



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Congressional Response Report

Administrative Law Judges with Both
High Dispositions and High
Allowance Rates

A-12-14-24092 | November 2014

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

November 14, 2014

The Honorable Darrell E. Issa
Chairman, Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In a January 7, 2014 letter, you asked my office to identify administrative law judges (ALJ) who had issued 700 or more dispositions and who had allowance rates of 85 percent or higher in any 2 fiscal years since 2007. You requested that we review a statistically significant, random sample of these cases to determine whether the ALJs processed the cases in a manner consistent with the Social Security Administration's (SSA) policies and procedures. You also were interested in the level of SSA monitoring of the ALJ outlier group, including subsequent actions taken with outlier ALJs based on this monitoring.

My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. Thank you for bringing your concerns to my attention. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Kristin Klima, Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Carolyn W. Colvin

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

November 14, 2014

The Honorable James Lankford
Chairman, Subcommittee on
Energy Policy, Health Care, and Entitlements
Committee on Oversight and Government Reform
Washington, D.C. 20515

Dear Mr. Lankford:

In a January 7, 2014 letter, you asked my office to identify administrative law judges (ALJ) who had issued 700 or more dispositions and who had allowance rates of 85 percent or higher in any 2 fiscal years since 2007. You requested that we review a statistically significant, random sample of these cases to determine whether the ALJs processed the cases in a manner consistent with the Social Security Administration's (SSA) policies and procedures. You also were interested in the level of SSA monitoring of the ALJ outlier group, including subsequent actions taken with outlier ALJs based on this monitoring.

My office is committed to combating fraud, waste, and abuse in SSA's operations and programs. Thank you for bringing your concerns to my attention. The report highlights various facts pertaining to the issues raised in your letter. To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Kristin Klima, Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Carolyn W. Colvin

Administrative Law Judges with Both High Dispositions and High Allowance Rates

A-12-14-24092



November 2014

Office of Audit Report Summary

Objective

To address the Committee on Oversight and Government Reform's concerns regarding administrative law judges (ALJ) who had both high dispositions and high allowance rates on their cases.

Background

In a January 2014 letter, the Chairmen of the House Committee on Oversight and Government Reform and the Subcommittee on Energy Policy, Health Care, and Entitlements asked us to identify ALJs who had 700 or more dispositions and allowance rates of 85 percent or higher in any 2 fiscal years (FY) from FYs 2007 through 2013.

After we identified the group of ALJs, the Chairmen asked us to review a sample of these ALJs' allowances to determine whether the ALJs processed the cases according to Social Security Administration (SSA) policy. Finally, the Chairmen asked us to determine how SSA monitors the ALJ outliers and discuss any subsequent actions resulting from this monitoring.

Our Findings

Overall, we found that 44 ALJs (about 4 percent of the ALJs at the Agency) met the outlier criteria. We estimate that 38 of the 275 sample cases related to these 44 ALJs should not have been allowed. We also found the number of ALJ outliers and cases with quality issues had decreased in recent years, at a time when the Agency has increased monitoring and oversight of ALJ workloads.

In our initial examination of the 275 sample cases, we found

- 31 were properly processed,
- 216 had quality issues related to the ALJ decisions, and
- 28 had missing information that prevented us from reviewing the file.

We referred the 216 questionable cases to SSA's Division of Quality (DQ). DQ stated, had these cases been part of its pre-effectuation review, it would have effectuated 88, but for the remaining cases it would have

- reversed 5 of the ALJ allowances,
- issued a less favorable decision on 7,
- issued a more favorable decision on 1,
- remanded 108 back to the ALJ, and
- taken corrective action on 7 without changing the decision.

From this feedback a review of earlier remand outcomes for these ALJs, we estimated that 38 of the 275 sample cases would have been denied or dismissed had they been part of a pre-effectuation review. Extrapolating these results to all the allowances by the 44 outlier ALJs over a 7-year period, we estimate they improperly allowed disability benefits on approximately 24,900 cases, resulting in questionable costs of about \$2 billion. Furthermore, we project that SSA will continue paying these beneficiaries approximately \$273 million over the next 12 months.

Our review of the 275 cases also found that (1) the number of ALJ outliers and percent of cases with quality issues decreased in recent years; (2) the Agency had increased oversight and monitoring of ALJ workloads; and (3) since 2007, SSA had taken at least 1 administrative or disciplinary action on 15 (34 percent) of the 44 outlier ALJs, including training, counseling, suspension, and termination.

TABLE OF CONTENTS

| | |
|---|-----|
| Objective | 1 |
| Background | 1 |
| Results of Review | 2 |
| ALJ Decision Quality | 4 |
| Cases Referred to DQ | 4 |
| Potential Overpayments | 6 |
| Trends in Our Sample Cases | 7 |
| Oversight and Monitoring of ALJ Workloads | 9 |
| Division of Quality Pre-effectuation Reviews | 10 |
| Agency Disciplinary and Other Related Actions | 11 |
| Conclusions | 12 |
| Agency Comments | 13 |
| Appendix A – Request Letter from the Chairmen | A-1 |
| Appendix B – Evaluating Disability in Adults and Children | B-1 |
| Appendix C – Scope, Methodology, and Sample Results | C-1 |
| Appendix D – Major Contributors | D-1 |

ABBREVIATIONS

| | |
|--------|--|
| Act | <i>Social Security Act</i> |
| ALJ | Administrative Law Judge |
| C.F.R. | Code of Federal Regulations |
| CPMS | Case Processing and Management System |
| DQ | Division of Quality |
| FY | Fiscal Year |
| OAD | Office of Appellate Operations |
| OASDI | Old-Age, Survivors and Disability Insurance |
| ODAR | Office of Disability Adjudication and Review |
| OIG | Office of the Inspector General |
| POMS | Program Operations Manual System |
| RFC | Residual Functional Capacity |
| SGA | Substantial Gainful Activity |
| SSA | Social Security Administration |
| SSI | Supplemental Security Income |
| U.S.C. | United States Code |

OBJECTIVE

Our objective was to address the Committee on Oversight and Government Reform’s concerns regarding administrative law judges (ALJ) who had both high dispositions and high allowance rates on their cases.

BACKGROUND

In a January 2014 letter, the Chairmen of the House Committee on Oversight and Government Reform and the Subcommittee on Energy Policy, Health Care, and Entitlements asked us to review ALJ productivity trends that resulted in an unusually high level of allowed cases. The Chairmen asked us to identify ALJs who had issued 700 or more dispositions and had allowance rates of 85 percent or higher in any 2 fiscal years (FY) from 2007 through 2013. The requestors asked us to review a sample of allowed cases to determine whether the ALJs processed them in accordance with Social Security Administration (SSA) policy. Finally, the Chairmen asked us to assess SSA’s oversight and monitoring of the identified ALJ outliers and discuss any subsequent actions resulting from this monitoring.¹

SSA provides disability benefits to eligible individuals through its Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs under Titles II and XVI of the *Social Security Act* (Act).² The Act considers an adult disabled if he/she is unable to engage in any substantial gainful activity (SGA) because of a medically determinable impairment(s) that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months. The Act also considers a child disabled for SSI purposes if he/she has a medically determinable impairment(s) that causes marked and severe functional limitations and can be expected to result in death or, has lasted, or can be expected to last, for a continuous period of not less than 12 months.³

¹ See Appendix A for a copy of the request letter. In the request letter, the term “reversal” denotes an ALJ’s allowance of a case denied earlier by a State disability determination services. When we use the term “reversal” in this report, we are referring to the Agency changing an ALJ’s allowance to a denial as a result of a pre-effectuation quality review.

² The OASDI program covers workers and their dependents or survivors, while the SSI program covers financially needy individuals. Act §§ 202 *et seq.*, 223 *et seq.*, and 1611 *et seq.*, 42 U.S.C. §§ 402 *et seq.*, 423 *et seq.*, and 1382 *et seq.*

³ See Act §§ 216(i)(1), 223(d)(1), and 1614(a)(3), 42 U.S.C. §§ 416(i)(1), 423(d)(1), and 1382c(a)(3). See also 20 C.F.R. §§ 404.1505, 416.905, and 416.906.

To determine whether an adult is disabled, SSA’s regulations provide a 5-step sequential evaluation process.⁴ This process generally considers whether the claimant

1. is performing SGA,
2. has a severe condition that meets the duration requirement,
3. has a condition that meets or medically equals an entry on SSA’s *Listing of Impairments*,
4. can perform past relevant work, and
5. can perform any other work in the national economy.⁵

SSA’s regulations also provide a 3-step sequential evaluation process for evaluating disability in children.⁶ For both processes, the adjudicator generally follows the steps in order. As soon as the adjudicator can make a decision at a step, he/she stops the analysis and makes a decision.⁷

To conduct our review, we identified ALJs who (1) issued 700 or more dispositions and (2) had allowance rates of 85 percent or higher in any 2 FYs between 2007 and 2013.⁸ We randomly selected 275 allowances issued by these ALJs and determined whether they processed the cases in accordance with SSA’s policies and procedures. When we identified cases we believed were processed inconsistent with SSA policy, we requested that the Office of Appellate Operation’s Division of Quality (DQ) conduct a second review. We then reviewed DQ’s determination on the cases to understand any differences in our conclusions. We also reviewed trends related to the outlier ALJs and the quality of their cases. Finally, we reviewed SSA’s oversight and monitoring of ALJs as well as its application of administrative or disciplinary actions in cases where ALJs were cited as having conduct or performance issues.⁹

RESULTS OF REVIEW

Overall, we found that 44 ALJs (about 4 percent of the ALJs at the Agency) met the outlier criteria. We estimated that 38 (13.8 percent) of the 275 sample cases related to these 44 ALJs should not have been allowed. We also found the number of ALJ outliers and cases with quality issues decreased in recent years at a time when the Agency has increased monitoring and oversight of ALJ workloads.

⁴ See Appendix B for more information on the 5-step sequential evaluation process.

⁵ See 20 C.F.R. §§ 404.1520 and 416.920.

⁶ See 20 C.F.R. § 416.924.

⁷ See Appendix B for more information about these processes.

⁸ Throughout the report, we use “outlier” to define an ALJ who issued 700 or more dispositions and had allowance rates of 85 percent or higher in any 2 FYs between 2007 and 2013.

⁹ See Appendix C for more information on our scope and methodology.

In our initial examination of the 275 sample cases, we found

- 31 (11 percent) were properly processed,
- 216 (79 percent) had quality issues related to the ALJ decisions, and
- 28 (10 percent) had missing information that prevented us from reviewing the file.¹⁰

We shared the 216 questionable cases with DQ, which stated if these cases had been part of its pre-effectuation review, it would have effectuated 88 cases (40.7 percent), but it also would have

- reversed 5 (2.3 percent) of the ALJ allowances,
- issued a less favorable decision on 7 (3.2 percent),
- issued a more favorable decision on 1 (less than 1 percent),
- remanded 108 back to the ALJ (50 percent), and
- taken corrective action on 7 without changing the decision (3.2 percent).

From this feedback, as well as a review of earlier remand outcomes for these ALJs, we estimated that 38 of the 275 sample cases would have been denied or dismissed had they been part of a pre-effectuation review. Extrapolating these results to all the allowances by the 44 outlier ALJs over a 7-year period, we estimate these ALJs improperly approved disability benefits in approximately 24,900 cases, resulting in questionable costs of more than \$2 billion. Additionally, we estimate that SSA will continue paying approximately \$273 million over the next 12 months to the beneficiaries still receiving benefits as of July 2014.

Our review of the 275 cases also found that the number of ALJ outliers and the percent of cases with quality issues decreased in recent years. The Office of Disability Adjudication and Review (ODAR) has increased oversight and monitoring of ALJ workloads by (1) creating an early monitoring system to identify outlier ALJs, (2) conducting focused quality reviews on ALJs, (3) creating new tools to help ALJs review their performance, (4) restricting and reducing case assignments to ALJs, and (5) assessing the quality of ALJ decisions through pre-effectuation reviews of allowances. Finally, 15 (34 percent) of the 44 outlier ALJs had at least 1 administrative or disciplinary action since 2007 because of conduct issues or failure to follow Agency policies.

¹⁰ The majority of these cases (64 percent) were from FY 2007 and the remainder distributed between FYs 2008 through 2011. Of the 28 missing cases, 26 were paper cases.

ALJ Decision Quality

We identified 44 ALJs who (1) issued 700 or more dispositions and (2) had allowance rates of 85 percent or higher for at least 2 FYs between 2007 and 2013.¹¹ The 44 outlier ALJs we identified processed approximately 180,000 allowances during the 7-year-period, ranging from 1,515 to 10,674 allowances per ALJ. We selected 275 allowances from these 44 ALJs for review.¹²

Of the 275 cases we reviewed, we found that, in 31 cases, the ALJs provided a well-supported rationale in their decisions.¹³ However, we also found that, in 216 cases, the ALJs did not appear to fully comply with SSA policies of issuing well-supported decisions. For instance, in some of the decisions, the ALJs did not provide a well-supported rationale, while in other decisions, the ALJs misapplied the medical-vocational guidelines.¹⁴ We referred all 216 cases to SSA's DQ for review. In addition, we were unable to review 28 (10 percent) of the sampled cases for a number of reasons, including missing case folders and folders missing key information, such as hearing transcripts or an ALJ's decision (see Table 1).

**Table 1: OIG Results on Sample Cases from 44 ALJ Outliers
(275 Sample Items)**

| Results | Count | Percent |
|---|------------|------------|
| ALJ provided a well-supported rationale for his/her decision | 31 | 11 |
| ALJ did not provide a well-supported rationale for his/her decision | 216 | 79 |
| Key information missing from SSA records | 28 | 10 |
| Total | 275 | 100 |

Cases Referred to DQ

Since the Agency had already effectuated the allowances, regulations do not permit SSA to take actions on any of our referred cases at the time of our review. However, DQ provided us with information on the merits of each case. Of the 216 cases we referred to DQ, it found sufficient

¹¹ The 44 ALJs represented about 4 percent of the average number of ALJs available annually to conduct hearings during the 7-year period.

¹² The number of cases reviewed for each of the 44 ALJs ranged from 1 to 19. The variance in case counts related to a number of factors, including ALJ productivity and time with the Agency.

¹³ The sample cases related to 112 Disability Insurance (DI)-only claimants, 51 SSI-only claimants, and 112 concurrent claimants. The ages of the claimants at the time of the ALJ's decision ranged from 5 to 67, with the average age being 46. The most common disabilities cited were disorders of the back (26 percent), affective disorders (15 percent), and osteoarthritis and allied disorders (7 percent).

¹⁴ See 20 C.F.R. §§ 404.1569 and Appendix 2 to Subpart P of Part 404—*Medical-Vocational Guidelines*.

support to affirm the ALJ’s decision in 88.¹⁵ However, in the other 128 cases, DQ determined that the ALJ’s decisions were not legally sufficient or fully supported (see Table 2).¹⁶

Table 2: DQ’s Feedback on OIG’s 216 Referred Cases

| Recommendation | Count | Percent |
|--|------------|-------------|
| Reversal of the allowance | 5 | 2 |
| Less favorable allowance | 7 | 3 |
| More favorable allowance | 1 | <1 |
| Remand to the ALJ for a new decision | 108 | 50 |
| Take other corrective action on the case | 7 | 3 |
| Case was decided consistent with Agency policy | 88 | 41 |
| Total | 216 | 100% |

For 5 of the 128 cases, DQ stated there was not enough evidence in the case folder to allow the decision, and it would have reversed the decisions and denied the cases had these cases been part of its pre-effectuation review. For example, one ALJ’s decision related to a 50-year-old claimant who applied for benefits in June 2010 alleging back problems and affective/mood disorder. The State disability determination services examiner denied the claim determining the claimant could perform past work in the national economy, and the decision was upheld at the reconsideration stage in March 2011. In August 2012, the ALJ issued a favorable decision citing that no jobs existed in the national economy that the claimant could perform. In our review of the ALJ’s decision, we found the ALJ did not provide sufficient rationale for the decision. DQ staff members agreed with our analysis and noted they would have denied the case had it been selected in a pre-effectuation review. The claimant received \$39,816 in disability payments related to the allowance and was still in current pay status as of August 2014.

In seven cases, DQ would have issued less favorable allowances. It stated it would have established a later disability onset date, and the claimant would have received a smaller past-due benefit payment.¹⁷

For the 108 remands, DQ would have sent the cases back to the ALJs who issued the decisions. The ALJs would have been required to issue a new decision, which could be another allowance

¹⁵ For instance, while DQ may have agreed with the initial deficiencies we identified, a DQ analyst’s review of medical documentation may have identified sufficient support for the ALJ’s decision on the case. In this case, the analyst may have determined that a remand was not necessary.

¹⁶ DQ reviewed these allowances as they would review allowances under its pre-effectuation quality reviews, which we discuss later in this report.

¹⁷ Past-due benefits resulting from a DI allowance are the benefits that have accumulated from the date of disability onset up to, but not including, the month SSA effectuated the decision. Past-due benefits resulting from a SSI allowance are the benefits that have accumulated from the date of application.

or be unfavorable to the beneficiary.¹⁸ In addition, the remand order may direct an ALJ to take further action(s), such as developing additional evidence or holding a supplemental hearing.

In the case where DQ would have issued a more favorable allowance, it stated it would have established an earlier onset date based on a claimant's prior application. For this case, DQ stated the ALJ found no basis to reopen the prior determination, but it found reopening the prior application was supported.

Finally, for the seven cases requiring corrective actions, DQ would have corrected the technical issues related to the finding, though the decision on the case was the same.

Potential Overpayments

Of the 275 sample cases associated with 44 outlier ALJs, DQ staff confirmed 113 ALJs' allowances were not fully supported by the record—5 would have been reversed and 108 remanded under the Agency's pre-effectuation quality review process.¹⁹ In another 28 cases, we were unable to review the ALJ's decision because SSA could not locate case folders, hearing transcripts, and/or the ALJ's decision. After applying a number of assumptions, we estimated that 29 of the 108 remands would have been denied or dismissed²⁰ as well as 4 of the cases we were unable to review.²¹ As a result, we estimated 38 of these 275 cases had ALJ decisions that were not fully supported by the record and would have been denied or dismissed as part of a pre-effectuation review.²²

Extrapolating the results of our 275-case review to the total number of allowances made by the 44 outlier ALJs over the 7-year period, we estimate these ALJs improperly allowed disability benefits on approximately 24,900 cases, resulting in questionable cost of approximately \$2 billion. Additionally, SSA will continue paying approximately \$273 million to these same beneficiaries over the next 12 months (see Table 3).^{23, 24}

¹⁸ The most common reasons for the DQ remand were (1) improper articulation of the residual functional capacity, (2) record not adequately developed, and (3) inadequate mental impairment evaluation.

¹⁹ DQ suggested modifications on another 15 cases, but the allowance on the case itself was not in question.

²⁰ We estimated 44 outlier ALJs would have denied or dismissed about 27 percent of the remanded cases based on earlier remand outcomes in a FY 2011 DQ pre-effectuation review. We discuss this review later in this report.

²¹ We used the error rate from the cases we were able to review to estimate the number of errors in the cases we were unable to review because of missing information.

²² See notes in Table C-1 in Appendix C for more information on how we determined the denial and dismissal rate on cases.

²³ This relates to the claimants that were still on the rolls as of July 2014. Of the 275 cases in our calculations, 26 were no longer in current pay as of July 2014.

²⁴ Our estimate relates only to those cases where we believe the ALJ's allowance would have changed to a denial or dismissal. We did not calculate questionable costs related to less or more favorable allowances. See Appendix C for more on our methodology.

**Table 3: Estimate of Past and Future Payments to Beneficiaries in the Population¹
(275 Sample Items)**

| Sample Case Characteristic | Estimated Number of Cases in the Population | Estimated Payments on Cases from FYs 2007 to 2013 | Estimated Future Payments on Cases over 12 Months |
|--|---|---|---|
| Questionable Allowances on cases reviewed by OIG ² | 22,265 | \$1,750,970,574 | \$247,931,673 |
| Questionable Allowances on case not reviewed by OIG ³ | 2,619 | \$264,421,825 | \$24,693,282 |
| Total | 24,884 | \$2,015,392,399 | \$272,624,955 |

Note 1: The population comprises 180,086 individuals allowed between FYs 2007 and 2013 by the 44 outlier ALJs. See Appendix C for the methodology and calculations related to the numbers presented in the table.

Note 2: This category relates to proposed reversals by DQ and the estimated number of denied or dismissed DQ remands using the outcomes for the 44 outlier ALJs in the FY 2011 DQ pre-effectuation review.

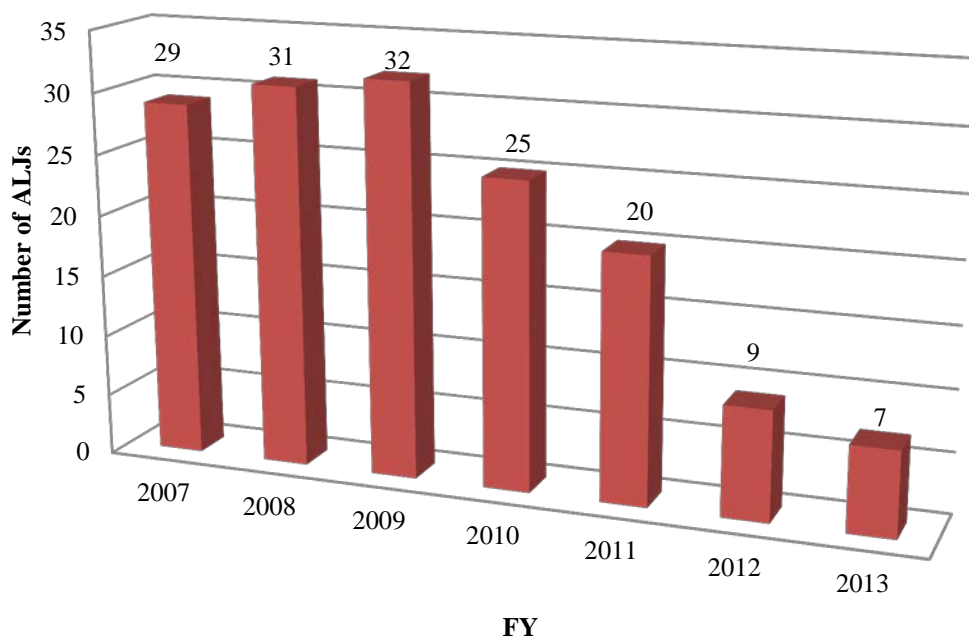
Note 3: This category relates to cases with missing information. We used the error rate from the cases we were able to review to estimate the number of errors in the cases we were unable to review because of missing information.

Trends in Our Sample Cases

We found that the number of outlier ALJs who met our criteria had decreased annually since FY 2009. While 32 ALJs met the criteria in FY 2009, the number decreased to 7 in FY 2013 (see Figure 1). Eighteen of the 44 ALJs were no longer with the Agency as of October 2014.²⁵

²⁵ These ALJs departed between June 2010 and October 2014. Six of the seven outliers identified in FY 2013 were still with the Agency in October 2014.

**Figure 1: Number of ALJs Meeting Outlier Definition
(FYs 2007 to 2013)**



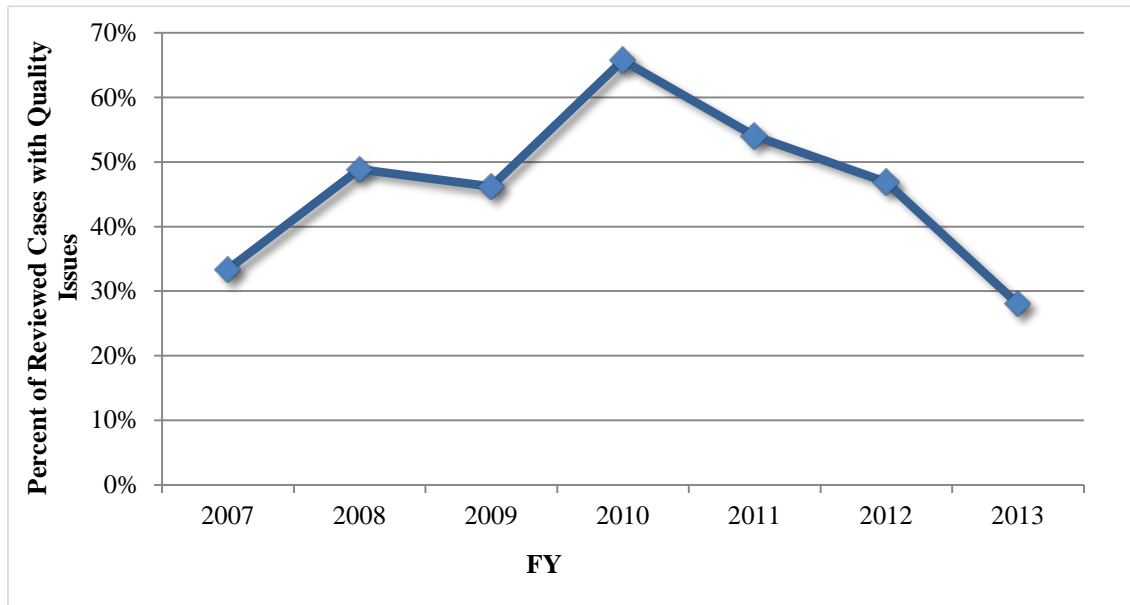
Note: “Outlier” is defined as an ALJ who issued 700 or more dispositions and had allowance rates of 85 percent or higher in any 2 FYs between 2007 and 2013.

In addition, the percent of cases with quality issues also decreased in recent years (see Figure 2). The number of ALJ decisions we identified as having quality issues decreased since FY 2010, with the number of cases we identified as having quality issues decreased from 66 percent in FY 2010 to 28 percent in FY 2013.²⁶ These changes may relate to a number of factors, including the departure of ALJs and increased Agency oversight and quality reviews of ALJ decisions.²⁷

²⁶ Six ALJs decided the FY 2013 cases with quality issues.

²⁷ We discuss ALJ oversight later in this report.

Figure 2: Trend in Quality Issues Among Outlier ALJ Decisions (FYs 2007 to 2013)



Oversight and Monitoring of ALJ Workloads

In recent years, ODAR has increased oversight and monitoring of ALJ workloads. For instance, ODAR

- created an early monitoring system²⁸ and conducted focused quality reviews²⁹ on outlier ALJs;
- developed the *How MI Doing?* tool allowing ALJs and others to compare their workload performance to their peers' performance;³⁰

²⁸ We discussed the early monitoring system in earlier reports. See OIG reports *Analysis of Hearing Offices Using Key Risk Factors* (A-12-13-13044), December 2013, and *Identifying and Monitoring Risk Factors at Hearing Offices* (A-12-12-11289), January 2013.

²⁹ DQ's focused quality reviews started in FY 2011 with an assessment of decisions issued by an ALJ at the Huntington Hearing Office. To conduct a focused quality review, DQ selects the period and randomly selects the decisions it will review; usually 60 to 90 cases. DQ analysts gather general information on the case and perform a more in-depth review on 25 percent of the cases. Examined issues have included (1) medical providers, (2) claimant representation, (3) on-the-record decisions, (4) use of medical and vocational experts, (5) examining sources, (6) forum shopping, and (7) length of hearing. In prior audits, we called these "focused reviews."

³⁰ *How MI Doing?* allows hearing office staff and ALJs to track their productivity over time and compare their performance at the local, regional, and national levels. The tool provides statistics and graphics that illustrate the productivity of each individual ALJ over time in five areas: (1) dispositions, (2) cases pending, (3) cases scheduled, (4) Appeals Council agree rates, and (5) average processing time. See OIG report *Subsequent Appellate Actions on Denials Issued by Low-Allowance ALJs* (A-12-13-13084), July 2014, for a discussion of *How MI Doing?*

- restricted and reduced case assignments to ALJs;³¹ and
- assessed the quality of ALJ decisions by conducting pre-effectuation³² reviews of favorable ALJ decisions³³ and developed appropriate training for adjudicators focused on the errors identified in the reviews.

For example, we examined the list of Agency reviews conducted on the 44 outlier ALJs and learned that 14 of the ALJs had at least 1 Agency review. These reviews included focused quality reviews, special studies, and Office of Quality Performance reviews. For the seven outlier ALJs in FY 2013 (see Figure 1), the Agency stated it was monitoring five of the six ALJs who were still with the Agency using its early monitoring system. In addition, DQ conducted focused quality reviews on four of the six ALJs. At the time of our audit, the Agency had not taken actions or reviewed the other two outlier ALJs. The Agency explained it had limited resources and had prioritized its focused quality reviews on other ALJs and issues.

Division of Quality Pre-effectuation Reviews

As part of ODAR's efforts to improve decision quality, DQ conducted its first pre-effectuation reviews on a random sample of hearing allowances from decisions issued in FY 2011.³⁴ Between FYs 2011 and 2013, DQ reviewed about 17,000 adjudicator decisions.³⁵ In its FY 2011 final report,³⁶ DQ stated that about 78 percent of the ALJs' decisions did not have quality issues, while it remanded³⁷ 17 percent back to the ALJs and made other decisions on the remaining 4 percent (see Figure 3).³⁸ However, DQ remanded 32 percent of the decisions by the 44 outlier ALJs, almost double the national remand rate for FY 2011.

³¹ In June 2011, the Acting Chief ALJ issued a memorandum to all regions highlighting new restrictions on case assignment and reassignment. In FY 2012, ODAR managers also limited new case assignments to ALJs to 1,200 cases, annually. ODAR lowered ALJ case assignments to 960 in FY 2013 and 840 in FY 2014.

³² The pre-effectuation period is within 60 days of an ALJ's favorable decision.

³³ In addition to the ODAR-initiated reviews mentioned in the next section, the Agency conducts an annual post-effectuation audit of ALJ allowances and denials to assess the quality of these decisions.

³⁴ See 20 C.F.R. §§ 404.969 and 416.1469, which require pre-effectuation reviews of ALJ decisions be selected at random or, if selective sampling is used, may not be based on the identity of any specific adjudicator or hearing office.

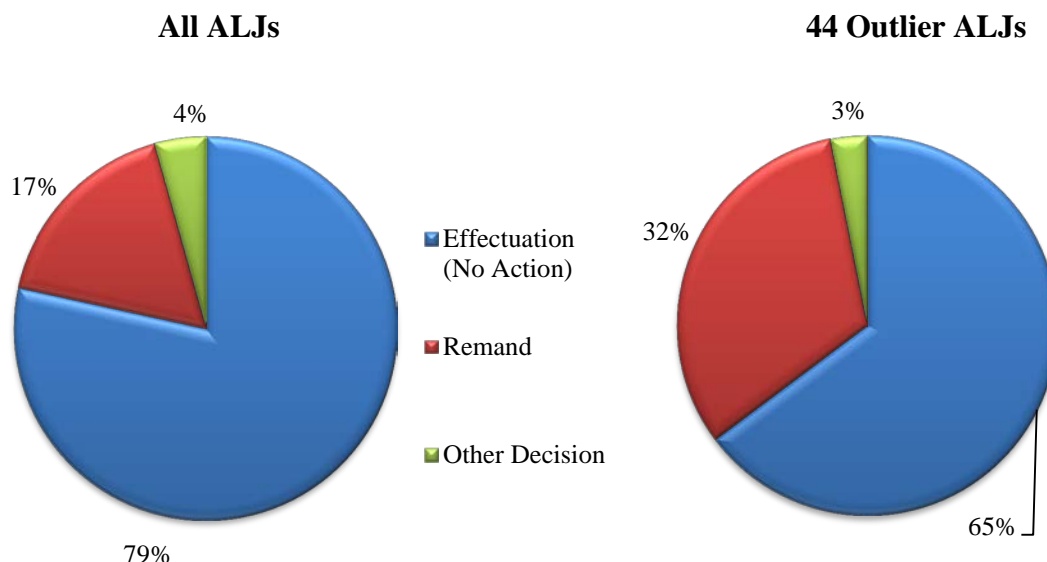
³⁵ DQ pre-effectuation review includes decisions issued by ALJs and Senior Attorney Adjudicators.

³⁶ SSA *Fiscal Year 2011 Final Action Report*, Division of Quality, February 8, 2012. The report related to 3,692 favorable decisions. The own-motion pre-effectuation quality review selection process excluded compassionate allowances, cases adjudicated in Spanish, terminal illness or critical cases, non-disability cases, and cases that were not fully electronic.

³⁷ The main reasons for remands were ALJs did not properly address medical opinions and did not properly evaluate the claimant's residual functional capacity.

³⁸ Other decisions taken included (1) reversals, (2) changes in disability onset dates, and (3) corrective actions. In total, DQ reversed 5 allowances in FY 2011, including a decision made by 1 of the 44 outlier ALJs.

Figure 3: DQ Pre-Effectuation Review Results (FY 2011)



Note: “Other Decision” includes reversals, changes in disability onset dates, and corrective actions.

Of the 17 percent of cases DQ remanded under the FY 2011 pre-effectuation review for all ALJs in the sample, ODAR determined that an ALJ denied or dismissed about 23 percent.³⁹ Moreover, of the 32 percent of cases DQ remanded under the FY 2011 pre-effectuation review to the 44 outlier ALJs in the sample, about 27 percent were denied or dismissed.⁴⁰

Agency Disciplinary and Other Related Actions

At the time of our review, Agency managers had taken at least 1 administrative or disciplinary action against 15 of the 44 outlier ALJs.⁴¹ These actions included⁴²

- one ALJ rehired annuitant’s contract was not renewed due to quality issues,

³⁹ As a result, the denied or dismissed remanded cases were about 4 percent of sampled cases for all ALJs in FY 2011.

⁴⁰ As a result, the denied or dismissed remanded cases were about 9 percent of sampled cases for the 44 outlier ALJs in FY 2011.

⁴¹ The majority of the administrative or disciplinary actions was taken in the last 5 FYs. In addition, the majority of the reviews we also performed was of cases decided during the last 5 FYs. Some ALJs had more than one disciplinary action.

⁴² Depending on the severity of the conduct or performance issue, SSA will take non-disciplinary or disciplinary action. Non-disciplinary actions include training, oral or written counseling, or issuing case-processing directives. If an ALJ’s conduct or performance does not change or is more egregious, SSA follows progressive discipline including reprimand, short-term suspension, long-term suspension, and removal.

- two ALJs were suspended or put on administrative leave because of conduct and failure to follow Agency policy,
- one ALJ was reprimanded⁴³ because of conduct and failure to follow Agency policy,
- six ALJs were counseled because of conduct and/or failure to follow Agency policy, and
- seven ALJs received training following a focused quality review.

While the Agency may have some flexibility in addressing workload issues, it cannot take actions that would infringe on an ALJ's qualified decisional independence.⁴⁴ Moreover, SSA can only suspend or remove an ALJ after the Merit Systems Protection Board determines there is "good cause" for discipline.⁴⁵

CONCLUSIONS

During our review, we determined that 38 cases from our sample of 275 cases had quality issues related to the 44 outlier ALJ decisions that would have led to a denial or dismissal of the case in a pre-effectuation review. Extrapolating the results to all of the allowances issued by the outlier ALJs during this time period, we estimated SSA overpaid about \$2 billion to claimants who were allowed by an ALJ decision that was not sufficiently supported by the evidence in the record. Furthermore, SSA will continue paying approximately \$273 million to these claimants over the next 12 months. Analysis of the 275 cases also showed that the number of outlier ALJs and the percent of cases with quality issues decreased in recent years. This could be due to various factors, including outlier ALJs leaving the Agency and ODAR's increased oversight and monitoring of ALJ workloads, including an early monitoring system to identify outlier ALJs. In addition, the Agency is creating new tools to help ALJs understand their workload performance, restricting and reducing the number of case assignments to ALJs, and assessing the quality of ALJ decisions through pre-effectuation reviews of allowances as well as focused quality reviews on post-effectuation cases. DQ had conducted a focused quality review on four of the seven

⁴³ A reprimand is a written disciplinary action that specifies the reason for the action. A written reprimand specifies that the employee is subject to more severe disciplinary action upon any further occurrence of an offense. The reprimand is maintained in the employee's personnel folder for up to 1 year.

⁴⁴ "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with agency policy as laid out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from Agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. The Agency may not take actions that abridge the duty of impartiality owed to claimants when ALJs hear and decide claims. See *Setting the Time and Place for a Hearing Before an Administrative Law Judge*, 75 Fed. Reg. 39154, 39156 (July 8, 2010).

⁴⁵ According to SSA, it cannot take disciplinary actions against an ALJ based solely on the ALJ's decisions in particular cases. SSA's basis for this belief comes from its interpretation of the Merit System Protection Board's ruling *Matter of Chocallo*, 1 M.S.P.R. 605, 610-11 (1980) (holding that Board will not find good cause to discipline an ALJ based solely on decision outcomes, and it will carefully examine for satisfaction of the good cause standard any proposed discipline based on an ALJ's performance of an adjudicatory function).

ALJs that we identified as outliers in FY 2013. In addition, the Agency had taken some form of administrative action on 15 of the 44 outlier ALJs.

We believe the Agency should incorporate these findings into its existing monitoring and quality review priorities. The Agency should place greater focus on the ALJs still meeting the outlier criteria with quality issues in recent FYs. In addition, we believe the Agency should ensure full medical continuing disability reviews have been conducted on claimants associated with the higher risk disability cases in our sample—cases where the ALJ decisions would have been reversed or remanded in a pre-effectuation review. To the extent these reviews have not been performed, the Agency should expedite such reviews to ensure the claimants are eligible for any ongoing disability benefits.⁴⁶

AGENCY COMMENTS

SSA reviewed the draft report and provided technical comments, which we incorporated, as appropriate.

⁴⁶ We plan to make these recommendations to the Agency under a separate cover.

APPENDICES

Appendix A – REQUEST LETTER FROM THE CHAIRMEN

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. MCENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DESANTIS, FLORIDA

LAWRENCE J. BRADY
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-6051
<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
MARK POCAH, WISCONSIN
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO

January 7, 2014

Mr. Patrick O'Carroll
Inspector General
Social Security Administration
6401 Security Boulevard, Suite 300
Baltimore, MD 21235

Dear Mr. O'Carroll:

The Committee on Oversight and Government Reform is continuing its oversight of the Social Security Administration's management of federal disability programs. Various reviews, hearings, and investigations continue to highlight the wide variance in administrative law judge outcomes at the Social Security Administration. SSA's published ALJ productivity figures demonstrate that reversal rates for some ALJs continued to exceed 85 percent in Fiscal Year 2013, which is far above the national average.¹

We are concerned that these high reversal rates, combined with a high number of dispositions, may indicate a lack of adherence to SSA's policies and procedures. During a transcribed interview with Committee staff on October 22, 2013, Regional Chief Administrative Law Judge Jasper Bede testified that when ALJs have a high reversal rate,² which he defined as over "75 or 80 percent," or dispose of more than 700 cases a year, "it raises a red flag" about the quality of the decisions.³ According to an analysis of the data, the Committee has calculated that between FY2005 and FY2012, 930,250 individuals were awarded federal disability benefits by ALJs who had annual reversal rates in excess of 80 percent. Additionally, during this time period, over 350,000 individuals were awarded benefits by ALJs with annual reversal rates in excess of 90 percent.

To assist with our oversight of the appeals process at SSA, we request that you review ALJ productivity trends that result in an unusually high level of reversed cases. Specifically, we

¹ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration.

² Reversal is defined as when an ALJ overturns the decision of state DDS who have denied benefits at least once and often twice to a claimant before the case reaches the ALJ. Others often use "approval" or "award" to describe an ALJ overturning the DDS decision.

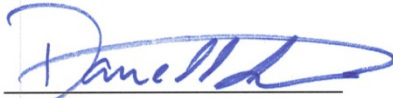
³ Defined by Mr. Bede as "certainly anything over ... 75 or 80 percent. Several years ago, that might have been [defined as] 85 percent, when everyone, as a whole, nationally and regionally, were reversing cases in the 65 percent range."

Mr. Patrick P. O'Carroll, Jr.
January 7, 2014
Page 2

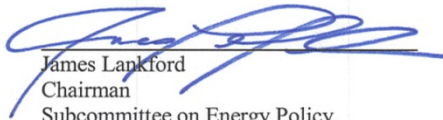
would like you to identify ALJs who had reversal rates of 85 percent or more and issued 700 or more dispositions in any two fiscal years since 2007. Once you have identified these ALJs, we would like you to review a statistically significant, random sample of these reversed cases to assess whether the cases were processed in a manner consistent with SSA's policies and procedures. Such a review should entail examination of the evidence submitted prior to the hearing, the hearing itself as well as parties in attendance, and any other factors that assist in determining whether the ALJ's decision to reverse the previous State Disability Determination Service denial was accurate according to SSA guidelines and criteria for reversing a denial.⁴ We are also interested in the level of SSA monitoring of this ALJ outlier group, including subsequent actions taken with outlier ALJs based upon this monitoring.

We request that you produce a report to the Committee by August 1, 2014, with your findings related to this request. Please keep Committee staff apprised of your progress in conducting this report and contact Brian Blase or Sharon Utz of the Committee staff at (202) 225-5074 with matters concerning this study. Your assistance in this matter is greatly appreciated.

Sincerely,



Darrell Issa
Chairman



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care Policy and Entitlements

⁴ According to Social Security policy, "ALJs must consider the entire case record, including the objective medical evidence, the individual's own statement of symptoms, statements and other information provided by the treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record." Policy Interpretation Ruling Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements, SSR 96-7p (July 2, 1996).

Appendix B – EVALUATING DISABILITY IN ADULTS AND CHILDREN

Under the *Social Security Act* (Act), an adult is considered disabled if he/she is unable to engage in substantial gainful activity (SGA)¹ by reason of a medically determinable physical or mental impairment. Such impairment must last, or be expected to last, for a continuous period of not less than 12 months or result in death.²

The Social Security Administration (SSA) has a 5-step sequential process for evaluating disability for adults that follows the definition of disability in the Act.³ The steps are followed in order. If a decision about disability can be made at a step, the analysis stops, and a decision is made. If a decision about disability cannot be made, the adjudicator proceeds to the next step.⁴

At Step 1, SSA generally considers whether the claimant is performing SGA. If the claimant is performing SGA, SSA finds that he/she is not disabled, regardless of the severity of his/her impairment(s). If the claimant is not performing SGA, SSA sends the claim for a determination of whether the claimant is disabled at a later step in the process. When the claim is initially developed, the adjudicator generally requests all evidence needed for consideration at Steps 2 through 5. At Step 2, SSA determines whether the claimant's impairment—or combination of impairments—is severe.⁵ If the claimant does not have a severe medically determinable impairment(s) that meets the duration requirement, the claim is denied. If the claimant has a severe medically determinable physical or mental impairment(s) that meets the duration requirement, the Agency goes to Step 3 and looks to the *Listing of Impairments*. If the severity of the impairment meets or medically equals a specific listing and meets the duration requirement, the individual is determined to be disabled.

¹ SGA means work that involves doing significant and productive physical or mental duties that is done for pay or profit. See 20 C.F.R. §§ 404.1510 and 416.910. See also 20 C.F.R. §§ 404.1572, and 416.972. In Calendar Year 2014, employees' "countable earnings" indicate SGA, and self-employed individuals' "countable income" is "substantial" if the amount averages more than \$1,070 per month for non-blind individuals or \$1,800 for blind individuals. Also see SSA, POMS, DI 10501.001—*Meaning of SGA and Scope of Subchapter (01/05/2007)* and 10501.015 B and C—*Tables of SGA Earnings Guidelines and Effective Dates Based on Year of Work Activity (11/01/2013)*.

² See Act §§ 216(i)(1)(A), 223(d)(1)(A), and 1614(a)(3)(A), 42 U.S.C. §§ 416(i)(1)(A), 423(d)(1)(A), and 1382c(a)(3)(A). See also 20 C.F.R. §§ 404.1505, 416.905, and 416.906.

³ See 20 C.F.R. §§ 404.1520 and 416.920.

⁴ If the claimant disagrees with the Agency's initial disability determination, he/she can file an appeal within 60 days from the date of notice of the determination. In most cases, there are three levels of administrative review (1) reconsideration by the disability determination services, (2) hearing by an administrative law judge, and (3) request for review by the Appeals Council. If a claimant is still dissatisfied after exhausting administrative remedies, he or she can appeal to the Federal courts. For more information, see 20 C.F.R. §§ 404.900 and 416.1400.

⁵ An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. See 20 C.F.R. §§ 404.1520(c), 404.1521, 416.920(c) and 416.921. See also Social Security Ruling 85-28.

If the individual's impairment does not meet or medically equal a listing, the Agency goes to Step 4, and, if necessary, Step 5.⁶ At Step 4, the Agency determines whether the claimant can perform any past relevant work, considering his/her residual functional capacity⁷ and the physical and mental demands of the work he/she did. If the claimant can perform past relevant work, the claim is denied. If the claimant cannot perform past relevant work, SSA goes to Step 5. At this Step, SSA determines whether the claimant can perform any other work that exists in the national economy, considering his or her residual functional capacity, age, education, and past work experience. If the claimant can perform any other work, SSA finds him/her not disabled; if the claimant cannot perform any other work, SSA finds him/her disabled.⁸

SSA has a similar sequential process with three steps for evaluating disability in children under Supplemental Security Income.⁹ Steps 1 and 2 are the same as for adults, with "severe" defined in terms of age-appropriate childhood functioning instead of basic work-related activities. At Step 3, SSA determines whether the impairment(s) meets or medically equals a listing or functionally equals the listings and meets the duration requirement.

⁶ Steps 4 and 5 do not apply to children under age 18.

⁷ An individual's impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what he/she can do in a work setting. The residual functional capacity is the most the individual can still do despite these limitations. SSA assesses residual functional capacity based on all relevant evidence in the case record. *See* 20 C.F.R. §§ 404.1545 and 416.945.

⁸ SSA has another sequential process for determining whether a disabled beneficiary's disability continues. *See* 20 C.F.R. §§ 404.1594(f) and 416.994(b)(5). This process generally requires a showing of medical improvement related to the ability to work but also includes steps like those in the initial sequential evaluation process.

⁹ *See* 20 C.F.R. §§ 416.924 and 416.994a.

Appendix C – SCOPE, METHODOLOGY, AND SAMPLE RESULTS

To accomplish our objectives, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals, and Litigation Law Manual.
- Reviewed previous Office of the Inspector General reports related to administrative law judge (ALJ) and hearing office workloads.
- Reviewed relevant SSA studies and reviews conducted by ODAR, the Office of Appellate Operations (OAO), and the Division of Quality (DQ).
- Extracted ALJ allowances for Fiscal Years (FY) 2007 to 2013 from ODAR's Case Processing and Management System (CPMS) and identified the outlier ALJs who, during any 2 years of this period, had (1) allowance rates of 85 percent or higher¹ and (2) issued 700 or more dispositions.
- Randomly selected 275 favorable decisions from the outlier ALJs workload over the 7-year period.² We identified six overpayment cases in our sample, so we extracted six replacement disability cases.³
- We reviewed the ALJ decisions to determine whether the ALJ provided the rationale for his/her decision and the application of the medical-vocational rules. As part of this analysis, we reviewed information related to the claimant's earnings, medical records provided by the claimant, and other evidence provided or procured⁴ as part of the claim. In each case, we reviewed the evidence in terms of the 5-Step sequential evaluation process (see Appendix B) and related Agency policy. For example, we focused on (1) the claimant's work history; (2) substantial gainful activity; (3) protective filing and disability onset dates; (4) whether the ALJ's opinion addressed conflicting evidence, claimant credibility, relevant

¹ We calculated decisional allowance rates by dividing allowances by total decisions (excluding dismissals).

² The number of cases reviewed for each of the 44 ALJs ranged from 1 to 19. The variance in cases counts related to a number of factors, such as ALJ productivity and time with the Agency.

³ These overpayment cases related to individuals appealing an earlier SSA decision that they owed money back to the Agency. While the case may have related to an individual receiving disability benefits, the appealed issue itself related to the Agency's assessment that money needed to be returned. We determined our population had 3,711 overpayment cases.

⁴ At times, SSA may order tests and evaluations of the claimant from an Agency-contracted medical provider to address gaps in medical evidence or to obtain a second opinion on a medical matter.

sections of the grid,⁵ where appropriate, and other treating source and Agency-procured medical opinions; and (5) other characteristics of the case, from the use of medical and vocational experts to the length of the hearing, if there was one.

- Reviewed paper and electronic hearing cases, as well as written and oral ALJ decisions. In some cases, the Agency was unable to provide a complete copy of the paper hearing case. In the case of bench decisions, where the ALJ did not provide a full written rationale for his/her opinion,⁶ we listened to the hearing recording to learn more about statements and evidence associated with the claim.
- Provided DQ with information on the sample cases where we identified quality issues. DQ responded with the action it would most likely have taken had the case been part of its pre-effectuation quality review process.⁷ DQ provided three primary responses on the cases we provided it: (1) case was decided consistent with policy, (2) case would have been remanded to the ALJ for further development under an own motion pre-effectuation quality review, and (3) case would have been reversed by the Agency under an own-motion pre-effectuation quality review.
- Calculated the Old Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) disability benefits (1) paid through July 2014 and (2) payable over the 12 months after July 2014 to claimants allowed by the ALJs in our population⁸ if they fell into any of three categories:
 - case would have been reversed by the Agency under an pre-effectuation quality review;
 - case would have been remanded to the ALJ under an pre-effectuation quality review; and
 - case could not be reviewed because of incomplete information from the Agency.
- Reviewed the results of OAO's FYs 2011 to 2013 pre-effectuation quality reviews and requested additional information for the ALJs identified in our review.⁹ OAO determined

⁵ The Grid is the *Medical and Vocational Guideline* the Agency uses to assess major functional and vocational patterns that are encountered in cases that cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his/her vocationally relevant past work. See 20 C.F.R. §§ 404.1569 and Appendix 2 to Subpart P of Part 404—*Medical-Vocational Guidelines*.

⁶ Even in the case of bench decisions, the Agency requires that the ALJ complete an *ALJ Bench Decision Checklist* that provides basic information about the decision on the case.

⁷ Since these cases were reviewed after they had been effectuated by the Agency, both the reversal and remand actions were no longer actionable.

⁸ If the individual became eligible for OASDI retirement benefits (at full retirement age) or SSI aged benefits, we did not include those dollars in our calculations.

⁹ We did not have comparable data for earlier periods since DQ pre-effectuation reviews on allowances did not start until FY 2011.

23 percent of the FY 2011 remanded cases to all ALJs were denied or dismissed,¹⁰ while we calculated a 27-percent denial/dismissal rate on FY 2011 remanded cases for the ALJs in our population.¹¹

- In cases the Agency would have remanded under an own-motion review, we estimated the number of potential denial and dismissals of remanded cases using the 27-percent rate (shown in the prior bullet) from the FY 2011 pre-effectuation cases related to the ALJs in our population. In those cases where the complete paper case folder was unavailable for us to review an ALJ's decision, we assumed the same error rate as the cases we were able to review.¹²
- Extrapolated our sample results, both items and dollars, to the population of favorable decisions issued by the outlier ALJs over the 7-year period to estimate both past payments as well as future payments over a 12-month period. We discuss our sample estimation methodology below. Our estimate relates only to those cases where we believe the ALJ's allowance would have been denied or dismissed. We did not calculate questionable costs related to less or more favorable allowances.

We found FY 2007 through 2013 CPMS data were sufficiently reliable to meet our objectives. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this performance audit from January through August 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Sample Results and Estimations

Of the 275 sample cases associated with 44 outlier ALJs, DQ staff confirmed 113 ALJs' allowances were not fully supported by the record—5 would have been reversed and the other 108 remanded under the Agency's pre-effectuation quality review process.¹³ In another 28 cases, we were unable to review the ALJ's decision because SSA could not locate case folders, hearing transcripts, and/or the ALJ's decision. After applying a number of assumptions, we estimated that approximately 29 of the 108 remands would have been denied or dismissed as well as 4 of the cases we were unable to review. As a result, we estimated ALJ decisions on 38 of these 275 cases were not fully supported by the record.

¹⁰ As we noted in the report, OAO remanded about 17 percent of the sampled national cases in FY 2011, so denied or dismissed remanded cases were about 4 percent of all sampled cases for all ALJs.

¹¹ As we noted in the report, OAO remanded about 32 percent of the sampled cases related to the 44 ALJs in FY 2011, so denied or dismissed remanded cases were about 9 percent of sampled cases for the 44 ALJs.

¹² The cases we were able to review consisted of 247 sample cases, which consisted of the 275 sample cases less the 28 cases with missing information.

¹³ DQ suggested modifications on another 15 cases, but the allowance on the case itself was not in question.

Extrapolating the results of our 275-case review to the total number of allowances made by the 44 outlier ALJs over the 7-year period, we estimate these ALJs improperly allowed disability benefits on approximately 24,900 cases, resulting in questionable cost of approximately \$2 billion (see Table C-1). Additionally, SSA will continue paying approximately \$273 million to these same beneficiaries over the next 12 month.¹⁴

¹⁴ This relates to the claimants that were still on the rolls as of July 2014. Of the 275 cases in our calculations, 26 cases were no longer in current pay as of July 2014.

**Table C-1: Questionable Allowances and Related Disability Payments
Among 275 Cases Reviewed by OIG and DQ**

| | |
|--|------------------------|
| Population size | 180,086 |
| Sample size | 275 |
| Cases DQ Would Have Reversed | |
| Number of Reversals Identified by DQ in Sample | 5 |
| Estimated Number of Reversals in Population | 3,274 |
| Past Due Payments for Reversed Sample Cases | \$335,134 |
| Estimated Past Due Payments for Reversals in Population | \$219,465,242 |
| Amounts Payable over Next 12 Month for Sample Cases | \$48,467 |
| Estimated Future Payments over Next 12 Months for Population | \$31,738,881 |
| Cases DQ Would Have Remanded | |
| Number of Remands Identified by DQ in Sample | 108 |
| Estimated Denial/Dismissal Rate on Remanded Cases (Note 1) | 27% |
| Estimated Number of Denials and Dismissals in Sample | 29 |
| Estimated Number of Denials and Dismissals in Population | 18,991 |
| Total Past Due Payments for Denied and Dismissed Sample Cases | \$8,709,576 |
| Average Past Due Payment among Sample Cases | \$80,644 |
| Estimated Past Due Payments for Denials and Dismissals in Population | \$1,531,505,332 |
| Total Amounts Payable over Next 12 Month for Sample Cases | \$1,229,475 |
| Average Future Amount Payable among Sample Cases | \$11,384 |
| Estimated Future Payments over Next 12 Months for Population | \$216,192,792 |
| Missing Cases – Not Reviewed by OIG | |
| Number of Missing Cases in Sample | 28 |
| Estimated Error Rate on Missing Cases (Note 2) | 13.8% |
| Estimated Number of Denials and Dismissals in Sample | 4 |
| Estimated Number of Denials and Dismissals in Population | 2,619 |
| Total Past Due Payments for Denied and Dismissed Sample Cases | \$2,826,494 |
| Average Past Due Payment among Sample Cases | \$100,946 |
| Estimated Past Due Payments for Denials and Dismissals in Population | \$264,421,825 |
| Total Amounts Payable over Next 12 Month for Sample Cases | \$263,955 |
| Average Future Amount Payable among Sample Cases | \$9,427 |
| Estimated Future Payments over Next 12 Months for Population | \$24,693,282 |
| Estimated Number of Questionable Allowances in Population | 24,884 |
| Estimated Past Due Payments for Questionable Allowances in Population | \$2,015,392,399 |
| Estimated Future Payments over Next 12 Months for Population | \$272,624,955 |

Note 1: We used a 27-percent denial/dismissal rate on the DQ remands, which matched the denial/dismissal rate for the FY 2011 pre-effectuation cases remanded by DQ to the 44 ALJs.

Note 2: Of the cases we were able to review, we estimated that 34 of the 247 cases would have been reversed or denied/dismissed after being remanded. We used this same error rate (13.8 percent) on the missing cases, since we have no reason to believe these cases were different from the reviewed cases.

Appendix D – MAJOR CONTRIBUTORS

Walter Bayer, Director, Chicago Audit Division

Nicholas Milanek, Audit Manager, Crystal City Audit Office

Yaquelin Lara, Auditor-in-charge, Crystal City Audit Office

Mary Ann Braycich, Senior Program Analyst, Crystal City Audit Office

Tonya Eickman, Audit Manager, Kansas City Audit Office

Shelley Guimond, Program Analyst, Birmingham Audit Office

Faisal Khan, Auditor, Crystal City Audit Office

Janet Matlock, Senior Auditor, Birmingham Audit Office

Nicholas Moore, Auditor, Kansas City Audit Office

Toni Paquette, Senior Analyst, Boston Audit Office

Parham Price, Auditor, Crystal City Audit Office

Ken Wong, Program Analyst, Crystal City Audit Office

Brennan Kraje, Statistician

Liang Wu, Intern

MISSION

By conducting independent and objective audits, evaluations, and investigations, the Office of the Inspector General (OIG) inspires public confidence in the integrity and security of the Social Security Administration's (SSA) programs and operations and protects them against fraud, waste, and abuse. We provide timely, useful, and reliable information and advice to Administration officials, Congress, and the public.

CONNECT WITH US

The OIG Website (<http://oig.ssa.gov/>) gives you access to a wealth of information about OIG. On our Website, you can report fraud as well as find the following.

- OIG news
- audit reports
- investigative summaries
- Semiannual Reports to Congress
- fraud advisories
- press releases
- congressional testimony
- an interactive blog, "[Beyond The Numbers](#)" where we welcome your comments

In addition, we provide these avenues of communication through our social media channels.



[Watch us on YouTube](#)



[Like us on Facebook](#)



[Follow us on Twitter](#)



[Subscribe to our RSS feeds or email updates](#)

OBTAIN COPIES OF AUDIT REPORTS

To obtain copies of our reports, visit our Website at <http://oig.ssa.gov/audits-and-investigations/audit-reports/all>. For notification of newly released reports, sign up for e-updates at <http://oig.ssa.gov/e-updates>.

REPORT FRAUD, WASTE, AND ABUSE

To report fraud, waste, and abuse, contact the Office of the Inspector General via

Website: <http://oig.ssa.gov/report-fraud-waste-or-abuse>

Mail: Social Security Fraud Hotline
P.O. Box 17785
Baltimore, Maryland 21235

FAX: 410-597-0118

Telephone: 1-800-269-0271 from 10:00 a.m. to 4:00 p.m. Eastern Standard Time

TTY: 1-866-501-2101 for the deaf or hard of hearing