

Tangled in fraud probe, 100s face loss of disability checks



By BY CLAIRE GALOFARO - Associated Press

MINNIE, Ky. (AP) — Donna Dye saw the coal truck come barreling over the horizon and her head started spinning with that familiar, desperate urge to end it all.

She thought of the disconnect notices, the engagement ring she pawned to keep the lights on, the house she loved and would probably lose. Life insurance was the only bill that was up to date; this way, she thought, it might look like an accident.

Months had passed since the letter arrived from the Social Security Administration. "We are suspending your disability benefits," it had said.

She thought of her husband, a proud man with a body broken from 26 years mining coal, and the fights over money they never had — until now. "Fraud," the agency had written, and the humiliation consumed them.

She thought about veering across the yellow line and slamming head-on into that truck.

For more than a year, Dye's family and hundreds of others in the coalfields of Kentucky and West Virginia have been fighting the federal government to keep their Social Security Disability checks. They have one thing in common: They hired attorney Eric C. Conn, a flamboyant master marketer who billed himself "Mr. Social Security." For years he clogged the highways with neon yellow billboards promising to help people get what they deserved from the government.

Dye thought they could trust him.

Now federal officials allege he funneled \$600 million in fraudulent claims to this impoverished pocket of Appalachia, and the government has turned off the spigot. It suspended disability payments to hundreds of Conn's former clients, propelling them into an unprecedented, year-long battle with the federal government. They must prove once again that they deserved disability years ago.

If they lose, their checks stop and they are billed for tens of thousands of dollars they received over the years, money the government now believes they never deserved.

The government has good reason to ferret out disability fraud. Critics call it a secret welfare program that morphed over the decades from serving the truly disabled to aiding the unemployable: the uneducated, the frail, the unfortunates who live in places where a rotting economy relies on back-breaking labor. Burgeoning claims — in Floyd County, Kentucky, 15 percent are on disability — have pushed the disability fund to the brink of insolvency.

The government has squeezed other programs for the poor, leaving many in these crumbling corners of blue-collar America with few good options. The mass suspensions laid bare their absolute dependence on disability.

Three people have killed themselves. Others caught themselves in quiet moments wondering whether they'd be better off dead.

Donna Dye didn't crash her car into the coal truck. Instead, she pulled over to the shoulder of the road and sat for an hour, her temples pulsing with panic, her thoughts racing. Disability had been her family's safety net; now, she thought, there was nothing to save them from flailing toward impact.

"It's like sitting in a tub of water, floating, nothing's wrong," she said. "And then somebody pulls the cork, you get sucked out and everything's gone."

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Eric C. Conn opened his law practice 23 years ago in a trailer in his hometown of Stanville, Kentucky, population 500. There, he built the third most lucrative disability firm in the nation.

When the Dyes went looking for a lawyer in 2008, Conn was everywhere.

He paid young women he called "Conn's hotties" to attend events across the region with his 1-800 number printed across their tank tops. He erected a 19-foot replica of the Lincoln Memorial in the parking lot of his law complex at a cost, he claimed, of a half-million dollars. He commissioned life-sized Conn effigies to sit atop billboards on the highways; in an online ad, he bragged that he had sent a local boy with terminal cancer to Disney World, and closed with a preacher's benediction giving thanks to God for Conn's kindness.

Tim Dye hurt his back in the mines years ago and a car wreck in 2008 aggravated his injuries. He had surgery for ruptured discs and disintegrating cartilage. He resisted applying for disability, his wife said, until it got to where he couldn't push in the clutch in his truck or bend over to tie his shoes.

His application was denied.

About three-quarters of applicants' initial claims are rejected, and many turn to lawyers to help them appeal. That means big money for attorneys doing disability claims in bulk. If they win on appeal, applicants are entitled to payments dating back to when they became unable to work and lawyers get a chunk of that money, paid directly by the agency.

Conn racked in more than \$20 million in fees.

Media reports in 2011 questioned his relationship with government-employed Administrative Law Judge David Daugherty, who approved nearly all of Conn's clients for disability. In 2013, former U.S. Senator Tom Coburn, a Republican from Oklahoma, led an investigation into abuse of the disability program. He entitled his report, "How Some Legal, Medical and Judicial Professionals Abused Social Security Disability Programs for the Country's Most Vulnerable: A Case Study of the Conn Law Firm."

For 161 pages, it described an elaborate system in which Conn paid doctors and Daugherty to rubber-stamp disability claims, using phony medical evidence.

Years passed. Conn was not criminally charged, and he remained in good standing with the Kentucky Bar Association. Donna Dye says she and her husband were unaware of any improprieties — the Social Security Administration has acknowledged there's no evidence Conn's clients were involved in the scheme. The Dyes' took him their records, went to the appointments he arranged and trusted he

took care of the rest.

But in May 2015, 11 months before Conn was formally accused of any crime, the Social Security Administration contacted his clients. The letters said their lawyer was suspected of having colluded with a judge and their doctors to file claims using fraudulent medical evidence. It told them their benefits were suspended, and gave them 10 days to collect their medical records from years before and prove once again they had been disabled.

Local attorney Ned Pillersdorf's phone started ringing. He heard a hundred letters were sent out and panicked. Then he heard it was several hundred, then 900. Before the scope of the chaos settled into focus, a colleague made an ominous prediction.

"There will be suicides," he said.

Within weeks, three people took their own lives, including Melissa Jude, on disability for a decade for anxiety and depression. She was on her way to Pillersdorf's office when she pulled over to the side of the road and shot herself in the head.

The death toll startled Republican Congressman Hal Rogers, whose district includes the hardest-hit counties of eastern Kentucky. He convinced the Social Security Administration to allow Conn's clients to keep their checks as they struggled in a series of hearings to prove they deserved them all along. The Appalachian Research and Defense Fund, a legal aid organization in eastern Kentucky, grew so worried they recruited the largest network of volunteer attorneys since the aftermath of Hurricane Katrina.

Now led by Pillersdorf, the band of 150 lawyers — some of the best disability attorneys in the nation — has become a sort grassroots suicide prevention network. "We are fighting for you," they tell people over and over. "You are not alone against the government."

Still, at least once a week, Pillersdorf fields a suicide threat. They plead publicly on Facebook that they want to die. They call his office. They call his home.

"Why live?" Kevin Robertson wrote him.

Robertson, a 41-year old with an anxiety disorder, a bad back and an eighth-grade education, lost his \$1,035 monthly draw. He hadn't worked in a decade and says his anxiety is so crippling he can barely leave his bedroom. He lost his house and

everything in it.

"I know some people killed themselves," he wrote. "To be honest, Ned, I've had some crazy thoughts myself."

Another man told him he's now sleeping in his pick-up truck. A woman wrote that she and her children kept only their camping gear and went out to live in the woods.

The stress is beginning to wear on Pillersdorf now, too. His wife begged him to see a therapist. His colleagues worry he's coming undone.

"I want this nightmare to be over," he said, the fraying hems peeking from the leg of his trousers and the framed diplomas crooked on his office wall. "I don't remember what life was like before this started. And I don't know if we're at the end or the beginning."

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Grocery stores in Floyd County, Kentucky, are overrun when the disability checks arrive the first week of the month. Traffic backs up on the main drag in downtown Prestonsburg, the county seat. Even the Papa John's doubles its number of delivery drivers.

The payments prop up an economy that struggled, then collapsed in recent years along with the coal industry.

One of every six working-aged adults here gets a check, more than three times the American average.

Coburn attributes that to a broken system abused by those who don't truly deserve it, yet grow dependent on government benefits. They should have known better than to hire a "shyster lawyer," he said, and those who didn't deserve benefits in the first place shouldn't draw another dime. Government dependency, he believes, is the first step toward tyranny.

"Do I feel sorry for them? Yes," he said. "Do they have hardships? Yes. But do they meet the qualifications for Social Security Disability? Absolutely not. Here's what the law says: if you can do any job in the economy you don't qualify for disability. Rules have to mean something, and life isn't fair."

The disability program was not designed to be welfare. It is an insurance program. Every American worker pays a premium out of their paycheck under an agreement with the government that a percentage of their salary will be paid to them if one day they become too disabled to work.

Tim Dye started working in the mines when he was 17. He thought when he hired Conn 26 years later, he was collecting what he was due.

His family grew entirely dependent on that check. His wife worked for the county government for nearly 18 years, until she was laid off in 2015. She didn't worry too much then about losing her job. Her husband's disability check came every month, around \$2,200. It wasn't a lot for a couple with a son still in high school and two granddaughters living with them. But it was stable and they made do, and expected life to go on the way it always had in their yellow house on the edge of a mountain.

Earlier this year, her husband went to the Social Security office for his initial re-determination hearing, thinking that his inclusion on the suspension list must have been some sort of mistake. But a vocational expert told the judge Dye's back problems wouldn't prevent him from working a desk job. He was denied, and the checks stopped coming seven months ago.

They wonder who would want to hire an old coal miner for a sit-down job, with nothing more than a high school diploma, a crippled back and an eight-year gap on his resume.

"In a month or two, we won't have nothing," he said. "We're losing everything."

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The volunteer lawyers representing Conn's former clients say the deck is stacked against them: The agency is assuming fraud without having to prove to any court that any of them committed it. The Office of the Inspector General identified applications that included Conn's suspect medical evidence. But the report is confidential, no one has seen the evidence the agency relied on to determine why this particular pile of claims was assumed to be fraudulent.

Citing a 1994 law, the agency is forbidding Conn's clients from using any medical evidence from the doctors alleged to have been involved in his scheme.

Pillersdorf said many of his clients were on disability for mental illness and cognitive disabilities. Now they are expected to recall the names of the other doctors they saw 10 years ago and pray they still have the records, Pillersdorf said.

They can't go back to original files they handed over to their lawyer. Conn is alleged to have destroyed millions of pages of documents. Coburn's investigation found that he shredded 26,000 pounds of paper when the senate started to investigate. His former employees testified he burned more in a bonfire behind his office that grew so big it smoldered for four days.

He was charged with 18 crimes, including mail fraud, wire fraud, destruction of records, money laundering, making false statements and conspiracy.

Conn's attorneys did not respond to calls requesting an interview. He was released on bond pending his trial scheduled for next summer. His bail was secured by his \$1.5 million estate in Pikeville.

Of the hundreds of his clients initially suspended, about half have won their cases. The other half, including the Dyes, were cut off. Their cases are entangled now in a series of lawsuits in federal court.

At least one judge agreed that the procedure is unfair. U.S. District Judge Amul Thapar — on President-elect Donald Trump's short list for the U.S. Supreme Court — issued an opinion last month that found a number of Conn's clients were afforded fewer protections than suspected terrorists and ordered the Social Security Administration to reconsider its process. But another federal judge sided with the agency. The question will now likely be settled by a federal appeals court. The agency declined to talk about the process.

In the meantime, many of those who lost are living with no income.

The Dyes couldn't pay the water bill, so Donna Dye designed a system of hoses and barrels to collect run off from the hill that juts up behind her house, "the old-fashioned mountain way," she says.

Then a man came to switch off the lights. He gave her enough time to get to the pawn shop, cash in her engagement ring and pay the bill.

She signed up for food stamps. But her husband is too proud to spend them. To him, disability was earned; food stamps are welfare.

She had hoped to find a job that paid almost as much as she made with the county, \$12.45 an hour. She's 49 years old, with only a GED. They live in rural Floyd County, 23 miles from the county seat, and just putting gas in their old truck to get to and from town eats up a couple hours of minimum wage work. But she gave up and put in 40 applications, from the Dollar Store to cleaning rooms at a cheap motel. She posted advertisements all over town offering babysitting or housecleaning for \$10 an hour. She's had no takers.

They raised their kids in a hollow nearby in a rickety two-bedroom house with no heat. When Tim was still working, about 10 years ago, they bought this bigger place for \$85,000 and thought it meant they'd made it to the middle class. She said it was one of the happiest days of her life, and she went out and got the big dining room table she always wanted, with eight chairs so she could have the whole family over for dinners.

The mortgage got behind by three months. The bank called to collect and she panicked. She put a sign in her yard. "Open house, everything must go." Her neighbors picked through her belongings. She sold her couch, her dishes and every television they owned. A woman offered her \$20 each for five of her eight dining room chairs.

"This has been pure hell. Worry, just worry, that's all I do," she said and slumped into one of the three chairs she has left.

"I'm almost out of stuff to pawn."

Most people — even Conn's former clients — believe fraud is rampant in the disability system. They point to a distant relative or a man down the street, who seems healthy and able to work but still draws a check. Pillersdorf calls them "fakers," people knowingly gaming the system, and said he hasn't met one in his stack of Conn's former clients yet. The reality is much more complicated.

The very definition of disability is open for debate. Mental illness is hard to measure. Pain is impossible to see.

"There is no medical condition called disability," said David Autor, an economics professor at the Massachusetts Institute of Technology. "You can't go to a doctor and

have them say, 'I've got bad news for you, son, you've got a disability.' Disability is a social construct; it's how much we want you to be suffering before you shouldn't have to work."

The nature of disability has evolved since its inception in the 1950s, when it was designed to support people with severe physical limitations — blindness, paralysis, heart disease. The program rapidly expanded in the 1970s and the federal government clamped down and kicked nearly a half-million people off the rolls. But it backfired: The public was incensed at the thought of suffering people cut off. Congress in 1984 responded by writing a more generous definition of disability which required that the agency consider pain, mental illness and combinations of less serious ailments in awarding disability.

The number of Americans in the program has skyrocketed since, from 1.8 million people in 1970 to more than 10 million today, only some of which can be attributed to aging baby boomers and more women in the workforce. Nationwide, 4.7 percent of Americans rely on Social Security Disability. But in some pockets, that number is far higher. Autor calls it the "disability belt," a swath across the South and Appalachia, where levels of education are among the lowest in the nation and jobs in mining or manufacturing have disappeared.

Dan Black, an economist at University of Chicago, studied how the rate of disability shot up when the coal industry declined. He pointed to a system tied more to economics than to physical impairments. But he doesn't believe that translates to fraud.

"I'm not sure what we mean by fraud," he said. "Obviously it's fraud if I have no health problems that prevent me from working. But there are big gray areas in between. If I have significant pain in my back, is that enough to keep me from working? Maybe. But maybe not. It is a very, very difficult line to draw."

Black has a colleague who uses a wheelchair. If he were a coalminer, he would be disabled. But he has advanced degrees and works as an economist at a university. The very definition of disability is inherently tied to education and skill and the labor market.

Americans have tasked administrative law judges employed by the Social Security Administration with choosing who deserves disability and who does not.

The stakes are high. A tiny fraction of those who enter the disability program ever leave it for a job, said David Stapleton, who runs the Mathematica Center for Studying Disability Policy. The government spends an average of \$300,000 in lifetime benefits for each person in the system. The disability fund is going broke. Congress routed money last year from the retirement fund into the disability fund, a move he likened to "robbing Peter to pay Paul when Peter's already in trouble."

But the solution, he said, is to work with people on the front end to keep them in the workforce, not kick them off after they've been out of the labor market for too many years to be reasonably expected to return to it.

"Just throwing them off the rolls without considering what that means for them," he said, "seems pretty irresponsible."

Donna Dye looked in the mirror not long ago and was stunned by the bags under her eyes, the frayed edges of her long curly ponytail.

Just a year ago, she would have never left the house without fixing her hair and putting on lipstick.

Somewhere along the way, she thought, she had run out of pride. She doesn't know exactly when it happened. Maybe it was on one of the trips to the pawn shop. Or maybe when her mother gave her all she could — four piggy banks, labeled "quarters," "dimes," "nickels," "pennies" — and she took them.

She told herself to accept it, resign to a life of poverty, and move back to that rickety old house in the hollow with no heat because she couldn't stand the stress of caring anymore.

She fixates now on the dents in the drywall, the peeling paint, the cracks in the concrete porch. She trained herself to hate this house she had loved so much. She will not weep when the bank comes to take it away.

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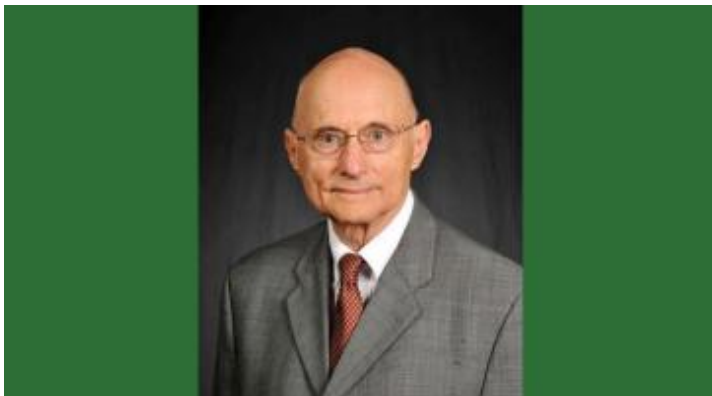


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