An Analysis of Problems in Defining Total and Permanent Disability with Special Reference to Disability Insurance Benefits and the Disability Freeze Under Title II of the Social Security Act

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AN ANALYSIS OF PROBLEMS IN DEFINING TOTAL AND PERMANENT DISABILITY WITH SPECIAL REFERENCE TO DISABILITY INSURANCE BENEFITS AND THE DISABILITY FREEZE UNDER TITLE II OF THE SOCIAL SECURITY ACT

by

Joseph John Pacholik

A Thesis Submitted to the Faculty of the Institute of Social and Industrial Relations of Loyola University in Partial Fulfillment of the Requirements for the Degree of Master of Social and Industrial Relations

February

1959
Joseph John Pacholik was born in Chicago, Illinois, March 19, 1919.

He was graduated from Fenger High School, Chicago, Illinois, June, 1937, and from Loyola University, February, 1950, with the degree of Bachelor of Philosophy.

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CHAPTER I

INTRODUCTION

The Need For Disability Benefits

Loss of income due to permanent and total disability is a major economic hazard to which, like old age, unemployment, and death, all gainful workers are exposed. The economic hardship resulting from permanent and total disability is frequently even greater than that created by death or old age. The family must not only face the loss of the breadwinner's earnings but must meet the costs of medical care. As a rule, savings and other personal resources are soon exhausted. In the case of the disabled younger worker this problem is particularly difficult since he is likely to have young children and has not had an opportunity to acquire any significant savings.

Only a minor proportion of the working population is covered by insurance or compensation of any type to take care of this contingency and so a long term or total disability creates financial hardship.

Group plans that provide income maintenance as a partial safeguard against the destitution that makes relief necessary are a comparatively recent development in our society and are
still a long way from universal coverage.

Social services before the Industrial Revolution were almost wholly provided through voluntary agencies and on a hit-or-miss basis. The earliest groups to concern themselves with what we now call income maintenance programs were the guilds. Predecessors of the modern labor unions, the guilds early saw that the concentration of workers in urban centers, increasingly dependent on continued cash earnings to meet the minimum needs of mere existence, made necessary some kind of pooled provision for income maintenance.¹

Since the beginning of the Industrial Revolution and with an accelerating tempo during the twentieth century mass production phase of the Industrial Revolution, the social, economic, and political forces that have shaped the institutions of the western democracies have compelled the governments to initiate social service programs and to expand them. This is no cause for alarm. There is a basic minimum of security and living standards below which we who live in the middle decades of the twentieth century cannot permit anyone to fall.²

Disability benefits are part of a comprehensive system of

¹Mary Donlon, "Disability Benefit Programs Here and Abroad: Their History and Scope", American Bar Association Journal, XXXVI (March 1950), p. 191.

²Ibid.
mutual aid and self-help comprised within the term social services.

The question whether existence of a disability justifies public action to compensate for loss of earning capacity is a major policy issue that has to be decided in devising non-means test, non-discretionary disability programs.

During the last two decades increasing attention has been devoted to the problems of the aged and old age retirement, as well as disability. Industrial pensions have greatly increased in number and scope, and federal as well as state social security programs have been amended and liberalized.

A major issue in contemporary America was raised by proposals to cover the risk of income loss due to both long and short period physical disability by social insurance or similar non-means test systems.

Method Of Analysis

In this thesis we shall be primarily concerned with the problem of defining total and permanent disability which resulted from an injury or an illness.

A survey of the literature on the subject was undertaken. Various plans of benefits for the disabled were examined and bargaining agreements between employers and unions were consulted. Copies of operating procedures and requirements were assembled
and compared to note the similarities and differences of the varied programs on specific points common to them.

Technical instructions regarding adjudication of claims and general informational literature which set forth the conditions to be met were also studied and compared.

Although numerous monographs, pamphlets, and articles have been written, little research has yet been directed specifically toward the definitional problems. There is at this time little reliable information either on the incidence of disability or on the mortality of disability pensioners in the population as a whole, if we can judge by the material we have examined for this study. It is felt, however, that as experience is gained with the disability programs, and especially the federal program under Title II of the Social Security Act, much valuable data will be available as time goes on.

Domenico Gagliardo believes that a health insurance system will result in more complete enumeration of the disabled. In other words, more sick people will be counted when cash or medical benefits are available.3

As an example of the limited information hereto in this field, there have been no data available on the experience with disability retirement where such a provision already is part of private company pension plans. Information on the actual inci-

idence of disability cases under these provisions, as well as on the advantages and disadvantages of the various possible approaches and solutions to the problems of definition and administration in disability cases, has been equally unavailable.

In this thesis the writer will present and review those analogous programs that illustrate the different approaches and solutions which have been made through the years and also show how the experience gained in these other similar programs is now being utilized in meeting current problems in the total and permanent disability categories.

This will be done by surveying and reviewing the historical as well as the administrative development of certain aspects of the other programs with special attention being given to the definitional phase of each program.

It is the purpose of this paper to assemble and analyze the information which is available about some formal arrangements for providing cash benefits for employees unable to work on account of disability occurring prior to their normal retirement age. In presenting information on administrative practices and problems, the definition and determination of disability will be emphasized. The frequency and nature of review, rehabilitation and re-employment of disabled workers as well as the extent of conflict with respect to these problems and the methods commonly employed to resolve them, will also be presented.
In the summary there will be some conclusions regarding the adequacy of present provisions in defining total and permanent disability for payment of benefits and the direction towards which current programs will tend to develop in the future.
CHAPTER II

EARLY PROBLEMS AND ACCEPTANCE OF DISABILITY PROGRAMS

The Problem Of Opposition

The need to provide some form of cash income when the family wage earner is disabled as the result of an accident or sickness not connected with his job has long been a serious gap in our insurance. Those who live a week to week existence with no income other than the pay check, are never free of anxiety about what to do when the breadwinner becomes disabled while living expenses continue, medical care becomes imperative, and there is no income in sight.

Wage loss resulting from injury or illness of a non-occupa­tional origin is a significant cause of the high cost of public assistance, since lack of insurance protection forces many work­ers to turn to public relief authorities when they are disabled.

Social insurance experts, the Social Security Administration, organized labor have supported federal disability insurance to be supplemented by public assistance where necessary. Represent­atives of insurance companies, medical societies, and business groups, on the other hand strongly opposed federal disability insurance but were willing to support public assistance.
In order to get disability aid under a public assistance program an individual must be needy, that is, without sufficient money or resources to provide the essentials of living. Under a social insurance type program the claim is founded upon the right to benefits which is preexistent to the emergency.

The advocates of the insurance program declare that if it is logical to provide through social insurance some financial security to the American people against hazards of old age, death and unemployment, then it is equally sound to provide for the risk of disability through social insurance.

The significance of utilizing the insurance principle lies in the fact that it makes more uniform and spreads over a group the financial burden which may be heavy and which cannot be predicted for any one individual. If each worker experienced only the "average" amount of disability, the burden would be of such small proportions that it could be dismissed from any further consideration, except for the very poorest. But it happens to be otherwise. The consequences of prolonged disability are serious, so much so that the general welfare will be promoted by a properly constructed and efficiently operated system of insurance. 

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In the United States there also has been considerable difference of opinion as to methods of financing and the appropriate administrative arrangements, including the respective responsibilities of the Federal government and the states. There are also many different opinions on the question of whether there should be a single combined permanent and temporary disability program or whether permanent disability should be linked administratively to the old age and survivors insurance program, with temporary disability treated as a separate program or linked to unemployment compensation or workmen's compensation as in the New York state plan.

Four states now have compulsory non-occupational sickness disability laws on their statute books to take care of temporary disabilities. Rhode Island passed its compulsory sickness compensation law in 1942, California passed theirs in 1946, New Jersey in 1948, and in New York the law was passed in 1950.

To an outsider especially it might seem curious that in a country like ours which had accepted the general idea of public action based on other than public assistance principles, there should be any issue to debate in this matter. It would seem as if, unlike payments made to the ablebodied persons, a system of disability insurance would involve no risk to national output being reduced, since the sick or disabled recipients would be unable to produce anyway.

Some of the main doubts about proposals for disability
insurance expressed by people opposed to it concern the feasibility of restricting cash payments to persons who are in fact genuinely disabled and the effect assured payment would have on the beneficiary.

One of the first problems in the development of sound private or public benefit programs for the permanently and totally disabled with regard to the practical implementation and administration is the question of definition.

A decision must be made as to what shall constitute "total" disability and how the "permanence" of such a disability is to be established. Even after formal definitions are formulated, there still remains the problem of how they are to be met and applied in specific cases. Once a retirement age has been set, there is little question regarding the point at which a worker becomes eligible for normal retirement since his exact age can be established in most cases. There can be much more controversy, however, as to the eligibility of the same worker for a disability pension which is to be based on his meeting a specified definition of disability set up as a requisite for disability payment. A relatively slight variation in interpretation of the definition of disability may easily result in substantial changes in the incidence of disability cases which qualify for payments.2

Another major problem in disability pension programs, especially as part of early retirement private plans or public benefit programs, is cost. Since permanent and total disabilities may occur at any age, future costs as for pensions, cannot be subjected to full actuarial discounts if some realistic minimum level of benefits is to be available to the worker. The cost of protection against this hazard is thus more expensive than ordinary pension coverage.3

Another problem in this field is caused by the belief that permanent and total disability, in most cases, is not considered a truly insurable risk by private insurance companies. As many companies have found, insurance concerns are usually quite reluctant to provide this type of coverage. Even where they do, it is often under severely limiting restrictions.

The insurance companies had such an unsatisfactory experience with disability insurance in the thirties, when their premium rates proved inadequate to support the large volume of claims believed to have been stimulated by unemployment, that they are generally not willing to provide disability benefits now even under group annuity contracts.

A problem which faced private insurers during the 1930's was the fact that some employers had actually used disability

3Ibid.
insurance benefits as a form of unemployment compensation. They frequently selected for lay-offs those workers for whom disability benefits could best be claimed, and then expected the insurers to take care of them.\footnote{University of Illinois Conference, Current Problems in Pension Planning, Proceedings ed. Robert I. Mehr and Charles W. Anrod (Robert Allerton Park, Illinois, May 20-21, 1953), p. 26.}

Mrs. Abraham Epstein, Vice President, American Association for Social Security, stated during public hearings on the Social Security Amendments of 1955 the seriousness of the need for the disability insurance thus:

On an average day of the year, 5 percent of our civilian population between the ages of 14 and 64 are unable to attend to their regular occupations because of disability. On an average day of the year about 2.2 million persons are unable to find work. Since only 1 person out of 20 suffers disability in connection with his work, the other 19 therefore are not qualified to receive workmen's compensation.\footnote{Senate Hearings, 84th Cong., 2nd Sess., on Social Security Amendments of 1955., H. R. 7225., Washington, p. 379.}

In most countries possessing fairly extensive social security systems, measures to provide alternative income for workers prevented by disability from earning a living have not only figured prominently but have been often among the first types of program to be developed. In the United States, on the other hand, public provision against income loss due to disability was, as late as the mid-1950's, still very limited.
Early History

In the countries of central and western Europe, many of the largest and most prosperous guilds began to accumulate substantial reserves, through member assessments, in order to serve the needs of their members during periods of income failure due to disability or unemployment. Their programs foreshadowed as long ago as the early eighteenth century both disability benefits and unemployment insurance. It was to be a hundred and fifty years before government moved into the field over there and still longer before social insurance became a fact through legislative action over here in America.\(^6\)

It seems that history sometimes selects unlikely agents to effect social progress. It was Bismarck, father of modern Germany, the statesman who a century ago joined the separate German states and petty principalities into a nation, who turned private social services for workers into a public program. It probably would have happened, sooner or later, and it would finally have happened as a conscious social program whenever the educational opportunities of workers expanded and they gained universal political franchise. With Bismarck, however, social insurance was a political device, an incident to his consolidation of power in the German state.\(^7\)

\(^6\)Mary Donlon, "Disability Benefit Programs Here and Abroad: Their History and Scope", American Bar Association Journal, XXXVI (March 1950), p. 192.

\(^7\)Ibid.
Bismarck accomplished all that he sought by two simple devices. He made the guild social insurances available to workers outside the guilds so that the guilds no longer offered the only social insurance available. Then, as bait to induce the guilds to what amounted to political suicide, Bismarck offered to cover their members into the seemingly more attractive government-provided social services and to reduce the assessments on the workers by providing that some of the support of the new social insurance program should come through assessments on employers, all in return for the transfer of the guild reserves to the new German state. It was clever. It worked, and there was the first modern, state-provided social insurance.  

Meanwhile, across the English Channel and here in the growing union of American states, the common-law a hundred years ago was struggling, not too happily, with the idea of social responsibility at least for those disabilities that employees incurred in industry.

The Rise Of Workmen's Compensation

Workmen's Compensation was the first of the significant social insurance programs in America. It followed by many years the inadequate workmen's compensation program in England. In fact, the initial workmen's compensation enactment in New York

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Ibid.
State in 1910 almost coincided with the first legislation in England to provide insurance for workers against the wage loss risks of non-occupational disabilities, the field into which we in this country are only now moving, well over forty years later.

England felt the need in her competitive industrial economy of providing some measure of income maintenance for workers during periods of temporary disability not connected with work accidents or that did not ensue from occupational disease. Here we, until recently, felt the social need only of providing for income maintenance in cases of occupational disabilities. It took us a long time to go even that far in all our states.

This year marks the fiftieth anniversary of workmen's compensation legislation in the United States. Compared with the common law and employer's liability systems that it replaced, workmen's compensation has made an impressive record.

But when achievements of workmen's compensation are appraised by the changes over the past twenty years in weekly wages entering into compensation benefit formulas neither the record nor the prospect for the future is nearly so impressive. Although the workmen's compensation systems have made commendable progress in some areas, some benefits have not only failed to keep pace with wages but have also slipped backwards.

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9Ibid., 193.
Since the compromise benefit amounts were the initial cautious gropings of a new program, it would seem reasonable to expect that as workmen's compensation became an accepted and sturdy social insurance system, its benefit performance would improve. But this has not uniformly happened. In fact, cash benefits today sometimes restore a smaller proportion of lost weekly wages than they did under the earliest laws. 10

Although work connected disabilities have been covered by workmen's compensation and occupational disease legislation, the vast majority of disability cases did not enjoy this protection, until recently.

This situation existed in spite of the fact that there was little dispute as to the severity of the risk of income loss caused by disability, for a long series of inquiries over the last twenty years had established the facts. Disability insurance as part of an adequate social insurance system had actually been studied over a number of years in this country.

Some preliminary studies were made back in the mid-thirties when the Social Security Act was being shaped and initiated. In 1938, the Advisory Council on Social Security recommended permanent and total non-occupational disability insurance, but was divided on its timing. In 1939, the President transmitted to

Congress a report of the Interdepartmental Committee to Coordinate Health and Welfare Activities recommending permanent disability insurance benefits. A similar formal recommendation was made by the Social Security Board in 1941. The Advisory Council on Social Security to the Senate Finance Committee, established by the eightieth Congress, and composed of representative citizens, made an extended study of the matter. Its members voted fifteen to two in favor, and so reported it to the Senate Finance Committee. In 1949, as in May 1948, the President recommended the enactment of such a program to Congress. In 1949, the House Ways and Means Committee held hearings over a period of many weeks on this proposal and other phases of social security. The House then passed a bill embodying a disability insurance program not unlike that which it again adopted in 1955, but it was defeated in the Senate in 1949.

The Senate Finance Committee held extended hearings on the House bill in 1950, receiving much testimony and evidence for and against disability insurance as well as other related problems.

Public Assistance Program For Disabled

Congress in 1950 failed to pass as extensive a program as had been considered but it did add a new title to the Social Security Act, Title XIV, making possible grants-in-aid to states with approved plans for aiding needy persons who are permanently and totally disabled.
In October 1950, when this type of assistance became available, sixteen states began making payments to eligible persons. By December 1952, such payments were being made by thirty-five states, The District of Columbia, Hawaii, Puerto Rico and the Virgin Islands.\footnote{Margaret Greenfield, \textit{Permanent and Total Disability Aid}, University of California, Bureau of Public Admin., Legislative Problems, No. 4 (Berkeley, 1953), p. 1.}

Total cost of disability aid during the fiscal year ended June 30, 1952, amounted to nearly eighty-six million dollars, including costs of administration. The Federal government paid almost half this sum, state governments about forty per cent, and local governments the balance. In twenty-three states, the local governments did not share in assistance payments, and in seventeen they bore no share of the administrative costs.\footnote{Ibid.}

Recent Legislative History

In 1954 both Houses finally did pass the disability freeze provisions which used eligibility requirements similar to those that had been in the report which had been submitted by the Advisory Council on Social Security appointed in 1947 by the Senate Finance Committee. This provision was much less restrictive but unlike the report by the seventeen member Advisory Council in 1947 it did not provide cash benefits for disability.
The change in the law in 1954 provided a way for a disabled worker to keep his social security rights intact and to keep his benefits from being reduced because he had become unable to work. A worker who becomes disabled for work at any time before age sixty-five can apply to have his social security record frozen so that the years when he is unable to work because of his disability will not be counted against him. This is what is known as the disability freeze. The worker may apply for the freeze as soon as he has been disabled for three months (Although his social security record will not be frozen unless his disability lasts for more than six months).

Before the law was changed in 1954, a working man or woman who became completely disabled for work before retirement age would have a gap in his social security record. In cases of prolonged disability, this could have meant that the benefits payable to the worker and his family in the future would be greatly reduced or lost entirely.

In 1955 the House of Representatives in the first session of the eighty-fourth Congress passed by a vote of 372 to 31, H. R. 7225, which included disability insurance benefits. The House Ways and Means Committee did not hold public hearings on the bill.

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However, in the second session in 1956, the Senate Finance Committee held public hearings in the course of which testimony was taken from all interested individuals and groups. A great deal of the discussion of H. R. 7225 was on the provisions for disability insurance benefits.¹⁴

Many arguments were presented, both for and against disability insurance benefits, in the course of these hearings. The existence of disability as an economic hazard was admitted by everyone who testified. The discussion centered around the most desirable means of overcoming this economic hazard. Those who favored disability insurance benefits argued that disability protection should be included in any comprehensive social insurance system. It was pointed out that thirty-seven foreign countries have some form of disability insurance in their systems. The proponents of the measure argued that social insurance, not public assistance, is the best means of meeting the problem, since it avoids the use of a means test and gives the worker an earned right to benefits when he is forced to retire because of disability just as it gives him an earned right to benefits because of age.¹⁵

Those who favored disability insurance benefits recognized


the need for vocational rehabilitation, but felt that rehabilitation was not the whole answer. They pointed out that past experience indicated that only about 25 per cent of disabled persons over age fifty can be rehabilitated, and that in any case, rehabilitation does not fill the need for maintenance of the worker's income during the period before he is rehabilitated. They stated that it is administratively possible to make disability determinations, basing this conclusion on the experience in administering disability benefit provisions of other Federal, State, and private pension systems, the aid to the permanently and totally disabled program, and the disability freeze.\textsuperscript{16}

The opponents of the measure pointed out that the past experience has shown that disability claims tend to increase during the periods of economic recession, because when jobs are plentiful, even severely disabled people are able to find work, but when jobs become scarce, the disabled are among the first in losing employment, as they are replaced by able-bodied workers. This tendency, they argued, makes it impossible to predict the cost of disability insurance with the same accuracy as the cost of old-age and survivors insurance. Therefore, the addition of cash disability benefits could unduly burden the Trust Fund and the old age and survivor insurance taxpayer. Another argument against the disability provision was the difficulty of making

\textsuperscript{16}Ibid., pp. 501-508, 526-528, 535.
realistic and consistent determinations of disability. Those who presented this argument pointed out that disability is not an objective fact like age or death. Disability is an individual thing and a physical impairment may be disabling to one individual and not to another. For this reason, strict and equitable administration of the program would not be possible. The tendency would be to make it easier to establish disability and thus encourage claims from individuals who are not severely disabled.

The opponents felt that adequate provision for the maintenance of disabled people had been provided by the program of aid to the permanently and totally disabled, and that administration of this program by the states was a more desirable method of providing an income for the disabled who are not feasible for rehabilitation.17

They also felt that in the whole approach to the problem of disability the emphasis should be placed upon vocational rehabilitation rather than the maintenance of income. It was argued that the provision of cash benefits under old age and survivors insurance would tend to deter individuals from availing themselves of rehabilitation opportunities. An expansion of the vocational rehabilitation program, including some provisions for maintenance payments during rehabilitation within that program, was seen by

17Ibid., pp. 679-684.
some as a better answer to the problem of disability.¹⁸

On June 5, 1956, the Senate Finance Committee reported out H. R. 7225 without the disability provisions of the House bill.

Following the Finance Committee action, one of the members who had disagreed with the majority introduced an amendment on the floor of the Senate which would restore disability insurance benefits at age fifty, and incorporated a new feature, a separate disability trust fund. This fund would be financed from a tax of one-half of one per cent covered wages, shared equally by the employee and employer, and three-eights of one per cent on covered self-employment. All disability insurance benefits and the administrative costs would be paid from this fund. The purpose of the separate trust fund was that it would always make clear what disability insurance benefits were costing, and that money would not be diverted from the general purposes of the old age and survivors insurance program to pay the benefits of this special group.¹⁹

As in the freeze provisions of the 1954 amendments, the program in the 1956 amendments is tied to vocational rehabilitation. The law provides for referral of individuals applying for disability insurance benefits to the vocational rehabili-

¹⁸Ibid., pp. 730-738.

tation agency, and further provides for deductions from disability benefits for refusal of rehabilitation services without good cause.

The problem faced by families in which there are children with serious mental or physical disabilities was recognized by including in the 1956 amendments, which became P. L. 880, a provision for paying child's insurance benefits to disabled adult "children."

The House version of H. R. 7225 provided only for a continuation of child's benefits after eighteen in the situation in which the child was entitled and under a disability before age eighteen. The definition of disability was the same as that for disability insurance benefits.

In the bill as reported by the Senate Finance Committee, this concept was extended to provide benefits for a child who was totally disabled before attaining age eighteen if he is still disabled and dependent upon the parent at the time the parent dies, or becomes entitled regardless of the child's age at the time of the parents death or entitlement. Both versions provided for monthly benefits for the mother of such a child as long as she had the child in her care.

The Social Security Amendments of 1956 marked a significant step in the evolutionary development and improvement of the social security program.

The social security bill was given extensive consideration
by Congress and Executive Branch since some of the features of the legislation had actually been discussed and studied for more than seventeen years.

House action in 1955 included much discussion of proposals to improve the old age and survivors program in closed executive sessions of House Ways and Means Committee.

The Executive Branch did not make any policy recommendations to the Committee or to the Congress as to changes in the program. The general view expressed by the Administration was that the 1954 amendments incorporated all the major changes needed at the time and, except for some further extensions of old age coverage, no further program changes were necessary or desirable at that time. 20

The House Committee reported out a bill incorporating their views with the unanimous vote of the fifteen members on the majority and most of the minority members.

The bill was brought to the House of Representatives on July 18, 1955, under suspension of the rules which did not permit any amendments and was passed by the overwhelming vote of 372 to 31. Two members voted present and twenty-nine members did not vote. 21

Consideration of the bill in the Senate Committee on Finance began in 1955 when Mrs. Oveta Culp Hobby testified before the

20 Ibid., 184.
21 Ibid., 185.
Committee. No action was taken by the Senate Committee, however, in 1955. The Finance Committee began public hearings on January 25, 1956, and closed on March 22 after nineteen days of hearings. Everyone who had requested to be heard was given an opportunity to speak. Over one hundred persons testified and numerous statements, letters, and additional information were inserted in the three volumes of published hearings on the bill.

When the amended bill was reported out of the Senate Finance Committee, Secretary of the Department of Health, Education, and Welfare, M. B. Folsom (who had meanwhile succeeded Mrs. Hobby) issued a press release which endorsed the bill wholeheartedly.

In the Senate itself amendments offered to the bill were more numerous than at any previous time in the twenty-one year history of Congressional consideration of social security legislation. About ninety different amendments were proposed, although many of these were identical, similar, or perfected versions of the same proposal. This still was a record. Practically all of the proposals involved broadening or improving the program.\textsuperscript{22}

The bill passed the Senate late in the evening of Tuesday, July 17, by the overwhelming vote of ninety to none. This was one of the largest votes on any bill in the history of the Senate.\textsuperscript{23}

\textsuperscript{22}\textit{Ibid.}
\textsuperscript{23}\textit{Ibid.}
The Conference Committee reconciled the differences between the House bill and the Senate bill and formally redrafted the bill, including a few changes in the bill before submitting it for action to the full Congress.

The House of Representatives approved the Conference Report on July 26 and the Senate approved it less than an hour before adjournment on July 27, 1956, the last night of the session. There was no debate or controversy on the Conference Report in either House. Representative Cooper offered the report in the House and Senator George, in the Senate. The President approved the bill on August 1, 1956, and it became Public Law 880.24

Growing recognition of the need for and the acceptance of special provisions for disability insurance benefits is quite vividly illustrated by the legislative history of the 1956 amendments.

24Ibid., 186.
CHAPTER III

DEFINITIONS OF TOTAL DISABILITY USED IN THE PACT
AND IN OTHER PROGRAMS

Definitions And Programs Abroad

The process of administration of disability applications is intimately related to the choice of definition which can be used as a requirement for entitlement to disability benefits. A detailed, restrictive definition requires lengthy and complicated administrative procedures. A liberal and simple definition on the other hand typically involves much less administrative work. The detailed, restrictive definition usually raises a good many problems to be taken into account while the simple definition is relatively much freer of these problems.

In foreign countries, invalidity insurance was developed concurrently with old age security. The German Act of 1889 established the first national compulsory system of disability benefits. Today all large industrial nations, and many small nations have enacted legislation for protection against invalidity through contributory social insurance. By 1949, thirty-five countries paid invalidity insurance, and five more paid benefits subject to means test.
The Social Security Administration reported the following countries as providing this protection under a system of compulsory insurance without a means test:¹

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Seven of these countries had assistance programs which supplemented the insurance program. These were: Czechoslovakia, Finland, Great Britain, Ireland, Netherlands, Sweden, Uruguay. In addition, disability protection under an assistance system with benefits subject to a means test was provided in Australia, Denmark, New Zealand, Spain, and the Union of South Africa.²

The number of national old-age insurance or assistance programs in January 1949 was forty-four, but as of early 1964 six additional countries (all in the Near East or the Orient) had adopted such legislation. China, Egypt, Israel, Turkey, Iran, 


²Ibid.
Thailand had enacted the new programs in the period of 1949-54.3

During the period 1955-57 legislative activity in the social security field resulted in the enactment in three more countries establishing entirely new programs. The new legislation appeared in the less industrialized nations, specifically, in Bolivia in 1956, Nicaragua in 1955, and Iraq in 1956.4

Invalidity is usually defined as at least a two-thirds reduction in the ordinary earning power due to physical or mental impairment. Four European countries use the definition of "in-capacity for work or a suitable occupation."

Probably the two best-known systems of invalidity insurance in Europe are those of Germany and Great Britain. Under the pre-war German system, a permanently disabled person was one incapable of earning, in work suited to his strength, ability, training, and previous experience, as much as one third of usual wages. Great Britain defined disability as total incapacity for work due to bodily or mental disease (or defect) which prevented a worker from carrying on such remunerative work as might be expected of one with similar training, education, and experience.5


German benefits comprised a basic annual amount, plus increments varying with contributions made. Additional allowances were given for children. There was no graduation of benefits to degrees of disability. Benefits might be terminated upon reexamination. British benefits were on a weekly rate and varied with sex and marital status. Payments begin after twenty-six weeks of disability and continue as long as disability lasts. Re-certification is required every four weeks.6

In order to qualify for benefits in Germany, workers must have made weekly or monthly contributions totalling five years. In Great Britain eligibility for indefinite benefits comes after 156 weekly contributions, of which fifty must have been made in the previous year; one year's benefit is paid after twenty-six contributions.7

State Non-Occupational Disability Programs

In the United States, a significant development in the disability field over the past several years has been the trend toward the adoption of state compulsory non-occupational sickness disability laws. Four states now have such legislation on their statute books: Rhode Island, California, New Jersey, and New York. Within the past few years similar bills have been introduced into

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6Ibid.
7Ibid.
the legislatures of about three-quarters of the states, but they have failed of passage.

The movement for compulsory cash sickness legislation in this country had its start in the Federal Unemployment Compensation Law passed by Congress during the depression days of 1935 as part of President Roosevelt's social security program. The purpose of this law was to induce the states to establish unemployment compensation systems whereby relief might be afforded to workers who were able and willing to work but who could find no employment. This law levied an excise tax, equal to specified percentage of total wages paid, on every employer of eight or more persons, but provided that ninety percent of the Federal levy would be returned to the states whose unemployment systems conformed to the standards prescribed by the Social Security Board. 8

When the states systems began to function, the question of relief for individuals who were unemployed because of disability came up. The inconsistency of paying cash benefits to the able-bodied unemployed but not to the disabled unemployed resulted in the amendment of a number of state plans to provide sick benefits where sickness occurs during unemployment. A few states went on further to establish compulsory disability compensation systems for employed workers as well. With the exception of the New York

law, the classes of employees covered are those included in the unemployment compensation laws. The rate of benefit is determined by the same formula; the waiting period and the limit on amount and period of benefit are substantially the same.

Rhode Island was the first state to enact a compulsory sickness compensation law. The measure, which included benefits to be paid for disability due to pregnancy, was passed by the legislature in April 1942, and became effective June 1 of the same year. Payment of benefits began on April 1, 1943. The program was financed without imposition of additional taxes, a circumstance which undoubtedly contributed importantly to its adoption.9

The plan soon fell into financial difficulties, for it had unsound features that contributed to the high claim rate encountered. In the case of workers disabled because of occupational accidents, it duplicated the benefits paid under the workmen's compensation law. Further, it took no cognizance of sick-leave pay or insurance coverage provided by the employer during disability, so that duplicate benefits were also paid under these circumstances. Double benefits made it attractive for workers to stay away from the job, but ran up the cost sharply. In the following year the plan was amended to stop double payment in connection with workmen's compensation benefits.10

California was the next state to adopt a compulsory sickness

9Ibid., 191.
10Ibid., 192.
compensation law. Following the same general pattern, the legislature on May 21, 1946, amended the California Unemployment Insurance Act, to provide benefits for unemployment due solely to non-occupational disability. The Unemployment Compensation Disability Benefits Plan began paying disability benefits on December 1, 1946. Basically it is the same as the Rhode Island plan. 11

The third state to enact a compulsory sickness compensation law was New Jersey. Passed by the legislature in 1948 as an adjunct to the state unemployment compensation law, the New Jersey Temporary Disability Benefits Law became effective on January 1, 1949.

In order to collect benefits the individual must be under the care of a legally licensed physician, dentist, or chiropodist, and may be required to furnish the Unemployment Compensation Commission with a certification of disability from the attending doctor, or a record of hospital confinement. 12

The California law does not look upon injury or illness resulting from pregnancy as a disability unless it continues for four weeks after termination of pregnancy. This means, in effect, that no benefits are payable in the normal maternity case, nor are benefits payable for any week for which unemployment insurance benefits are payable. Payment for occupational disability is

11 Ibid., 195.
12 Ibid., 195.
made only to the extent necessary to increase the workmen's compensation benefit to the amount which would have been payable had the disability been non-occupational. In order to obtain any benefits, the individual must present a certificate from a physician, dentist, or chiropodist regarding the disability and its probable duration, in connection with the first claim made for each disability. Furthermore, a claimant may be required to submit to an examination under state auspices to determine the extent of the disability. 13

In the New Jersey plan, no benefits are payable for disability due to pregnancy or resulting childbirth, miscarriage, or abortion, or for self-inflicted injuries, or injuries sustained in the perpetration of a high misdemeanor. Neither are benefits payable during any period in which the claimant performs work for remuneration or profit, or for which the employee is entitled to receive unemployment compensation benefits. If a disabled employee receives sick-leave pay from the employer, his disability benefits are reduced, so that the combined weekly amount does not exceed his normal wage. 14

The state of Washington, March 1949, enacted a program of weekly non-occupational accident and sickness benefits patterned closely after the California law, to to into effect on June 10,

13 Ibid., 198.
14 Ibid., 204.
1949. But before it became law, a petition carrying 75,000 signatures was filed and certified calling for submission of the bill to a public referendum at the November 1950, election. At that time the proposal was overwhelmingly rejected by a three to one vote.

The New York Disability Benefits Plan, which began to pay benefits on July 1, 1950, departed from the pattern established in the other states where such legislation had been an extension of the unemployment compensation law on the theory that sickness is a form of unemployment. It more logically provides for the compulsory disability benefits in supplement to the Workmen's Compensation Law by means of an amendment to the latter.\textsuperscript{15}

In order to collect benefits in New York the individual must be under the care of a legally licensed physician authorized to render care by the Workmen's Compensation Board, and may be required to submit to examination by a physician designated by the employer, insurance carrier, or the Workmen's Compensation Board.

No benefits will be payable for disability resulting from pregnancy unless disability occurs after an employee's return to work for a period of two weeks following termination of pregnancy. Self-inflicted injuries or those sustained in the perpetration of an illegal act are not compensable, nor are benefits payable for any period in which the claimant performs work for remuneration.

\textsuperscript{15} Ibid., 199.
or profit. To avoid duplication of benefits, the disability benefit is reduced by the amount of any disability payments under old-age and survivors insurance systems, government pension plans, or private pension plans. An employee who received his regular remuneration from the employer may not collect state disability benefits.16

Other Programs

In addition to the state disability compensation laws there is also a Federal law which provides for the payment of cash benefits during temporary disability to certain classes of railroad workers. This is the Railroad Unemployment Insurance Act, which was amended in 1946 to pay disability benefits. According to the provisions of the amended Act, on and after July 1, 1947 all workers covered by the Act, that is employees of any railroad carrier, express company, sleeping-car company, national railway labor organization, railroad association and certain other railroad-connected organizations engaged in interstate commerce, may be eligible for sickness benefits.

In order to get sickness benefits the individual must be sick or injured and unable to work. He must have no wages, salary, pay for time lost, vacation pay, or other remuneration but payments under a private health or accident insurance policy

16 Ibid., 210.
or from a relief department of an employer or a group insurance policy will not prevent the payment of sickness benefits. As part of the procedure, he will have to have a statement of sickness filled out by his doctor and submit it to the Railroad Retirement Board.17

The worker may be disqualified for sickness benefits if he fails to take a medical examination when required by the board or receives sickness benefits for the same time under any other law, or if he receives unemployment benefits for the same time under the railroad unemployment insurance act or any similar act.18


18 Ibid.
CHAPTER IV

SOME OTHER PROGRAMS PAYING BENEFITS TO THE TOTALLY AND PERMANENTLY DISABLED

State Aid To The Disabled

Congress in 1950 amended the Social Security Act by adding a new title to it, Title XIV, making possible grants-in-aid to states with approved plans for aiding needy persons who are permanently and totally disabled. Formerly, Federal funds were limited to programs that aided the aged, the blind, and dependent children.

The program of aid to the permanently and totally disabled helps physically and mentally disabled people. It provides regular money payments to help them live at home, with relatives, or in nursing homes or other institutions. Persons in tuberculosis institutions or mental institutions are not eligible for this aid.

Permanent and total disability is interpreted by the states to mean a physical or mental impairment, disease, or loss that substantially precludes an individual from engaging in useful occupations within his competence such as holding a job or homemaking. Each state is responsible for establishing its own
definition for permanent and total disability.\(^1\)

The Social Security Administration advises against including in the state laws covering disability aid any specific definition of permanent and total disability.\(^2\)

Laws are recommended which will give the administrative agency general authority to make and enforce such rules and regulations as will enable it to establish the specific conditions of eligibility.\(^3\)

A majority of the states have adopted a definition of disability which permits a finding of eligibility when the individual's permanent impairment, disease, or loss is sufficiently severe to prevent him from engaging in a useful occupation, within his competence, including homemaking. Many state agencies have refrained from using the phrase "permanently and totally disabled" in establishing the program. They prefer to call it "disability assistance" or "aid to the disabled."\(^4\)

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\(^3\)Ibid.

\(^4\)Ibid.
Assistance is not restricted to persons who are completely helpless and most of the states are including other disabled individuals in addition to the completely helpless. The disability factor is determined by consideration of medical findings and a social study of the individual and his ability to carry out his responsibility in relation to this impairment, that is, the extent to which his age, training, and experience influences his ability to engage in useful occupations as a wage earner or homemaker.

Determination of disability is made by a team of specialists which usually includes a doctor, a medical social worker, and a vocational rehabilitation counselor. The team may also give advice on rehabilitation possibilities of the disabled person. 5

In December 1956 there were in operation forty-five Federal-State programs of aid for permanently and totally disabled people. Plans were set up in three more states during the year of 1957. California, Kentucky, and Texas were the states added. 6

There are also provisions for disability monthly benefits in the various retirement systems established by the Federal Government for its civilian employees.

5 Social Security Administration, A Brief Explanation of the Social Security Act, p. 43.

Federal Disability Benefit Plans

Altogether there are nine different retirement systems for Federal civilian employees. In making this classification, the civil service retirement system is defined as including not only general employees, but also Members of Congress, legislative employees, and investigative employees.

In the Civil Service Retirement System, total disability is defined as "inability of the employee because of disease or injury, to satisfactorily and efficiently perform his duties or the duties of a similar position. It need not be shown that the applicant is disabled for all kinds of work." 7

The Civil Service Commission makes the determination whether an employee is totally disabled so as to qualify for an annuity. Unless there is other evidence acceptable to the Commission, the employee must undergo an official medical examination which will be arranged, without cost to him, either by his employing agency or the Civil Service Commission. The disability annuity may not be based on a disability of short duration, or on disability due to vicious habits, intemperance, or willful misconduct on the employee's part within the five year period before he becomes disabled.

The injury or disease need not be incurred while on duty, but if it is so incurred, the employee will have a choice between the annuity under the Retirement Act and benefits under the Federal Employees' Compensation Act, and may choose whichever is to his advantage.

Annual examinations are required until the annuitant reaches age sixty, unless in the meantime it is found that the disability is of a permanent nature. A finding of permanent total disability may be made upon the first or any later examination, and will eliminate the need for any further examination unless circumstances warrant.

Even if he remains totally disabled, an annuitant whose earning capacity is restored before he reaches age sixty will have his annuity discontinued. If earning capacity is restored, the annuity is continued temporarily (not to exceed one year).

A disability annuitant's earning capacity is considered restored if in each of two consecutive calendar years the annuitant's income from wages or self-employment, or both, is at least eighty per cent of the current salary of the position from which he had retired.8

Members of Congress, legislative employees, and certain investigative employees are covered by this system as well as the general employees. They have the same disability protection, the

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only difference being that the benefit formulas are higher than for the general employees since a larger percentage of pay is given for each year of service.

In the U. S. Foreign Service the definition of total disability is total disability for useful and efficient service, as proven by medical examination. Benefits are payable immediately without a waiting period but are not available during the time sick leave is being paid. If the individual is eligible for benefits under the employees' compensation system, he may elect either benefit. There are no provisions or requirements for vocational rehabilitation. Annual examinations are required, unless the disability is permanent, but there are no direct restrictions on any earnings that the individual might have. Upon recovery, the benefits cease immediately.9

For employees of the Tennessee Valley Authority disability is defined as the individual being incapacitated for further performance of duty, with such incapacity likely to be permanent. The disability must be proven by medical examination, with an annual examination during the first five years and then examination every three years. Disability benefits are payable without any waiting period, except that they cannot overlap with sick leave.10


10Ibid.
For the teachers in the District of Columbia the definition of disability is inability to perform duty as proven by medical examination under the direction of the health officer of the District of Columbia. Disability benefits begin immediately but are not payable at the same time as sick leave. Individuals eligible for benefits for work-connected disability under the employees' compensation system may elect to receive benefits under only one of these systems. There are no requirements or provisions for vocational rehabilitation. Annual physical examinations are required, except for disability of a permanent nature. If an individual recovers from the disability, the annuity continues to be payable until he is reappointed (or refuses to accept such an appointment).\(^{11}\)

The policemen and firemen of the District of Columbia are disabled and qualify for disability benefits when they are permanently disabled and incapacitated for performance of duty. No benefits are payable under the retirement system for disability in the line of duty, since benefits for work connected injuries are payable under a different system.\(^{12}\)

The definition of disability for the Board of Governors, Federal Reserve System, is total disability for useful and effi-

\(^{11}\) Ibid.

\(^{12}\) Ibid., p. 53
cient service in the regular job, as proven by medical examination. There is no waiting period for benefits but these cannot overlap with salary or sick leave. When the individual is disabled as a result of his employment, he may choose either this benefit under the retirement system or workmen's compensation benefits. Annual examination is required unless disability is permanent. There is no limitation on the earnings that the individual can have, although he is still subject to medical examination as to continuance of disability.13

For civilian teachers at the U.S. Naval Academy, disability is defined as being totally disabled for useful and efficient service. There is no waiting period for benefits but benefits cannot overlap with sick leave. If the individual is eligible for benefits under the employees' compensation system, he may have his choice of benefits under only one of these two systems. There are no requirements for vocational rehabilitation. There is an annual examination to determine continuance of disability, unless it is permanent in character. If the individual recovers, the annuity is continued unless he is offered reemployment by the Government or is reemployed elsewhere. There is no restriction on earnings during the receipt of disability benefits, other than the individual being subject to medical examination as to continuance of disability.14

13 Ibid.
14 Ibid.
The local rate employees of the Panama Canal Zone can qualify for disability benefits under their retirement system if their disability is rated as unfitness for further useful service. Unlike most retirement systems for Federal employees, this system is noncontributory.  

The Federal judiciary also has a non-contributory system. Special provisions apply to the judiciary of the Territories, to the District of Columbia judiciary, and judiciary of the Tax Court; for all these special categories, there is no special disability provision other than the normal age and service requirement provisions. In regard to the Federal judiciary, the definition of disability is permanent disability for performing regular duties, as certified by the beneficiary and by the judge who is his superior. The benefit is payable immediately without a waiting period although it cannot overlap with salary. There is no offset by other benefits nor are there any requirements for vocational rehabilitation or periodic examination.  

Railroad Disability Benefits

The Railroad Retirement Act of 1937 provided pensions to any person in railroad service on or after August 29, 1925, who

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15 Ibid.
16 Ibid.
had become totally disabled upon the incurrence of disability, regardless of age, if he had as many as thirty years of railroad service, or if he were sixty years of age regardless of length of service. The Act has been amended and under the newer provisions an occupational disability annuity is payable at age sixty, if the worker had ten years of railroad service or before age sixty if he had twenty years of railroad service. In either case, he must be permanently disabled for work in his regular railroad occupation and have a current connection with the railroad industry when he retires.

A total disability annuity is payable at any age, if the worker had ten years of railroad service and he is permanently disabled for all regular work.

An employee is considered permanently disabled for work in his regular occupation if, in accordance with the occupational disability standards established by the Board, his permanent physical or mental condition is such that he is unable to perform the duties of that occupation. The cause of the disability is immaterial. Also, it does not matter whether or not the employee was disqualified for such work by his employer. 17

the disability standards which apply are those for the job to which the individual holds seniority rights or the job which he left to take the position with the labor organization.18

An employee is permanently disabled for all regular employment whenever his permanent mental or physical condition is such that he is unable to perform regularly, in the usual and customary manner, the duties of any regular and gainful employment which is substantial and not trifling, whether for a covered or noncovered employer. The condition of permanent disability must be established in the manner prescribed by the Board.

Loss of sight, loss of both arms or both legs, or of one arm and one leg, severe tuberculosis or heart disease, and loss of mind are among the infirmities which would ordinarily be sufficient to permit a finding of permanent disability for regular, gainful employment.19

Private Plans For Disability Benefits

As part of the general concern with disability now being considered in this country, many private employers have tackled the problem of income security for the totally disabled employee, especially the long service one. A number of company welfare benefits are being used to provide long-term disability income.

18 Ibid.
19 Ibid., p. 9.
Deferred profit-sharing plans and the new "thrift" plans can provide sizable lump-sum benefits. Also many group life insurance plans pay off the face value of the policy in monthly installments to a disabled employee. A few companies provide benefits similar to paid sick leave for long term disability. 20

A completely disabled employee can also receive income from two provisions commonly found in company pension plans. These are early retirement and vested benefits. However, neither benefit is designed specifically to meet the problem of total and permanent disabilities. Although disability may be the reason for an employee taking advantage of these provisions, it is not the only condition which allows payment of the benefits. Actually, only a very few vested plans are structured so that the disabled employee can receive the benefits from the onset of disability. Almost all vested plans begin payment only at the normal retirement age or, in some cases, at the early retirement age, regardless of when the disability occurs. 21

By far the most important development in company aid to the totally and permanently disabled employee is the "disability pension." Although, like vesting and early retirement, it is an

21Ibid.
integral part of the age retirement plan, this pension is specifically and solely designed to provide benefits for long-term disability. Disability pensions provide benefits from the date of disability, and they are not available to an employee who is not disabled.22

Although disability benefits were practically universal in pre-depression day pension plans, they steadily lost favor after the Depression until the union pension movement gained momentum at the beginning of this decade. At the present time about two-thirds of the bargained pension plans, but only one-quarter of the unilateral plans, contain a disability pension provision. However, when bargained and non-bargained plans are combined, only about one quarter of the pension plans in the United States have disability provisions.23

Although a minority of all pension plans have a disability provision, the majority of workers covered by pension plans probably are covered by disability provisions.24

The union demand for disability pensions apparently has brought two major changes in the eligibility requirements for a disability benefit. An age requirement has become more common.

22Ibid.
23Ibid., p. 196.
24Ibid.
The average length of service needed to qualify has increased from roughly twelve years prior to 1950, to seventeen or eighteen years in 1956.25

The vast bulk of disability plans define total and permanent disability as the "inability to do any kind of work for remuneration or profit." In one survey by the National Industrial Conference Board it was found that in about fifteen percent of the plans, the primary emphasis is on inability to handle work in the company; ability to find work outside the company is more or less ignored.26

Despite the important role of unions in the adoption of disability pensions, they do not play a significant part in decisions concerning the extent of an employee's disability.27

Only eighteen of fifty-three disability pensions in the Conference Board Study mentioned the possibility of a Federal disability benefit as part of Social Security. All eighteen were bargained plans and all provided that in the event that a Federal disability benefit was provided, it would be subtracted from the company disability pension.28

25 Ibid.
26 Ibid.
27 Ibid.
28 Ibid.
Although a disabled employee may meet the age and service requirements for a disability pension, he must also prove that his disability is serious enough to qualify for this type of benefit. The general objective of a disability pension is to provide benefits only for "total and permanent" disability. Actually the definition of "total and permanent" disability varies from company to company, and in some companies, it varies from case to case.

A recent National Industrial Conference Board study, "Retirement of Employees", indicated that most companies with disability pensions have a written definition for the term "total and permanent disability." Only fifteen percent of 146 companies studied apparently had no standard definition. It could vary from case to case in these companies. 29

Among the companies with a specific definition, there are two basic concepts of what constitutes total and permanent disability. In all but twenty-one of these 125 plans, an employee must be unable to do any kind of work either in the company or in the labor market generally. Three plans even require the employee to be confined to his home. 30

But the other twenty-one plans apparently are less concerned with the possibility that the employee can find work outside the

29 Ibid., p. 197.
30 Ibid.
company. Here the primary emphasis is on the fact that the long-
service employee is no longer able to handle work in the company. 
The extreme case is the plan which provides a disability pension 
if the employee cannot perform his normal duties satisfactorily, 
the fact that there might be other jobs in the company and many 
jobs outside the company which he can do is ignored.31

Less extreme is the plan which gives a disability benefit to 
an employee who cannot handle any available job in the company. 
In some cases the employee's subsequent earning power in other 
companies is ignored. In other cases, the restriction is added 
that he be able to perform only "light work" once he leaves the 
company.32

The definition of total and permanent disability used by the 
largest number of plans for disability retirement is illustrated 
by the definition as used in the agreement between the Ford Motor 
Company and UAW-CIO. Through negotiations with such employers as 
the General Motors Corporation, the Ford Motor Company, the 
Chrysler Corporation, and many others, this union established 
pension plans covering more than one million employees and pro-
viding permanent total disability benefits for eligible employees. 
The definition given in the contract is as follows:

31 Ibid.
32 Ibid.
An employee shall be deemed to be totally and permanently disabled only if the Board shall find, on the basis of medical evidence, (i) that he has been totally disabled by bodily injury or disease so as to be prevented thereby from engaging in any regular occupation or employment for remuneration or profit, and (ii) that such disability will be permanent and continuous during the remainder of his life; provided, however, that no employee shall be deemed to be totally and permanently disabled for the purposes of the Plan if his incapacity consists of chronic alcoholism or addiction to narcotics, or if such incapacity was contracted, suffered or incurred while he was engaged in a felonious enterprise or resulted therefrom, or resulted from an intentionally self-inflicted injury, or resulted from service in the armed forces of any country.\footnote{Agreements between Ford Motor Company and the UAW-CIO. (Detroit, 1950), p. 159.}

The definitions used in many other contracts and plans are not being included since this would involve giving a large number of typical examples which would be of limited value in a paper of this type since the principle we are discussing is made clear by the material that has been presented.
CHAPTER V

DEFINITIONS OF DISABILITY FOR THE DISABILITY FREEZE
IN THE SOCIAL SECURITY AMENDMENTS OF 1954

Requirements For Disability Freeze

Under the Social Security Act prior to the changes made by the 1954 amendments, a worker's rights to old-age and survivor's insurance benefits might be impaired or lost entirely if he had periods of total disability before reaching retirement age. Unless the worker was already permanently insured when he became disabled, he lost his fully insured status when he reached retirement age because the entire period of his disability was included in the elapsed time that was the basis for determining his insured status. Benefit amounts, whether for retirement of survivor benefits, were based on the average monthly wage, which was computed by taking an individual's total earnings from a specified starting date up to age sixty-five or death and then dividing that total by the full elapsed time, including any periods of total disability. The 1954 amendments, by freezing the old-age and survivors insurance status during extended total disability, remove this disadvantage by preventing such periods of disability from reducing or wiping out retirement and survivor
benefits. The four or five year dropout period provided by the new law for all persons was also available to the disabled individual in addition to the disability dropout feature.

The freeze provision is analogous to the "waiver of premium" commonly used in life insurance and endowment policies to maintain the protection of these policies for the duration of the policyholder's disability. About 375 life insurance companies, including all of the largest, offer a waiver-of-premium clause to individuals purchasing ordinary life insurance. About half the standard ordinary life insurance issued currently carries this waiver.1

One of the requirements a person must meet to be entitled to a disability freeze is that he be under a "disability." The term "disability" is defined in the law as "inability to engage in any substantial gainful activity by reason of a medically determinable impairment that is expected to be of long-continued and indefinite duration or to result in death," or "blindness."

The Freeze For The Blind

Blindness constitutes disability in the Social Security Act and is defined in the law as central visual acuity of 5/200 or less in the better eye with a correcting lens; an eye in which the

visual field is reduced to 5 degrees or less concentric contraction is considered as having a central visual acuity of 5/200 or less.\textsuperscript{2}

A medical finding of blindness, as defined, would alone be sufficient proof that an individual is disabled. Individuals with a visual handicap that does not meet this definition may nevertheless meet the general definition of disability if they are found unable to engage in any substantial gainful activity because of visual impairment that can be expected to be of long-continued and indefinite duration.\textsuperscript{3}

In order to qualify for the freeze, the applicant must establish by medical evidence that his impairment results in such a lack of ability to perform significant functions, such as moving around, handling objects, hearing or speaking, or, in the case of mental impairment, reasoning or understanding, that he cannot, with his training, education and work experience, engage in any substantial gainful activity. It is not necessary that an applicant establish that he is helpless. On the other hand, it is not enough that he is unable to carry on his last or usual occupation.

In general, a determination of disability depends upon the severity of the impairment and the extent of the handicap that

\textsuperscript{2}Ibid. \textsuperscript{3}Ibid.
it imposes on the particular applicant; it is made on the basis of
the medical facts in the individual case and the worker's own
background and training. However, there are some cases where the
medical facts may be controlling. For example, where the only
impairment is moderate neurosis, moderate impairment of sight or
hearing, or other moderate abnormality, it would be obvious on the
basis of medical considerations alone that the facts would not
justify favorable determinations. Likewise, where the impairment
is very severe, "disability" as defined in this program, may be
established (in the absence of work) on the basis of the medical
facts.4

The Senate Committee on Finance explained the definition of
disability in the disability freeze provision:

"There are two aspects of disability evaluation: (1) There
must be a medically determinable impairment of serious
proportions which is expected to be of long-continued and
indefinite duration or to result in death, and (2) there
must be a present inability to engage in substantial gain-
ful work by reason of such impairment (recognizing, of
course, that such efforts toward rehabilitation will not be
considered to interrupt a period of disability until the
restoration of the individual to gainful activity is an
accomplished fact). The physical or mental impairment must
be of a nature and degree of severity sufficient to justify
its consideration as the cause of failure to obtain any
substantial gainful work. Standards for evaluating the
severity of disabling conditions will be worked out in

4U. S. Department of Health, Education, and Welfare, Bureau
of Old-Age and Survivors Insurance, Disability and Social Security,
consultation with the State agencies. They will reflect the requirement that the individual be disabled not only for his usual work but also for any type of substantial gainful activity.

A medically determinable impairment is an impairment that is determined by a physician to exist and is based on medical evidence and where necessary on appropriate medical tests.

An impairment can be "expected to be of long-continued and indefinite duration or to result in death," if it has persisted despite appropriate therapy for a period of not less than six months and if it cannot be reasonably anticipated that the impairment will in the foreseeable future be so diminished as no longer to prevent substantial gainful activity. However, the possibility that through new discoveries in medical science or rehabilitation techniques the applicant may be able to engage in substantial gainful activity in the future does not mean that the condition presently may not be expected to be of long-continued and indefinite duration.

An impairment is considered "likely to result in death" if, on the basis of established medical knowledge, it is found to be in a terminal stage under the particular circumstances of the case, considering the age, medical history, and medical condition

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of the individual. 6

A condition that is remediable by generally accepted therapy to the extent that it would no longer prevent the applicant from engaging in substantial gainful activity is not considered to be disabling. However, a condition is considered remediable, only if the therapy does not involve significant risk to the life or health of the patient. 7

The rules in the social security law for deciding whether a person is disabled are different from the rules in some other Government and private disability programs. This means that some disabled people, receiving payments for "total disability" from another Government agency, or from a private company, may not be found eligible under the social security law.

A decision of another agency that an individual is totally and permanently disabled is not controlling. The evaluation team must make an independent determination under the law and it is not authorized to find the applicant disabled unless in its judgment the evidence supports such a finding.

Therefore, an applicant for disability benefits who has been allowed a benefit under another program should submit the report of the examination made for the other agencies, as well as the

6Disability and Social Security, Evaluation of Disability, p. 3.
7Ibid.
decision. The evaluation team (which includes a physician and a vocational specialist as well as a trained lay evaluator) considers the evidence underlying the decision of the other Government agencies as one factor in making its decision.
CHAPTER VI

DEFINITION OF TOTAL AND PERMANENT DISABILITY FOR DISABILITY PAYMENTS IN THE SOCIAL SECURITY AMENDMENTS OF 1956

Disability Payment Requirements

The 1956 Amendments to the social security law provide for the payment of disability insurance benefits to disabled workers between the ages of fifty and sixty-five. Payments to persons eligible for these benefits began with the month of July 1957.

Another disability provision in the 1956 amendments is designed for dependent children who became totally disabled before age eighteen. It makes possible the payment of monthly benefits after age eighteen if the person's present disability began before he reached age eighteen. The mother of the disabled child gets benefit payments as long as she has the child in her care. Child disability benefits first became payable for January 1957.

A person may become unemployed or remain unemployed for a number of reasons other than disability; individual employer hiring practices, technological changes in the industry in which the applicant has been employed, local or cyclical business or economic conditions, and many others. The disability provisions
are intended to benefit only those persons who are not working because of incapacity, and not because of these other factors.

Among the requirements an individual must meet to be entitled to disability insurance benefits, or to child's insurance benefits after attainment of age eighteen, is that he be unable to engage in any substantial gainful activity because of a medically determinable impairment and that his impairment be expected to continue for a long and indefinite period of time, or to result in death.

The definition of disability is the same as for the disability freeze, except that there is no presumed disability for the blind.

The work requirements for the disability freeze and for disability insurance benefits are practically the same but there is a difference in the definition of disability where a blind person is concerned. To be eligible for cash disability payments, it must be shown that the applicant, even though he is totally blind, is unable to engage in substantial activity.

A person who is blind, as defined in the freeze provision, can have his social security record frozen without consideration being given to his ability to work. But, to be eligible for disability insurance benefits, blind persons, like those with other impairments, must be unable to engage in any substantial gainful activity. A person with central visual acuity of 5/200 or less in the better eye with the use of correcting lens is considered
disabled for the purpose of having his record frozen.

A six-month's waiting period is required after onset of the disability before benefits are payable.

To be insured for disability benefits under the law in effect, under the 1956 amendments, the disabled worker must:

(1) Be fully and currently insured and
(2) Have twenty quarters of coverage out of the forty quarter period ending with the first quarter of his period of disability.¹

The earnings test of the Old-Age and Survivors Program does not apply, since earnings in the amount permitted by the work clause would be inconsistent with the definition of disability.

Where an individual also receives a workmen's compensation benefit or another Federal benefit based on disability, the disability benefit is to be reduced by the amount of such benefit, under the provisions of the 1956 law.²

The amount of the benefit is to be the same as the primary insurance amount would be if the worker were entitled to old-age insurance benefits.

Applicants are to be referred for vocational rehabilitation as under the 1954 law. Deductions to be made from monthly bene-

¹Cohen and Fauri, p. 6.
²Ibid.
fits if the individual refuses rehabilitation without good cause. Refusal by a member or adherent of any recognized church or religious sect which relies on spiritual healing will be deemed to be refusal with good cause.3

The burden of establishing the existence and duration of disability is on the applicant. Opinions regarding prognosis or functional capacity expressed by the applicant's medical sources are not conclusive. If submitted, they should be supported by an adequate summary of the history, course, findings and reasons for the opinion.

An applicant must furnish evidence based upon examinations made by a qualified medical examiner to establish the nature and severity of his impairment from the time he claims it prevented him from engaging in substantial gainful work. The Department of Health, Education, and Welfare may, under certain circumstances, purchase medical evidence to reconcile discrepancies in the proof, obtain more detailed findings, etc. However, this may be done only after the applicant has furnished sufficient evidence to establish the reasonable likelihood of disability.

The medical evidence submitted by the applicant should contain an adequate summary of the history, diagnosis, physical and clinical findings, treatment and response. The clinical facts must be adequate to confirm for the reviewing physician the diag-

3Ibid.
nosis and to describe the severity of the condition, the response to therapy and the applicant's residual physical or mental capacity. Where appropriate, the applicant's physician is expected to supply results of tests that he has made to establish the diagnosis or describe the applicant's capacity to function. Where an applicant has been examined in connection with an application for benefits under another disability program or has been hospitalized or institutionalized, the report of such findings or treatment is acceptable in support of the applicant's claim. In many cases the Department will be able to assist an applicant to obtain copies or summaries of medical records.

Basis For Determinations Of Disability

Under the disability provisions, the determination of disability must be made on the basis of the facts in the individual's case. The law does not authorize the use of a rating schedule or the adoption of an "average man" concept of total disability. The question in every case is whether the individual's impairment has left him with sufficient capacity to function so that considering his age, education, and experience, he is able to engage in any substantial gainful activity. This requires evaluation of the severity of the impairment and of its effect upon the applicant, and finally, consideration of the applicant's education and experience so that it can be determined whether there remains a capacity to engage in any substantial gainful work.
If the claimant is not actually working, here are some examples of conditions which are ordinarily severe enough to make a person unable "to engage in any substantial gainful activity":

1. Loss of use of both arms, both legs, or a leg and an arm.

2. Progressive disease which has resulted in the physical loss of a leg or arm or which has caused the limb to become useless. Among these diseases are diabetes, multiple sclerosis, or Fuerger's disease.

3. Disease of heart, lungs, or blood vessels which has resulted in serious loss of heart or lung reserve (as shown by x-ray, electrocardiogram, or other tests) so that, in spite of medical treatment, there is breathlessness, pain, or fatigue on slight exertion, such as walking several blocks, using public transportation, or doing small chores.

4. Cancer which is progressive and can't be successfully operated on.

5. Damage to the brain, or brain abnormality, which has resulted in severe loss of judgment, intellect, orientation, or memory.

6. Mental disease (e.g., psychosis or severe psychoneurosis) requiring constant supervision or continued confinement in an institution.

7. Loss of vision or narrowing of vision to the extent that the individual has central visual acuity of no better than 20/200 in the better eye after best correction, or an equivalent concentric contraction of visual fields.

8. Permanent and total inability to speak.

9. Total deafness (which cannot be corrected by a hearing aid).

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The Department has developed medical guides for evaluation teams in the State agencies and in the central office. The medical guides were prepared with the assistance of a national Medical Advisory Committee. They are supplemented by technical training and discussion and are constantly being reviewed and revised in the light of the Department's experience to make them more useful to evaluators. An objective of the guides is to promote equal treatment for all applicants throughout the country.  

These medical guides are essentially clinical descriptions of a number of impairments that may be totally disabling from the point of view of anatomical damage or functional loss arranged according to the body system primarily involved. Primarily, the discussions include a description of the symptoms and the clinical and laboratory findings that may indicate that a disease process has reached such an advanced stage that most people so affected would not have sufficient vitality or understanding to support any kind of substantial work. However, it is not possible to describe all conditions which are disabling. Moreover, the effect of a given impairment will vary as between individuals, and the vocational limitations imposed by a particular condition will depend upon the applicant's age, education, and previous experience.

Thus, there will be cases in which an applicant with a condition described in the guides will nevertheless not be disabled within the meaning of the law because as a result of special skills or for other reasons, he was able to, or actually did engage in substantial gainful activity despite a severe impairment.\(^6\)

On the other hand, there is no requirement that the applicant have a single condition or combination of conditions comparable in severity to those described in the medical guides. Conditions that fall short of the severity of those described in the guides are evaluated in terms of whether in fact they prevent the applicant from engaging in any substantial gainful activity. The guides facilitate identification of clear-cut cases of what might ordinarily be inability to engage in substantial gainful activity.\(^7\)

The law sets forth the conditions under which disability determinations will be made. The State vocational rehabilitation agencies or other appropriate State agencies, will, under agreements with the Secretary of Health, Education, and Welfare, determine if the individual is suffering from a disability and the day the disability began and the day it ceases. Their determinations will be considered as the determinations of the Secretary, with the following exceptions.

\(^6\)Ibid., p. 5.

\(^7\)Ibid.
The Secretary is authorized to review, on his own motion, any determination made by a State agency that a disability exists and, as a result of such review, to make a finding that no disability exists or that the disability began later than determined by the State agency, or that the disability ceased earlier than determined by the State agency. The law also gives an individual, dissatisfied with a determination by a State or the Secretary, the right to a hearing by the Secretary and to judicial review of the final decision of the Secretary after such hearing, to the same extent as provided in section 205 (b) and section (g) of the 1950 law.

An agreement may cover all persons in the State or only certain classes of individuals, as may be designated in the agreement at the State's request. In the relatively few cases where there is no agreement with a State, then the disability determinations will be made by the Secretary. Such determination will also be made for the types or classes of cases that, because of their characteristics or their volume, the State has asked to have excluded from the agreement.

Standards for evaluating disability were worked out in consultation with the State agencies, and both the State agencies and the Bureau of Old-Age and Survivors Insurance will apply these standards for the purposes of the freeze. Equal treatment
in all states will thus be promoted.  

In addition to the medical evidence in every case, it is important that non-medical evidence about such factors as age, education, work experience, daily activity, part-time or intermittent work, be completely developed and reflected in the case file since the determination cannot be made on the basis of medical evidence alone in certain cases. The additional factors that influence the extent of handicap imposed by an impairment should be considered when judging whether an individual can still engage in substantially gainful employment.

Education and training are factors in determining the employment capacity of an applicant. Lack of formal schooling, however, is not necessarily proof that the applicant is an uneducated person or not adaptable. The kinds of responsibilities he carried when working may indicate ability to do more than unskilled work, even though his education has been limited. An applicant for disability benefits whose serious impairment permits very light work only may be unable to engage in substantial gainful activity because of extremely limited education and a work history confined to heavy unskilled manual work.

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ORGANIZATION AND FUNCTIONS OF THE DIVISION OF DISABILITY OPERATIONS

Organizational Units In The Disability Program

With the signing of the legislation by President Eisenhower on September 1, 1954, the Division of Disability Operations was set up within the Bureau of Old-Age and Survivors Insurance, Social Security Administration in the Department of Health, Education, and Welfare for the specific purpose of administering the disability program which had been created by the 1954 amendments to the Social Security Act. This Division was actually organized on September 21, 1954 with Arthur E. Hess, Assistant Director, Bureau of Old-Age and Survivors Insurance, in charge of the Division of Disability Operations. (Hereafter, for the sake of brevity the abbreviation of BOASI will be used to designate the Bureau of Old-Age and Survivors Insurance.)

The Division of Disability Operations is under the supervision of an Assistant Director and a Deputy Assistant Director. The organization is divided into five groups: the State Operations and Medical Consultants Staffs, and the Disability Standards, Evaluation and Review, and Operations Standards Branches.
The Division is responsible for the planning and operations necessary to preserve the rights of a disabled individual as provided in the Social Security Act. The part played by the regional and district offices, the five groups of the Division of Disability Operations, and the designated State agencies in carrying out this responsibility is briefly as follows.

The regional representative directs the operations of the BOASI district offices, including their activities relating to the disability program. In addition, he is the Bureau's representative in its day-to-day administrative dealings with contracting State agencies in matters concerning the disability program. State agency inquiries and other communications with the Bureau are through the regional representative, except for case file transmittal and specific case correspondence for which routing is prescribed elsewhere as being directly between State agencies and the BOASI central office.

The district office is the Bureau's direct link with the public. It is at this "grass roots" level that the disabled applicant will be met face-to-face, his problem talked over, and his disability application taken.

The BOASI district offices have, as a minimum, the following responsibilities with respect to the administration of the disability provisions:

1. Explanation of the OASI program and the disability provision to the public;
2. Taking applications for disability determinations;
3. Obtaining the individual's earnings record;
4. Accepting medical evidence required of the applicant;
5. Sending the case file to the appropriate office (central office of BOASI or State agency) for disability determinations;
6. Complying with requests for additional information from the State agency or from the BOASI central office;
7. Answering the individual's inquiries about the status of his case;
8. Referring disabled people to the State rehabilitation agency for services which may restore them to productive activity;
9. Explaining disability decisions and receiving requests for reconsideration or hearing.

The Work Of The Division--Operational

The Evaluation and Review Branch is the Branch of the Division of Disability Operations that adjudicates disability applications and reviews State agency determinations of disability.

The Branch:

1. Reviews State agency determinations of disability for conformance to standards and policies promulgated for the guidance of the several States;
2. Requests additional evidence, clarification of State decisions, or reasons for apparent deviation from prescribed standards by the State agency;
3. Revises or reverses State decisions where authorized by law (the revisions or reversals cannot be more favorable to the applicant but may be less favorable) and where not so authorized, requests the State agency to reconsider its decision where it appears that such action is justified;
4. Adjudicates all disability applications excluded by law or agreement from State participation;

5. Notifies the non-beneficiary applicant or his representative of the determinations and of his right to reconsideration and appeal (except cases already in benefit status, where appropriate area office sends the notice).

6. Reconsiders, upon request of applicant, applications initially adjudicated and reviewed by the Branch and forwards appeals to the referee;

7. Interprets established standards and policies, and recommends changes in adjudication or review practices based on practical experience and the recognition of problem areas;

8. Reviews and re-evaluates applications in which a follow-up medical examination is necessary or in which earnings information indicates possible termination of disability;

9. Answers specific inquiries from wage earner and others, including senators and representatives, as to the content of the disability program and its applicability to individual cases;

10. Determines whether the expenditure by a State for a new examination is justified.

The Disability Standards Branch is responsible for developing and formulating standards for the evaluation of disability for individuals applying for the freeze and for disability benefits. It works very closely with the Medical Staff of the Division and with the Evaluation and Review Branch. The Disability Standards Branch develops and formulates policies on the development of medical evidence necessary in the adjudication of disability cases. The forms and procedures used by the Evaluation and Review Branch and
State agencies in the adjudication of disability cases are devised and issued, for the most part, by this Branch.

1. In discharging their responsibilities, staff members of the Disability Standards Branch consult frequently with other Divisions of the Bureau such as the Divisions of Field Operations, Claims Policy, Accounting Operations, and Claims Control, as well as other constituents of the Department such as the Office of Vocational Rehabilitation, the Bureau of Public Assistance, and General Counsel.

2. The Branch also participates in meetings with the States Council of state Vocational Rehabilitation Directors and in meetings of the Medical Advisory Committee, appointed by the Commissioner of Social Security for the purpose of discussing new policies and instructions.

3. Specifically, the Disability Standards Branch is responsible for district office instructions (other than the operating policies and instructions for which Division of Field Operations is responsible) contained in Part VI of the Bureau's Claims Manual and Part I, II, and III of the Disability Insurance State Manual issued for the use of State agencies which have agreed to prepare disability determinations under the disability program.

4. The Branch issues instructions on the adjudication of disability cases by the Evaluation and Review Branch—at the present time, these procedures are contained in a series of "Operating Instructions."

The Operations Standards Branch is responsible for the development and formulation of fiscal and management standards, policies and procedures applicable to State agencies making determinations of disability under the terms of an agreement with the Department, for evaluating the fiscal and administrative performance by these State agencies, and for taking such corrective action as falls within the Branch responsibility.

In addition, the Branch is responsible for performing the
tasks relating to the preparation, support, and execution of the Division's budget. The following are illustrative of the responsibilities outlined above:

1. Examination and analysis and processing of proposed agreements and modification of agreements to make determinations of disability between the Secretary and State agencies for conformance to established standards and policies.

2. Development and formulation of fiscal and management standards, policies and procedures applicable to State agency operations and Part IV of the State Manual.

3. Endeavor to maintain a working balance between effective and economical operations by State agencies.

4. Development and maintenance of an effective reporting system for State agencies and for the Division (as it pertains to work load and program data).

5. Review, analyze and approve or modify State agency budget requests to support fund advances or support operations on a reimbursable basis.

6. Develop and install effective controls and procedures so as to ensure proper administrative control over the activities of State agencies.

7. Periodically analyze State operations to ascertain the effectiveness and economy of these operations, collaborating with other units of the Division, and the Bureau, as requested.

8. Develop, support and execute Division's budget for administrative expenses for the Division and for funds for State agencies.

9. Provide advice and consultative service to regional representatives and State agencies on fiscal and management problems which arise in the course of carrying out the contract to make determinations of disability.

10. Maintain appropriate and necessary contacts with other components of Bureau and Department.
The Work Of The Division--Staff

The State Operations Staff is organized in the Office of the Assistant Director in charge of Division of Disability Operations to coordinate the negotiations of agreements with State agencies, to work with the regional representatives in assisting State agencies to plan, install, and carry out their contractual agreements under the disability provisions of Title II, to assist the OASI regional representatives with problems concerning State operations and relationships, and the interpreting of objectives and standards to State agencies, to work with other Branches and the regional representatives in developing and carrying out periodic administrative surveys of State operations, and to plan and assist in carrying out orientation and other training programs of State personnel both on a broad national basis and upon request from individual States. It is also a function of this staff to assist the Assistant Director maintain sound operating relationships with regional personnel on disability matters, to conduct special project work not identifiable to one of the Branches, and to serve as general liaison in the field with regional offices and State agencies on Division of Disability Operations matters.

The Medical Consultant Staff provides medical advice so that the standards, procedures, and forms relating to the medical aspects of administration of the disability program will be technically valid and professionally acceptable. The staff also as-
sist in the analysis of State agency practices under established medical standards and policies and provides consultation on handling of problem cases, and advises on dealings and relationships with the medical staffs of the States. It is responsible for coordination of the medical phases of the program within the Department and with related public and private programs. Among its functions are the initiation and maintenance of good public relations with the Medical Advisory Committee and public and private professional groups in the fields of medicine and vocational rehabilitation.

Important day-to-day functions of the Medical Consultant Staff are to provide medical training and advice to the lay adjudicators of the Evaluation and Review Branch, participate in the training of State medical consultants, and interpret medical standards and policies to them and the lay members of State disability teams.

The Work Of The Designated State Agency

The Social Security Act directs the Secretary of Health, Education, and Welfare to enter into an agreement with each State that wishes to make such an agreement whereby an appropriate State agency will make disability determinations on behalf of the Secretary for individuals in the State. The Secretary has authorized the Commissioner of Social Security to make such agreements. The BOASI will make determinations of disability for individuals who
live outside the United States, or in States which have not com-
pleted agreements, or who are in a class of persons specifically
excluded by the terms of the agreement.

State agencies entering into these agreements will make dis-
ability determinations that will be used in the Federal OASI pro-
gram. Necessary costs in making such determinations will be met
from the OASI Trust Fund.

The contracting State agency, within the framework of the
agreement, will be responsible for the following:

1. Making determinations of disability on classes of cases
covered by the State agreement; this basic responsibil-
ity of the State agency involves one or more of the
following: a. Evaluating evidence in case files sub-
mitted by the BOASI district office and securing clar-
ification or additional pertinent evidence from the
applicant, his physician, other medical sources or the
BOASI district offices; b. Where on the basis of the
evidence submitted by the applicant a determination of
disability could reasonably be made, authorizing and
obtaining additional medical examination of the appli-
cant, where necessary to verify medical evidence secured
by the applicant in support of the alleged disability;
c. Applying the prescribed standards and guides to the
facts of the case to determine whether the applicant is,
or is not, under a disability and the date of onset, or
the date of termination of disability.

2. Reconsidering disability determinations made by the
State agency, upon request from BOASI.

3. Recommending review of the determination and follow-up
medical examination, where indicated, with an approx-
imate date, for determining continuance of the disabil-
ity.

4. Forwarding the case file with supporting evidence and
the state agency's written determination of disability
to the Division of Disability Operations.
5. Establishing cooperative working relationships with other agencies and professional groups for the purpose of utilizing the services, facilities and records of such organizations, to the extent possible, in making determinations of disability.

6. Advising or discussing with BOASI representatives problem areas or questions encountered in any phase of operations, including those arising out of specific cases; the need for revision or clarification of standards, guides, etc.

7. Providing sufficient qualified personnel to evaluate pertinent medical and other data, and to make determinations of disability in the classes of cases covered by the agreement.

8. Preparing agency budget requests to secure necessary funds.

9. Maintaining accounts and records to support cost estimates or actual expenditures incurred in making disability determinations.

10. Submitting financial and statistical reports and such other reports as experience may indicate are necessary for good administration.

Summary Of Selected Workload And Benefit Data

On Disability Operations

The "disability freeze" provisions of the Social Security Act have now been in effect for more than three years. Cash disability benefits for disabled workers aged fifty to sixty-five

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1The descriptions of functions given in this chapter are from the District Office Training Guide: The Disability Program and The Functions of the Division of Disability Operations, Social Security Administration, Bureau of Old-Age and Survivors Insurance, Division of Field Operations, (Baltimore, 1957), pp. 6-11.
and for disabled children over eighteen were added by the 1956 Amendments. The 1958 Amendments extended benefits to certain dependents of workers entitled to cash disability benefits. Some of the highlights of the disability program to date are summarized below:

A. Workload Highlights (cumulative through end of September 1958)

1. Initial determinations completed
   - State determinations: 546,900
   - Non-State determinations: 534,700

2. Initial applications pending: 119,800
   - In district offices: 51,600
   - In State agencies: 38,900
   - In Division of Disability Operations: 29,300

3. Total determinations allowed: 572,800
   - Determinations allowed as percent of total: 55.0%

4. Total benefit claims allowed: 366,100
   - All Disability Insurance Benefits (including "attainment" Disability Insurance Benefits): 314,200
   - Childhood disability: 51,900

5. Requests for reconsideration received: 96,700
   - Reconsideration determinations made: 85,300
   - Number allowed after reconsideration: 24,500
   - Percent allowed after reconsideration: 28.7%

6. Requests for hearing received: 26,300
   - Number of cases allowed by Bureau before hearing: 4,900
   - Percent allowed by Bureau before hearing: 20.3%
   - Number of cases sent referees: 19,300
7. Total hearing cases disposed by referees........ 10,100
   a. Number of cases allowed after hearing
      by referee.................................. 450
   b. Percent allowed after hearing
      by referee.................................. 4.4%

8. Number of continuing disability cases screened for possible investigation
   of continuing disability.......................... 241,900
   a. Cases with no adjudicative
      action necessary........................... 136,400
   b. Total continuing disability
      determinations made....................... 61,500
   c. Number of cases terminated
      after investigation........................ 9,800
   d. Terminations as percent of
      cases screened............................. 4.0%

B. Current State Agency Operations

1. Full-time staff (September 1958)...................... 850
2. Monthly average number of cases cleared
   (July-September 1958)........................... 30,400
3. Full-time staff (estimated end of
   June 1959)................................... 1,320
4. Funds expended (June 1957-July 1958)........... $7,341,500
5. Funds expended (estimated July 1958-
   June 1959).................................. $12,332,0002

2Social Security Administration, Bureau of Old-Age and
Survivors Insurance, Division of Disability Operations, Benefit
CHAPTER VIII

SOME PROBLEMS OF ADMINISTRATION

Organizational Problems

It is generally recognized that the administration of any
disability program will involve some difficult problems for which
there are no easy solutions. Administering a cash payment type
of disability program by the government which is nationwide in
its scope creates special problems as well as being subject to
some of the same problems private programs have to contend with
in their operation.

In enacting the disability freeze provisions in 1954, Con­
gress specified that agreements should be negotiated with each
State for making disability determinations and that these agree­
ments should be made with the agency "administering the State
plan approved under the Vocational Rehabilitation Act, or any
other appropriate agency." The provision was implemented in
late 1954 and in 1955.

The provision for agreements to be negotiated with the States
created a unique governmental relationship, under which State
agencies play an integral part in the administration of a wholly
Federal program. The expansion of unemployment insurance in 1958
by the Federal Government to extend unemployment compensation payments to workers in participating states is a similar governmental relationship. The working relationship under these agreements resembles in some respects the grants-in-aid relationship, although there are no State laws defining participation in program responsibility and no State funds involved.

The relationship is voluntary. Federal funds are paid to the State agencies for their expenses, and in return the agencies make determinations of disability for applicants under the old-age, survivors, and disability insurance program.

In negotiating these agreements, legal questions with strong administrative policy considerations had to be resolved. What expenditures, for example, would be included in the reimbursable operating costs, and what would be considered joint costs of the Bureau and the State agency and how to be shared?

One difficulty encountered while the agreements were being negotiated was that all vocational rehabilitation agencies were faced with the problem of simultaneously building up their rehabilitation programs and meeting the impact of the old-age and survivors, and disability insurance referrals for vocational rehabilitation services. In states where the vocational rehabilitation agency was also assuming responsibility for making disability determinations there was the additional problem of securing and training new staff or of training existing staff for this function.
A corollary problem to that of organizing for State agency operations was the consideration of how best to fit into the Bureau structure the responsibility for administering the disability provisions. A Division of Disability Operations was established to pull together the special skills and resources needed for this part of the insurance program.

Staff members with experience acquired in planning and administering the old-age and survivors insurance benefits were drawn from existing Bureau units. In addition the Bureau secured persons experienced in the administration of Federal-State programs.

Another problem that had to be solved was the co-ordination with other agencies in developing interagency procedures.

Organizing for disability operations required the establishment and maintenance of new relationships with agencies administering other programs. Particularly close relations were found to be necessary with the Veterans Administration and the Railroad Retirement Board. Many disabled veterans filing for disability benefits have as their only medical records those of the Veterans Administration. Procedures were designed to make available, under proper authorization, pertinent records for use in supporting the veteran's claim for disability determinations under the social security program.¹

Policy Problems

Coordinated policies had to be rapidly prepared for use by district offices, State agencies, and the Bureau's central office. It was essential that the basic policies for securing evidence and evaluating disability be uniformly understood by all units.²

Faced with the problems of evaluating disability on a large scale, the Bureau found it essential to develop and to keep refining evaluation guides, a tool that helps to get the job done with facility and the uniformity needed in this type of program. Guides that contain clinical descriptions of the most common disabling conditions were prepared with the assistance of the Medical Advisory Committee and participating State agencies. These guides describe more than 150 impairments and show the symptoms and clinical and laboratory findings that usually exist when the condition has become so severe that most persons so afflicted would be unable to engage in substantial gainful work. Not all persons so afflicted will be equally disabled, but the impairments described are set at a level of severity that will be presumptively disabling in the absence of conflicting evidence.³

The guides greatly facilitate the handling of cases, especially those which, from the standpoint of medical evidence alone,

²Ibid.
³Ibid.
the impairment is clearly disabling, and there is no evidence to the contrary. The guides serve also as a training device and a standardization tool. They do not, however, represent a rating schedule.\footnote{Ibid.}

The question of what type of work activity constitutes substantial gainful activity so that a cessation of period of disability is necessary has become one of the most difficult problems with which the administrators of the program have to contend. This problem was accentuated when cash disability benefits were added to the freeze program.

The public has been disappointed in not being able to get from the local offices of the Bureau exact and authoritative information as to whether a specified work activity would be considered substantial gainful activity and cause the termination of a period of disability.

Besides the dissatisfaction expressed by the individual applicant, many professional people engaged in rehabilitation counselling and occupational therapy have stated that their programs have been hindered as a result of the lack of definitive information. Some people receiving cash disability benefits are unwilling to undergo rehabilitation training which may cause immediate termination of their benefits if it is determined they are engaging in substantial gainful activity. It has been suggested
that a tolerance rule which would take into account the wages paid to and/or the hours worked by a beneficiary be adopted, as a possible solution to this problem. This is not too feasible because the individual would then limit his earnings so as to maintain his eligibility.

It is recognized that the return to work of an individual despite continued impairment does not in and of itself establish that he has regained the ability to engage in substantial gainful activity. As a consequence of this recognition there is actually a policy followed that stated that the work effort of a seriously disabled individual must often be sustained for a period of three calendar months in order to demonstrate that his ability to engage in substantial gainful activity has been restored. Therefore, where the individual has returned to work and the evidence does not demonstrate that he has regained his ability to engage, the bureau need not suspend his benefits for a period of three months after the month in which he resumed work. During this time the facts surrounding the work activity will be developed.

In those cases where the person is working pursuant to a State approved vocational rehabilitation plan, such person will not be regarded as able to engage in substantial gainful activity for the first twelve months of such work.

As indicated earlier in regard to other problems, instructions modifying procedures as experience dictates the need for doing so are constantly being promulgated.
CHAPTER IX

VOCATIONAL REHABILITATION OF THE DISABLED

Need For Vocational Rehabilitation

The opponents of cash disability benefits, in the Congressional hearings indicated that they felt that in the whole approach to the problems of disability emphasis should be placed upon vocational rehabilitation rather than the maintenance of income. They argued that the provision of cash benefits under the old-age and survivors insurance program as a matter of right rather than based on need, would tend to deter individuals from availing themselves of rehabilitation opportunities. An expansion of the vocational rehabilitation program, including some provisions for maintenance payments during rehabilitation within that program, was seen by some as a better answer to the problem of disability.

Rehabilitation has been defined as the restoration through personal health services of handicapped persons to the fullest physical, mental, social, and economic usefulness of which they are capable; the personal health services include both ordinary treatment and treatment in special rehabilitation centers.1

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1Hearings before the Committee on Finance, U. S. Senate, 84th Cong., 2d Sess., on Social Security Amendments of 1955, H. R. 7225, Washington, pp. 562-569.
Cost of rehabilitating a severely handicapped person is said to be frequently less than is needed to support him on public assistance one year. The U. S. Office of Vocational Rehabilitation reported that 12,000 of the persons rehabilitated in 1952 had been receiving around 8.5 million dollars a year from public assistance sources. Six million dollars was spent to make them self-supporting, about seventy percent of one year's payments to the group. Their combined earnings were approximately twenty-two million dollars the first year after rehabilitation.²

The other side of the picture is that rehabilitation is frequently a slow process, and financial aid to the individual has to be continued through its duration.

Every State has Vocational Rehabilitation for disabled men and women. The District of Columbia, Alaska, Puerto Rico and Hawaii also have Vocational Rehabilitation. All of these work in partnership with the Federal Government. In some states there are two kinds of vocational rehabilitation agencies. One is for the blind and the other is for people who are disabled in other ways. In the other places, one agency helps both the blind and the others who are disabled. There is a list at the back of a pamphlet issued by the Office of Vocational Rehabilitation which specifically describes the types of services which a handicapped person

²Margaret Greenfield, Permanent and Total Disability Aid, U. of California, Bureau of Public Administration, Legislative Problems, No. 4 (Berkeley, 1953), p. 3.
may get through the state vocational rehabilitation agency.²

Although one individual may only need a few of these services, another person may need them all.

These are the eight types of services available:

1. Advice to help the disabled person pick out the right kind of job and to prepare for that kind of job.
2. Medical help to bring back or improve a handicapped person's ability to work.
3. Physical aids such as braces, trusses, artificial limbs, and hearing devices.
4. Training for the right job.
5. Board, room, and travel expenses during rehabilitation. These are paid only while the disabled person is being made ready for work or while he is being helped to find a job.
6. Tools, licenses, stocks and equipment. In some cases, the vocational rehabilitation people will even help the handicapped person to set up a small business.
7. Job finding.
8. Help on the job.

Vocational Rehabilitation In Operation

Any man or woman of working age may get vocational rehabilitation if he is disabled in mind or body so that he cannot work or must take a job which would be harmful to him. These vocational rehabilitation services are for those with unseen handicaps as

well as for those who have handicaps which show. The cause of disability does not count in deciding whether a person can get Vocational Rehabilitation. It can come from an accident, disease or from birth.

In other words, any disability that keeps the person from using his best ability to earn a living, or that interferes with his making a living, would make him eligible for vocational rehabilitation. It could be an amputation, paralysis, tuberculosis, deafness, mental illness, arthritis, rheumatism, palsy, cardiac condition, and blindness.

All Vocational Rehabilitation service is given through the state agency but some private insurance companies also have some rehabilitation programs of their own.

The Liberty Mutual Company, for example, was a pioneer in the development of rehabilitation centers, and started in to take the responsibility, as an insurance carrier, for providing rehabilitation services.

The economics of rehabilitation, as well as the human side of it, was referred to by Miss Mary Switzer, Director of the Federal Office of Vocational Rehabilitation, when she appeared before the Committee on Finance of the Senate in the hearings on H. R. 7225, on February 16, 1956.

She indicated that the end result of vocational rehabilitation is wages and for people to be at work and be self-supporting if they can be. She said that of the 58,000 people that were re-
bilitated in 1955, three-quarters were unemployed at the time they were accepted for rehabilitation.\textsuperscript{4}

She also indicated that one-quarter were employed part-time, but probably below the level of independence. Of the total number that were unemployed, one-fifth were on relief of one kind or another before they were rehabilitated. This small group was in 1954 earning at an annual rate of about $16 million a year.\textsuperscript{5}

After they were rehabilitated, they were all employed, and their annual wage was increased to $106 million a year. As a result of many studies and checking with the Treasury it was estimated that ten dollars of Federal income tax paid by every rehabilitated person for every dollar that is invested in their rehabilitation.\textsuperscript{6}

Some people have expressed the viewpoint that rehabilitation has little to offer to those over fifty years of age. This may have been true in the past but it is no longer true because of the great advances made in rehabilitative techniques.

In 1935, only 7.2 per cent of persons rehabilitated under State-Federal rehabilitation programs were fifty years of age or

\textsuperscript{4}Hearings before the Committee on Finance, 84th Cong., 2d Sess., 1955, p. 568.
\textsuperscript{5}Ibid.
\textsuperscript{6}Ibid.
over. In 1954 this percentage had increased to 16.5 and may be expected to go higher. Incidentally, 4.7 per cent were sixty years of age or over.7

Rehabilitation has come to be regarded as a creative process in which the remaining physical and mental capacities of the physically handicapped are utilized and developed to their highest efficiency.

It is an organized and systematic method by which the physical, mental, and vocational powers of the individual are improved to the point where he can compete with equal opportunity with those who have not been handicapped.

Every State in the Union now has an office, bureau, or division of vocational rehabilitation, with which the Federal Office of Vocational Rehabilitation works in close cooperation. These units have been expanded in recent years but due to shortages of vocational counselors and other qualified personnel they are still a long way from achieving their full potential.8

7Ibid., p. 378.
8Ibid., p. 379.
CHAPTER X

SOCIAL, ECONOMIC, AND LEGAL IMPLICATIONS OF A GOVERNMENTAL DEFINITION OF DISABILITY FOR SOCIAL SECURITY

Social And Economic Trends

Social insurance is a means whereby gainfully employed persons can join together so that through government they can prevent dependency arising from contingencies beyond their control. Because of the complexity of our economy "in our day, lack of social control over the economic forces means periodic misery and constant insecurity; insecurity means frustration, aggressiveness, and war; and the mere possibility of war means a quasi-totalitarian regimentation in 'peacetime' and the end of freedom sooner or later. The impact of modern science in its potential of both productivity and destructiveness is such that lack of social control, in its final result, means lack of individual freedom as well."\(^1\)

Donald R. Richberg said that the way to preserve free enterprise is to establish positive duties to meet the social obligations of business, and to confine negative regulation to the

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prohibition of acts which are in themselves wrong.\(^2\)

One of the examples of the wisdom of positive duties is found in Workmen's Compensation laws. Prior to their enactment, there were many efforts made to improve the safety of industrial operations, which were only partially successful. The injured employee had a legal right to recover damages for negligence; but, except in case of serious injury he was unlikely to bring suit—and lose his job—particularly if the employer was human or shrewd enough to take care of him fairly well. In case of serious injury, national statistics established the fact that only a small part of what employers paid out was actually received by injured employees.

Then, by State law, the positive duty was imposed on all employers to pay fixed amounts for industrial accidents and occupational diseases. This made such payments a similar charge on all competitors so that no employer could profit by inhumanity or lack of generosity toward his employees. But since each employer had to take out his own insurance, he would have to pay a higher premium for unsafe operations. Furthermore, the insurance company would be concerned to see that safety appliances were not only installed but maintained; thus, by imposing a positive duty, more was accomplished in a few years in improving the safety of

operating conditions than in previous decades of employee complaints and negative regulation.  

The choice in future relations which involves the legal responsibilities of business is no longer a choice between more or less government regulation—of the prohibitory kind. It is a choice between either the acceptance of positive public duties by managers endowed with freedom to meet these obligations, or the imposition of direct government controls of business, whereby government accepts the responsibilities which private management should assume.  

The very real problem of loss of income due to non-occupational disability was not acted upon until very recent years in the United States. With the passing of legislation by some states of laws paying cash benefits for temporary disability and also aid to the totally and permanently disabled by Congress in 1950, we see the trend which finally resulted in the 1954 Amendments which established the disability freeze, and the 1956 Amendments which began paying benefits to the disabled without a means test. The further development of this trend is visible in the 1958 Amendments which extended eligibility for payment of cash benefits to dependents of workers receiving disability benefits under the social security system.

3Ibid., p. 32.

4Ibid.
An important social effect of these benefits now payable as a matter of right rather than financial destitution will no doubt be a greater freedom from anxiety about the very real fear of indifference to one's plight by workers who become disabled and are no longer able to work.

Economically the payment of benefits to the disabled means that their buying power is sustained and they are still able to buy those things they need as they need them. Improved morale with consequent increased output per worker during the time he is working could very easily result, when the fear of being reduced to destitution because of a disability is eliminated.

**Effect On Private Plans**

The payment of Federal disability benefits will also affect the economy in that private pension plans can be co-ordinated and more early retirement provisions will be contained in them, if the trend of recent years continues.

The trend in union negotiations for wage increases and wage plans will no doubt be affected to some degree at least. The problem of whether the disability benefits from government are to be deducted from those paid by private plans will be covered in negotiations of bargained plans.

When plans were first negotiated in the mass-production industries, they frequently provided for offsetting the full amount (one-half the full amount in the rubber industry) of the
old-age benefit under the Social Security Act from the amount derived from the plan's benefit formula. As a result, when benefits paid under the Act were liberalized, the amount of benefit payable by the plan was reduced.

A recently negotiated plan in the trucking industry provides for normal retirement at age sixty, with a monthly benefit of $90. When the worker reaches age sixty-five and becomes eligible for a benefit under the old-age, survivors, and disability insurance, his monthly benefit under the plan drops to $22.50.5

The effect of the elimination of the offset of workmen's compensation and other Federal benefits offset will increase the amount of benefits payable to the beneficiaries of disability benefits. As of April, 1958 there were 165,460 beneficiaries not subject to any offset, 21,976 subject to a partial offset, and 12,955 whose benefits were subject to the offset completely until after the effective date of the 1958 amendments.6

As of September, 1958 some preliminary benefit figures issued by the Bureau of Old-Age and Survivors Insurance, Division of Disability Operations are as follows:


1. Number of disability insurance beneficiaries receiving payment, end of month..............226,200

2. Average monthly benefit paid to disabled workers..................................................$82

3. Total amount of disability insurance benefits paid..................................................$22.6 million

4. Number of childhood disability beneficiaries receiving payment, end of month.............45,000

5. Average monthly benefit paid to disabled children..................................................$39

6. Total amount of childhood disability benefits paid..................................................$2.2 million

7. Number of disability periods in effect for persons under age fifty (estimated)...........85,000

8. Disability Trust Fund assets, end of month..............................................................$1.26 million

By the year 1980, it was expected that at least a million people would be getting disability insurance benefits and that costs would run close to a billion dollars a year. This was on the basis of the 1956 requirements which did not provide for benefits to dependents of disabled workers. This provision was added by the 1958 Amendments so the number of beneficiaries is of course increased. It was estimated that 180,000 dependents of disabled beneficiaries would be added by the 1958 Amendments.

It was also estimated that, for every sixty disabled workers

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7Social Security Administration, Benefit Data Sheet (Baltimore, 1958), p.2.
in the fifty-to-sixty-four age bracket, there are forth more who are under age fifty. 8

Because the program is rather new, it is difficult to say at this time whether there will be any real problem created in the legal processes as a result of a governmental definition of total and permanent disability. Legal competency to drive a car or to operate power machinery is a possibility but probably no greater problem than that caused by definition of total disability workmen's compensation will be the result.

CHAPTER XI

CONCLUSION

Social legislation is the product of the consciousness of social needs, the result of conflicting points of view that may be reconciled, cooperation among various groups, compromise and timing. This results in a blending of many points of view which are represented in our diverse economy toward the solution of a specific problem which may have existed for some time but which was not resolved at an earlier time for a variety of reasons.

Such was the case with the problem of income maintenance for workers who became disabled and were no longer able to continue in gainful employment.

Although disability insurance could have been enacted in 1935 along with the original social security law, it was not for a number of reasons. Some of these reasons have been reviewed by the writer of this thesis.

It would appear that the social conscience of the people in this country was slow in being awakened. The social security system is a comparatively new development in this country as compared to similar systems in other countries with a modern industrialized economy such as ours.

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The change from an agricultural society and extended family system to an industrial economy has made necessary a parallel shift in the social basis for caring for the non-productive groups in the population.

Social programs, much more than methods of production or even economic organization, carry the marks of the history and culture of the nation in which they have developed.¹

If people are to live up to the standard of living to which their productive and creative capabilities justify them in aspiring, they must have an income large enough to enable them to acquire whatever is necessary to that standard of living. But for them to enjoy the income which they acquire today, they must have the assurance of an adequate income tomorrow.² Government social security has the virtue of assuring something for the future to the weakest and less fortunate parts of the population. Disability insurance benefits under a social security system are a means of supplying an income to sustain a sort of floor below which individual well being will not be permitted to fall.

Such a program serves to socialize individual economic risks in the sense that society assumes responsibility through the Federal government, for a given level of income. In the Federal

disability program under Title II of the Social Security Act this is guaranteed as a matter of right.

Disability under the Social Security Act has two aspects, the severity of the impairment and the capacity for substantial work. The two areas are not exclusive, one of the other. The severity of the physical impairment is indicated by the medical evidence. A description of the condition showing actual physical damage, deterioration, and limitations that can be verified has to be shown by the medical report so that the extent of the handicap which the condition imposes upon a particular individual applicant can be determined. The inability to work is tested in relationship to his remaining residual capacities. The inability to work must be the result of an impairment severe enough to prevent substantial gainful employment.

Substantial gainful activity is the performance of substantially valuable work with some regularity over a reasonable period of time in employment or self-employment.

In arriving at a determination on the substantial gainful activity issue the State agency of the Division of Disability Operations takes into consideration various factors, including the amount of earnings; the hours of work; the regularity, continuity and duration, and the quality of job performance; the nature of the duties and responsibilities; and the special skills' knowledge, training, experience, mental and physical demands required by the job.
The rules in the social security law for deciding whether a person is disabled are different from the rules in some other Government and private disability programs. This means that some disabled people, receiving payments for "total disability" from another Government agency, or from a private company, may not be found eligible under the social security law.

The Veterans Administration in its various programs provides for several kinds of statutory total disabilities. These are comparable to statutory blindness in the social security law in that ability to work is not actually evaluated. In statutory cases the only issue is whether the individual has the described condition. The Veterans Administration statutories include loss of use of two limbs and loss of vision, speech or hearing and others.

The various state Workmen's Compensation systems have all adopted disability rating schedules to cover certain common losses; they place statutory values on the loss of an arm, a finger, a leg, etc. However, almost every Workmen's Compensation statute includes a provision to permit an industrial compensation commission or board to find that an individual is permanently and totally disabled if the facts of the case justify such action.

The strictness of the definition of disability in the Social Security Act as compared to the definition applied by other agencies, employers, and insurance companies has occasioned a number of complaints.
The successful administration of a long term disability program makes administrative demands that are far more difficult, and in the short run more costly, than those made by such a risk system as old-age insurance. This does not mean that the problems are insoluble or that no positive public action should have been taken until they were all resolved.

There are people who have felt that this should be the case but the people of the United States speaking through their representatives have ordained otherwise. The possibility of some measure of failure successfully to solve all the administrative problems of operating a disability social insurance system should not prevent the establishment of such a program. After the program has been in operation, administrative experience will doubtless indicate ways in which it can be improved.

In 1935 some saw in social security the inevitable destruction of individual initiative and thrift and of our free enterprise system. Some feared that political pressures would raise benefits all out of line and that the system would collapse of its own weight. Others feared that administrative costs would be staggering and the system would bog down in a mass of red tape. The actual history of social security since its inception has shown that the fears of the opponents were not justified.

Similarly, the operation of the disability benefit program under Title II of the Social Security Act has not been a runaway program flooded by large numbers of malingerers or false claims,
as was feared by those who were opposed to such a program.

As part of the summary benefit data given in Chapter VII, it was shown that over a million initial disability determinations were made through the end of September, 1958. A little over 500,000, or about 50 percent were allowed. Of this number 366,100 qualified for cash benefits. The balance was those disabled before age fifty for whom a period of disability was established under the disability freeze provisions of the social security law. By having their social security record frozen their retirement and survivor benefit rights were protected.

In this thesis some historical development of related disability programs was covered as well as was the need for disability benefits as part of a social insurance program for this country.

The problems common to all disability programs were reviewed, the qualification requirements were presented and compared analytically. Special attention was directed to the problem of the definition of disability as a qualifying element for disability benefits.

Primary emphasis has been given to the governmental programs because of the wide scope of these plans as compared to the narrower coverage of private plans.

Other problems were looked at and solutions that had been found useful were given as were some techniques that had not met with success in other systems. The relationship of various
phases of the programs was suggested and analyzed.

In order to give a fairly complete picture of operations in the field of disability benefits some description of overall processing procedures was also incorporated in this presentation.

We may conclude that in spite of strong forces which are opposed to the payment of cash disability benefits the principle has, in fact, been accepted by the majority and a comprehensive social insurance program is now a reality in the United States.

There are refinements and extensions that can still be made, such as removing the minimum age limit of fifty for disability benefits which still exists in the present social security law. It appears likely that this will be eliminated in the not too distant future since a bill which provided for payments of benefits to dependents of disabled workers on the same basis as those going to dependents of workers on old-age benefits was passed in August of 1958.

The latest changes in the Social Security law removed the offset of other benefits and eligibility rules were eased to eliminate the six quarters of coverage during the last thirteen calendar quarters up to the quarter of disability. This currently insured rule has been eliminated. The twenty quarters of coverage out of the last forty requirement was retained.

On the whole, the writer has presented an analytical resume of the data which is available on the problems connected with defining total and permanent disability.
Only a limited amount of statistical data was presented because only a limited amount is available at this time. It is felt that as time goes and the program matures more data will be available and more detailed studies can be made later.

In view of the fact that all circumstances cannot be anticipated and covered especially in a new program, it is felt more desirable data can only be obtained by trying it out for several years. As experience accumulates, further insights into the problems of disability may be developed.

Murray W. Latimer, an expert in the field of pension costs made this point clear in a report to the trustees of the United Mine Workers Welfare and Retirement Fund at their meeting, April 11, 1948. He said:

The shortest, quickest, cheapest, and in fact, the only way to find out what a pension plan costs is to try it out—and for several years. The collection and analysis of data for the railroad retirement system cost many millions, and none of the estimates were borne out. Some were too high, some were too low—and if the life of the system depended upon the infallibility of prognosticators, it would never have left the ground. And so it is with pension plans.¹

Increasing interest in disability retirement is shown by current trends in private employee benefit plans. Progressive management wants to secure some financial protection for its employees against a hazard beyond their control.

No program developed by management can be expected to solve

singlehandedly the broad social problems of disability. Companies must recognize the deficiencies of some of their current programs and cooperate fully with private and public agencies in improving the protection against financial disaster arising from disability. A reevaluation of current provisions and practices regarding disability retirement in industrial pension plans would be an important contribution to the solution of the disability problem.

Every social advance involves overcoming difficulties in order to obtain benefits. Social progress can seldom be achieved without a heavy fight against privileges, vested interests, and plain stupid ignorance.

The goal of economic security cannot be taken for granted yet, but a national minimum of security has been established. In Title II of the Social Security Act workers now have a form of insurance against wage loss due to extended disability which is a desirable answer to a basic need.
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APPROVAL SHEET

The thesis submitted by Joseph John Pacholik has been read and approved by three members of the faculty of the Institute of Social and Industrial Relations.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Social and Industrial Relations.

January 30, 1959

Date

Signature of Advisor