



Leadership Council
of Aging Organizations

Max Richtman, Chair

May 12, 2021

The Honorable Nancy Pelosi
H-222 Capitol
Washington, D.C. 20515

Dear Speaker Pelosi,

Since 1980, the Leadership Council of Aging Organizations (LCAO) has been the country's preeminent coalition representing older Americans. Composed of 69 national nonprofit organizations, LCAO focuses on the well-being of America's older population and is committed to representing their interests in the policy-making arena. LCAO serves as a source of information about issues affecting older persons and provides leadership and vision as America meets the challenges and opportunities presented by its aging society.

LCAO urges you to expeditiously bring H.J. Res. 38 to the House floor for a vote. This resolution, introduced by Ways and Means Social Security Subcommittee Chairman John B. Larson and Worker and Family Support Subcommittee Chairman Danny K. Davis, would disapprove the rule submitted by the Social Security Administration relating to hearings held by Administrative Appeals Judges of the Appeals Council.

This harmful rule adopted by the Trump Administration, "Hearings Held by Administrative Appeals Judges of the Appeals Council" (85 Fed. Reg. 73138), changes the Social Security Administration's (SSA) appeals hearings in ways that compromise claimants' and beneficiaries' due process, potentially limit their access to their earned benefits, and contradict the congressional intent of the law governing such proceedings. Specifically, the rule allows SSA to put unqualified agency attorneys (Administrative Appeals Judges) in charge of appeals hearings, rather than independent Administrative Law Judges (ALJs). As the deadline for the Senate to consider resolutions brought under the Congressional Review Act is rapidly approaching, it is imperative that the House complete action on the Resolution of Disapproval in a timely manner.

Under the Social Security Act Amendments of 1939, Congress established the right of a claimant to a fair hearing to appeal a denial of Social Security benefits and used referees to achieve this goal. This requirement was incorporated into the Administrative Procedures Act (APA), which requires adjudicatory hearings be presided by an Administrative Law Judge.

Congress has long understood that SSA is required to use ALJs to decide appeals cases and believed that ALJs are the most qualified to ensure impartial and fair adjudication of appeals of denials of benefits. In cases where Congress believed it to be appropriate, Congress explicitly

authorized the use of non-Administrative Law Judges to decide cases, and these authorizations have been specifically time-limited. ALJs are given independence from agency interference to maintain public confidence in the essential fairness of the process through which Social Security benefits are allocated by ensuring impartial decision-making. Conversely, Administrative Appeals Judges (AAJs) are regular employees of SSA and could be subject to SSA influence to deny appeals.

Administrative Law Judges conduct de novo, face-to-face hearings to gather evidence, examine witnesses, establish facts, and apply law and policy. In contrast, Administrative Appeals Judges do not currently conduct hearings, focusing primarily on policy compliance and quality review. These are fundamentally different roles, and consequently the two positions require and develop very different expertise and skills.

Administrative Appeals Judges are simply not interchangeable with Administrative Law Judges.

For eligible individuals, Social Security and Supplemental Security Income (SSI) benefits are typically their sole or primary source of income, and wrongful denial of benefits due would inflict devastating harm. A significant portion of claimants who are found eligible for disability payments only receive them after a hearing before an Administrative Law Judge. The risk that even a single individual would be deprived of due process and denied the Social Security or SSI benefits that they are eligible for is too great for SSA to be permitted to implement this inappropriate and unjustified rule.

Social Security is an earned right. Americans spend their entire lives working hard and contributing to Social Security with the legitimate expectation that the benefits they have earned will be available for them when needed. The rule promulgated under the Trump Administration undermines this right and could leave those most in need of benefits without a fair hearing or due process under the law.

LCAO urges you to bring H.J. Res. 38 to the House floor promptly so Congress can overturn this devastating rule.

Sincerely,

A handwritten signature in black ink that reads "Max Richtman". The signature is written in a cursive, flowing style.

Chair