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by fax: 410-966-2830

Jo Anne B. Barnhart
Commissioner
Social Security Administration
P.O. Box 17703
Baltimore, MD 21235-7703

Re: Proposed Rules, Continuation of Benefit Payments to Certain Individuals Who Are Participating in a Program of Vocational Rehabilitation Services, Employment Services, or Other Support services, 68 Fed. Reg. 45180 (August 1, 2003).

Dear Commissioner Barnhart:

I write to comment upon the above-referenced proposed rule.

The Disability Law Center (DLC) is a private, nonprofit protection and advocacy agency that provides free legal assistance to individuals with disabilities throughout Massachusetts. DLC provides free legal services to people with disabilities in Massachusetts. A key mandate of DLC is ensuring that people with disabilities are able to access needed supports to live and work in the community. Since 1983, The Disability Benefits Project at the Disability Law Center has provided technical back up and support on Social Security and SSI matters to legal advocates in Massachusetts. The project also engages in community outreach and training. The following comments are based upon my experience and are submitted on behalf of those the Disability Law Center serves.

General Comments

First, we thank you for proposing these long needed changes. The expansion of the

definition of "appropriate program of vocational rehabilitation" to include a wider variety of programs and the new opportunities being created through the Ticket to Work Act has the potential of benefitting many individuals who need vocational rehabilitation to achieve greater independence. The designation of individualized education programs for youth aged 18 through 21 as programs that automatically meet the criteria for benefit continuation is particularly positive, given the importance of such programs to the employment prospects of youth with disabilities. The retention of SSI and SSDI benefits is often a critical support for individuals who are participating in vocational rehabilitation programs. Loss of benefits too soon can mean that the individual is unable to complete his or her program or education, with the result that the individual is ill prepared for greater independence in the long run. The Administration should adopt and implement the regulations, with a few improvements, as soon as possible

Needed Improvements

While I strongly support the proposed regulations, I must comment that the policy behind the proposed regulations would be better served by some improvements, as follows.

- The Administration should describe **good cause criteria** for a break in participation in education or appropriate programs of vocational rehabilitation. The proposed rules provide that entitlement ends with "... the month in which you stop participating for *any reason*..." See 20 C.F.R. §§ 404.316, 416.1338 (emphasis added). This could cause individuals to lose benefit continuation protections because of temporary exacerbations in their medical conditions, personal emergencies, etc. This is contrary to the goals of the proposed regulations and to the Administration's general policy of providing good cause protections when beneficiaries are unable to comply with rules for reasons beyond their control.
- The proposed regulations should be amended to permit benefit continuation for a reasonable period of time for youth with disabilities who transition from school to vocational rehabilitation services. Many youth with severe disabilities will transition from school to more traditional vocational rehabilitation services. In the usual course, these vocational rehabilitation services will not begin until the student completes his or her education. The proposed regulations, which require that vocational rehabilitation programs begin prior to the initial termination decision, would preclude benefits continuation for youth who transition from special education to vocational rehabilitation programs, even where these programs are essential to future employability and independence. The proposed regulations should be revised to provide for benefit continuation where this continuum exists.
- In furtherance of the rehabilitation goal, the Administration should extend the benefit protection rules to youth with disabilities who are not receiving education under an IEP. There are youth with severe disabilities who are still in school at

age 18 and older who are not part of the special education system, e.g., youth in private schools, for whom completion of their education is just as important as for those being educated pursuant to an IEP. More documentation may be necessary for these youth, but that should not eliminate the opportunity.

- Finally, in furtherance of the rehabilitation goals evidenced by the proposed regulations and the Ticket to Work Act, the Administration should apply the new beneficial rules to all termination cases that are in the adjudicative process.

Implementation Issues

The Administration must aggressively publicize and promote the benefit continuation rules. The policy has been around for over 20 years, but remains under utilized. For example, it has not been unusual for advocates representing individuals in benefit termination cases to discover at the ALJ hearing level, the level at which cases are usually accepted for representation, that the benefit continuation rule is relevant to the case. However, the adjudicator is often unwilling to apply the rule because the issue has not been identified, documented, or considered below. If the adjudicator upholds the termination, the individual loses benefits and must fight for application of the rule and reinstatement. Although the individual has the right to appeal a denial of the applicability of the benefit continuation rule, the appeal/procedural path is not clear in these circumstances.

In August, 1999, the Administration issued EM-99079, to inform personnel that the benefit continuation rule applies to age-18 reviews and to lay out the responsibilities of the various SSA components as to identification, documentation and decision-making under the rule. This instruction should be revised, updated and reissued as soon as possible. After that, the instructions should be included in more formal forms, such as POMS, Ruling and HALLEX. Among the critical implementing instructions are the following:

- Whenever an individual is facing a review that could result in benefit termination, whether it is a CDR or age-18 review, the individual should be informed about and questioned on the potential applicability of the benefit continuation rule. Failure to document that this occurred should constitute grounds to send the case back to the original adjudicator for a determination. Specialized training and staff will necessary to ensure that cases are properly identified, documented and adjudicated.
- The individual must be able to raise the benefit continuation issue whenever its applicability is discovered or alleged. The case should then be returned to the state agency for an initial determination on the issue. This is necessary to ensure that the individual receives written notice on the applicability of the rule and has a clear procedural path to appeal, if necessary. It should also be made clear that benefits should NOT be terminated until the initial decision is made on the benefit continuation issue.

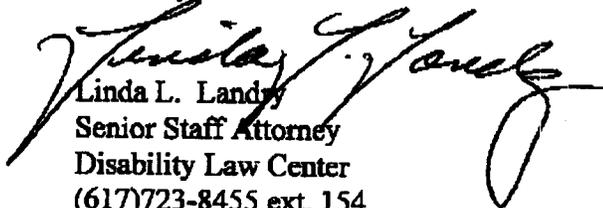
4

- The benefit continuation rule should be widely publicized to beneficiaries, to school personnel and to vocational rehabilitation providers to ensure that all are aware of the potential benefit of the rule. For youth with disabilities, knowledge of the protections of the benefit continuation rule will provide support for taking advantage of their special education rights and maximizing their employment and independence potential by staying in school.

Finally, because of the likelihood of applicability of the benefit continuation rule to youth with disabilities, the Administration should stop all age-18 reviews until the new policy is in place. Doing so furthers the rehabilitation goal evidenced by the revisions to this rule. Too many youth have already missed out on the protection and opportunities provided by the benefit continuation rule.

Thank you very much for this opportunity to comment. I would be happy to provide further comment at any time.

Sincerely,



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