

MEMORANDUM TO SENATOR DOLE

DA: May 23, 1996
FR: Alec Vachon
RE: UPDATE/CHILDREN'S SSI

Attached is a description of the provisions that will appear in the Chairman's mark tomorrow--along with some explanation.

CHAFEE. Senator Chafee is deeply anxious. Bottomline, he wants to vote for the Chairman's mark (and specifically w/you) on this issue, but he has political considerations. The head of the ARC (Association of Retarded Citizens) in Rhode Island is a big supporter of Chafee--did fundraisers and commercials for Chafee in the last election.

The big issue for the ARC is preserving cash benefits--House would have a cash program for some children, a state services program for others. Chairman's mark preserves an all cash program.

HELP FOR CHAFEE. I have met on several occasions with the head of the Washington Office of the ARC--Paul Marchand. Basically, he can live with Finance bill (obviously not happy with any restrictions)--IF HE BELIEVES THE SENATE WILL HOLD TO ITS POSITION IN CONFERENCE.

N.B. One reason for the ARC to be as conciliatory as they are is that all alternatives also tighten eligibility. Conrad bill has about 1/2-1/3 of Finance bill impact--Conrad has been point person for Democrats on this issue. Moynihan bill has same impact--if not more--than Finance bill on Children's SSI.

I will also be meeting at 1:30 p.m. with Chafee's staff, Conrad staff, and head of Washington Office of the ARC--at the request of Chafee staff.

Tomorrow morning, the Committee will walk through the Chairman's mark of welfare reform, mark up on Thursday. Lindy Paull has asked me to present the Children's SSI piece to the Committee because of my knowledge of this area. Sheila has endorsed this request.

STAFF WALK THROUGH THIS AFTERNOON. There will be meeting of member's staff this afternoon to walk through the full welfare reform bill at 3:00 p.m.

DRAFT

TITLE III SUPPLEMENTAL SECURITY INCOME PROGRAM

SEC. 302 SUPPLEMENTAL SECURITY INCOME BENEFITS FOR DISABLED CHILDREN

(a) Changes to Eligibility for Benefits.

(1) Definition of Childhood Disability.

Present Law.--Currently, this is no definition of childhood disability in Title XVI. Instead, at sec. 1614(a)(3)(A), a child under age 18 is determined qualified for Supplemental Security Income ("SSI") "if he suffers from any medically determinable physical or mental impairment of comparable severity" to either one of two adult definitions of work disability that appear in statute. Social Security has been required to translate these adult definitions into a childhood disability definition.

Proposed Change.--Add new sec. 1614(a)(3)(C), "A child under age 18 shall be considered disabled for the purposes of this section if that individual has a medically determinable physical or mental impairment, which results in a marked, pervasive, and severe disability, and is expected to last 12 months or result in death."

Reasons for Change.--Since our society does not expect children to work, nor do we think of disability in children as an inability to work, the lack of a proper childhood disability definition is a fundamental problem and has led to much of the current confusion over eligibility for this program.

(2) Changes to Childhood SSI Regulations.

(A) Modification to Medical Criteria for Evaluation of Mental and Emotional Disorders.

Present Law.--Under the disability determination process for children, the Social Security Administration first determines if a child meets or equals a "Listing of Impairments"--over 100 specific physical or mental conditions that are described in Federal Regulations. Under the Listing that relates to mental disorders, maladaptive behavior may be scored twice, in domains of social functioning and of personal/behavior functioning.

Proposed Change.--Social Security Administration is directed to eliminate references to maladaptive behavior in the domain of personal/behavior functioning.

Reasons for Change.--Current practice permits maladaptive behavior to be double counted in making a disability

determination in the mental disorders listing. This change is recommended by a National Academy of Social Insurance panel on childhood disability.

(B) Eliminate Individualized Functional Assessment.

Present Law.--Under the disability determination process for children, if the Social Security Administration determines that a child does not meet or equal the "Listing of Impairments," it conducts a second evaluation--an "individualized functional assessment" ("IFA")--to determine if by this other standard a child nonetheless qualifies for SSI.

Proposed Change.--Eliminate the IFA.

Reasons for Change.--The IFA is a misnomer--it is less a functional assessment than simply a lower standard of severity of disability to qualify for SSI than the Listing.

The IFA was interpreted as required following a 1990 Supreme Court decision, Zebley v. Sullivan. Under Title XVI, there are two qualifications for SSI for adults. An adult may qualify if he is "unable to engage in any substantial gainful activity" because of disability [sec. 1614(a)(3)(A)], or because of disability, "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" [sec. 1614(a)(3)(B)]. (It is useful to recall that the SSI program was sold to Congress in 1972 as a cash program principally for older Americans--so poor seniors would not have to suffer the indignity of going on "welfare"--i.e., state general assistance programs.)

Since there is no definition of childhood disability in Title XVI, the Social Security Administration has been required to craft one from the two definitions of adult work disability. The Supreme Court in Zebley determined the Social Security Administration employed a childhood definition of disability analogous only to the first definition and not to the second. The Social Security Administration subsequently decided that this finding required them to write a new, lower qualification standard for childhood disability--the IFA--than the Listing of Impairments.

This provision establishes as policy that the SSI program for children is intended for children with severe disabilities, and that the Listing properly reflects that standard. Further, as a reliable disability determination procedure, GAO has found that the IFA is fundamentally flawed.

Moreover, there had been longstanding interest in an IFA-type determination procedure because of perceived neglect of

mental disorders in the Listing. However, a substantially improved Listing for childhood mental disorders was promulgated by the Social Security Administration in 1990, which emphasized functional assessment criteria and added new listings for certain specific conditions, such as Attention Deficit Hyperactivity Disorder (ADHD).

(b) Application to Current Child SSI Recipients.

Present Law.--No provision.

Proposed Change.--For children whose eligibility for SSI may be affected by the amendments made in this bill, the Commissioner shall conduct a continuing disability review within 1 year after enactment. No child shall be removed until such CDR is completed, and a child's right to appeals and other due process procedures is preserved. Notwithstanding such review, no child shall be removed from the rolls until January 1, 1997. A recipient shall be held harmless for any payments made until he is removed from the rolls.

Reason for Change.--This provision is intended to provide a partial grandfather for current recipients (until January 1, 1997), and an orderly "glide path" for removing recipients ineligible under the new amendments. It is estimated that upwards of 40 percent of children qualified for SSI under the Individualized Functional Assessment (IFA) will requalify under the Listing of Impairment.

(c) Continuing Disability Reviews.

Present Law.--Under section 208 of P.L. 103-296, Social Security Independence and Program Improvements Act of 1994, beginning on October 1, 1995, the Commissioner of Social Security will be required to conduct each year at least 100,000 continuing disability reviews (CDRs) of SSI recipients qualified on the basis of disability. The provision expires on October 1, 1998.

Proposed Change.--The Commissioner is required to conduct a continuing disability review every 3 years for every child except for those children whose condition is not expected to improve. The Commissioner is required to redetermine eligibility for SSI for a child whose low birth weight is a contributing factor to that child's disability determination after 12 months of receiving benefits. The Commissioner is required to redetermine eligibility for SSI for an individual who has reached 18 years.

Reasons for Change.--Expands continued disability review requirements.

(d) Study of Disability Determination Process.

Present Law.--No provision.

Proposed Change.--The Commissioner of Social Security is directed to contract with the National Academy of Sciences, or other independent entity, to conduct a thoroughgoing study of its disability determination procedure, including original studies of its reliability and validity.

Reasons for Change.--Currently, in order to determine if an individual qualifies for benefits under either Title II or Title XVI, the Social Security Administration decides whether the individual meets or equals a "Listing of Impairments"--specific physical or mental conditions described in Federal Regulations. If an individual's impairment(s) meets or equals a Listing, this is taken as prima facie evidence that the individual is work disabled and qualifies for benefits. However, there is no evidence that the impairments included in the Listing are by themselves disabling. The Listing is written by the Social Security Administration with advice from outside experts--on what conditions they believe should ordinarily be disabling. The Social Security Administration has never conducted any validity studies as to whether the impairments in the Listing correctly predict work disability.

The study would also examine use of evidence in appeals and any other matters related to the determination process.

(e) National Commission on the Future of Disability.

Present Law.--No provision.

Proposed Change.--The bill establishes a commission, with appointments by the President, House Speaker, and the Senate Majority Leader. Among other matters, the commission is to examine the dramatic projected growth in SSI and SSDI programs and make recommendations for alternative policies; and to examine criticisms by people with disabilities and others that Federal disability programs create barriers to employment and independence.

Reason for Change.--The President's budget projects SSI will jump from \$28 billion in 1995 to \$43 billion in 2000, and SSDI/SSI together from \$60 billion to \$105 billion in 2000. Such cost growth appears unsustainable, yet there has been little attention to these forecasts and the need for better responses.