

1981

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Minn. L. Rev. Editorial Board

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Recommended Citation

Editorial Board, Minn. L. Rev., "Latent Disabilities under the Social Security Act: Cassel v. Harris" (1981).
Minnesota Law Review. 3160.
<https://scholarship.law.umn.edu/mlr/3160>

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Latent Disabilities Under the Social Security Act: *Cassel v. Harris*

Frances Cassel applied for disability benefits under section 223(a) of the Social Security Act¹ (the Act) after having accumulated twenty quarters of coverage. Although Cassel had not accumulated her covered quarters within the forty quarters preceding the onset of her total disability as the Act requires,² her disability had occurred under circumstances that suggested that it might have been a latent disability³—that is, “an impairment that originated when [she] was insured but did not become disabling until [her] coverage expired.”⁴ Notwithstanding the evidence suggesting a latent disability, the Secre-

1. 42 U.S.C. § 423 (1976). For a general history of the Social Security Act and the events leading to its enactment, see P. DOUGLAS, *SOCIAL SECURITY IN THE UNITED STATES* (2d ed. 1939).

An individual who wishes to receive Social Security disability insurance benefits initiates the procedure by filing an application for disability insurance benefits. 20 C.F.R. § 422.505(a) (1980) (form SSA-16). A claims representative of the Social Security Administration (SSA) substantiates the claim and provides any assistance to the applicant necessary in preparing his or her application and in obtaining the proof required in support. *Id.* § 422.130(b). For a more detailed description of the claims procedure, see A. ABRAHAM & D. KOPELMAN, *FEDERAL SOCIAL SECURITY* 105-26 (1979).

2. See notes 11-12 *infra* and accompanying text.

3. Plaintiff Cassel's lawyer argued that Cassel had rheumatoid arthritis, deterioration of the back, and emotional problems in 1976 although diagnosis occurred after the onset of the disability. See Letter from Adam M. Dalmay to Joseph E. Doneghy, SSA (Oct. 24, 1980) (on file with the *Minnesota Law Review*).

4. *Cassel v. Harris*, 493 F. Supp. 1055, 1058 (D. Colo. 1980). The *Cassel* court used the terms “latent disability” and “progressive medical condition” interchangeably. In medical terms “latent” denotes the period of an infectious disease before the appearance of the symptoms of the disease. T. STEDMAN, *STEDMAN'S MEDICAL DICTIONARY* (21st ed. 1966). “Progressive,” on the other hand, denotes the course of a disease, especially when the course is unfavorable. *Id.* Although the court more often used the term “latent disability,” it seems to have had “progressive medical condition” in mind. For example, the only time the court discussed the ramifications of its decision it stated, “[a] contrary decision would disregard the special plight of those persons who contribute to the nation's output, but who become too sick to work regularly—then grow progressively sicker, but not sick enough to obtain disability benefits until they no longer are currently insured.” 493 F. Supp. at 1058. The “genesis” of a “latent disability” that the court referred to probably means the time of the appearance of the symptoms of the disease. For consistency, however, the term “latent disability” will be used throughout this Comment.

tary of Health and Human Services (HHS)⁵ denied Cassel's application on the ground that Cassel had not been insured for disability insurance benefits when she allegedly became disabled. Upon review of the Secretary's decision,⁶ the United States District Court for the District of Colorado remanded the case for more specific administrative findings, *holding* that if Cassel could "demonstrate a present disability that is clearly and directly traceable to a condition having its inception when she was covered by disability insurance, HHS should find her qualified for disability insurance benefits." *Cassel v. Harris*, 493 F. Supp. 1055, 1058 (D. Colo. 1980).

Under section 223(a) of the Social Security Act, an individual is eligible for disability insurance benefits if he or she (1) is insured for disability insurance benefits, (2) is under age sixty-five, (3) has filed an application, and (4) is under a disability.⁷ The second and third requirements are readily determinable, while the "insured" and "disability" requirements are further defined by the Act.⁸ Prior to 1958 an individual was insured for

5. The Department of Health, Education, and Welfare has been redesignated the Department of Health and Human Services. Department of Education Organization Act, 20 U.S.C. § 3508(a) (Supp. III 1979).

6. Judicial review of any final decision of the Secretary, made after a hearing to which the individual seeking review was a party, is available in the United States District Courts. 42 U.S.C. § 405(g) (1976). The standard of review is whether the Secretary's decision was supported by substantial evidence. *Id.* In Social Security disability cases substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).

In this case Cassel contended that the Administrative Law Judge (ALJ) abused his discretion and erred as a matter of law by failing to apply the proper legal standards and by making a factual determination without considering certain evidence of her alleged disability. The district court, however, found that the ALJ had applied the proper legal standard. *Cassel v. Harris*, 493 F. Supp. 1055, 1056 (D. Colo. 1980). The legal standard for determining disability is whether a person can engage in substantial gainful activity. *See* note 13 *infra* and accompanying text. The ALJ found only that Cassel had "no significant impairment," but the court was satisfied with the ALJ's statement that it is only through an assessment of the limitations on a person's physical and mental functions that a meaningful decision can be made with respect to the ability to engage in substantial gainful activity. 493 F. Supp. at 1056.

7. *See* 42 U.S.C. § 423(a) (1976).

8. Section 223(a) of the Act reads in relevant part:

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d) of this section),

Shall be entitled to a disability insurance benefit.

disability benefits only if he or she had 1) at least six quarters of coverage during the thirteen-quarter period directly preceding total disability, and 2) twenty quarters of coverage during the forty-quarter period preceding the date of total disability.⁹ The 1958 amendment to the Act deleted the six-out-of-thirteen-quarters requirement.¹⁰ Today an individual is insured for disability insurance benefits if he or she has not less than twenty quarters¹¹ of coverage during the forty-quarter period ending with the onset of disability.¹²

The Act also defines the "disability" requirement: an individual is disabled if he or she is unable "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 which has lasted or can be expected to last for a continuous period of not less than 12 months."¹³

Courts have generally held that the Social Security Act, as a remedial statute, should be construed liberally to find disability.¹⁴ Nevertheless, in interpreting the "insured" and "disabil-

42 U.S.C. § 423(a) (1976).

9. Social Security Act Amendments of 1950, ch. 809, § 214, 64 Stat. 477 (1950) as amended by Social Security Amendments of 1956, ch. 836, § 223, 70 Stat. 807 (1956).

10. Social Security Amendments of 1958, Pub. L. No. 85-840, § 204(b), 72 Stat. 1013 (1958) (amending definition, in section 223, of insured).

11. The terms "quarter" and "calendar quarter" both mean a period of three calendar months ending on March 31, June 30, September 30, December 31. *Id.* § 413(a)(1). See 45 Fed. Reg. 25,387 (1980) (to be codified in 20 C.F.R. § 404.140).

12. See 42 U.S.C. § 423(c)(1) (1976). The present twenty-out-of-forty-quarters requirement is determined by examining the individual's earnings record. See UNITED STATES DEP'T OF HEW, SOCIAL SECURITY ADMINISTRATION, SOCIAL SECURITY HANDBOOK 21 (6th ed. 1978). See also 20 C.F.R. §§ 404.801-404.803 (1980); A. ABRAHAM & D. KOPELMAN, *supra* note 1, at 127-30. For a determination of disability insured status, see 45 Fed. Reg. 25,385 (1980) (to be codified in 20 C.F.R. § 404.110).

13. 42 U.S.C. § 423(d)(1)(A) (1976). The regulations state that the determination of whether an impairment constitutes a disability is determined from all the pertinent facts and that this determination may be based on medical considerations alone or on medical considerations and certain vocational factors such as age, education, and work experience. 20 C.F.R. § 404.1502 (1980) as amended by 45 Fed. Reg. 55,588 (1980) (to be codified in 20 C.F.R. § 404.1520).

The leading case on what factors are to be considered in assessing disability is *Underwood v. Ribicoff*, 298 F.2d 850 (4th Cir. 1962). In *Underwood*, the court listed four factors: (1) the objective medical facts, (2) diagnoses or medical opinions based on those facts, (3) subjective evidence of pain and disability testified to by the claimant and corroborated by others, and (4) the claimant's educational background, age, and work experience. *Id.* at 851.

14. The "liberal construction" rule has been applied in most jurisdictions. See, e.g., *Bastien v. Califano*, 572 F.2d 908, 912 (2d Cir. 1978); *Mandrell v. Weinberger*, 511 F.2d 1102, 1103 (10th Cir. 1975); *Hess v. Secretary of HEW*, 497 F.2d 837, 840 (3d Cir. 1974); *De Paepe v. Richardson*, 464 F.2d 92, 101 (5th Cir. 1972);

ity" requirements of the Act, courts have uniformly held that disability insurance benefits are available only to individuals who become disabled prior to the expiration of their insured status.¹⁵ Most of these courts have focused only upon the date of the onset of total disability as defined by the Act and have not commented on the date of the origin of the disabling condition. The few courts that have decided cases in which the date of the origin of the disability was at issue have uniformly held that an individual must be disabled, as defined under the Act, on his or her last insured date, even when the individual is currently disabled due to an impairment that had its origin during a period of insured status.¹⁶

Courts have, however, allowed the introduction of subsequently derived evidence—that is, evidence derived after the claimant's last insured date—as probative in deciding whether the claimant was disabled on that date.¹⁷ Such evidence has

Celebrezze v. Bolas, 316 F.2d 498, 500 (8th Cir. 1963). *But see Sorenson v. Weinberger*, 514 F.2d 1112, 1119 (4th Cir. 1975).

15. *See, e.g., LeMaster v. Weinberger*, 533 F.2d 337, 338 (6th Cir. 1976); *Ramirez v. Secretary of HEW*, 528 F.2d 902, 903 (1st Cir. 1976); *Kirkland v. Weinberger*, 480 F.2d 46, 48 (5th Cir.), *cert. denied*, 414 U.S. 913 (1973); *Davis v. Richardson*, 460 F.2d 772, 775-6 (3d Cir. 1972); *Harmon v. Finch*, 460 F.2d 1229, 1231 (9th Cir.), *cert. denied sub nom.*, *Harmon v. Richardson*, 409 U.S. 1063 (1972); *Sellars v. Secretary of H.E.W.*, 458 F.2d 984, 986 (8th Cir. 1972); *Jeralds v. Richardson*, 445 F.2d 36, 38 (7th Cir. 1971); *Johnson v. Finch*, 437 F.2d 1321, 1322 n.2 (10th Cir. 1971); *Dixon v. Gardner*, 406 F.2d 1035, 1036 (4th Cir. 1969). This interpretation is consistent with the regulations, which state that "[t]o become entitled to disability insurance benefits, [an individual] must have disability insured status in the first full month that [he or she is] disabled . . ." 45 Fed. Reg. 25,387 (1980) (to be codified in 20 C.F.R. § 404.131(b)(1)). This has also been recognized by the commentators. *See, e.g., Haviland & Glomb, The Disability Insurance Benefits Program and Low Income Claimants in Appalachia*, 73 W. VA. L. REV. 109, 134 (1971).

16. These decisions often give little explanation of their reasoning. For example, in *Rodriguez v. Califano*, the court stated without elaboration that the rule is well established that, even if an individual is currently disabled because of an impairment that had its origins during a period of insured status, the individual is not eligible for benefits unless he or she was totally disabled on his or her last insured date. 431 F. Supp. 421, 423 (S.D.N.Y. 1977); *see Davila v. Weinberger*, 408 F. Supp. 738, 741 (E.D. Pa. 1976); *Capaldi v. Weinberger*, 391 F. Supp. 502, 503 (E.D. Pa. 1975); *Gibson v. Celebrezze*, 220 F. Supp. 271, 272 (E.D. Ky. 1963). *See generally Estep v. Weinberger*, 525 F.2d 757, 758 (6th Cir. 1975); *Harmon v. Richardson*, 448 F.2d 638, 639 (6th Cir. 1971); *De Nafu v. Finch*, 436 F.2d 737, 739 (3d Cir. 1971); *Henry v. Gardner*, 381 F.2d 191, 195 (6th Cir.), *cert. denied*, 389 U.S. 993 (1967).

17. For example, in *Gold v. Secretary of HEW*, 463 F.2d 38 (2d Cir. 1972), the court stated:

[E]vidence bearing upon an applicant's condition subsequent to the date upon which the earnings requirement was last met is pertinent evidence in that it may disclose the severity and continuity of impairments existing before the earnings requirement date or may identify additional impairments which could reasonably be presumed

been admitted in two different factual circumstances. In the first circumstance, the claimant has offered the evidence because little or no evidence was derived at the time of the claimant's last insured date, and thus only subsequently derived evidence is available to prove that the claimant was disabled on that date.¹⁸ In the second circumstance, the claimant has offered the subsequently derived evidence either because it contradicts evidence derived at the time of the claimant's last insured date, or because the earlier derived evidence is inconclusive.¹⁹ Even in these cases, the courts require claimants to

to have been present and to have imposed limitations as of the earnings requirement date.

Id. at 41-42 (quoting *Carnevale v. Gardner*, 393 F.2d 889, 890 (2d Cir. 1968)); see *Stawls v. Califano*, 596 F.2d 1209 (4th Cir. 1979); *Kemp v. Weinberger*, 522 F.2d 967 (9th Cir. 1975); *Stark v. Weinberger*, 497 F.2d 1092 (7th Cir. 1974); *Payne v. Weinberger*, 480 F.2d 1006 (5th Cir. 1973); *Moore v. Finch*, 418 F.2d 1224 (4th Cir. 1969); *Berven v. Gardner*, 414 F.2d 857 (8th Cir. 1969); *Stock v. Secretary of HEW*, [1976-1977 Transfer Binder] UNEMPL. INS. REP. (CCH) ¶ 14,602 (D. Or. 1976); *Reese v. Richardson*, [1970-1971 Transfer Binder] UNEMPL. INS. REP. (CCH) ¶ 16,321 (S.D. Ohio 1971).

For a discussion on proving prior disabilities with contemporary medical findings, see Rowland, *Judicial Review of Disability Determinations*, 52 GEO. L.J. 42, 70-76 (1963).

18. In this situation the claimant usually maintains that he or she was disabled during a period of coverage but is unable to substantiate such a claim with objective medical evidence derived near the last insured date. The claimant can, however, prove that he or she is currently disabled. When faced with this situation, some courts have allowed the subsequently derived evidence to create an inference that the claimant was disabled on the last insured date. For example, in *Moore v. Finch*, 418 F.2d 1224 (4th Cir. 1969), the claimant's last insured date was September 30, 1960. The only evidence of disability derived at that time was the testimony of the claimant's wife and other witnesses that the claimant was mentally disabled. In 1966 and 1967, however, the claimant was clinically diagnosed as disabled due to a psychoneurotic anxiety reaction. The Secretary conceded that in 1966 and 1967 the claimant's mental and emotional status was impaired, but would not allow that evidence to be considered for the purpose of creating an inference that the claimant was disabled on his last insured date in 1960. The court remanded the case for rehearing, stating: "[T]he record is not so persuasive as to rule out any linkage of the final state of [claimant] with his earlier symptoms. Certainly, it is arbitrary to declare preemptorily that the two could not be related in tracing causation." *Id.* at 1226; see *Capaldi v. Weinberger*, 391 F. Supp. 502, 505-06 (E.D. Pa. 1975). *But see* *Cook v. Califano*, 569 F.2d 1328, 1329-30 (5th Cir. 1978); *Davison v. Celebrezze*, 340 F.2d 606, 606 (5th Cir. 1965).

19. In this instance the subsequently derived evidence is essential to the claimant's case, for without it the claimant will be unable to establish his or her case or to rebut the Secretary's case. For example, in *Stawls v. Califano*, 596 F.2d 1209 (4th Cir. 1979), the claimant's last insured date was June 30, 1962. The claimant maintained that she was disabled due to schizophrenia as of this date. Based on the medical evidence derived prior to June 30, 1962, the district court found that the Secretary's decision denying benefits was supported by substantial evidence. By upholding the Secretary, the court did not need to "consider the medical evidence concerning [appellant's] mental condition subsequent to September 30, 1962." *Id.* at 1212 (quoting from the district court opinion). The

prove that they were disabled prior to the expiration of their disability coverage, admitting the subsequently derived evidence only to prove retrospectively that the claimant was disabled during the time he or she was insured.²⁰

In *Cassel*, however, the District Court of Colorado held that claimant Cassel would be eligible for disability insurance benefits if she could prove that her disability had its *origin* at a time when she was covered by disability insurance.²¹ Asserting that

circuit court disagreed and remanded the case, stating: "[E]ven assuming that schizophrenia is progressive in nature, proof the appellant was disabled due to schizophrenia after June 30, 1962 is probative of the fact that she may have been disabled due to schizophrenia before June 30, 1962, although it is not conclusive." *Id.* at 1213; *see* Selig v. Richardson, 379 F. Supp. 594, 600-01 (E.D.N.Y. 1974). *But see* Steimer v. Gardner, 395 F.2d 197, 198 (9th Cir. 1968) ("The pertinent date is June 30, 1955, the date when her insured status terminated. Much of the evidence relates to occurrences since that time, which have only tangential relevance.").

20. In most of the cases considering the admissibility of evidence derived after the expiration of the applicant's insured status, the courts have explicitly stated that to be eligible for benefits an individual must be disabled as of his or her last insured date, and then have allowed the introduction of subsequently derived evidence to prove retrospectively that the claimant was disabled during the time he or she was insured. *See, e.g.*, Selig v. Richardson, 379 F. Supp. 594, 599-600 (E.D.N.Y. 1974). Courts reason that this procedure accords with the rule that the Social Security Act, as a remedial statute, is to be construed liberally to find disability. *See, e.g.*, Gold v. Secretary of HEW, 463 F.2d 38, 41 (2d Cir. 1972); Selig v. Richardson, 379 F. Supp. 504, 600 (E.D.N.Y. 1974); *see* note 14 *supra*.

Nevertheless, the admission of subsequently derived evidence to prove disability retrospectively could be used to circumvent the rule that an individual must be disabled on his or her last insured date to be eligible for benefits by permitting courts to draw questionable inferences of insured date disability on the basis of new evidence of a progressive illness. For example, in *Stark v. Weinberger*, 497 F.2d 1092 (7th Cir. 1974), the court, over a strong dissent, awarded benefits to a claimant who was suffering from scleroderma, a progressive, incurable disease, from as early as 1930. The claimant's last insured date was in 1950 but she was not "properly" diagnosed as disabled until 1960. The court awarded benefits even though the claimant was able to engage in substantial gainful activity as late as 1958, reasoning that if the claimant had been properly diagnosed in 1951 she would have been advised to avoid the kind of work she had been doing. *Id.* at 1098. *Stark* is a typical latent disability case. The claimant was clearly disabled subsequent to the expiration of her insured status due to a disease that had its origin during a period of insured status, but the claimant could also work subsequent to the expiration of her insured status. Although *Cassel* may have been a case in which subsequently derived evidence could have been used to prove disability retrospectively, the court chose to define and confront the latent disability issue directly.

21. The question of latent disability arose because, as the court stated, "HHS has acknowledged that Cassel's medical reports indicate a significant impairment within a year after her insured status terminated. Moreover, Cassel's medical records suggest a long history of back problems that may have been present during the time when she was insured." 493 F. Supp. at 1057. The court commented that, even if Cassel did not become disabled during a period of coverage, she may have become disabled after she was last insured due to a condi-

Congress did not anticipate or contemplate the problem of latent disability,²² the court addressed the latent disability question by looking to the general purposes of the Social Security disability insurance program.²³ The court found that the purpose of the program was "to aid workers who, after having made a contribution to the nation's work force, are unable to continue."²⁴ Noting that the Social Security Act is a remedial statute that should be broadly construed,²⁵ the court reasoned that a failure to provide benefits to the latently disabled "would disregard the special plight of those persons who contribute to the nation's output, but who become too sick to work regularly—then grow progressively sicker, but not sick enough to obtain disability benefits until they no longer are currently insured."²⁶

In reaching its result, the court also drew an analogy between the Social Security disability insurance program and state workers' compensation statutes.²⁷ The court thought the two programs were similar because both "operate to protect workers from loss of income due to disability."²⁸ Thus, the court argued, since workers' compensation benefits are typically provided to those whose latent disabilities originated from a work-related cause, Social Security disability insurance benefits ought to be available to those whose disability had its inception during the insured period.²⁹ Nevertheless, the court

tion that had its inception during an insured period. The court concluded that, to determine if the Secretary's decision was supported by substantial evidence, it needed more specific administrative findings on the issue of whether Cassel became disabled during a time when she was insured. *See* note 6 *supra*.

22. 493 F. Supp. at 1057.

23. *Id.* at 1057-58.

24. *Id.* at 1058 (quoting *Coleman v. Gardner*, 264 F. Supp. 714, 718 (S.D. W. Va. 1967)).

25. The *Cassel* court stated that "[a]s a remedial statute, the Social Security Act is 'to be broadly considered and liberally applied.'" *Id.* at 1058 (quoting *Stewart v. Cohen*, 309 F. Supp. 949, 956 (E.D.N.Y. 1970)). *See* note 14 *supra*.

26. *Id.* at 1058. The *Cassel* court went on to note that it "would be both senseless and insensitive to find that a worker who contributes his or her share of earnings into the social security fund, and suffers a latent disability while doing so, cannot collect from that same fund merely because of the peculiar nature, evolution, or timing of the disability." *Id.* *See generally* Haviland & Glomb, *supra* note 15.

27. 493 F. Supp. at 1058.

28. *Id.* at 1057 n.1.

29. *Id.* at 1057-58. The court noted that the statute of limitations does not begin to run on a workers' compensation claim until a disability becomes evident, thus allowing an eventual employment-related injury to be compensated years later. *Id.* at 1058 (citing California case law). This appears to be the general rule under many workers' compensation statutes, although there are exceptions. *See* 3 A. LARSEN, *THE LAW OF WORKMEN'S COMPENSATION* § 78.42

emphasized that the plaintiff still had the "heavy burden" of establishing a factual link between the insured period and the later disability³⁰ and remanded the case to HHS for further administrative findings on these factual issues.³¹

An analysis of the objectives of the Act³² suggests that the *Cassel* court may have been correct in finding that some latently disabled individuals should be covered by the Act, but incorrect in assuming that the judiciary should extend benefits to these individuals.³³ In reading the purpose of section 223(a) broadly "to aid workers who, after having made a contribution to the nation's work force, are unable to continue,"³⁴ and in mandating the payment of disability insurance benefits to latently disabled individuals, the *Cassel* court ignored the legislatively expressed purposes of the section and misconstrued the intended operation of the disability insurance program.³⁵ The

(1976). The court concluded that, in a similar way, a disability for Social Security purposes should relate back to the period of insurance coverage if the disability is clearly traceable to a latent condition that existed when the individual was insured. 493 F. Supp. at 1058.

30. In describing this burden the *Cassel* court stated:

In order to establish the existence of a latent disability, however, the plaintiff carries a heavy burden of establishing: (1) with a high degree of medical probability that her disabling condition had its genesis when she was covered by disability insurance; (2) that the condition was potentially disabling; (3) that the disabling capacity of the condition lay dormant and did not manifest itself during the period of her disability insurance coverage; (4) that the present disability she now claims evolved directly, naturally and exclusively from the condition that originated during the time she was insured.

Id. at 1058.

31. *Id.*

32. In a broad sense, the purpose of the disability program is to obviate, through a program of forced savings, the economic dislocations that typically accompany disability. See *Califano v. Boles*, 443 U.S. 282, 283 (1979).

33. See note 53 *infra* and accompanying text.

34. 493 F. Supp. at 1058 (quoting *Coleman v. Gardner*, 264 F. Supp. 714, 718 (S.D.W.Va. 1967)).

35. As addressed by the court, the question of whether latently disabled individuals are eligible for benefits under the Act is one of statutory interpretation. In the alternative, the *Cassel* court could have addressed the issue on a constitutional level, *i.e.* whether denying Social Security disability insurance benefits to a latently disabled individual is a violation of the equal protection clause. Although the Supreme Court has never addressed the constitutionality of the twenty-out-of-forty-quarters requirement, the lower courts that have addressed the issue have held that the requirement does not violate the due process clause or the equal protection clause. *Tuttle v. Secretary of HEW*, 504 F.2d 61, 63 (10th Cir. 1974); *Townsley v. Weinberger*, [1976-1977 Transfer Binder] UNEMPL. INS. REP. (CCH) ¶ 14,866 (N.D. Calif. 1976); *Colon v. Secretary of HEW* [1974 Transfer Binder] UNEMPL. INS. REP. (CCH) ¶ 17,578 (S.D. Fla. 1974). See *generally* *Lerner v. Richardson*, 393 F. Supp. 1387 (E.D. Pa. 1975). This result is correct in light of the minimum rationality test applied to social welfare cases not involving a suspect class. See *Califano v. Jobst*, 434 U.S. 47, 54 (1977); *Ma-*

legislative history of the Act clearly indicates that the actual purposes of the program are much narrower: first, to provide benefits only to those who have made a substantial contribution to the program so as to guarantee the self-supporting nature of the program,³⁶ and second, to provide benefits to those who are dependent upon their earnings, but unable to work because of a disability.³⁷

The vehicle that Congress chose to accomplish these purposes was an insurance program, not a general welfare program.³⁸ The requirement that an individual pay twenty quarters of "premium" to be eligible for benefits achieves the first purpose by guaranteeing that each potential recipient of benefits makes a substantial contribution to the program.³⁹ The additional requirement that an individual earn twenty quarters of coverage within the last forty quarters before the onset of disability is an attempt to achieve the second objective by limiting benefits to those whose covered employment was

thews v. De Castro, 429 U.S. 181, 185 (1976); Weinberger v. Salfi, 422 U.S. 749, 768 (1975). Although the twenty-out-of-forty-quarters requirement is under-inclusive and the "benign purpose" of the Act encompasses some latent disability cases, there are legitimate reasons for placing limits on the program. See *Califano v. Jobst*, 434 U.S. 47, 56-57 (1977) (the quarters requirement "is simple to administer" and is a reliable indicator of dependency on earnings).

36. S. REP. NO. 2133, 84th Cong., 2d Sess. 17, reprinted in [1956] U.S. CODE CONG. & AD. NEWS 3877, 3893. See *Tuttle v. Secretary of HEW*, 504 F.2d 61, 62 (10th Cir. 1974); *Lerner v. Richardson*, 393 F. Supp. 1387, 1389-90 (E.D. Pa. 1975) ("Congress has found it necessary to build into the Social Security System a formula designed to prevent the dissipation of the Social Security Fund by those groups who have made limited contributions to the fund . . .").

37. See H.R. REP. NO. 2288, 85th Cong., 2d Sess. 14 (1958); S. REP. NO. 2388, 85th Cong., 2d Sess. 12-13, reprinted in [1958] U.S. CODE CONG. & AD. NEWS 4218, 4229. See also *Tuttle v. Secretary of HEW*, 504 F.2d 61, 63 (10th Cir. 1974); *Lerner v. Richardson*, 393 F. Supp. 1387, 1389-90 (E.D. Pa. 1975) ("Congress has found it necessary to build into the Social Security System a formula designed to . . . protect those individuals who have been in covered employment for a considerable portion of their working lives."). See generally S. REP. NO. 1987, 83d Cong., 2d Sess. 20, reprinted in [1954] U.S. CODE CONG. & AD. NEWS 3710, 3729; H.R. REP. NO. 1698, 83d Cong., 2d Sess. 22-23 (1954).

38. The analogy between Social Security and insurance has been severely criticized. See, e.g., R. DIXON, SOCIAL SECURITY DISABILITY AND MASS JUSTICE: A PROBLEM IN WELFARE ADJUDICATION 21-23 (1973); Cowan, *Background and History: The Crisis in Public Finance and Social Security*, in THE CRISIS IN SOCIAL SECURITY: PROBLEMS AND PROSPECTS 2 (M. Boskin ed. 1977). Nevertheless, the insurance concept is accurate in the sense that an individual must first make a contribution (premium payment) before he or she is entitled to benefits. In addition, the Supreme Court has recognized the insurance character of the Social Security system. *Califano v. Boles*, 443 U.S. 282, 296 (1979) ("The desire to alleviate hardship wherever it is found is tempered by the concern that the social security system in this country remain a contributory insurance plan and not become a general welfare program.").

39. *Tuttle v. Secretary of HEW*, 504 F.2d 61, 63 (10th Cir. 1974).

sufficiently long and sufficiently recent to suggest that they probably had been dependent upon their earnings.⁴⁰ As the legislative history of the section states:

Under a program which provides protection against loss of earnings on account of disability, it is reasonable and desirable that there be reliable means of limiting such protection to those persons who have had sufficiently long and sufficiently recent covered employment to indicate that they probably have been dependent upon their earnings. It was to meet this purpose that the disability work requirements were designed⁴¹

The twenty-out-of-forty-quarters requirement reflects the congressional judgment that it would simply be administratively burdensome to determine on a case-by-case basis whether, in fact, individuals were dependent upon their earnings.⁴² Thus, Congress created a presumption that individuals who contributed twenty out of forty quarters are dependent upon their earnings. Whether these individuals actually are dependent upon their earnings is generally considered irrelevant in determining eligibility for benefits.⁴³

The twenty-out-of-forty-quarters requirement does allow brief periods of involuntary and voluntary unemployment without loss of disability coverage.⁴⁴ In fashioning the requirement, Congress recognized that individuals dependent upon their earnings, while not technically disabled, might still be forced to retire early because of impairments caused by progressive illnesses.⁴⁵ To expand the availability of benefits to those suffering from such illnesses, Congress abolished the six-out-of-thirteen-quarters requirement that had been imposed prior to 1958 in addition to the present twenty-out-of-forty-quarters requirement.⁴⁶ Thus, it seems clear that Congress intended to

40. S. REP. NO. 2388, 85th Cong., 2d Sess. 12-13, *reprinted in* [1958] U.S. CODE CONG. & AD. NEWS 4218, 4229.

41. *Id.*

42. *See* Califano v. Jobst, 434 U.S. 47, 52 (1977).

43. *See id.*

44. *See* text accompanying notes 47-48 *infra*.

45. *See* S. REP. NO. 2388, 85 Cong., 2d Sess. 5, *reprinted in* [1958] U.S. CODE CONG. & AD. NEWS 4218, 4222. In further describing the group of disabled persons the 1958 Amendments were to affect, the Senate report states:

In many instances, these are persons whose work was interrupted by a progressive illness and who at the onset of this impairment met the work requirements for disability protection. It is not uncommon that an impairment which is not severe enough to meet the definition of disability in the law causes a worker to be absent from work for extended periods. The result is that by the time the impairment becomes serious enough to meet the definition of disability, the worker has lost his currently insured status.

Id. at 13, *reprinted in* [1958] U.S. CODE CONG. & AD. NEWS 4218, 4230.

46. *See* notes 9-10 *supra* and accompanying text.

extend coverage to some claimants who involuntarily retired because of a progressive illness.

Implicit in the present requirement is the recognition that individuals dependent upon their earnings might be involuntarily unemployed for reasons other than progressive illness or disability,⁴⁷ or might choose to be voluntarily unemployed for brief periods.⁴⁸ An individual might be unemployed for a number of quarters, for example, because he or she is laid off or because his or her skills have become technologically obsolete. An individual might also choose voluntary unemployment for a short period in order to obtain additional training to qualify for additional jobs. The twenty-out-of-forty-quarters requirement thus allows a limited amount of such involuntary and voluntary unemployment without a resultant termination of eligibility for disability benefits.

The *Cassel* court fashioned relief broader than that justified by the legislative history and by the statutory language because the court ignored the second purpose of the disability insurance program—to provide benefits to disabled individuals who were dependent upon their income.⁴⁹ Although the court asserted that Congress did not contemplate the problem of latent disability,⁵⁰ the legislative history and the 1958 amendment mentioned above indicate that Congress was aware of the

47. The twenty quarters requirement operates to establish that claimants have a reasonably substantial attachment to the labor force. Clearly, however, individuals who are involuntarily unemployed have not voluntarily retired from gainful activity and if they subsequently become disabled they will have been compelled to leave the labor force by reason of their disability.

The legislative history of the 1958 amendments reveals that Congress recognized that differentiating between insured individuals who became disabled and individuals with latent disabilities who lost their insured status because of involuntary unemployment does not accomplish the objectives of the Act. Although the legislative history indicates that the prior work requirements generally produce results in accordance with the purpose that only those individuals who are probably dependent on their earnings are awarded benefits, Congress recognized that this is not always the case. Therefore, the Act was amended to eliminate the current insurance requirement so that benefits would not be denied to individuals whose earnings have been cut off as a result of a disability. S. REP. NO. 2388, 85th Cong., 2d Sess. 13, reprinted in [1958] U.S. CODE CONG. & AD. NEWS 4218, 4229-30.

48. *But see* H.R. REP. NO. 1189, 84th Cong., 1st Sess. 5 (1956) ("eligibility . . . will be limited to persons who . . . have demonstrated a capacity and a will to work"). Although the legislative history makes no mention of periods of voluntary unemployment, the effect of the present twenty-out-of-forty-quarters requirement is clearly to allow such periods.

49. The first purpose—ensuring that each claimant makes a substantial contribution to the program—was not at issue in the case, since it was undisputed that *Cassel* had fulfilled the twenty quarters of coverage requirement.

50. The *Cassel* court stated that "[a] reading of the Act itself leaves the

plight of those suffering from progressive illnesses.⁵¹ Nonetheless, because Congress did not want to mandate determinations of dependence in fact, yet wished to direct benefits primarily towards those who were forced to leave employment because of their illnesses, Congress extended insured status only to a maximum of twenty quarters beyond the individual's last covered date of employment. Had Congress intended to extend coverage to all progressive illnesses or latent disabilities having their origins in a covered quarter, it would have done away with the twenty-quarter extension and would have required only that the disability have its origin during the twenty covered quarters. Although the present requirement may work hardships on some individuals suffering from a progressive illness or a latent disability,⁵² Congress chose to retain the twenty-out-of-forty-quarters requirement, and the *Cassel* court failed to cite specific authority to justify its decision to upset that judgment.⁵³

The court also fashioned its relief without considering that the necessary implication of its decision was to allow disability benefits even when a claimant has been voluntarily unemployed for over twenty quarters.⁵⁴ This result surely does not comport with the expressed intent of the Act, which is to provide benefits to those dependent upon their earnings, and goes beyond even the most liberal interpretation of the operation of the twenty-out-of-forty-quarters requirement.

The *Cassel* court's failure to consider the Act's second purpose of limiting benefits to only those disabled individuals who

distinct impression that Congress did not anticipate, and thus did not contemplate, the question of latent disability." 493 F. Supp. at 1057.

51. See notes 45-46 *supra* and accompanying text.

52. *Id.* Because the twenty-out-of-forty-quarters requirement is different only in degree from the current insurance requirement, see note 47 *supra*, some individuals with latent disabilities are still denied benefits.

53. Absent any assertion by the *Cassel* court that the requirements of the Act are ambiguous or unclear, the court's reasoning does not support its award of benefits to individuals excluded by the express terms of the Act. *Cf. Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979) (no private right of action under § 17(a) of the Securities Exchange Act where the section by its terms does not purport to create a private right of action). In a Social Security case the Supreme Court has stated that "[g]eneral rules are essential if a fund of this magnitude is to be administered with a modicum of efficiency, even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano v. Jobst*, 434 U.S. 47, 53 (1977).

54. For example, an individual who developed the symptoms of a slowly debilitating disease while insured, but who simply decided to quit working even though fully able to work and who subsequently became totally disabled more than twenty quarters after quitting work, would be eligible for benefits under the court's holding.

were dependent upon their earnings is most clearly evidenced by the court's flawed analogy between the operation of workers' compensation and Social Security disability insurance. Although the court noted that both workers' compensation and disability benefits "operate to protect workers from loss of income due to disability,"⁵⁵ it failed to delineate adequately the differences in the purposes of the two programs.⁵⁶ Workers' compensation is based on a form of strict tort liability,⁵⁷ whereby injured workers are compensated for work related injuries.⁵⁸ Because individuals are compensated by virtue of their injuries, regardless of the length of time they have worked, there is no earnings requirement analogous to that for Social Security disability benefits. Latent injuries, if work related, are compensable. The statute of limitations for filing a worker's compensation claim does not begin to run until a disability becomes evident;⁵⁹ thus, a worker may receive benefits

55. 493 F. Supp. at 1057 n.1. Only some workers' compensation statutes operate in this manner, however. Basically, workers' compensation benefits are based on one of two theories: the "earning impairment theory" or the "physical impairment theory." 2 A. LARSON, *supra* note 29, at § 57.14(a) (1980). Under the former theory, benefits are based on either actual or presumed loss of earning capacity. Under the latter theory, benefits are based on a schedule that takes into account only the type of injury sustained. Only under the "earning impairment theory" can a workers' compensation law be said to operate to protect workers from loss of income due to disability. Nevertheless, the fact remains that the rationale for the existence of each program is fundamentally different and, therefore, any argument the court made by analogy is unpersuasive. In addition, the actual functioning of the two programs differs dramatically. See R. DIXON, *supra* note 38, at 115-29.

56. See R. DIXON, *supra* note 38, at 115-29; 1 A. LARSON, *supra* note 29, § 3 (1978); Abraham & Wolkstein, *Workmen's Compensation and the Social Security Disability Program: A Contrast*, 16 VAND. L. REV. 1055 (1963).

57. Even the *Cassel* court recognized this. See 493 F. Supp. at 1057 n.1. The theory underlying workers' compensation statutes is that the cost of industrial accidents should be passed on to the consumer. W. PROSSER, HANDBOOK ON THE LAW OF TORTS § 80 (4th ed. 1971). As a substitute for common law tort actions, workers' compensation is a compromise by which workers accept limited compensation, usually less than the estimate that a jury might place upon their damages, in return for extended liability of the employer and an assurance that they will be paid. Accordingly, even though their damages are partly not compensated under the workers' compensation statute, workers have no cause of action based on the negligence of their employers. *Id.*; see *United States v. Demko*, 385 U.S. 149, 151 (1966). For a discussion of the contrast between workers' compensation and tort law, see 1 A. LARSON, *supra* note 29, § 2 (1978).

58. See *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 171-72 (1972); *United States v. Demko*, 385 U.S. 149, 151 (1966); J. CHELIUS, *WORKPLACE SAFETY AND HEALTH* 17-23 (1977). See generally J. TURNBULL, C. WILLIAMS, JR., & E. CHEIT, *ECONOMIC AND SOCIAL SECURITY* 297-331 (4th ed. 1973); Abraham & Wolkstein, *supra* note 56, at 1065-66.

59. See note 29 *supra* and accompanying text.

for a late-developing disability by demonstrating that it is work related. Private insurers, who operate the system, maintain the balance between premiums and payments through the payment of claims only to those able to prove work related injuries.⁶⁰

Underlying Social Security disability insurance, however, is the concept of public insurance. This insurance concept requires that an individual earn coverage by working for a specific period of time, and protects those who are insured from loss of earnings due to disability. In contrast to workers' compensation, disability insurance is financed without regard to risk through Social Security taxes.⁶¹ The government controls the balance of premiums and payments, not through ratemaking based upon risk and causation, but through broad tax adjustments and limitations on the extent to which claimants can receive benefits after their payments of "premium" have stopped. Obviously, these limitations must be fashioned to accomplish the purposes of the Act. In the case of disability insurance, one stated purpose is to provide benefits to the disabled who were dependent upon their earnings; the limitation to accomplish this purpose is the twenty-out-of-forty-quarters requirement. The Social Security disability insurance program has no statute of limitations provision similar to that in workers' compensation statutes. Such a provision is inappropriate for a program in which eligibility is based on the claimant's insured status and not on the nature of the claimant's injury. These fundamental differences in the purposes of

60. See 1 A. LARSON, *supra* note 29, § 3 (1978).

61. A major distinction between private and public insurance is the method each uses to determine actuarial soundness. This distinction was described in the House of Representatives report that accompanied the 1958 amendments as follows:

Thus, the concept of "unfunded accrued liability" does not by any means have the same significance for a [public] insurance system as it does for a plan established under private insurance principles. In a private insurance program, the insurance company or other administering institution must have sufficient funds on hand so that if operations are terminated, the plan will be in a position to pay off all the accrued liabilities. This, however, is not a necessary basis for a national compulsory social insurance system. It can reasonably be presumed that under Government auspices such a system will continue indefinitely into the future. The test of financial soundness then is not a question of sufficient funds on hand to pay off all accrued liabilities. Rather the test is whether the expected future income from tax contributions and from interest on invested assets will be sufficient to meet anticipated expenditures for benefits and administrative costs. Thus, it is quite proper to count both on receiving contributions from new entrants to the system in the future and on paying benefits to this group.

H.R. REP. NO. 2288, 85th Cong., 2d Sess. 26 (1958).

the two programs and the means by which these purposes are achieved preclude using an analogy to workers' compensation as justification for awarding disability insurance benefits to a class of individuals not covered by the express terms of the Act.

Although the *Cassel* court usurped legislative authority in holding that latently disabled individuals are entitled to disability insurance benefits, the court correctly identified an inherent unfairness of the current twenty-out-of-forty-quarters requirement.⁶² Critics of expanding Social Security coverage can legitimately argue that any expansion is unwarranted because of the Act's long history of financial difficulties,⁶³ but Congress should consider any reform proposal that can more nearly accomplish the goals of the Act without increasing the financial pressure on the system.

One possible solution⁶⁴ to the problem would be for Con-

62. The *Cassel* court described this unfairness as follows:

It would be both senseless and insensitive to find that a worker who contributes his or her share of earnings into the social security fund, and suffers a latent disability while doing so, cannot collect from that same fund merely because of the peculiar nature, evolution, or timing of the disability.

493 F. Supp. at 1058.

63. See, e.g., Swardson, *Silver Threads, but no Gold, Maybe*, N.Y. Times, Sept. 12, 1980, at 23, col. 2.

64. There are many additional solutions that could be considered, but all present greater difficulties than do those discussed in the text. One possible solution would be a judicial determination on a case-by-case basis of whether the claimant in fact satisfies the purposes of the Act. This proposal would extend coverage to additional claimants without eliminating the coverage to those whom Congress did not intend to benefit—individuals who voluntarily retire and are not dependent on their earnings but become totally disabled during their retirement period. Such a judicial solution would increase financial pressure on the Social Security system, but would not significantly aid in achieving the Act's purposes.

Another solution would be to create a statutory presumption of disability. For example, if an individual became disabled as a result of nontraumatic illness within a certain number of years after the expiration of his or her insured status, the individual would be eligible for benefits if he or she otherwise qualifies. Even though this solution requires that the disability result from a nontraumatic event (i.e., a slowly debilitating disease) the second objective of the Act would be violated in many instances because individuals who voluntarily quit working would be eligible for benefits. In addition to being overinclusive, this solution would be underinclusive in that some individuals with progressive disabilities who did not become disabled until after the expiration of the statutory presumption would be denied benefits even though the objectives of the Act mandate that they should receive benefits.

A third solution would be to change the insurance requirement. This could be done in either of two ways. First, a permanent insurance provision could be enacted whereby an individual would always have insured status after earning a given number of quarters of coverage. See Haviland & Glomb, *supra* note 15, at 135. This solution would violate the second objective of the Act, however.

gress to adopt the *Cassel* court's approach by amending the Act so that an applicant would be eligible for benefits if he or she established that the disability's onset occurred during a covered period even though the applicant's coverage has since lapsed. Although this solution may effectively allow coverage for applicants suffering from a latent disability, it clearly goes beyond Congress' intention to limit coverage to those who have made a substantial contribution to the work force and are dependent on their earnings.⁶⁵ Applicants who have been voluntarily unemployed for many years could still qualify for benefits under this proposal. In addition, the number of potential beneficiaries could increase substantially, which would threaten the system's ability to remain self-supporting.⁶⁶ Allowing a claimant to establish the onset of a disability also presents proof problems: years later it will be extremely difficult to determine the exact date of a disability's origin.⁶⁷ A case-by-case determination of whether an individual's disability had its onset within a covered period would also prove administratively burdensome.

A better solution, however, would be to modify both the present statutory presumption of dependency on earnings and the manner in which this presumption is applied. This proposal would better achieve congressional purposes without substantially increasing administrative costs. First, a "waiver of premium" principle,⁶⁸ such as that already used in determining fully insured status for Social Security retirement benefits under section 202(a)⁶⁹ of the Act, should be adopted. Under section 202(a), the time during which an individual is disabled

An individual, after acquiring permanent insurance status, could voluntarily stop working and still be eligible for benefits. Second, the recency of work or twenty-out-of-forty-quarters requirement could be changed. For example, a person would be insured if he or she had earned one quarter of coverage for every two elapsed quarters since he or she earned his or her first quarter of coverage, provided that at least twenty quarters of coverage had been earned. This would violate neither the first nor the second objective of the Act, but would not completely solve the problem. This solution would, however, probably alleviate some of the inequities of the present system, and would be easy to administer.

65. See notes 36-37 *supra* and accompanying text.

66. See note 36 *supra* and accompanying text.

67. See, e.g., R. DIXON, *supra* note 38, at 63-92.

68. Two commentators who studied the effects of the Social Security disability insurance program on low income claimants in Appalachia suggested, but did not elaborate upon, this approach. See Haviland & Glomb, *supra* note 15, at 135.

69. 42 U.S.C. § 402(a) (1976). An individual is entitled to old-age insurance benefits if, among other things, he or she is fully insured. 42 U.S.C. § 402(a) (1976). The Social Security Act defines a fully insured individual as:

is not included in the calculation of the number of years in which an individual must have earned at least one quarter of coverage to be eligible for retirement benefits.⁷⁰ Similarly, when an individual is involuntarily unemployed and therefore unable to earn quarters of coverage, the period of time he or she is unemployed should not count as part of the forty quarters in the present twenty-out-of-forty-quarters requirement.⁷¹ This "waiver of premium" approach is consistent with both objectives of the Act. It ensures that only those who have made a significant contribution to the system will be awarded benefits because only those who have earned at least twenty quarters of coverage will be eligible for benefits. In addition, this approach results in a more accurate identification of those individuals who are probably dependent on their earnings.

The incorporation of this concept into the Social Security disability program should not be too administratively burdensome. A claimant would have to prove that he or she was involuntarily unemployed during a particular quarter for that quarter to be exempted from the forty-quarter period. For example, an able worker who is unable to find employment because of a slump in the economy, technological obsolescence, or refusal of employers to hire him or her because of partial disability would be permitted to prove involuntary unemployment in the same ways that inability to obtain employment is proved for qualification for unemployment benefits.⁷² An indi-

any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year . . . in which he attained age 62

. . . .
not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 416(i) of this title).

Id. § 414(a).

70. See note 47 *supra*.

71. See Haviland & Glomb, *supra* note 15, at 135.

72. For a quarter to be exempted under this plan an individual would not have to actually qualify for unemployment benefits, although he or she may, but rather an individual must meet certain of the eligibility criteria for receiving unemployment benefits. Although each state has its own unemployment program, these programs have similar criteria for determining eligibility for unemployment benefits. For example, among other things, all states require that an unemployed worker file a claim for benefits, [1976] 1B UNEMPL. INS. REP. (CCH) ¶ 1945, that the worker register for work and thereafter continue to report at such times as the administrative agency may require, *id.* ¶ 1940, and that the worker be able to work and be available for work, *id.* ¶ 1950. In addition, all states will disqualify an individual for benefits either permanently or temporarily if the individual refuses suitable work, *id.* ¶ 1965, has been discharged for misconduct, *id.* ¶ 1970, left work voluntarily without good cause, *id.*

vidual who became involuntarily unemployed because of recurring illness would be permitted to prove involuntary unemployment for one quarter, in the same way that he or she would prove disability for twelve months for the purpose of receiving disability insurance benefits.⁷³ The "waiver of premium" approach would thus eliminate many of the arbitrary distinctions in the present system.

Because the "waiver of premium" approach will give benefits to additional individuals, however, the twenty-out-of-forty-quarters requirement should be modified to exclude, as much as possible, any individuals whom Congress did not intend to benefit. A decrease in coverage is essential to the Social Security system's financial health, and would better reflect Congress' concern that a claimant be dependent upon his or her earnings. Thus, people who voluntarily retire for several years before becoming disabled should be excluded from benefits since they are unlikely to be dependent on their earnings. Congress may want to retain some provision for allowing short periods of voluntary unemployment without loss of disability coverage, however, to encourage people to obtain additional training or to provide brief unemployment periods for female workers who become pregnant.⁷⁴ Both groups of individuals are arguably more dependent on their earnings than those individuals presently covered who become disabled five years after voluntarily retiring. In addition, Congress may want to make some allowance for the difficulty of establishing the precise date of disability.⁷⁵ Under the "waiver of premium" approach, a few claimants may still have difficulty establishing a quarter of disability even though they were prevented from working because of illness. Replacing the present requirement with a twenty-out-of-thirty-quarters requirement would eliminate coverage for individuals that Congress did not intend to benefit and would still ensure some flexibility without loss of disability coverage for individuals dependent upon their earnings.

¶ 1975, or is unemployed due to a stoppage of work that exists because of a labor dispute, *id.* ¶ 1980. Since the above information is routinely gathered by all state agencies, it should not be too burdensome to determine when an individual has been involuntarily unemployed for a quarter. For an individual to have a quarter exempted, he or she would have to register for work at the appropriate state unemployment agency, be able to work and available for work, and not be unemployed as a result of a disqualifying factor. When an individual had satisfied these requirements, the appropriate entry would be made on his or her earnings record.

73. See note 13 *supra* and accompanying text.

74. See text accompanying note 48 *supra*.

75. See R. DIXON, *supra* note 38, at 63-92.

In the final analysis, although the *Cassel* court did usurp legislative authority in allowing a blanket award of benefits to a latently disabled individual, the court appears to be the first to address specifically the problems presented by the Social Security system's treatment of such disabilities. The *Cassel* court is correct in noting the hardship caused by denying benefits to latently disabled individuals and in noting the failure of the Act to accomplish fully its purposes. Nevertheless, the legislative history of the Act clearly indicates that the court was incorrect in assuming both that Congress never considered the issue of latent disability and that if it had it would have acted as the court did. Congress clearly decided not to give disability coverage to all latently disabled individuals. In addition, the court failed to consider the increased financial burdens its decision would have on the Social Security system itself. By extending coverage without a corresponding decrease in coverage, the court undermined Congress' goal of keeping the system self-supporting. Moreover, because the *Cassel* court's solution for the problem of disability coverage is judicially imposed, it is subject to modification by other courts, which will make predictions of financial requirements even more difficult.

The two modifications of the Act suggested above would solve many of the problems raised by the *Cassel* decision. The "waiver of premium" approach would expand coverage to those not presently covered but within the category of individuals Congress intended to benefit. The twenty-out-of-thirty-quarters modification would decrease the coverage of individuals Congress did not intend to benefit, but would preserve some flexibility of coverage. The *Cassel* court and others might argue that these modifications do not go far enough in extending insurance benefits to latently disabled individuals, but until and unless Congress decides to transform the current disability insurance program into a more general welfare program, these modifications would appear to be satisfactory means to relate more fully the operation of the disability insurance program to its purposes.