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DEPARTMENT OF HUMAN SERVICES
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March 18, 2019

TO: The Honorable Representative Ty J.K. Cullen, Chair
House Committee on Legislative Management

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 492 SD2 – RELATING TO THE DEPARTMENT OF HUMAN SERVICES/AUDIT
OF THE DISABILITY DETERMINATION BRANCH**

Hearing: March 19, 2019, 3:00 p.m.
Conference Room 312, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure and respectfully provides comments. DHS appreciates the amendments and finding of the Senate Committee on Human Services "that the Disability Determination Branch (DDB) is responsible for making timely, accurate, and cost-effective disability determinations in accordance with Social Security Administration rules and regulations."

PURPOSE: The purpose of the bill is to require the Office of the Auditor to conduct a performance audit of the Disability Determination Branch (DDB) of the Department of Human Services (DHS) and present findings and recommendations to the legislature, as appropriate.

The Disability Determination Branch (DDB) is responsible for making timely, accurate and cost-effective disability determinations in accordance with Social Security Administration rules and regulations. The DDB is 100 percent federally funded by the Social Security Administration (SSA).

SSA provides regular oversight of the performance of all State Disability Determination Branches to ensure the states maintain effective business procedures for processing Social Security disability claims, and has sole authority for evaluating the methods, procedures and criteria used by the DDB for making eligibility determinations.

SSA and the Hawaii's DDB work together to deliver quality service and accurate disability determinations as quickly as possible for the residents of Hawaii.

DDB makes disability determinations for the two disability programs of the SSA: Social Security Disability Insurance (SSDI) program and the Supplemental Security Income (SSI) program. To qualify for SSDI benefits, a person needs to have worked long enough, usually 10 years or 40 quarters. A person must also have a medical condition that meets SSA's definition of disability to be eligible for benefits through the SSDI program.

The SSI program is a needs-based program for disabled individuals who may not have enough work quarters or any income from employment, and this applicant must also meet SSA's definition of disability. Also, for SSI, an individual must meet certain income and resource limits along with other eligibility factors.

The Social Security Act defines disability as the inability to engage in any substantial gainful activity (SGA) because of a physical or mental medical condition, that is expected to last, or has lasted, twelve consecutive months, or is expected to result in death. DDB uses a Sequential Evaluation Process to determine if an individual's circumstances or condition meets the definition of disability.

Regarding items identified in SECTION 2:

1. Details on the Disability Determination Process can be found here:

<https://www.ssa.gov/planners/disability/qualify.html>

2. Analysis of the rate of denials for Initial applications and the rates of denials and approvals for those appealed applications.

DDB wants to be sure that every decision made about a person's disability or SSI application is correct. If a person does not agree with the decision, they can file an appeal – that is, ask us to look at the case again. Generally, there are four levels of appeal. They are:

- Reconsideration;
- Hearing by an administrative law judge;

- Review by the Appeals Council; and
- Federal Court review.

DDB is responsible for the Reconsideration level of appeal. A reconsideration is a complete review of the claim by someone who did not take part in the first decision. We will look at all the evidence submitted when the original decision was made, plus any new evidence.

Please refer to the tables referenced in item #4 for “Allowance” and “Denial” rates of Initial applications and Reconsideration (appealed) applications. Please note that DDB’s allowance and denial rates for Initial and Reconsideration applications have aligned with the national averages since FFY 2015.

3. Factors contributing to extended processing times for disability eligibility applications and subsequent determinations;

One of the methods used to evaluate the efficiency of a DDB is the length of time it takes to make a determination on disability claim from beginning to end. SSA refers to this as processing time and establishes performance measurements to process a claim.

There are several factors that affect processing time. While some are beyond the control of the State, some are within their scope of influence.

The DDB and the State can have an influence on processing time by:

- Maintaining adequate staffing – though this is often subject to SSA hiring authority;
- Providing staff program training to increase proficiency;
- Maintaining funding including salaries and equipment;
- Eliminating furloughs and layoffs;
- Maintaining adequate in-house medical and psychological consultant resources;
- Maintaining an adequate Consultative Examination (CE) panel;
- Using overtime as deemed appropriate by SSA and the DDS;
- Adjusting to fluctuating expectations from SSA; and
- Establishing and comparing base periods of time.

The Social Security Administration has sole authority for evaluating the timeliness of eligibility determinations. While SSA has tasked the DDB with improving timeliness of determinations, the Agency is satisfied with the progress made to date, as well as the business process improvements deployed currently under way.

4. Internal operations at the disability determination branch, specifically with respect to any management policies or directives that may influence staff to make eligibility determinations quickly and without thorough evaluation of applications and supporting documentation;

There are no directives or policies that influence staff to make determinations quickly without respect to ensuring the accuracy of the determination. To comply with the policies set forth by the Social Security Administration, the DDB must achieve both timely processing and accurate decisions.

Social Security does require that States meet thresholds for case processing time and decisional accuracy. These requirements are established to ensure that individuals filing claims for disability benefits receive timely and accurate service. DDB is accountable for delivering the best possible service to the residents of Hawaii. DDB has a goal to improve processing times while sustaining our accuracy rates, and are committed to serving our residents in Hawaii timely.

DDB has consistently delivered accurate decisions and the DDB's claims accuracy has consistently met or exceeded the national average.

In contrast, the timeliness of DDB's determinations has historically fallen short of national performance level. However, over the last 4 years, the DDB has narrowed the gap between the timeliness of determinations for residents of Hawaii and the national average. In 2016, residents of Hawaii waited 19.3 days longer than the national average for an initial determination, while in 2019 to date, residents wait just 7.7 days longer than the national average. For appeals of initial determinations, the improvement in customer service is even more dramatic with Hawaiian's waiting 26.6 days longer in 2016, and receiving a decision 12.2 days faster than the national average in 2019 to date.

Through investment in staff training, and business process improvements, the DDB has made great strides in the timeliness of determinations, while maintaining consistently high

accuracy. The dedication of the current managers and staff of the Hawaii DDB, has resulted in a tremendous customer service success story.

5. Actual processing times for disability eligibility applications.

See last column for combined Title 2 & Title 16 Mean processing times for Initial and Reconsideration (appeals) claims related to DDB processing times.

2019 through 1/25/19	Receipt	Clearance	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	670,551	690,155	35.5%	64.5%	97.5	91.4
Hawaii Initial Claims	1,855	2,065	33.4%	66.6%	100.0	99.1
Nation Reconsideration	160,393	153,792	12.3%	87.7%	95.9	79.0
Hawaii Reconsideration	533	281	12.1%	87.9%	96.7	66.9

2018	Receipt	Clearance	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	2,304,611	2,265,999	35.0%	65.0%	96.9%	86.6
Hawaii Initial Claims	6,351	6,758	34.7%	65.3%	98.3%	102.5
Nation Reconsideration	506,269	497,903	12.2%	87.8%	96.1%	73.4
Hawaii Reconsideration	672	798	11.2%	88.8%	98.7%	123.6

2017	Receipt	Clearance	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	2,408,676	2,448,734	34.3%	65.7%	97.3%	85.1
Hawaii Initial Claims	6,456	6,178	36.2%	63.8%	97.0%	100.1
Nation Reconsideration	538,957	538,046	12.3%	87.7%	96.1%	71.1
Hawaii Reconsideration	1,404	1,529	15.7%	84.3%	97.1%	104.4

2016	Receipts	Clearances	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	2,541,823	2,580,064	33.2%	66.8%	97.8%	84.2
Hawaii Initial Claims	6,796	7,333	31.9%	68.1%	97.5%	103.5
Nation Reconsideration	537,559	549,228	11.9%	88.1%	96.6%	71.9
Hawaii Reconsideration	2,019	2,197	11.9%	88.1%	95.6%	98.5

2015	Receipts	Clearances	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	2,673,505	2,665,845	33.0%	67.0%	97.7%	T2=83.5; T16=87.2
Hawaii Initial Claims	7,272	7,354	33.3%	66.7%	98.0%	T2=109.0; T16=118.4
Nation Reconsideration	609,975	650,829	11.3%	88.7%	97.2%	Not available
Hawaii Reconsideration	1,920	1,894	13.8%	86.2%	97.9%	Not available

Combined processing time not available prior to 2016 – provided T2 and T16 processing time

2014	Receipts	Clearances	Allowance	Denial	Accuracy Rate	T2/T16 Combined MPT
Nation Initial Claims	2,703,030	2,766,706	32.4%	67.6%	97.8%	T2=83.0; T16=85.7
Hawaii Initial Claims	6,608	6,666	34.8%	65.2%	98.5%	T2=118.5; T16=132.4
Nation Reconsideration	715,888	704,404	10.7%	89.3%	96.9%	Not available
Hawaii Reconsideration	1,754	1,393	13.5%	86.5%	96.8%	Not available

Combined processing time not available prior to 2016 – provided T2 and T16 processing time

OTHER POSITIVE NEWS:

At the end of Federal Fiscal Year 2018, the Social Security Administration and Office of the Inspector General (OIG) opened a Cooperative Disability Investigations Unit in Hawaii. The unit includes a part-time examiner from the Department of Human Services Disability Determination Branch. This unit will identify, investigate, and prevent Social Security disability fraud throughout the State of Hawaii.

The CDI Program is one of Social Security’s most successful anti-fraud initiatives, contributing to the integrity of Federal disability programs. CDI brings together personnel from Social Security, its OIG, DDB, and local law enforcement agencies to analyze and investigate suspicious or questionable Social Security disability claims, to help resolve questions of potential fraud before benefits are ever paid. CDI Unit efforts help DDB disability examiners make informed decisions, ensure payment accuracy, and generate significant taxpayer savings, for both Federal and State programs.

Thank you for the opportunity to provide comments on this measure.



SOCIAL SECURITY

LATE

Office of the Regional Commissioner
1221 Nevin Avenue, 6th Floor
Richmond, California 94802

March 19, 2019

The Honorable Representative Ty J.K. Cullen, Chair
The Honorable Representative Mark M. Nakashima, Vice Chair
House Committee on Legislative Management
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Representatives Cullen and Nakashima:

I am writing to express my concerns about Hawaii State Bill 492 (SB 492), which was referred to the House Committee on Legislative Management on March 15, 2019. SB 492 would require an auditor to conduct a performance audit of the Disability Determination Branch (DDB) of the Hawaii Department of Human Services, and present its findings and recommendations to the legislature.

The audit contemplated in the Bill would include an examination of the management and operations of the DDB, including but not limited to:

- (1) methods, procedures, and criteria used to make eligibility determinations, including an analysis of the rate of denials for initial applications and the rates of denials and approvals for appealed applications;
- (2) factors contributing to the extended processing times for disability eligibility applications and subsequent determinations;
- (3) internal operations at the DDB, specifically with respect to any management policies or directives that may influence staff to make eligibility determinations quickly and without thorough evaluation of applications and supporting documentation; and
- (4) actual processing times for disability eligibility applications.

I have several concerns about SB 492. As you know, the DDB makes disability determinations pursuant to the Social Security Act (Act), the Social Security Administration's (SSA) regulations, and other written guidelines. The Act requires the Commissioner of Social Security to promulgate regulations specifying performance standards and administrative requirements that States must follow in performing the disability determination function. Consistent with that statutory requirement, our rules and written guidelines include audit requirements for the DDB and other State agencies that make disability determinations. 20 C.F.R. §§ 404.1627, 416.1027; Program Operations Manual System (POMS) DI 39554.000. At this time, it is unclear whether

SB 492 would comport with those audit requirements. Without assurances that the State plans to comply with SSA's audit requirements, we are concerned the pending legislation may conflict with the Act.

Furthermore, SSA has sole authority to evaluate the methods, procedures, and criteria used by State agencies to make disability determinations. SSA provides regular oversight of the performance of all State agencies that make disability determinations to ensure that States maintain effective business processes for adjudicating disability claims.

In addition, our rules establish performance standards that we use to determine whether a State agency is substantially complying with our regulations and other written guidelines. 20 C.F.R. §§ 404.1640, 416.1040. These performance standards help us administer our disability programs in an effective and uniform manner, help measure whether the performance of the disability determination function by each State agency is acceptable, and help ensure that benefits are made available to all eligible persons in an accurate and efficient manner.

To ensure that disability claimants receive timely and accurate service, we require States to meet thresholds for case processing time and decisional accuracy. The Hawaii DDB's accuracy rate has consistently met or exceeded the national average, and while its disability determinations have historically been less timely than the national average, over the last four years the Hawaii DDB has significantly narrowed the gap. Historically, the Hawaii DDB has faced challenges in gaining access to consultative examinations, which has contributed to longer processing time. However, we worked with the Hawaii DDB to increase the reimbursement rate for consultative examination providers, and recently began to offer examinations via video for residents in more remote locations. While we have seen significant improvement in the timeliness of service to Hawaii's residents, we will continue to work with the Hawaii DDB on this aspect of service.

In addition to the concerns discussed above, it is also worth noting that the audit contemplated by SB 492 would be subject to SSA's rules regarding the confidentiality of information, including the security of systems and records requirements. 20 C.F.R. §§ 404.1631, 416.1031. As such, it would be important to ensure that the State's auditor does not disclose any personally identifiable information obtained from the DDB to the legislature as part of its report.

Finally, SB 492 would require the auditor to submit to the State legislature a report of its findings and recommendations, including any proposed legislation. However, as mentioned above, State agencies that make disability determinations under the Act must do so in accordance with SSA's regulations and other written guidelines. Thus, States have limited authority to legislate disability determination functions under the Act.

We will continue to monitor the status of SB 492; however, I wanted to bring these concerns to your attention. We would be happy to discuss the Bill further. Please let

me know if you have any questions or wish to discuss. Staff-to-staff questions may be directed to Florina Docena, Center Director for Disability and Programs Support, at (510) 970-8304.

Sincerely,

A handwritten signature in black ink that reads "Steve Breen". The signature is fluid and cursive, with the first name "Steve" and last name "Breen" clearly legible.

Steve Breen
Acting Regional Commissioner

LATE

SB-492-SD-2

Submitted on: 3/19/2019 9:02:19 AM

Testimony for LMG on 3/19/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Hackett	Individual	Oppose	No

Comments:

SB-492-SD-2

Submitted on: 3/17/2019 11:39:54 PM

Testimony for LMG on 3/19/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne Itomitsu	Individual	Support	No

Comments:

TESTIMONY FAVORING and AMENDING SB 492

03/17/19

I am in favor of SB 492. However, in its present form, it falls short of addressing the mismanagement of the Disability Determination Branch (DDB). Pursuant to the submitted written testimony submitted for the Human Services Committee hearing, the concerns/problems discovered in the 2014 DDB Management Assessment has never been addressed. Written testimony, by the author of the 2014 management assessment report, testified that DHS shelved the report. If you read the assessment report, the reasonable conclusion to shelve the report were the negative findings.

As someone who worked in DDB when the assessment was conducted, I have first-hand experience of the assessment procedures. I can attest that the assessment evidence gathering was fair. The staff, which included management, disability claims examiners, medical consultants, clerical and support personnel, privately met with the author and her staff to tell their individual experiences with management. Those interviews were used as a basis of the assessment report. There also was a written survey completed by all the staff. The compilation and analysis of that survey was never done. During a staff meeting, the then director of the Disability Vocational Rehabilitation (DVR) was asked about the results of the written survey. The DDB Branch Administrator reports to the director of DVR. His response was the assessment was "dead". From that day on, management did not implement the assessment's recommendations nor discuss the survey.

Whatever happened to integrity in government? There is nothing wrong if management makes missteps in their decision making. But to deny it and not implement recommendations meant to improve how the department can better serve the public, is inexcusable.

In its current form, SB 492, calls for the Auditor of the State, to conduct a performance audit on the disability claims decision making process, to assure a fair decision is reached. If they also conduct a management audit, this would focus on how DDB

management's decisions, in relations to the disability claims examiners, may be the root cause leading to the quality and hastiness of a claim decision.

If the committee members read the 2014 DDB Management Assessment report submitted by attorney Diane Haar, for the Human Services Committee hearing, the reason for a management audit will become clearer. After reading the report, try to imagine yourself as a staff in DDB when DHS shelved it. Our trust in management was crushed. The staff knew their opinion would never be taken seriously again and DDB management was protected from any State oversight.

I am in favor of SB 492, but requesting the committee members amend SB 492 to include a management audit, along with the performance audit.

Respectfully,

Wayne Itomitsu