

## 14.Exploring an Alternative Social Security Definition of Disability

*Neil Jacobson, Aya Aghabi, Barbara Butz, and Anita Aaron*

### INTRODUCTION

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Since Congress created the Social Security Disability Insurance (SSDI) program in 1956, studies, briefs, and advocates have examined the definition of disability in the Social Security Act in a context of being a barrier to the employment of people with disabilities. “*Securing the Social Contract: Reforming Social Security Disability*” is a recent example of a straightforward discussion on the topic addressed to the President and Congress (National Council on Disability 2015, 1).

The authors acknowledge and applaud the Social Security disability programs’ track record of preventing millions of people with disabilities from living in abject poverty or family dependency. At the same time, the current strict definition, tied to an exhaustive and time-consuming application process, has measurably extended time spent away from the workforce, or preparing a return to it.

Systemically prolonging time away from the workforce may be the most cogent reason to evaluate a repurposing of the SSDI program.

We cite the definition of disability for adults in the Social Security Act, in use by both the SSDI and the Supplemental Security Income (SSI) programs: “disability as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”<sup>1</sup> Under this definition, people with disabilities have been required to prove their inability to work at SGA (\$1090 per month in 2015) to be eligible for Social Security disability programs. This definition of disability used by the Social Security Administration (SSA) for both the SSDI and SSI disability programs has not kept pace with the changing nature of work, options available for accommodations, and technological supports available to people with disabilities.

In 2006, the Social Security Advisory Board wrote: “At the same time, we believe that the existing definition of disability that emphasizes inability to work does not represent the proper central approach to providing support to persons with significant mental or physical limitations. An overall uniformly applicable and systematic approach needs to be adopted in which the initial focus is on assessing what individuals can do and helping them to obtain the support services, both financial and nonfinancial, that are needed to maintain or increase expectations that return to work (or, as appropriate, starting work) is a realistic possibility. The determination that an individual cannot work should be the option of last resort, not the first option” (Social Security Advisory Board 2006, 1).

The nature of work in the United States has fundamentally changed in the past 60 years since the establishment of the SSDI program and later the SSI program. In 1955, as Congress was shaping the

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<sup>1</sup> 42 U.S.C. § 423, 1382c.

legal framework for the SSDI program, more than 30 percent of American jobs were in manufacturing. Over the next 50 years, that number decreased to 17 percent, while white-collar, service industry, and retail jobs increased substantially (Lee and Mather 2008, 9). The digital age since the 1990s is transforming the workplace for a second time since 1956. Laws including the Americans with Disabilities Act of 1990 (ADA) created accessible transportation and workspace standards, along with requirements for employers to provide reasonable accommodations for people with disabilities. The authors' experiences show that these laws enable many people with disabilities to pursue employment and careers they could not have done before. Likewise, technology and the trend toward virtual offices and online businesses have greatly increased career and employment opportunities for people with disabilities. The authors postulate that as the nature of work changes, so, too, should the definition of disability.

A systemic assumption that people with disabilities are unable to work acts as a disincentive to the employment of people with disabilities. Complex and lengthy application procedures that apply this construct set up a risk-averse culture after the award of benefits that moves away from seeking employment, or any change that is perceived to jeopardize benefits. While the authors are not benefits planners in the field, we hear regularly from benefits planners that disability beneficiaries are risk averse when it comes to planning employment, with the experience of undergoing the current application process cited as a chief reason for their risk-averse thinking and behavior. While recent beneficiary survey data shows that over 40 percent of Social Security disability beneficiaries want to work, the SSA disability application process supports a prolonged separation of a large group of Americans from productive living (Livermore 2010, 7).

Social Security's systemic definition of disability can foster a culture of low expectations, inhibit early interventions, and cannot integrate well with employers' opportunities to provide accommodations for their employees with disabilities. To encourage the investment in employment of people with disabilities, the authors call for modernizing the definition of disability by eliminating the requirement that people with disabilities prove their inability to work to get the supports they need to enter or re-enter the workforce.

Developing a new construct to replace the phrase "inability to engage in any substantial gainful activity" can lead to a change in the fundamental principles of the SSDI program and, in turn, provide an integrated focus on early intervention. From there, the mission of SSDI could expand from a wage replacement program to a program that safeguards against the high cost of disability and enables workers to connect to work, stay at work, or return to work. The re-purposed SSDI program would work in tandem with braided and blended vocational and other public funding streams.

We want to emphasize the need for a careful development phase where many of the details of the suggestions put forth throughout this paper would be worked on by affected agencies. The section titled "Intermediate Steps – The Development Phase" provides details of this process. We want to emphasize the importance of carefully testing a re-purposed SSDI program. Throughout this paper, we will recommend ways to limit potential exposure until evidence based data is available. We recommend that one or more pilots be conducted before a national rollout of the proposed program.

## **THE PROBLEM – THE CURRENT SOCIAL SECURITY DEFINITION OF DISABILITY IN THE SSDI PROGRAM**

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According to the U.S. Census Bureau, in 2010 approximately 56.7 million people (18.7 percent) of the 303.9 million in the civilian noninstitutionalized population had a disability (Brault 2012, 4). Four in every 10 individuals aged 21 to 64 with a disability were employed (41.1 percent), compared to eight in 10 adults without disabilities (79.1 percent) (Brault 2012, 5). Further, 34 percent of people with disabilities live in households with annual incomes of \$15,000 or less – a percentage almost three-times higher compared to non-disabled peers (34 percent versus 12 percent, respectively). In addition to limited household income, 59 percent of people with disabilities reported having insufficient resources to live at the poverty level for three months without another means of support, while 37 percent without disabilities report being asset poor (Katz and DeRose 2010, 345).

Much of the social-political progress made by people with disabilities since the 1950s can be attributed to a paradigm shift from the medical model to the independent living and social model framing disability. June Isaacson Kailes has documented a comprehensive comparison of these two paradigms. This shift included a self-identifying conviction from Americans with disabilities that society must be accessible to all people (Kailes 2002).

Surprisingly, in the context of a huge cultural and legislative shift since the 1960s, the employment rates of people with disabilities since enactment of the ADA have not changed significantly. We view the systemic penetration of SSA's definition of disability into the practice and culture surrounding these Americans as an impediment to their economic growth. The definition systematically sets up low expectations of people with disabilities, which influence the unemployment trends of people with disabilities (Social Security Advisory Board 2006, 1). While the Rehabilitation Act of 1973 and the ADA have resulted in greater accessibility and acceptance for those with disabilities, and have changed the entire legal framework for workers with disabilities, they have had little impact on the employment rates of people with disabilities (Jacobson 2013).

By defining the eligibility requirement for benefits as the inability to work and connecting the receipt of disability benefits to a form of compensation for an inability to work, Social Security reinforces the notion that people with disabilities cannot work and need not try. At the least, we posit there are negative effects on the risk management and decision-making environment for significant numbers of SSDI beneficiaries. As the Social Security Advisory Board suggested in their 2006 *Statement on the Supplemental Security Income Program*, “it should be possible to make changes that would simplify that program and at the same time provide stronger work incentive features” (SSAB 2006, 22).

The current monthly stipend is one of the systemic problems with the SSDI program. The SSDI cash benefits are a partial replacement of lost wages associated with long-term impairment. Although SSDI recognizes that there are often additional costs caused by disability and allows beneficiaries to take individual work related expenses into account when calculating earnings, benefits planners report to us that many beneficiaries find these features complex and not worth the effort (SSA 2015a). Another systematic problem is that SSDI does not foster, address, or connect with early intervention strategies. Without early intervention, the opportunities to help employers make accommodations for their employees are often lost. The benefits of early interventions have been well documented (Mitra and Brucker 2004, 159-67). For people who become disabled or whose disability progresses while working, early intervention can reduce time away from the workforce. The sooner employees address and manage their disability, the sooner their environment becomes accessible to their needs, and the sooner

they receive services they need the better. It is important for the system that employees acknowledge and address their emerging disability issues promptly so that the employer can make necessary accommodation as quickly as possible and keep the employee working when possible. The proposed new definition of disability promotes and can work with early intervention strategies in play today, including working with employers to make reasonable accommodations that allow more workers to remain employed.

It is acknowledged that there have been studies that argue the current Social Security definition is appropriate and should not change. These studies say the SSDI program and the strict “inability to work” is based on the assumption that only a small subset of individuals with disabilities—those with the most severe limitations—are precluded from work and, therefore, deserving of income replacement, and that it should remain that way. In 2004, the National Academy of Social Insurance issued such a study. That study also said that all other individuals with disabilities can and should work, and that a variety of programs to assist those individuals in working are available (Reno 2004). However, a recent Social Security Advisory Board study stated that, “the current disability programs, though well intentioned, are badly fractured and disjointed. A unifying point of vision, oversight, and management is desperately needed” (SSAB 2006, 32).

To be awarded SSDI, a person with disabilities must show they are not working above SGA. To receive vocational rehabilitation services, a person must show that the vocational services are warranted and likely to improve employment outcomes. To receive services from workforce development agencies, a person must be looking for work or work with the agency on a plan for employment. To have reasonable accommodations that support a person with a disability at work, a person must be employed. With current work incentive programs, vocational rehabilitation programs, workforce development programs, higher education programs for people with disabilities, and supported employment services for people with a developmental disability or mental illness, federal agencies spend billions of dollars annually trying, with mixed results, to improve the employment rate of people with disabilities (Livermore et al. 2011, 6).

Redefining SSDI’s definition of disability could pave the way for more people with disabilities to achieve economic success.

As the Social Security Advisory Board wrote in its 2006 report, “The result has been to confirm our belief that a definition based on inability to work collides with the goals of the Americans with Disabilities Act, which proclaimed that the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” In this global economy, when employers know they can hire highly qualified and experienced people anywhere in the world, expecting them to hire people with disabilities will only become more difficult. These antiquated constructs are the crux of the problem behind the employment of people with disabilities. The paradigm for the 21st century should shift from perceiving people with disabilities as unable to work to providing people with disabilities the technology and services they need so that they can work and be independent.

Social Security work incentive programs in place over the last few decades to improve the rate of employment for disability beneficiaries have not appreciably changed employment rates for those eligible for them. For example, the Ticket to Work program has been designed to assist recipients to return to work by expanding vocational services available to SSDI and SSI recipients, and providing additional protections to return to work without risking their benefits. Under the Ticket to Work

program, vocational services, nonprofits, and other entities can become Employment Networks (ENs). SSDI and SSI beneficiaries receive services from ENs by assigning their Tickets to them (Roberts 2008). A recent study concluded that the number of beneficiaries who were assigned a Ticket to an EN has continued to grow but, as of December 2010, represented only 6.25 percent of work-oriented beneficiaries and only 2.5 percent of all beneficiaries (Prenovitz et al. 2012, 39). In addition, this growth has not been significant. “[Ticket To Work] participation among work-oriented beneficiaries was 6 percent in 2010, 5.6 percent in December 2009, and 5.4 percent in December 2008” (Livermore et al. 2013, 13). The Ticket to Work program is having a limited impact on the employment of people with disabilities. We suggest that a significant reason for this outcome is because it does not address the root of the problem—the definition of disability.

## THE PROPOSED SOLUTION

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### The New Definition of Disability

The Social Security Administration defines disability by saying:<sup>2</sup>

To meet our definition of disability, you must not be able to engage in any Substantial Gainful Activity (SGA) because of a medically determinable physical or mental impairment(s):

- That is expected to result in death, or
- That has lasted or is expected to last for a continuous period of at least 12 months.<sup>3</sup>

We recommend that disability should be defined as follows:

“A disability is a medically determinable physical or mental impairment(s) that has resulted in a substantial impediment to employment and is expected to result in death or has lasted or is expected to last for a continuous period of at least 12 months.”

This proposed definition could focus the SSDI program on removing impediments to employment rather than on the inability of beneficiaries to work. It would set an expectation that impediments could be addressed and removed, enabling beneficiaries to stay at work or return to work as soon as possible. The definition would work with constructs that employees should seek assistance from SSDI as soon as they experience a substantial impediment to employment and, if possible, not wait until they are unemployed.

The California Department of Rehabilitation defines a substantial impediment to employment as “a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual’s abilities and capabilities.”<sup>4</sup>

The Social Security Administration has experience evaluating induced entry into disability rolls caused by policy changes. In 2010, at SSA's request, the Rand Corporation issued a report suggesting two

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<sup>2</sup> 42 U.S.C. § 423, 1382c.

<sup>3</sup> Social Security Ruling 82-53, “Titles II and XVI: Basic Disability Evaluation Guides.”  
[http://www.socialsecurity.gov/OP\\_Home/rulings/di/01/SSR82-53-di-01.html](http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR82-53-di-01.html)

<sup>4</sup> CCR Title 9 Section 2027.

models for evaluating induced entry. One model is a research design using stated preferences (SP) and the other is a research design using past policy (PP) changes in a simple structural framework (Maestas et al. 2010). These models can be modified to incorporate policy changes suggested arising from the proposed redefinition of disability. Executing one of these models during the Development Phase would enhance the accuracy of the proposed cost-benefit analysis.

To avoid the induced entry of new applicants because of changes in the program, SSDI may decide to restrict eligibility to applicants categorized as “most significantly disabled” on the Level of Significance of Disability. Most Significantly Disabled is defined by California statute as an eligible individual who has a serious limitation in terms of an employment outcome in at least four functional capacity areas.<sup>5</sup> It is recognized that changing Social Security's definition of disability will require regulatory changes regarding eligibility determinations. These changes should be defined during the development phase.

### **Implications of the New Definition**

Under the current definition, SSDI provides a cash benefit that partially replaces lost wages, Medicare after two years of cash benefits, and access to the Ticket to Work program.

Integrated with the proposed definition, two stages of SSDI would be available to SSDI beneficiaries. The first stage would provide Coordinated Employment Services; the second stage would be a cash benefit that offsets the high cost of disability. This model is similar to one proposed by the Social Security Advisory Board in 2006. The new definition of disability together with the two new stages of SSDI is what we believe will significantly improve the employment rate for people with disabilities.

Coordinated Employment Services would support the SSDI beneficiary Individualized Career Plan (ICP), created, monitored, and maintained with professional services from a career coach. The ICP describes tasks to be accomplished to stay at work or return to work. These tasks may include:

- Completing a rehabilitation program
- Finishing a school, training or retraining program
- Assessing and modifying the workplace environment
- Obtaining benefit and financial planning services
- Acquiring self-employment and business start-up services

Many, if not all, of these services are available to people with disabilities today. There is, however, no formal coordination of these services. Systematically there are few if any federal requirements to coordinate these services. The proposed new definition of disability implicitly calls for such expectation and coordination to be established. This can be accomplished through a collaborative effort among federal agencies, including SSA and the Departments of Health and Human Services, Education and Labor. How these agencies will collaborate would be defined and agreed upon during the development phase. One precedent for this type of collaboration is in the PROMISE program and other efforts targeted to SSI youth (Thompson and Barnes 2007, 13-4). The administrative

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<sup>5</sup> CCR §7051(a)(5)(C).

## EXPLORING AN ALTERNATIVE SOCIAL SECURITY DEFINITION OF DISABILITY

responsibility for Coordinated Employment Services should be with the SSDI program since that is where most people go when their disabilities impede their employment.

We acknowledge that some beneficiaries do not work and will not be able to work even with more readily available supports. For beneficiaries unable to work, the ICP would indicate that fact, along with providing a date similar to current SSDI regulations, if any, when the situation should be re-evaluated. Except perhaps meeting briefly with a career coach, these beneficiaries should experience no change from the current SSDI program.

We emphasize that only the coordination of services is being added. Career coaches will help participants navigate their way through existing services. It is not suggested that services be consolidated or centralized. With proper collaborative agreements, the costs, eligibility and administration of these services would be shared with each agency contributing through a blended and braided approach.

With the new definition of disability, the SSDI eligibility criteria would change. A person would be eligible for SSDI and Medicare if the person has earned at least 40 Social Security work credits, 20 of which were earned in the last 10 years, and is considered disabled under the new definition. The applicant with enough work credits may still be employed and qualify for services (SSA 2015b).

The new definition of disability does not use the concept of “substantial gainful activity.” In lieu of defining the monthly cash stipend as a replacement of lost income, it should be seen as an offset for the high cost of disability. The cost of disability is often quite substantial and has been well documented. In 2008, Livermore, Stapleton and O’Toole reported the average federal expenditure for people with disabilities who were receiving SSI and/or SSDI was \$27,100. This was 261 percent greater than the 2008 federal poverty level (Livermore et al. 2011, 8).<sup>6</sup> It is acknowledged that this includes Medicaid and Medicare expenditures. Given that the high cost of disability is often health care related, e.g. Personal Assistant Services, including Medicare and Medicaid expenditure is appropriate. Another report states, “There is little disagreement with the idea that disability imposes extra costs on individuals and their households, above and beyond the often negative effect on the individual’s earnings” (Stapleton et al. 2008, 8).

The formula for determining the amount of the insured individual’s monthly benefit could remain the same as it is today. To begin receiving cash benefits, SSDI beneficiaries should meet the same criteria as today, thus avoiding the woodwork effect and focusing attention on Coordinated Employment Services. Cash stipends should be viewed as temporary benefits rather than lifelong payments by beneficiaries able to return to work. The purpose of the stipend (offsetting the high cost of living versus wage replacement) is just as important, if not more so, than how the amount of the stipend was derived.

A person would continue to qualify for SSDI until they were no longer disabled as per the new definition of disability, or until they reached retirement age or died. Recognizing that at some earnings level a person with a disability should be able to afford the high cost of his/her disability, beneficiaries should keep their full federal stipend until their total earnings plus stipend exceeds 250 percent of the federal poverty level. After reaching that earning level, stipends would be reduced by \$1 for every \$3

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<sup>6</sup> Gina Livermore, David Stapleton and Meghan O’Toole, “Federal Expenditure for Working Age People with Disabilities in Fiscal Year 2008.” [2002] <http://www.researchondisability.org/docs/sos-2012-presentations/3a-federal-disability-expenditures.pdf?sfvrsn=2>

earned. Earnings would be reevaluated annually. Participants experiencing intermittent unemployment could request earnings re-evaluations more frequently. Stipends are to offset the high costs of disability.

This new way of determining continuing eligibility for cash stipends should significantly enable and entice SSDI beneficiaries to return to work and result in cost savings for SSDI. During the development phase, the earnings limit for receiving cash stipends might change based on cost-benefit analysis findings and consensus of affected agencies and advocates.

Pilot projects with a sunset date should be conducted in up to five states to learn how to implement and fine-tune the effectiveness of Coordinated Employment Services and a new cash stipend program. Pilots would also test the accuracy of the costs and savings projections and new sets of work and benefits rules.

Pilot participants would be ineligible for current SSDI work incentive programs. Complexity is in itself a work disincentive, and today's SSDI work incentive programs are extremely complex. Beneficiaries need rules that are simple to understand, such as the ones suggested above (SSAB 2006, 10).

### **Predicted Benefits**

Providing Coordinated Employment Services to people with disabilities while they still have connections to the workforce and their career would be a major benefit. Instead of waiting months after being unemployed, beneficiaries would receive needed services as soon as they know their disabilities cause an impediment to employment meeting the new definition. And instead of having to navigate the maze of siloed services available to them today, with the help of a career coach, an ICP would be developed that to clearly outline the tasks they need to perform to return to work and/or stay at work. Rather than seeing SSDI as a replacement for lost wages, beneficiaries would see SSDI as a coordination program that helps them to return to work and/or stay at work, as well as assisting them with their high cost of disability. Coordinated Employment Services should be outsourced to vocational rehabilitation agencies, independent living centers, employment networks and other authorized vendors.

Another predicted benefit is that employers would view SSDI as the go-to program to learn how to retain valuable employees facing impediments to employment caused by disability. Today, an overwhelming number of service providers exist to which employers can turn. As such, viewing SSDI not only as the place to pay FICA taxes but also as the single point of entry for Coordinated Employment Services would be of great benefit to employers.

Knowing there are real expectations for beneficiaries to return to work and/or stay at work is another benefit of these proposed changes. Career coaches would work with beneficiaries to meet their ICP objectives. Furthermore, eliminating the complex set of work incentive reporting requirements would better enable beneficiaries to focus on their careers.

Implementing blended, braided, and streamlined Coordinated Employment Services should result in substantial savings for the federal and state governments. Undeniably, the most complex and most critical aspect of implementing this new definition of disability will be determining how the multitude of employment services that exist today can be coordinated. "The National Collaborative on Workforce and Disability (2006) describes in its January 2006 *InfoBrief* paper the importance of

blended and braided services and funding in areas such as mentoring, employer outreach and internships that has proven to be successful.

Allowing more disability beneficiaries to reduce their time spent away from the workforce should result in savings for the SSDI Trust Fund. An economic impact study (that is beyond the scope of this paper) should analyze how many more beneficiaries would need to return to work in order to achieve cost neutrality. The economic impact study combined with the cost-benefit analysis and pilots will be the true indicators of net savings. Dr. Kevin Hollenbeck, senior economist at the W.E. Upjohn Institute, estimates that the economic significance of 10 percent of people with disabilities staying at work or returning to work is about \$25 billion (Hollenbeck 2015).

Perhaps most importantly, we expect a significant increase in the number of employed people with disabilities that will dramatically improve the American workplace fiscally and culturally, and set new international standards in the process.

### **Why Now?**

Twenty-five is the 25th anniversary of the Americans with Disabilities Act. We are celebrating the progress people with disabilities have achieved since its passage, while also recognizing that employment is the area that has shown the least amount of progress. The time has come to remove work disincentives (Harkin 2014).

The Achieving a Better Life Experience (ABLE) Act, passed with bipartisan support in 2014, demonstrates that Congress recognizes that the costs of living with a disability can be significant. The ABLE Act will provide new tax vehicles to save and accumulate funds to pay for these extra expenses (Vennoch 2015).

The Employment First initiatives in most states today provide major cultural and systemic opportunities for employment. Employment First, with some of its roots in the U.S. Supreme Court *Olmstead* decision, has become an evolving, national set of policies to facilitate the full inclusion of people with the most significant disabilities into the workplace and the community (U.S. Department of Labor 2015). In the Employment First initiative, community-based, integrated employment is the first option for employment services for youth and adults with significant disabilities (U.S. Department of Labor 2015). This initiative, like so many others, will not succeed until and unless people with disabilities can focus on their careers instead of focusing on keeping their government subsidy.

Several states have already adopted a definition of disability similar to the one proposed in this paper. The New York State Human Rights Law, which is used to determine who gets disability employment services, defines disability as follows:

The term “disability” means

- (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or
- (b) a record of such an impairment or

(c) a condition regarded by others as such an impairment.<sup>7</sup>

Another example is the way California defines disability for state programs including Medi-Cal: “a physical or mental impairment, or perceived impairment, that substantially limits one or more of the major life activities of such a person, or is perceived as limiting one or more such activities” (California Health Advocates 2014).

## **ANALYSIS OF THE IMPACT OF PROPOSED CHANGES**

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The authors posit that the paper’s changes will have a measurable fiscal impact on the lives of individuals with disabilities, the communities in which they live, and the resources available to Social Security and the federal government. While there are short-term modernization costs in transition and pilot project phases, we anticipate that for everyone who prolongs their separation date from the workforce, or does not leave work entirely, or returns to the workplace early after a disability onset, the savings to the Social Security Trust Fund, health care costs, and the overall tax base will be substantial over time (Hall and Kurth 2013). As Dr. Kevin Hollenbeck (2015), senior economist at the W.E. Upjohn Institute, said, “Almost any policy that results in more retention/re-employment is going to pass benefit-cost test.”

Perceived advantages of the new definition include:

- Establishing an expectation that workers with disabilities will maintain their attachment to the workforce or return to the workforce more quickly after the onset of a disability.
- Minimizing fear of poverty resulting from disability and loss of connectivity to the workforce.
- Creating a national system of coordinated services with blended and braided funding that will support individuals in their effort to maintain a workforce connection.
- Creating a more simple and straightforward system that will serve and support workers with disabilities and will not serve as an impediment to a continued workforce connection.

The current system asks individuals to “prove they cannot work” as opposed to expecting individuals to maintain their current work through analysis of job requirements and identifications of needed accommodations, or by helping them return to work after a break caused by the onset of disability through provision of timely, coordinated services and supports.

Our proposal prioritizes work as the goal for people with disabilities who can work and understands that individuals may need distinct services and supports to achieve this goal. We posit that many beneficiaries would choose to access a system that would assist them financially, as they worked to identify their new level of abilities, and develop an ICP to use those abilities and keep their connection to work and career.

Of note, these are foundation values and objectives of the private sector's disability management models. The key elements of this service approach reflect the best practices of the private sector in their disability management programs. As noted in an article from AskEARN (2013), “An effective disability management program reduces the human and financial costs associated with absence,

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<sup>7</sup> N.Y. Exec. Law §§ 290-301. <http://www.dhr.state.ny.us/doc/hrl.pdf>

disability, health care, return to work, and worker's compensation claims and ensures that organizations are able to retain diverse, knowledgeable and experienced employees.”

Receiving early Coordinated Employment Services, viewing the cash stipend as temporary and the increased earning allowance make this approach attractive to the newly disabled worker, as it causes the least interruptions. Research shows that the length of time away from work is a determining factor both in the individual's sense of attachment to work and in their belief that they can work after an interruption caused by a disabling condition (SSAB 2006, 17).

Efforts to simplify the system and its expectations will greatly improve the interaction between the system and individuals with disabilities. It shifts the dialogue from requiring proving an inability to work before assistance can be provided, to focusing on what a person with a disability can do, even if his/her abilities have changed (SSAB 2006, 22). This philosophy aligns with a strong career-planning focus and the acquisition of coordinated services from existing service sources to create a program of temporary benefits to replace lost income during what should be a re-evaluation and re-training period. The program shift and realignment would create a program that:

- Focuses on work capacity, not incapacity
- Helps the worker with a disability evaluate the current level of ability and use the information to create an ICP that provides necessary services and supports to assist the individual's ability to continue to work or return to work with minimal disruption.

The authors believe the impact of this proposal is substantial at all levels and will achieve an improvement in the life of the individual, reduced human service costs, and an increase in taxes paid in the community. It will also lead to a long-term fiscal benefit, as in this model, workers with disabilities who can work will either not access SSDI or will use SSDI as a support while preparing for the next period of employment.

### **INTERMEDIATE STEPS – THE DEVELOPMENT PHASE**

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Reasonable, attainable, and measurable goals are critical to success. First, it is necessary to develop processes and procedures for creating and maintaining ICPs, which will include coaching, counseling and employment support services. Definition of the roles of career coaches must occur. The qualifications and responsibilities of career coaches must be detailed. How career coaches will monitor ICPs by working on case management, coaching, and supporting disability beneficiaries to assist them in achieving their career goals through federally approved agencies and organizations must be agreed upon. For participants unable to work, there must be a straightforward way for the ICP to indicate that fact, along with a date, if any, when the situation should be reevaluated. Coordinated Employment Services are necessary to “facilitate rehabilitation and employment by coordinating and integrating the various sources of assistance and support that are now inconsistently provided by multiple uncoordinated programs” (SSAB 2006, 11).

Another important intermediate step is defining and obtaining agreements for the provision of blended and braided services. As the new definition of disability is adopted and people with disabilities are expected to work, there will be a higher demand for supportive employment services and vocational rehabilitation programs. Federal agencies including SSA and the Departments of Health and Human Services, Education, and Labor will need to work collaboratively to develop a funding,

implementation and oversight plan. There is a precedent for this type of collaboration in the federal Department of Education PROMISE grants and other efforts targeted to SSI youth (Thompson and Barnes 2007, 13-14).

Projected costs from all participating agencies must be considered in conducting a cost-benefit analysis to show empirically that our expectation of the effects of redefining disability is correct and the solutions are feasible. An actuarial study could include the impact of increased numbers of people with disabilities becoming employed, the effect on federal and state taxes, possible reduced public health care utilization, and other identified markers.

In addition, in order for states to pilot the new definition of disability and the consequential policy and program changes, waivers from Social Security will be needed not only to test the new definition but also to waive restrictions regarding Substantial Gainful Activities, asset limits, suspension of current work incentive programs, etc.

During the development phase, it needs to be determined how many SSDI beneficiaries need to return to work in order to make the program sustainable. In order to do this, a true cross-agency cost-benefit analysis must be performed, as well as a true economic impact report.

Finally, it is important to obtain support from the disability community, the rehabilitation community, the business community, affected government agencies, and legislators. In order for the new definition of disability to result in the significant improvements we are aiming for in employment for people with disabilities, upfront consensus and cooperation from many communities and agencies is required.

## **EXPECTED DOWNSIDE OF NEW DEFINITION AND PROPOSED MITIGATION**

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In this section, we discuss possible adverse effects, implementation challenges, and unintended consequences of changing the definition of disability, as well as how they may be addressed.

A significant concern is that costs may increase, when a goal of the program is to reduce expense. Although it may appear that new employment services are being added, it should be emphasized that most, if not all, the services are available today. Coordinating existing services and promoting the expectation that providing Coordinated Employment Services will enable many more participants to return to work/stay at work and will not increase costs. It may also appear that costs will rise as a result of raising the limit at which participants stop receiving their cash stipend. But so few participants currently leave the rolls that the proposed changes will improve this issue, allowing people to successfully return to work.

For those receiving a cash stipend, the proposal calls for a gross earning plus stipend disregard of 250 percent of the federal poverty level, followed by a \$1 reduction for every \$3 earned. Earnings should be analyzed annually unless a pilot participant requests more frequent reviews. This approach, together with Coordinated Employment Services, should further encourage and enable participants' return to work or stay at work. Our proposal suggests that during pilots, current SSDI work incentive programs be suspended. This will result in a much less complex system as well as cost savings. A true cross-agency, cost-benefit analysis must be performed before pilots begin to determine how many participants must stay at work or return to work in order to achieve cost neutrality and financial sustainability.

Another commonly expressed concern is that redefining disability will negatively affect people with disabilities who are unable to work. We acknowledge that although the proposed definition is based on a belief that people with disabilities can work when provided the proper environment and support services, some people with disabilities cannot. Neither the language of the proposed definition nor the parameters of the program reforms should result in disparaging treatment or benefit decreases for people with disabilities who cannot work. Their SSDI experience should be unchanged.

Recognizing that many excellent ideas and proposals have been presented over the past few decades promising to significantly improve current programs and policies, what makes this proposal different? The main difference is the proposed change in the base definition of what disability is and what SSDI represents. Instead of trying to find and fix “low-hanging fruit,” a major overhaul of the entire system is required. Rather than adding another complex program to an already complex system, significant simplification is needed. In order to achieve success, we must blend and braid existing employment services in a coordinated fashion with the high expectation that these services will truly lead people with disabilities to employment. Another important difference is that a cross-agency, cost-benefit analysis and an economic impact report is requested in order to set measurable, attainable goals with which to determine program success. Most importantly, a real buy-in from the disability community, the rehabilitation community, the business community, and all affected government must be obtained before pilots begin, with the expectation that continual improvements to the program will be made.

## CONCLUSION

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We believe that changing the definition of disability by removing reference to the phrase “inability to engage in substantial gainful activity” will lead to a positive shift in the fundamental principles of SSDI and markedly improve the focus on early intervention. As a result, the mission of SSDI will change from a wage replacement program to one that safeguards against the high cost of disability, while enabling insured workers to connect to work, stay at work, or return to work.

The current definition of disability does not adequately address the high cost of disability; the current monthly stipend is a partial replacement of lost wages. The current SSDI program makes it difficult and complex for beneficiaries to account for additional costs incurred by their disability.

This paper’s proposed definition of disability would enable employees to work with employers to make reasonable accommodations that may allow a worker to remain employed for longer periods of time, which could reduce fiscal stress on SSDI.

In summary, the paper defines disability as follows: “A disability is a medically determinable physical or mental impairment(s) that has resulted in a substantial impediment to employment, is expected to result in death or has lasted or is expected to last for a continuous period of at least 12 months.”

Along with the new definition of disability, there would be new eligibility criteria. A person would be eligible for SSDI and Medicare if the applicant has earned the required work credits within the required period in accordance with current rules, and the person is found disabled per the new definition.

With the proposed definition, two provisions via SSDI would be available to disability beneficiaries. The first is providing Coordinated Employment Services; the second is a cash benefit that offsets the high cost of disability. Advantages and objectives of the new definition include:

- Raising the expectation that workers with disabilities will maintain their attachment to the workforce, and/or return to the workforce more quickly after the onset of a disability;
- Reducing fear of poverty resulting from disability and loss of connectivity to the workforce;
- Creating a national system of coordinated services with blended and braided funding to support individuals in their efforts to maintain a workforce connection; and,
- Establishing a more straightforward, purposeful system to serve and support workers with disabilities and reducing prolonged periods of time away from the workforce.

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