

The New York Times

## Suit Alleges Bias in Disability Denials by Queens Judges

By [SAM DOLNICK](#)

April 12, 2011



Dhanasar Raman, who has a muscular disease, is among the plaintiffs suing because their disability appeals were denied.

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 history of mental illness who has never held a job.

But the suit could also affect thousands of other Queens residents who have been denied benefits; it seeks to bar the five judges from hearing any more claims, and to annul all their decisions since 2005 to deny benefits.

“Queens is not just far and away the worst,” said Troy G. Rosasco, a disability lawyer who has argued cases for nearly two decades across the New York area, including hundreds in Queens, but is not involved with the lawsuit. “It would be the Social Security system’s Superfund site.”

At a time of budgetary crisis, the Social Security disability program, which paid \$172 billion last year, has attracted criticism nationwide from those who call its benefits too generous and urge the program to issue more denials. Yet in New York, the Queens lawsuit has drawn support from the city’s public advocate, [Bill de Blasio](#), who joined the lawsuit with a friend-of-the-court brief.

The office, Mr. de Blasio said, “appears to be a small and obscure part of government running amok.”

The five judges named in the suit are David Z. Nisnewitz, Michael D. Cofresi, Seymour Fier, Marilyn P. Hoppenfeld and Hazel C. Strauss. The [Social Security Administration](#) said that it could not comment on a pending lawsuit, and that the judges did not want to be interviewed.

Together, the five have rejected an average of 63 percent of the cases they have heard in the fiscal year that began in September, compared with a national average of 36 percent, according to an analysis of data by The New York Times.

The Queens office, in a federal building in the Jamaica section, had the nation’s third-highest rejection rate from 2005 to 2008, according to [a separate analysis](#) by The News Journal, a Delaware newspaper, that is cited in the lawsuit.

The Times’s analysis found that the rejection rate for the entire Queens office, 50.9 percent, was the highest in New York State, and far higher than in other New York City boroughs; in the current fiscal year, Manhattan has an average denial rate of 37 percent, the Bronx 33 percent, and Brooklyn 14.5 percent.

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.”

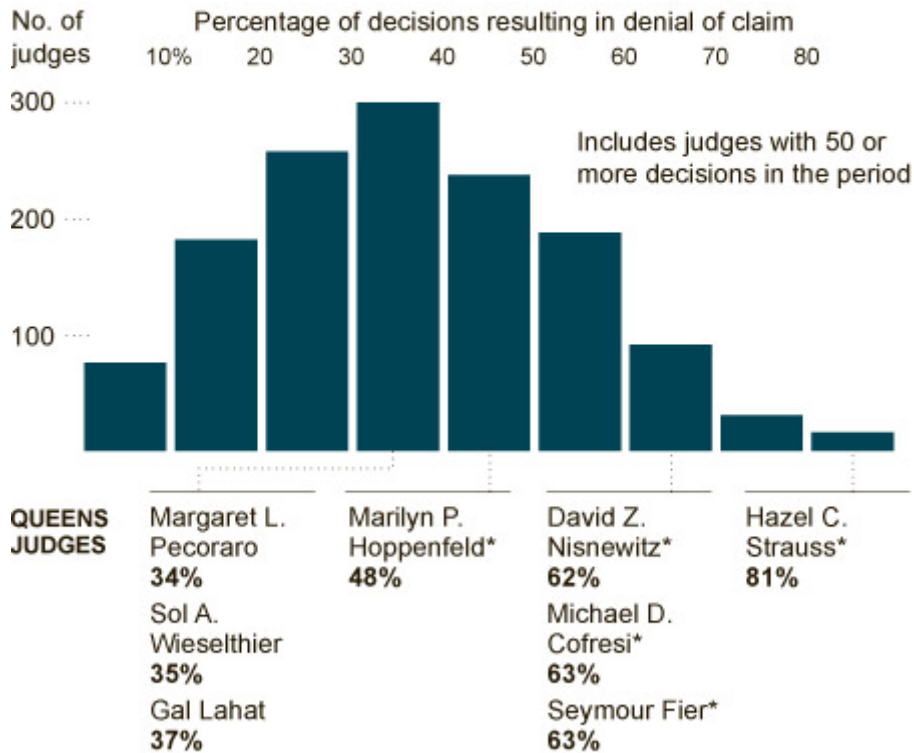
*Jo Craven McGinty contributed reporting.*

## Disability Claim Appeals

Some judges who hear appeals of Social Security benefit denials in Queens are among the most likely in the country to deny them.

### Distribution of administrative law judges nationwide by denial rate

Sept. 25, 2010 to Feb. 25, 2011, compared with Queens judges



\*Named in a class-action lawsuit

Source: Social Security Administration

THE NEW YORK TIMES