did not meet the severity step of the sequential evaluation. The court found that the evidence relied upon to establish those impairments came from practitioners, including a physical therapist and a physician's assistant, who were not "acceptable medical sources." The court did recognize that physician's assistants are currently considered acceptable medical sources under 20 C.F.R. §§ 404.1502 & 416.902, but only for claims filed on or after March 27, 2017. This claim was filed shortly before that date. The court also found, however, that even if the ALJ erred in failing to find the impairments were MDIs, any error was harmless as the ALJ accounted for the plaintiff's leg and foot pain in determining her residual functional capacity (RFC).

Congratulations to Will. His first victory was even more significant considering his client was working, albeit part-time, at the time of her hearing.

Court Holds ALJ Erred in Rejecting Treating Opinions

The good old days continue to live on. The U.S. District courts are still considering appeals under the old "treating physician rule" regulations. [See the January 2017 edition of this newsletter discussing the 2017 changes to the evaluation of opinion evidence for applications filed after March 27, 2017.] Nicole DeAnda of the Elmira office of LawNY scored a sweet win in the W.D.N.Y. in such an appeal. *Jamie A. v. Kijakazi*, 2021 WL 3507895 (W.D.N.Y. Aug. 10, 2021).

U.S. District Judge David Larimer agreed with Nicole that the ALJ erred in finding the uncontradicted opinions of two different treating sources were entitled to "minimal weight." Judge Larimer criticized the ALJ's reliance on three sporadic references to normal strength or gait in the course of treatment spanning several years. He found that even if the doctors' reports appeared to be in tension with treatment notes, the ALJ was obligated to seek clarification for the physicians rather than simply reject their opinions. Judge Larimer further found the ALJ's "cavalier" rejection of the opinions was particularly conspicuous given that they were largely consistent with all the other opinions of record.

The court also agreed that the ALJ erred in failing to find the plaintiff's fibromyalgia severe but held any error was harmless given the ALJ did not discount the plaintiff's complaints of fibromyalgia symptoms. Rather, the ALJ concluded the symptoms were attributable to the plaintiff's severe impairment of rheumatoid arthritis and considered her pain-related limitations.

Thanks to Nicole's advocacy, her client will have another chance to prove disability under the old regulations.

Campaign to Update SSI Continues

After years of proposed legislation to update several of the outdated limits and rules under the Supplemental Security Income (SSI) program, a campaign emerged this year to include the changes in the Build Back Better reconciliation package. Unfortunately, the efforts are considered unlikely to succeed at this time. As this newsletter went to press, SSI changes did not appear to be included in the package, and the fate of the bill passing at all remained uncertain.

The updates sought for SSI would include increasing income disregards, ending in-kind support and maintenance, raising the federal benefit rate and the resource limit, and not reducing benefits for married couples when both receive SSI. Details were discussed in the July 2021 issue of this newsletter.

While stand-alone legislation – first the SSI Restoration Act and more recently the SSI Restoration Act of 2021 – failed year after year to garner enough support, the Build Back Better bill, also known as the "soft infrastructure" bill, was considered a unique opportunity to pass SSI updates as part of that package. Instead of needing 60 votes, a budget reconciliation bill only needs a simple majority in the Senate. Under the "Byrd Rule," policy changes that are extraneous to the budget and changes to the Social Security Old Age, Survivors, and Disability Insurance program are not permitted for inclusion in reconciliation.

Regardless of the outcome of this particular legislation, the campaign has succeeded in amplifying in both media and political discourse the importance of SSI, a program whose population has long been forgotten. Several op-eds, like the one published in the Hill by Congressman Jamaal Bowman and Empire Justice Center's Emilia Sicilia, described how inadequacy of the current levels trap recipients in enduring poverty, with benefit amounts at three-quarters of the federal poverty levels. The Center for Budget Policy and Priorities has noted that the inclusion of SSI in the Build Back Better legislation would advance racial equity. The push for SSI is one part of the #DemolishDisabledPoverty campaign.

While Social Security is often an area of oversight in Congress, the Senate subcommittee with jurisdiction – the Finance Committee's Subcommittee on Social Security, Pensions, and Family Policy – only recently on September 21 held a hearing about SSI specifically. It had not done so in over 25 years.

The forecast for legislation remains bleak in the near future. However, the campaign for SSI shows no sign of letting up, with some now calling for Congress to consider a phased-in approach to the limits if the cost of the bill is to be trimmed. Advocates hope the elevation of this issue will serve as groundwork for future success.

Processing of Non-Disability Appeals Enhanced

Among several Emergency Messages (EMs) issued by the Social Security Administration (SSA) recently are two particularly technical instructions related to the information technology used at SSA's field offices (FOs). The changes are intended to increase the efficiency of how requests for reconsideration and waivers are processed at the FOs by making them easier to identify, track, and to enter into SSA's various systems.

The first of the two changes, EM-21051, became effective August 2, 2021, and mandates the use of a specific application, known at SSA as "Banana," when inputting non-medical reconsideration requests. Advocates are well aware of the systemic failures with the processing of any submissions at the FO level. Claimants who are entitled to continuing benefits are especially harmed by these failures when reconsideration requests are not processed in time to preserve the right to continuing Supplemental Security Income (SSI) under *Goldberg v. Kelly*. Under *Goldberg v. Kelly*, an SSI recipient is entitled to continuing benefits if reconsideration is requested within 10 days.

The "Banana," also known as the Dallas Appeals Application, is a "graphical user interface" that streamlines data entry so that a user only needs to input information in one place, decreasing the amount of manual entry required to keep benefits continuing or to stop overpayment recovery. In addition to streamlining the amount of manual entry required, the program "automates the inputs to stop overpayment recovery when appropriate and includes helpful policy reminders and prompts." The EM makes use of "Banana" mandatory for non-medical reconsideration requests.

The EM is entitled "Mandating Use of the Dallas Appeals Application for Non-Medical Post Eligibility Supplemental Security Income Reconsideration Requests" and has a retention date February 2, 2022.

An EM issued September 21, 2021, EM-21062, deals with yet another application: WorkTrack.

Under EM-21062, submissions such as requests for reconsideration or waiver must be loaded into WorkTrack for review and processing. The changes under the new EM "allow for streamlined identification of these documents" so that due process rights can be preserved until a decision is made on the appeal or waiver request. The new instructions require these time sensitive filings to be profiled and coded as either non-medical or medical reconsideration requests, thereby allowing for better sorting and tracking.

EM-21062 is entitled "WorkTrack Enhancements for SSI Waiver and SSI Non-Medical Reconsideration Requests" and has a retention date March 21, 2022.

Contact Us!

Advocates can contact the DAP Support attorneys at:

Kate Callery: (800) 724-0490, (585) 295-5727, kcallery@empirejustice.org
Emilia Sicilia: (914) 595-0910 ext. 104, esicilia@empirejustice.org
Ann Biddle: (347) 592-2214, abiddle@lsnyc.org

OIG Finds SSA's Mail Processing Inadequate

In findings that will come as no surprise to many advocates, the Social Security Administration's (SSA's) Office of Inspector General (OIG) recently issued a scathing report on SSA's lack of internal controls over mail processing. The report focused on SSA's management of mail and controls over its processing of Social Security card applications during the COVID-19 pandemic, but advocates will undoubtedly recognize the problems identified as long standing. *Mail and Enumeration Processing During the Pandemic* (A-08-21-51036 & A-15-21-51015).

According to the OIG, SSA has no performance metrics and does not maintain management information on the volume of incoming, outgoing, or pending mail. Consequently, the Agency does not have sufficient information to enable it to adjust staffing levels to ensure mail is processed timely. SSA also lacks comprehensive policies and procedures to track and return original documents, including driver's licenses, birth certificates, passports, and naturalization documents, that claimants provide as proof of eligibility for benefits or a Social Security card.

The OIG visited 73 SSA facilities, including field offices and payment processing centers (PSCs). At one PSC, it found 9,000 unprocessed documents, some of which had been received as early as November 2020, and some of which were necessary to establish eligibility for benefits. One field office had 677 unprocessed applications dated as early as July 2020. A Social Security card center had 9,000 unprocessed applications dated as early as May 2021. The OIG also found large quantities of undeliverable mail at some PSCs, including one with the staggering number of 200,000 pieces of returned mail, some of which were over one year old. Offices also reported receiving or storing mail in unsecure locations, including outside the offices in publicly accessible areas after business hours and over weekends.

Office managers reported that the volume of mail had increased exponentially during the COVID-19 pandemic. Fifty percent reported they were overwhelmed by mail duties, and 20 percent reported they were unable to keep up with mail workloads. Of note, OIG acknowledged that through July 2021, it had given the offices it visited two to four weeks' notice. It was aware that SSA personnel has taken actions to address backlogs in anticipation of the visit in some offices it visited. To understand the true scope of the problems, OIG provided no more than four hours' notice to the sites it visited after July 16, 2021.

The OIG is engaged with SSA management about the concerns raised in this interim report and plans to issue final findings and recommendation before the end of the year.

GAO Studies Agencies' Telework Policies

Pursuant to the 2020 CARES Act, the Government Accountability Office (GAO) was tasked with examining federal agencies' preparedness to support expanded telework. GAO's objectives were to determine (1) selected agencies' initial experiences in providing the information technology (IT) needed to support remote access for maximum telework and (2) the extent to which selected agencies followed federal information security guidance for their IT systems that provide remote access. The Social Security Administration (SSA) was one of the twelve agencies the GAO reviewed, and one of the six agencies for whom the GAO made specific recommendations regarding security controls. See GAO-21-583.

All the agencies reviewed reported they had IT in place to allow employees to access agency resources remotely during the COVID-19 pandemic, although acknowledged they faced challenges in providing the IT to support remote access. SSA and the Securities and Exchange Commission (SEC), however, lacked sufficient controls and enhancements relevant to protecting their systems that provide remote access to support telework. According to the GAO, these agencies could be at increased risk that cybersecurity officials will not have the necessary information to make credible, risk-based decisions regarding their information systems.

The GAO made a total of nine recommendations to six of the agencies. The Commissioner of SSA was advised to ensure that the agency documents relevant IT security controls and enhancements in the security plan for the system that provides remote access for telework. SSA agreed with the recommendations, stating that it was finalizing the security plan for its system that provides remote access for telework.

Indigenous People Face Gaps in Social Insurance

A recent report by the National Academy of Social Insurance confirms that indigenous people face high challenges in accessing social insurance and other safety net programs such as Social Security, Unemployment Insurance, Medicare, and Workers Compensation. This lack of access to these programs only compounds the increased life risks indigenous people face because of "the social and economic isolation, discrimination, and addiction that our country has historically piled onto indigenous peoples."

Native Americans living on reservations and in other remote areas often lack reliable (or even any) internet access. They rely on in-person services that are increasingly unavailable. Many also work physically demanding jobs and unusual hours, making it difficult to find the time to complete applications. They may also struggle to secure the official documents and records needed for those applications.

Indigenous people are disproportionately likely to be unemployed or out of the labor market, live in regions with few high-paying jobs, or work in part-time or other "non-standard" jobs. As a result, they are less likely to be eligible for unemployment benefits. These disparities have been exacerbated by the Covid -19 pandemic. According to the Minneapolis Federal Reserve, "In April 2020, more than one-quarter of the Native American workforce (26.3 percent) was unemployed, the highest rate of any racial group and three times the Native unemployment rate for March." These barriers also reduce indigenous worker's contributions to Social Security, threatening the security of their retirements and diminishing their chances to collect disability benefits. The gap is even more significant for Native women.

Various Task Forces at the Academy are exploring the risks communities of color, including indigenous people, are facing. As part of its Campaign for Pathways to Economic Security, it is assessing policy options, including making it easier to apply for benefits across a range of social insurance programs, and enhancing guidance for those who need it; increasing benefit levels and durations to raise more families out of poverty; and making benefits more equitable across states, regions, and racial and ethnic groups.

Banks Offer Free Accounts for SSI/SSD Recipients

The Social Security Administration (SSA) encourages beneficiaries to sign up for direct deposit for their monthly payments. In fact, pursuant to federal law, beneficiaries must sign up for an electronic option: either via direct deposit into an existing bank account or onto a Direct Express® Debit Mastercard®. But many low-income applicants are among the unbanked, who do not have savings or checking accounts. And they may find the fees associated with opening those accounts daunting.

There are banks that offer free accounts for individuals who receive direct deposits from SSA each month. Thanks to research by the Inner City Law Center in Los Angeles, California, here is a helpful list of large banks that exist in many communities and can make opening a bank account a more cost-efficient option for clients.

Free and Low-Cost Checking Account Options for SSI/SSDI Direct Deposit Recipients

Bank of America
"Bank of America Advantage Plus Banking" Checking Account
Minimum Opening Deposit: $25
Monthly Fee: $12

No monthly fee if at least one direct deposit of $250 or more in SSI/SSDI/retirement benefits per month.

Wells Fargo Bank
"Everyday Checking" Checking Account
Minimum Opening Deposit: $25
Monthly Fee: $10

No monthly fee if least one direct deposit of $500 or more in SSI/SSDI/retirement benefits per month *or* have a $500 minimum daily balance.

HSBC Bank
"Basic Banking" Checking Account
Minimum Opening Deposit: None
Monthly Fee: $1

Monthly fee is only $1.

"Choice Checking" Checking Account
Minimum Opening Deposit: None
Monthly Fee: $15

No monthly fee if at least one direct deposit in SSI/SSDI/retirement benefits per month.

Chase Bank
"Total Checking" Checking Account
Minimum Opening Deposit: $25
Monthly Fee: $12

No monthly fee at least one direct deposit of $500 or more in SSI/SSDI/retirement benefits per month *or* have a balance of $1,500 or more at the beginning of each day.

Citibank
"Access" Checking Account:
Minimum Opening Deposit: None
Monthly Fee: $10

No monthly fee with at least one direct deposit in SSI/SSDI/retirement benefits per month. *Note*: paper checks are not offered with this account.

"Basic Banking" Checking Account
Minimum Opening Deposit: None
Monthly Fee: $12

No monthly fee if at least one direct deposit in SSI/SSDI/retirement benefits per month *or* maintain at least $1,500 combined average monthly balance in eligible linked accounts.

Free Online Banking Options

The following online-banking options have low or no minimum opening deposits, no minimum monthly balances, and no monthly fees.

Capital One 360 Checking
Minimum Opening Deposit: None

Discover Bank Cashback
Minimum Opening Deposit: None

Debit Ally Bank Interest Checking Account
Minimum Opening Deposit: None

FNBO Direct Online Checking
Minimum Opening Deposit: $1

Schwab Bank High Yield Investor Checking
Minimum Opening Deposit: None

When setting up a bank account, beneficiaries should provide a government-issued photo ID and proof of residence (such as utility or phone bills). They should tell the bank the name of the exact type of account they want to avoid monthly fees.

Bulletin Board

This "Bulletin Board" contains information about recent disability decisions from the United States Supreme Court and the United States Court of Appeals for the Second Circuit. These summaries, as well as earlier decisions, are also available at https://empirejustice.org/wp-content/uploads/2021/10/Recent-2d-Circuit-Decisions-October-2021.pdf

Synopses of non-precedential summary orders issued by the Second Circuit are available at: https://empirejustice.org/wp-content/uploads/2021/10/2d-cir-summaries-October-2021.pdf

We will continue to write more detailed articles about significant decisions as they are issued by these and other Courts, but we hope that these lists will help advocates gain an overview of the body of recent judicial decisions that are important in our judicial circuit.

Supreme Court Decisions

Carr v. Saul, 141 S.Ct. 1352 (Apr. 22, 2021)

The Supreme Court held that a claimant is not precluded from raising a legal issue for the first time in U.S. District Court if it was not raised before the Administrative Law Judge (ALJ). The underlying issue in question in *Carr* and its companion cases was whether the ALJ was properly appointed under the Appointments Clause of the U.S. Constitution. In the aftermath of *Lucia v. Securities and Exchange Commission,* 138 S.Ct. 2044 (2018) challenging the constitutionality of SEC ALJs, Carr and other plaintiffs challenged the legitimacy of the ALJs who had denied their disability claims and sought new hearings. The Commissioner argued the plaintiffs had forfeited their Appointments Clause challenges because they had not raised them before SSA during the administrative appeals process. The Supreme Court resolved a conflict in the circuits by holding that given the non-adversarial nature of SSA hearings, issue-exhaustion is not required.

***Smith v. Berryhill*,** 139 S.Ct. 1765 (2019)

The Supreme Court held that an Appeals Council dismissal of a request for review is a final decision subject to judicial review. The Court unanimously held that where the Appeals Council has dismissed a request for review as untimely after a claimant has obtained a hearing from an ALJ on the merits, the dismissal qualifies as a "final decision . . . made after a hearing" within the meaning of 42 U.S.C § 405(g). It distinguished its earlier ruling in *Califano v. Sanders*, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977), by emphasizing that as opposed to the denial of a request for reopening in *Sanders*, there had been a decision by an ALJ on the merits of the plaintiff's claim.

Biestek v. Berryhill, 139 S.Ct. 1148 (2019)

In a 6-3 decision, the Court declined to adopt a categorical rule that a vocational expert's supporting data must be provided in order for the testimony to constitute substantial evidence. But the majority acknowledged that in some cases it may be possible to draw an adverse inference against a VE who refuses to provide supporting data.

Barnhart v. Thomas, 124 S. Ct. 376 (2003)

The Supreme Court upheld SSA's determination that it can find a claimant not disabled at Step Four of the sequential evaluation without investigation whether her past relevant work actually exists in significant numbers in the national economy. A unanimous Court deferred to the Commissioner's interpretation that an ability to return to past relevant work can be the basis for a denial, even if the job is now obsolete and the claimant could otherwise prevail at Step Five (the "grids"). Adopted by SSA as AR 05-1c.

***Barnhart v. Walton*,** 122 S. Ct. 1265 (2002)

The Supreme Court affirmed SSA's policy of denying SSD and SSI benefits to claimants who return to work and engage in substantial gainful activity (SGA) prior to adjudication of disability within 12 months of onset of disability. The unanimous decision held that the 12-month durational requirement applies to the inability to engage in SGA as well as the underlying impairment itself.

Second Circuit Decisions

***Alexander v. Saul*, 5 F.4th 139 (2d Cir. July 8, 2021)**

The Second Circuit upheld a district court's refusal to extend the time to appeal its decision affirming the Commissioner's denial of an SSI claim. Although the Circuit was "sympathetic" to the plaintiff, it concluded the district court had not abused its discretion – even though the plaintiff filed her appeal and request for an extension only two days after the 60-day deadline expired. The district court had reasonably applied the "excusable neglect" factors rather "good cause" standard under Fed. R. App. P. 4(a)(5) because the plaintiff's failure to appeal was at least partially due to her own inadvertence in failing to notify her attorney of her change of address rather than due to her alleged mental illness. The court refused to toll the Rule 4(a)(5) deadline as it is considered jurisdictional and less flexible than the statute of limitations governing the 60-day limit to seek judicial review under 42 U.S.C. § 405(g).

***Sczepanski v. Saul*, 946 F.3d 152 (2d Cir. 2020)**

The court held that ability to complete work during the probationary period is relevant to a disability claim. It remanded for further proceedings at Step five of the Sequential Evaluation to determine whether the claimant could perform work as required during the probationary period, including meeting the levels for absenteeism tolerated by the employer.

Estrella v. Berryhill, 925 F.3d 90 (2d Cir. 2019),

The Court of Appeals endorsed in strong terms the value of treating source evidence and affirmed its prior treating physician rule cases. The court faulted the ALJ for failing to consider explicitly the *Burgess* factors incorporated into the former opinion evidence regulations, which were replaced in 2017 by 20 C.F.R. §§ 404.1520c(a) & 416.920c (a). The new regulations were not considered by the court.

***Lockwood v. Comm'r of SSA*, 914 F.3d 87 (2d Cir. 2019)**

The Court of Appeals remanded because the ALJ had not met his affirmative obligation under SSR 00-4p to inquire about any possible or apparent conflicts between vocational testimony and the *Dictionary of Occupational Titles* (DOT). The court found the ALJ did not meet his burden simply by asking the vocational expert if her testimony was consistent, especially where the ALJ found the plaintiff could not reach overhead, but the three jobs to which the VE testified all required frequent or occasional reaching.

***Lesterhuis v. Colvin*, 805 F.3d 83 (2d Cir. 2015)**

The Court of Appeals remanded for consideration of a retrospective medical opinion from a treating physician submitted to the Appeals Council, citing *Perez v. Chater*, 77 F.3d 41, 54 (2d Cir. 1996). The ALJ's decision was not supported by substantial evidence in light of the new and material medical opinion from the treating physician that the plaintiff would likely miss four days of work per month. Since the vocational expert had testified a claimant who would be absent that frequently would be unable to work, the physician's opinion, if credited, would suffice to support a determination of disability. The court also faulted the district court for identifying gaps in the treating physician's knowledge of the plaintiff's condition. Citing *Burgess v. Astrue*, 537 F.3d 117, 128 (2d Cir. 2008), the court reiterated it may not "affirm an administrative action on grounds different from those considered by the agency."

***Greek v. Colvin*, 802 F.3d 370 (2d Cir 2015)**

The court remanded for clarification of the treating source's opinion, particularly as to the claimant's ability to perform postural activities. The doctor had also opined that Mr. Greek would likely be absent from work more than four days a month as a result of his impairments. Since a vocational expert testified there were no jobs Mr. Greek could perform if he had to miss four or more days of work a month, the court found the ALJ's error misapplication of the factors in the treating physician regulations was not harmless. "After all, SSA's regulations provide a very specific process for evaluating a treating physician's opinion and instruct ALJs to give such opinions 'controlling weight' *in all but a limited range of circumstances*. See 20 C.F.R. § 404.1527(c)(2); see also Burgess, 537 F.3d at 128." (Emphasis supplied.)

***McIntyre v. Colvin*, 758 F.3d 146 (2d Cir. 2014)**

The Court of Appeals for the Second Circuit found the ALJ's failure to incorporate all of the plaintiff's non-exertional limitations explicitly into the residual functional capacity (RCF) formulation or the hypothetical question posed to the vocational expert (VE) was harmless error. The court ruled that "an ALJ's hypothetical should explicitly incorporate any limitations in concentration, persistence, and pace." 758 F.3d at 152. But in this case, the evidence demonstrated the plaintiff could engage in simple, routine tasks, low stress tasks despite limits in concentration, persistence, and pace; the hypothetical thus implicitly incorporated those limitations. The court also held that the ALJ's decision was not internally inconsistent simply because he concluded that the same impairments he had found severe at Step two were not ultimately disabling.

End Note

Deacon King Kong Says It All

"…he was standing in front of a young white woman behind a desk who had a look on her face just like the folks did back in the Social Security office in downtown Brooklyn when he went to see about his late wife's benefits. The same look, the irritated questions, the impatience, the demand for documents that had odd names he'd never heard of, pushing forms through the window at him with titles he couldn't even pronounce or understand; forms that demanded lists and birth dates and more papers, and even some forms that demanded names of other forms, all of which were so complicated that they might as well have been in Greek, the whole conglomeration of document names vanishing into thin air the moment the clerks uttered them. He could not remember what a 'Lifetime Sheet for Pro Forma Work Information Record' was from the moment the words came out of a clerk's mouth, or what it was supposed to be or do, which meant by the time he walked out of the Social Security office, tossing the form in the garbage as he left, he was so addled by the experience that he worked to forget about it, which meant it was as if he hadn't been there at all."

Excerpted from *Deacon King Kong,* by
James McBride, published in 2020 by Riverhead Books