

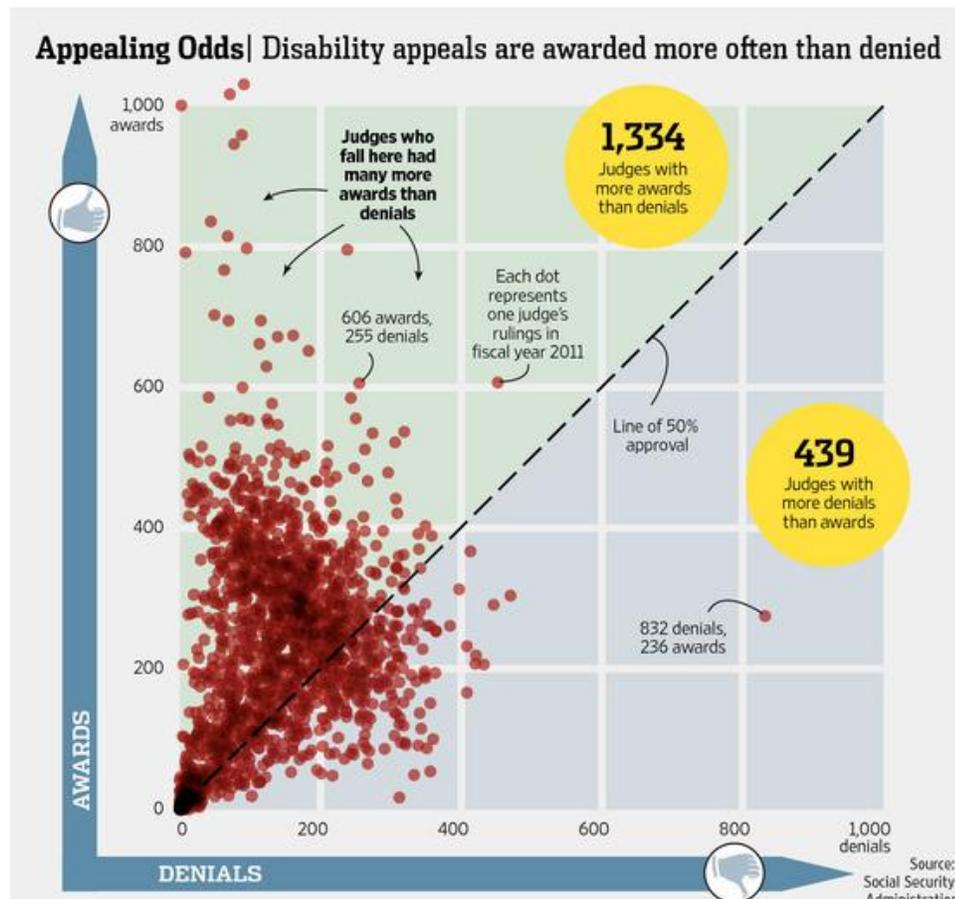
Disability-Benefits System Faces Review

By DAMIAN PALETTA

The Social Security Administration has commissioned an independent review of the federal disability system amid concerns it awards benefits to those who don't deserve them and denies benefits to those who do.

A focus of the study is expected to be the work of roughly 1,500 administrative-law judges, who hear appeals by applicants but whose award rates vary widely.

Meanwhile, the Social Security Administration next week plans to stop notifying people applying for benefits of which judge they've been assigned for their case. This is being done, someone briefed on the plan said, to prevent applicants and their lawyers from trying to shop their appeals to the most lenient judges.



The review will be undertaken by the Administrative Conference of the United States, which studies government policy in Washington. The conference said it planned to release recommendations for overhauling the disability-appeals process next year.

"It's healthy, when something appears not to be ideal, to get some fresh eyes to see if there can be improvements," said Harold Krent, dean of the Chicago-Kent College of Law, who was hired as the lead researcher for the project.

The Social Security Disability Insurance program, created during the 1950s, was meant to help Americans who can't work by offering financial and health-care benefits. The program is expected to pay \$130 billion in benefits to 10.6 million Americans in 2011. Facing a crush of new applications each year, the program is projected to exhaust its reserves by 2017 if changes aren't made, according to actuaries.

A series of articles in The Wall Street Journal this year identified significant inconsistencies in the process for awarding disability benefits. The program can be a maze of state and federal bureaucracies for applicants, whose chances of being awarded benefits can vary greatly depending on where they live and who reviews their file.

The administrative-law judges, who work for the Social Security Administration, are essentially appointed for life and have wide discretion to award or deny benefits based on their interpretation of each case.

One such judge, in Houston, awarded benefits in 13% of his cases last year, according to federal data, while another judge, in Kingsport, Tenn., awarded benefits in 99% of his decisions. The average approval rate is around 60%.

Social Security judges weigh appeals by applicants who have been denied twice before at the state level. The hearings typically take an hour, but some judges have decided cases in a few minutes. That has prompted complaints from their colleagues that such judges are cutting corners. The disparity between how much time judges spend in hearings will be part of the study's review.

Top Social Security Administration officials have said for years they can do little about the judges who award an unusually high ratio of benefits, and they have tried to minimize their impact on the program.

The agency began scrutinizing judges more closely this year following an article in the Journal about a judge in West Virginia who had approved benefits in every case he decided through the first six months of 2011.

Social Security Administration Commissioner Michael Astrue told Congress in July that judges who award disability benefits more than 85% of the time cost the agency an additional \$1 billion a year. More than 100 judges fit that category.

A top Social Security Administration official had a conference call with roughly 300 managers Wednesday to express concern about the issue of outlier judges and said he was hopeful the new study could provide ways to address the problem, a person familiar with the call said.

"We commissioned this report with the Administrative Conference to get an independent look at our [administrative-law judge] decision-making process," a Social Security Administration spokesman said. "The Administrative Conference is one of the most respected institutions on matters of administrative law."

The Social Security Administration has worked hard in recent years to tackle a backlog of pending appeals. At the end of September, there were 771,318 Americans waiting in the backlog, up from 392,397 in 2001. The agency has succeeded in cutting down the amount of time Americans must wait for their appeal to be heard, which has led to a decrease in the number of people who have died while waiting for a decision.

Still, many judges have complained privately that the agency's focus on speeding cases through the system has allowed, and in some cases encouraged, the emergence of more outliers in the system who are willing to move cases quickly and with less scrutiny. Top agency officials have said they have tight controls to prevent this from happening.

A draft of the study is due in August and the final recommendations are to be released in November. The recommendations won't be binding, but they could serve as a blueprint for changes by either the SSA or Congress.

Another focus of the study will be why federal courts are overturning many of the decisions that Social Security judges make when they deny benefits. In 2010, federal courts overturned or found errors in 51% of the roughly 12,000 Social Security

appeals they decided, according to Robert Rains, a law professor at Penn State University. The SSA is "concerned that the federal courts may be interpreting rules in a manner inconsistent with their intent," according to a description of the study.