

SOCIAL SECURITY & YOU

FROM THE OFFICE OF ATTORNEY WILLIAM CRAWFORTH

FALL 2011

Message From Attorney Crawford

SOCIAL SECURITY JUDGE ISSUE CUTS BOTH WAYS

The Wall Street Journal article from 5-19-11 regarding Huntington, West Virginia SS judge, David B. Daugherty, certainly caused quite a stir. In case you missed it, ALJ Daugherty had issued 729 decisions since the fiscal year began on October 1st. The average number of decisions issued by Social Security judges & the target number is 40 per month.

And the average award rate at the ODAR appeal level is about 60%. Judge Daugherty awarded benefits to all 729 Claimants.

It reminds me of several now deceased ALJs in the Detroit ODAR. There were several from the City of Detroit Law Department staff. They were of Irish heritage. They awarded benefits to just about every Claimant who was represented. The judge is the most important variable in any case. One of these judges once told me that he gave a lot of weight to the testimony of the Claimant. He didn't want the person who treated at the free clinic and didn't have well-documented symptoms to suffer for it.

For me, the issue is even clearer.

If 60% is the average award rate by ALJs, (mine is closer to 90%) then 100% is better than 15%.

Here in Michigan we have been both blessed & cursed with video (and sometimes in person) hearings with judges from Tulsa, Dallas, Stockton, CA, and other locales, plus the National Hearings Centers in Chicago and Washington D.C.

The plus side is that we've had quicker hearings and the judges are, by and large, about the same as we would draw locally. But there are exceptions.

Check out this Social Security link. http://www.socialsecurity.gov/appeals/DataSets/03_ALJ_Disposition_Data.html

The statistics for every SS ALJ in the country are listed. The total number of decisions, both open and closed awards, plus denials, are listed.

I'm not going to list them by name, but check out the stats for a couple of judges from the Dallas North ODAR. How about award rates of 14% & 5%? Or the judges from Dover & Richmond, who award benefits to 18% & 21% of Claimants.

No, paying 100% is better than those numbers when the average pay rate is 60%.

WALL STREET JOURNAL ARTICLE PROMPTS CONGRESS

The aforementioned WSJ article on ALJ Daugherty got the attention of the U.S. House of Representatives Ways & Means Subcommittee. The members sent a letter to the Office of the Inspector General, dated June 16, 2011. The letter requested assistance in reviewing ALJ workloads, adherence to Agency policies and related monitoring. Specifically, the committee wanted analysis of variations in productivity and outcomes of ALJs, compared to their peers.

CLASS ACTION LAWSUIT ALLEGES BIAS

A Class action lawsuit has been filed in the U.S. District Court for the Eastern District of New York alleging bias against disability Claimants by 5 named ALJs in the Queens, NY ODAR. The complaint alleges the 5 ALJs "have demonstrated persistent and flagrant bias against benefits claimants as demonstrated conclusively by their persistent and intentional legal and procedural errors, as well as unprofessional behavior and disregard of court-imposed rules".

The complaint alleges each ALJ has 1) failed to develop the record, 2) failed to follow the law, specifically the treating physician rule, 3) made erroneous credibility determinations and 4) a high denial rate.

The complaint requests the named ALJs be provided a "roadmap" to correct adjudication of benefits applications.

MICHIGAN ODAR PROCESSING TIMES DOWN

The processing times for Requests for Hearing in the Michigan ODARs have been some of the longest in the nation for years. The report issued on May 3, 2011 shows that the addition of new ODARs serving Michigan in Mt. Pleasant, Livonia & Toledo, OH (the Toledo ODAR serves Monroe County, Mi.), visiting judges and video hearings from the National Hearing Centers have helped reduce processing time.

Out of 157 ODARs only Grand Rapids and Toledo are in the bottom 10% at #155 & #153, respectively with processing times of 500 days and 482 days. Flint is #136 at 423 days and Lansing is #123 at 405 days. Detroit has made great strides, coming in at #72 with 341 days as its average processing time. The new Mt. Pleasant and Livonia ODARs are also in the top half at #69 (340 days) and #29 (288 days). The average processing time, nation-wide, is 357 days, just under a year.



AARP TAKES ON GOVERNOR SNYDER

One of new Michigan governor, Rick Snyder's more controversial moves since taking office was to institute a new tax on retiree pensions. Now the American Association of Retired Persons has filed suit contending the tax is unconstitutional. Oral argument before the Michigan Supreme Court is set for early September.

BUDGET CUTS LEAD TO CLOSING OF TEMPORARY REMOTE SITES

It shouldn't affect Michigan too much with the opening of new ODARs in Mt. Pleasant and Livonia, but a \$643 million cut in Social Security's administrative budget for fiscal 2011 has forced the ending of the practice of holding hearings in temporary sites, such as motels, hotels, schools, courthouses and conference centers.

In Michigan hearings have been held over the past few years by visiting judges in the U.S. Courthouse in Detroit, Embassy Suites in Livonia, Regis Conference Center in Southfield and the Courtyard By Marriott in Ann Arbor, among other locations. The reasons given include rental fees, extra security costs and travel expenses.

Thus far the Mt. Pleasant ODAR has continued hearings in the Days Inn in Alpena, as did the Flint ODAR before.

Additionally, some Social Security field offices are being equipped with video equipment so that hearings can be held without lengthy travel. Attorney Crawforth has had video hearings in both the Port Huron and Jackson field offices.

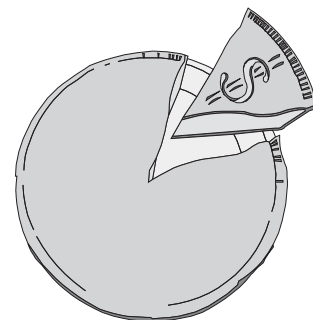
Social Security will pay mileage if the distance traveled to the hearing site is 75 miles or longer. This is true for representatives, as well as Claimants.

GOING TO THE APPEALS COUNCIL? FORGET THE NEW APPLICATION

Recent Social Security Ruling 11-1p changes current policy with regard to a subsequent application for either Title II Disability Insurance Benefits or Title XVI SSI Benefits. Claimants are put in the unhappy position of appealing the recent ALJ denial or filing a new application. They can't do both any longer.

Formerly Social Security would accept a new application alleging an onset date the day after the date of the prior decision simultaneously with a Request for Review at the Appeals Council. No longer.

Now "if you already have a claim under the same title and of the same type pending in our administrative review process" SSA "will no longer process a subsequent disability claim".



TRUSTEES RELEASE 2011 REPORT ON SS TRUST FUND

On May 13, 2011 the Board of Trustees for the Social Security and Medicare Trust Funds released their annual report. The 2011 report states that if no action is taken the Trust Funds will still be able to pay 100% of scheduled benefits until 2036, one year earlier than in the 2010 report. Although there are actually 2 separate trust funds they are treated as a single fund for most purposes.

A closer look at the data shows that Old Age & Survivors Insurance Fund (OASI) will continue to build up reserves until 2022 and start losing reserves thereafter while the Disability Insurance Trust Fund (DI) will be depleted in 2018. 3 reasons are cited for the faster depletion of the DI fund. One is the aging of the "baby-boomer" generation into their high-disability years, a second is the same generation's higher number of working women, who have the earnings to qualify for benefits and the third is the rise in the retirement age from 65 to 66, which means the disabled stay on disability benefits a year longer.

To rectify the imbalance Congress could allocate more dollars to the DI fund than the OASI fund. Of course since the recent debt ceiling show down demonstrated the Republicans and Democrats in Congress can't agree on what day it is. The last time Congress changed the allocation was 1994 when the DI fund was estimated to reach insolvency in 2016.

STUDIES, STUDIES, STUDIES

There are many study topics that are more popular than others. Food & drink are two. Last issue of *SS&Y* covered several of these. Mammograms for women and tobacco are two others.

Among the recent studies that actually seemed to make some sense was one on mammograms for women over 40. A study reported in May by the American Society of Breast Surgeons found that screening women aged 40-49 detected smaller breast cancers, with less chance of spreading to the lymph nodes than relying on clinical breast exams alone. This contradicts the recommendation of the U.S. Preventive Services Task Force in 2009.

University of Michigan researchers released results of a study which contradicts another recent study but bolsters earlier studies that a gene which regulates serotonin, a naturally occurring substance in the body, influences a person's susceptibility to depression.

A study done at Beth Israel Deaconess Medical Center concluded that eating one bowl of whole grain cereal, 7 days a week, decreased the risk of high blood pressure in 20% of study participants.

Here's a wild one: A Danish study found a link between rates of some cancers and contact allergies. Patients with contact allergies to certain chemicals and metals had lower rates of breast & brain cancers but higher rates of bladder cancer. Variables in the immune systems are the focus.

The stock market is crashing again so it may not be good news but U.S. life expectancy is above 78 years, an all-time high. The report released in March by the Centers for Disease Control & Prevention noted decreases in the death rates from 10 of the 15 leading causes of death. Those include heart disease, cancer, stroke, accidents, Alzheimer's disease, homicide, influenza & pneumonia. So your odds of outliving your money are better than ever.

According to the Center for Advancing Health 40% of American adults had trouble paying their bills in 2010. This is up 34% from 2005.

Here's a shocker on smoking. A Texas A&M Health Science Center College of Medicine in Bryan, TX theorizes that smokers are thin because they have a lot of energy and don't eat as much. Attorney Crawford's mother used to say she'd rather smoke & talk than eat. So there you go.

A study released this by the Journal of the American Medical Assoc. notes that smoking rates have dropped considerably. Not only are fewer people smoking but the one's still smoking are smoking less. The # of people smoking a pack or more per day continues to decrease since the Surgeon General's first report in 1964.



A study from the Harvard School of Public Health for Global Tobacco Control says that children exposed to secondhand smoke in their homes have a higher risk of developing attention deficit/hyperactivity disorder and other behavioral problems & learning disorders.

Smoking increases colon cancer risk. Not only getting colon cancer but dying from the disease is increased, per the American Cancer Society. The strongest link is to those who smoked in their teens and 20's because there is 30 year lag between smoking onset & diagnosis.

A new study finds a link between second hand smoke & boys' blood pressure. A study released in May by the University of Minnesota's Institute for the Environment of boys aged 8-17 who lived in a home with a smoker found significantly higher levels of systolic blood pressure. However, girls of the same age in the study had lower blood pressure than those living in a home without a smoker. Go figure.

And according to the journal *Cancer*, smokers who start right after waking up in the morning *may* be at greater risk for lung, head & neck cancers.

But now the good news. According to the Smoking Cessation Center it's never too late to quit and reap the health benefits. According to the SCC, the benefits of quitting start immediately and never end. Within 20 minutes your blood pressure decreases, your pulse rate slows and the temperature of your hands & feet increases. 8 hours after quitting your blood begins to recover as levels of both carbon monoxide & oxygen return to normal. 24 hours after quitting your likelihood of heart attack goes down and after 48 hours nerve endings begin to regenerate and your sense of taste and smell improve. After a few weeks circulation and lung function improve.

And the benefits continue. 1 year after quitting your risk of coronary artery disease decreases by 50%. After 5 years your risk of stroke has decreased and will continue to decrease. 10 years after quitting your risk of lung cancer is half of those who kept smoking. Your risk of ulcers and cancers of the mouth, throat, esophagus, pancreas, kidneys and bladder are also down. And 15 years after quitting your risk of coronary artery disease is about that of those who never smoked a single cigarette, as is your risk of dying.

Here's a shocker. Persons who drive a lot with the window down are more likely to have skin cancer on the left side of the body, especially the left upper arm, according to a St. Louis University study.

2 new studies have been released this year regarding Alzheimer's Disease. A study done by scientists from the University of New Mexico School of Medicine, Brown University & House Ear Institute in Los Angeles found a link between the herpes simplex virus type 1 and development of Alzheimer's. Rather than calling it a cause, the researchers called the virus a "co-factor".

Researchers at Zucker Hillside Hospital and the Feinstein Institute for Medical Research in New York have concluded that a low-fat, low-glycemic diet may reduce the risk of Alzheimer's. A low-glycemic diet focuses on fruits, vegetables, whole grains & lean meats and avoids spikes in blood sugar.

William Crawforth
-Attorney at Law-
220 E. Huron, Ste. 520
Ann Arbor, MI 48104

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TIGER TICKET WINNERS

The following readers entered Attorney Crawforth's contest and won his Tiger tickets for a game.

Kelly from Saline
Michael from Waterford
Paul from Ann Arbor
Nancy from Ypsilanti
Judy from Rogers City
Kevin from Garden City
Bonnie from Whitmore Lake



Thanks to everyone who entered and look for the entry form for next year's contest in the spring 2012 newsletter.