1983

Judicial Relief for Delay in the Social Security Administration's Disability Determination Process

Mary Todd Alred

Follow this and additional works at: http://lawecommons.luc.edu/luclj

Part of the Disability Law Commons

Recommended Citation

Available at: http://lawecommons.luc.edu/luclj/vol15/iss1/4

This Note is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola University Chicago Law Journal by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.
NOTES

Judicial Relief for Delay in the Social Security Administration’s Disability Determination Process

INTRODUCTION

In 1983, the Social Security Administration (“the Agency”) spent an estimated eighteen billion dollars in the operation and administration of its disability benefit insurance program. Considered the most costly of the federal administrative programs, the Agency is also known for its long delays in deciding meritorious claims and in providing needed financial assistance to qualifying wage earners forced to leave the labor force due to a severe disability. With few exceptions, exhaustion of four administrative levels of review is mandatory before an appeal may be made by claimants to the federal district courts. Particularly severe are the delays suffered by claimants awaiting administrative hearings. With a median waiting period for a

---

1. The annual cost of the Social Security Administration’s disability program has increased from $59 million in 1957 to an estimated $18 billion in 1982. The number of qualifying disabled workers has similarly expanded from 149,850 in 1957 to an estimated 2,603,713 in 1982. Soc. Security Bull.—Annual Statistical Supplement. 1982, Table 85, at 153. There is no evidence to indicate that this increase was based on real increased incidence of disabling conditions among the population at large. A study by Social Security Administration actuaries in June 1977 cited a variety of factors as responsible for the growth in the benefit rolls. These factors included the increased attractiveness of benefits under a system in which benefit levels have been substantially increased, changing attitudes on the part of individuals with impairments, increased emphasis on vocational factors resulting in more allowances on appeal, and the increased tendency to give claimants the benefit of the doubt. S. Rep. No. 648, 97th Cong., 2d Sess. 18, reprinted in 1982 U.S. Code & Ad. News 4388.


3. Under 42 U.S.C. § 405(g) (1976), a federal district court is granted jurisdiction to review “any final decision of the Secretary.” This language would therefore seem to
hearing of over 180 days, delays of well over a year are not uncommon. Asserting that these administrative delays violate their statutory and constitutional rights, claimants have begun to file class action suits in federal district court asking that the Secretary of the Department of Health and Human Services be compelled to act promptly on requests for disability benefits.

Faced with these claims, federal courts have had to balance the potentially extreme financial hardship suffered by an individual during the application process against the broad discretion granted a federal agency to dictate its administrative procedure.
Delay in Social Security Benefits

and allocate its limited resources. Issues involved are: first, how to determine when administrative delay is unreasonable; second, whether administrative efficiency is a subject for judicial action; and, third, if courts may intervene, what types of action are appropriate. The appellate courts have adopted three conflicting approaches in dealing with these issues. Furthermore, the United States Supreme Court has granted certiorari in Day v. Schweiker for the October 1983 term to determine whether the courts can order the Secretary to meet mandatory time limits and award interim benefits to claimants in the event that such limits are not met.

This note will first explain the administrative procedure a claimant must undergo in pursuing a claim for social security benefits, and will then examine the three approaches the federal courts have used to mitigate the effects of the delays that often occur during that procedure. The note will conclude that although courts may neither grant interim benefits without an express waiver of sovereign immunity by Congress nor establish mandatory time limits, courts do have the express power under the Administrative Procedure Act ("APA") to compel the Agency to perform its statutory duty within a reasonable time and to order the Agency to promulgate rules prescribing self-imposed time limits.

ADMINISTRATIVE PROCEDURE

In order to qualify for disability benefits, an individual must meet specific earnings requirements, be under age sixty-five,

---

7. The First Circuit in Caswell v. Califano, 583 F.2d 9 (1st Cir. 1978), and the Second Circuit in Day v. Schweiker, 685 F.2d 19 (2d Cir. 1982), cert. granted, 51 U.S.L.W. 3774 (U.S. Apr. 25, 1983) (No. 82-1371), have set mandatory time limits within which an administrative hearing must be met. The Seventh Circuit in Wright v. Califano, 587 F.2d 345 (7th Cir. 1978) and the court in Deloney v. Califano, 488 F. Supp. 610 (N.D. Ill. 1980), have maintained that administrative efficiency is not a subject suitable to judicial intervention, and that, courts should therefore be reluctant to interfere absent clear evidence of "bad faith" by the Agency or a constitutional threat. The Sixth Circuit in Blankenship v. Secretary of Health, Educ. & Welfare, 587 F.2d 329 (6th Cir. 1978), took the middle ground, indicating that while judicially imposed time limits are improper, the courts may compel the Secretary to promulgate regulations establishing time limits which the federal district courts may then review.


9. Under the statute, an individual must have 20 three-month quarters of coverage, employment at which he earned pay, in the last 40 quarters prior to the three-month period in which he became disabled. 42 U.S.C. §§ 416, 423 (1976). In lay terms, this means that of the most recent ten years before disability, the individual must have worked five. The rationale behind this requirement is that the program insures against a
file an application, and be under a disability as that term is defined by the Social Security Act. The administrative procedure a claimant must follow when seeking an award of benefits begins when the claimant files an application with any district office of the Agency. The application and any supporting evidence is then transferred to an independent state agency which initially determines whether a claimant is disabled. These initial determinations are generally made fairly quickly by the state agency. If the application is denied, the claimant may seek reconsideration by the state agency by filing a written request within sixty days. This is the second level of the administrative process. Since new applicants are processed first, however, claimants requesting reconsideration usually experience at least some delay.

If the claimant is not satisfied with the state agency’s determination, he may request a hearing before a federal administrative law judge (“ALJ”), again, within sixty days. Due to the number of hearing requests, 172,000 in 1980, and the limited number of ALJ’s available to hear such actions, an ever-

loss of earnings. To fulfill this insurance concept, the Act requires a somewhat recent attachment to the labor market.

11. Id.
12. 42 U.S.C. § 416(i)(1) (1976) defines the term disability as an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.”
14. 42 U.S.C. § 421(b) (1976) provides for disability determination by an independent state agency, pursuant to an agreement between the state and the Secretary.

In 1980, more than 1,000,000 initial disability applications were filed. DEPT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, THE BELMON REPORT, (1982), reprinted in 45 SOC. SEC. BULL., May, 1982, at 8.
16. The named plaintiff in Day v. Schweiker, 685 F.2d at 19, experienced a 167-day wait for a reconsideration determination upon his timely request.

In 1980, the Social Security Agency received an estimated 300,000 reconsideration requests. 45 SOC. SECURITY BULL., May, 1982, at 8.
increasing backlog exists at this third level.\textsuperscript{20} If the ALJ renders a decision unfavorable to the claimant, he may take the fourth and final step and request review by the Appeals Council.\textsuperscript{21} This final determination by the Appeals Council exhausts a claimant's administrative remedies.\textsuperscript{22}

Thereafter, if the claimant wishes to contest the denial of benefits, he may begin the judicial process by bringing an action against the Secretary of Health and Human Services in federal district court within sixty days of the Agency's final decision.\textsuperscript{23} With few exceptions, the claimant can bring this action only if he has exhausted his administrative remedies.\textsuperscript{24} If the district court's decision is unfavorable to the claimant, he may request review by a federal court of appeals.\textsuperscript{25} After such review, the claimant can usually go no further, for the United States Supreme Court rarely reviews Social Security disability cases.\textsuperscript{26}

\textit{Judicial Intervention to Remedy Administrative Inefficiency}

Generally, the pace of administrative action is a matter totally within the agency's discretion, and thus unreviewable by the
courts. The APA\textsuperscript{27} expressly excepts from judicial review "agency action that is committed to agency discretion by law."\textsuperscript{28} Moreover, a court may not substitute an agency's method of procedure with its own simply because it believes other procedures would be preferable.\textsuperscript{29} The Supreme Court, however, has established that agency action (or inaction) challenged as a denial of constitutional or statutory rights can be immune from review, if ever, only by the clearest manifestation of congressional intent to that effect.\textsuperscript{30} Courts have found that when an agency fails to follow its statutory mandate, judicial intervention may be necessary.\textsuperscript{31}

An important set of controls on administrative behavior arises from court review of agency action. Judicial review serves an important function by ensuring that an agency acts according to the will of Congress as expressed in the agency's enabling legislation.\textsuperscript{32} The Supreme Court has refused to limit the activities of each branch of the federal government to prevent overlap or blending of their functions.\textsuperscript{33} The legislative history of the APA evidences an intent that federal agency action not go unchecked by the courts, indicating that the Act is "an outline of minimal essential standards and procedures . . . including a simplified standard of administrative review."\textsuperscript{34} Moreover, provisions in the APA state that federal agencies may only use the defense of sovereign immunity to bar judicial review in actions where the plaintiff seeks money damages.\textsuperscript{35}

\textsuperscript{31} Day, 685 F.2d at 22; Blankenship, 587 F.2d at 335; Caswell, 583 F.2d at 16.
\textsuperscript{32} See infra note 138 and accompanying text.
Even though an agency enjoys wide discretion in establishing the procedures it will follow and the actions it will take, judicial intervention is appropriate when it is alleged that the agency has violated its statutory duty. In addition, courts may take an active role in providing equitable relief for the harm caused by these violations. Although the Social Security Administration enjoys considerable freedom to fashion its own rules of procedure, courts may properly intervene in response to clear violations of the Agency's statutory duty.

THREE JUDICIAL APPROACHES TO DELAYS IN THE DISABILITY DETERMINATION PROCESS

Recently claimants seeking disability benefits under Title II of the Social Security Act have presented federal courts with claims against the Secretary of Health and Human Services for unreasonable delays in processing their applications. In deciding these cases, the federal courts of appeals have agreed on one point: exhaustion does not operate to prevent judicial review. Their determinations of appropriate remedies, however,

36. The First, Second, Sixth, and Seventh Circuits properly rejected the Secretary's allegations concerning lack of jurisdiction, failure to exhaust administrative remedies, and timing, any of which may preclude plaintiffs from bringing their complaints of administrative delay to federal courts. Jurisdiction is thus generally granted, since the Agency itself grants jurisdiction to federal courts to review "final decisions of the Secretary." 42 U.S.C. § 405(g) (1976). Where a plaintiff's claim of a statutory or constitutional violation is entirely collateral to the issue of eligibility for benefits, courts have found that the plaintiff's claim is final for purposes of review. See Mathews v. Eldridge, 424 U.S. 318 (1976), where the Supreme Court found that the jurisdictional prerequisite of a final decision was satisfied when the plaintiff presented his claim and the Secretary denied it. The Court viewed § 405(g) as providing jurisdiction over a final issue admittedly collateral to plaintiff's claim of entitlement to benefits. See also Caswell v. Califano, 583 F.2d 9 (1st Cir. 1978), wherein the court commented that "requiring a final determination might moot any individual plaintiff's claim of right." The requirement of exhaustion of administrative remedies is similarly waived for such a collateral claim. (In Mathews v. Eldridge, 424 U.S. at 330, the Supreme Court held that in certain cases the court may waive the exhaustion requirement. Such a case arises where plaintiff's statutory and constitutional claims are entirely collateral to their substantive claim of entitlement.)

It has been noted that questions of timing merge with the merits in claims of administrative delay, since the passage of an unreasonable amount of time is the situation that the plaintiff seeks to eliminate. Blankenship v. Secretary of Health & Human Serv., 587 F.2d 329, 331 (6th Cir. 1978). See Bermann, Administrative Delay and its Control, 30 Am. J. Comp. L. 473, 479-82 (1982) (a general discussion of the barriers to judicial relief: "[T]iming questions should never be an independent barrier to a judicial decision on a
vary widely, turning primarily upon their interpretations of the following issues: first, how to balance the conflicting interests to determine whether administrative delay is unreasonable; second, whether administrative efficiency is a subject for judicial action given the differing scopes of authority of judicial review and agency discretion; and, third, if courts may intervene, what types of action the courts may take given the separation of powers principle, the courts' express statutory grants of power to provide an equitable remedy, and the courts' own perception regarding their levels of expertise in the complex problems of administrative agency inefficiency.

The federal appellate courts' decisions have exhibited three distinct approaches to these issues. In *Day v. Schweiker* and *Caswell v. Califano* the courts established strict time limits and ordered the Secretary to render disability determinations within those time limits or pay interim benefits to the claimants until such decisions are made. On the other hand, held that absent allegations of "bad faith" or a dilatory attitude, the delays complained of were not so unreasonable as to justify the court's resort to mandatory time limits and presumptive eligibility. The court in *Blankenship v. Secretary of

---

*claim of delay, since the controversy . . . will not become ripe by further delay.") To prevent injustice, courts have considered the delay itself to be the agency's final decision. See *Deering Milliken, Inc. v. Johnston*, 295 F.2d 856, 865 (4th Cir. 1961) (holding that although delay may not be final in the usual sense of the word, when it amounts to a violation of the APA, it is "final action.").


38. 583 F.2d 9 (1st Cir. 1978).

39. See also *Sharpe v. Harris*, 621 F.2d 530 (2d Cir. 1980) (affirming district court decision imposing time limits on hearings and decisions and granting payments to SSI applicants); *Barnett v. Califano*, 580 F.2d 28 (2d Cir. 1978) (affirming district court's 90-day mandatory time limit, but reversing the interim benefit provision as an abuse of discretion); *White v. Mathews*, 559 F.2d 852 (2d Cir. 1977), cert. denied, 435 U.S. 908 (1978) (ordering Secretary of Health, Education and Welfare to reduce time delays and provide interim benefits to claimants forced to wait longer than judicially imposed schedule time); *Crosby v. Social Security Admin. of the United States*, 550 F. Supp. 1278 (D.C. Mass. 1982) (ordering 180-day maximum time limit for obtaining a hearing); *Martinez v. Califano*, No. 73 C 900, (E.D.N.Y. Apr. 4, 1978) (ordering the Secretary to reduce waiting period to 150 days and grant interim benefits to claimants required to wait longer).

40. 587 F.2d 345 (7th Cir. 1978).

41. See also *Zambrana v. Califano*, 651 F.2d 842 (2d Cir. 1981) (class certification denied pending amendment of regulations by Secretary of Health and Human Services to provide uniform nationwide rules establishing reasonable time limits); *Deloney v. Califano*, 488 F. Supp. 610 (N.D. Ill. 1980) (delays processing disability claims not so unreason-
Health, Education & Welfare\textsuperscript{42} established a third approach by ordering the Secretary to promulgate rules providing for an administrative hearing within a specified period of time.\textsuperscript{43}

\textit{Mandatory Time Limits and Presumptive Eligibility: Day v. Schweiker and Caswell v. Califano}

In both \textit{Day v. Schweiker}\textsuperscript{44} and \textit{Caswell v. Califano},\textsuperscript{45} plaintiffs seeking to obtain disability benefits under Title II of the Social Security Act filed class action suits asserting that they had experienced unreasonable delays awaiting reconsideration decisions and administrative hearings.\textsuperscript{46} Plaintiffs sought relief on statutory\textsuperscript{47} and constitutional\textsuperscript{48} grounds. The district courts found the delays to be unreasonably lengthy and therefore in violation of the Secretary's statutory duty to provide a hearing within a reasonable time.\textsuperscript{49} Both courts found that it was unnecessary to rule on the due process issue since statutory relief was available.\textsuperscript{50}

The two courts fashioned nearly identical remedies by imposing mandatory time limits, ordering the Secretary to render reconsideration decisions and schedule administrative hearings

\begin{itemize}
\item[42.] 587 F.2d 329 (6th Cir. 1978).
\item[43.] \textit{See also} Cockrum v. Califano, 475 F. Supp. 1222 (D.D.C. 1979) (ordering Secretary to submit a plan reducing the time for administrative hearings to within a reasonable time). \textit{See generally} Blankenship v. Secretary of Health & Human Servs., 517 F. Supp. 77 (W.D. Ky. 1981) (allowing Secretary to lengthen self-imposed time limits to 165 days); Blankenship v. Secretary of Health & Human Servs., 522 F. Supp. 618 (W.D. Ky. 1981) (denying approval of Secretary's proffered sanction of administrative action against ALJ's for failure to meet time limits); Blankenship v. Secretary of Health & Human Servs., 533 F. Supp. 739 (W.D. Ky. 1982) (lengthening time limitation to 180 days at Secretary's request).
\item[44.] 685 F.2d 19 (2d Cir. 1982), \textit{cert. granted}, 51 U.S.L.W. 3774 (U.S. Apr. 25, 1983) (No. 82-1371).
\item[45.] 583 F.2d 9 (1st Cir. 1978).
\item[46.] Both cases were filed after an initial determination by the appropriate state agency had been made and plaintiffs were awaiting either the scheduling of or the issuance of a decision in reconsideration and administrative hearings. \textit{Day}, 685 F.2d at 21; \textit{Caswell}, 583 F.2d at 11.
\item[47.] \textit{See supra} note 6.
\item[48.] The fifth amendment provides, in relevant part, that "no person shall... be deprived of life, liberty, or property without due process of law." U.S. \textsc{const.} amend V.
\item[49.] \textit{Day}, 685 F.2d at 22; \textit{Caswell}, 583 F.2d at 11.
\item[50.] \textit{See infra} note 80 (discussing the history of due process rights of a Title II disability applicant).
\end{itemize}
within ninety days of a claimant’s request. In addition, as a sanction, the district court in Day ordered the Secretary to award interim benefits to claimants if these deadlines were not met, regardless of the likelihood that a favorable decision would be subsequently made. Both courts stipulated that any delays attributable to the claimant would toll the expiration of the mandatory time period.

On appeal, the First and Second Circuit Courts of Appeals affirmed the district courts’ decisions that the administrative delays were statutory violations and upheld the courts’ remedies establishing mandatory time limits and interim benefits. Both courts found that judicial intervention was not only appropriate, but necessary. Citing Caswell, the Day court reasoned that although Congress had entrusted the Secretary with administration of the disability insurance program, that delegation of authority does not preclude a judicial role, particularly when a statutory mandate is being disregarded. Similarly, the Caswell court held that although the Agency has substantial discretion in carrying out its administrative tasks, this discretion does not protect a system that routinely schedules hearings with unreasonable delay. The Caswell court indicated that when the delays exceed the bounds of reasonableness, the court may order the Agency to act promptly to meet its statutory obligation.

In analyzing the issue of the unreasonableness of the delays, the courts weighed the financial hardship of the applicant.

51. In Day v. Schweiker, 685 F.2d at 22, the Secretary was ordered by the district court to complete reconsideration processing and schedule hearings within 90 days of the claimant’s request. In Caswell v. Califano, the district court’s order required the Secretary to schedule and hold hearings in Title II disability cases within 120 days of a claimant’s request beginning Dec. 31, 1977, and within 90 days of such request beginning July 1, 1978. 583 F.2d at 11 n.2. Additionally, the Caswell court ordered the Secretary to submit progress reports to allow the courts to monitor compliance. Id. at 11.
52. Interim benefit payments were to be made, subject to recoupment if the claimant later failed to qualify, whenever no reconsideration determination was issued within 180 days of a request for reconsideration or whenever no hearing was held within 180 days of a hearing request. Day, 685 F.2d at 22.
53. The Caswell court excluded periods of delay directly caused by a claimant’s failure to provide essential information and other delays. 583 F.2d at 11 n.2. Similarly, the Day court excepted delays in reconsideration and in holding hearings caused by plaintiff’s failure to appear or failure to provide information, plaintiff’s request for a delay, or for other such reasons. 685 F.2d at 22 n.n.6,7.
54. Caswell, 583 F.2d at 16; Day, 685 F.2d at 24.
55. 685 F.2d at 22.
56. 583 F.2d at 15.
57. Id.
against the inherent efficiency problems of the Agency. The Second Circuit in Day expressed concern for the Agency’s problems, but rejected the argument that a “flood of claims” would prevent the Secretary from adhering to a judicially-mandated timetable. The court instead looked to the severe hardships imposed on wage earners by administrative delay and found that these delays detracted from the very purpose of the disability program. Similarly, the Caswell court noted that it realized that the problem was not only endemic to the First Circuit, but was nationwide, with a backlog of cases reaching an all time high. The court also noted that it was aware of attempts by Congress and the Secretary to reduce the delays. Both courts, however, concluded that the plight of the disability applicant outweighed these other considerations and that judicial intervention therefore would be necessary.

Both courts considered the presence of a possible separation of powers problem, but decided that previous congressional action would not prevent judicial intervention. The Day court indicated that implicit in Congress’s enactment of solely managerial types of remedies was its belief that the courts were effectively handling the problem. The Day court therefore maintained that it had a duty to vindicate the plaintiffs’ interests only so long as Congress had not enacted clarifying legislation or removed the term “reasonable” from the statute. Similarly, the Caswell court indicated that although Congress bears the responsibility for remedying problems in its administrative agencies and may enact legislation clarifying or modifying the statutes at issue, this does not preclude judicial intervention in the absence of

58. Day, 685 F.2d at 23.
59. Id. at 25 (citing its previous decision, White v. Mathews, 559 F.2d 852 (2d Cir. 1977), cert. denied, 435 U.S. 908 (1978)).
63. Day, 685 F.2d at 23.
such clarifying legislation when the law as written is being violated.\textsuperscript{64}

The appellate courts turned finally to the issue of the validity of the ninety day time limitations that the district courts had imposed on the Agency. In upholding the time limits, both indicated that courts have considerable discretion to formulate such equitable remedies.\textsuperscript{65} The appellate courts refused to accept the Secretary’s argument that mandatory time limits would not solve the delay but would only cause a nationwide shift of scarce resources. Although mindful of the decision’s impact, the Casswell court indicated it “could hardly permit the legal rights of litigants to turn upon the alleged inability of the defendant fully to meet his obligations to others.”\textsuperscript{66} The Day court, with little comment, also upheld the district court’s order compelling the Secretary to award interim benefits to claimants if the time limits were not met.\textsuperscript{67}

\textit{Deference to Agency Discretion: Wright v. Califano}

In \textit{Wright v. Califano},\textsuperscript{68} the named plaintiff filed suit seeking benefits under Title II of the Social Security Act against the Secretary on behalf of himself and other similarly situated applicants.\textsuperscript{69} The complaint alleged that the Secretary’s failure to

\begin{footnotesize}
\footnotesize
\begin{enumerate}
\item[Caswell, 583 F.2d at 17.]
\item[Id. They supported this position by citing to prior First Circuit decisions that also had prescribed mandatory time limits to alleviate administrative delay.]
\item[Id.]
\item[Day, 685 F.2d at 23.]
\item[587 F.2d 345 (7th Cir. 1978).]
\item[Title II of the Social Security Act, 42 U.S.C. §§ 401-431 (1976), provides for the disbursement of old age benefits (§ 401) and survivor’s benefits (§ 402), in addition to disability benefits (§ 404). As a claimant under § 401 or § 402 must follow the same four level administrative process as a claimant for disability, the same types of delays are experienced.]
\item[Citing \textit{Wright} extensively, the district court maintained that \textit{Wright} was equally applicable where plaintiffs challenged delays in all levels of disability determination. \textit{Id.} at 614. Thus \textit{Wright} v. Califano may be credited as the decision which established the Seventh Circuit’s denial of mandatory time limits and interim benefits in the event of delay.]
\end{enumerate}
\end{footnotesize}
Delay in Social Security Benefits

provide administrative hearings for each claim within a “reasonable time” violated the plaintiff’s statutory and constitutional rights. The district court granted the plaintiff’s motion for summary judgment, finding the lengthy delays violated the mandates of the Social Security Act and the Administrative Procedure Act. The court then ordered the Secretary either to render administrative hearing decisions within ninety days from the date of request or pay interim benefits until the Secretary rendered a final decision.

The Court of Appeals for the Seventh Circuit reversed the district court’s decision. It found that delays in the administrative procedure were not so unreasonable as to justify resort to the court’s extraordinary equitable powers to impose mandatory time limits or to presume benefit eligibility. The Seventh Circuit viewed the conflicting interests differently than the First or Second Circuits, looking at the delay problem within a “broader context” with a view from the agency’s perspective. The court found that a certain amount of waiting time would always be inevitable, and that the reasonableness of any delay should be judged in relation to the Agency’s attempts to cope with the problem in light of its severe resource constraints. The court would only consider a delay unreasonable when, for example, there was evidence of a dilatory attitude, or when the amount of time was disproportionate to that normally required. Viewed from this perspective, the court found that the particular delays experienced by the plaintiffs were not unreasonable.

The Wright court indicated that judicial intervention in the procedures of a federal agency are usually inappropriate. The appellate court stated that it would be an extremely rare case where a district court would be justified in holding that the mere passage of time presented an occasion for intervening in the administrative process. Moreover, the Wright court felt that the judiciary could not accurately determine the appropriate length of time; at best, only a relative standard such as “rea-

70. See supra note 6.
72. Wright, 587 F.2d at 347.
73. Id. at 354.
74. Id. at 351-52.
75. Id. at 353.
76. Id. at 352 (citing FTC v. Weingarten, 336 F.2d 687, 691-92 (5th Cir. 1964)).
reasonable dispatch” could be created. The Wright court further noted that Congress itself had continuously monitored the administrative delay problem and that it had found mandatory time limits inappropriate. The court maintained that absent a constitutional violation or a clear violation of congressional intent the judiciary should hesitate to interfere in a matter of administrative efficiency, a subject not particularly suited to judicial evaluation.

Of the four decisions, the Wright court alone addressed the argument that administrative delays violate due process rights as provided by the fifth amendment. The court acknowledged that public assistance claimants do own “property rights” in benefits actually due and owing. The court found, however, that no property right attached to future benefits existing only as a mere possibility and that there was therefore no deprivation of property that called for due process protection.

77. Wright, 587 F.2d at 353. See generally Ad Hoc Comm. on Judicial Admin. v. Massachusetts, 488 F.2d 1241 (1st Cir. 1973), a class action in which members of a state bar and litigants alleged that the state’s failure to provide sufficient court facilities and personnel violated the sixth amendment. The court denied relief to the class, indicating that the district court would have to translate the due process clause into formulae and timetables establishing the maximum permissible delay. Id. at 1244.


79. Wright, 587 F.2d at 353.

80. Id. at 354-56. The due process clause protects against deprivation of property without due process of law. Traditionally, the property interests protected have been defined quite narrowly; monetary government benefits distributed to individuals were considered mere “privileges” bestowed by the government rather than protected property rights. A recipient whose public assistance benefits were terminated was denied the due process protection afforded the owner of a recognized property right because receipt of a benefit was seen as a privilege not a right. In 1970, the Supreme Court abandoned the right/privilege distinction in Goldberg v. Kelly, 397 U.S. 254 (1970), holding that welfare recipients have a protected property right in the benefits received. In Mathews v. Eldridge, 424 U.S. 319 (1976), the court found that disability benefit recipients enjoyed this same protected property status. With the demise of the right/privilege controversy in the Mathews and Goldberg decisions, it therefore becomes necessary to determine in each instance whether the claimant has a sufficient entitlement to an important benefit to constitute a right and hence invoke constitutional protection.

The Day, Caswell, and Blankenship courts circumvented the issue of potential property rights by finding that a statutory violation had occurred and then granting relief to the plaintiff on statutory grounds. The Wright court alone approached the issue. In determining whether new applicants were to be afforded the protected property right given disability benefit recipients, the Wright court identified three factors to be balanced: first, the private interest to be affected; second, the value of additional or substitute procedural safeguards; and, third, the fiscal and administrative burdens on the government that additional or substitute procedural requirements would entail. Upon consideration of
Delay in Social Security Benefits

The Middle Ground:

Blankenship v. Secretary of Health, Education & Welfare

In Blankenship v. Secretary of Health, Education & Welfare, applicants seeking benefits under Title II and Title XVI of the Social Security Act brought a class action suit against the Secretary. Plaintiffs challenged delays by the Secretary in scheduling administrative hearings, seeking relief on statutory and constitutional grounds. The district court granted them summary judgment, finding that the agency had both a statutory and a constitutional duty to provide a hearing within a “reasonable time,” and that the delays experienced by plaintiffs stretched well beyond the bounds of reasonableness. The district court issued an order requiring the Secretary to schedule administrative hearings for plaintiff class members within ninety days of a request. The Court of Appeals for the Sixth Circuit, however, reversed this decision and remanded the case with instructions to require the Secretary to formulate his own regulations requiring administrative hearings to be scheduled within a specified time.

The appellate court weighed the conflicting interests of the Agency and an applicant and affirmed that the delays experienced by plaintiffs were unreasonable. Even though the court found no evidence of a dilatory motive by the Agency and noted that the Agency had limited resources to meet a dramatically increased caseload, the court reported that the lengthy delays were intolerable, since the applicants had suffered substantial hardship and were only trying to obtain the necessities of life.

these factors, the court held that “in the name of due process as a flexible standard” it would not impose time limits upon an agency which in good faith without arbitrary actions had demonstrated an inability to comply. 587 F.2d at 356.

81. 587 F.2d 329 (6th Cir. 1978).
82. 42 U.S.C. §§ 401-431 (1976). Title II provides Old-Age, Survivor's and Disability Insurance (OASDI) benefits.
83. 42 U.S.C. §§ 1381-1383(c) (1976). Title XVI provides supplemental security income to individuals who are aged, blind or disabled.
85. Id.
86. Blankenship, 587 F.2d at 331.
87. Id. at 334.
88. Id.
Turning to the issue of the appropriate remedy, however, the Sixth Circuit found the district court’s mandatory time limits inappropriate. The court focused on the intent of Congress, noting that even though the legislature had prescribed time limits in other types of social security proceedings, the procedure and fact-finding necessary in disability cases precluded fixed time limitations and demanded instead a more flexible “reasonable time” standard. The court also maintained that it would be “inappropriate and inconsistent with the principle of separation of powers” to dictate any hard and fast deadlines.

The Blankenship court also expressed concern that, since the problem of delay was nationwide, a mandatory time limit would necessitate a shift of scarce personnel and resources from other parts of the country, causing even more severe delays elsewhere. The court was of the opinion that time limits imposed without a thorough understanding of the problem might make government unworkable.

The Sixth Circuit made it clear, however, that the judiciary was not required to stand helplessly by and deny plaintiffs’ relief simply because of the complexity of the delay problem. Rather, the court issued an order requiring the Agency to exercise its rulemaking authority to formulate regulations establishing reasonable time limits for scheduling hearings. In keeping with the separation of powers doctrine, the courts’ role would then be to review the “reasonableness” of the proposed regulations.

FASHIONING A JUDICIAL REMEDY

The problem of administrative delay is not new to the courts. Judicial relief from protracted administrative delay was first

89. Id. at 335.
90. Under Title XVI, applicants for SSI in non-disability cases are to be afforded a determination on their claim within 90 days after requesting a hearing. 42 U.S.C. § 1393(c)(2) (1976).
91. Blankenship, 587 F.2d at 335.
92. Id.
93. Id.
94. Upon remand, the district court authorized publication of experimental regulations providing that an administrative hearing be scheduled within 90 days of a request. These regulations were subsequently amended by the Secretary with court approval to provide for an overall time limit of 165 days, after the Secretary cited statistics indicating the experimental deadlines were rarely met and the backlog was increasing despite a
Delay in Social Security Benefits

1983

1

Delay in Social Security Benefits

granted by the United States Supreme Court in 1926. Since then, numerous cases have addressed the problem of administrative delay in the federal agencies. While delay is certainly undesirable, it may be inevitable when its source lies in the complexity of the issues to be resolved and the amount of information that must be assimilated and considered. In addition, the specialized mission of an administrative agency often necessitates a certain amount of delay.

Four federal courts of appeals analyzed the problem of delay within the Social Security Administration's disability determination process and arrived at widely dissimilar solutions. The differences in their conflicting decisions turned upon how they balanced the Agency's hardships against those suffered by the disability applicants; whether they found judicial intervention appropriate to remedy problems of administrative inefficiency; and what they considered to be the best form of relief to provide plaintiffs challenging such delays.

Balancing of Interests

Severely disabled individuals critically need prompt financial assistance to meet the necessary expenses of life as well as the determined concentration of resources. 519 F. Supp. 77, 80 (D. Ky. 1981). In allowing the Secretary to amend the regulations, the district court indicated that its mandate did not permit it to impose duties on the Secretary that could not be performed.

95. In Smith v. Illinois Bell Tel. Co., 270 U.S. 587 (1926), Illinois Bell successfully contended that a state commerce commission's five year delay unconstitutionally deprived the company of its property without due process of law.

96. See generally NLRB v. Rutter-Rex Mfg. Co., 396 U.S. 258 (1969) (Supreme Court reversed previous decision shifting the cost of a long delay in processing the case from employer to employees); Smith v. Miller, 665 F.2d 172 (7th Cir. 1981) (upholding district court order that all requests for medical benefits not timely processed under the Department of Public Aid's prior approval procedures be automatically approved); Nader v. FCC, 520 F.2d 182 (D.C. Cir. 1975) (court ordered the Federal Communications Commission to submit a proposed timetable to complete a certain investigation); Adams v. Richardson, 480 F.2d 1159 (D.C. Cir. 1973) (court ordered the Secretary of Health, Education and Welfare to institute proceedings to withhold federal funds from schools failing to desegregate); Environmental Defense Fund Inc. v. Hardin, 428 F.2d 1093 (D.C. Cir. 1970) (role of court described as insuring that the Secretary of Agriculture exercised his discretion within a reasonable time, FTC v. Weingarten, Inc., 336 F.2d 687 (5th Cir. 1964) (court found that Federal Trade Commission was not proceeding with dispatch to investigate a complaint pending two years against a third by plaintiffs); Deering Milliken, Inc. v. Johnston, 295 F.2d 856 (4th Cir. 1961) (determining that second remand by National Labor Relations Board was in violation of Board's duty to dispose of a case with reasonable dispatch).

97. See Skiffington, Federal Administrative Delay: Judicial Remedies and Applica-
burdensome medical costs associated with sickness or injury. Less severely impaired individuals, although their needs may not be quite so acute, also require speedy relief, since meeting the definition of “disabled” requires a complete withdrawal from the labor force and frequently the consequent loss of all financial security.\textsuperscript{98} The Day, Caswell, and Blankenship courts found that claimants meeting this definition suffered unreasonable delays waiting for administrative hearings.

The Wright court, however, balanced the interests involved to achieve a different result. The court agreed that the Agency had a statutory duty to provide a claimant with the type of administrative review requested within a reasonable time, but indicated that the problem was to give content to the word “reasonable” in the circumstances presented. The court commented that it was not unsympathetic to the deprivations that the delays could cause and acknowledged that the First and Second Circuits had focused primarily on the plaintiffs’ interests in finding the delays unreasonable. The court found that the reasonableness of the delays must be judged in light of the resources that Congress had supplied the Agency as well as the impact of the delays on the applicants’ interests.\textsuperscript{99}

In balancing these interests, the Wright court failed to give adequate weight to the plight of the wage earner. The court took note of the systemwide nature of the delays and the Agency’s reported lack of resources. It also considered Congress’s concern for quality adjudication. While the court acknowledged that the Agency has a statutory duty, it failed to explain how this duty should be fulfilled. In essence, the court advocated a shift in focus from the claimant to the Agency. Applying this type of analysis, the court was therefore able to find that the particular delays complained of were not so unreasonable as to require judicial intervention.\textsuperscript{100}

\textsuperscript{98} The definition of disability requires “an inability to engage in any substantial gainful activity.” 42 U.S.C. 416(i)(1), 423(d)(1), (1976). Therefore, a claimant may perform neither his former work activity nor any other form of work while his application is pending. Moreover, the regulations require a waiting period before benefits are payable; an individual must be disabled for five months before he begins to receive benefits. 42 U.S.C. § 423(a)(1)(D) (1967). These required periods of inactivity alone are a financial hardship to the claimant in addition to any procedural delay.

\textsuperscript{99} Wright, 587 F.2d at 351.

\textsuperscript{100} Id. at 354.
Additionally, in finding that the delays suffered were not unreasonable, the court noted that plaintiffs had made no allegations of "bad faith," a dilatory attitude, or a lack of evenhandedness. While it is true that these specific allegations were not made, the fact that the Agency failed to meet its statutory duty to plaintiffs might evidence some degree of "bad faith." Moreover, the court impliedly commended the Agency for an evenhanded, systemwide failure to comply with its duty. Finally, the court left unanswered what action it would take if it found the Agency to have acted in bad faith.

Another ground for the court's finding that administrative delays were not unreasonable was its observation that plaintiffs had made no suggestion to increase productivity and no allegations of specific inefficiencies within the Agency's administrative procedure. This was an unfair expectation since the complexity and size of the Social Security Administration make it unlikely that the plaintiffs could have proffered suggestions to the Agency to remedy its administrative problems. Since the court itself admitted a reluctance to intervene, its criticism of plaintiffs' failure to do so holds plaintiffs to an unreasonably high standard of expertise.

101. Id. at 353.
102. In Smith v. Illinois Bell Tel. Co., 270 U.S. 587 (1926), Illinois Bell successfully challenged the state commerce commission's two year delay. The court noted that the commission's conduct "evinces an entire lack of that acute appreciation of justice which should characterize a tribunal charged with [this] delicate and important duty." Id. at 591.

The Secretary has argued that the administrative delays should be viewed in part as reflecting a concern for accurate determinations of entitlement to disability insurance. This argument has gained some support from scholars who note that, increasingly, delay is found among well-intending agencies following lengthy procedures designed to produce fairer and more accurate decisions. Bermann, Administrative Delay and its Control, 30 AM. J. COMP. L. 473, 474 (1980). It has also been noted, however, that delay may be caused by regulations serving no legitimate purpose or by inefficiency within the agency, rather than the complex and technical nature of the agency's specialized purpose. If so, they are unnecessary and may be unreasonable. Skiffington, supra note 97, at 679.

103. Wright, 587 F.2d at 353.
104. Reduction of administrative agency delay has been the subject of numerous articles. In Mashaw, How Much of What Quality: A Comment on Conscientious Procedural Design, 65 CORNELL L. REV. 823 (1980), for example, the author confronts the question of how far to push the demand for timeliness. The author notes that while delay reduction has political and judicial support, Congress's unwillingness to incur additional administrative costs suggests that reductions in delay will only come at the cost of increased error unless adjudicative "technology" can be improved in some way. See also Chassman, Social Security Disability Hearings: A Case Study in Quality Assurance and Due Process, 65 CORNELL L. REV. 801 (1980); Schwarz, Adjudication Process under U.S. Social
One approach to evaluating the unreasonableness of administrative delay would be to weigh the Agency’s justification for delay against the harm the delay causes the applicant.\textsuperscript{105} This balancing test would properly consider the needs of a disabled applicant and at the same time afford the Agency reasonable time to determine whether a disability actually exists. Applying this test, a court might find that an administrative delay is reasonable if its source lay in the complexity of the administrative process and the amount of information to be considered. If, on the other hand, a delay is without sufficient justification then a court could find that the delay is unreasonable and therefore in violation of the plaintiff’s statutory rights.

**Finding the Appropriate Form of Relief**

Courts have emphasized that an active judicial role is needed when statutory rights are violated by unreasonable administrative delays.\textsuperscript{106} They have, however, formed no consensus as to the definition of unreasonable or the appropriate remedy. Each court’s approach varies according to how it views its equitable authority.

**Judicially-Imposed Time Limits**

Judicially-imposed time limits on the Agency’s procedures may violate the dictates of the doctrine of separation of powers.\textsuperscript{107} In essence, rules and regulations are the administrative equivalent of statutes. Congress, through its enabling legislation, grants authority to federal agencies to promulgate these rules.\textsuperscript{108} The separation of powers principle operates to provide exclusive authority in federal agencies as sole delegates of congressional power. To properly comply with this principle, the courts must defer to the Agency’s rulemaking authority.\textsuperscript{109}


\textsuperscript{106} Day, 685 F.2d at 22; Blankenship, 587 F.2d at 336; Caswell, 583 F.2d at 15.

\textsuperscript{107} See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

\textsuperscript{108} The Social Security Administration was granted exclusive authority by Congress by Act of August 14, 1935, ch. 531, 49 Stat. 624 (1935) (codified at 42 U.S.C. § 405). 42 U.S.C. § 405(a) provides in relevant part: “The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of the title, which are necessary or appropriate to carry out such provisions . . . .”

\textsuperscript{109} See infra notes 112-13 and accompanying text.
The APA does not grant authority to the courts to draft rules of administrative procedure. It provides instead for a simplified standard of administrative review.\textsuperscript{110} Rules and regulations promulgated by an agency are subject to review and approval by the courts before their final publication in the Code of Federal Regulations, the general body of regulatory laws governing procedure before federal administrative agencies.\textsuperscript{111} In 1977, the United States Supreme Court reaffirmed this separation of duties in a decision regarding the APA's informal rulemaking provisions. The Court found that the APA's provisions for judicial review of "pre-publication" regulations established the maximum limit of judicial intervention into an agency's rulemaking authority.\textsuperscript{112} The Court emphasized that reviewing courts are not free to grant additional procedural rights if the agency itself has not chosen to do so.\textsuperscript{113}

Even if it were within the power of a court to impose time limits, it would very likely cause more harm than good. Courts are generally ill-equipped to make fixed timetables out of an agency's duty to provide a hearing within a reasonable time. The Supreme Court has not even attempted to quantify the sixth amendment right to a speedy trial in criminal cases, one of the Constitution's most fundamental edicts against unreasonable delay.\textsuperscript{114} Similarly, federal courts presented with actions challenging delays in the state courts have declined to mold remedies with formulae and timetables.\textsuperscript{115}

Moreover, since the agency's delays are systemwide, time limits would accomplish little more than a nationwide shifting of resources, exacerbating hearing delays in other parts of the country. Given that the Agency has a limited amount of resources available and that the courts lack a thorough understanding

\textsuperscript{110} See supra note 34.
\textsuperscript{111} 5 U.S.C. § 553(b) (1976) requires that "notice of proposed rulemaking shall be published in the Federal Register. § 553(c) provides that the agency "shall give interested persons an opportunity to participate in the rulemaking process through submission of written data."
\textsuperscript{113} 435 U.S. at 524.
\textsuperscript{114} Barker v. Wingo, 407 U.S. 514 (1972). "We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate." Id. at 521.
\textsuperscript{115} Ad Hoc Comm. on Judicial Admin. v. Massachusetts, 488 F.2d 1241 (1st Cir. 1973); Kail v. Rockefeller, 275 F. Supp. 937 (E.D.N.Y. 1967).
of the mechanics of administrative procedure, time limits in this setting may make government unworkable.\textsuperscript{116}

Lastly, the relatively swift decisions required by courts may not necessarily be accurate.\textsuperscript{117} If time limitations are imposed, the Agency may be forced to make decisions based on incomplete evidence. This would create a tremendous hardship on deserving applicants. If a claim is denied, the evidence cannot be heard on appeal to the federal courts since de novo review is unavailable.\textsuperscript{118} In this instance as well, harm may be caused as a result of permitting courts to prescribe and enforce time limits.

\textbf{Interim Benefits}

Although a court's authority to award interim benefits arguably flows from its equitable power to fashion remedies, providing this type of remedy may not be within the court's authority. The legislature must expressly authorize disbursement from the federal treasury to satisfy a particular class of claims. In addition, the courts may not grant monetary relief as a remedy to plaintiffs in cases of administrative delay against the United States absent a congressional act waiving the sovereign immunity of the United States. The Supreme Court has emphasized that the terms and conditions defined by Congress for creating government liability preclude this type of remedy.\textsuperscript{119} The Court has further indicated that a grant of a right of action by the federal government must be made with specificity,\textsuperscript{120} and has emphasized the courts' duty to observe the conditions defined by Congress when charging the public treasury.\textsuperscript{121}

A 1976 amendment to the APA eliminated the defense of sovereign immunity as a bar to judicial review in actions against federal agencies seeking non-monetary relief.\textsuperscript{122} The amendment served to reinforce previous judicial and legislative mandates that the courts were not to grant monetary relief in cases where

\begin{itemize}
\item \textsuperscript{116} Blankenship, 587 F.2d at 335.
\item \textsuperscript{117} Schwartz, \textit{supra} note 104, at 555.
\item \textsuperscript{118} 42 U.S.C. § 405(h) (1976) provides that "no findings of fact or decisions of the Secretary shall be reviewed."
\item \textsuperscript{120} Testan, 424 U.S. at 400.
\item \textsuperscript{121} Schweiker \textit{v.} Hansen, 450 U.S. 785, 788 (1981).
\item \textsuperscript{122} See \textit{supra} note 35.
\end{itemize}
sovereign immunity was not expressly waived. Moreover, Congress and the Secretary have prescribed specific limited situations in which interim benefits will be granted. A qualifying individual receiving benefits who is found initially to be no longer disabled may request continued benefits until the Agency has reached a final decision.

Despite sympathetic reasons for providing interim benefits to claimants awaiting determination of their applications, no statutory authority exists for such a remedy. On the contrary, the APA expresses the intent that monetary claims brought against an agency of the federal government do not create a waiver of sovereign immunity.

Compelling Agency Action

Although the APA restricts judicial review of actions within an agency's discretion, the Act also requires that the agency proceed with dispatch to conduct all matters before it. Courts have emphasized that administrative discretion is not a license for lethargy. Judicial review extends to failure to take action as well as abuse in acting. Although courts have found that the Secretary's delays have violated a statutory duty and that judicial intervention has been necessary, an active rulemaking role by the courts is inappropriate. The courts, however, need not abdicate their role in cases of unreasonable administrative delay. The express grant of power under the APA is an effective tool which allows the federal courts to compel an agency to act promptly against alleviating unreasonable delay. Under this provision, a court may thus order an agency to act promptly to meets its statutory duty.

123. See supra note 119 and accompanying text.
124. 42 U.S.C. § 423(g) (1976) provides for continued payments of disability benefits during appeal in any case where:
   (A) an individual is a recipient of disability insurance benefits,
   (B) the impairment on the basis of which such benefits are payable is found to have ceased or to no longer be disabling, and
   (C) a timely request for a hearing is pending.
126. See supra note 35 and accompanying text.
127. See supra note 6.
Courts have successfully remedied the effects of protracted delay within other regulatory agencies by ordering the offending agency to perform some type of action it is statutorily required to perform.\textsuperscript{131} In some cases, courts have also required an agency to submit a timetable for agency action instead of the court imposing its own.\textsuperscript{132} Courts have then retained jurisdiction to approve and monitor the proposed timetable. The agency is expected to meet its schedule and explain any failure to do so.\textsuperscript{133} Courts also have compelled funding agencies to institute proceedings,\textsuperscript{134} and at times have even ordered an agency to withhold funds from recipients who violate federal laws as a coercive measure to comply.\textsuperscript{135} Failure of the agency to take such action may be seen as a dereliction of duty.\textsuperscript{136}

In a 1973 Second Circuit case, plaintiffs providing medical care under the Medicare Act claimed that the Social Security Administration failed to promptly reimburse them according to the requirements of that Act.\textsuperscript{137} The court provided relief to the plaintiffs because it found authority within the provisions of the APA to compel the Agency to promulgate regulations consistent with the court's announced interpretation of the statute.

In adopting the APA, Congress intended, among other things, to provide a remedy to those injured by unwarranted official


\textsuperscript{132} Nader v. Federal Commerce Comm'n, 520 F.2d 182 (D.C. Cir. 1975) (court ordered FCC to submit a proposed timetable for determining the lawfulness of the applicant telephone company's proposed rate increases).

\textsuperscript{133} \textit{Id.} In North Amer. Van Lines, Inc. v. United States, 412 F. Supp. 782 (N.D. Ind. 1976), the court emphasized that a "deliberate policy of institutionalized delay by administrative agency in considering applications for licenses must be closely scrutinized and purported justifications tested against actual practices." \textit{Id.} at 792.

\textsuperscript{134} See Silverman v. NLRB, 543 F.2d 428 (2d Cir. 1976) (court found that delay by National Labor Relations Board of more than five years in computing amount of back pay to be awarded employees under Board's decision was the type of inaction which violates the mandates of the APA).

\textsuperscript{135} In Adams v. Richardson, 480 F.2d 1159 (D.C. Cir. 1973), the court enjoined the Secretary of Health, Education and Welfare to institute proceedings withholding federal funds for 10 state school systems for failure to desegregate.

\textsuperscript{136} \textit{Id.}

\textsuperscript{137} Kingsbrook Jewish Medical Center v. Richardson, 486 F.2d 663 (2d Cir. 1973).
Delay in Social Security Benefits

The APA's legislative history emphasizes that no agency should be permitted to cause any person to suffer from administrative delays. The purpose of the compelling provision was thus to provide a wronged individual with the right of enforcement.

The power of the courts to compel an agency to set the time limits within which it will perform its statutory duty gains support from this purpose, as well as from case law and statutory law. Moreover, it is in keeping with the separation of powers principle. It has proved to be a successful tool for the courts to provide relief when unreasonable delay occurs in federal administrative agencies.

CONCLUSION

While it has been said that "one man's delay is another man's due process," few would be able to justify the administrative delays suffered by many applicants for disability benefits under Title II of the Social Security Act. The delays come at a time when an applicant's coping mechanisms are marginal at best. Although a determination of the unreasonableness of the delay may include consideration of the Agency's budgetary constraints, this factor should not override the irreparable harm to an applicant caused by a failure to reach a prompt decision.

With few exceptions, broad discretion is given to the Social Security Administration to formulate its own procedure. A judicial role, however, is not precluded when the agency fails to meet its statutory duty. Recent federal court decisions mandating that the Agency must complete its disability determination process within judicially prescribed time limits are in violation of the separation of powers principle. Moreover, as the courts concede, attempts to provide a remedy through such limited means cannot solve a problem that is nationwide. Additionally, such an approach may do more harm than good by adding an inestimable financial burden on the Agency or by forcing the Agency to make hasty, potentially incorrect decisions.

138. In the APA's legislative history, Senator McCarran, the author of the bill which later became the APA, reported that it was the intention of the compelling provision to give a party injured by a violation of one of the terms of the bill the right of enforcement, emphasizing that no agency would be permitted to cause any person to suffer injury due to unwarranted official delay. S. Doc. No. 248, 79th Cong., 2d Sess. 217 (1946).
139. Skiffington, supra note 97, at 679.
This does not mean, however, that the courts must abdicate their responsibility to see that the Agency performs its statutory duty. In the case of administrative delay by the Social Security Administration, courts should compel the Agency to promulgate rules prescribing, with specificity, time limits within which it will carry out its administrative tasks. These rules would then be subject to review by the courts to insure that they are carried out. With each tribunal operating within its own area of expertise, the interests of the disability applicant are thus best met.

MARY TODD ALRED