

People With Disabilities Foundation's Comments on Revising the Ticket to Work Program Rules, in Response to Advance Notice of Proposed Rulemaking, Docket No. SSA-2015-0025

People With Disabilities Foundation (PWDF) is a nonprofit agency with expertise in medical (psychiatric)-legal issues and bases these comments on its 16-year history of providing legal representation for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) issues for people with psychiatric and/or developmental disabilities. PWDF's comments are also based on its experience 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, primarily consisting of psychosis (schizophrenia) and mood disorders and/or autism with intellectual disability. PWDF is not an EN.

PWDF has three general comments and several specific responses to SSA's areas of interest. All comments herein pertain to revising the Ticket to Work (TTW) rules in the context of people with psychiatric and/or developmental disabilities.

General Comments

1. With regard to people with psychiatric disabilities, magnifying in on two 12-month periods denies this population equal, meaningful access to program services if the episodic nature of the disorder is not taken into account. Some individuals need more flexibility, including in work schedules, longer breaks, and/or less interaction with the public, all of which should be accommodated. The TTW period should take into account the beneficiary's need for more time off and longer breaks due to the limits caused by the disorder. Because of changing (episodic) needs, these beneficiaries should have more flexibility than that given them in two 12-month time periods, e.g., taking off 3 weeks in a quarter or taking off 4 hours per day, which are inconsistent with fulltime work. The TTW Program should take into account these accommodations for decompensation and other impairment-related special conditions. The program should have built-in

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protections for what could be unanticipated, but frequent, episodes of certain disorders, e.g., mood (such as bipolar or depression), psychotic, or anxiety disorders. Information about any given beneficiary's disorder and impairments can be ascertained from the claims file and the treating source since the disorder was evaluated when the application was filed. This information should be used to ascertain the applicability of these proposed built-in protections (reasonable accommodations).

2. SSA should require the employment networks (ENs) to develop individualized employment plans that are based on the beneficiaries' maximum residual functional capacity (RFC). This is a recurring theme in these comments.
3. To encourage working, the SSA should stop counting earnings as substantial gainful activity (SGA) while the ticket is active. While a beneficiary is using a ticket, SSA should stop counting every month to determine whether the beneficiary is at or above SGA, even though there is a 2-year period after onset date or after an expedited reinstatement (EXR) in which SSA will not do a work review.

Responses to SSA's Areas Interest

Recommendations for Specific Employment Support Models

Whichever models are used, mentoring and apprenticeships are important supports for this population, i.e., people with autism, psychosis, intellectual disability, and other mental and /or developmental disabilities.

Studies have indicated that improving employment may help individuals maintain their mental health.¹ Thus, providing employment and health care supports may also lead to

¹ Lisa Rosenthal, et al., *The importance of full-time work for urban adults' mental and physical health*, Soc Sci Med November 2012; 75:9; pp. 1692-1696. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3504362/>

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net cost savings by reducing the number of hospitalizations due to mental health decompensation.² This is an area recommended for consideration.

Effective Ways to Present Information [Effective Communication] to Improve Participation and Outcomes

The SSA serves over 5 million people who receive disability benefits based on mental disorders.³ This includes 59.9% of SSI recipients under the age of 65.⁴ Thus, instead of just developing generalized methods of presenting information, SSA should consult with mental health experts to develop methods of “effective communication” for specific impairments.

Supports to Manage Finances and Benefits

- a) Assist beneficiaries understand the options for increasing earnings and achieving/sustaining greater financial independence: In order to obtain meaningful results, the SSA should utilize the RFC information that the SSA already has for each individual that was obtained when the application was made.

- b) Whether financial education, financial services and asset building are necessary to foster work outcomes that are likely to lead to exit from the disability rolls: Financial education and asset building are absolutely necessary to help beneficiaries exit from the disability rolls. Financial services can also be helpful. Changes to the TTW program regulations to enable financial services and planning should be made in consultation with a mental health expert and a financial planning expert.

² Holger Hoffmann, M.D., et al., *Long-Term Effectiveness of Supported Employment: 5-Year Follow-Up of a Randomized Controlled Trial*, *Am J Psychiatry* 2014; 171:11; pp. 1183-1198.

³ Social Security Administration, “[SSI Annual Statistical Report, 2014](#),” pp. 41, 76; Social Security Administration, “[Annual Statistical Report on the Social Security Disability Insurance Program, 2014](#)” p. 39.

⁴ Social Security Administration, “[SSI Annual Statistical Report, 2014](#),” p. 76.

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Fostering Program Success with ENs

ENs are overly generalized. They need to be divided up into categories that are tailored to the needs of the disability. For example, a beneficiary who has low mental functioning because of autism and/or intellectual disability has different needs from other, e.g., physical, impairments. The more the SSA does towards this end, the better the results that can be expected.

EN Payment Structures

Should ENs receive increased payments for helping beneficiaries find and keep higher paying jobs: Payment systems to ENs should only be structured to increase payments for helping beneficiaries find and keep higher paying jobs for sustained periods if the EN can tie a given beneficiary's higher earnings to increased services provided by the EN, and these services should maximize the potential⁵ of the beneficiary. ENs should get increased payments if they maximize the beneficiary's utilization of higher level job skills. They should not receive increased payments for assisting with under-employment. It is equally important that the SSA does not inadvertently create an incentive to the ENs to screen out people with disabilities who are harder to place because of their impairments.

Should ENs receive more than they currently do for helping beneficiaries find and keep part-time employment: Yes, ENs should be paid more for helping a beneficiary find and keep part-time employment since part-time work is often necessary in the transition from no employment to full-time employment. In some cases, the maximum an individual who is disabled can work may be part-time. The EN payment for helping a beneficiary find and maintain part-time employment should be proportional to the individual's maximum RFC. For example, if 100% of the individual's RFC relates to

⁵ I.e., They should receive increased payments if they maximize the job skill level to the individual's capacity. They should not receive increased payments for employment that is below the beneficiary's capacity, e.g., the US military's practice of giving contracts to organizations for the blind to make toilet paper packages.

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part-time work, then the EN should get 100% of the payment. Again, this structure will prevent a dis-incentive from screening out individuals who are harder to place.

ENs – Fostering a Robust Market of Employment Support Services

How should SSA define “ongoing support services” for the ENs: “Ongoing support services” has to be analyzed on an individual basis, according to the beneficiary’s maximum RFC. We urge the adoption of an individualized approach, analogous to the Individualized Education Program (IEP) that has been in use for disabled students in K-12 education since the 1970’s under Section 504 of the Rehabilitation Act of 1973.

Should state VR agencies participating as ENs offer the same services and have the same responsibilities as other ENs: Either approach is fine, as long as it does not detract from providing the most supportive, individualized employment framework.

What factors should be used to measure EN performance: EN performance should be based on the maximum skill level that a given beneficiary can achieve. For example, the beneficiary may need these supportive services for the rest of his/her working life, even for an unskilled job. Although a beneficiary’s need for employment supports may decrease over time, he/she may still need some supports throughout his/her working life.

How TTW rules might be adjusted to help ENs succeed at providing services and support that beneficiaries need to find and maintain employment: Have a clear statement of medical-vocational needs as to each beneficiary. The SSA already has this information (i.e., an individualized maximum RFC) whenever they make a disability determination and continuing disability review (CDR).