

Individuals with disabilities can be eligible for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). 12.6 percent of Americans have a disability and may be eligible for these benefits.<sup>1</sup> However, receiving benefits when due can often be challenging for individuals. The process for filing a disability claim and asking for a reconsideration if rejected can be difficult without a lawyer's assistance. When individuals with disabilities have access to legal representation during this process, the likelihood that they will receive benefits increases (Massachusetts Legal Aid Assistance Corporation, 2006; Popkin, 1977) and their SSI allowance is often greater (Social Security Advisory Board, 2012).

Page 1 of this research brief provides some helpful information sources and research highlights; pages 2-3 a narrative overview; page 4 other helpful resources; and pages 5-7 summaries of the curated studies. All endnotes are to sources not included in our summaries section.

## RESEARCH HIGHLIGHTS:

- The Social Security Advisory Board (2012) found that of those who are applying for SSDI, 9.1 percent are represented by an attorney, about 5 percent were represented by a non-attorney, and 85.7 percent have no representation. For those who are applying for SSI, 0.6% have an attorney, 3.4 percent are represented by a non-attorney and 95.1 percent those have no representation. When those applying for SSI had an attorney, they received a higher allowance rate.
- “In Fiscal Year 2004, roughly a \$500,000 net investment by the state legislature to fund [Disability Benefits Project’s] assistance to low-income individuals yielded \$7.7 to \$15.4 million dollars of new revenue [in terms of disability benefits and healthcare]” (Massachusetts Legal Aid Assistance Corporation, 2006).
  - Legal aid can help individuals obtain health insurance. “As a result, we estimate 85 [of the 170 who received a favorable outcome with their benefits] individuals secured health insurance that did not already have it by DBP’s efforts. Based on the distribution of those receiving either SSI or SSDI benefits, we estimate 30 individuals received Medicare via their SSDI award and 55 individuals received MassHealth via their SSI award” (p. 12).
- In one of the first studies on the effectiveness of representation, Popkin (1997) found in Social Security hearings, individuals without representation won 48 percent of their cases, compared to 71 percent with a lawyer. When veterans in Social Security hearings were represented, they won 74 percent of their cases, compared to 58 percent who were not represented.

## **NARRATIVE OVERVIEW RE: ASSISTING INDIVIDUALS WITH DISABILITIES**

Approximately 40 million Americans, or 12.6 percent of the population, has a disability.<sup>2</sup> Disability is both geographically concentrated and more common among the elderly: the states with the highest disability rates are West Virginia (19.4%), Arkansas (17%), and Kentucky (17%). About half of Americans 75 years old or older reported living with a disability in 2015.<sup>3</sup> The most common types of disability are difficulties with walking, climbing stairs, and living independently.<sup>4</sup> On average, individuals with disabilities have less earning potential: They make approximately 70 percent of the median earnings for those without a disability.<sup>5</sup> They also have lower rates of technology adoption.<sup>6</sup>

Individuals with disabilities can be eligible for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). SSI pays financial benefits to adults and children who are aged, blind, or disabled, requiring the applicant to have limited income and resources. SSDI provides benefits to those who are both insured and disabled. To receive SSDI, individuals must have worked for a certain number of years and made contributions to the Social Security trust. However, receiving benefits when due can be challenging for individuals. To receive money from the government, claimants must complete an application with the Social Security Office. On average, states approve less than 40 percent of disability claims. Social Security disability cases represent about 5 percent of all civil cases filed in U.S. district courts and one-third of all civil cases involving the federal government.<sup>7</sup>

The processes for filing a disability claim and asking for a reconsideration if rejected can be arduous without a lawyer's assistance. In 40 states, a claimant can ask for a "reconsideration" if they are not approved, which is then submitted to an Administrative Law Judge (ALJ). At these hearings, claimants are represented 77 percent of the time. Of those who go to the ALJ, disability has been warranted in 60 percent of those decided. The next steps are as follows if the claimant still has not received their benefits but believes themselves to be eligible. They then move to the Appeals Council, which has the ability to reverse the ALJ decision. Appeals Councils reverse three percent of the cases before them, and remand a rate of close to 50 percent. Finally, individuals receiving benefits are subject to a continuing disability review every three years to see if the beneficiary is still disabled. If their benefits are repealed, they can appeal to the ALJ and move through the process again.

Receiving reasonable accommodations, or changes to enable an employee to perform basic duties, protect health, and obtain same benefits, in housing and employment is also often a legal need.<sup>8</sup>

## **DATA AND STUDIES SHOW LEGAL AID HELPS:**

The Social Security Advisory Board (2012) analyzed preliminary data on the effect of representation at the initial claims level when individuals with disabilities are applying for SSI and SSDI. They found that for those applying for SSDI, 9.1 percent were represented by an attorney and 5 percent were represented by a non-attorney. For those who are applying for SSI, 0.6 percent have an attorney and 3.4 percent are represented by a non-attorney. When those applying for SSI have representation, they receive a greater allowance rate. The Minnesota Bar Association (2003) estimates that with legal aid, Minnesotans have obtained over \$5 million each year in new federal disability benefits. Other studies have made similar findings.

In one of the first studies about the effectiveness of having a lawyer, Popkin (1977) found that in Social Security hearings, individuals without representation won 48 percent of their cases, compared to 71 percent with a lawyer. Further, when veterans were represented for disability benefits, they won 74 percent of their cases, compared to 58 percent who were not represented. A later study found similar results.

Legal aid can also assist with securing health insurance. The Massachusetts Legal Aid Assistance Corporation (2006) found that of the 170 clients who received a favorable judgment, the Disability Benefit Project secured health insurance for those who did not have it for 85 individuals, 30 individuals received Medicare, and 55 individuals were awarded the state's health insurance. Further, they received a favorable ruling in 96.2 percent of cases decided at the application level, 94.7 percent of cases at the district office level, 89.7 percent of cases at the remanded level, 88.6 percent of cases at the reconsideration level, 83.1 percent decided at the administration law judge level, and 23.5 percent of its cases at the appeals council level.

## HELPFUL RESOURCES:

- The U.S. Census has the percentage of people with a disability by [state](#) and by [county](#).<sup>9</sup>
- The National Council on Disability, an independent federal agency, provides a list of [resources](#) to assist individuals with disabilities, like a guide to disability rights laws from the U.S. Department of Justice and employment policies from the U.S. Department of Labor.<sup>10</sup>
  - The U.S. Department of Labor has a similar [resource](#) page.<sup>11</sup>
- Legal Services Corporation has collected client success stories [here](#).<sup>12</sup>
- For more information about civil legal aid messaging, communications, and story-telling, go to the [Voices for Civil Justice](#) and [All Rise for Civil Justice](#) websites.<sup>13</sup>
- For a more comprehensive repository of legal aid related research, go to the National Legal Aid & Defender Association's [LegalAidResearch](#) website.<sup>14</sup>

## Endnotes

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<sup>1</sup> Kristen Bailik, *7 Facts about Americans with Disabilities*, Pew Research Center, (July 27, 2017), available at <http://www.pewresearch.org/fact-tank/2017/07/27/7-facts-about-americans-with-disabilities/>

<sup>2</sup> *Supra* note 1.

<sup>3</sup> U.S. Census, *2015 American Community Survey 1-year Estimates Disability Characteristics* (2015), available at [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_1YR\\_S1810&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S1810&prodType=table)

<sup>4</sup> *Supra* note 1.

<sup>5</sup> U.S. Census, *2015 American Community Survey 1-year Estimates Median Earnings in the Past 12 Months (in 2015 Inflation-Adjusted Dollars) by Disability Status by Sex for the Civilian Noninstitutionalized Population 16 Years and Over with Earnings* (2015), available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

<sup>6</sup> Monica Anderson & Andrew Perrin, *Disabled Americans Are Less Likely to Use Technology*, Pew Research Center (April 7, 2017), available at <http://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>

<sup>7</sup> Administrative Conference of the United States, *Achieving Greater Consistency in Social Security Disability Adjudication: An Empirical Study and Suggested Reforms* (April 3, 2013), available at [https://www.acus.gov/sites/default/files/documents/Achieving\\_Greater\\_Consistency\\_Final\\_Report\\_4-3-2013\\_clean.pdf](https://www.acus.gov/sites/default/files/documents/Achieving_Greater_Consistency_Final_Report_4-3-2013_clean.pdf)

<sup>8</sup> Legal Aid at Work, *Disabilities in the Workplace: Reasonable Accommodation* (2019), available at <https://legalaidatwork.org/factsheet/disabilities-in-the-workplace-reasonable-accommodation/>

<sup>9</sup> By state: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>; By county: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

<sup>10</sup> <https://ncd.gov/resources>

<sup>11</sup> <https://www.dol.gov/odep/topics/disability.htm>

<sup>12</sup> <https://www.lsc.gov/what-legal-aid/client-success-stories>

<sup>13</sup> See <https://voicesforciviljustice.org/> and <https://www.allriseforciviljustice.org/>

<sup>14</sup> <https://legalaidresearch.org/>

# SUMMARIES OF KEY STUDIES

## 1. Social Security Advisory Board, *Filing for Social Security Disability Benefits: What Impact Does Professional Representation Have on the Process at the Initial Application Level?*

(Sept. 2012), available at <https://legalaidresearch.org/wp-content/uploads/ssab-social-security-disability-representation-2012.pdf>

The Social Security Advisory Board analyzed preliminary data on the effect of representation at the initial claims level when individuals with disabilities are applying for SSI and SSDI. They found that most individuals who apply for SSDI and SSI self-represent. When individuals have legal representation, but not a non-attorney advocate, they receive higher SSI allowance rates.

### **Methodology:**

They used data from the Office of Retirement and Disability Policy, Longitudinal Disability Research File to see how representation at the initial claims level affected outcomes.

### **Highlights:**

- “During the filing process, representatives should help claimants complete the necessary forms, either through SSA’s online process or via a paper application. More importantly, they should help the claimant explain and describe the nature of the claimant’s impairment(s) and the resulting physical, mental, and vocational limitations in order to present a clear and accurate picture to DDS decision makers. Some representatives add a narrative explanation to the standard application” (p. 17).
- Of those who are applying for SSDI, 9.1 percent are represented by an attorney, about 5 percent were represented by a non-attorney, and 85.7 percent have no representation.
- For those who are applying for SSI, 0.6 percent have an attorney, 3.4 percent are represented by a non-attorney and 95.1 percent those have no representation.
- “One possible explanation for the higher SSI allowance rate for represented claimants is that representation of claimants with the least ability to navigate the complex filing process is more likely to have a greater impact. For instance, claimants who are homeless or have serious mental health problems or intellectual disabilities may not have the ability, knowledge and/or resources to successfully apply for benefits on their own” (p. 24).

## 2. Massachusetts Legal Aid Assistance Corporation, *Assessing the Benefits of Provision of Legal Services through the Disability Benefits Project* (August 2006), available at

<http://legalaidresearch.org/wp-content/uploads/Research-Assessing-the-Benefits-of-Provisionof-Legal-Services-through-the-Disability-Benefits-Project.pdf>

The Disability Benefits Project (DBP) is funded by the Massachusetts Legal Aid Corporation (MLAC) . DBP provides legal representation to low-income clients who are potentially eligible for federal disability benefits. DBP works to secure SSDI and SSI for their clients. MLAC examined the Project’s 2004 database of 1,094 closed cases. DBP employs 16 full-time attorneys and have a budget of \$1.2 million. MLAC found that for those whose cases were adjudicated, they received a favorable judgement 82 percent of the time.

### **Methodology:**

Researchers at the University of Massachusetts Boston analyzed MLAC’s Disability Benefits Project Fiscal Year 2004 database of 1094 closed cases to see how DBP’s work affected case outcomes.

**Highlights:**

- For those who were represented by the DBP, 63.5 percent of the cases were adjudicated. Of the 600 that were adjudicated, DBP received a favorable judgement on 492 (82%). The range of favorable rulings was from 74.5 percent in the Legal Services of Cape Cod and the Islands and 95.7 percent at the Boston College Legal Assistance Bureau.
- When it came to applications and appeals for disability-related benefits, DBP secured a favorable ruling in 96.2 percent of cases decided at the application level; 94.7 percent of cases at the district office level; 89.7 percent of cases at the remanded level; 88.6 percent of cases at the reconsideration level; 83.1 percent decided at the administration law judge level; and, 23.5 percent of its cases at the appeals council level (p. 6-7).
- “In Fiscal Year 2004, roughly a \$500,000 net investment by the state legislature to fund DBP assistance to low-income individuals yielded \$7.7 to \$15.4 million dollars of new revenue” (p. 11).
- “As a result, we estimate 85 [of the 170 who received a favorable outcome with their benefits] individuals secured health insurance that did not already have it by DBP’s efforts. Based on the distribution of those receiving either SSI or SSDI benefits, we estimate 30 individuals received Medicare via their SSDI award and 55 individuals received MassHealth via their SSI award” (p. 12).

### 3. Minnesota Bar Association, *“With Liberty and Justice for All” Legal Aid: Essential to the Justice System* (March, 2003), available at

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/lis\\_mn\\_impact\\_2003.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/lis_mn_impact_2003.authcheckdam.pdf)

This is a fact sheet from the Minnesota Bar Association outlining how their legal aid offices have benefited Minnesotans. Minnesotan legal aid offices are working with less: Until the 2001 session, legal aid had not received any increase to its funding base since 1997; further, legal aid was one of the few justice programs suffering a cut in the 2002 session. This fact sheet shows how legal aid programs have saved the state of Minnesota money. Minnesotans with disabilities are one of the subpopulations Minnesota Legal Aid has helped.

**Methodology:**

The data is from the Minnesota Legal Services Commission

**Highlights:**

- “Thousands of disabled Minnesotans obtain over \$5 million each year in new federal disability benefits with Legal Aid’s help, thus easing the burden on state and local government funds” (p. 1).
- If legal aid is not funded at the same level as the year prior and suffers another cut, “at least 2,000 fewer veterans, disabled persons, and seniors will receive legal help obtaining federal disability benefits, including access to federal medical programs, or being assisted in moving from welfare to work” (p. 2).

### 4. William D. Popkin, *The Effect of Representation in Non-Adversary Proceedings: A Study of Three Disability Programs*, 62 Cornell L. Rev. 991 (1977).

Popkin, Professor Emeritus of Law at Indiana University, finds that having representation offers an advantage even in informal, non-adversarial proceedings. Because this study was done before the Americans with Disabilities Act of 1990, he looked at the Federal Employees’ Compensation Act (FECA), which provided benefits to federal employees suffering from job-related disabilities. He also looked at the Social Security program, which at the time, required the claimant to have worked long enough in jobs

covered by the Social Security program to be "insured." He found that for those with legal representation, they were more likely to "have an advantage at the FECA hearing and final administrative review stages, and the Social Security hearing stage" when compared to those without legal representation (p. 1026).

**Methodology:**

He obtained data from file folders maintained from the Division of Hearings and Review and analyzed how whether the individual win or loss was affected by having legal representation, procedures used by the claimant, the agency's use of outside experts, and type of issue.

**Highlights:**

- In FECA hearings, individuals without representation won 57 percent of their cases, compared to 72 percent with a lawyer.
- In Social Security hearings, individuals without representation won 48 percent of their cases, compared to 71 percent with a lawyer.
- When veterans were represented in Social Security hearings, they won 74 percent of their cases, compared to 58 percent who were not represented.