

Wait for a Social Security disability decision drags on months - and years - for many Ohioans

CLEVELAND, Ohio-- For tens of thousands of Ohioans applying for Social Security disability benefits, an underfunded and inadequately staffed federal system means months, and even years, of waiting to get in front of a judge and receive a decision on a claim.

More than 1 million people across the country are [waiting on average more than 600 days](#) -- about 19 months-- for these hearings. In some parts of the country, the wait is longer than two years.

The Social Security Administration's problems processing disability claims [stretch back decades](#) and track closely with the funding the agency receives through the Congressional budget process. The agency has seen an 11 percent budget cut since 2010 and could see another 4 percent drop next year.

Hiring freezes, staff cuts and other cost-saving measures because of this belt-tightening have adversely impacted disabled people who are out of work and need help, experts say. Judges argue it's impossible for them to handle the current workload without more support staff.

Clevelander Ebony Calhoun, a former home health worker, is one of more than 42,000 Ohioans in the absurdly long queue.

Calhoun, 40, has lupus and had surgery on both ankles to remove pieces of bone after a staph infection. She can now only stand for short periods with the help of orthopedic shoes, she said. She lives in transitional housing and can no longer afford to pay rent she used to afford.

Her initial application with the state agency that first reviews Social Security disability cases was denied after her application in 2016, as most are. She's been waiting since May for a hearing.

In Cleveland, one of six Ohio hearing locations where cases are referred after these denials, the wait is 15 months, one of the lower wait times in the country. In Cincinnati the wait is longest at 19 1/2 months, and in Akron, applicants wait about 547 days.

A frustrating process

The wait for a hearing is really the third step in an even longer undertaking for most Ohioans applying for Social Security disability benefits, which are separate from worker's compensation. (link to Q and A). An application is first considered by a state agency in a two-step process which initially denies more than 60 percent of claims.

That can take up to a year.

For Joanne Maki of Grafton, the excruciating exercise began in September of 2015, and still hasn't ended.

Maki, 60, has chronic asthma, irritable bowel syndrome, carpal tunnel syndrome that required two surgeries in her dominant hand, and a narrowing of her spinal canal following two car accidents. Combined, she says, the illnesses finally made it impossible for her to work full time in 2015 after 35 years of uninterrupted employment and 18 1/2 years with the same company.

She was denied in the initial two-step process and had a hearing in Cleveland in June after a relatively short 442-day wait. It took 165 days to receive the judge's decision. She was denied benefits.

In order to qualify for benefits, the judge must determine that a person's disability is severe enough to make full-time work impossible, and that the person doesn't retain enough function to do another type of job. (See Q &A). The judge in Maki's case said she was still capable of working.

Maki, who supports her disabled Vietnam veteran husband, was devastated. She's filing an appeal with Social Security's Appeals Council, which will likely take another year. Her chance of success is slight. Only 13 percent of these cases are sent back to local judges for reconsideration.

In addition to her daily pain and worry, Maki says she's had to seek treatment for depression since filing for benefits.

"It takes a toll on you, the waiting," she says. "There's the anger, the frustration. That's a big part of this whole process. I had no idea it would take as long as it has."

Maki is surviving off her 401k savings and the generosity of her family, she says.

"I feel like a burden."

Maki is lucky though, experts say: The system is so overburdened that some people waiting for benefits lose their homes and their savings. Some are so sick they die waiting.

"I have clients who are living in homeless shelters and clients living in tents in the woods," says Charles Hall, a lawyer in North Carolina who has been practicing in the Social Security disability arena for almost 40 years. "We can get those cases expedited, but it still takes a long time for them. We have far more who are barely staving off losing their homes."

Is the wait worth it? Lawyers and advocates say the payoff for the years-long ordeal is usually pretty low. The average benefit nationally is \$1,173 per month, and varies based on age, income, and years worked. Those 65 and under deemed disabled are also eligible for Medicare two years after they're approved.

Not enough staff, or time, to hear complex cases

The reasons for the long wait are simple, experts say: Not enough staff, or time, to hear the complex cases that make it to a hearing.

In most states, the cases that reach a hearing stage have already been denied twice. They tend to be the less clear-cut cases, experts say, because the "easy ones" are quickly approved. They're less likely to be cases of terminal cancer, for example, than cases of asthma or fibromyalgia .

"I get more clients with multiple sclerosis than anything else right now," says [Charles Hall](#) , a North Carolina attorney practicing in disability law since 1979. Other conditions such as arthritis, back pain, chronic immune diseases and mental health illnesses are also common, lawyers say.

Still, many cases end up approved after these initial denials, either because the person gets sicker while waiting for a hearing, or because they gather better medical evidence for a judge.

The increased wait is not due to more cases. Social Security data shows that applications for disability benefits have fallen since 2009, when they were at a high due to high rates of unemployment and the economic downturn. In 2016, the agency received 2.3 million applications, about the same level as 2008, the year before the spike.

Social Security is still trying to catch up since falling behind on cases during that time of high volume, according to a regional spokesman for the agency.

There are about 1,600 administrative law judges who hear Social Security disability cases nationwide. In Cleveland, there are 18 judges, who ruled on about 6,800 cases last year and heard far more.

Still, judges are only as efficient as their support staff, says Marilyn Zahm, an administrative law judge in the agency's Buffalo office and president of the Association of Administrative Law Judges.

"A judge needs a clerk and writers to work with the judge in order to issue decisions," she says. "If the judge has the appropriate staff they can be more efficient. It's just common sense."

Zahm, who has been practicing for 23 years, says the system was functioning better about five years ago, before hiring freezes and attrition started to hollow out the offices.

"We've been starved for staff for years and years, but the most recent two years have been particularly acute," says Zahm, who as president of the national association represents other administrative law judges in labor negotiations and grievances with Social Security.

Social Security planned to ease the backlog by hiring about 800 new administrative law judges and their corresponding support staff, including law clerks, senior attorneys, paralegals and other staffers, over three years starting in 2016. That plan has since stalled due to hiring freezes. About 400 judges were hired, and no support staff. Social Security would not say if the agency has plans to hire more staff next year.

The spare staffing has put "unreasonable demands" on judges to issue decisions quickly, Zahm says.

The end result is bad for judges, who Zahm says are putting in overtime in 55-degree federal buildings on weekends in order to keep up, and for people filing claims.

"They are desperate, and they are sick. Whether or not they are eligible for benefits is beside the point. They need an answer. To make people wait this long is poor public service," she says.

What can be done?

Experts, including disability lawyers, advocates and judges, say the solution is simple: give Social Security enough operating funds to hire sufficient staff to make a dent in the backlogged cases.

"Everything else has been tried and goes pretty much nowhere," says Charles Hall, the North Carolina attorney. "Nobody wants to say it's overtly political but it is."

Funding woes ease when Democrats have control of the Congressional purse strings, he says. When the Social Security budget increased in the late 2000's, the backlog across the country fell from 2008 to 2012, when the average wait time for a disability decision fell from more than 500 days to 350 days. It was the first time the wait had been less than a year since 2003.

The odds of the agency's budget increasing soon are slim, however. The House of Representatives and the Senate Appropriations Committee have passed funding plans that would either freeze Social Security's operating funds or cut another \$400 million, which is nearly 4 percent of the agency's operating budget .

If the \$400 million is cut next year, the agency's total budget will have fallen by 16 percent since 2010.

Ohio U.S. Sen. Sherrod Brown, a Democrat and head of the Senate Finance Committee's Subcommittee on Social Security, Pensions and Family Policy [wrote in October to Senate Appropriations Committee leaders urging them to support full funding for the agency's budget .](#)

"It's unacceptable that Ohioans with disabilities are forced to wait so long to get the benefits that help them meet their day-to-day needs," Brown says.

So if a funding boost is unlikely, are there other possible solutions to make the system more efficient?

[Andrew November](#), a Cleveland disability lawyer who represents Maki, says one way to save time is if judges once again issued fully favorable decisions without a hearing for cases with solid evidence, a process called an "on the record" decision. Judges issued more than 54,000 of these decisions as recently as 2010, but they have since fallen out of favor due to concerns about fraud and abuse.

The [rate of Social Security disability fraud is low](#) --a fraction of one percent, according to the agency.

Zahm advocates allowing judges to issue shorter decisions on fully favorable cases. Most decisions are 20 to 25 pages long, and a shorter 5-page decision in the roughly 40 percent of favorable cases which judges issue would save about half-a-million work hours a year, she says.

Social Security told Zahm in August the agency would consider implementing the measure but has since done nothing, she says . A regional spokesman for SSA would not respond directly to a question about shortening favorable decisions, but said "we are looking at ways to streamline the decision writing process and strategies to increase productivity."

"This is a calcified bureaucracy," Zahm says.

OIG research on why productivity among administrative law judges has fallen in recent years [pointed to decreased staffing ratios, requirements for more medical evidence during hearings and that more cases are being denied](#) . Denials typically take longer than approvals to process.

Large case files may be due to a 2015 Social Security rule revision that required applicants and their lawyers to inform the agency about "all evidence" related to the person's disability. Disability advocates say the rule is confusing and leads to duplicate evidence in case files.

In Cleveland, voluminous medical records may be a big part of the problem. The city has one of the largest case file sizes in the country: 29 percent of case files contain more than 1,000 pages.

"Judges have to read all of that," says Zahm.

What happens if changes aren't made?

"At a certain point the whole thing might collapse," Zahm says. "This is a crisis."

For Joanne Maki, the entire process, from her initial online application to the judge's denial after her in-person hearing, took about 800 days. Now she'll wait, again.

Her advice to others recently disabled: "Get an attorney right away and expect a long, long wait."