



ANCOR Testimony Submitted for the Record to the House Ways and Means Subcommittee on Social Security for the May 21, 2009 Hearing on Social Security's Employment Support Programs for Beneficiaries with a Disability

The American Network of Community Options and Resources (ANCOR) appreciates this opportunity to provide comments and recommendations for the record to the House Ways and Means Subcommittee on Social Security on Social Security's employment support programs for beneficiaries with a disability. ANCOR is the national organization representing over 800 private providers of community living and employment supports and services to over 500,000 individuals with disabilities.

The focus of ANCOR's testimony is on the Ticket to Work and Work Incentives Improvement Act (TWWIIA) as signed into law as P.L. 106-170 and effective January 28, 2002. ANCOR strongly supported the passage of TWWIIA because of the program's possibility to remove work disincentives that prevent individuals with disabilities from working. ANCOR believed that the new Ticket program would strengthen individual choice and help individuals with disabilities work by allowing them to access a larger universe of private vocational and employment services providers rather than relying solely on the state vocational rehabilitation agency and access to benefit planning services.

Despite the program's initial potential, the original regulations were insufficient to support the intent of the legislation. In September of 2005 and August 2007, the Social Security Administration (SSA) issued Notices of Proposed Rule Making (NPRM), which proposed changes to the original regulations, and became effective in July 2008. These regulations aimed to improve the payment systems for Employment Networks (EN) and provided greater financial incentives and flexibility for ENs. ENs now earn milestone payments earlier in the employment process and are reimbursed at a higher rate based on beneficiary attainment of specific earnings targets.

Many ANCOR members who initially signed up to be ENs were forced to withdraw because they could not afford to sustain providing services. The expenses associated with providing services as EN out-paced revenues. Under those regulations, an EN outcome payment was worth only 40 percent of an average SSDI or SSI benefit. An EN that opted to receive payments under the Milestone System was limited to four milestone payments. Furthermore, an EN would receive these milestone payments only when a beneficiary it served engaged in substantial gainful activity (SGA). For many individuals with significant disabilities, reaching SGA is often difficult because of challenges due

to their disability. The regulations set the bar for ENs receiving payments too low and the bar for receiving payments too high.

Because of limited EN participation, the early vision of beneficiary choice could not be realized. To address the issues imparted by the initial regulations created a more attractive EN payment structure. The 2008 regulations increased the value of outcome payments (they are now worth 67 percent of an average SSDI or SSI benefit) and increased the value of milestone payments (increasing the total payout under the Milestone System relative to the Outcome System). The new Ticket regulations increased the number of milestone payments an EN can receive from 4 for serving any Ticket beneficiary to 15 for SSDI beneficiaries and 22 for SSI beneficiaries. The regulations also allow an EN to receive the first four milestone payments when a beneficiary it serves earns \$700 in a month, which is below the SGA level.

In addition, many beneficiaries may need to ease their way back into the workforce via part-time work. However, since the previous EN payment structure based payments on attainment of SGA, ENs were reluctant to accept Tickets from beneficiaries seeking part-time employment. The current EN payment threshold removes previous disincentives to serve these beneficiaries.

However, it remains extremely difficult to achieve SGA for severely disabled consumers working part-time. As a EN it takes the same amount of resources to support a consumer working part-time as it does someone working full-time. It is significant to note that 20 to 30 hours per week is the maximum that many severely disabled consumers can work. One ANCOR member (an EN) has one beneficiary who has been working part-time for more than six months; in all likelihood she will not be able to reach SGA.

SSA also increased available services by permitting State VR agencies to work collaboratively with ENs in an arrangement known as Partnership Plus. This "team" approach allows State VR agencies to provide training and job placement services and then refer beneficiaries to ENs, who can offer job retention supports. This initiative increases the likelihood that beneficiaries will keep working and leave the rolls. In addition, the new regulations abbreviated the process for the One-Stop Career Centers to become ENs.

SSA reports that prior to publishing the new Ticket program regulations, it identified three key indicators to assess the degree to which the new regulations addressed many concerns. The new regulations were measured by: 1) the number of new EN contracts, 2) the number of beneficiaries accessing EN services, and 3) the number of beneficiaries entering the workforce. SSA reports that compared to the 11 months preceding the new Ticket rule's publication, the number of new EN contracts has increased from 5 to 34 per month. At the end of April, there were over 1,300 ENs. Furthermore, the number of beneficiaries

assigning their Tickets has increased from 332 per month to 867, and the number of job starts has increased by 83 percent.

SSA also committed to recruiting more ENs. Through their marketing contractor, Cherry Engineering Support Services, Inc. (CESSI), SSA is contacting ENs that have gone 6 months without taking a Ticket to determine whether they can resolve any problems. CESSI also holds State and regional "Ticket Express" conferences to recruit new ENs and share best practices and has made a lot of educational materials available on line and through conference calls. In addition, SSA made a point to attend and present at conferences, such as ANCORs, in order to reach out and educate potential ENs.

Social Security beneficiaries were also extended outreach activity. For example, they created the Work Incentive Seminar (WISE) event to encourage beneficiaries to attempt to work. WISE events educate beneficiaries and their families about work incentives. Employers, ENs, State VR agencies, Protection and Advocacy agencies, and other employment support providers attending these events share information with beneficiaries about available services and employment opportunities in their communities.

Benefit Offset Demonstration

Long before TWWIIA, SSA was required to initiate a national demonstration to test alternate methods of treating work activity in the Social Security Disability Insurance (SSDI) program through a benefit offset project. The purpose of the Benefit Offset demonstration was to determine the effect of employment outcomes including wages, benefits, hours worked, and job retention when a financial offset in benefit payment is applied reducing Title II disability benefit payments by only one dollar for each two dollars earned. This work incentive already exists in the SSI program and enables a beneficiary to successfully and gradually work their way off benefits and move toward self sufficiency by decreasing benefit payments as earnings increase. This encourages work but does not penalize the individual or force them to give up a full benefit amount when they are working their way back to full employment.

Despite years of planning and design, the Benefit Offset *National* Demonstration (BOND) is not scheduled for implementation until FY 2010. Prior to this national implementation, SSA conducted a four-State pilot demonstration, which began in August 2005. The results have not been shared publicly. This long overdue project will allow beneficiaries to face a gradual reduction in their benefits eliminating the abrupt loss of cash benefits in the Title II disability programs when the beneficiary works and has earnings over the Substantial Gainful Activity (SGA) level which is currently \$940.00 a month. If properly conducted and implemented, the strategies developed for this project could serve as a powerful incentive and should considerably reduce barriers to work for SSDI beneficiaries by allowing them to maintain or increase their employment, earnings and

financial independence. ANCOR believes it is imperative that this project not languish any longer but instead move forward with full deliberation and intent. In addition SSA should be required to report the results of their findings to the public in a timely manner.

Overpayments

As you know, the SSI and SSDI programs include numerous work incentives which allow beneficiaries to work and test their ability to become self-sufficient. The success of these work incentives, as well as that of the Ticket to Work program, rests heavily on the ability of SSA to record and track wages and make prompt adjustments to benefit levels when working beneficiaries report earnings, thereby reducing overpayments. According to an SSA Office of Inspector General Report dated April 2006, income or earnings from work activity was the most significant reason for overpayments. These overpayments were said to be much larger and spanned longer periods of time than the overpayments identified by SSA's normal processes of Continuing Disability Reviews (CDRs) and data matches to detect deaths, prisoners, fugitives, and other issues that impact eligibility.

Overpayments have been a huge concern for many years and are recognized as a tremendous disincentive for beneficiaries to try work. Many beneficiaries do the right thing: they report their work in person or to the 800 number and are told that SSA will let them know if anything is a problem. At best SSA takes a month or two to process the report, which causes overpayments that the beneficiary is obligated to repay. However, SSA very often fails to process the earnings reports and adjust the payments for months or even years. Beneficiaries reasonably assume that SSA is paying them the correct amount. When SSA finally gets around to processing the earnings reports, the beneficiary is hit with a demand to repay overpayments that often amount to thousands of dollars. This can be devastating for someone whose sole or primary source of income is their benefit payment (currently a maximum of \$674 per month for SSI beneficiaries).

ANCOR and the disability community continue to struggle with the inability of SSA to record and appropriately adjust benefits in a timely manner. SSA does not require earned income reports to be made in any specific way; they can be made in writing, by calling the 800 number, or by stopping in to report at an SSA field office. There is no particular form to complete or file, and until the Social Security Protection Act of 2004 was implemented, there was no official record for the beneficiary to use that proved the report was made. In addition, there appears to be no effective internal system for recording the income which beneficiaries report. And despite the development of internal electronic tools such as eWorks, this program is not used consistently across the country. In addition SSA does not seem to realize that people do not understand the terms of art used by the agency when making SGA determinations and staff are not always clear in their explanations or do not have the time necessary to explain

them well enough. Therefore important wage deductions such as Impairment Related Work Expenses (IRWEs) Blind Work Expenses, Subsidies and Special Conditions do not get reported or considered.

In terms of overpayment issues, field office staff seem to have a single rule: “you worked; you are at fault for the overpayment”. The staff is very reluctant to apply the other work incentive rules, like IRWEs or special conditions after wage reporting has occurred, and rarely are these questions asked during the submission of this type of wage information.

One ANCOR member has several consumers who have tried to work in the past and have been penalized for overpayment. In one case in particular a consumer contacted SSA and informed them of her employment and income, a year later she was contacted by SSA for overpayment of benefits. This had a traumatic effect on her and evoked a fear of benefit loss in regards to employment. In this case WIPA (see below) was used to discuss her benefits in relationship to employment.

SSA clearly needs to improve its processing of work and earning reports. Most individuals who receive these benefits are overwhelmingly low income and do not have the income cushions to deal with unreliable application of the work rules. Some at SSA seem to have a cavalier attitude about overpayments (considering them low interest loans), not understanding the financial and emotional effect of a large overpayment on someone who is low income and who thought s/he was doing a good thing by going to work.

Many claimants do not understand the differences between SSI or Title II disability benefits and many do not know which is which even though they may get both. These concurrent beneficiaries will not know to report work activity separately to the Claims Representatives assigned to each of the benefit programs. As a result, concurrent beneficiaries are doubly impacted with overpayments over time. The SSI file and Title II disability file are separately maintained and information within the office is not communicated across programs. SSA staff who are assigned to only one benefit program (SSI or Title II disability) should understand that claimants will not know to separately report work and they **should make sure that the work report gets to all the right places**, including the payment processing center, and that it is acted on in a timely fashion.

Expiring TWWIA Provisions

There are several expiring or expired provisions contained within TWWIA that are critical to facilitating the participation of those on Title II and/or Title XVI in the workforce. **The failure to extend these programs could undermine the long-term impact of the law in improving employment opportunities for this population of people with disabilities.** Two such programs include the Work

Incentive Planning and Assistance (WIPA), and the Protection and Advocacy for Beneficiaries of Social Security (PABSS).

Work Incentive Planning and Assistance (WIPA) Program --The Social Security Administration has long been committed to the WIPA program and issued a Request for Proposal inviting application for these programs in May of 2000, with a second round of application in the fall of 2006. WIPA grants to non profits and other agencies fund outreach, education and benefits planning services to Title II Disability and SSI beneficiaries about work incentives and services for finding, maintaining and advancing in employment.

WIPA grantees inform beneficiaries of the impact that employment will have on their disability income and medical coverage, and address many of the real fears that individuals have about going to work, including the risk of losing health coverage. These grants, have consistently demonstrated their effectiveness in explaining work rules and stressing the important information that people need to know before going back to work. Relevant pamphlets and the "Red Book" are not enough to help individuals understand the confusing work rules. People often need more than one explanation and need to see the rules applied to the facts of their cases. Trained WIPA staff is skillful at making sure that beneficiaries know what will happen to their benefits when they go to work. Often, the fear of losing ones benefits is enough to prevent someone from seeking employment.

The Protection and Advocacy for Beneficiaries of Social Security (PABSS) – This program was created in TTWWIIA to protect the rights of beneficiaries as they attempt to go to work and was the last programs within TWWIIA to be fully implemented. It is the responsibility of the PABSS programs to provide information, advice, and remedy to complaints of beneficiaries utilizing their options to explore work.

In addition to resolving work related overpayments and assisting individuals to access the services and supports they need to work, this program assures that legal protections are given to beneficiaries in the difficult economic climate where discrimination against people with disabilities may increase. PABSS helps people with disabilities maintain employment, enforces the non-discrimination provisions of the ADA, works for the provision of reasonable accommodations, and seeks to protect other basic employment rights that are important to the employment of people with disabilities.

SSA and Work Incentives

The Ticket to Work Program and other provisions of TTWWIIA are only one part of a larger discussion needed concerning barriers to employment for Social Security disability beneficiaries. Many other policies within the Social Security

Disability and Supplemental Security Income programs serve as disincentives to workforce participation for people receiving these benefits.

The elimination of the 24-month waiting period for Medicare -- Good health is essential to a successful return to work. Failure to have access to health coverage undermines the person's ability to stabilize his or her condition and to attempt a return to work when that is appropriate. This waiting period also forces individuals to impoverish themselves to qualify for Medicaid, putting even greater burden on this already strapped program.

Allowing permanent premium-free access to Medicare for beneficiaries who work -- Social Security disability beneficiaries who have lifelong conditions should retain lifetime access to Medicare. Once someone goes beyond the premium-free Part A coverage provided under TTWWIIA, a working person with a disability can buy-in to Medicare but at significant expense. Providing continued attachment to Medicare for working beneficiaries would ensure on-going eligibility for health care. Some beneficiaries, based on their earnings, should have the ability to obtain this coverage through a buy-in program.

Increasing Medicaid asset and resource limits – SSI assets/resource limits have increased only minimally since 1974. As a result, working people with disabilities who rely on that program for critical services and supports cannot earn and save like most Americans.

Modifying “deemed” SSI eligibility to protect Medicaid for certain working people who transition to Title II -- The deeming of SSI eligibility is important to avoid creating an unintended disincentive to work, especially for younger individuals who receive Disabled Adult Child or DAC benefits. Current law creates a constraint against attempting to work because it only provides protection when the *sole* reason a person's income exceeds the SSI level is the Title II benefit increase. Thus, working and having any earnings will automatically make the person ineligible for the deemed SSI status that protects his or her Medicaid. This is especially ironic, because if s/he had been solely an SSI recipient, the person would be able to benefit from the 1619(a) and (b) work incentives. This can be fixed by providing that SSI deemed status will continue so long as the person's only other reason for ineligibility is earnings from work.