

Statement of Professor Peter Blanck¹

Before the U.S. House of Representatives Subcommittee on Social Security

Thursday, July 11, 2002

Summary Page

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My testimony focuses on two related conclusions:

- (1) the definition of disability under the SSI/SSDI programs and under the Americans with Disabilities Act (ADA) serves different important yet complementary national policy goals; and,
- (2) to further the goal of a cohesive national disability policy framework, additional dialogue and study on the SSI/SSDI and ADA definitions of disability are required.

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Introduction

Mr. Chairman, members of the Committee, my name is Peter Blanck. I am the Charles M. and Marion Kierscht Professor of Law at the University of Iowa.² I am the director of the Law, Health Policy, and Disability Center at the University of Iowa College of Law.

I am the Principal Investigator for the National Institute on Disability and Rehabilitation Research (NIDRR), U.S. Department of Education, funded Rehabilitation Research and Training Center (RRTC) on Workforce Investment and Employment Policy for Persons with Disabilities. I have conducted research and written articles and books on the implementation of federal disability law and policy and the Americans with Disabilities Act (ADA), particularly with respect to the application of the reasonable accommodation provision.³

My testimony focuses on two related conclusions:

- (1) the definition of disability under the SSI/SSDI programs and under the Americans with Disabilities Act (ADA) serves different important yet complementary national policy goals; and,

² Ph.D. in psychology from Harvard University, J.D. from Stanford Law School; Member of the President's Committee on the Employment of People with Disabilities; former Senior Fellow of the Annenberg Washington Program; former Commissioner on the American Bar Association Commission on Mental and Physical Disability Law.

³ See, e.g., Peter Blanck, *The Americans with Disabilities Act and the Emerging Workforce* (1998); Peter Blanck (ed.), *Employment, Disability, and the Americans with Disabilities Act* (2000).

(2) to further the goal of a cohesive national disability policy framework, additional dialogue and study on the SSI/SSDI and ADA definitions of disability are required.

1. The definition of disability under SSI/SSDI and under the Americans with Disabilities Act (ADA) serves different important yet complementary national policy goals.

SSI/SSDI. The Social Security Act provides monetary benefits to eligible participants with a disability. The definition of disability for an adult in the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs is based upon the individual's inability to work. Eligibility for these programs requires that an individual cannot perform substantial gainful activity (SGA) due to a medically determinable physical or mental impairment that is expected to either result in death or to last not less than a continuous period of 12 months.⁴

The inability to work under SSI/SSDI is assessed by a five-step disability determination process. If a claimant is employed at SGA, the application is denied in the first step of the process. Other aspects of the disability determination process assess the applicant's capability to be employed – taking into account factors such as prior employment, age, education, and residual functional capacity through medical evidence and the applicant's narrative.⁵

ADA. The ADA seeks to eliminate discrimination against individuals with disabilities.⁶ The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities. The term “substantially limits” is based upon the nature and severity

⁴ See 42 U.S.C. 423(a)(1)(D), 423(d)(1)(A); see also Definition of Disability, 20 C.F.R. §404.1505 (45 FR 55584, Aug. 20, 1980, as amended at 51 FR 10616, Mar. 28, 1986; 57 FR 30120, July 8, 1992); Definition of Disability for Adults, 20 C.F.R. §416.905 (45 FR 55621, Aug. 20, 1980, as amended at 56 FR 5553, Feb. 11, 1991).

⁵ See 20 CFR § 404.1520(b-f) (1998).

⁶ See *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 802 (1999).

of the impairment, and the length of time the impairment is expected to last. To be covered by the ADA, however, an individual does not have to be totally unable to work. The ADA prohibits discrimination by covered employers against a “qualified individual” with a disability – that is, a person who is able to perform the essential functions of the job, with or without reasonable accommodations.⁷ Reasonable accommodations may include modifications to the work environment, policies, or procedures.⁸ Prior study has shown that highly individualized ADA workplace accommodations, when developed through the ADA’s interactive process, often result in measurable benefits to the employee and employer.⁹

Different Statutory Definitions Yet Complementary. The definition of disability under SSI/SSDI and the ADA thereby reflect different statutory purposes. Primary among the statutory differences is that when the SSI/SSDI determines an individual is disabled for purposes of its programs, it does not consider the possibility of reasonable accommodation.¹⁰ The U.S. Supreme Court has concluded in its 1999 *Cleveland v. Policy Management Systems Corp.* decision:

[the difference in the SSI/SSDI and ADA definition of disability] reflects the facts that the SSI/SSDI receives more than 2.5 million claims for disability benefits each year; its administrative resources are limited; the matter of reasonable accommodation may turn on highly disputed workplace-specific matters; and an SSI/SSDI misjudgment about that detailed, and often fact-specific matter would deprive a seriously disabled person of the critical financial support the statute seeks to provide.¹¹

⁷ Id.

⁸ Id.

⁹ Peter Blanck, Communicating the Americans with Disabilities Act: Transcending Compliance--1996 Follow-up report on Sears Roebuck and Co.” *The Annenberg Program, Washington, D.C.* (1996).

¹⁰ *Cleveland*, at 803.

¹¹ Id.

In addition, unlike the ADA's individualized process, the SSI/SSDI administers its benefit programs under a five-step procedure containing presumptions about disabilities and job availability.¹² Also unlike the ADA, the Court concludes that SSI/SSDI presumptions about disability eliminate "consideration of many differences potentially relevant to an individual's ability to perform a particular job."¹³ Therefore, an individual may qualify under SSI/SSDI for program benefits but be a qualified individual for purposes of the ADA, able to perform essential job functions with or without accommodation. SSDI also grants monetary benefits to eligible beneficiaries who can work during a "trial-work period."¹⁴

To summarize my opinions about the different yet complementary purposes of SSI/SSDI and the ADA:¹⁵

- (1) A person with a medical condition may be entitled to disability benefits under SSI/SSDI and still be an ADA qualified individual because that individual can perform the particular essential job functions with reasonable accommodations. Moreover, as the SSI/SSDI eligibility process does not consider whether reasonable accommodations might be required under the ADA, a person may be entitled to SSI/SSDI benefits even if he could perform his prior job with reasonable accommodations.
- (2) A person may qualify for SSI/SSDI on the basis of the regulatory presumptions set out in the five-step eligibility process that he is not able to work. This may be true even though that individual is not prevented from

¹² *Id.* at 804.

¹³ *Id.*

¹⁴ 42 U.S.C. § § 422(c), 423(e)(1); 20 CFR § 404.1592 (1998).

¹⁵ For development of these views, see Brief for the United States and the Equal Employment Opportunity Commission as Amici Curiae Supporting Petitioner, in *Cleveland*, 1998 WL 839956 (illustrating logic adopted by the Court).

working in particular jobs. Thus, the SSI/SSDI regulatory presumptions are not related to the assessment of an ADA qualified individual.

- (3) SSI/SSDI permits beneficiaries to receive benefits even though they are presently employed (e.g., trial-work period) to encourage individuals to return to work.
- (4) Because disability severity, type, and status change over time, a person discharged from work in violation of the ADA (e.g., because of the lack of a reasonable accommodation) subsequently may become increasingly disabled and then appropriately receive SSI/SSDI benefits.
- (5) The determination of reasonable accommodation under the ADA cannot be transferred to the determination of disability eligibility under SSI/SSDI.¹⁶

As the United States stated in its amicus brief in the *Cleveland* case (which logic was adopted by the Court in its decision):

Social security benefits and the ADA are *not* necessarily alternative remedies between which people with disabilities must choose. Rather *they are complementary measures* that provide financial support to people with physical or mental impairments who face practical barriers to work while at the same time encouraging and facilitating their efforts to move off the benefit rolls and return to work.¹⁷

¹⁶ This view is consistent with guidance set out on the subject by the Equal Employment Opportunity Commission (EEOC). See EEOC Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person Is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990 (ADA), EEOC Notice, Number 915.002, Feb. 12, 1997, at <http://eoc.gov/docs/qidreps.html>.

¹⁷ Brief for the United States and the Equal Employment Opportunity Commission as Amici Curiae Supporting Petitioner, in *Cleveland*, at 5 (emphasis added).

The Supreme Court in *Cleveland* endorsed this view, stating “there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side.”¹⁸ Together, SSI/SSDI and the ADA advance the national disability policy goal to aid people with disabilities to return to work by providing monetary support (SSI/SSDI) and preventing discrimination on the basis of disability in the workplace (ADA).

2. To further the goal of a cohesive national disability policy framework, additional dialogue and study on the SSI/SSDI and ADA definitions of disability are required.

In 2002, the United States Supreme Court reiterated the important national disability policy objectives of the ADA in the case *US Airways v. Barnett*.¹⁹ The Court concluded that, unlike prior federal government law and policy:

[The ADA] seeks to diminish or to eliminate the stereotypical thought processes, the thoughtless actions, and the hostile reactions that far too often bar those with disabilities from participating fully in the Nation’s life, including the workplace.... These objectives demand unprejudiced thought and reasonable responsive reaction on the part of employers and fellow workers alike. They will sometimes require affirmative conduct to promote entry of disabled people into the workforce.²⁰

The Court’s enunciated goal of the ADA is to insure equal opportunity, full participation, independent living, and economic self-sufficiency by individuals with disabilities in all aspects of society enjoyed by those without disabilities.

Since the passage of the ADA in 1990,²¹ there has been unprecedented change brought to public policy that recognizes “disability as a natural part of life experience,” no longer defined purely in a medical context but now explained by social and

¹⁸ *Cleveland* at 802-03.

¹⁹ *U.S. Airways, Inc. v. Barnett*, 122 S.Ct. 1516, 1522-23 (2002).

²⁰ *Id.*

²¹ Pub. L. 101-336, 104 Stat. 327, (1990).

environmental barriers and facilitators.²² The prior paradigm of disability often viewed people with disabilities as “defective and in need of fixing.”²³ The new paradigm embodies a “disability policy framework,”²⁴ as articulated in the ADA, and sets forth the goals of “equality of opportunity, individualization, full participation, independent living and economic self sufficiency.”²⁵

The goals of the disability policy framework have provided organizing principles adopted by Congress in passage of the Workforce Investment Act (WIA) of 1998 and the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999, as well as in its reauthorizations of the Rehabilitation Act of 1973 and the Individual with Disabilities Education Act (IDEA).²⁶

These public policy achievements have moved significantly beyond historically imposed policy and attitudinal barriers that subjected persons with disabilities to lives of dependency, segregation, and paternalistic treatment.²⁷ The ADA, SSI/SSDI, and subsequent Congressional actions such as TWWIIA and WIA have set out new

²² NIDRR Long Range Plan (64 Fed. Reg. 68608). See also Peter Blanck & Helen Schartz, Towards researching a national employment policy for persons with disabilities, in LR McConnell (ed), *Switzer Monograph Series* (July 2001); Harlan Hahn, Disability Policy and the Problem of Discrimination, 28 *Am. Behav. Sci.* 293, 294 (1985).

²³ Peter Blanck & Michael Millender, Before disability civil rights: Civil War pensions and the politics of disability in America, 52 *Alabama L. Rev.* 1 (2000); Peter Blanck, Civil War pensions and disability, 62 *Ohio State L. J.* 109 (2001).

²⁴ See Robert Silverstein, Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy, 85 *Iowa L. Rev.* 1691 (2000).

²⁵ NIDRR Long Range Plan (64 Fed. Reg. 68578).

²⁶ Workforce Investment Act (WIA) of 1998, P.L. 105-220, 112 Stat. 936 (1998); Individuals with Disabilities Education Act Amendments of 1997, P.L. 105-17, 111 Stat. 37-157 (1997); Ticket to Work and Work Incentives Improvement Act (TWWIIA), P. L. 106-170, 113 Stat. 1860 (1999).

²⁷ Emerging Disability Policy Framework, 85 *Iowa L. Rev.* 1691.

expectations about the abilities of persons with disabilities to learn, work, return to work, and be included in the mainstream of American life.²⁸

In assessing the effectiveness of such strategies, dialogue and study of questions may be considered such as the following:

- In what ways is the ADA facilitating access to reasonable accommodations, including assistive technology tools, so as to enhance access to work, return to work, career advancement, and job productivity?
- In what ways may SSI/SSDI eligibility support an applicant or newly eligible beneficiary to retain meaningful employment while maintaining appropriate access to financial, health care, and other benefits provided by SSI/SSDI?

NIDRR has funded a RRTC on Workforce Investment and Employment Policy, as well as other projects, that are seeking answers to these and other questions. Researchers and policy analysts are beginning to understand the initial implementation phase of WIA and TWWIA, as well as the ongoing impact of the ADA.

Additional study is needed to identify the characteristics of those who enter the workforce and return to meaningful work from SSI/SSDI benefit programs. Study is warranted of the economic and social factors that facilitate the reduced need for benefits. Dialogue and research are needed on issues such as the nature of hidden or attitudinal discrimination against individuals with disabilities in the workplace, and on the ways to facilitate ADA reasonable accommodations and the provision of assistive technology in the workplace for qualified individuals.²⁹

²⁸ Id.

²⁹ See Scott Burris & Kathryn Moss, A Road Map for ADA Title I Research, in Blanck (ed.), *Employment, Disability, and the Americans with Disabilities Act* (2000).

Lastly, a recent GAO report on the effects of the SGA level identifies several significant data limitations that presently hinder valid and reliable assessment of the employment status of SSI/SSDI beneficiaries.³⁰ These data limitations include a lack of useful information on the monthly earnings of beneficiaries or the beneficiary's engagement in a trial work period or extended period of eligibility. The Social Security Administration is addressing these issues by using enhanced means to track the wages and earnings of people who participate in the Ticket to Work program.

Conclusion

Recent U.S. Supreme Court decisions interpreting the ADA's definition of disability have highlighted the different yet complementary purposes of SSI/SSDI and the ADA. The Supreme Court has articulated the national policy goals of the ADA and the emerging disability policy framework. Congress, the disability community, employers, researchers, and others now must work together to implement SSI/SSDI programs and the ADA in ways that further these objectives.

This common purpose is required to develop meaningful information about effective policy and implementation strategies that advance the economic independence of Americans with disabilities. The information learned will shape the lives of the next generation of children with disabilities who have experienced integrated education and who will become part of the competitive labor force of the 21st century.

³⁰ SSI/SSDI Disability: *SGA Levels Appear to Affect the Work Behavior of Relatively Few Beneficiaries, but More Data Needed*, United States Government Accounting Office, GAO-02-224 (Jan. 2002).