

April 2022

THE STATE OF OUR STATE

My last email focused upon an excellent article in the Miami Herald describing the challenge of providing health care to an aging population of inmates in Florida's prisons. One of the astonishing facts found in this article was that one of every four inmates serving a life sentence in our country call a Florida Penitentiary their home. And I criticized Florida's legislative priorities, as it is obvious that the rights of our state prisoners are given rather low priority.

There is another matter more closely affecting my disability clients, that appears to be tied to the short-comings of Florida's Department of Health. In the past twelve months I have seen increasing delays in disability determinations at stage II of the Social Security Disability Claim Review - this is known as the "RECONSIDERATION" stage.

Here's how this is supposed to work. An individual seeking Social Security Disability benefits, both under Title II, and Title 16 [SSI], files an application. If initial eligibility is determined, the "app" is opened, the claimant is contacted and interviewed, asked to complete some surveys, and medical records are obtained for administrative review. An initial decision to approve, or deny, is made, after about four to six months.

If the application is Denied, the claimant is informed in writing, and given the opportunity to appeal - this second step or stage is called Reconsideration. A claimant *must* request that his or her claim be "reconsidered" before they have the right to proceed to the hearing stage. And Social Security rules require that the Reconsideration review be handled by someone who did not make the initial decision to deny.

Here then, is the problem. Reconsiderations rarely result in an approval - less than 15% of all claimants are found at *this* stage to be disabled. *Therefore, it stands to reason that this stage of the claim process should not result in unreasonable delay* - as the claimant stands the best chance of success at the next stage of the claim process - a Hearing conducted by an Administrative Law Judge.

Social Security's publications state that the Reconsideration stage is expected to take between four and six months. In my own past experience, this was a reasonably accurate statement. ***However, in the past twelve months, my anecdotal experience clearly shows that reviews at the Reconsideration stage are now taking much longer.***

I currently have two clients whose claims have been "stuck" at "recon" for over one year. And many others whose claims at this second stage have languished for over eight months. Communication between the reviewing office and my office ranges from okay to poor. On many claims it appears that there is a great delay in assigning the claims for review. For other claims, consultant evaluations are set by the reviewing office - but only after the claim has languished for eight months - or more.

Back to the Florida Dept. of Health. Our Governor proudly made this announcement in September, 2021; "I am pleased to announce that Dr. Joseph Ladapo will lead the Florida Department of Health as our state's next Surgeon General". One of the programs handled by Florida's Department of Health is - you guessed it - "DISABILITY DETERMINATIONS"*. Social Security Disability is a Federal program. However, the individual State Departments of Health are tasked with administration of the program's Step II review.

So I'll just come out and say it. The state department responsible for conducting Reconsideration reviews is failing to conduct prompt reviews. And the department is now helmed by the Governor's hand picked COVID denier - a physician who is at the very outer fringes of our medical community.

Given this state of affairs, I have a prediction. As we crawl out of the grips of the Pandemic, and as State employees return to work in a more normal fashion - performing their work in State offices rather than from their homes - there will continue to be serious delays in the handling of disability Reconsiderations for Florida residents.

I could not imagine, in our current political environment, and with our current Governor, that the Florida Department of Health will prioritize the course correction that Florida claimants deserve. Watch this space. As they say.

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<https://www.floridahealth.gov/programs-and-services/people-with-disabilities/disability-determinations/index.html>