

The Social Contract Revisited

Disability Benefit Reform and the Contract for Income Support

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Executive Summary

■ Disability benefit programmes around the world have experienced exceptional growth over the past thirty years or so, resulting in record numbers of persons receiving disability benefits and dramatically higher levels of expenditures. Equally problematic are chronically low 'outflow' levels, since very few persons receiving disability benefits ever return to work.

■ Social security institutions have responded with a slew of disability benefit 'reform' measures aimed at stemming the rise in numbers and cost. Overall, these reforms seek to recast the relationship between disability benefit schemes and the labour market by placing greater emphasis on the employment opportunities and responsibilities of persons with disabilities as a way of tempering society's obligation to provide them income support.

■ There are a number of relatively narrow reforms that have appeared widely and regularly since the 1980s that might qualify individually as trends. These include: reforms aimed at redefining disability and periodic review of eligibility; reforms aimed at medical and vocational rehabilitation, job training, and work-related supportive services; and reforms aimed at incentives and disincentives to work resumption.

■ Two competing models of disability share influence in this area: the 'medical model' and the 'social model'. The 'medical model' conceptualizes

disability as a physical or mental condition that inheres in the body of the disabled person.

The 'social model' defines disability as resulting from an interaction between a person's physical or mental characteristics and an inaccessible or inhospitable physical or social environment.

A coherent set of social model-based disability policies can help frame a contract for income support for persons with disabilities.

■ The challenge is to develop disability benefit policy that maximizes the benefits of supporting self sufficiency and autonomy, while also providing a basic income to those who are truly unable to work. The policy thrust of most recent disability benefit reform measures is to concentrate on building up one's capacity to work – to 'equalize' persons with disabilities as much as possible – rather than to set them aside by providing income support.

■ The correct measure of disability benefit reform is whether it serves to integrate persons with disability into the workforce and encourage their employment (that is, target those who might under past policy have fallen too easily into a lifetime of disability-earned compensation) – yet also maintain a stigma-free, community-supported safety net to catch those who are truly unable to work.

Disability Benefit Reform and the Contract for Income Support

Introduction

Disability has been included among the bases of eligibility for social security income support benefits since the first social security laws were promulgated in Germany in the 1890s. Although some countries delayed including disability benefits until some years after old age and unemployment benefits were put in place, today most social security schemes include some sort of disability coverage as well.¹

Disability benefits programmes are driven by a generally acknowledged exception to every individual's social obligation to work. Because the justification for supporting persons with disabilities is that they cannot work, disability benefit programmes have always incorporated a disability definition linked in some way to work capacity that conditions eligibility on proof of inability to work. The same is true for other work-related conditions and requirements found in most disability benefit schemes.

There are nonetheless significant differences in the details of how these programmes are administered. Some programmes are more aligned with disability policy that focuses on disability rights leading to full integration (with anti-discrimination laws as the centrepiece), while others favour policies that emphasize maintenance and compensation (with income support benefits as the primary concern).

Many social security institutions are in the process of reforming their disability benefit programmes in an effort to reduce historically high numbers of beneficiaries on the rolls. This brief will discuss the causes of this high recipient rate and will describe current disability

benefit reform measures aimed at addressing the problem. It will then explore the policy reasons behind these different reform measures and examine how different types of reform measures might best address those policy concerns. The manner in which these reform measures are implemented can be critical if they are to achieve their policy goals of greater integration rather than simply reduce benefit rolls.

The nature of the problem

Disability benefit programmes around the world have experienced exceptional growth over the past thirty years or so, resulting in record numbers of persons receiving disability benefits and dramatically higher levels of expenditures. Among the Organisation for Economic Co-operation and Development (OECD) countries, for example, the median percentage of persons in the working age population receiving disability benefits in 1999 was about 5 per cent, with the top five countries at between just under 8 and just over 13 per cent.² The more dramatic figures come from particular countries. In the Netherlands, for example, its 2000 level of 9 per cent of the working age population receiving disability benefits compared to about 3.5 per cent in 1970.³ In Poland, the number of disability pensioners increased by 31 per cent between 1990 and 1995.⁴ In the United States, the number of disabled workers receiving social security disability insurance benefits more than doubled between 1990 and 2005.⁵

1. US Social Security Administration, *Social Security Programs Throughout the World* (Africa 2007 edition, The Americas 2005 edition, Asia and the Pacific 2006 edition, Europe 2006 edition).

2. OECD (2003) *Transforming Disability into Ability*.

3. OECD (2004) *Economic Survey of the Netherlands 2004: Reform of the Sickness and Disability Benefit Schemes*.

4. Elaine, F. (2002) 'A Comparative Overview of Disability Pension Reforms in the Czech Republic, Estonia, and Poland'. In: E. Fultz and M. Ruck (eds.) *Reforming Worker Protections: Disability Pensions in Transition*. Geneva: ILO.

5. Social Security Administration, *Annual Statistical Supplement*, 2006

Equally problematic are chronically low 'outflow' levels, since very few persons receiving disability benefits ever return to work. Again, among OECD countries and with the exception of the Netherlands and the United Kingdom, return-to-work rates are at about one per cent or less. As a result, even with a decrease – or a slowing of increases – in 'inflow' of new beneficiaries, the number of persons on the rolls is destined to remain high.

The problem has been described as a sort of 'perfect storm' resulting from the relative attractiveness to policymakers and politicians of placing persons on disability benefits, as compared to unemployment or pre-retirement; a large percentage of difficult-to-evaluate, yet difficult to deny conditions (particularly mental illness and lower back pain); and limited opportunities and incentives to return to work. Thus, 'we find almost everywhere trends towards inclusion of ever-broader limitations as constituting inability to work; and ever-shrinking probability to get off the rolls once an invalidity status has been granted'.⁶

Recent reform measures

While the impetus behind most current disability benefit reform is the belief that the programmes have spun out of control, the sentiment is not that they are no longer needed. Rather, it is felt that they have been ill structured and mismanaged to the point that they do not achieve relevant social policy goals. Some policymakers would go further and say that many of these programmes have become counterproductive, in the sense that they exacerbate the very social problems they were designed originally to solve.

Social security institutions have responded with a slew of disability benefit 'reform' measures aimed at stemming the rise in numbers and cost. These reforms reflect serious concerns with the criteria for entry (definition of disability), conditions

for continued receipt (rehabilitation and training), and unlikelihood of exit (work incentives and disincentives), all of which may signal failures in current disability benefit work-related policies.

Some reform measures are directed at particular aspects of the relevant scheme where change can have an immediate effect, such as reducing (or curbing increases of) the amount of benefits or tightening the process for determining eligibility. Others address broader issues with longer term implications, such as the definition of disability or the influence of demographic changes. Overall, these reforms seek to recast the relationship between disability benefit programmes and the labour market by placing greater emphasis on the employment opportunities and responsibilities of persons with disabilities as a way of tempering society's obligation to provide them income support.

Current trends in disability benefit reforms

Current trends in disability benefit reforms can be classified along two tracks. First, there are a number of relatively narrow reforms that have appeared widely and regularly since the 1980s that might qualify individually as trends. Second, and more importantly for the purposes of this brief, most of these reforms can be characterized in terms of a single overarching trend that not only serves to explain the general direction of current disability benefit reform but also helps put most of the individual reforms in their most meaningful context.

As one might expect, the most common reform measures fit into one of the three areas of concern mentioned earlier: entry into the system, continued receipt of benefits, and exit to the labour market. The main problem at entry is the definition of disability for purposes of establishing eligibility for benefits. Most reforms along this line seek to change the definition in ways that will more properly distinguish between those persons truly in need of income support and those who are capable of supporting themselves. Others look to enforce the disability criterion over time by implementing more rigorous procedures for reviewing continuing

6. Marin, B. (2003) 'Transforming Disability Policy. Completing A Paradigm Shift'. In: C. Prinz (ed.) *European Disability Pension Policies*, p. 25. Aldershot: Ashgate Publishing.

eligibility. Problems around continued receipt of benefits focus on conditions or requirements of ongoing eligibility. Reforms at this stage concentrate on medical and vocational rehabilitation, job training, and other employment-related services. The problem at the exit stage is that, to all intents and purposes, there is none. Reform efforts aimed at getting beneficiaries off the rolls attempt to follow up on rehabilitation and training by increasing incentives and minimizing disincentives to return to work.

Redefining disability and periodic review

Disability is defined typically in medical-vocational terms, with the goal of targeting persons who are unable to work. The task of deciding who is disabled is framed by a commonly drawn distinction between impairment and functional loss, consistent with long-standing international practice.⁷ Eligibility for benefits is based first on proof of a physical or mental impairment (typically on the basis of medical criteria), followed by a showing of a certain degree of functional loss (typically measured against the capacity to perform employment-related activity). The functional limitation requirement ties eligibility to work incapacity.

One obvious way to reduce the number of persons receiving disability benefits is to narrow the definition of disability used to decide eligibility. Since not much can be done to tighten the medical impairment requirement (any qualifying disability must result from an underlying physical or mental impairment), efforts to control findings of impairment tend to focus on process. Thus, some programmes that used to rely exclusively on simple declarations by a worker's physician now require fuller evaluation and more extensive documentation. Others have instituted new internal procedures intended to make the disability claims and administrative appeals process more accurate and efficient. These types of reforms, unlike those that

would narrow medical eligibility standards, should not necessarily reduce the number of beneficiaries. The aim is to reach more accurate decisions by introducing greater control over the disability determination process, not to deter possible applicants with cumbersome administrative requirements.

The required amount of functional loss is the more flexible component of the disability definition. Standards for measuring functional loss vary according to vocational benchmark (inability to do either any type of work within one's vocational capacity or one's usual or customary work), degree (full vs. partial), and length of time (short-term, long-term, permanent). Most reforms aimed at the definition of disability focus on these types of measures of functional capacity. A number of countries have opted for a stricter 'inability to do any type of work' measure as opposed to the more lenient inability to do one's usual or customary work. Another choice, less clear as a policy matter, is whether to provide benefits for partial and short-term disability or only for permanent and full disability. Although limiting eligibility to persons with full and permanent disability is the 'stricter' choice, persons who receive partial benefits are far more likely to return to work, while a full benefit restriction can have the perverse effect of discouraging persons once on the rolls from ever leaving.

Recognizing that disability is not necessarily a static condition, disability benefit schemes anticipate some form of periodic review of beneficiaries in order to assure continuing eligibility. Although laws and regulations typically require beneficiaries to report any changes in their medical condition, for the most part these provisions are not effective. A number of countries are now undertaking these reviews more seriously, prompted in part by advancements in medical technology that raise the likelihood of significant increases in beneficiaries' functional capacities.

Rehabilitation, job training, and work-related supportive services

Links between disability benefits and rehabilitation services are surprisingly weak, and the use of

7. World Health Organization (1980) International Classification of Impairment, Disability and Handicaps. A more recent WHO classification reflects a less medically centered view of disability with a greater role for environmental and social factors. World Health Organization (2001) International Classification of Functioning and Disability (ICFD).

rehabilitation services by disability benefit programmes is very limited. The same is true, although to a lesser extent, with respect to job training and various other work-related supportive services. One reason for this lack of coordination is that in many countries benefit payments and support services are provided through different agencies. Some countries are structurally addressing the ensuing coordination problems by moving toward more unitary administration of social security and related benefits and services.

Many reforms aimed at return-to-work are directed at beneficiaries, either requiring them to engage in various types of rehabilitation and other work-related services or encouraging them to do so with various incentives and sanctions. Some also target employers and possible future claimants by taking into account shifts in labour market needs and opportunities resulting from increasingly applicable anti-discrimination laws. One approach is to strengthen laws mandating early intervention and re-employment of workers with disabilities, together with a programme of wage subsidies. These types of schemes, including subsidies, are put in place to ensure that benefits are awarded only after all possible means of obtaining employment, including flexible working arrangements, are precluded. In addition, there is also a 'reverse' strategy of relaxing protective labour laws, such as the minimum wage, to encourage employers to hire disabled individuals.

Incentives to work resumption

A number of countries are returning to the basics: increasing incentives and minimizing disincentives to return to work. While some disability benefit schemes at one time effectively reduced return-to-work incentives to zero by coupling a package of benefits that no one would refuse with an absence of reciprocal conditions, this has not been the case for some time. Still, the degree to which incentives outpaced disincentives has varied considerably. Current reform measures aim at shifting these measures so that incentives dominate, using various combinations of reduced benefit amounts, earnings offsets, as well as conditions that include sanctions such as loss or reduction of benefits and loss or addition of ancillary benefits.

The common thread: from compensation toward integration

The clear common thread in current disability reform is a shift in priorities away from providing income support toward supporting initiatives aimed at keeping people with disabilities in (and returning disability benefit recipients to) work. Data compiled by the OECD in its 2003 report, *Transforming Disability into Ability*, confirm this observation. The report developed a typology consisting of two policy dimensions – compensation and integration – to analyze recent trends in disability benefit schemes in OECD countries. Each dimension included a number of subdimensions to measure relevant qualities of various country schemes. Thus, the compensation policy subdimensions included coverage, qualifying disability levels, types of medical and vocational assessments; the integration policy subdimensions included various employment services, employer responsibilities, availability and timing of rehabilitation, and various work incentives. It then applied the typology as a tool for a comparative analysis of disability benefit policy reform between 1985 and 2000.

The data show a clear shift in the majority of OECD countries from compensation-oriented disability benefit policies in 1985 toward integration-oriented policy by 2000. Specifically, the report documented policy reform trends aimed at increasing integration, such as the introduction of anti-discrimination laws, increases in employer responsibilities relative to the retention and hiring of workers with disabilities, promotion of one-stop service centres, and the introduction of various work incentives; coupled with trends aimed at curtailing (or at least slowing the growth of) compensation, including increased regulation and standardization of medical assessment procedures, the tightening or elimination of disability measures based on 'own' as opposed to 'any' employment, granting of temporary benefits, and the reduction of benefit amounts. The fifteen-year period was characterized overall as one of 'strong expansion of employment-related integration measures, with some contraction of compensatory transfers'.⁸

8. OECD (2003), p. 141.

Disability policy framework

This trend from compensation toward integration policy – seen both in the common disability benefit programme reforms listed above and those reported in the 2003 OECD report – is part of a broader social policy trend toward emphasizing the importance of individuals' employment opportunities and responsibilities over society's obligation to provide income support. This trend is still in the making and there remain many options for implementing specific reforms. Social security institutions can be guided in this process by looking more closely at the social contract underpinnings of disability benefit programmes.

Two models for disability policy

Today's social security laws are a form of modern social contract. The social contract underpinnings of social security can be seen most easily with respect to old age retirement benefits, which are awarded only at a certain age and after a life of productive work. The argument is more difficult with respect to disability benefit programmes, which are designed not to reward a life of contribution to society but rather to respond to the need to adjust society's expectations in the case of persons unable to complete a lifetime of work. Consequently, persons with disabilities are seen as excluded from the social contract theory's conception of justice because they are dependent upon and thus unequal to the dominant contracting group.⁹

Two competing models of disability share influence in this area. Most disability policy draws on one or both of two dominant models of disability: the 'medical model' and the 'social model'. The 'medical model' conceptualizes disability as a physical or mental condition that inheres in the body of the disabled person. The 'social model' defines disability as resulting from an interaction between a person's physical or mental characteristics and an inaccessible or inhospitable physical or social environment. Under this model, society disables individuals by not

accommodating their needs, such as ramps for those who cannot walk. The relatively objective nature of the medical model makes it appealing with respect to the distribution of benefits; disability can be verified, measured, and matched with applicable eligibility criteria. The social model, with its focus on society's failure to accommodate individuals' special needs, is used most often to support anti-discrimination policy and the disability rights movement.

A coherent set of social model-based disability policies can help frame a contract for income support for persons with disabilities. Anti-discrimination legislation provides the necessary framework for individuals with disabilities to contribute by removing social barriers to capacity. In the same vein, disability benefit reforms should seek to transform persons with disabilities from 'outsiders' into equal contributors to the welfare state. Of course, persons with disabilities must be given the opportunity to compete on an equal basis (or at least at a reasonably productive level), which requires a range of services and benefits that will depend on the individual's circumstances. The challenge is to develop disability benefit policy that maximizes the benefits of supporting self-sufficiency and autonomy, while also providing a basic income to those who are truly unable to work. There will also be difficult policy choices with respect to individuals for whom the cost of accommodation will outweigh the benefit society gains from the work they can do.

Disability benefit reform and the contract for income support

Disability benefit reform's emphasis on integration over compensation can guide social security toward a contract for income support for persons with disabilities consistent with the needs of the modern welfare state. Bringing disability benefit programmes in line with this policy shift is particularly important as societies' social expectations change. Traditionally, countries in Europe have adopted a generous view of their social obligations toward their citizens compared to that of the United States. However, in recent years the nature of the social

9. Nussbaum, M. C. (2006) *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Belknap Press.

contract has changed in both Europe and the United States toward retrenchment rather than expansion, with many policymakers convinced that the welfare state is a burden on economic growth which inhibits full employment.

The policy thrust of most recent disability benefit reform measures is to concentrate on building up one's capacity to work, to 'equalize' persons with disabilities as much as possible, rather than to set them aside by providing income support. This echoes the concerns of social contract theory, and can be summarized as follows: persons with disabilities should be expected, to the maximum extent possible, to fulfil their societal obligation to work; to make that possible, society's primary obligation to any person needing a disability benefit is to help reduce that need.

Current disability benefit reforms are also influenced by the two current models of disability, neither of which is adequate on its own. The medical model is too rigid, often employing a definition of disability which is ultimately unhelpful to those seeking assistance. It also reinforces the belief that people with disabilities are different from able-bodied individuals and should be treated differently. The social model, on the other hand, does not take due account of the real physical and mental impairments that can limit an individual's capacity to work and place an undue burden on employers to accommodate people with disabilities.

Conclusion

Recent shifts in disability benefit policy toward integration over compensation have been motivated by the twin failures of disability benefit programmes to curtail what is seen as unjustifiably high volume of inflow (persons found to be 'disabled') and an unacceptably low rate of outflow (beneficiaries returning to work). An examination of recent reforms designed to curb, if not reverse, the growth of disability benefit programmes reveals that virtually all significant programme changes reflect this policy shift.

No one can argue with this policy preference for integration and self-sufficiency over isolation and loss of independence. The problem is that such a shift in policy can lead to benefit programme reforms, but the resulting programme changes will not necessarily achieve the new policy's social goals. Indeed, it is the consequences of compensation-oriented disability benefit policies that have been blamed for past disability benefit programme failures, more than the aspiration of those policies. The success of current disability benefit reform depends, therefore, on two things: avoiding perverse and unintended consequences, and the realization of long-term aspirations.

There are significant perverse and unintended consequences that could flow from some of the most common current disability benefit reforms. Persons with no real options for work can be classified as 'not disabled' by measuring their work capacity against imaginary or impossible-to-obtain jobs; low benefit levels can result in impacted poverty where incentives are not the issue; rehabilitation and other work-oriented services can become excuses to abandon non-participants, rather than targeted opportunities.

The key to avoid such perverse and unintended consequences is to focus on long-term aspirations. The fundamental long-term aspiration of current disability reform is, in essence, to bring 'outsider' persons with disabilities into the common social enterprise. In other words, to equip everyone with the means to function at a level that respects their mutual obligations under the modern welfare state's social contract. The correct measure of disability benefit reform is whether it serves to integrate persons with disability into the workforce and encourage their employment (that is, target those who might under past policy have fallen too easily into a lifetime of disability-earned compensation) – yet also maintain a stigma-free, community-supported safety net to catch those who are truly unable to work.

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