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A Case Study of Administrative Due Process:

Texas Disability Determination Services

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by

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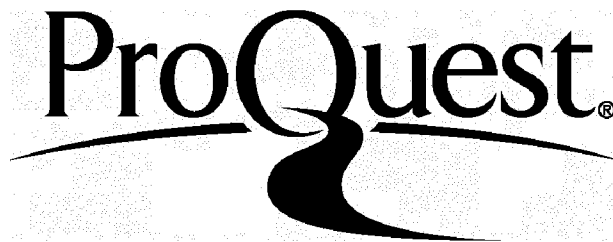
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DEDICATION

I dedicate this thesis to Jessica Viader, who reminds me to pause for wonder.

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I wish to thank Dr. Stephen R. Schwalbe, my thesis professor. I also want to extend my appreciation for his guidance. I am thankful for the Texas State Archives and Texas Workforce Commission for helping me with my research. Thank you to the members of the Texas Disability Determination Services and the Texas Disability Attorneys who responded to my requests request for guidance and needed information.

ABSTRACT OF THE THESIS

IMPROVING TEXAS DISABILITY DETERMINATION SERVICES

By

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The goal of this research was to identify and correct flaws in the Disability Determination Services at the initial claims stage of review. The research included examining previous literature, comparing the Texas Disability Determination Services mission statement the agencies performance measures, examining the Supreme Court case *Mathews v. Eldridge* and applying the Mathews v. Eldridge three-part balance test to a recent rejected claim from Texas Disability Determination Services. .

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CHAPTER 1

INTRODUCTION

On January 20, 1937 President Franklin D. Roosevelt delivered the Second Inaugural Address. In this address, President Roosevelt spoke of a vision for raising the standard of living. The President spoke of our nation's progress, pointing out that, despite our prosperity and wealth in resources, "I see millions of families trying to live on incomes so meager that the pall of family disaster hangs over them day by day."¹ Later, he added that, "The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."²

This address pertains to the United States now as much as it did in 1937. As the nation's two longest wars, Afghanistan and Iraq are coming to an end, and obesity and heart complications are on the rise, the common family tragedy that plagues the American family is that of the disabled worker. Since President Roosevelt's New Deal, social benefits have provided for citizens in need and increased the quality of life for those suffering from poverty, misfortunate happenings and disability. Social benefits have lead to the creation of many government agencies and have, in turn, led to many questions and concerns in administrative law. The problem of government agencies that

¹ Addresses of the Presidents of the United States, 1937

² Ibid.

issue social benefits to citizens is that they must give the aid provided by law, protect the agency against fraud and maintain sufficient measures to avoid arbitrariness.³

The largest number of cases involving public administrative law is those that seek disability benefits or a determination of status.⁴ In some cases of administrative law, the intention is to change the policy of a government agency or administration rather than simply provide benefits to a claimant. In the case of Social Security disability, the design of the agency is one that requires the involvement of multiple levels of government working together. This, in turn, requires complex communication and coordination between different levels of government and creates many opportunities for potential disconnect. Like many other government agencies tasked with providing social benefits, preventing fraud has become the focus of concern for Disability Determination Services. Funding is scarce and claims rise steadily.

In an attempt to prevent fraud, the Social Security Administration and Texas Disability Determination Services have established a claims process that begins as a very black and white determination. Later, it builds to a more humanized and personal approach at higher levels. This approach increases approval chances the higher an individual goes in the determination process. The black and white approach, at the initial claims level of disability determinations, helps prevent fraud. It requires that others that may yet qualify, who are not such black and white cases, undergo an extensive time

³ Phillip Cooper, Public Law and Public Administration, *Foundations and Perspectives: Public Law, Policy Problems, and the Nature of Administrative Law*, 2007, pg. 17

⁴ Ibid, pg. 5

consuming process. Many times, this initial rejection for disability benefits has lead to an abundance of unnecessary hardship on the disabled citizens of Texas. It is vital that the state Disability Determination Service often review their process to ensure that the process best represents the purpose of the agency, the interests of the citizens it serves and the interest of the government.

Purpose of the Study

Recent statistics of approval ratings between the initial stage of claims and the further appeals stages have created a need for the examination of the Texas Disability Determination Services process. The purpose of this study is twofold: 1) to explore the problems of the Texas Disability Determination process, and 2) to offer some reform measures for the reduction in the number of needed appeals. It is hopeful that the Texas Disability Determination Services will become more efficient and effective if the recommendations suggested from this analysis are considered or adopted. To accomplish the purpose of the study, the exploratory case method and the success case study method will be applied to the current Disability Determination Service process of claims.

The case study begins with a discussion of the Social Security Disability Determination process. This is followed by a literature review, the study methodology and an analysis of the disability determination administrative process as it pertains to administrative law and the Social Security Act. Furthermore, this paper discusses some of the major causes of needed appeals. In sum, the paper concludes with some

recommendations on how to implement reasonable preventive fraud measures while reducing excessive burdens on those in need.

Intended Audience

The intended audiences for this research paper are those interested in improving the Texas Disability Determination Services process for claims. Those that will benefit from this research are the Social Security Administration, Texas Disability Determination Services and the government of Texas. The Texas Disability Determination Services has the ability to improve the process for Texas citizens. As the process improves, there should be fewer appeals, creating a reduced workload on DDS while providing benefits for the government and citizens of Texas. First, disabled citizens will receive the financial support they need as they transition from the workforce without unnecessary hardship. Second, a reduction in costly appeals can save the government of Texas money and create jobs for more productive and able employees.

Social Security Disability Determination Process

The Social Security Act was drafted in 1956 as an effort to attend to the issues of citizens regarding old age, poverty, disability, unemployment and the financial burdens of widows and fatherless children.⁵ Social Security Disability Insurance (SSDI) is an income tax-funded, federal insurance program managed by the Social Security Administration (SSA). SSDI provides for the payment of disability benefits to citizens

⁵ Texas Department of Assistive Rehabilitation Services, *Disability Determination Services*, 2013. <http://www.dars.state.tx.us/services/ddis.shtml>. (accessed 2013).

who can no longer work because of a medically determinable physical or mental impairment that has lasted, or is expected to last, for an extended time.⁶

States approve the SSDI applications through the Disability Determination Service (DDS). The process used for making the determination of claims involves four stages: initial, reconsideration, appeals and council review. General eligibility requirements to receive the benefit are listed by the SSA as: (1) being under the age of 65, (2) having a physical or mental condition that prevents the citizen from engaging in “substantial gainful activity” (SGA), (3) having a condition that is expected to last at least 12 months or result in death, and (4) having accumulated 20 social security credits within the last 10 years prior to the start of the disability. Work requirements can be waived if the citizen can prove they were disabled prior to the age of 22, making them eligible to collect under the credits of their parents.⁷ Applications are submitted directly to a local Social Security Administration (SSA) Field Office online, by mail, telephone or via an in-person interview. Following the application, the SSA field office verifies that the applicant meets non-medical requirements for eligibility. Those applicants that do not meet non-medical requirements for eligibility are denied. Those claims that do qualify are submitted to the Disability Determination Services (DDS) for evaluation and

⁶Ibid.

⁷ Social Security Administration, Department of Assistive and Rehabilitative Services, Texas Disability Determination Services, 2012, (accessed November 19, 2013). www.dars.state.tx.us/services/dds.shtml.

adjudication.

The SSA uses an electronic case processing system to submit eligible claims to DDS. Once the case is received, DDS assigns the case to a disability specialist. DDS will then seek evidence from the applicant's medical sources and arrange a consultative examination to obtain additional information if there is insufficient or unavailable evidence to establish a medical determination. DDS utilizes the five-step sequential evaluation process for evaluating disability claims developed by the Social Security Administration. The first step of the sequential evaluation process is to determine whether the claimant is engaged in "substantial gainful activity" (SGA). If the claimant is engaged in SGA, then the claim is denied. If the claimant is not engaged in SGA, then the claim proceeds to determine if the claimant has a medically severe impairment (that exceeds the medical-severity threshold). If the claimant does not have a medically severe impairment then the claim is denied. If the claimant does have a medically severe impairment then the claim proceeds to determine if the impairment meets or is equivalent to one of the disabling medical conditions in the "Listing of Impairments" defined by SSA. If the impairment of the claimant does meet or is equivalent to one of the impairments defined by the SSA then it is accepted to be disabled and is therefore entitled to SSA benefits. If, however, the claimant does not have an impairment listed by the SSA, then the claim proceeds to the next step to determine if it prevents the claimant from performing past relevant work. Past relevant work refers to action considered to be work done by the claimant that amounted to SGA eligibility credits and

was performed within the previous 15 years. If it is determined that past relevant work can be performed, the claim is then denied. If it is determined that the claimant cannot perform past relevant work, then the claim proceeds to the fifth step in the sequential evaluation. This will determine if other work may be performed after considering the age, education and prior work experience of the claimant. The process and role of DDS is visually described in Figure 1 provided by Texas Department of Assistive and Rehabilitative Services.⁸

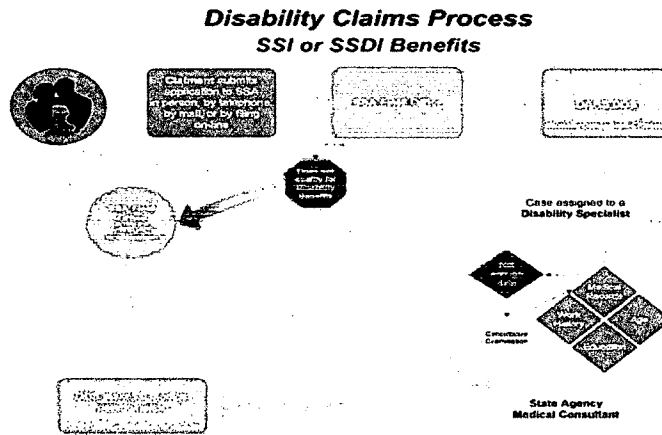
An adjudicative team of medical and psychological consultants, funded by SSA, and a DDS specialist determine eligibility. Once the determination is made, DDS then sends the claim back to the SSA Field Office so that the applicant may be contacted. SSA then makes the final decision of whether or not the applicant will receive benefits.⁹

Figure 1. Disability Flow Chart provided by Texas Disability Determination Services¹⁰

⁸ Texas Department of Assistive Rehabilitative Services. Disability Determination Services. 2013. <http://www.dars.state.tx.us/services/ddis.shtml>

⁹ Texas Department of Assistive Rehabilitative Services. Disability Determination Services. 2013. <http://www.dars.state.tx.us/services/ddis.shtml>

¹⁰ Social Security Administration, Department of Assistive and Rehabilitative Services Disability Determination Services Process, <http://www.dars.state.tx.us/services/ddis.shtml>



Statement of the Problem

Recent efforts to assess the initial claims determination process of the Texas DDS have focused on limiting fraud and increasing economical efficiency. Texas DDS currently measures accuracy by the performance measures set by the SSA. Accuracy is measured by the SSA by the amount of cases completed and the economical cost-per-case. This approach is limited. Although it prevents fraud, increases production output and reduces cost, the more fundamental objective of Texas DDS, that is, to improve the quality of life of disabled Texans goes overlooked.

The Texas DDS initial claims stage utilizes a 'by the book' checklist of applicants almost as if disability were a black and white determination. It fails to consider that, although applicants could physically return to work, they may not be able to be a productive employee and that their malady could worsen considerably. These considerations are normally taken into account later on in the determination process. Yet, at the initial stage, the processing time is already on average 90-120 days. Since

time is a necessity to both the disabled and the government, ensuring accuracy at the earliest stage level is important.

The counter-argument is that the initial claims process needs to remain the same, or become more stringent, to prevent fraud and unqualified claims. The argument suggests that, during times of economic hardship, there is an increase of unemployed and unqualified citizens trying to apply for benefits. It is thought that this is the cause for a back up in claims and long wait times. Some believe that, during times of high unemployment, DDS employees are likely to be more empathetic and approve more claims. Therefore, the initial claims process needs to remain as black and white as possible to prevent the approval of fraud and unqualified claims.

The evidence used to support this claim only suggests an increase in claims and not necessarily an increase in fraudulent claims. An increase in disability claims is expected to increase due to a variety of reasons such as the raised eligibility age for full Social Security retirement benefits, U.S. obesity and aging baby boomers.¹¹ An increase in claims and approval ratings does not necessarily suggest the approvals are not justified. The following comparison between unemployment and disability rates provided by the United States Department of Labor and the Disability Status Reports is depicted in Tables 1.0-1.5. This does not suggest a significant rise in approved disability

¹¹ Substance Addiction and the Undeserving Poor: A Critique of the Social Security Disability Independence and Program Improvements Act of 1994, 3 Geo. On Fighting Poverty 125, 128 (1996).

claims from 2008-2011, despite the economy undergoing a recession.¹² Although there is a small increase in disability as unemployment rises, it is insignificant to the argument. The military employment cutbacks during the years 2010 and 2011 and veterans returning from the wars in Iraq and Afghanistan simultaneously increase both unemployment and disability rates. These are included in the statistics, but are of no concern to DDS as they fall under the Department of Veteran Affairs. This argument has created a fracture in the social contract by creating a bureaucratic process for claims that addresses perceptions of issues rather than their lived reality. As state to state variations of approval claims indicate, it is perhaps the perception of the state agency that guides the decision more than the process itself. In Texas, the political culture is much derived from a suspicion of the needy, due to a perception of a debatable issue. This can be seen in that the number one reason for rejected disability claims in Texas, surpassing other states, is the ability to perform usual work.¹³ It is crucial that the focus of Texas Disability Determination Services returns to the most important aspect of their service. This is improving the quality of life of disabled Texans in every way possible.

¹² Department of Labor, Office of Disability Employment Policy, 2008, 2009, 2010, 2011 Disability Employment Report, Washington, DC.

<http://www.dol.gov/odep/odsp/DisabilityEmploymentStatistics.htm>.

¹³ State Agency Initial Allowance Rates for DI and SSI by State, Fiscal Years 1985 and 2010 U.S. Social Security Administration, Office of Disability Programs, State Agency Operations Report, data received August 2011.

Table 1.0 Comparative U.S. and Texas Unemployment and Disability Rates FY 08-2011
¹⁴

One concern that portrays a need to re-evaluate the disability determination process is the outstanding number of disputes received by the SSA. This service handles more legal disputes in one year than all the federal courts in the United States combined. Each case averages close to \$25,000. The stakes are even more burdensome to the individual who struggles with home payments and increasing debt as their standard of living decreases while they wait for the results of a dispute. Furthermore, as an individual attempts to maintain work hours due to a rejected claim,

¹⁴ Data collected from the Department of Labor, Office of Disability Employment Policy, 2008, 2009, 2010, 2011 Disability Employment Report, Washington, DC.

<http://www.dol.gov/odep/odpocs/DisabilityEmploymentStatistics.htm>.

they may further impair themselves. Therefore, what may have been a rehabilitative situation quickly turns into a full blown disability claim.

CHAPTER 2

LITERATURE REVIEW

This chapter provides knowledge of existing background and support for the essential purpose of identifying and correcting flaws in the Texas Disability Determination Services initial claims process. The literature discussed in this review provides an understanding of the struggles and concerns of both citizens and the government in providing for disability while providing support for the research hypotheses. It also examines the Mathews v. Eldridge balancing test used by the courts to determine if an agency has offered an individual due process.

Methods of Measuring Quality of Life

According to Texas DDS, “the mission of Texas DDS is to improve the quality of life of disabled Texans that apply for or receive SSA disability benefits by making timely and accurate disability determinations.”¹⁵ To measure the efficiency of Texas Disability Determination Services, in comparison to its mission, there must be a basis by which to measure a citizen's quality of life. According to *A Holistic Theoretical Model for Examining Welfare Reform: Quality of Life*, by Doctor Hollar at Mt. Sinai Medical Center,

¹⁵ Texas Disability Determination Services (2013)

"A complete assessment of the success of a government effort must also consider the wellbeing of citizens the government serves".¹⁶

An efficient assessment of welfare reform is normally calculated by declining caseloads or other economic measures. Danielle Hollar explains that the problem with this approach is that it does not provide an assessment of the purpose of the welfare reform. This purpose is, of course, to improve the quality of life for citizens affected most directly by a policy¹⁷. In a study aimed at measuring how political culture directly impacts citizens' well-being, according to *Miringoff and Opdyke's Index of Social Health*, the method of measurement for well-being included a states' performance on a collection of social indicators designed to gauge social health.¹⁸ The study acknowledged that evaluations of the effectiveness of welfare reform often did not consider the wellbeing of citizens. This included qualities such as hunger or homelessness experienced from welfare reforms. The outcome of the study found that one major predictor of the overall well-being of citizens was the political culture of a state. Further, citizens in states with a political culture that favors government intervention in community issues measured a

¹⁶ Danielle Hollar, "A Holistic Theoretical Model for Examining Welfare Reform: Quality of Life." *Public Administration Review* (American Society for Public Administration) 63, no. 1 (January 2003): 90-104.

¹⁷ Ibid.

¹⁸ Jessica L. Son, "Determinants of Citizen Well-Being in the United States: Do Policy Liberalism and Political Culture Matter?" *Texas State University*, (2009)

greater overall well-being.¹⁹

Other studies of the effects of social programs on quality of life are those suggested by Dr. Julianne who performed interviews with former welfare recipients to recall what factors contributed to their overall quality of life. These factors excluded economics, a feeling of discrimination, lack of compassion, courtesy and assistance from case workers.²⁰ It is possible that the performance measures of Texas Disability Determination Services are directed at a reduction in applications and appeals. The problem could be the inaccurate measuring of the well-being of citizens they serve.

An American Public Health Association decision demands a documented account of the placement to a more restrictive appeals process for those initially rejected disability applicants. The decision to reject the proposed appeals process was based on evidence of suffering and injuries that the disabled had already sustained prior to the appeals stage. The reasoning was that the opportunity to appeal the decision may be the only way in which to remedy their suffering and injuries.²¹ This holds as an important reminder to improve the lowest level of claims to reduce the suffering and injuries of the disabled as they await the decision process.

¹⁹ Ibid.

²⁰ Dr. Julie Cooper Altman, D.S.W. Gertrude Goldberg "The Quality of Life Paradox: A Study of Former Public Assistance Recipients, *Adelphi University School of Social Work* (2005): 14.

²¹ "Rejection of Proposed New Appeals for Those Denied SSI Benefits." *American Journal of Public Health*, 1989: 368

Preventing Fraud and Creating Work Incentive

Much research has been dedicated to the need to both decrease fraud and increase work incentives in social benefit reforms that include disability. According to Brook Campbell, a disability specialist for the Department of Assistive and Rehabilitative Services within the Texas Disability Determination Services, in her study, *A Study of Unemployment Rates, Disability Application Rates, and Fraud Referral Rates*, a distinct relationship exists between an increase in high unemployment rates and an increase in Texas disability application claims. The approval of claims indicates that economic hardship presents more fraudulent claims.²² Campbell also notes that during economic hardship, the increased rates of approval claims is due to a tendency of DDS employees to be more empathetic to claims. The author used a quantitative data analysis that she admits is limited because it does not address why some individuals decide to apply after becoming unemployed while others do not. She stresses the need for the initial level of claims to remain as a checklist of those qualified and those unqualified to prevent fraud and empathetic approvals.²³

This argument is further presented by Dr. Rourke O'Brien, a senior policy advisor for the United States Department of the Treasury. In his, *"Conditions and the Disability of the Working Age."* Dr. O'Brien examined the relationship between macroeconomic

²² Brook Campbell, "A Study of Unemployment Rates, Disability Application Rates, and Fraud Referral Rates." *Public Administration Program Applied Research Projects* (Texas State University), 2010.

²³ Ibid

conditions and an individual's self-perceived disability status by utilizing a comparative study of economic hardship and an increase in disability claims. Dr. O'Brien presented a slightly different explanation for the increase in claims. Instead of fraudulent claims, the increase is due to an increase in one's self-perception of disability that arises during times of economic hardship.²⁴ The study revealed an analysis that utilized an individual-level data from the 2008-2009 (Great Recession period) American Community Survey (ACS). The analysis indicated that those individuals currently employed are more likely to report a disability if they are living within an area that holds a higher rate of unemployment²⁵. Although it is validated that, during times of economic hardship, there is an increase in disability claims, both studies are limited. These results could be circumstantial since reasons for the claims were not evident.

Creating work incentives is vital in ensuring that those that can return to work, do so to better provide for the more vulnerable. Jennifer Erkulwater, an Associate Professor at the University of Richmond, wrote that although providing for the disabled is of utmost priority, equally important is providing encouragement to participate in the workforce and society.²⁶ Dr. Erkulwater argues that the independent living movement and the SSA expansion impacted disability by creating a focus on minimizing the need

²⁴Rourke L. O'Brien, "Conditions and the Disability of the Working Age." *Social Problems* (University of California Press) 60 (2013): 321-333.

²⁵ Ibid.

²⁶ Jennifer L. Erkulwater, "Disability Rights and the American Social Safety Net." *Cornell University Press*, 2006.

for disability benefits since many disabled people are and can work to contribute to society. In the same year, however, a study was conducted by policy researchers at Cornell University that examined the effect the political environment and self-sufficiency movement had on disability claims.²⁷ The research presented the argument that, with SSI benefit payments being only 75% of the federal poverty standard, it is not rational to assume that an individual would benefit from leaving the workforce to pursue the benefits of disability without a substantial necessity to do so.²⁸

With the current initial claims process of DDS, a doctor's evaluation holds much weight in the eligibility assessment. However, the accuracy of the Functional Capacity Evaluations (FCE) has been considered questionable. Dr. Chen, a Clinical Assistant Professor, studied the potential hazard of doctors who conduct Functional Capacity Evaluations while not being trained to do so. Dr. Chen summed the questions that physicians have during such evaluations in a model of explanation. This allowed a clear picture of the parts of FCE that may be questionable and the parts in which doctors need further training.²⁹ Further, he questions the validity of the Functional Capacity Evaluation. Dr. Erin O' Fallon and Dr. Steven Hillson of the Division at the Minneapolis

²⁷ David Stapleton, Bonnie L. O'Day, Gina Livermore, and Andrew Imparato. "Dismantling the Poverty Trap: Disability Policy for the Twenty-First Cent." *Milbank Quarterly*, 2006: 701-732.

²⁸ Ibid.

²⁹ M.D., Joseph Chen J. "Functional Capacity Evaluation and Disability." *Iowa Orthop Journal*, 2007: 121-127.

Hennepin County Medical Center conducted research examining how a physician's personal discomfort can create variables in the decisions of doctors during routine disability eligibility assessments. The study further confirmed that lack of training in doctors is of concern to the validity and the outcome of a patient's disability qualification.

30

One major issue of the FCE was presented by Natalie Cheung an Associate Attorney at Day Ketterer Ltd., in her research, *Defining Intellectual Disability and Establishing a Standard of Proof: Suggestions for National Model Standard*. The author notes that, without a medical and legal definition of disability, the FCE may vary from state to state, or even from doctor to doctor.³¹ In her study, she combines previous Supreme Court law cases that indicted differences in how disability was defined among the states. Her research provided a suggestion for a national standard and definition that would prevent a given state's interpretation of disability from denying benefits to its citizens.³² Given that so much of the initial claims decision by DDS is weighed on the applicants' FCE, it is vital that doctors are trained and the patient's assessment is as accurate as possible.

³⁰ Ibid.

³¹ Natalie Cheung, "Defining Intellectual Disability and Establishing a Standard of Proof: Suggestions for a National Model Standard." *Journal of Law-Medicine*, 2013: 317-351.

³² Ibid.

The Supreme Court improved the rights of individuals under the Fifth and Fourteenth Amendments in the 1960s. Soon after, individuals began to bring forward various administrative law cases contesting the termination of employment, government benefits and professional licensure.³³ The question of what constitutes due process was being challenged consistently. The historically significant social benefits case of *Mathews v. Eldridge*, led to the Supreme Court ruling that lower courts must apply a three-part balancing test when analyzing procedural due process cases.^{34 35} The *Mathews v. Eldridge* balancing test determines whether or not an individual has received due process under the Constitution.³⁶ The test calls for the balance of three stakeholders. These include the importance of the interest at stake, the risk or unnecessary deprivation of the interest because of the procedures used and the probable value of additional procedural safeguards and the interest of the government.³⁷

Critics of the *Mathews v. Eldridge* balancing test feel that undefined terminology may result in various interpretations. The result would be that judges could impose their personal values on the relative worth of private and government interests. Despite critics, the lower courts, as well as the Supreme Court, still apply the balancing test.

³³ Bernard Schwartz 1993. *A History of the Supreme Court*. New York: Oxford Univ. Press.

³⁴ *Mathews v. Eldridge*, 425 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)

³⁵ Jerry L. Mashaw, 1976. "The Supreme Court's Due Process Calculus for Administrative Adjudication in *Mathews v. Eldridge*: Three Factors in Search of a Theory of Value," *University of Chicago Law Review* 44.

³⁶ *Ibid.*

³⁷ *Ibid.*

Perhaps if state agencies such as Texas Disability Determination Services used the Mathews v. Eldridge balancing test on previous and current claims, they could prevent unnecessary appeals to the lower and higher courts.

Research suggests that, to be efficient, Texas Disability Determination Services must improve the wellbeing of disabled citizens in line with its mission. Recent research also indicates that an increase in claims during times of high unemployment corresponds to increases in fraudulent claims and unqualified empathetic approvals during economic hardship. It is important to review the relationship of unemployment and disability claims to increase work incentives and reduce fraud. It is equally important to note the limitations of such research as potentially circumstantial.

Compared to the overall disability claims of the United States, both prior to and during the economic recession, a paucity of evidence exists to support the need for a more stringent initial claims process in hopes of reducing empathetic approvals or creating work incentives. Further, a reduction in work incentives is not rational when the benefits are merely 75% of the federal poverty standard. Finally, research suggests that one potential interest to improving the initial claims of Texas Disability Determination Services is to review the qualifications and training of the doctors that perform the Functional Capacity Evaluations of applicants. With the opinions of applicant FCEs holding incredible sway in the decision process, proper training and understanding of

the doctors conducting them could potentially reduce the need of appeals to initial claims.

CHAPTER III

METHODOLOGY

The techniques used in the collection of data are qualitative in nature. First, Texas Disability Determination Services initial claims process will be compared with its agency's mission statement. By perusing published literature, the mission of Texas DDS will be analyzed with an eye to establishing potential improvements that could enhance performance. Second, an Exploratory Case Study Method will be used to understand the history of the *Mathews v. Eldridge* case and its impact on administrative due process. Third, the Success Case Study under the Best Practices Approach will be used to analyze if the adoption of the *Mathews v. Eldridge* three-part balance test practices used by the lower and Supreme Courts are likely to improve the way Texas DDS operates. Finally, the top reasons for rejected claims from Texas DDS will be

examined under the three-part *Mathews v. Eldridge* balance test. This effort will present possibilities for improvement that may benefit all stakeholders involved in the decision. All of the data collected and examined in this project are obtained from the Texas Department of Assistive Rehabilitative Services, Disability Determination Services, Social Security Administration and from previous relevant literature.

Exploratory Case Study Method

The exploratory case study research method is used to identify potential areas for improvement. Researcher Robert K. Yin defines the exploratory case study research method as, "an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used."³⁸ The exploratory case study method is most often useful as a preliminary step for a largely causal explanatory research design. It is used for research questions that either have not been clearly identified or formulated or the data for the hypothetical formulation has not yet been obtained.

The *Mathews v. Eldridge* case was chosen because it uniquely pinpoints what is considered typical reasons for appeals and administrative due process challenges. The case also resulted in a profound resolution made by Supreme Court. This case study will explore the case from perspective of George Eldridge since he was the customer to

³⁸ R. K. Yin, Case study research: *Design and methods*. Newbury Park, CA: Sage, 1984.

a government agency or a claimant. This is vital to understanding claimants of Texas Disability Determination Services as they, like George Eldridge, are consumers of the administrative decisions of Texas Disability Determination Services. The case will also be examined from the perspective of the government as the pressures of the times greatly impact the processes.

Best Practice Approach: Success Case Study

The *Best Practice Approach* to research is commonly used in public administration and public management fields. It helps to understand if a replicated practice of another organization or agency would potentially provide either success or failure in the way an agency or organization operates.³⁹ To accomplish this, techniques that are considered successful in other agencies or organizations, and that can feasibly be replicated, must be identified. There are three variants to this method. These include the Implementation Case Study, the Success Case Study and the Failure Case Study.⁴⁰ The Success Case Study method was selected to identify the best practice approach that could improve the Texas DDS process.

The Success Case Study reviews practices by other organizations or agencies that have proven to be of significance in terms of outcomes of success. Further, the Success Case Study, "provides suggestions for methodologies where similar practices

³⁹ Commonwealth Association for Public Administration and Management, Overview of Case Study Models and Methodology April 2010.

<http://www.capam.org/documents/reportoncasestudymethodologies.pdf>

⁴⁰ Commonwealth Association for Public Administration and Management, Overview of Case Study Models and Methodology April 2010.

<http://www.capam.org/documents/reportoncasestudymethodologies.pdf>

can be used in other Public Administrations.”⁴¹ In this study, the Success Case Study chosen is the *Mathews. V Eldridge* three-part balance test that is practiced by the lower and upper courts to determine if an individual received due process. This practice will be applied to the balance test in a theoretical way to analyze the process of determining claims at Texas DDS. The three-part balance test will provide insight as to how the claimants, the Texas Disability Determination Services and the government of Texas, are affected by the current process.

Performance Measures and Mission of Texas DDS

Performance measures, as defined by Harry P. Hatry, in *Performance Measurement Principles and Techniques*, refer to the systematic assessment of how well services are being delivered to a community, both efficiently and effectively.⁴² Hatry defines efficiency as the relation of the amount of input required to the amount of output produced. Effectiveness is defined as the impacts and quality of the service delivery, whether or not the service achieves its purpose, and how responsive it is to community needs.⁴³

The performance measures used by Texas DDS to determine the effectiveness and efficiency of Texas DDS are dependent upon the processing time and the quality/accuracy of the decisions made by DDS. The mission of Texas DDS is to

⁴¹ Ibid.

⁴² Performance Measurement Principles and Techniques: An overview for Local Government,” *Public Productivity Review* 4 (December, 1980): 312-339.

⁴³ Ibid.

*"improve the quality of life of Texans with disabilities that apply for and receive SSA disability benefits."*⁴⁴ These are, without doubt, significant indicators of the quality of life. However, timeliness and accuracy of claim determinations does not account for other aspects of the quality of life of disabled Texans.

According to *A Holistic Theoretical Model for Examining Welfare Reform: Quality of Life* by Doctor Hollar, "A complete assessment of the success of a government effort must also consider the wellbeing of citizens the government serves." Dr. Hollar's study of welfare beneficiaries indicated that customer service, assistance and compassion directly impacted the citizens applying for and receiving welfare benefits beyond that of economic circumstances.⁴⁵

Measuring State and Local Government Performance by Gloria Grizzel examines the broad complexity of defining performance. Grizzel explains that a comprehensive performance measurement system may offer information about how well a government or single governmental agency is operating. This applies to any degree of performance whether it be cost related to direct output, cost related to benefit or impact, service delivery quality or service delivery equity.⁴⁶ Grizzel explains that a factor to consider,

⁴⁴ Texas Disability Determination Services ,2013, (accessed 2013), <http://www.dars.state.tx.us/services/dos.shtml>.

⁴⁵ Danielle Hollar, "A Holistic Theoretical Model for Examining Welfare Reform: Quality of Life." *Public Administration Review* (American Society for Public Administration) 63, no. 1 (January 2003): 90-104.

⁴⁶ Gloria A. Grizzel, *Measuring State and Local Government Performance: Issues to Resolve Before Implementing a Performance Measurement System*, "State and Local Government Review 14 (September, 1982): 132-136.

when looking to establish or reform performance measures, is that it is often too costly to consider those things that are not controllable.

Is customer satisfaction controllable in the case of Texas Disability Determination Services? From the perspective of disability, this performance measure could be controlled, at least to a degree, with compassionate and courteous employees, telephone services, available information of assistance services and so forth. This measurement has been used by the Texas Department of Assistive Rehabilitative Services and by the Social Security Administration to gauge overall customer satisfaction of services. This is limited for Texas Disability Determination Services because there is no performance measurement for its individual agency as there is with accuracy and timeliness. Gloria Grizzel warns that limiting performance measurement dimensions that are included in the performance measurement system will most likely result in the included measurements being misused to answer questions they are not intended or designed to answer.⁴⁷ Are the performance measurements, accuracy and timeliness, being misused to answer the question of quality of life?

Accuracy is defined by Social Security and DDS as a case that has been correctly reviewed, evaluated and a verdict made according to statutory and policy, requirements set by Congress, SSA and Texas DDS. With decisions being measured based on the compliance of the sequential evaluation and according to the medical and

⁴⁷ Gloria A. Grizzel, Measuring State and Local Government Performance: Issues to Resolve Before Implementing a Performance Measurement System, "State and Local Government Review 14 (September, 1982): 132-136.

vocational policies, an acceptable quality rate is at or above 95%. This presents a considerably accurate accountability measure for the mission of SSA. However, when considering the mission of Texas Disability Determination Services, it is possible that perhaps the current performance measurements are not accurately reflecting the individual mission of the agency.

The mission statement of a government agency establishes the purpose for which efficiency and effectiveness are measured. The mission of Texas DDS is to improve the quality of life of disabled Texans. The Texas DDS mission statement states that only two factors contribute to quality of life. These are accuracy and timeliness. Yet previous literature also suggests that customer satisfaction significantly factors into the quality of life. Leaving out customer satisfaction in the mission statement prevents customer satisfaction from being made a priority by its employees.

A theoretical proposal for a new mission statement for Texas DDS could be, *"to improve the quality of life of Texans with disabilities that apply for or receive SSA disability benefits by making timely and accurate disability determinations while providing customer satisfaction."* To properly adjust to the recommended mission statement, performance measures must adequately portray the total amount of increase or decrease in quality of life. A theoretical performance measure addition is quality of life (QOL). One possibility for calculation of the additional performance measure (QOL) is adding the customer satisfaction (CS) rate with the accuracy rate (AR) divided by the total number of cases (TC). This could portray how Texas Disability Determination

Services are improving all controllable and measurable aspects of quality of life; customer service, accuracy and timeliness.

$$QOL = CS + AR \div TC$$

Mathews v. Eldridge

George Eldridge

George Eldridge took a job with the same company that employed his father, L & N Railroad in Norton, Virginia. This task with L & N Railroad included laying new railroad tracks, installing and maintaining rail lines and switches at coal mine entrances and coal triples. These tasks required of George were performed by hand and therefore required strenuous and physical work. After three years working for L & N Railroad George then was drafted into the United States Army. After becoming discharged from his duties with the U.S. Army, George returned to the railroad for an additional nine years. He then switched his job to become a soft drink distributor for the Royal Crown Cola (RC) Cola Company. This is where the previous years of physical labor caught up to him and George found himself disabled and diagnosed with spinal arthritis. Having no education and a large family, George did not see any alternative to the physically demanding soda delivery job. He continued to work for eight years after being diagnosed with spinal arthritis. His health issues became even worse as he was then diagnosed with diabetes. George recounts that while working in Coeburn,

"I got down from the truck and then I couldn't raise my legs to get up on the running board of the truck to get back into the truck. They had to come and get me... I laid thirty-one days in the hospital unable to move my legs."⁴⁸

With over twenty years of working physically demanding occupations included service in the Army, and a diminishing health status, George Eldridge finally made a claim to the Social Security office in Norton, Virginia for disability benefits. His initial claim was denied. He then requested reconsideration in 1967 by the state agency in which he was once again denied. George then requested to receive a hearing with an administrative law judge in spring 1968. The administrative law judge ruled in his favor a few months later. One year later, George received a request for information regarding his medical condition as proof that he was still disabled. Even though all documents were properly filed, in February of 1970, Eldridge received notification that his benefits would be terminated.

To put into perspective the devastation this notification had on his family, one must understand the state of George at the time. His home situation included a wife dying of cancer, six children and a mortgage to pay for. Eldridge was confused as to how the determination could have changed when he had not reported any changes in his medical condition and no one had performed any medical examination of him. Eldridge felt angry that he invested in the program while he was working and now, with little notice and no chance to be heard, his benefits would be cancelled.

⁴⁸ Interview with Mr. George Eldridge by Phillips Cooper in Norton, Virginia, August 27, 1979.

With his last experience of the process and his knowledge of the time it takes for approval, George knew that eventual reinstatement would take approximately 18 months. This caused him to not only send an administrative appeal, but to also challenge the Social Security Administration in the Supreme Court. His grounds were that to terminate a disability benefit without providing the recipient an oral hearing is a violation of the Fifth Amendment of the Constitution. The court ordered that the government resume benefit payments while George continued his appeal process. During the pending Supreme Court Case in 1971, the administrative law judge favored George and resumed his benefits, complete with all previous cancelled payments. This caused his Supreme Court case to be dismissed because he was no longer in an actual disagreement with the government.

Yet again, in 1972, Eldridge received another letter requesting information about his health status. His return letter informed him yet again that his benefits would be terminated. George Eldridge then returned back to the Supreme Court to once again challenge the constitutionality of the due process of terminating benefits without an oral hearing. The Court of Appeals decision by Judge Turk ruled in favor of George Eldridge on April 9, 1973. Judge Turk held that relative cases such as *Goldberg v. Kelly* clearly required that the government provide a predetermination hearing for those recipients' of disability benefits under Title II of the Social Security Act.

Social Security Administration

The George Eldridge struggle is heartbreaking but there is another side to this story. The pressures that distress an agency need to be addressed if ever any improvements result. The impact of Judge Turk's decision led to an abundance of issues for the Social Security Administration. The determination was made shortly after expansion of the Disability Program. In 1974, the Social Security Administration had processed over 1.2 million claims. An increase in claims and eligible recipients, without an increase in staff, created delays. Hearing demands and appeals to the federal court became overwhelming for the administration. The reversal decision rate grew to well over 50% thereby questioning the integrity of the entire administration. The increase in hearings, in turn, led to a logjam of claims that increased the overall time taken for any claimant to be processed or appealed.

This was not only costly to the claimant but also to the state agencies and the courts. Social Security administrators saw that the main problem rose from a steady increase in hearings from state agencies. This put improving initial and reconsideration stages on the agenda for both the Social Security Administration and Congress. This laid bare the inconsistencies of reversals amongst the states. It was pointed that, in 1975, the staff report indicated a stable percent of reversals by the State agencies over the years of rates between 30-40 percent. At the same time, however, there was much variation between State agencies of initial claims. The low for 1974 was 19.5 percent for Kentucky and 25.9 percent for New Jersey with the overall national average being 30.5

percent.⁴⁹ This variation unequally proportioned the cases among the courts with some district courts receiving twice as many disability cases as others.

The government appealed the *Mathews v. Eldridge* case to the Supreme Court of the United States as the issues of the previous decision on the government were becoming all the more clear. The government argued that the case was a public policy problem dealing with losses and gains changing the focus of the court. The Supreme Court ruled in favor of the government.

Many of the issues for the Social Security Administration, state agencies and claimants have improved over the years with an increase in staff, technological advancements, reduction in processing times and communication abilities between all the parties. Even though claimants still find themselves in debt, losing their homes and cars while at the same time battling an illness. The government also still has a backlog of cases and appeals and continues to worry about how to balance the budget, provide for benefits and increase the quality of life for disabled citizens after over forty years of progress. Efficiency enhancements have reduced the hardships of all parties but have not resulted in any real changes to the hardships that occur. The variations between state agencies of initial claims still exist as they did during the 1970s.

In 2010, the percent of cases approved for disability only ranged from a high of 59% in New Jersey to a low of 34% in Tennessee. Cases for only SSI benefits ranged

⁴⁹ Future Directions in Social Security Unresolved Issues: An Interim Staff Report, 93rd Congress 2nd Session, March 1975.

<http://www.aging.senate.gov/imo/media/doc/reports/rpt975.pdf>

from a high of 56% in Alaska to a low of 24% in Mississippi.⁵⁰ These approval variations can even be seen within a given state as well. In the case of Texas the variations can be seen in table 2.

Table 2 Texas Disability Determination Service Allowance Rate FY 2013.⁵¹

	<u>All Types</u>	<u>SSDI-Only</u>	<u>SSI-Only</u>	<u>Concurrent</u>
<u>Initial Claims</u>				
TEXAS	32.6%	39.7%	31.4%	26.5%
Region 6	32.9%	41.1%	30.6%	26.5%
National	32.4%	42.8%	28.1%	23.7%
<u>Reconsideration</u>				
TEXAS	12.6%	16.2%	11.3%	10.3%
Region 6	12.0%	15.8%	10.7%	9.6%
National	11.5%	15.0%	10.3%	8.9%

⁵⁰ State Agency Initial Allowance Rates for DI and SSI by State, Fiscal Years 1985 and 2010 U.S. Social Security Administration, Office of Disability Programs, State Agency Operations Report, data received August 2011.

⁵¹ Data obtained by Texas Disability Determination Services Statistics FY 2013.

<http://www.ssdinfo.com/texas>.

Continuing Disability Review

TEXAS	65.1%	87.2%	49.2%	89.1%
Region 6	70.1%	89.0%	54.4%	89.9%
National	74.3%	87.9%	59.9%	87.3%

Justice Brennan stated, "The Constitution recognizes higher values than speed and efficiency". Thus, it is not surprising that speed and efficiency alone do not remedy the need for appeals nor does it value the hardships of the consumer. Over forty years have passed since the *Mathews v. Eldridge* case, yet the problems remain the same. It brings the rational assumption that the problem was not merely the need for increased efficiency and processing speed but it was the administrative process, in itself, starting at the initial claims stage. Which party has more to lose in the current DDS process? Is it the rejected disabled claimant or a potential fraudulent claim to the government?

Mathews V. Eldridge Balance Test

The *Mathews V. Eldridge* balance test consists of three parts. These include the importance of the interest at stake, the risk of an erroneous deprivation of the interest because of the procedures used, the probable value of the additional procedural safeguards and the government's interest. The purpose of the test is to determine if an

individual has received due process under the Constitution.⁵² This balance test has been used to understand the impacts of administrative due process on the government and the citizens. Bradley J. Wyatt applied the Mathews v. Eldridge balancing test to reforms to the Board of Immigration Appeals in his study "*The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge.*" The three-part balancing test successfully leads the author to conclude that constitutional due process requirements were met. The balancing test also concluded that George Eldridge had received the minimum constitutional due process requirements of his time. It is understood that Eldridge lost far more from the process than did the government in his case. This rather obvious point has resulted in numerous scholarly criticisms to this balance test approach. The main critique is that the balance test has resulted in a focus of technique over the values at stake.

Many other versions of the Eldridge balance test have been implemented. These include the *Penn* balancing test, derived from the case *Penn Central Transportation Company v. City of New York*. It determines if the use of land is within the boundaries set by the Fifth and Fourteenth Amendments.⁵³ The *Penn* balance test consists of the review of three factors; the nature of the state action, the economic impact of the

⁵² Mashaw, Jerry L. 1976. "The Supreme Court's Due Process Calculus for Administrative Adjudication in *Mathews v. Eldridge*: Three Factors in Search of a Theory of Value." *University of Chicago Law Review* 44

⁵³ *Penn Central*, 438 U.S. at 124

regulation, and the regulation's obstruction with the owner's investment-backed expectations.⁵⁴

It is possible to successfully construct a balance test similar to the Eldridge test that targets particular issues. The *Eldridge* balance test targets the due process required by the Constitution for the individual. This study will use the Eldridge balance test in a hypothetical way towards the administrative process as whole and not just the constitutionality of the availability of appeals such as in the *Mathews v. Eldridge* case. It is understood that the process is set forth by the Social Security Administration yet at the same time states have much room for interpretation of somewhat broad definitions. This explains the state to state variances for approvals and disapprovals. Since it is already understood that the current procedures meet the minimum constitutional requirements for due process, this study will utilize the balance test in a way that it addresses the values at stake from the administrative process. It will point out which party loses the most in the process.

Texas DDS under the Eldridge Balance Test

The process of Texas Disability Determination Services is one that reflects the requirements set forth by the Social Security Administration as well as the interest of the state and its disabled citizens. The balance test will be applied to see whose interest is best reflected within this determination process. In addition to the requirements, the disability condition of the claimant must be so severe that it impacts their ability to

⁵⁴ Ibid.

perform daily activities and interferes with the ability to perform basic work activities. The leads to a vague and broad way of measuring an applicant's disability claim. The state has the opportunity of deciding if the disability is not listed under the Social Security, "Listing of Impairments".

Some states choose to be more liberal in this area while states such as Texas rate the most common reason for rejection to be the claimant is found to be capable of performing another type of work. This hypothetical balance test will be applied to the most common reason for Texas Disability Determination Services to reject a claim as well as result in an appeal, the most likely occupation of one seeking benefits based on Texas Workforce Commission Statistics, and the most likely education level of a claim based on Texas Workforce Commission Statistics. The basic profile of the rejected claim is based on interviews with certified disability attorneys and rejected claimants. The first stakeholder considered will be the claimant, then the government of Texas, and then the Social Security Administration.

Claimant

This hypothetical claimant for the sake of this study will be named Jennifer Bishop. Jennifer Bishop is 54 years old and lives in Arlington, Texas.⁵⁵ She married shortly after high school and began working as a waitress at the local diner. Jennifer has worked at the local Denny's Diner for 35 years. Jennifer now has three children in which

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the dual income between her husband's payroll and her own supports the middle class family. As the years of serving for the diner and the stresses of life with three children take a toll on Jennifer's body she began to accumulate a combination of illnesses; obesity, diabetes, chronic back pain and severe oedema or water retention.⁵⁶ Her days at the diner are numbered as the combination of back pain, joint pain and swelling of her hands and feet are making it extremely difficult to be a productive employee. The oedema causes her hands, feet, ankles and face to swell. Walking and standing for long periods accelerates the swelling to the point that she can barely walk. Jennifer began receiving her first customer complaints after 25 years of serving. The customer remarks that she is too slow, spills drinks, confused orders and overall appearance began to become a daily occurrence. This hurts Jennifer deeply as for many years she has prided herself in her worth ethic and customer satisfaction reports. She knows that quitting is not an option and all though Social Security disability is a reduced rate of her current income she understands that her income is vital to sustaining the family and proceeds with filing a disability claim to make for a hopeful attempt to reduce the hardships her family will have to endure through this transition. Her doctors have all advised her to discontinue work, reduce stress levels and focus on her healing and pursue a healthy diet and exercise routine. They tell her that although losing weight will

⁵⁶ Council for Disability Awareness, Long-Term Disability Claims Review, 2012 A sample of factors that increase the risk of disability: Excess body weight, tobacco use, high risk activities or behaviors, chronic conditions such as; diabetes, high blood pressure, back pain, anxiety or depression, frequent alcohol consumption or substance abuse.

help the likelihood of preventing further impairments and complications symptoms are expected to worsen. Her doctors have recommended her for disability. She turns in her application, proceeds to submit all her medical information and anxiously awaits the decision from Texas DDS. Due to just recently seeking medical attention, the doctors have not yet made a diagnosis on the source of her back pain and have her only on pain medications to help until test results come back. In the meantime she continues to work although her conditions are worsening daily.

Three months later Jennifer is down to working two days a week. It is now difficult for her to even get out of bed. Her feet begin to swell and she is out of breath just trying to walk to her car. Jennifer receives notice from Texas Disability Determination Services of the status of her claim. The notice indicates her claim was disapproved because the administrative evidence suggest that she is capable of working a different occupation that requires less standing and walking. She asks for reconsideration in which again she is told that she is not considered completely disabled because it is possible for her to work at an administrative job. Given her education level and work experience finding an available administrative job that she qualifies for is near impossible. She gets an interview for a movie ticket booth but her feet were so swollen that she had to meet the manager at the door for the interview. The manager did not call back. As her back pain continued she returned to the doctor and was then diagnosed with osteoarthritis and spinal stenosis which now meets the listing of impairment set by the Social Security Administration. Her back got so bad that it was decided surgery was needed. In the

meantime, her family income has been cut in half. The family has suffered financial losses of almost \$4300 already and they still must undergo the process of an appeal given her recent diagnosis. The father has also been out of work as he has had to cut work hours in order to help Jennifer recover from surgery. They are behind on payments for the home and selling it is unfortunately not a better option as the housing market has devalued the home so much that they will owe money after it is sold. The initial claim and reconsideration rejections have set Jennifer and her family back 5 months already. In addition to her health conditions, Jennifer now has high blood pressure and has become severely depressed as she watches her family suffer due to her condition. Like George Eldridge, Jennifer cannot understand how she could have been denied after paying into the system for 25 years with honest hard work. Her husband's income alone makes too much to be considered for welfare but not enough to pay all the bills and provide for the family. As she awaits her chance to see an administrative judge, Jennifer has lost \$4300 in income, her home may be lost, her health has worsened, and she feels cheated by the system she paid into for 25 years. If it takes the family one year to appeal the decision and receive benefits the family will have lost \$10,333 in income.

Texas Disability Determination Services

At the time of Jennifer's claim, Texas Disability Determination Services has received 373,704 claims making her claim number 373,705.⁵⁷ Total cost of the agency is

⁵⁷ Department of Assistive and Rehabilitative Services, Guide to Agency Programs, Disability Determination Services FY 2012.

http://www.dars.state.tx.us/news/Sunset/section_VII_DDS.pdf

at \$113,224,755.⁵⁸ As studies and previous literature have suggested disability fraud is on the rise. Texas Disability Determination Services cannot afford to allow fraudulent approvals or unqualified claimants cheat the system and hurt the economy. A recent study has shown that empathetic approvals are increased during economic hard times making it all the more important to stay administratively focused at the initial claims level. They either qualify or they do not. If a claimant is really disabled they have the chance to appeal and receive due process.

When Jennifer's claim reaches the desk of a Texas DDS caseworker she reviews her medical evidence and claim. She notices that the back pain is not diagnosed and the applicant is still working. If she is still working then perhaps she is not in such critical condition that would suggest an immediate need for the benefits. She also considers the possibility of a desk job that would not require her to be on her feet as much. There is no evidence of the pain and therefore this cannot be verified. All that can be verified are impairments that are not listed on the SSA "Listing of Impairments." The caseworker notes that medically she is considered disabled but she does not meet the legal definition. The cost of the initial rejection for Texas DDS is approximately \$309.⁵⁹ Had the claim been approved the cost for the claim would have cost Texas DDS \$309 and the Federal government \$861.12 a month⁶⁰ If the claim was unqualified or a fraud and

⁵⁸ Ibid.

⁵⁹ Department of Assistive and Rehabilitative Services, Guide to Agency Programs, Disability Determination Services FY 2012.

http://www.dars.state.tx.us/news/Sunset/section_VII_DDS.pdf

⁶⁰ Determined by Disability Calculator set at FY 2012, DOB 1969, and income 18,800
<https://www.ssdcservices.com/DisabilityCalculator>

took one year to find out total cost to Texas DDS would be \$309 and total cost to the Federal government would be \$10,333. If, however, the claim is fraud and the SSA, Office of the Inspector General (OIG) finds the claimant guilty of fraud under 42 U.S.C. § 408(a) (1)-(8), which sets forth penalties for felony fraud violations under Title II of the Act resulting in the claimant to be prosecuted under a felony charge with up to 5 years in prison and a fine up to \$250,000.⁶¹

⁶¹ John K. Webb, Social Security Fraud, Prosecuting Title II Cases: Protecting the Social Security Trust Funds from Fraud, November 2004. Volume 52 pg. 3
http://www.justice.gov/usdo/eoua/foia_reading_room/ussh5206.pdf

CHAPTER IV

Research Findings

The mission statement of a government agency establishes the purpose for which efficiency and effectiveness are measured. The mission of Texas DDS is to improve the quality of life of disabled Texans. The Texas DDS mission statement states only two factors that contribute to quality of life; that of accuracy and that of timeliness. Yet previous literature also suggests that customer satisfaction plays a significant factor into the quality of life. Leaving out customer satisfaction in the mission statement prevents customer satisfaction from being made a priority.

The Exploratory Case Method of Mathew v. Eldridge examined the hardships of both the government and the consumer in the process of disability claims. The case study showed that although a disability applicant has the constitutional requirements for due process, this alone does not provide justice to the claimant. The Exploratory Case Method also indicates that despite increases in accuracy and efficiency through technological advances the process is still very much the same as it was in 1973 and still has the same issues to both the government and the disabled. The Exploratory

Case Method explores the possibility that accuracy, timeliness and administrative due process are not the only contributing factors to the hardships endured by the disabled it is the design of the process itself.

The Success Case Study further pointed to the fact that the disabled claimant is still very much in the same predicament as George Eldridge. The risk of losing their homes, cars, furniture and incurring debt to the point of bankruptcy is a common tragedy for the disabled even after all these years. *Mathews vs. Eldridge* balance test was used to assess not the required due process but in what values are at stake. The balance test used research to support the most common profile considering occupation, age, disability, and education level of an applicant. The most common difficulties of the claimant were established through statistical research and interviews of Texas Board Certified Disability Attorneys. The average cost per claim for Texas DDS was used to establish the most likely hypothetical cost to the agency for the claim. The test reviewed both scenarios of possible decisions Texas DDS could make and the losses that both parties have endured at the initial rejection stage. The balance test indicated that both the values and financial cost were far greater to the applicant than to that of the agency. At the time of initial and reconsideration rejection the applicant was at a loss of \$4300, in the midst of a foreclosure of her home, out of work, undergoing surgery, a reduction in health status. At this same stage of initial rejection and reconsideration rejection Texas

DDS and the SSA have lost a grand total of \$309. An appeal will not bring back her health, her home she has live in for 15 years, or the losses her family had to endure.

Chapter V

Recommendations

This paper recommends redefining the mission statement of Texas DDS to the following: to *improve the quality of life of Texans with disabilities that apply for or receive SSA disability benefits by making timely, accurate disability determinations and providing customer satisfaction*. This would also require the addition of customer service to the performance measures. The combination of performance measures accuracy, timeliness and customer service will more accurately measure all controllable aspects the agency has on quality of life. This will not only make customer service a priority but

will also result in an understanding by the consumer that they are the priority of the agency and not just an administrative case number.

This study recommends establishing a research team dedicated to making a process that not only address the issues of timeliness and effectiveness but also creates a more humanized and balanced approach in addressing the circumstances, hardships and values at stake unique to each individual applicant. Further, investments and research should aim to improve the post decision reviews so that they may become more effective at targeted fraud and improved health conditions. Texas DDS employees should be allowed to assess the applicant by their overall profile and make common sense determinations. For claims such as the hypothetical case in this study, the applicant had nothing to gain and everything to lose by quitting work and seeking disability. The likelihood of the claim being fraud was slim to none. This could reduce the need for rejections based on bureaucratic details that most applicants do not understand and open the door to reducing the need for costly appeals and the hardship on disabled citizens.

Chapter VI

Conclusions

This research paper was aimed at identifying and correcting flaws in the Disability Determination Services at the initial claims stage of review. The research included examining previous literature, comparing the Texas Disability Determination Services mission statement to the agencies performance measures, examining the

Exploratory Case Study of the Supreme Court case *Mathews v. Eldridge* and applying Best Approach Case Study method using the *Mathews v. Eldridge* three-part balance test to a hypothetical disability claim based on the most common profile for claims. The findings of the research conclude that the mission statement and performance measures are inadequate and although the initial claims process meets constitutional requirements for due process, the administrative procedures are greatly imbalanced in favor of the government over the citizen. The study recommends reforming the mission statement and performance measures of Texas DDS, and investing in research towards improvements to post decision reviews and towards creating a more balanced and humanized process in initial claims decisions.

Future Research

This research has outlined the current flaws in the disability determination services (DDS) at the initial claims stage of review. The future research is based on improving post decision reviews, reducing fraud and reforming the ways of which DDS case workers are allowed to decide cases that would result in a reduction in appeals and less hardship for citizen.