

# PART III.-BACKGROUND MATERIAL

## A. LEGISLATIVE HISTORY

### The Development of the Disability Program Under Old-Age Survivors Insurance, 1935-74

#### CONSIDERATIONS OF DISABILITY INSURANCE, 1935-39

(a) *The 1935 Report to the President of the Committee on Economic Security*<sup>1</sup>

This report recognized the problems of earnings lost during periods of disability, but specific consideration was not given to the problems of permanent and total disability.

(b) *The Final 1938 Report of the Advisory Council on Social Security to the Senate Committee on Finance*<sup>2</sup>

The Council recognized the desirability of providing benefits to an insured person who becomes totally and permanently disabled and to his dependents. However, a difference existed in the Council on the timing of the introduction of these benefits. Those in favor of immediate introduction argued that permanently disabled persons (except the blind) were the only category of permanent social casualties who receive no insurance or assistance under the Social Security Act, and that no other group was more completely dependent or in a more desperate economic situation. Those Council members in favor of further study before establishing disability benefits argued that costs were unpredictable and that the initiation of the new benefits should wait until probable total program costs could be more accurately projected. They also envisioned many difficult administrative problems of a character apart from the rest of the program, such as the necessity for a skilled staff to make disability determinations in each case and for intensive and sustained local investigation to prevent abuses.

(c) *The 1938 Annual Report of the Social Security Board to the President*<sup>3</sup>

In recommending changes in the Social Security- Act, the Board gave considerable thought to whether the system should be expanded to include provisions for benefits to workers who become permanently and totally disabled, before reaching age 65, and to their dependent's Recognizing the difficult but not insuperable administrative problems and the increased cost of the provision, the Board made no positive recommendation. The Board did state that the extent of the increase in costs would depend upon the definition of disability, and that a strict definition at the beginning would keep costs within reasonable limits. Later, with experience, the definition could be made more liberal if this was considered socially desirable. It was suggested that any plan for permanent total disability insurance should have adequate provisions for hospitalization and other institutional care, and vocational rehabilitation.

(d) *The 1939 Report to the President on National Health by the Interdepartmental Committee to Coordinate Health and Welfare Activities*<sup>4</sup>

After a survey of the problems of disabled persons, the Committee concluded that wage earners and their families need protection against loss of income during periods of temporary or permanent disability. The Committee recommended the development of social insurance to replace in part wages lost

<sup>1</sup> See hearings before the Committee on Ways and Means, 74th, Cong., 1st sess. (1935), on H.R. 4120, p. 17 et seq.

<sup>2</sup> See hearings relative to the Social Security Act Amendments of 1939 before the Committee on Ways and Means, vol. 1, p. 18 et seq.

<sup>3</sup> *Ibid.*, p. 3 et seq.

<sup>4</sup> H. Doc. No. 120, 76th Cong., 1st sess. (1939).

during temporary or permanent disability. It suggested that insurance against permanent disability should be effected through a liberalization of the old-age insurance system, paying benefits at any time prior to age 65 to qualified workers who become permanently and totally disabled.

(e) *Social Security Act Amendments of 1939*

There were no provisions on disability in the 1939 amendments to the Social Security Act; nor was any mention made of disability in the Committee reports accompanying the bill which later was enacted by the Congress.

CONSIDERATIONS OF DISABILITY INSURANCE, 1940-50

(a) *Annual reports of the Social Security Board from 1940 to 1950*

Throughout this period, the Social Security Board (and its successor, the Social Security Administration) recommended in its annual reports the payment of social insurance benefits to permanently and totally disabled persons. Some of the specific proposals made to implement this recommendation were as follows:

(1) Benefits should be payable only after a 6-month waiting period and then only if the disabled person had been in covered employment within a reasonably recent period, for a reasonably substantial time, and with reasonably substantial income.

(2) Benefits should be paid to dependents of disabled workers.

(3) Vocational rehabilitation for beneficiaries should be financed from the trust fund.

As for the definition of disability, the Board stated that for "permanent" disability to imply a concept of lifetime disability, requiring a medical prognosis of permanency, was socially and administratively unsatisfactory. Instead, benefits should be paid for loss of earnings after a suitable waiting period (6 months) and for the duration of total incapacity for substantially gainful work.

(b) *The 1946 Report to the Committee on Ways and Means by the Committee's social security technical staff*<sup>5</sup>

After an analysis of the problems involved in long-term disability benefits provided as an extension of OASI, this report—known as the Calhoun report—suggested as an initial step that such benefits be provided only to persons above some specified age, such as 55 or 60. It was felt that this would be a promising method for easing into disability insurance with a minimum of initial difficulty, although it was recognized that it would not touch the areas where the consequences of disability were the most serious.<sup>6</sup>

(c) *Social Security Act Amendments of 1946*

These amendments were limited in scope and dealt only with simple and noncontroversial legislative changes; they did not include a provision for disability insurance.

(d) *The 1948 Report of the Advisory Council on Social Security to the Senate Committee on Finance*<sup>7</sup>

The Council recommended payment of benefits to the permanently and totally disabled, regardless of age, as part of the social insurance system. (Two members of the Council disagreed with this recommendation. They felt that protection against the risk of total disability should be provided by State assistance programs aided by Federal grants and should not be included in a Federal contributory system.) Some of the specific recommendations of the Council were—

(1) A strict test of recent and substantial attachment to the labor market should be a condition of eligibility. The individual would need a

<sup>5</sup> Issues in social security: A report to the Committee on Ways and Means of the House of Representatives by the committee's social security technical staff established pursuant to H. Res. 204 (79th Cong., 1st sess.), 1946.

<sup>6</sup> *Ibid.*, p. 101. In its 1947 report, the Social Security Administration argued against the suggestion that benefits be limited to disabled workers over age 55 by emphasizing that the consequences of disability may be more disastrous for the younger than the older worker. See annual report of the Federal Security Agency (1947), pp. 62 and 63.

<sup>7</sup> S. Doc. No. 162, 80th Cong., 1st sess. (1948).

minimum of 40 quarters of coverage, at least 1 quarter of coverage for every 2-calendar quarters in his working lifetime before the onset of disability, at least 6 quarters of coverage in the 12 quarters preceding such onset, and at least 2 quarters of coverage in the 4 quarters preceding such onset.

(2) The definition of disability would mean "any disability which is medically demonstrable by objective tests, which prevents the worker from performing any substantially gainful activity, and which is likely to be of long-continued and indefinite duration."<sup>8</sup>

(3) Qualified individuals would be eligible for benefits after a waiting period of 6 months. Such a waiting period was recommended "because it is sufficiently long to permit most essentially temporary conditions to clear up or show definite signs of probable recovery."<sup>9</sup>

(4) No benefits would be provided for dependents.

(5) Benefits would be suspended where workmen's compensation was payable; if another Federal program paid a disability benefit, only the larger benefit would be paid. It was felt that dual benefits based on disability would be so high as to discourage beneficiaries from returning to gainful work when they are able to do so.<sup>10</sup>

(6) The provisions for disability benefits and for old-age and survivors benefits would be so integrated that periods of total disability would not be counted in computing insured **status** and the average monthly wage of a disabled person.

(7) Rehabilitation services would be provided and paid from the trust fund.

#### SOCIAL SECURITY ACT AMENDMENTS OF 1950

Many of the details of the present disability program had their origin in the bill, H.R. 6000, which eventually became the 1950 amendments to the Social Security Act. This bill, as passed by the House of Representatives late in 1949, contained provisions for the payment of disability insurance benefits under title II of the Social Security Act to permanently and totally disabled insured workers. In support of its action recommending such a program to the House of Representatives, the Committee on Ways and Means relied upon the recommendations of the 1948 Advisory Council. In the view of the committee, the program it recommended was conservative inasmuch as it:

would only apply to those wage earners and self-employed persons who have been regular and recent members of the labor force and who can no longer continue gainful work.<sup>11</sup>

The Senate, however, deleted the disability insurance provisions when it passed H.R. 6000. In its report on H.R. 6000, the Senate Committee on Finance expressed the following views on the disability insurance program:

Your committee has not included permanent and total disability insurance or assistance provisions in the bill. We recognize that the problem of disabled workers is one which requires careful attention, especially because of the increasing proportion of older workers and the rising rate of chronic invalidity in the population. Moreover, the problem is not limited to the feasibility of providing income or pensions merely to maintain disabled workers. At least of equal significance is the need for assuring fullest use of rehabilitation facilities so that, disabled persons may be returned to gainful work, whenever this is possible. Your committee believes that the Federal Government should increase the grants-in-aid to the States for vocational rehabilitation and that further study should be made of the problem of income maintenance for permanently and totally disabled persons?

The conference committee went along with the Senate version of the bill as to disability insurance benefits, and as finally passed by the Congress the bill made no provision for disability insurance benefits. The legislation did, however, extend the State-Federal public assistance programs to the permanently and

<sup>8</sup> Ibid., p. 5.

<sup>9</sup> Ibid., p. 7.

<sup>10</sup> Ibid., p. 9.

<sup>11</sup> H. Rept. No. 1300, 81st Cong., 1st sess. (1949), pp. 27 and 28.

<sup>12</sup> S. Rept. No. 1669, 81st Cong., 2d sess. (1950), p. 3.

totally disabled by providing grants-in-aid to the States for such individuals who are in need, as had been recommended by the minority of the 1948 Advisory Council.<sup>13</sup>

Some of the salient features of the disability insurance program passed by the House of Representatives as part of H.R. 6000 were-

(1) To be insured, the individual needed 20 quarters of coverage in the 40-quarter period ending with the quarter of disablement and 6 quarters of coverage in the U-quarter period ending with such quarter.

(2) The definition of disability was the same as the present definition for the payment of disability insurance benefits, except that the disability had to be "medically demonstrable" and "permanent," and blindness (defined as it now is for purposes of the disability "freeze") was included within the definition. Benefits were to be paid only after a waiting period of 6 months. In this regard the Committee on Ways and Means made it clear that the 6-month period was not a basis for a presumption of permanence or protracted total disability. Where recovery could be expected, according to medical prognosis, within relatively short periods of time after the expiration of the 6-month waiting period, such cases would not be compensable under the definition of disability. The committee felt, that a cautious approach to the payment of benefits was necessary to prevent abuses.\*

(3) There was no age limitation such as the former requirement that an individual must be at least age 50 to receive benefits; nor was provision made for the payment of benefits to dependents.

(4) An individual's insured status and benefit amount for purposes of old-age and survivors insurance were preserved (i.e., a disability "freeze" was established) while he was entitled to disability insurance benefits.

(5) Determinations of disability were to be made by the Administrator of the Federal Security Agency (predecessor of the Secretary of Health, Education, and Welfare).

(6) Benefits were to be adjusted in cases where the beneficiary was also receiving a workmen's compensation benefit for the same disability during the same period of time.

(7) Benefits were to be suspended where, among other things, an individual who was still disabled had earnings in excess of a permitted amount or where he failed, without good cause, to accept certain rehabilitation services or to undergo medical examinations.

#### SOCIAL SECURITY ACT AMENDMENTS OF 1952

The 1952 amendments to the Social Security Act provided for a disability "freeze" (not disability insurance benefits) with an effective date of July 1, 1953, but only if the Congress prior to that date affirmatively approved the provision. The Congress did not take any action prior to July 1, 1953. As a result, the disability "freeze" in the 1952 amendments never became operative.

The 1952 amendments had their origin in H.R. 7800, which was reported out by the Committee on Ways and Means of the House of Representatives with a provision for a disability "freeze" similar in many respects to the disability "freeze" in present law. The committee included in the bill a provision which authorized the Administrator of the Federal Security Agency to make determinations of disability—a like provision having appeared in H.R. 6000 as passed by the House of Representatives in 1949. This provision came under heavy attack on the floor of the House of Representatives<sup>15</sup> and was eventually deleted from the bill. As finally passed by the House of Representatives, the bill contained no specific provision as to who would make determinations of disability.

<sup>13</sup> Title XIV, Social Security Act, superseded by new title XVI under Public Law 92-603

<sup>14</sup> H. Rept. No. 1300, 81st Cong., 1st sess. (1949), pp. 29 and 30.

<sup>15</sup> Congressional Record, vol. 98p.5466 et seq. (May 19, 1932).

The Senate Committee on Finance recommended the passage of H.R. 7800 without any provision for a disability "freeze." In taking this action, the committee stated :

In deleting these provisions, your committee did not prejudice the merits of these proposals. There was insufficient time for full hearings which would have been necessary if proper consideration were given to these two provisions and the numerous amendments suggested thereto?

The Senate followed the recommendations of the Committee on Finance.

In conference, it was agreed to recommend the inclusion of the disability "freeze" as passed by the House of Representatives with the following two not able changes-(1) determinations of disability would be made by States through appropriate agencies pursuant to agreements between the States and the Administrator; and (2) the provision would become operative only if Congress later affirmatively approved it.<sup>17</sup>

Although the disability "freeze" in the 1952 amendments never went into effect, its specific provisions later served as a basis for the disability "freeze" enacted in the 1954 amendments.

### SOCIAL SECURITY AMENDMENTS OF 1954

These amendments established the first operating disability program under the Social Security Act.

The definition of "disability" was basically the same as the definition which appeared in H.R. 6000 as passed by the House of Representatives in 1949.

The insured status requirements for a "freeze" were 20 quarters of coverage in the 40-quarter period ending with the quarter of disablement and 6 quarters of coverage in the 13-quarter period ending with such quarter-the same as appeared in H.R. 6000 as passed by the House of Representatives in 1949. (Under present law, the "20-out-of-40" requirement still generally exists, while the "6-out-of-13" requirement was repealed in 1958.)

As under present law, the "freeze" was retroactive to the date of onset of disability, which could be as early as the fourth quarter of 1941. The law provided, however, that retroactivity could exceed no more than 12 months if the application was filed after June 30, 1957.

In addition, Congress, recognizing the importance of rehabilitating disabled persons, specifically provided for the referral of such persons to State rehabilitation agencies for rehabilitation services so that the maximum number of disabled individuals may be restored to productive activity.

In all other respects (State determinations and effect of freeze) the law enacted in 1954 is the same as present, law.

In moving from determinations of disability made by the Federal Government (as provided in H.R. 6000 passed by the House of Representatives in 1949) to State determinations (as first promulgated in the inoperative 1952 provision), the Committee on Ways and Means stated :

By and large, determinations of disability will be made by State agencies administering plans approved under the Vocational Rehabilitation Act. This would serve the dual purpose of encouraging rehabilitation contacts by disabled persons and would offer the advantages of the medical and vocational care development undertaken routinely by the rehabilitation agencies. These agencies have well-established relationships with the medical profession and would remove the major load of case development from the Department.

By agreement, the State agencies will apply the standards developed for evaluating severity of impairments for purposes of the

<sup>16</sup> S. Rept. No. 1806, 82d Cong., 2d sess. (1952), p. 2.

<sup>17</sup> The purpose of this, according to the conference committee, was to "permit appropriate steps to be taken for the working out of tentative agreements with the States for possible administration of the disability provisions" and to allow further hearings to be held. H. Rept. 2491, 82d Cong., 2d sess. (1952), p. 9.

freeze. This will promote equal treatment of all disabled individuals under the old-age and survivors insurance system in all States. The cost to these agencies for their services in making disability determinations will be met out of the Trust Fund.<sup>18</sup>

### SOCIAL SECURITY AMENDMENTS OF 1956

Monthly disability insurance benefits were provided under the 1956 amendments to eligible disabled workers between the ages of 50 and 65. In addition, benefits were provided for disabled dependent children of a retired or deceased insured worker if the child was disabled before he attained the age of 18.

These changes in the Social Security Act were first included by the Committee on Ways and Means in H.R. 7225, the bill which later became the 1956 amendments to the Social Security Act. The provisions relating to the disabled insured workers were patterned after the provisions on disability appearing in H.R. 6000 as passed by the House of Representatives in 1949, except that benefits were to be paid only to individuals between the ages of 50 and 65. The provisions in the bill relating to childhood disability benefits were somewhat restrictive in that they applied only if the child was on the benefit rolls prior to attainment of age 18. H.R. 7225 was passed by the House of Representatives in 1955.

The Senate Committee on Finance, which held hearings on the bill in 1956, recognized the problems of the severely disabled worker but did not agree that disability insurance benefits should be provided under the old-age and survivors insurance system. This was the position taken by Secretary of Health, Education, and Welfare Folsom, in testifying before the committee. The committee, in opposing a cash disability insurance benefit program, considered : (1) The difficulty in making disability determinations, (2) the availability of assistance under the program of aid to the permanently and totally disabled, (3) the significant strides made in vocational rehabilitation, (4) the uncertainty as to the future costs of a cash disability insurance benefit program, and (5) the need for time to study and evaluate existing disability programs.<sup>19</sup>

It did, however, recommend the adoption of the provisions relating to the payment of childhood disability benefits, except that it removed the restriction that the child must be on the benefit rolls prior to attainment of 18; it sufficed that the child became disabled before 18. So long as that occurred, the childhood disability benefit would be paid to the child whenever the insured worker died or became entitled to old-age insurance benefits. The committee did not believe that the serious difficulties involved in paying benefits to disabled workers applied to children disabled before age 18, since most of the cases involving children would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency.<sup>20</sup>

When H.R. 7225 was acted upon by the Senate, an amendment providing for disability insurance benefits was adopted on the floor by a 47 to 45 vote. The amendment followed very closely the provision adopted by the House of Representatives in the preceding year with one notable exception—a separate trust fund was set up for the purpose of paying disability insurance benefits. This fund is held separate from the trust fund from which other benefits are paid and is the only source from which disability insurance benefits can be paid. The rate of contributions to this fund was one-half of 1 percent on wages (an employer rate of one-fourth of 1 percent and an employee rate of one-fourth of 1 percent) and three-eighths of 1 percent on the earnings of the self-employed.

In conference it was agreed to adopt the Senate's version of the disability insurance program with its separate trust fund, including the more liberal provision for the payment of childhood disability benefits.

As passed in 1956, the following pertinent provisions appeared:

(1) Benefits were payable if the individual was insured, was between the ages of 50 and 65, was under a disability, and had applied for benefits.

<sup>18</sup> H. Rept. 1698, 83d Cong., 2d sess. (1954), pp. 23 and 24.

<sup>19</sup> S. Rept. 2133, 84th Cong., 2d sess. (1956), pp. 3 and 4.

<sup>20</sup> *Ibid.*, p. 2.

Benefits were payable beginning July 1957, and, except in the case of applications filed before January 1958, there was retroactivity of benefit payments.

(2) Insured status provision : The individual must have been a currently insured individual (a requirement similar to the one then existing under the "freeze" of 6 quarters of coverage in the 1.3 quarters ending with the quarter of disablement) and he must have had 20 quarters of coverage out of the last 40 calendar quarters.

(3) The definition of disability stated that in order for a person to be under a disability he must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which must be expected to result in death or to be of long-continued and indefinite duration. The definition for "blindness" was similar to that of the freeze except that a blind person had to meet the substantial gainful activity test.

(4) There must have been 6 months of disability before benefits could be paid.

(5) Disability insurance benefits were reduced in any case where the individual was receiving another Federal disability benefit or a State workmen's compensation payment.

(6) In addition to the provision on rehabilitation enacted as part of the 1954 amendments, further provision on rehabilitation were added, those dealing with the withholding of benefits for refusing rehabilitation services and the rendering of services under a State plan for vocational rehabilitation.

(7) The provisions relating to the definition of disability, rehabilitation, and reduction as applied to disabled insured workers were also applicable to childhood disability benefits.

(8) Determinations of disability were to be made by the States under the same conditions as determinations of disability were made under the freeze.

The Conference report also stated :

it is understood and expected that the Secretary of Health, Education, and Welfare will fully utilize his authority to review and revise determinations of State agencies in order to assure uniform administration of the disability benefits and to protect the Federal Disability Insurance Trust Fund from unwarranted costs.<sup>21</sup>

#### AMENDMENTS TO THE SOCIAL SECURITY ACT IN 1957 (PUBLIC LAW 85-109)

These amendments (Public Law 85-109) made the following changes:

(1) The 12-month limitation on retroactivity of the disability "freeze" did not apply if the application were filed prior to July 1, 1957. The 1957 amendments extended this date to July 1, 1958. The Committee on Ways and Means indicated concern :

that many persons who became disabled some time ago will, if they fail to file applications before July 1, 1957, lose all their protection under the old-age and survivors insurance program \* \* \* it is only fair to give workers now disabled a further opportunity to avoid loss of these valuable rights \* \* \*.<sup>22</sup>

(2) Disability insurance benefits were reduced where the beneficiary was receiving a disability benefit under another Federal program. The 1957 amendments exempted from this provision veterans' compensation received on account of service-connected disabilities. According to the Committee on Ways and Means—

the purpose of veterans' compensation is such as to justify disregard of that compensation in the determination of rights to disability insurance benefits under the social security program?

<sup>21</sup> H. Rept. 2936, 84th Cong., p. 26.

<sup>22</sup> H. Rept. 277, 85th Cong., 1st sess. (1957), p. 2.

<sup>23</sup> Ibid., pp. 2 and 3.

## SOCIAL SECURITY AMENDMENTS OF 1958

The 1958 amendments broadened the protection of the disability program and removed certain provisions which had proved unnecessary and, in some situations, had caused inequities. The following modifications were made:

(1) Provision was made for the payment of monthly benefits to dependents of disability insurance beneficiaries.

(2) The amendments repealed the provision (known as the offset) which required the reduction of disability benefits where the beneficiary was receiving a workmen's compensation payment or a disability benefit from another Federal program. The Committee on Ways and Means expressed the view that the "danger that duplication of disability benefits might produce undesirable results is not of sufficient importance to justify reduction of social security disability benefits."<sup>24</sup>

(3) Applications for disability "benefits were made retroactive for as much as 12 months to prevent the loss of benefits where a beneficiary fails to file a timely application."<sup>25</sup> For a similar reason, the deadline date for full retroactivity in the case of a disability "freeze" was extended from July 1, 1958, to July 1, 1961, -applications for the freeze filed on or after July 1, 1961, were made retroactive for not more than 18 months.

(4) The insured status requirements for the disability "freeze" and disability insurance benefits were modified and made identical. The modification was the elimination of a recency-of-work test-i.e., the requirement of currently insured status for disability benefits and of "6 quarters of coverage out of 13 quarters" for the disability "freeze". The test was made identical by adding the requirement of a fully insured status for the "freeze." (In the 1956 amendments, "fully insured status" was included as a requirement for disability insurance benefits.)

The Committee on Ways and Means felt that the elimination of this recency-of-work test would be particularly helpful to persons with progressive illnesses. In many such cases, a person who is forced to stop working as a result of his impairment would lose his insured status before the impairment became sufficiently severe to meet the statutory definition of disability. The committee also felt that the fully insured status requirement was necessary for the disability "freeze" in order to avoid the anomalous situations that might arise after June 1961 with respect to workers who could qualify for a disability freeze and not be eligible for any disability or old-age benefits.<sup>26</sup>

## SOCIAL SECURITY AMENDMENTS OF 1960 (PUBLIC LAW 86-778)

These amendments removed the minimum age requirement of 50 years for the purpose of disability benefits for insured workers. The report of the Subcommittee on the Administration of Social Security Laws of the Committee on Ways and Means, which was issued in 1960, stated:

During the course of the hearings the question of the desirability of removing the age requirement, and the administrative ramifications which such a change would entail, came up time after time (e.g. hearings, pp. 70, 83-839, 858, 918, 922-924, 964, 975).

The evidence before the subcommittee was:

1. There is no administrative or other justification for continuation of this purely arbitrary distinction.

2. The distinction can be eliminated without an increase of the tax or impairment of the soundness of the trust fund, according to the Department of Health, Education, and Welfare.<sup>27</sup>

There were also a number of recommendations from a GAO study on the disability program which found great support in the subcommittee hearing and were incorporated into the 1960 legislation. Included among these were:

1. A trial work period in order to encourage attempts by disabled workers to return to the labor market. Under this provision a disabled person, provided

<sup>24</sup> H. Rept. 2288, 85th Cong., 2d sess. (1958), p. 13.

<sup>25</sup> Ibid., pp. 13 and 14.

<sup>26</sup> Ibid., pp. 14 and 15.

<sup>27</sup> Preliminary Report of Committee on Ways and Means, Mar. 11, 1960, p. 46.

his disability has not medically improved, may return to work for up to 9 months, not necessarily consecutively, and still receive benefits. If at the end of this 9-month trial work period the worker is found to be able to engage in substantial gainful activity, his benefits are terminated in 3 months. Thus, a disabled worker may experiment with his vocational skills up to a year without losing his eligibility for benefits. No trial work period, however, was provided within 5 years following the termination of a period of disability.

2. Elimination of the 6-month waiting period for a disability which recurs after an apparent recovery, as an incentive to encourage disabled workers to return to work. The time elapsed between periods of disability may not exceed 60 months. Thus, a disabled worker may return to the job market if his condition improves knowing that if his condition worsens he will receive immediate help without the waiting period.

### PUBLIC LAW 88-650 (1964)

In 1964 the restriction on retroactivity of disability applications was eliminated. Before this amendment the beginning of a period of disability could not be established earlier than 18 months before an application was filed.

### SOCIAL SECURITY AMENDMENTS OF 1965 (PUBLIC LAW 89-97)

In these amendments the qualifying duration of a disability was liberalized so that a worker would become entitled to benefits if his disability could be expected to last for a continuous period of 12 months or longer instead of the previous requirement of "long-continued and indefinite duration." The Senate Committee on Finance's report stated that:

The effect of the provision the committee is recommending is to provide disability benefits for a totally disabled worker even though his condition may be expected to improve after a year. As experience under the disability program has demonstrated, in the great majority of cases in which total disability continues for at least a year the disability is essentially permanent \* \* \*.

It is estimated that if benefits were payable for disabilities that are total and last more than 12 calendar months but are not necessarily expected to last indefinitely, about 60,000 additional people-workers and their dependents—would become immediately eligible for benefits.<sup>28</sup>

This provision brought the program more in line with commercial disability insurance policies.

A provision was also included in the legislation which permitted young workers who were blind to qualify even though they had not worked for a substantial period of time. The amendment provided that a blind worker under 31 need have insurance coverage for only one-half of the quarters between age 21 and the time he became qualified for disability benefits. He must, however, have a minimum of six quarters of coverage. (Prior law provided that all workers including the blind, must have worked 5 years out of the last 10 preceding their disability.) The amendments also modified the definition of disability for a person 55 or older who became blind from one requiring inability to engage in any substantial gainful activity to one requiring skills and abilities comparable to those used in his previous work experience. Previously, the substantial gainful activity criteria were applied to blind persons of all ages.

The House Committee on Ways and Means requested in its report on the 1965 amendments that a study be done to determine if workers receiving both State workmen's compensation benefits and disability benefits are receiving excessive payments. The Senate Committee on Finance, however, felt that it was desirable to add an offset provision for workmen's compensation without waiting for the study. This amendment, as it was included in the law, allowed **an individual** who was entitled to receive State workmen's compensation and

<sup>28</sup> S. Rept. No. 404, part I, 89th Cong., p. 99.

federal disability benefits to receive both in full if they do not together exceed the higher of:

80 percentum of his "average current earnings", or the total of such individual's disability insurance benefits \* \* \*. For purposes of [this] clause, an individual's average current earnings means the larger of (A) the average monthly wage for purposes of computing his benefits under section 223, or (B) one-sixtieth of the total of his wages and self-employment income for the five consecutive calendar years after 1950 for which such wages and self-employment income was highest.<sup>29</sup>

An individual is permit ted to receive any increase in social security benefits that Congress may authorize after the individual's offset was first applicable. This system for calculating the amount of reduction for disability benefits was designed to eliminate the problems caused by the dollar-for-dollar reduction included in the 1956 amendments, which caused its repeal in 1958.

In another area Congress tried to solve the dilemma of a worker who had to choose between either receiving an actuarially reduced old-age, insurance benefit and, therefore, providing his wife, age 65 or over, with hospital insurance coverage or protecting his eligibility for disability payments. Under the provision a worker under 65 who becomes entitled to reduced retirement benefits retains his eligibility for disability insurance benefits.

When Congress established the disability program it stated that one of its objectives was to promote the rehabilitation of disabled insurance beneficiaries. To this end, applicants for disability insurance benefits were referred to the State vocational rehabilitation agencies. The Senate Committee on Finance's report stated that only about 3,000 disability beneficiaries were rehabilitated annually due in large part to the States' inability to match the Federal funds available for vocational rehabilitation. The 1965 amendment authorized social security trust funds to be made available to reimburse State vocational rehabilitation agencies for the cost of vocational rehabilitation services furnished to disability insurance beneficiaries. The total funds available could not, in any year, exceed 1 percent of the social security disability benefits in the previous year. It was felt that this expense would actually result in a savings for the trust fund since benefits for rehabilitated workers would be terminated and these workers would resume contributing to the trust fund through covered employment .

These amendments also changed section 223(b) of the Social Security Act to add a "floating application" clause. An application filed before a claimant is entitled to benefits is deemed to be filed at the time the claimant becomes eligible if he becomes entitled before the Secretary makes a final decision on his application. Thus, the onset date for a disability may be established after the date of application. Previous law allowed a claim to remain valid if the applicant could establish entitlement within 9 months of filing date only.

This law also included a provision for setting attorney's fees in social security cases before a Federal court. A judge who handed down a judgement favorable to the claimant in a disability case was authorized to determine a reasonable fee for such services before the court, not to exceed 25 percent of the claimant's past-due benefits. This provision originated as an administration proposal to protect the claimant against contingency agreements that allowed the lawyer to collect an unreasonably high percent of the claimant's benefit.

#### SOCIAL SECURITY AMENDMENTS OF 1967 (PUBLIC LAW 90-248)

In 1967 the Congress, in the context' of major actuarial deficiencies in the disability insurance program, took up the problem of court interpretation of the disability definition. The Committee on Ways and Means' report noted that over the prior 4 years the number of disability allowances had been greater than estimated. Although the Social Security Administration had maintained that this was in large part due to greater knowledge of the availability of benefits and the better development of evidence of disability and its evaluation, the

<sup>29</sup> Social Security Act, sec. 224(a).

committee was particularly concerned with the "growing body of court interpretation of the statute which, if followed in the administration of the disability provisions, could result in substantial further increases in costs in the future."<sup>30</sup> The statutory definition of disability was expanded from its bare-bones statement of "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment" to the following :

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 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.<sup>31</sup>

The definition, as enacted into law, was almost identical to HEW policy as it appeared in the regulation or in the then confidential Disability Insurance State Manual. The Senate, by floor amendment, struck the Ways and Means provision, but the House provision was retained by the Conference Committee with the following elaboration of what is meant by the "work which exists in the national economy." The Conference report added the language that this term "means work which exists in significant numbers either in the region where such individual lives or in several regions of the country." The Statement of managers in the report said, "The purpose of so defining the phrase is to preclude from the disability determination consideration of a type or types of jobs that exist only in very limited numbers or in relatively few geographic locations, in order to assure that an individual is not denied benefits on the basis of the presence in the economy of isolated jobs he could do."<sup>32</sup>

The committee reports said they were presenting guidelines "to reemphasize the predominant importance of medical factors in the disability determination." The law was changed to read:

For purposes of this subsection, 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.<sup>33</sup>

And both committee reports declared:

Statements of the applicant or conclusions of others with respect to the nature and extent of impairment or disability do not establish the existence of disability . . . unless they are supported by clinical or laboratory findings or other medically acceptable evidence confirming such statements or conclusions".<sup>34</sup>

Finally, the legislation gave the Secretary specific regulatory authority to prescribe the criteria for determining when earnings derived from work demonstrate an individual's ability to engage in substantial gainful activity.

To provide younger workers who would normally not be expected to have enough quarters to qualify for benefits with protection, Congress extended the requirements for quarters of coverage for the blind under 31 to all workers of that age. A worker under 31 must have coverage for one half of the quarters between age 21 and the time he becomes disabled, with a minimum of six quarters.

A benefit was provided for disabled widows, aged 50 to 59 and disabled dependent widowers aged 50-61. The benefit was to be actuarially reduced according to the age of the beneficiary at the time of eligibility. To be eligible for the benefits, the widow or widower must have become totally disabled not later than 7 years after the spouse's death, or in the case of a widowed mother, before the end of her benefits as a mother or within 7 years thereafter. These 7

<sup>30</sup> H. Rept. 544, 90th Cong., p. 28.

<sup>31</sup> Social Security Act, sec. 223(d)(2)(A).

<sup>32</sup> H. Rept. 1030, 90th Cong., p. 52.

<sup>33</sup> Social Security Act, sec. 223(d) (3).

<sup>34</sup> H. Rept. No. 544, 90th Cong., p. 30.

years provided the widow or widower **with** enough time to earn quarters of coverage to gain protection on his or her own record. However, the definition of disability for a widow, surviving divorced wife or widower was narrowed. In order to be found disabled, the above **dependents** must have a physical or mental impairment that is of such severity that it precludes the individual from engaging in any gainful activity. The test is based on the medical severity of the impairment and is not based on non-medical factors and work activity. No trial work period was provided for disabled widows and widowers.

The Senate Finance Committee added an amendment which changed the definition of blindness from "central visual acuity of **5/200** or less" to "central visual **acuity** of **20/200** or less." This new definition conforms to the definition of industrial blindness and enabled people who are **industrially** blind to qualify automatically for a social security earnings records freeze. In order to qualify for benefits, though, the blind person still had to prove inability to engage in substantial gainful activity.

The workmen's compensation offset was modified. Previous law did not take into account that some workers' creditable earnings for social security were only a part of their actual total earnings, and they may be getting less than 80 percent of the total predisability income. The new provision took into account the earnings of a worker which were in excess of those credited for social security purposes by providing that "average current earnings" could also be computed as one-sixtieth of the worker's total earnings over a specified 5-year period.

For purposes of the disability freeze, an extension of the time allowed to file was authorized. If an application for the freeze is filed not more than 12 months after the month in which the Social Security Amendments of 1967 were enacted, and if the disability ended not more than 36 months previous to the application; the freeze will be granted if, in accordance with the rules and regulations by the **Secretary**, the lapsed time was due to the worker's physical or mental condition.

A provision pertaining to attorney fees was passed on the Senate floor and adopted by the **Conference**. It authorized the Secretary of HEW to certify for payment a fee for services in administrative proceedings which result in a **favorable** outcome for the claimant. The amount certified for the fee could not exceed the smaller of (1) 25 percent of the past-due benefits, (2) the fee fixed by the Secretary, and (3) the fee agreed upon by the applicant and the attorney. The Secretary retained his authority to set fees according to how much time the attorney spent on the case and how **difficult** it was to prepare and argue.

### SOCIAL SECURITY AMENDMENTS OF 1972 (PUBLIC LAW 92-603)

The amendments of this year were part of the comprehensive **welfare-social** security bill, H.R. **1**. This bill was passed by the House on June 22, 1971, and by the Senate on October 6, 1972. Most of the lengthy debate on the bill was concerned with the welfare reform aspects rather than the disability program. However, the legislation did contain some new provisions for the disability program.

The waiting period required before a benefit could be paid was reduced from 6 to 5 months.

The recency of work requirement (20 quarters of coverage in the last **40-quarter** period preceding disability) was eliminated for a blind person. The blind worker must now have as many quarters of coverage as the number of calendar years that have elapsed after 1950 or the year he reached **21**, whichever is later.

Under previous law a worker's social security disability benefit was reduced if the disability benefit and any workmen's compensation benefit received exceeded 80 percent of the workers' average current earnings. The new law provided an **additional** method for computing the average current earnings. It can now be based on the highest **1** year of total earnings (not limited to earnings creditable for social security purposes), in the period consisting of the year of onset of disability and the 5 preceding years. It was felt that these earnings would perhaps be higher than earlier ones because of inflation.

Childhood disability benefits may be paid to an adult if the childhood disability began before age 22 instead of age 18 (as provided by previous law). In addition, a person who was entitled to childhood disability benefits will become reentitled if he again becomes disabled within 7 years after his prior entitlement to such benefits was terminated. This provision was included to encourage the person with a childhood disability to experiment with skills without losing entitlement to benefits. Applications for disability insurance benefits may be filed within 3 months after worker's death. Reimbursement from the Disability Trust Funds for vocational rehabilitation was increased in two stages—to 1.25 percent of the trust fund in fiscal year 1973 and to 1.5 percent of the trust fund in fiscal year 1974.

Several other laws also affect disabled persons and the social security disability system. They are as follows:

#### FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969—BLACK LUNG

During consideration of the Federal Coal Mine Health and Safety Act, it was brought out in hearings that, not more than a handful of States recognize pneumoconiosis (black lung) as a disease which would make miners eligible for workmen's compensation. Moreover, in States where this disease was recognized the standards for diagnosis were very strict. In the hearings before the Select Subcommittee on Labor of the House Committee on Education and Labor on H.R. 11476 in June and July of 1969, page 9, representatives of the United Mine Workers of America stated that since 1949 only six cases of pneumoconiosis had been awarded workmen's compensation benefits in **West Virginia**, and in all of these cases awards were granted only because autopsies showed that all had died from heart failure due to massive concentrations of coal dust in the lungs.

Legislation to compensate the Nation's miners from black lung, under Federal auspices, was developed in both Houses of Congress. The Senate amendment for disability benefits was introduced on the floor. It called for the Secretary of HEW to develop interim standards for "black lung" disability; however, the bill clearly intended benefits for complicated pneumoconiosis only. The Secretary was then to enter into agreements with the States to receive and adjudicate black lung claims based on the disability standards published. The Federal Government was to pay all black lung benefits through fiscal year 1971. The States were to assume half of the burden in fiscal year 1972 and fiscal year 1973. After that time the Federal Government would be out of the program. A provision for benefits for widows and dependents was also included in the Senate bill.

The House version was reported out of the House Education and Labor Committee. It also called for payments to be made to miners who had complicated pneumoconiosis only. The Secretary of Labor was to enter into agreements with State governors in order for the States to process and adjudicate claims. The Secretary of Labor would make grants to the States to pay the claims. If an agreement could not be reached with any State the Secretary would pay the claim directly. No claim could be considered unless it was filed within 1 year after an employed miner received his first chest x-ray or was afforded an opportunity to have one. A system for giving every miner a chest x-ray every 6 months was established by the bill. An unemployed miner would have to file for benefits within 3 years after enactment, a widow 1 year after her husband's death. These time limits were meant to restrict payments to miners who already had pneumoconiosis rather than future victims.

In conference it was decided that this program could best be administered by the Secretary of HEW using "the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act."<sup>35</sup> By regulation, disability decisions for black lung payments were made only in the central office in Baltimore instead of the State Federal decisionmaking system used for the regular section 223 disability cases. Evidence for black lung was gathered at the State level. Thus, the

<sup>35</sup> Federal Coal Mine Health and Safety Act, sec 413(b).

Secretary of HEW had ultimate responsibility for the program, the so-called part B payments. Under the law, as it was passed, the Secretary of HEW was to publish regulations for determining disability under black lung. He was given the following guidelines for such regulation:

1. if a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more underground coal mines, there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment ;

2. if a deceased miner was employed for 10 years or more in one or more underground coal mines and died from a respirable disease, there shall be a rebuttable presumption that his death was due to pneumoconiosis; and

3. if a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconiosis by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.<sup>36</sup>

In order to be eligible for the Federal benefits, the miner must have filed a claim for workmen's compensation unless such an act is, in the opinion of the Secretary of HEW, clearly futile. HEW decided that payments for black lung were to be treated as workmen's compensation benefits for the purpose of social security disability benefit off set.

The Federal Government was to take claims for and finance this benefit until December 31, 1972, but claims filed in 1972 would be transferred to the State programs at the end of 1972, the so-called part C program. As of January 1, 1972, States with adequate workmen's compensation programs as judged by the Secretary of Labor would take over the cost of new claims. Coal mine operators would then be liable for the compensation payments if found responsible, by regulations promulgated by the Secretary of Labor. In those States where the workmen's compensation did not come up to the statutory standards for the amount of benefits and the various eligibility standards of Federal law and regulation and where no liable operator can be found, the Federal Government would still be responsible for payments. Claims filed on or before December 31, 1971 would be eligible for lifetime benefits from the Federal Government, all other claims payments will terminate on December 30, 1976.

When a point of order was raised in the House stating that many of the provisions in the Conference report were not in either bill, it was ruled that the changed provisions were germane and proper for consideration by the Conference since such points were not in agreement in both bills.

#### **BLACK LUNG BENEFITS ACT OF 1972**

In 1972 Congress felt that it was necessary to delay implementation of part C of the Black Lung Act until after December 31, 1973. It believed that this additional time was needed in order for the States to create workmen's compensation plans which would comply with Federal standards. The termination date of part C was also extended from 1976 to 1981. So payments under this part will be made after this time.

The conditions of eligibility were liberalized. The distinction between underground and aboveground mines for the purpose of disability payments

<sup>36</sup> Ibid., sec. 411 (c).

was removed ; thus, miners who worked in an aboveground mine can also collect benefits if found to be disabled by pneumoconiosis.

Congress was concerned over the high rate of denials of black lung claims. The Senate Labor and Public Welfare Committee report stated that the SSA definition of disability "is unrealistic when applied to coal miners, if it results in the denial of claims of miners who for medical reasons can no longer be expected to work in the mines and for whom there is no, too often, other realistic employment opportunity \* \* \*." <sup>37</sup> The new more occupationally oriented definition of disability stipulates that a miner is to be considered disabled "when pneumoconiosis prevents him from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time." (sec. 402(f)).

This amendment added another rebuttable presumption of disability to the two other such presumptions found in the Federal Coal Mine Health and Safety Act of 1969. The new presumption (sec. 411 (c) (4)) states:

if a miner was employ-e-d for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram [X-ray] submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that, his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption.

A miner may not now be denied benefits solely on the basis of roentgenogram. (Sec. 413(b).) The Senate Report stated that:

Testimony has further indicated that a negative X-ray is not proof positive of the absence of pneumoconiosis. Studies in addition to that of the Public Health Service confirm the existence of the disease by autopsy where a chest X-ray was negative, indicating an error of 25 percent in diagnosis.<sup>38</sup>

The 1972 Black Lung Act also liberalized benefits for dependents of disabled miners. Survivors of a miner who was totally disabled by pneumoconiosis at the time of his death may receive benefits even though the miner did not die from pneumoconiosis. Children of disabled miners are now eligible for benefits even if both parents are dead. Survivors coverage was also extended to dependent parents or to dependent brothers and sisters if no such parents existed, providing the miner was not survived by a wife or child.

Other changes in the law made section 206 of the Social Security Act, which limits attorney fees in disability cases, applicable to black lung benefits. A provision was added that stated that black lung benefits under part B were not to be considered a workmen's compensation paymen t for the purposes of the social security offset provision, thus, part B black lung recipients will receive the total amount of their social security disability benefits if they qualify. The new law also stipulates that no coal mine operator may discriminate against a miner employed by him who is suffering from pneumoconiosis.

A new section was added which provided for amendments of part B of this law to apply to part C where appropriate, except that no employment' after June 30, 1971 would be considered as applying to the 15-year rebuttable presumption of disability included in this law.

The Secretary of HEW was instructed by this law to inform all black lung claimants who had been denied benefits that their claims were being reexamined in light of these new amendments.

<sup>37</sup> S. Rept. No. 743, 92d Cong., p. 16.

<sup>38</sup> Ibid., p. 10.

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED  
(PUBLIC LAW 92-603) (1972)

The supplemental security income for the aged, blind, and disabled was the one major provision in H.R. 1 dealing with "welfare reform". Effective January 1, 1974, it replaces (except in Puerto Rico, the Virgin Islands, and Guam) the present State programs of aid to the aged, blind, and disabled. This program provides from the Federal Government a guaranteed monthly income of \$130 for an individual or \$195 for a couple. The first \$20 of social security or any other earned or unearned income (other than income based on need) will not cause any reduction in payments. In addition, \$65 of earned income plus one-half of any remaining earnings will be disregarded. Also, any amount reasonably attributable to the earning of income would be disregarded for the blind and any income necessary for the fulfillment of a plan for achieving self-support will be disregarded for persons qualifying on the basis of blindness or disability. A grandfather clause provides that any person who was on the State APTD rolls in December 1973 and who continues to meet the State definition of blindness or disability in effect as of October 1972 will qualify for SSI benefits, except that no person who is medically determined to be a drug addict or an alcoholic will be eligible for SSI benefits unless such individual is undergoing appropriate treatment. Applicants who were not on the State rolls as of December 1973 will have to meet the definition of blindness or disability as stated in title II. Children under 18 with disabilities of comparable severity will be eligible.

Any aged, blind, or disabled person with resources less than \$1,500 (or \$2,250 for a couple) will be eligible. In determining his resources the value of a home (including land surrounding home), household goods, personal effects, an automobile, and property needed for self support will, if found to be reasonable, be excluded. Life insurance policies will not be counted if the face value of all policies is less than \$1,500. (Current recipients under State programs with higher resource limits will be retained.) In determining the resources of a child under 21, the income and resources of the parents or spouse of a parent living in the same household as the child will be considered.

Any State wishing to supplement the benefits to the blind, aged, or disabled may do so. The law states that such payments be made to all persons who are eligible for federal supplemental payments, except where a State may require a period of residence as a condition of eligibility. The law provides no direct federal participation in the costs of State supplemental payments. However, HEW will pay administrative costs of federally administered State supplementation. Moreover, a savings clause is included under which the Federal Government will, if it administers the State payments, assume all of a State's cost of supplemental payments which exceed its calendar year 1972 share of the costs of aid to the aged, blind, and disabled. This savings clause will apply only to State supplementation needed to maintain the State's assistance levels in effect as of January 1972.

States are authorized to continue programs providing social services to the aged, blind, and disabled. There will be a 75-percent Federal matching for the services provided (90 percent for family planning) subject to the overall appropriation limitations established by the State and Local Fiscal Assistance Act.

The Secretary of HEW is to use the apparatus now used for social security disability determinations (sec. 221) for determinations of blindness and disability under this new law. In actuality, the State agencies' decisions are implemented immediately and a random sample is reviewed in the regional offices for quality control as well as decision accuracy. In SSA title II claims, a random sample is reviewed in BDI central and allowances are implemented from there while denials are implemented in the State agencies.

Because, by definition the claimants for SSI are in immediate need, it was felt that some kind of help should be available without the long wait that could accompany a decision, or the 5-month waiting period required for title II benefits. An emergency advance of \$100 against future benefits may be made for a claimant who is presumptively eligible. Presumptive determinations of

eligibility for 3 months may be made ; after that time- a final determination must be made. By regulation, a district Social Security Office may make a presumption of disability only if the claimant meets certain strict criteria of a medical nature. The State offices have more latitude in such decisions.

The Secretary of HEW is to provide for referral of disabled or blind SSI recipients to State rehabilitation agencies at least quarterly for reevaluation of disability and vocational rehabilitation services, except in such cases that he determines such action would be nonproductive. The recipient must accept such services if he is to remain eligible for payments. The Federal Government is to pay the State agency for such services received by the title XVI recipient.

#### **PUBLIC LAW 93-66 (JULY 1973)**

This law changed a number of provisions of the title XVI, supplemental security income for the aged, blind, and disabled including raising the payment level from \$130 to \$140 for an individual and from \$195 to \$210 for a couple, effective July 1974; and requiring that the supplementation of Federal payments by the States be made mandatory for recipients transferred from Federal-State programs. The States, in order to receive medicaid (title XIX) funds, must supplement, the Federal recipients' benefits to bring them up to the recipients' December 1973 payment level. The Congress did not feel that a recipient should be penalized because the APTD program was federalized. Therefore, it enacted this provision to assure that no State APTD recipient would receive less than his State APTD payment under the Federal plan.

#### **SOCIAL SECURITY AMENDMENTS OF 1973 (PUBLIC LAW 93-233) (DECEMBER 1973)**

In 1973 the Congress became concerned over what it felt was an effort, at least in some States, to reduce their AFDC (aid to families with dependent children) cost at the expense of the Federal Government by moving AFDC mothers to APTD so they would be grandfathered in under SSI. The Senate Finance Committee report on legislation, aimed at curtailing this practice, stated :

New York City is apparently hastily examining all AFDC caretaker relatives for disability in order to place the maximum number on aid to the disabled. An article appearing in the New York Times of September 24, 1973, indicated that 65 percent of the first 10,000 welfare mothers screened were found to have severe disabilities. New York City plans to test 250,000 welfare mothers in a ten-week period. This transfer of AFDC mothers to APTD would shift the cost from the Federal-State AFDC program to the Federal SSI program, with higher Federal and lower State costs.<sup>39</sup>

In order to prevent this transfer, Congress enacted a provision which would allow State APTD recipients to be grandfathered into SSI only if they were on the State rolls at least one month prior to July 1973 and were still on the rolls as of December 1973.

Because of the rise in the cost of living, it was decided to make the increases in SSI monthly payments of \$140 for an individual and \$210 for a couple, provided by Public Law 93-66 effective January 1974. In addition, SSI benefits would be increased to \$146 for an individual and \$219 for a couple, effective July 1, 1974.

#### **PUBLIC LAW 93-256 (MARCH 1974)**

This law extends from March to December 1974 or until a redetermination of disability is made, whichever occurs first, the authority of the Social Security Administration to pay benefits to these former APTD recipients whose eligibility for SSI benefits could not be determined within the prescribed time limits, under the provision authorizing payments for presumptive disability

<sup>39</sup> S. Rept. No. 529, 93d Cong., p. 25.

for 3 months. The Department of Health, Education, and Welfare estimated that by the end of March there would still be about 150,000 to 200,000 people whose eligibility would not yet have been decided. As the Committee on Ways and Means report states:

Your committee has been advised by the Department of Health, Education, and Welfare that it is very likely that a substantial majority of the people subject to suspension of payments will ultimately be found to be eligible . . . Your committee is naturally concerned about the harsh and unjust effect of such a suspension?

In addition, the Senate Finance Committee report stated that:

While the Committee agrees that due care must be exercised so as to reach correct determinations it expects that those determinations will be made as promptly as possible, consistent with that objective and that the Social Security Administration will assure that the disability determination units do not give these cases lowest priority simply because payments can be made on the basis of presumptive disability through December 1974. The committee emphasizes the importance of establishing stable precedents for disability determination which will have important consequences for the nature of the administration of the social security and SSI programs in future years.<sup>41</sup>

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<sup>40</sup> H. Rept. 871, 93d Cong., p. 2.

<sup>41</sup> S. Kept. No. 735, 93d Cong., p. 3.