

Adelante

DEVELOPMENT CENTER, Inc.

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To: The Social Security Administration

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Subject: **Recommendations on the Proposed Rules on Expedited Reinstatement
under the TWWIA**

Adelante Development Center, Inc., has been an Employment Network since March of this year. This input is a result of our experience of working with the people calling about the Ticket to Work as well as our fifteen (15) years of experience providing employment services to persons with disabilities and how to appropriately address their concerns on this issue.

The Ticket to Work Legislation and the proposed rules for Expedited Reinstatement (EXR) do not address how these rules would interact with the Ticket to Work Program (TTW). There is at least one major conflict and there are several adverse issues relative to the TTW Program and the proposed EXR rules. Some of the issues listed below will require statutory change. However, we believe the Commissioner of Social Security has the authority to resolve the major conflict (#1) through use of the regulatory process.

Problem Statements:

1. EXR and CDR Protections:

The TTW Program protects beneficiaries from Medical Continuing Disability Reviews (CDR) throughout the time he or she has a Ticket deposited with an Employment Network (EN) and is making timely progress. If the TTW Program participant (i.e. ticket user) completes the Extended Period of Eligibility¹ while the TTW is deposited and then stops working due to his or her medical condition,

¹ The Extended Period of Eligibility applies to Title II beneficiaries who complete a 9-month Trial Work Period after becoming employed above the Substantial Gainful Activity level. The EPE lasts for 36 months whether the beneficiary is working or not. If the beneficiary is not working during the month the EPE ends, SSDI benefits will continue following the last month of the EPE. However, if the EPE has ended, cash benefits stop immediately if the beneficiary is working above SGA or stop the first month after the beneficiary exceeds the SGA due to earned income.



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the participant may file for EXR, thus immediately starting provisional benefits payable for up to six months. **The conflict arises because the TTW protects the beneficiary from being subjected to a medical CDR but the EXR provisions require that a medical CDR be completed to establish eligibility for continued benefits.** There is a direct conflict between the two provisions. The recommendations we make below can be achieved through the rulemaking process and we encourage SSA to include them in the final rule.

The reason we believe this can be handled in the regulatory process and does not require a statutory change is found in the EXR provisions of Sec. 112(2)(A)(i) "A request for reinstatement shall be filed in such form, and containing such information, **as the Commissioner may prescribe. [emphasis added]**"

By this provision, the Commissioner has the authority to prescribe what must be filed by the beneficiary and what information it must contain. This section goes on to explain further in Sec. 112(2)(A)(ii) "A request for reinstatement shall include express declaration by the individual [emphasis added] that the individual meets the requirements specified in clauses(ii) and (iii) of paragraph (1)(B)." Nowhere does it say that Commissioner must perform a CDR to determine whether the individual is entitled to EXR (i.e.) reinstatement of benefits. By not addressing this conflict in the proposed rules, the Commissioner has totally ignored the specifically mandated provisions under a different section of the statute that clearly prohibits CDRs for ticket users.

2. EXR Eligibility Due to Medical Condition:

The proposed EXR rules specify that to be eligible for reinstatement of benefits the beneficiary must have stopped working due to his or her medical condition and the medical condition must be the same as or related to the disability for which the beneficiary was originally found eligible for benefits. We realize this is almost verbatim from the statute; however, the Commissioner has exercised here authority through rulemaking to add "special circumstances" as a reason for EXR eligibility. **We believe that if the Commissioner believes she has the authority to add this provision when the law is silent, she also has the authority to resolve the conflict(s) between the TTW Program and the EXR provisions since the law is silent.** One of the major fears beneficiaries have is trying work, not being able to do the work (whether directly because of a medical condition or not), and then not being able to get his or her cash benefits reinstated. Our experience of providing employment services to over 800 persons on Social Security benefits over the past fifteen (15) years is that such individuals frequently move in and out of employment. There may be several months between jobs due to market factors and other considerations having **nothing to do with the ticket user's medical condition.** This EXR restriction coupled with the medical CDR requirement **strongly discourages** a beneficiary from attempting to work and leave the rolls.

3. Effect of EXR on EN Willingness to Continue Services

The proposed EXR rules discourage an EN from continuing to provide services to a TTW participant who has filed for EXR. If a TTW participant stops working **for any reason**, the EN no longer receives milestone/outcome payments. This is a provision in the TWWIA designed to encourage an EN to continue providing return to work services throughout the 60-month period during which outcome payments are made. If a beneficiary loses his or her job for any reason, it is in the best interest of the beneficiary, the EN and SSA to get that person back to work again as quickly as possible. However, if the beneficiary applies for EXR (especially if work ended due to reasons other than a medical condition), the EN will be reluctant to continue investing time and resources into that beneficiary if the possibility exists that the beneficiary will be found ineligible for benefits, thus terminating the ticket. This provision encourages the EN to stop services for up to the six months during the provisional payment period before again providing services. This lag time could seriously impact the beneficiary's willingness to look for work during the time his or her EXR status is being determined.

If the beneficiary is subsequently found ineligible for benefits under the EXR provisions, he or she may file a new disability claim and the eligibility for benefits is determined using the new-claim disability determination rules instead of the Medical Improvement Expected (MIE) rules used in the EXR determination. Even though the five-month waiting period for a new claim will not apply if the beneficiary is within a 60-month period since receiving cash benefits, this still requires an additional lag time for a new determination to be made. If it takes up to six months to determine eligibility for EXR and adds another indeterminate amount of time for a new claim to be decided, this further discourages the beneficiary and the EN from continuing to work together. Some have argued there is an advantage in this scenario because a new ticket will be issued when the beneficiary is found eligible as having a new period of disability. There is some legitimacy to that argument. However, the main purpose of TWWIA is to keep people off the rolls. These provisions work directly against that goal.

In addition to the time lag, if a new ticket is issued, it terminates the old ticket under which an EN has provided services. Therefore, if the beneficiary decides to deposit the new ticket with a different EN, the original EN who provided a significant amount of services will not be eligible for a split payment with the new EN.

4. The proposed EXR rules specify a 24-month initial reinstatement period following a determination that the beneficiary is entitled to reinstatement under the EXR provisions. During this 24-month period, the beneficiary will have a new ticket but will not be eligible for a new Trial Work Period or Extended Period of Eligibility. Once again, the individual will be discouraged from

attempting work during this period. If he or she begins work above SGA, his or her benefits will immediately cease and the rules further prohibit the individual from being eligible for another EXR determination during that period. The message is: "Work and you're done if you fail. You can file a new claim but you'll have to wait without any income until we make a new disability determination."

Recommendations:

1. Adelante supports the proposed EXR rules for beneficiaries who are not participating in the TTW Program and do not have a Ticket deposited with an Employment Network at the time the EXR claim is filed.
2. We believe that all of the above issues discourage a beneficiary from using a TTW or the EXR provisions, both of which are part of TWWIA and are intended to encourage employment. All of these issues can be resolved if SSA adds a section to the proposed EXR rules that applies specifically to users of the TTW Program. We recommend that the new section state the following:

- A. TTW Program participants may have their benefits immediately reinstated if they are no longer able to work for any reason so long as they have their ticket deposited with an EN and are making timely progress under the TTW rules.

By eliminating the requirement to judge eligibility based upon the reason for leaving the job, the need for a medical review ceases. Thus the conflict between the CDR protections of the TTW Program and the EXR provisions no longer exists.

Important to note: Since the TTW Program applies to both SSI and SSDI beneficiaries, simply extending the EPE to coincide with in-use status of a ticket would not be sufficient as the EPE does not apply to SSI beneficiaries.

- B. If the ticket user subsequently un-assigns his or her ticket and does not reassign it within the 90 days currently required in the existing rules, then a medical CDR will automatically be triggered at that point.
- C. Ticket users may move in and out of benefits whenever they fall below SGA in any given month as long as their ticket is still assigned. This would be particularly beneficial to those beneficiaries whose work is episodic at first.

3. The other provision in the proposed rules that is clearly statutory is the 24-

month initial reinstatement period when exercising EXR. But that actually is okay relative to ticket users since they only have two years of having their original ticket assigned to go to work or they are not making timely progress. If the benefit reinstatement can be made without a CDR, ENs won't have the risk of not knowing whether to provide services or not. If the ticket user is automatically reinstated and does not go back to work within the 24-month initial reinstatement period, the EN probably doesn't want to continue serving them anyway. Therefore, this provision in the proposed rules should apply to all beneficiaries, whether using a Ticket or not.

This concludes Adelante's recommendations and input related to the Expedited Reinstatement of Provisions of the TWWIA. We thank you for taking the time to read our concerns.