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FROM  
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## Suit Alleges Bias in Disability Denials by Queens Judges

By SAM DOLNICK

The Queens office that hears appeals of Social Security disability cases is well known to lawyers, judges and many other New Yorkers as an inhospitable place to seek benefits.

It has had the 10th-highest rejection rate among 166 offices across the country this fiscal year. Lawyers say many applicants have been reduced to tears by harsh questioning from the administrative law judges who hear the appeals; some lawyers have advised their clients to rent apartments or move to homeless shelters in other boroughs so they can plead their cases elsewhere.

And federal judges have rejected scores of the Queens rulings in recent years, complaining of legal errors, "combative" hearings and a tone that one court called "brusque, intemperate and unhelpful."

Now, a class-action lawsuit filed on Tuesday in Federal District Court in Brooklyn says that five of the eight Queens judges are not just difficult, but also biased against the applicants — many of whom are poor or immigrants — and have systematically denied benefits to the disabled by making legal and factual errors.

"They are not calling cases down the middle," said Jim Walden, a partner at the firm Gibson, Dunn & Crutcher, which is handling the suit pro bono, with the Urban Justice Center. "They are being extremely heavy-handed with some of the most vulnerable people you could ever meet."

The lawsuit names eight plaintiffs who were denied benefits, including a 50-year-old Guyanese man who says he has seizures and a muscular disease, and a 55-year-old woman with a long



The Queens office also ranked fifth in the nation for the percentage of its decisions that were sent back for rehearing in the 2007 fiscal year, according to an audit by the Social Security Administration's inspector general.

The agency's ranks of roughly 1,500 administrative law judges occupy an unusual position in the legal world. They are lawyers hired by the government; there are no limits to how long they can serve, and their hearings are closed to the public.

Their job is to hear appeals from people whose initial applications for Social Security benefits or Supplemental Security Income were denied. To qualify, applicants must be disabled and unable to support themselves.

D. Randall Frye, president of the Association of Administrative Law Judges, said that allegations of bias were generally sour grapes from clients who failed to receive benefits, and from lawyers who get paid only if they win. "If you represent a lot of clients and don't get paid, you're probably not going to be a happy camper," Mr. Frye said.

He added, however, that judges are under pressure to get through 500 to 700 cases a year, sometimes leading to cursory decisions. "With the pressure to do that large number of cases, they are sometimes not able to review all the evidence," he said. "There's certainly a chance you would make an incorrect decision."

Mr. Frye said the adversarial tone cited in the lawsuit was common in disability offices, and "part of the process."

But federal judges who have reviewed the Queens cases have disagreed. In remanding a 2005 case, Judge Dora L. Irizarry said the transcript offered "a study in combative questioning, which hampered the truth-seeking process."

In that case, Joan Ginsberg, who had worked for years as a freelance proofreader and copy editor, sought benefits after her doctor diagnosed chronic fatigue syndrome. But the Queens judge, Mr. Nisnewitz, said he was skeptical of the doctor's credentials and refused to speak with the physician, even though judges' responsibilities include contacting medical experts.

"I'm not going to call her," he said in the hearing. "I don't make calls. I don't do that."

One plaintiff in the class-action lawsuit, Dhanasar Raman — a native of Guyana who worked for 26 years in a factory that made machinery to produce zippers — says he cannot walk straight or sleep through the night. His neck involuntarily twists to the side because of cervical dystonia, he said, and he has seizures.

Judge Strauss denied him benefits, saying Mr. Raman was not credible because he had not sought physical therapy or narcotics for pain — even though his doctors did not prescribe them. “She disrespected me,” Mr. Raman said in an interview. “When you talk to her, she doesn’t want to hear anything.”

Mr. Raman’s lawyer, Ann Biddle, said that Queens administrative law judges often discriminated against the foreign-born, who make up roughly half of the borough’s population. Translators are provided at the hearings, but lawyers say the judges sometimes hold applicants’ limited English against them.

“There’s an inappropriate focus on the fact that they’re foreign-born and how they came to this country, and a real skepticism that they were able to survive without becoming fluent in English,” said Ms. Biddle, the deputy director of Queens Legal Services, which represents several of the plaintiffs but is not a party to the lawsuit.

The lawsuit said Judge Strauss made several errors in her ruling: She improperly discounted the treating physician’s conclusions and ignored the severity of Mr. Raman’s muscular problems.

The Queens judges “make the same legal and factual errors again and again,” Mr. Walden, the lawyer, said. “It is routine and systemic, and it shows you the fix is in.”

*Jo Craven McGinty contributed reporting.*