

# The Gottesman Report

## A Newsletter For Your Benefit

April 2006

### **NOSSCR Conference Report . . .**

Ms. Gottesman attended the NOSSCR conference in Boston earlier this month. Although many topics relevant to Social Security practice were covered, those that received the most attention concerned the issue of ALJ (Administrative Law Judge) bias (see below) and the sweeping changes that have been, and are being, implemented at SSA across the country.

Briefly, SSA is now concerned with providing quicker and more reliable decisions on claims for SSDI/SSI benefits. Claimants can expect to receive quicker determinations, and our office has noticed that indeed many determinations have been quicker. Have they been more legally correct and accurate? No.

SSA's Region 1, which is comprised of the Boston area, has begun a pilot project in which, for the next year, all ALJ decisions, both favorable and unfavorable, are being pulled and reviewed for legal correctness. SSA wishes to create a database of the common types of errors that are being made by the local offices in their initial and reconsideration determinations. Based on this information, they plan to implement local office staff re-training to eliminate many of those errors. It is hoped that this will result in fewer requests for ALJ hearings.

However, SSA is also planning to implement changes at the hearing office level, which may result in continued or further denial of due process for Claimants. For example, there will be a time limit

placed on submission of additional medical evidence to be reviewed by the ALJ. Also planned is the eventual elimination of the Appeals Council (AC) review level. The AC reviews ALJ decisions, upon the request of the Claimant or his/her attorney, to determine whether the ALJ made any legal errors. The AC then has the power to send the case back for another hearing, to pay benefits outright, or to refuse review. While elimination of this level of review means a shorter waiting time to take the case to Federal Court, SSA is also considering the establishment of a special Social Security Court. This step, should it happen, may hurt Claimants in that it may be a method to rubber stamp SSA Administrative decisions and/or result in denial of due process in its own procedures. Most advocates are strongly against establishment of this type of Court.

Our office takes pride in relating these changes to our readers so that they may be informed consumers of SSA's services.

### **ALJ Bias . . .**

As our readers are aware, our office is constantly reporting on procedures and processes at the ALJ level, in order for our clients who are facing hearings to understand, and be prepared for, what an ALJ might do or say at the hearing. Our office has been in the forefront of this hot topic area on a case by case basis. Currently, we have pending in Federal Court an action to allow one particular client to bypass yet another ALJ hearing and proceed to Federal

Court to have the merits of his case determined by the Federal Judge. Although case law is not in our favor, there have been instances in which the bypass has been allowed. In fact, several years ago there was a class action against one of the Queens ALJs, which was voluntarily dismissed when the ALJ promised to "behave himself." Unfortunately, that promise was very short-lived. Many Claimants who must go through the ALJ process in Queens will understand that as a general rule these ALJs are not concerned with protecting Claimants' rights. If the Claimant does not "look disabled," or is not of the right age and, in some cases, gender and color, it is almost guaranteed that the ALJ will rule against that Claimant. This adverse ruling means a wait of two years or more, in general, until the Appeals Council sends the case back for another hearing before the **SAME** ALJ.

In the case in which our office has been involved, we sought input from other NOSSCR members concerning their experiences in the Queens OHA. Our office received many offers to document other instances of ALJ bias in Queens. Currently, this case is before the Federal Judge who will decide whether our client will be allowed to bypass the administrative process due to these allegations of ALJ bias. This lawsuit sets the stage for acknowledgment by the Courts that ALJ bias does exist and cannot be allowed to continue. Its result will have far-reaching consequences on future ALJ behavior not only in Queens, but nation-wide. Our office is proud to be in the forefront of making new law for the protection of our clients.

### **Other news ...**

In December 2005 the U.S. Supreme Court upheld SSA's obligation to withhold benefits in order to collect student loan debts

that are more than ten(10) years old. Any Claimant seeking SSDI/SSI benefits is urged to make a payment plan with your student loan provider so that you will not be in default and risk collection of lump-sum retroactive and ongoing benefits.

Our office has repeatedly advised claimants that if their application for SSDI/SSI benefits is denied, that denial must be appealed. It is not wise to re-apply following a denial. In addition to the fact that all accumulated retroactive benefits are lost if a new application is filed, the legal doctrine of "res judicata" may prevent the new application from going forward. If the case comes before an ALJ, it is subject to dismissal on the basis of "res judicata" – a term which means that "the matter has already been decided." We urge all those who are faced with denial of their application to appeal rather than start a new application. As always, our office is ready to discuss all such matters, on a complimentary basis, with anyone who contacts us.

### **Finally ...**

The best "thank you" for a job well done is the referral of a new client.

If you are interested in seeing a particular issue addressed in this Newsletter, or if anyone you know wishes to be placed on the mailing list for future Newsletters, please let us know.

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