LEGAL REPRESENTATION IN DISABILITY CLAIMS

Hilary Hoynes, University of California, Berkeley and NBER
Nicole Maestas, Harvard University and NBER
Alexander Strand, Social Security Administration

RDRC Annual Meeting
August 4-5, 2022

The research reported herein was performed pursuant to a grant from the U.S. Social Security Administration (SSA) funded as part of the Retirement and Disability Research Consortium. The findings and conclusions expressed are solely those of the author(s) and do not represent the views of SSA, any agency of the federal government, Harvard University, UC Berkeley, or the NBER Retirement and Disability Research Center.
Overview

• Legal representatives have long played a role in the SSDI application process—at the appellate level
  • Common in other civil law settings, e.g., immigration, housing
  • Not a standard feature of the broader U.S. social safety net
• Despite the $1.2 billion payout in legal fees per year, we know little about the value of legal representation
Potential Gains to Representation

Process of applying to SSDI is complex: application includes employment history, medical history, requires medical records

Legal representatives may help applicants
- Understand rules, complete application forms, obtain medical records
- Develop stronger cases, matching medical evidence to regulatory criteria
- Obtain the decisive outcome earlier (1/2 of awards made on appeal, 2-yr wait)
  - This benefits the applicant and federal government (reducing the workload and costs)
  - Non-qualifying applicants would spend less time out of labor force
But Concerns about Aggressive Marketing, Perverse Incentives, and Even Fraud

WASHINGTON—A federal grand jury Tuesday indicted three people—including a former judge and a lawyer who billed himself as “Mr. Social Security”—over a multiyear scheme that won millions of dollars in disability benefits for people by allegedly cheating rules and procedures.

The arrangement helped make the attorney, Eric Conn of Stanville, Ky., Attorney Eric Conn during a Senate committee hearing on Capitol Hill in 2013. He has been indicted by a federal grand jury in Lexington, Ky., on charges including conspiracy to commit mail fraud and wire fraud.

Allegations that reps slow process down to earn a higher fee

Three Indicted for Alleged Social Security Fraud Scheme in Kentucky

Government disbursed benefits in excess of $600 million as result of scheme, indictment says

By and Updated April 5, 2016 5:47 pm ET

Devlin Barrett
Damian Paletta
Incentives

- Reps paid only if they “win” and if “back pay” owed
  - Fee = 25% of back pay up to max of $6,000; avg fee is $3,000
  - Back pay = monthly benefit for months from onset to decision (less 5-mo waiting period)
  - SSA deducts fee from the claimant’s back pay, pays rep directly
- Fee payment maximized when cases move slowly (more back pay) but ultimately result in favorable decision
Our Study

- We investigate the impact of legal representation on case outcomes when representatives engage from the initial review stage.
- Leverage new administrative data linking case files to data on representation.
- Track cases through appellate process and final outcomes.
- Instrumental variables research design accounts for non-random assignment of representatives to cases, motivated by developments at the appellate level that altered market structure for representation, increased use of representation at the initial level.
Rise and Fall in Representative Fee Payments

SSDI Direct Payments to Representatives, Appellate and Initial Levels

Source: U.S. Social Security Administration
Binder & Binder, one of the nation's largest Social Security disability firms, filed for bankruptcy protection Thursday night amid shrinking demand for its services as government scrutiny of disability claims tightens.

The Wall Street Journal previously reported that Binder & Binder had been preparing for Chapter 11 to restructure its debt. The firm listed assets and liabilities each between $10 million and $50 million in a bankruptcy petition filed in U.S. Bankruptcy Court in White Plains, N.Y.

Those debts include $23 million in secured debt to lenders U.S. Bank and Capital One Bank and $16.7 million in unsecured debt to Stellus Capital Management, a spinoff of investment firm D.E. Shaw & Co., court filings show.

U.S. Bank and Capital One Bank are prepared to lend up to $26 million in bankruptcy financing, filings show, subject to court approval.

Founded by brothers Harry and Charles Binder, the firm represents people seeking disability benefits from the federal government. It rose to prominence in recent years thanks to an aging workforce, high unemployment and less oversight than in the current environment, although it now must confront a shrinking number of people seeking benefits and tougher scrutiny from the Social Security judges who decide cases.

A number of the judges who paid high amounts of benefits in recent years have either been placed on leave or left the agency, data show. The agency has also tightened its controls.

People familiar with the matter have told the Journal that the Chapter 11 filing isn't immediately expected to affect the majority of the firm’s 966 employees, many of whom aren’t lawyers, or its nearly 58,000 active cases.

In projections filed in court papers, Binder estimates its employee head count will drop to under 400 over the next two years.

—Damian Paletta contributed to this article.

Write to Sara Randazzo at sara.randazzo@wsj.com

This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers visit http://www.djreprints.com.

Dec. 19, 2014 12:10 a.m. ET

By SARA RANDAZZO

SSDI Direct Payments v. Hearing-Level Allowance Rate

Source: U.S. Social Security Administration
Rise and Fall in Representative Fee Payments

Hearing-Level Allowance Rate v. Percent of Initial Applicants with Representation

Representation at initial level (right axis) rises sharply as hearing level allowance rates fall

Source: U.S. Social Security Administration
Geographic Variation in Representation at Initial Level

Map showing geographic variation in representation at the initial level for the years 2010 and 2014.
Instrumental Variables (IV) Approach

- Reduction in appellate allowance rates $\rightarrow$ reductions in firm revenue (Binder and Binder bankruptcy)
- Firms to seek new revenue sources $\rightarrow$ enter market for initial applicants
- We construct instruments to capture the existing “market” for reps at appellate level by area-year
- **Intuition:** Applicants living in areas with greater disability law firm presence in appellate cases are more likely to enlist reps for their initial filing, due to local advertising or word of mouth
Main Findings (IV Estimates)

Initial representation leads to

- 23pp increase in initial allowance
- Large reduction in appeals (deterred by rep? learning about quality in initial stage?)
- Reduces mean total case time by 316 days
- No effect on final allowance (point estimate negative and imprecise)
- 10pp increase in denials for insufficient evidence

<table>
<thead>
<tr>
<th></th>
<th>Initial Allowance</th>
<th>Initial Denial</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any reason (1)</td>
<td>Insufficient Evidence (4)</td>
</tr>
<tr>
<td></td>
<td>Refused Medical Exam (5)</td>
<td>Appellate Hearing Observed (7)</td>
</tr>
<tr>
<td></td>
<td>Final Allowance (8)</td>
<td>Total Processing Time (Days) (7)</td>
</tr>
<tr>
<td>Legal Representation</td>
<td>0.232** (0.118)</td>
<td>0.103*** (0.038)</td>
</tr>
<tr>
<td></td>
<td>0.006 (0.020)</td>
<td>-0.453** (0.181)</td>
</tr>
<tr>
<td></td>
<td>-316.1** (151.3)</td>
<td>-0.144 (0.159)</td>
</tr>
</tbody>
</table>

Observations 7,431,904
Over ID test P value 0.012
Mean Dep. Var. 0.320

Notes: Covariates include age, age squared, and indicators for female, education attainment, vocational training, SSI concurrent claim, BMI and BMI squared, pain indicated at application, random QA sample, quick disability determination flag, compassionate allowance flag, terminal illness flag, wounded warrior flag, major diagnosis class, and fixed effects for month and DDS office. Standard errors in parentheses, clustered by DDS office. *p<0.10     ** p<0.05     *** p<0.01
**Mechanisms**

- Increase in initial allowances comes from 19.7pp increase in meeting the listings
- Technical alignment of medical evidence to allowable conditions

<table>
<thead>
<tr>
<th></th>
<th>Initial Allowance</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any reason (1)</td>
<td>Meets Listing of Impairments (2)</td>
<td>Medical-vocational (3)</td>
</tr>
<tr>
<td>Legal Representation</td>
<td>0.232** (0.118)</td>
<td>0.197*** (0.061)</td>
<td>0.035 (0.105)</td>
</tr>
<tr>
<td>Observations</td>
<td>7,431,904</td>
<td>7,431,904</td>
<td>7,431,904</td>
</tr>
<tr>
<td>Over ID test P value</td>
<td>0.012</td>
<td>0.012</td>
<td>0.019</td>
</tr>
<tr>
<td>Mean Dep. Var.</td>
<td>0.320</td>
<td>0.128</td>
<td>0.192</td>
</tr>
</tbody>
</table>
Mechanisms

• Improvement in efficiency, administratively and with communication

• No statistically significant increase in processing time at Field Office or DDS

• Rep’d cases 33pp more likely to generate backpay – but because reps get more distant onset dates

<table>
<thead>
<tr>
<th></th>
<th>Electronic Communication</th>
<th></th>
<th>Time Segments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Claim Filed Electronically</td>
<td>Email Address Given</td>
<td>Processing Time (Days) Field Office</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Legal Representation</td>
<td>0.416**</td>
<td>0.405*</td>
<td>9.057</td>
</tr>
<tr>
<td></td>
<td>(0.200)</td>
<td>(0.219)</td>
<td>(7.106)</td>
</tr>
<tr>
<td>Observations</td>
<td>7,431,904</td>
<td>7,431,904</td>
<td>7,431,904</td>
</tr>
<tr>
<td>Mean Dep. Var.</td>
<td>0.364</td>
<td>0.307</td>
<td>6.353</td>
</tr>
</tbody>
</table>
Conclusions

- Representation improves case outcomes (on the margin)
  - Increases initial awards by medical listings, fewer appeals, shorter time to decision, no affect on final allowances
- Estimates imply reps obtain earlier disability awards for individuals who would win on appeal -- “Right decision earlier”
- Representation in initial claims inefficiently low
  - Large benefits, small costs for applicants; cost-savings for SSA
  - Contingency-fee structure encourages reps to be selective, minimize effort; optimal fee higher than current fee
  - Reps reduce application burdens without loss in target efficiency; possible gains for people with listing-level impairments