
PRESUMPTIVE DISABILITY FOR SUPPLEMENTAL SECURITY INCOME

OCTOBER 9 (legislative day, SEPTEMBER 28), 1978.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 10848]

The Committee on Finance, to which was referred the bill (H.R. 10848) to amend title VI of the Social Security Act to provide that an individual who applies for supplemental security income benefits on the basis of disability shall be considered presumptively disabled if he has received social security or supplemental security income benefits as a disabled individual within the preceding 5 years, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY

The bill as passed by the House of Representatives would permit supplemental security income payments to be resumed on a presumptive basis pending a formal determination of disability in any case where the claimant had been receiving SSI or social security disability payments within the last 5 years but had his eligibility terminated because of performing substantial gainful activity. (The individual would still be required to meet SSI eligibility requirements relating to income and resources.) The House bill would also require that if as a result of the formal determination the individual was found not to be disabled, he would be required to repay the amounts received as a result of this provision. The committee amended the House bill to delete the requirement that overpayments be collected in such cases.

II. GENERAL DISCUSSION

Present law.—The supplemental security income program provides benefits to persons who meet Federal eligibility requirements relating

to income and resources and who also qualify on the basis of old age, blindness, or disability. The definition of disability which is used for the SSI program, as well as for the title II social security disability program, provides that an individual shall be considered disabled

* * * if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

The law directs the Secretary of Health, Education, and Welfare to prescribe criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity (SGA). A person whose services or earnings meet these criteria cannot be found disabled. By regulation, the Secretary establishes a dollar amount of earnings—currently \$240 a month—which is used in determining whether an individual is engaging in substantial gainful activity.

Present law also provides for a 9-month trial work period during which the disabled individual's earnings are not used in determining whether he is engaged in substantial gainful activity. After the 9-month period, however, if the individual has earnings which average \$240 a month, he will be considered to be engaging in substantial gainful activity, and will lose his disability status. In losing SSI eligibility, he may also lose eligibility for medicaid and social services.

A person who loses eligibility because of performing substantial gainful activity but then finds himself unable to continue working must reapply as a new applicant in order to reestablish eligibility for SSI payments. The same procedures are followed in processing the application of the reapplicant as are used in processing a new disability application. The time required for processing an application, including the determination of disability, may take a number of months. Currently the average time between application and receipt of SSI benefits for disabled claimants is 67 days. For one-third of blind and disabled applicants it takes over 60 days, and for over 10 percent of such applicants it takes over 90 days.

Committee bill.—In its hearings on H.R. 10848 the committee heard persuasive testimony to the effect that the prospect of having to undergo a waiting period, which in some cases may be prolonged, is a significant deterrent to individuals who wish to attempt reentry into employment but are unsure of their success. The committee bill would expedite the application process for individuals who reapply for SSI disability benefits after losing them as a result of performing substantial gainful activity by providing that such individuals will be presumed to be disabled. The provision would apply in the case of persons who had previously been receiving benefits under either the SSI or social security disability programs. Reapplicants would still have to establish their eligibility for SSI by meeting the nondisability requirements, including these related to income and resources. However, payments would not be withheld while the individual underwent the full disability evaluation.

The committee version of the bill, like the House-passed version, provides that in making the subsequent formal determination of the individual's disability, the disability adjudicator shall not be pre-

vented from taking into account the individual's actual performance of substantial gainful activity.

Although the House bill also included a provision that would require the repayment of benefits in cases in which the individual was subsequently determined not to be disabled, the committee agreed to the request of the administration to delete this requirement. While the committee has accepted this administration recommendation, it notes that the absence of any repayment provision involves some inherent incentives for abuse. To prevent this the committee expects the administration to establish procedures for prompt review, particularly where there is any indication that the disability determination will be unfavorable. Moreover, the committee expects that the provision will be strictly limited to the narrow category defined in the bill. That is, to qualify for the presumptive payments the individual must have previously become ineligible because of a finding that he was engaging in substantial gainful activity and not because of any improvement in his medical condition or because he ceased to meet other eligibility factors such as income or resources. Before the presumptive payments are begun, he must have established his eligibility in all respects other than meeting the definition of disability.

The committee further expects that the administration will carefully monitor this provision and will promptly notify the Congress if it appears that payments are being made in any significant number of instances to individuals who are subsequently found to be ineligible.

III. BUDGETARY IMPACT

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and section 403 of the Congressional Budget Act of 1974, the following statements are made concerning the cost and budgetary impact of the bill.

The primary objective of the bill is to provide payments which would have been due in any case with somewhat less delay than is now encountered. The only cost should arise from those instances in which an individual who receives advance payments is subsequently found to be ineligible. Given the narrow grounds for eligibility under the bill and the expected careful administration of its provisions, the committee believes that cases of incorrect payments should be relatively rare. The committee estimates that the cost of the bill will be less than \$1 million in fiscal year 1979 and in each of the next 5 fiscal years. In making its estimate, the committee has consulted with the Congressional Budget Office. That agency estimates that the bill will have "negligible" costs. The budgetary impact of the bill can be accommodated within the budget totals in the second concurrent budget resolution for fiscal year 1979 and within the committee allocation of those totals in Senate Report 95-1270.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., October 10, 1978.

HON. RUSSELL LONG,
Chairman, Committee on Finance,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1973, the Congressional Budget Office has reviewed the

cost implications of H.R. 10848, as ordered reported by the Senate Finance Committee on October 3, 1978. This bill amends title XVI of the Social Security Act to provide that an individual who applies for supplemental security income disability benefits will be considered presumptively disabled if, within the preceding 5 years, he or she has lost SSI disability or title II disability insurance status because of performing "substantial gainful activity."

There are negligible costs associated with this bill. Only a small number of disabled SSI recipients and title II disability insurance recipients work and are subject to the "substantial gainful activity" rules. Of these, few will apply for SSI disability benefits within 5 years. Of those that do reapply, many would probably qualify for presumptive disability status under current program rules. As an example of the possible costs of H.R. 10848, if 500 additional persons a year were given presumptive disability status for three months, and benefits were \$130 per month, the costs of H.R. 10848 would equal \$195,000 per year.

Should the committee so desire, we would be pleased to provide further details.

Sincerely,

ALICE M. RIVLIN,
Director.

IV. REGULATORY IMPACT

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the following statement is made about the regulatory impact of the bill.

The committee believes that the bill has no regulatory impact other than to relieve some disabled individuals of a delay in benefit eligibility which arises under existing law and regulations.

V. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made concerning the vote of the committee to report the bill.

The bill was ordered reported by a voice vote.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*);

SOCIAL SECURITY ACT, AS AMENDED

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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SEC. 1614. (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding the provisions of subparagraph (B), an

individual whose services or earnings meet such criteria, except for purposes of paragraph (4), shall be found not to be disabled.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(F) An individual applying for benefits under this title as a disabled individual (or as an eligible spouse on the basis of disability) shall be considered presumptively disabled if, within the five years preceding the date of the application, he was treated for purposes of this title or title II as a disabled individual but ceased to be so treated because of his performance of substantial gainful activity; but nothing in this paragraph shall prevent his performance of such gainful activity from being taken into account in determining whether he is currently disabled in fact.

(4)(A) For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(B) The term "period of trial work", with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this title on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this title on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).

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