



...is maddening. There's nothing
 you can do

The Social Security office of judges who hear appeals for disability benefits is 990,399 cases behind

RECEIVED

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In an obscure corner of the federal bureaucracy, there is an office that is 990,399 cases behind.

That is Washington's backlog of backlogs — a queue of waiting Americans larger than the populations of six different states. It is bigger even than the infamous backups at Veterans Affairs, where 526,000 people are waiting in line, and the patent office, where 606,000 applications are pending.

All of these people are waiting on a single office at the Social Security Administration.

Social Security is best-known for sending benefits to seniors. But it also pays out disability benefits to people who can't work because of mental or physical ailments. And it runs an enormous decision-making bureaucracy to sort out who is truly disabled enough to get the checks — and who is trying to game the system.

Within Social Security, this backlogged office handles appeals of appeals. In most of its

Written by David A. Fahrenthold

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Above: Patrick McGarvey, 48, pets his cat Marco at his house in Riegelsville, Pa. McGarvey, who has debilitating back pain, waited seven years, including appeals, to get approval for his Social Security disability benefits. "Some nights my back pain is so bad

cases, the applicants have already been turned down twice by lower-rung officials who didn't think they were disabled enough.

If they appeal to this office, they can plead their case in person, before a special kind of Social Security judge.

The judge is supposed to read the applicant's medical records and ask questions about medications, limitations and levels of pain. There are 1,445 of these Social Security judges, which means its in-house legal system is larger than the entire regular federal court system — district and appeals courts and the Supreme Court put together.

When they make a ruling, they must decide whether someone is truly unable to hold any job.

That is slow work, made slower by a pileup of outdated rules and oddball procedures. The judges' official list of jobs, for instance, is a Depression-era relic last updated in 1991. It still includes "telegram messenger" and "horse-and-wagon driver" — not exactly growth industries. It doesn't mention the Internet at all.

These judges fell behind when Gerald Ford was president. And they never caught up. Along the way, their office has become a bureaucratic parable — about what happens when the machinery of government cannot keep up with its good intentions.

In this case, the system became, in effect, too big to fix: Reforms were hugely expensive and so logistically complicated that they often stalled, unfinished. What's left now is an office that costs taxpayers billions and still forces applicants to wait more than a year — often, without a paycheck — before delivering an answer about their benefits.

The experience of fighting this backlog can feel desperate and futile to people on both sides of the judge's bench.

"I had two claimants on my docket this past month. . . . They died. They *died*. Waiting for a hearing," said Carol Pennock, a Social Security judge based in Miami.

She worried that the two women might have improved if they'd lived long enough to be awarded disability benefits. In an especially absurd twist, even death didn't remove one of those women from Social Security's backlog. The woman had a child who might receive the woman's disability benefits post-mortem. So Pennock said she had to hold a hearing to decide if a dead person was legally disabled.

"I really wonder if what we're doing is effective at all. If it helps at all," Pennock said, after a day of hearing cases and trying to reduce her share of the backlog. "If, based on

that my animals are the best company when I'm up," he said. McGarvey has two cats and a dog. (Kevin Cook for The Washington Post)

BREAKING POINTS:

WHERE GOVERNMENT FALLS APART

Fifth in a series examining the failures at the heart of troubled federal systems.



the amount of evidence we get, my decision is any better than flipping a coin.”

A list of ailments

“She suffers from coronary artery disease, as well as depression, schizophrenia, migraines,” said the lawyer, a man with close-cropped hair whose firm advertises for frustrated Social Security applicants on the Internet. Also, he said, “she suffered an injury at work,” falling in a way that hurt her side.

In a small, spartan courtroom in Miami, this lawyer was laying out the maladies of a 52-year-old woman, who sat beside him in a gray zip-up sweatshirt. He was not done.

The woman also had a torn shoulder tendon, he said. And back pain. “Rules out any work,” the lawyer said, summing up the effect of these conditions.

The woman, a former Transportation Security Administration screener, had applied for disability benefits two years ago. She was scraping by without a paycheck, living with her mother and taking money from her brothers. And waiting. Now, at last, she would see a judge.

“Financially, I’m very stressed out,” the woman said outside the courtroom. Normally, Social Security hearings like this one are closed to the public. But the woman allowed a reporter to attend hers on the condition that her name not be used. “I can’t do anything at all,” she said. “I rely on too many people.”

The judge for her case was Timothy Maher, a lawyer who had been on the bench for six years. This was his second case of the afternoon. The first had been a burned-out cocaine addict who rambled incoherently. His case remains undecided.

Now, an hour later, Maher was on to a new person’s constellation of troubles. The woman’s attorney had listed seven different ailments — any one of which might render her legally disabled. Maher started with the coronary artery disease.



“I don’t get treatment” for it, the woman told him.

“You’re not taking any medication for that?”

“No, sir.”

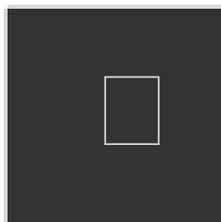
Maher asked the woman about her daily routine.

“I swim a lot,” the woman said. “When I have tension, I go out . . . and swim.”

There were now six different ailments that might render this woman disabled. The judge mentally crossed heart disease off the list and moved on to the others.

“There’s a pretty good chance you don’t have a terrible heart condition” if you’re swimming that much, Maher said later, in an interview after the hearing was over.

Video: The ever expanding backlog



To help understand how government's best intentions can turn into a bureaucratic nightmare, The Post's David Fahrenthold explains the longest backlog in the federal government. (David Fahrenthold, Osman Malik, and Gabe Silverman)

The process

The waiting list at this Social Security office is emblematic of a class of terrible backlogs across the bureaucracy. Some of the others move even slower. The average

case at this Social Security office will take 422 days to decide, but an appeal at the VA will take 957 days. A patent application usually waits more than 800 days for a decision.

At Social Security, however, the experience of waiting in the backlog can be especially painful — because disability applicants typically have little or no income while they wait.

“It’s a nightmare,” said Patrick McGarvey, 48, a former pharmaceutical-plant worker from Riegelsville, Pa., who suffers from problems in his back and neck. He spent seven years waiting before he was granted disability benefits in 2012, bouncing between judges and appeals.

“You have no money coming in. The bills are piling up, and your credit is shot, instantly. It’s just maddening. There’s nothing you can do. There’s nothing at all you can do,” he said. Even two years later, McGarvey is still digging out of his financial hole.

On Thursday morning, his power was turned off.

For former workers declared disabled, the average monthly benefit is \$1,145, which equals \$13,740 annually (those with no work history receive less). The best estimate of the amount the government spends during the lifetime of a disabled beneficiary is \$300,000.

For those seeking disability benefits, the process works like this: First, a person fills out an application and tells Social Security how to track down their medical records.

Then state-government officials — paid by Social Security — read the paperwork and may also order an examination by an independent doctor. Then the officials decide if the person is disabled.

At this first step, there are about 633,000 cases waiting for an answer. Each decision takes 109 days. By Social Security’s standards, this is classified as “no backlog at all.”

At the end of this step, 32 percent of cases are approved for benefits. The rest can appeal.

If they do, most of them go on to the second step. (In 10 states, applicants can skip to the third.) Another official reads the paperwork again and decides if the first official was wrong.

There are about 170,000 people waiting on this step. The average wait time is 107 days. Only about 11 percent of the applications are approved.

Bad Credit Update

People with a Pension, Annuity, Structured Settlement, or VA Disability Income over \$300 per month, and a total income over \$1,500 per month now qualify for a Lump Sum Advance up to \$25,000. [Find Out More](#)

The rest can appeal — and demand to see a judge in person. Eventually.

The judges they see are appointed for life and earn between \$118,000 and \$165,000 per year. They are the moral centerpiece of this system: a symbol that the government intends to apply the old American ideal of due process before the law to the vast new caseloads of the American welfare state.

They are also the system's biggest problem — a 40-year-old clog in the pipe.

“The only time they say ‘Yes’ is after two teams of actually trained people say ‘No,’ ” said Richard Pierce, a law professor at George Washington University who has become one of the system's biggest critics.

Pierce believes that the government should eliminate the judges altogether and just let the bureaucrats with the paperwork decide. He said that the main thing these hearings bring to the process — that face-to-face interaction between judges and applicants — often adds only pathos, not useful information.

“What they are, are lawyers who don't know diddly s--- about medicine, have no training whatsoever,” Pierce said. “They call 'em judges. They wear black robes. They don't have the slightest idea what . . . they're doing.”

Skepticism from the bench

The judge asked the woman in the gray zip-up sweatshirt why she stopped working.

“I got schizophrenic toward the end,” the woman said, recounting her last days at the TSA. “And one day I decided to just quit. I resigned.”

Maher, the judge, had spent three hours reading this woman's medical records. That reading had left him skeptical. Her mental health tended to stabilize when she was being treated.

“Can you picture yourself going back to work?” he asked her.

“I try to,” the woman said. “The only thing that bothers me is, I hear voices.” Often, she said, it seems like the TV is talking to her.

“Do you recognize the voices?”

“No, I don't, sir,” the woman said.

Problems arise

At Social Security headquarters, officials say their enormous backlog is mainly caused

Disability claims clogging the Social Security system

There is a backlog of disability claims waiting to be denied or approved by the Social Security Administration. An outdated list of occupations that could fit a disabled person's abilities, huge amounts of paperwork, a surge in disability claims resulting from the aging of the baby boom generation, and a simultaneous shortfall in funding from Congress to adjudicate the claims all are factors. Here's how the disability-claim process works and the backup of cases at last count.

1	2	3	4	5	Next <input type="checkbox"/>
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CLAIM REVIEWED Claim submitted

A person under age 65 applies for disability payments, citing inability to work because of a long-term medical or psychological condition. Eligibility is determined without meeting applicants.



109
DAYS

Average time to process a claim



U.S. Social Security Administration, Social Security Advisory Board

GRAPHIC: David Fahrenthold and Cristina Rivero - The Washington Post. Published October 19, 2014.

by factors outside their control.

First, they say, there was a surge of new disability applications, from broken-down baby boomers and people left jobless by the Great Recession. The judges' incoming caseload surged from 589,449 in fiscal 2008 to 810,715 in fiscal 2014.

At the same time, Social Security officials say, in some years Congress sent them hundreds of millions of dollars less than they asked for in funding. Last year's government shutdown also idled most of their operation for more than a week, letting cases pile up.

"We have a proven track record of getting the job done when we have adequate and sustained funding," said Glenn Sklar, who runs the office that oversees the judges, formally called the Office of Disability Adjudication and Review. "We just haven't had adequate and sustained funding for the past few years."

This may be a slight overstatement of the office's track record.

Indeed, it has been running behind since at least 1975, when Congress complained about a "huge backlog" of 103,000 cases. After that, the backlog rose and fell from year to year. But mainly it rose: to 160,000 by 1990. Then to 311,000 in 2000.

Along the way, Congress toyed with imposing deadlines on judges but decided not to risk rushing them. Social Security tried to impose systemwide reforms, but they often fizzled because of the logistics of changing something so big.

Thomas Snook and Carol Pennock are Social Security judges based in Miami who hear appeals about denied disability benefits. Many judges consider the task of clearing the backlog of cases overwhelming. (Angel Valentin for The Washington Post)

By 2008, the backlog had hit 760,000, and the wait time had stretched to 514 days.

In response, Social Security decided to try a simpler approach. It would push the judges to work faster and decide at least 500 cases a year.

“How many cases could you do in a day? You know, if you’ve got a well-run office, you could probably do three cases a day. That’s 15 a week. You average that out, it takes you to above 500 to 700 cases a year,” said Michael Astrue, who ran Social Security from 2007 to 2013. He said that an expert judge should be able to handle one case — start to finish — in 2½ hours. He added: “These cases generally don’t take very long.”

Judges complained about harassing e-mails from their bosses. But the push worked, aided by other reforms: a shift from paper to electronic records and the expansion of hearings by video link.

The backlog fell to 705,000 in 2010. The wait time dropped, too, eventually falling below a year.

But a problem appeared.

The problem was rooted in a flaw in the system. Judges complain that saying “yes” is a lot easier — and faster — than saying “no.” A negative decision often requires a lengthier write-up, which goes through all the different ailments that might have rendered this person disabled. That means 10 pages of text to prepare for a future appeal. A “yes” decision is rarely appealed. So, they say, it takes less writing.

“So, what happens when you’re pressed for time? You end up paying cases,” said Thomas Snook, a judge who has worked in the Miami office for 17 years and has been active in the judges union.

During the push for speed, Snook said, he had been rushed into a decision he regrets. The applicant was a man who claimed disability because part of his leg had been amputated. Snook was skeptical because of something in the file: The man had been convicted of attempted murder. Twice. Which seemed pretty good evidence that he was capable of physical exertion.

Snook rejected the case at first, but then a higher-level appeals judge sent it back. On the second go-round, a medical expert testified that the man was debilitated by depression. There were other cases waiting. He caved.

“Now, why did I pay it?” Snook said. “I could have taken the time to make it clear the guy wasn’t depressed. But . . . I was under a lot of pressure to move it along, and I gave up. And I’m human.”

Across the system, judges approved more than half of the cases they saw — up to 62 percent, according to Social Security’s figures. Congressional investigators found 92 judges were even more generous: They had been saying yes to 90 percent of their appeals.



Some of them didn't seem to be giving these cases a lot of deep thought.

"During claimant's testimony, snoring is heard in the background. Attorney: 'I just want to put on the record . . . that it appears as though the administrative law judge is sleeping at the moment,' " read Rep. Jackie Speier (D-Calif.) during a House hearing this year. She was questioning a West Virginia judge named Harry C. Taylor and reading a transcript of a 2009 hearing where Taylor allegedly fell asleep at the bench. "No response. The [judge] apparently continues sleeping."

"Ma'am, I don't recall the specifics of that hearing," Taylor said. Between 2005 and 2013, the House oversight committee found, Taylor repeatedly decided more than 1,000 cases per year — and he approved about 94 percent of the cases that came to him. That meant he handed out a total of \$2.5 billion in benefits. The House committee said Taylor had been suspended for 14 days at one point for sleeping on the bench. But Social Security records seem to indicate that Taylor is still serving as a judge. He declined to comment for this story.

As the decades passed — and officials struggled to make big fixes in the system — judges say they were also troubled by a number of other unfixed flaws.

They were small things. But they made slow work slower.

For one thing, the system requires most judges to read all the medical records themselves, without the help of a dedicated clerk. That leaves them digging for valuable information in reams of hospital jargon and doctors' chicken scratch.

"You look for the shape of the words. . . . It looks like, well, that could be 'severe,' and that could be 'anxiety,'" said Jessica Pugrud, a judge based in Billings, Mont. Pugrud said in an average week, she might go over 3,700 pages of medical records. She drinks five-hour energy shots on the bench so she doesn't nod off after late nights of reading.

"I've had times [where] I look at my notes, and my handwriting would get really small and trail off," Pugrud said. "So I wasn't quite asleep, but I was getting there."

Another problem in the system is the government's enormous, outdated list of all of America's jobs.



CIA Insider Warns "25-Year Great Depression to Strike America"

Online video reveals why many inside the U.S. intelligence community fear a single flashpoint could soon sink America into a 25-Year Great Depression...

[See Why](#)

That book is the Dictionary of Occupational Titles. It lists a “web worker” as someone who repairs fishing nets (a heavy-duty job, the book says, fit only for the strong and able). Its flaws mean judges must sometimes burn extra time, asking vocational experts to look in the old book for jobs that have parallels in the modern economy.

Social Security officials say they’re working on a replacement. It might be ready in 2017.

Today, Social Security officials seem to have backed off their push for faster decisions. They’ve now limited all judges to 720 cases a year and imposed new checks to make sure the “yes” decisions are as well thought-out as the “noes.”

Today, judges approve just 44 percent of cases, a marked decline. At the same time — even as the agency has hired dozens more judges — the backlog has reached its highest level in history. It increased by 13,000 people in the first half of this month alone.

The head of this office was asked: When does he expect the backlog will be gone?

“I don’t have those numbers in front of me,” Sklar said. “And certainly it’s going to be very closely tied to Congress.”

Social Security's extremely outdated book of jobs

The word "Internet" does not appear in the agency's Dictionary of Occupational Titles, which was last updated in 1991. But here are some of the jobs it does include.



HORSE-AND-WAGON DRIVER

This is listed as a sub-specialty within the broader entry for "teamster." Other listed specialties include "Mule Driver," "Four-Horse Hitch Driver" and "Long-Line Teamster." (Associated Press)



CIRCUS T

"Supervises and engaged in loading equipment on an supply for animals
Ehrha



The end?

In the Miami courtroom, Maher called the vocational expert on a speaker phone. The judge laid out a long list of conditions that a hypothetical job would have to meet in order for someone like this woman to hold it.

No heavy lifting or repetitive arm-raising (because of her shoulder). No contact with the public (because of her mental conditions). Did that job exist?

“Yes, sir,” the expert said. He read off names and code numbers from the 23-year-old book. “Housekeeper, 323.687-014 . . . Mail sorter, 209.687-026 . . . Cleaner, 381.687-018.”

The judge wasn’t finished. He added another condition. Was there any job that would fit all those conditions and allow someone to miss one day a month for health flare-ups?

No, the expert on the phone said.

“If I find against you, you have the right to an appeal,” Maher told the woman when the hearing ended. “The appeal will cost you nothing.”

Afterward, Maher said he would spend at least four hours writing up his decision, which would mean he spent at least seven hours on this case alone.

“Sisyphus,” he said.

Outside the courtroom, the woman in the gray sweatshirt said she was optimistic that Maher would award her benefits at last. But if not, she said, “I’m going to have to appeal it.”

If she did, the next step would be Social Security’s Appeals Council, where other judges would read her file and decide if Maher had made a mistake.

That would mean another wait, in another backlog. There are 150,383 people waiting for an Appeals Council decision. The average wait there is 374 days.

Editor’s picks

Sinkhole of
bureaucracy

A Medicare scam that
just kept rolling

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The government has paid billions to buy power wheelchairs. It has no idea how many of the claims are bogus. □

255 Comments

Discussion Policy

Credits

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