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Social Security Administration
137 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235-6401

RE: Docket No. SSA-2009-0081

Dear Sir or Madam:

Thank you for this opportunity to comment on SSA operating procedures for determining SSI/DI eligibility for persons whose drug addiction or alcoholism may be a contributing factor to their disability. SAAS (State Associations of Addiction Services) is the leading national organization that advocates on behalf of state associations of addiction prevention, treatment, and recovery providers, representing thousands of providers in 42 states around the country. The mission of SAAS is to ensure the availability and accessibility of quality drug and alcohol treatment, prevention, education, and research. Legal Action Center is a non-profit law and policy organization whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, and criminal records, and to advocate for sound public policies in these areas. We are happy to serve as a resource to you as we all work to better serve individuals with drug and alcohol addictions.

Medical experts agree that drug and alcohol addiction is a chronic disease that can be prevented and treated effectively. Unfortunately, less than 10 percent of the 23.1 million people in need of help for an alcohol and/or drug use problem received treatment in the past year.¹ People with addictions can and do recover and have a meaningful life in the community—if they get the help they need. Addiction treatment results are also sustainable. One year after completing treatment, studies have shown a 67 percent reduction in weekly cocaine use, a 65 percent reduction in weekly heroin use, a 52 percent decrease in heavy alcohol use, a 61 percent reduction in illegal activity, and a 46 percent decrease in suicidal ideation. Moreover, these outcomes were generally stable for the same individuals five years after treatment.² Eligibility for SSI/DI benefits and healthcare is often the only pathway to treatment for unemployed disabled individuals in need of drug and alcohol addiction services.

¹ Substance Abuse and Mental Health Services Administration (SAMHSA), *Results from the 2008 National Survey on Drug Use and Health: National Findings*, U.S. Department of Health and Human Services, September, 2009, 83.

² Hubbard, R.L., “Overview of 1-year Follow-up Outcomes in the Drug Abuse Treatment Outcome Study (DATOS).” *Psychology of Addictive Behaviors*, 11, 2003, 261-278. and Hubbard, R.L. “Overview of 5-year Follow-up Outcomes in the Drug Abuse Treatment Outcomes Studies (DATOS).” 2007, 263-70.

As you know, under current law a person is not eligible to receive SSI or SSDI benefits if his or her addiction is a contributing factor to the determination of disability. Since this change became effective in 1997, hundreds of thousands of individuals with drug and alcohol addictions have become ineligible for monthly income and have lost a pathway to critically important Medicare or Medicaid coverage. Evidence shows that individuals who lost all federal benefits due to the change in law have a much greater likelihood of drug dependence and worsened physical and mental health following their loss of benefits, and only a small portion were able to find and sustain employment.³

We understand that case management and monitoring can be useful tools to encourage SSI/DI beneficiaries to access needed services and wisely spend monthly allotments, and we would support care and representative payee requirements that would serve the best interests of beneficiaries. Before the change to current law, individuals whose alcoholism or drug addiction was a contributing factor material to the determination of their disability were entitled to benefits. However beneficiaries were required to have a representative payee manage their funds and undergo addiction treatment. This treatment requirement was a useful tool to connect individuals in need of treatment to services. The change in law made these individuals ineligible for SSI/DI benefits and Medicaid/Medicare, leaving them disabled, addicted, and uninsured without monthly income.

Current SSA policy also creates a disincentive for SSI/DI beneficiaries with drug and alcohol disorders to be honest with their doctors and evaluators, knowing that if they talk openly about their addictions they may be putting their benefits at risk. Policy should not create barriers that make accessing addiction treatment more difficult. Rather SSI/DI beneficiaries should be screened for substance use disorders and those found in need of addiction services should be referred to appropriate treatment and recovery support services, without jeopardizing their eligibility. The Medicare or Medicaid eligibility made available to beneficiaries with substance use disorders through a determination of disability is critical to closing the addiction treatment gap and promoting wellness.

Drug and alcohol addiction is a preventable, treatable, chronic disease, just like diabetes and hypertension. Similar to other chronic diseases, addiction health cannot be separated from overall health. Addiction can also be very closely linked to other mental and physical disabilities because individuals often use addictive substances, with or without doctor supervision, to cope with pain or mental illness. Misinterpretation of the law could result in these individuals being wrongfully found ineligible for benefits.

In the years since Congress terminated SSI/DI benefits for individuals whose addictions contributed to their disabilities, science, policy, and Congress have all moved towards recognition of addiction as a chronic disease. For example, in 2008 Congress passed the Wellstone/Domenici Mental Health Parity and Addiction Equity Act and in 2010 national healthcare reform legislation included services related to substance use disorders, at parity, in the minimum health benefits package requirements. While this progress towards the understanding of addiction as a chronic disease has not yet resulted in changes to the legal restraints under which the SSA must operate when determining eligibility for these programs, the SSA should utilize its flexibility in this area to consider what is in the best interest of SSI/DI applicants and beneficiaries.

³ Swartz, James; Lurigio, Arthur; and Goldstein, Paul; "Severe Mental Illness and Substance Use Disorders Among Former Supplemental Security Income Beneficiaries for Drug Addiction and Alcoholism," *Arch Gen Psychiatry*, Vol 57, July 2000.

Substance use- related disorders can be as disabling as the physical and mental conditions recognized by SSA as SSI/DI eligible disabilities. The financial and medical benefits provided by SSI/DI are as critical to individuals with substance use-related disorders as those with other disorders to avoid homelessness, receive healthcare, and, when possible, recover from their disabilities.

Below are our responses to certain questions outlined in the request for comments:

Individuals with co-occurring addictions and mental/physical disabilities should be found eligible for benefits

In response to the questions regarding evaluation of disability claims among individuals with co-occurring physical or mental impairments, the SSA should clarify that applicants cannot be denied benefits simply due to a presence or history of substance use disorders. The burden is on the SSA to show that an applicant's addiction is a contributing factor material to a determination of disability.

The causes of substance use disorders are multiple, complex, and generally cannot be separated from overall health and co-occurring conditions. Individuals often use substances in conjunction with physical and mental illnesses, and the co-occurring substance use disorder cannot be considered independently of the physical or mental condition. If the SSA determines that an applicant has a co-occurring mental or physical condition and finds the applicant to be disabled, the applicant should be found eligible for benefits regardless of his or her substance use disorder.

A period of abstinence from drug or alcohol use should not be required for SSI/DI eligibility determination

We do not believe that an applicant/beneficiary should be required to undergo a period of abstinence for SSI/DI eligibility determination. There is nothing in Public Law 104-121 requiring a period of abstinence from substance use to be eligible for benefits.

Such a requirement places an undue burden on individuals to access and comply with treatment services that are often not readily available or accessible. Even with treatment, abstinence from drug and alcohol use can be difficult to achieve, particularly for individuals with untreated co-occurring physical and/or mental disabilities, and attempting to separate co-occurring disorders to determine which disorder or functional limitation is responsible for the other is extremely difficult if not impossible in many cases.

In addition, it is not possible to apply an abstinence standard that would be applicable in all cases. If abstinence or nonuse requirements are utilized, they should not be arbitrarily determined but should be based on recommendations by qualified treatment clinicians. To deny someone benefits, the SSA has the burden to demonstrate that continued substance use is material to the determination of disability.

Medical evidence of addiction should be based on diagnoses by qualified medical professionals

As stated earlier, drug and alcohol addiction is a chronic disease, and addiction-related considerations by the SSA should be based on a diagnosis by a qualified medical professional. The diagnosis should meet a standard of accepted criteria for the disease, such as the criteria in the Diagnostic and Statistical Manual of Mental Disorders.

The SSA should clarify that a diagnosis of a substance use disorder does not disqualify an individual from receiving SSI/DI benefits.

Considering tobacco use would further restrict eligibility and be inconsistent with legislative intent

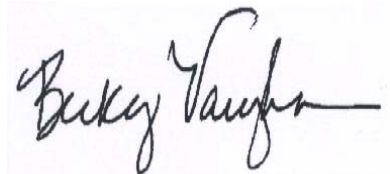
The rate of tobacco use is significantly higher among adults with disabilities than those without.⁴ Considering tobacco use when making a determination of disability would result in fewer disabled individuals being able to access benefits. It would also be inconsistent with legislative intent. We do not support including tobacco use in SSA instructions.

Homelessness should be considered when determining eligibility and addiction status

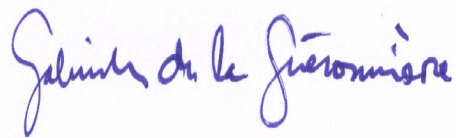
Recovery from drug and alcohol addiction is extremely difficult to achieve while simultaneously homeless. We believe that the SSA should take into account an applicant's homelessness when determining functional abilities and SSI/DI eligibility. Homelessness should be considered when evaluating whether an applicant's or beneficiary's substance use disorder is material to a determination of disability. In addition, homelessness and other barriers should be screened for and individuals should be linked to case management and supportive services.

Thank you again for the opportunity to provide recommendations to the Administration for determining disability requirements for individuals with substance use disorders and related disabilities. We look forward to working with you on this important issue. Please use us as a resource moving forward.

Sincerely,



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⁴ Brawarsky, P et al, "Tobacco Use Among Adults with Disabilities in Massachusetts," *Tobacco Control*, Suppl 2:ii-29-33, June, 2002.