

# San Francisco Chronicle

## Government Can't Say No

By Debra Saunders

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The Social Security Disability Insurance program is in big trouble. In 2016, the program's trust fund is expected to run out of money. When that happens, there will be "large across-the-board cuts for all beneficiaries," warn James Lankford, the Republican chairman of the House subcommittee that oversees entitlements, and Jackie Speier, the subcommittee's ranking Democrat. Those cuts will be painful for the "truly disabled," whom the system originally was designed to serve.

Washington has a choice to make: provide for the truly disabled or the newly disabled.

The definition of disability was expanded to include mental disorders, such as anxiety and depression, as well as musculoskeletal pain. The proportion of Americans deemed permanently disabled doubled over the previous four decades, George Washington University law professor Richard J. Pierce Jr. wrote in a 2011 piece for the libertarian Cato Institute. It's like an epidemic. In 2008 alone, the number of applicants -- 2.8 million -- grew by 21 percent.

In an 11-page memo to acting Social Security Administration Commissioner Carolyn W. Colvin, Lankford and Speier faulted administrative law judges for having "rubber-stamped" new applicants. Each new disability recipient is expected to cost taxpayers \$300,000. In 40 states, cases reach a judge only after two separate teams of examiners have turned down an applicant. Nonetheless, hundreds of judges have reversed more than 80 percent of the cases before them. The SSA's Office of the Inspector General calculated that the judges approved 930,250 individuals on disability between 2005 and 2012. No wonder the system is going broke.

There's such a huge backlog that the SSA has yet to review cases approved by infamous "red flag" judges Charles Bridges and David Daugherty. According to their regional chief, Bridges awarded benefits to nearly all the 2,000 claimants who came before him each year. Daugherty approved 99.7 percent of cases before him, to the benefit of 8,413 individuals. Estimated lifetime cost: \$2.5 billion.

Social Security spokesman Mark Hinkle responded that the administration has ramped up its efforts to prevent and detect abuses. The White House has submitted a budget that would fund fraud prevention, and that, too, should help.

Lankford and Speier made a number of common-sense recommendations -- including that the SSA conduct more reviews of existing cases, comb through applications approved by "red flag"

judges and require that applicants submit all evidence regarding their conditions instead of only favorable medical reports.

The Republican and Democratic representatives also take issue with Social Security's refusal to allow judges to review social media. They think it should be mandatory for examiners to check Facebook and other websites to see whether applicants who claim back pain are spending their weekends waterskiing or moving furniture. Pierce questions whether judges should look outside legal records to adjudicate claims. If that's the roadblock, perhaps other investigators can look to see what applicants do in their spare time.

When she visited the San Francisco Chronicle's editorial board in March, Speier made the general observation that Congress does so little compared with what needs to be done. On this issue, Speier and Lankford have bucked Beltway languor in a bipartisan -- and hence modest -- effort to make the safety net work better.

But I have to say, I like Pierce's idea best. The professor thinks the SSA should get rid of all 1,400 administrative law judges. "They are counterproductive. They introduce more errors than they eliminate," Pierce told me. "They have absolutely no relevant training, no expertise, and they're overruling people who have relevant training and expertise." What's more, he wrote for Cato in 2011, the \$2 billion freed up by their removal could be used to "hire a large number of talented people to manage" important programs.

Pierce's solution would not yield the most painstaking justice. But painstaking justice costs too much money. The only way to even the scales that tip in favor of applicants' attorneys would be to hire another army of lawyers to represent the taxpayer in administrative law court -- and that would mean less money for the truly disabled.