



People With Disabilities Foundation

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July 2, 2015

US Department of Labor
Office of Disability Employment Policy
Advisory Committee on Increasing Competitive Integrated Employment for
Individuals With Disabilities
c/o Mr. David Berthiaume
Suite S-1303, 200 Constitution Ave. NW
Washington DC 20210

Submitted by email

Re: Written Statement to Department of Labor's Advisory Committee on
Increasing Competitive Integrated Employment for Individuals with
Disabilities

Dear Members of the Department of Labor Advisory Committee on
Increasing Competitive Integrated Employment for Individuals With
Disabilities:

We appreciate the opportunity to provide a written statement as you
develop your report on increasing competitive integrated employment for
individuals with disabilities. This is a very important topic in ensuring that
people with intellectual, developmental, and psychiatric disabilities achieve
equal opportunities and are able to fully participate in society without
discrimination.

PWDF is a nonprofit agency with expertise in medical-legal issues
and bases these recommendations on its 15-year history of providing legal

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services to people with psychiatric, intellectual, and/or developmental disabilities, primarily in relation to their ability/inability to work. PWDF's comments are also based on its experience as plaintiffs' attorney in the legal cases of *Terrence Davis v. Astrue*, Case No. 3:06-CV-6108 EMC (NC) (N.D. Cal. 2012) and *John Doe v. Astrue*, Case No. 3:09-CV-980 EMC (NC) (N.D. Cal. 2012), the substance of which involved Social Security Administration (SSA) work reviews for two beneficiaries with a combination of mental disabilities, consisting of intellectual disability, autism, psychosis (schizophrenia), and/or mood disorders.

To ensure that future policies are realistic for people with intellectual, developmental, and/or psychiatric disabilities, PWDF urges the Committee to focus its recommendations on providing mechanisms that will ensure that individuals receive the support frameworks they need in order to engage in sustained competitive integrated employment. This is particularly important for the target population since developmental disabilities, by definition, are lifelong. It is critical that the Committee include strategies that will ensure that stakeholder agencies provide reasonable accommodations to program participants if required based on the individuals' specific impairments, including requiring training for stakeholder agency staff. Finally, PWDF recommends that the Committee include strategies for federal agency coordination that will support sustained competitive employment. PWDF's recommendations are discussed below.

1.0 Provide Mechanisms to Ensure Individuals Receive Appropriate Support Frameworks

The Committee's report should devise strategies that will provide individuals with solid, sustained support frameworks. These strategies should provide vocational supports and mental health care, and physical health care where indicated, in order to sustain employment. These supports should be provided as long as necessary throughout the individuals' working lives, given that developmental disabilities, by definition, are lifelong.

1.1 Vocational Supports

A study commissioned by the SSA at an initial cost of \$52 million in 2005 entitled the "Mental Health Treatment Study" (MHTS) produced positive results in enabling individuals with psychiatric disabilities to engage in competitive employment (see Attachment A).¹ Results from the MHTS may provide insights into the range and types of support frameworks that could be successful for individuals with developmental disabilities. This framework consisted of providing vocational support and mental health support through standard procedures, i.e., psychotherapy and medications, eliminating the fear of losing Medicare [or Medicaid]² even in part, and eliminating Social Security Disability Insurance (SSDI) disability reviews [or Supplemental Security Income (SSI) Redetermination Reviews based on earnings], which threaten monetary benefits and Medicare [and Medicaid]. The results were statistically significant: the intervention group had a

competitive employment rate of 52.4% versus a 33.0% rate for the control group.

The Committee's final report should include tangible strategies for providing employment supports specific to the needs of this population. These strategies should include vocational supports and recommend that the vocational supports receive positive financial treatment for individuals who receive Social Security disability or other public benefits when being evaluated for initial and continued eligibility.

Vocational supports and their financial treatment for public benefit eligibility should include, but not necessarily be limited to, those identified under impairment-related work expenses (IRWEs),³ employer subsidies,⁴ and special conditions⁵ of the Social Security regulations. Additional sources of information about specific vocational supports that should be considered, e.g., job coaches and independent living skills (ILS) trainers, are available through the DOL Office of Disability Employment Policy's Job Accommodation Network (JAN).

1.2 Health Care

Good health care services (physical, mental, and dental) can be necessary to maintain wellness, a prerequisite to sustaining competitive employment. Individuals with intellectual and/or developmental disabilities may have additional health care needs because this population has higher incidents of physical health issues than the general population.⁶

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In spite of the potential increased need for health care services, people with developmental disabilities may have barriers in accessing health care services.⁷ The MHTS identified the fear of losing Medicare benefits as a potential obstacle to study participants engaging in increased levels of employment. A report from the Special Care Dentistry Association explicitly states “Surveys indicate that only a small proportion of dentists in private practice are willing to treat patients with disabilities and that they are more reluctant to treat patients with developmental or psychiatric disabilities than those whose disability is physical.”⁸ For this reason, PWDF urges the Committee to include strategies that will ensure this population has access to appropriate physical, mental, and dental health care services and medications to maintain wellness so that the lack thereof does not present a barrier to sustaining competitive integrated employment.

PWDF recommends the Committee look to reputable organizations for clear, tangible information and recommendations about medical and dental care needs specific to individuals with developmental disabilities and integrate this information into its report. Examples include the University of California San Francisco’s Office of Developmental Primary Care, the Special Care Dentistry Association, and the University of Washington School of Dentistry’s Dental Education in the Care of Persons with Disabilities (DECOD).

2.0 Require All Stakeholder Agencies to Provide Reasonable
Accommodations Based on the Nature of the Impairments to Allow Equal
Access to Program Participation

The Committee should include strategies to ensure that all stakeholder agencies (e.g., federal, state, and non-governmental organizations (NGOs), including nonprofit and for-profit) provide reasonable accommodations in the provision of program services for individuals with invisible disabilities, where required by law.⁹ This should include easy access to reasonable accommodations based on the individuals' functional limitations, without a cumbersome approval process. This should also include training for key staff of all stakeholder agencies so that the employees' lack of understanding of intellectual, developmental, and mental impairments does not impede equal employment opportunities for this population.¹⁰

2.1 Invisible Disabilities May Prevent the Provision of Reasonable
Accommodations, Resulting in Individuals Being Screened Out of Program
Services

As PWDF has stated before, in its cases of *Davis* and *Doe, supra*, the reasonable accommodations for people with developmental and/or mental disabilities are too often ignored. Unlike intellectual disabilities, some mental disorders cannot be measured by psychometric testing. Instead of identifying and implementing reasonable accommodations for these individuals, the issue is just “swept under the rug;” as a result, individuals

with invisible disabilities, especially those that cannot be quantitatively measured, are too often screened out of programs.

2.2 PWDF Recommendations on Providing Reasonable Accommodations to Allow Equal Program Access for Individuals with Invisible Disabilities

The way to give these individuals meaningful reasonable accommodations in order to allow equal access to program participation (whether employment supports, benefits, or other program services) is to do individualized assessments. In addition, developmental disorders frequently co-occur,¹¹ and this co-morbidity happens with other mental disorders.¹² Intellectual disabilities, autism spectrum disorders, and other significant developmental disabilities and mental disorders are not the same, and individualized assessment is needed and legally required under Section 504 of the Rehabilitation Act of 1973, *Davis v. Astrue, supra*, and under the Americans with Disabilities Act (ADA) for state agencies and NGOs.

In the *Davis* and *Doe* cases, *supra*, PWDF provided a model for reasonable accommodations to allow equal program access to two plaintiffs with a combination of developmental and mental disabilities (*See Davis, supra* at Document 364). These accommodations are described in Attachment B to this letter, “PWDF Urges the Social Security Administration to Specify and Implement Reasonable Accommodations for Individuals with Mental and/or Developmental Disabilities to Ensure Effective Communication” subsection, “*PWDF's Recommendations for*

Reasonable Accommodations for Mental and/or Developmental Disabilities.” (The *Davis and Doe* Settlement Agreement is provided in Attachment C.)

In addition, stakeholder agencies should make reasonable accommodations easy to obtain without special approval. In Section 504 of the Rehabilitation Act of 1973, Congress prohibited federal agencies from discriminating against individuals with disabilities and required them “to provide meaningful access to their programs and activities to individuals with disabilities.”¹³ It is notable that four decades later, the SSA, an agency that specifically serves people with disabilities, only provided “standard” reasonable accommodations nationwide for visual and hearing impairments. (See Attachment B.) As of mid-2014, SSA had no reasonable accommodations for cognitive, learning, psychological, or emotional impairments that it routinely provides.¹⁴ We urge the Committee to ensure that all stakeholder agencies develop protocols for providing easily accessed, reasonable accommodations that address individuals’ impairments, without requiring an approval process.

With reasonable accommodations administered to ensure equal program access, especially as they pertain to employment supports, including SSDI and SSI work incentive programs for those who receive such benefits, individuals with significant mental and/or developmental disabilities might be better able to increase their levels of competitive

integrated employment, especially if they have substantial work history. See MHTS study, *supra*.

2.3 Key Stakeholder Staff Should Be Required to Attend Training on Reasonable Accommodations for Developmental and Mental Disabilities

Reasonable accommodations are intended to accommodate an individual with his/her particular disability. As noted above, all mental, developmental and intellectual disabilities are not the same. Employees' lack of understanding of developmental and mental impairments will continue to impede equal employment opportunities for this population, both when assisting individuals to gain access to program services and after receiving program services and benefits.

Thus, PWDF recommends that the Committee include requirements for stakeholder staff training.¹⁵ Without specific training, employees who provide services under the recommendations in the Committee's report may believe that these disorders are the same, not know the difference between them, or not recognize that an individual has a combination of intellectual, developmental, and/or psychiatric disabilities. In other words, the employee may not be aware of the differences between autism spectrum disorder, intellectual disorder, psychosis, bi-polar disorder, etc., and that individuals who have one or more of these disorders may have different functional limitations and communication needs. For example, if someone with an intellectual disability has evidence of a mood disorder, there needs to be a

strategy by which the stakeholder agency can identify the best method of communication and/or provide a reasonable accommodation for that individual.

PWDF recommends that all stakeholder agencies, including DOL, the SSA, other federal agencies, the states, and NGOs, be required to train their employees who serve this population about specific developmental and mental impairments so that these employees can perform their essential job functions. These essential job functions include providing reasonable accommodations in program services as required under Section 504 of the Rehabilitation Act of 1973, the ADA, and all other federal, state, and local laws. These essential job functions also include recognizing the necessary employment supports and ensuring such supports receive proper financial assistance in the determination of initial and continuing eligibility for benefits, when applicable.

3.0 Ensure Federal Agency Coordination Necessary to Support Sustained Competitive Employment

It is crucial that the Committee's report identifies federal agency coordination that is necessary or useful in promoting sustained competitive integrated employment. For example, PWDF recommends that the DOL coordinate with the US Equal Employment Opportunity Commission (EEOC) to eliminate discrimination against job applicants and employees with developmental and/or mental disabilities. As another example, it is

important to ensure that the Committee's strategies, as implemented, do not jeopardize Social Security disability benefits for those otherwise entitled or dilute Social Security work incentive rules, resulting in unfavorable initial application decisions or terminations of severely disabled people from benefits. (Please see Attachment D for one example of this type of potential conflict between federal agency regulations.)

4.0 Conclusion

PWDF recommends that the Committee's report include tangible strategies that will enable individuals with intellectual, developmental, and /or psychiatric disabilities to engage in sustained, competitive, integrated employment. These strategies should include vocational supports and appropriate physical, mental, and dental health care. The provision of reasonable accommodations based on individualized assessment of program participants' functional limitations will be critical to ensuring equal access to program services for people with invisible disabilities. Reasonable accommodations should be easy to access and not require special approval. This in turn will require training of stakeholder agency employees so that they are able to perform their essential job functions.

Additionally, federal agency efforts to increase competitive integrated employment for people with developmental, intellectual, and/or mental disabilities should be coordinated such that people with significant disabilities have equal access to employment opportunities and program services.

Sincerely,

/s/

Steven Bruce, Esq.
Legal Director and Interim Executive Director
People With Disabilities Foundation

Attachments:

Attachment A: SSA Mental Health Treatment Study

Attachment B: PWDF e-newsletter article, “PWDF Urges the Social Security Administration to Specify and Implement Reasonable Accommodations for Individuals with Mental and/or Developmental Disabilities to Ensure Effective Communication”

Attachment C: Settlement Agreement from *Terrence Davis v. Astrue*, Case No. 3:06-CV-6108 EMC (NC) (N.D. Cal. 2012) and *John Doe v. Astrue*, Case No. 3:09-CV-980 EMC (NC) (N.D. Cal. 2012)

Attachment D: PWDF Comments to ED 6-2015

¹ Robert E. Drake, MD, PhD, et al., *Assisting Social Security Disability Insurance Beneficiaries With Schizophrenia, Bipolar Disorder, or Major Depression in Returning to Work*, *Am J Psychiatry* 2013; 170:1433-1441.

² The MHTS specifically included participants who were SSDI beneficiaries; in the context of the scope of the Advisory Committee’s report, the employees may not have earned the quarters of coverage to qualify for SSDI, so we also include Medicaid and SSI as relevant to this written statement.

³ 20 C.F.R. § 404.1576 (2014); 20 C.F.R. § 416.976 (2014).

⁴ 20 C.F.R. § 404.1574(a)(2) (2014); 20 C.F.R. § 416.974(a)(2) (2014).

⁵ 20 C.F.R. § 404.1573(c) (2014); 20 C.F.R. § 416.973(c) (2014).

⁶ For example, intellectual disability frequently has co-occurring mental disorders, neurodevelopmental disorders, medical conditions, and physical conditions, “with rates

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of some conditions . . . three to four times higher than in the general population.”
Diagnostic and Statistical Manual of Mental Disorders 40 (Am. Psychiatric Ass’n 5th ed.)
(2013). “[C]ompared with people without disabilities, people with intellectual and
developmental disabilities are more likely to have poor health, be susceptible to illness,
have limited access to care, and be excluded from health promotion opportunities.”
National Council on Disability, “The Current State of Health Care for People with
Disabilities” 85 (2009).

⁷ National Council on Disability, *supra* note 6, at 87-91.

⁸ Special Care Dentistry Association, SPECIAL CARE IN DENTISTRY Vol. 22, No. 3,
p. 7S “Dental Care Considerations of Special Care Populations” (2002).

⁹ I.e., under the Rehabilitation Act of 1973 § 504 (29 USC § 794), the Americans with
Disabilities Act, as amended, or other federal or state laws.

¹⁰ See *infra* note 15.

¹¹ See Am. Psychiatric Ass’n, *supra*, note 6 at 31.

¹² See Am. Psychiatric Ass’n, *supra*, note 6.

¹³ Rehabilitation Act of 1973 § 504 (29 USC 794).

¹⁴ People With Disabilities Foundation, “PWDF Urges the Social Security Administration
to Specify and Implement Reasonable Accommodations for Individuals with Mental
and/or Developmental Disabilities to Ensure Effective Communication” Volume 19
(Summer 2014), *available at* http://pwwdf.org/enews/v19_SSA%20RA%209-19-14.html.

¹⁵ Training for employment in this area does exist; for example, see People With
Disabilities Foundation video, “Understanding Employees and Job Applicants with
Psychiatric Disabilities,” which features a former US Equal Employment Opportunity
Commission District Director.