

BY THE COMPTROLLER GENERAL

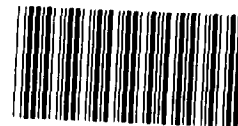
# Report To The Congress

OF THE UNITED STATES

## Legislation Allows Black Lung Benefits To Be Awarded Without Adequate Evidence Of Disability

Social Security Administration approval of black lung claims is based on provisions of law which GAO believes do not adequately ensure that benefits are provided only to those entitled to them. Under the 1977 amendments to the Federal Coal Mine Health and Safety Act such claims were based on affidavits from spouses and other dependent persons, inconclusive medical evidence, and presumptions based on years of coal mine employment.

GAO believes that medical evidence should be the basis for determining disability and death from black lung.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

This report summarizes the results of our review of approved black lung claims by the Social Security Administration under the Black Lung Benefits Reform Act of 1977. It discusses our belief that adequate medical evidence should be used to establish eligibility for black lung benefits.

Our review was requested by Congressman John N. Erlenborn to determine whether the approval of black lung claims complied with the Black Lung Benefits Reform Act of 1977.

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretaries of Education, Labor, and Health and Human Services.

A handwritten signature in black ink, appearing to read "Thomas A. Stack".

Comptroller General  
of the United States



D I G E S T

GAO's review of a random sample of Social Security Administration (SSA)-approved black lung claims indicated that, in most cases, medical evidence was not adequate to establish a coal miner's disability or death from black lung. The approved cases were re-reviewed under the 1977 amendments to the Federal Coal Mine Health and Safety Act.

Approval of these claims was not contrary to law; it was based on provisions of law which GAO believes do not adequately assure that benefits are provided only to those disabled from black lung or to the survivors of those who died from black lung. Under the provisions of the amended legislation, SSA approved claims on the basis of affidavits from spouses and other dependent persons, inconclusive medical evidence, and presumptions based on years of coal mine employment. (See p. 8.)

The Federal Coal Mine Health and Safety Act of 1969 provided benefits to coal miners totally disabled by pneumoconiosis--commonly called "black lung"--and to dependents of miners who had died from the disease or were totally disabled from it at death. The act was amended in 1972 and 1977 to make more miners and their survivors eligible for program benefits. (See p. 1.)

Black lung is caused by inhaling substances, such as coal dust. The disease, in its advanced stages, usually causes considerable breathing difficulty and severely limits the physical capabilities of the individual.

SSA was responsible for administering all miner claims filed before July 1, 1973, all survivor claims filed before January 1, 1974, and certain survivors' claims filed within 6 months of the death of a miner. The Department of Labor is responsible for administering all other black lung claims filed after these dates. (See p. 2.)

The 1977 amendments gave claimants of previously denied black lung claims the option of having their claims re-reviewed by either SSA or Labor. (See p. 1.)

At the time of the 1977 amendments, SSA had about 165,000 previously denied claims on file. Over 118,000 miners and survivors elected to have their claims reviewed under the new law. Of these claimants, 82,434 wanted SSA to review their cases and 36,104 chose Labor. As of September 19, 1979, SSA had approved 23,178 (28.1 percent) of the 82,434 claims.

At the request of Congressman John N. Erlenborn, GAO reviewed SSA's administration and processing of the previously denied claims that it re-reviewed.

The act, as amended, requires the person claiming eligibility for benefits to provide medical or other relevant evidence to show that the miner is or was totally disabled from black lung and that it resulted from coal mine work. Where there is no medical or other relevant evidence, the act permits the use of affidavits and years of coal mine employment as evidence in establishing disability. (See pp. 3 and 4.)

GAO's review of a random sample of 200 SSA re-reviewed and approved black lung claims indicated that, in 88.5 percent of the cases, medical evidence was not adequate to establish disability or death from black lung. SSA approved claims on the basis of affidavits, inconclusive medical evidence, and presumptions based

on years of coal mine employment--all of which were legal under existing legislation. (See p. 8.)

Projecting the results of its sample, GAO estimated that successful claimants received retroactive lump-sum payments of about \$353.6 million, of which \$312.9 million was for claims that were not based on adequate medical evidence of disability or death from black lung. The same claimants also receive about \$79 million annually in monthly payments, of which \$69.8 million was not supported by adequate medical evidence of disability or death by black lung. (See p. 9.)

Although GAO believes that medical evidence should be used as the basis for determining eligibility for black lung benefits; GAO is not making any legislative recommendation at this time. This review covered only SSA's administration of the program. GAO is currently reviewing Labor's administration of the black lung program. Accordingly GAO is deferring any legislative recommendation until the completion of its current review. (See p. 14.)

Labor decided not to comment on the report. SSA officials stated that the report is factually correct and the conclusions valid. They said that the legislation was amended to permit approval of claims without medical evidence of disability and that SSA's actions in approving black lung claims were therefore not contrary to law. (See p. 15.)

Tear Sheet





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### ABBREVIATIONS

GAO	General Accounting Office
HHS	Department of Health and Human Services
SSA	Social Security Administration

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## CHAPTER 1

### INTRODUCTION

The 1977 amendments to the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) gave claimants of previously denied black lung claims the option of having their claims re-reviewed. The Social Security Administration (SSA) informed claimants with previously denied SSA claims of the legal changes and advised them of the option of having SSA or the Department of Labor re-review their claims.

At the time of the 1977 amendments, SSA had about 165,000 previously denied claims on file. Over 118,000 miners and survivors elected to have their claims reviewed under the new law. Of these claimants, 82,434 wanted SSA to review their cases and 36,104 chose Labor. Claims reviewed by SSA and not approved were sent to Labor, where they were reviewed under Labor's eligibility criteria. As of September 19, 1979, SSA had approved 23,178 (28.1 percent) of the 82,434 re-reviewed claims.

This report deals with SSA's review of the previously denied black lung claims. Our review was requested by Congressman John N. Erlenborn. We have issued 11 other reports on other aspects of the black lung benefits program. (See app. I.)

### BACKGROUND

The Federal Coal Mine Health and Safety Act became law on December 30, 1969. The act was the first law at any governmental level to provide benefits exclusively to victims of a single occupational disease. The act, as amended in 1972 and 1977, provides for monthly cash payments to

--coal miners who are totally disabled due to coal workers' pneumoconiosis--commonly called "black lung"--resulting from work in and around coal mines and

--survivors of coal miners who were entitled to such benefits and who died from black lung or were totally disabled from it at death.

Pneumoconiosis is a generic term referring to a class of diseases caused by inhaling substances, such as coal or quarry dust. Black lung, caused by inhaling coal dust, is characterized by a chronic fibrous tissue reaction in the lungs which may cause disability or death.

Black lung occurs in two forms--simple and complicated. Simple pneumoconiosis is characterized by the profusion of small opacities (lesions) in the lung. Complicated pneumoconiosis, which usually occurs after simple pneumoconiosis, is characterized by conglomerate or massive lesions larger than 1 centimeter in diameter.

The disease in this form usually produces marked lung impairment and considerable breathing difficulty for the individual. Such breathing disability severely limits the person's physical capabilities, can induce death by heart failure, and may contribute to other causes of death. Once the disease is contracted, it is progressive and irreversible.

SSA, within the Department of Health and Human Services (HHS), <sup>1/</sup> and the Department of Labor administer the black lung benefits program. Claims filed by a living miner on or before June 30, 1973, claims filed by the survivors of a miner on or before December 31, 1973, and certain survivors' claims filed within 6 months of the death of a miner, were processed and paid by SSA from congressionally appropriated funds. SSA is still responsible for administering these claims. Claims filed by a living miner between July 1 and December 31, 1973, were processed and paid by Labor. All other claims filed after December 31, 1973, were processed by Labor and paid by either a coal mine operator from his funds or Labor from congressionally appropriated funds.

Beginning April 1, 1978, claims not identified as being the responsibility of a particular coal mine operator are paid from a trust fund, established by the 1977 amendments, financed from a tax on coal sold by producers. Also, claims

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<sup>1/</sup>On May 4, 1980, a separate Department of Education was created. The part of the Department of Health, Education, and Welfare responsible for the activities discussed in this report became the Department of Health and Human Services.

coal miner had at least 10 years of coal mine employment and had a chronic lung impairment before he died. The only evidence in the file to establish disability was the deceased claimant's and his widow's statements about "shortness of breath."

On March 5, 1979, the day the survivor's claim was approved, the living-miner claim, which had been denied in September 1973, was again denied by SSA under the 1977 amended eligibility criteria. The widow received a retroactive lump-sum payment of \$22,007.80 and monthly benefit payments of \$348.

DISABILITY ESTABLISHED BY  
INCONCLUSIVE MEDICAL EVIDENCE

In 61 of the 69 living-miner claims and 1 of the 131 survivor claims, medical evidence was inconclusive to establish disability from black lung. Of the 61 claims, 56 had X-ray evidence of simple pneumoconiosis as determined by the claimant's radiologist, including 23 that had physicians' comments about a respiratory or pulmonary disorder, but no further medical evidence of a totally disabling impairment. SSA determined that 39 of the 56 X-rays did not show evidence of black lung. Of the 61 claims, 57 had lung function studies showing no breathing impairment.

SSA, in most instances, approved the living-miner claims on the basis of 10 or more years of coal mine employment, a positive X-ray for simple pneumoconiosis, and other evidence of a totally disabling respiratory or lung impairment. Other evidence can include blood gas studies, lung function studies, and statements by physicians. A wife's affidavit could not be used by itself to establish disability for living-miner claims. In 29 cases, the other evidence was a second X-ray read positive for black lung by the claimant's radiologist; SSA determined that 16 of these X-rays did not show evidence of black lung. In 13 cases, the other evidence was comments about black lung by the claimant's physician.

Two examples of approved living-miner claims follow:

--On September 9, 1971, a 58-year-old miner applied for black lung benefits, reporting over 20 years of coal mine employment and naming his disability as black

disabled from pneumoconiosis and evidence that it resulted from coal mine work. The act has five presumptions--one irrebuttable and four rebuttable--which are used in determining a miner's eligibility for black lung benefits. Where there is no medical or other relevant evidence, the act, as amended, also permits the use of affidavits as evidence in establishing disability.

#### Irrebuttable presumption

The act provides that, if a chest X-ray, a biopsy, an autopsy, or another diagnostic procedure shows the existence of complicated pneumoconiosis, the miner is presumed to be totally disabled or to have died from black lung. Therefore, except for the evidence of coal mine employment, no further evidence is needed to establish eligibility for benefits.

#### Rebuttable presumptions

The act provides that, for cases in which the medical evidence does not show the existence of complicated pneumoconiosis, a determination that the miner is totally disabled due to, or died from, black lung be based on legislative requirements established by the act and eligibility standards for disability prescribed by the Secretary of HHS. For determining eligibility for these cases, the act provides the rebuttable presumptions referred to as (1) 10-year presumptions, (2) 15-year presumption, and (3) 25-year survivor presumption.

#### Ten-year presumptions

The act provides that, if the miner has been employed at least 10 years in one or more coal mines, a presumption be made that

--the miner's death was due to black lung if he died from respiratory disease or

--black lung, if present, arose from his mining employment.

Under the act, these two presumptions are rebuttable. If a coal miner was employed for less than 10 years, the claimant must present the medical evidence necessary to establish that the miner suffered from black lung and that it arose out of his employment as a coal miner.

### Fifteen-year presumption

The 1972 amendments added another rebuttable presumption. It is that miners are totally disabled due to black lung, that their deaths were due to black lung, or that they were totally disabled by black lung at death, if they were employed for at least 15 years in underground coal mines or in comparable conditions in surface mines and other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment. This provision may be rebutted only by establishing that the miners do not, or did not, have black lung or that their respiratory or pulmonary impairments did not arise out of their coal mine employment.

The amendments provide that no claim for black lung benefits shall be denied solely on the basis of a chest X-ray interpreted as negative for black lung. The amendments require that, in determining the validity of claims, in addition to X-rays, all relevant evidence shall be considered, including such medical tests as breathing tests, 1/ blood gas studies, 2/ and electrocardiograms 3/ and any medical history evidence submitted by the claimant's physician or affidavits from a surviving spouse.

### Twenty-five-year survivor presumption

The 1977 amendments allow a presumption of eligibility for a miner's survivor, if the miner died on or before the date of enactment of the amendments and had at least 25 years of coal mine employment before June 30, 1971, unless it is established that at the time of death the miner was not partially or totally disabled due to black lung. Eligible survivors are required to furnish, upon request, such evidence if available with respect to the health of the miner at the time of death.

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1/Breathing tests measure breathlessness and working capacity in persons with breathing impairments.

2/Blood gas studies determine whether the lung efficiency in exchanging oxygen and carbon dioxide has been impaired.

3/Electrocardiograms may identify impairment of the heart function that may be caused by a damaged lung.

### Use of affidavits

In the case of a deceased miner, the 1972 amendments required that a spouse's affidavit and other appropriate affidavits of persons with knowledge of the miner's physical condition be considered along with other relevant evidence in determining the validity of black lung claims. The 1977 amendments added that, where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits shall be considered to be sufficient to establish that the miner was totally disabled due to black lung or that his or her death was due to black lung.

### Rereading of X-rays

The 1977 amendments provide that, where there is other evidence of pulmonary or respiratory impairment, the amended law requires SSA to accept an interpretation by a claimant's physician as evidence of pneumoconiosis without rereading by experts, providing the X-ray: (1) is of acceptable quality, (2) was taken by a qualified radiologic technician or technologist, (3) was initially interpreted by a board-certified or board-eligible radiologist, and (4) is not fraudulently misrepresented.

### COMPENSATION AND OTHER BENEFITS

Black lung benefits paid are 50 percent of the minimum monthly payment to a totally disabled Federal employee in grade GS-2, step 1, under the Federal Employees' Compensation Act (5 U.S.C. 8101). (If the miner or survivor has dependents, the benefit amount is increased.) The 1977 amendments provided for payment of lump-sum benefits retroactive to January 1974. The monthly benefit rate has increased with changes in Federal salary levels. The table below shows the monthly benefit rates paid between October 1976 and September 1980.

<u>Dependents</u>	<u>10-1-76 through 9-30-77</u>	<u>10-1-77 through 9-30-78</u>	<u>10-1-78 through 9-30-79</u>	<u>10-1-79 through 9-30-80</u>
None	\$205.40	\$219.90	\$232.00	\$254.00
One	308.10	329.80	348.00	381.00
Two	359.50	384.80	405.90	444.50
Three or more	410.80	439.70	463.90	508.00



In the 8 years from enactment of the Federal Coal Mine Health and Safety Act of 1969 through 1977, SSA paid almost \$6 billion in black lung benefits to 365,512 claimants, out of the 537,075 miners and survivors who filed claims in that period. The successful claimants represented 65.2 percent of the living miners and 74.1 percent of the survivors who had filed claims for benefits.

## CHAPTER 2

### BENEFITS AWARDED WITHOUT ADEQUATE

#### MEDICAL EVIDENCE OF DISABILITY

Our review of a random sample of 200 SSA re-reviewed and approved black lung claims indicated that, in 88.5 percent of the cases, medical evidence was not adequate to establish disability or death from black lung. The approval of these claims was not contrary to law; however, the approval was based on provisions of law which we believe do not adequately ensure that benefits are provided only to those disabled from black lung or to the survivors of those who died from black lung. Under the provisions of the amended black lung legislation, SSA approved claims, without adequately establishing disability or death from black lung, on the basis of affidavits from spouses and other dependent persons, inconclusive medical evidence, and presumptions based on years of coal mine employment.

Our sample consisted of claims approved for 131 survivors of deceased miners and 69 living miners. A summary of our sample follows:

	<u>Benefits paid to</u>		
	<u>Survivor</u>	<u>Living miner</u>	<u>Total</u>
Disability established by medical evidence	15	8	23
Disability established by means other than medical evidence:			
Affidavits	78	-	78
Inconclusive medical evidence	1	61	62
25 years or more of coal mine employment	<u>37</u>	<u>-</u>	<u>37</u>
Total	<u>131</u>	<u>69</u>	<u>200</u>

Projecting the results of our sample, we estimate that successful claimants received retroactive lump-sum payments of about \$353.6 million, of which \$312.9 million was not based on adequate medical evidence of disability or death from black lung. The same claimants also receive about \$79 million annually in monthly payments, of which \$69.8 million was not supported by adequate medical evidence of disability or death caused by black lung.

#### DISABILITY ESTABLISHED BY AFFIDAVITS

Of the 131 survivor claims, SSA established disability from black lung by accepting statements from persons with a knowledge of the deceased miner's physical condition in 78 cases. However, in 68 of the 78 cases (87 percent), the person who signed the statement about the miner's physical impairment was the one that filed the claim and received benefits. Affidavits from third parties with no self-serving or vested interests in the outcome of the claims established disability from black lung in 10 (13 percent) of the cases.

The 1977 black lung amendments provide that:

"In determining the validity of claims \* \* \* all relevant evidence shall be considered, including \* \* \* evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, \* \* \*

"Where there is no medical or other relevant evidence in the case of a deceased miner \* \* \* affidavits shall be considered to be sufficient to establish that the miner was totally disabled \* \* \*"

In implementing the 1977 amendments, SSA allowed affidavits to be general. Statements by survivors saying a miner "coughed and spit," had "miner's asthma," or had "shortness of breath" were accepted as proof of disability when medical evidence was not available.

Of the 78 claims with disability established solely by affidavits, 43 also established length of coal mine employment by affidavits.

Here are two examples of survivors' claims approved on the basis of affidavits:

--In April 1966, a retired miner died from a coronary occlusion at the age of 82--38 years after the last reported period of coal mine employment. In June 1973, the miner's widow filed a black lung claim stating that her husband had worked over 10 years in coal mines and had shortness of breath. Twelve years of coal mining employment was substantiated by a coworker, but there was no medical evidence of disability. SSA approved the claim in January 1979 based on 10 years of coal mine employment and the widow's statement of shortness of breath.

The claim had been previously denied twice on the basis that medical evidence did not establish disability. However, under SSA's revised criteria for the 1977 amendments, disability was presumed by affidavit and the claim approved. The only other evidence in the file was a statement by a physician several years before death that the miner's lungs were clear. The widow was awarded a retroactive payment for black lung benefits of \$12,240.40 plus a monthly allowance of \$232. The retroactive payment was for benefits from January 1, 1974.

--In June 1973, a 54-year-old former miner applied for black lung benefits. On his application he reported 15 years of coal mine employment and listed his disability as "shortness of breath." SSA substantiated 4 years of coal mine employment. In July 1973, the claimant's physical examination resulted in an X-ray negative for pneumoconiosis and a lung function study that showed no disability. On August 31, 1973, the claimant died of stomach cancer. SSA denied his living-miner claim on September 11, 1973, because of the negative X-ray and lung function study.

On September 10, 1973, the claimant's widow filed a survivor's claim for benefits giving the miner's disability as "shortness of breath." SSA denied the claim in January 1974 and again in October 1978 because of the negative X-ray and lung function study. Although SSA was able to substantiate only 4 years of coal mine employment, SSA approved the claim in March 1979 on the basis of statements that the

coal miner had at least 10 years of coal mine employment and had a chronic lung impairment before he died. The only evidence in the file to establish disability was the deceased claimant's and his widow's statements about "shortness of breath."

On March 5, 1979, the day the survivor's claim was approved, the living-miner claim, which had been denied in September 1973, was again denied by SSA under the 1977 amended eligibility criteria. The widow received a retroactive lump-sum payment of \$22,007.80 and monthly benefit payments of \$348.

DISABILITY ESTABLISHED BY  
INCONCLUSIVE MEDICAL EVIDENCE

In 61 of the 69 living-miner claims and 1 of the 131 survivor claims, medical evidence was inconclusive to establish disability from black lung. Of the 61 claims, 56 had X-ray evidence of simple pneumoconiosis as determined by the claimant's radiologist, including 23 that had physicians' comments about a respiratory or pulmonary disorder, but no further medical evidence of a totally disabling impairment. SSA determined that 39 of the 56 X-rays did not show evidence of black lung. Of the 61 claims, 57 had lung function studies showing no breathing impairment.

SSA, in most instances, approved the living-miner claims on the basis of 10 or more years of coal mine employment, a positive X-ray for simple pneumoconiosis, and other evidence of a totally disabling respiratory or lung impairment. Other evidence can include blood gas studies, lung function studies, and statements by physicians. A wife's affidavit could not be used by itself to establish disability for living-miner claims. In 29 cases, the other evidence was a second X-ray read positive for black lung by the claimant's radiologist; SSA determined that 16 of these X-rays did not show evidence of black lung. In 13 cases, the other evidence was comments about black lung by the claimant's physician.

Two examples of approved living-miner claims follow:

--On September 9, 1971, a 58-year-old miner applied for black lung benefits, reporting over 20 years of coal mine employment and naming his disability as black

lung. SSA substantiated 13 years of coal mine employment through SSA earnings records. On October 6, 1971, the miner had an X-ray taken, which was read positive for simple pneumoconiosis by one radiologist and negative by two others. The miner had two more X-rays taken on February 15, 1972, and May 30, 1974. The radiologist who took the X-rays read both of them as negative. The miner also had two lung function studies made, neither of which met SSA's revised standards for establishing disability. A physical examination did not show a chronic respiratory or lung disease.

SSA denied the claim in November 1971, January 1972, and August 1973 because of the negative medical evidence. The claim was also denied by an administrative law judge in December 1974. Nevertheless, after the 1977 amendments, the claim was approved because (1) the miner had more than 10 years of coal mine employment, (2) an X-ray showed simple pneumoconiosis, and (3) the miner said that he had black lung. The 1977 law precluded SSA from rereading an X-ray interpreted by a qualified reader as showing the presence of pneumoconiosis. The miner received \$22,638.90 in a retroactive lump-sum payment and \$348 a month.

--On November 10, 1970, a 48-year-old miner applied for black lung benefits. In his application he alleged 12 years of coal mine employment and described his disability to include, among others, his lungs and emphysema. SSA substantiated 6-1/2 years of coal mine employment through employment records. An X-ray taken in 1971 did not identify pneumoconiosis. An X-ray taken in 1973 indicated possible pneumoconiosis. SSA had the X-rays reread in 1974, and they were identified as negative. Lung function tests taken in July 1972 and March 1973 indicated no disability using the revised standards. A blood gas test taken in March 1973 indicated no disability. Physicians' comments during 1971-76, however, indicated a lung impairment.

SSA denied the claim in January 1971 and July 1973 because evidence failed to establish a lung impairment. Although SSA was able to substantiate only 6-1/2 years of coal mine employment, SSA approved the claim in April 1979 because the miner stated in his claim that

he had been employed in coal mines for at least 10 years and had a positive X-ray for simple pneumoconiosis. The claims examiner did not consider the negative lung function tests. The miner received \$19,404 in a retroactive lump-sum payment and \$348 a month.

DISABILITY BASED ON AT LEAST  
25 YEARS OF COAL MINE EMPLOYMENT

In 37 of the survivor claims, the miners were presumed to have been disabled because they had worked at least 25 years in coal mines. Of the 37 survivor claims, 29 had no evidence of black lung or disability, and 7 had positive X-ray evidence of simple pneumoconiosis as determined by the claimant's radiologist. One claim had physician's comments about a respiratory-pulmonary disorder.

Two examples of claims awarded on the basis of 25 years of coal mine employment follow:

--On February 10, 1953, a 50-year-old miner was killed from falling slate while working in a coal mine. On February 8, 1971, the miner's widow filed a black lung claim--almost 18 years after the miner died--stating that the miner had worked 32 years in coal mines and that she thought he might have had a lung condition. SSA substantiated 33 years of coal mine employment from his employer.

SSA denied the claim on April 3, 1971, because the miner's death was caused by a broken neck resulting from a mine accident and because the hospital medical examination failed to reveal the presence of black lung or a respirable disease. On April 9, 1973, SSA again denied the claim for the same reasons. The denial was contested by the widow, and on April 10, 1974, the claim was again denied by an administrative law judge.

SSA approved the claim on September 8, 1978, because of the more than 25 years of coal mine employment and no rebutting evidence--death presumed due to black lung. The widow was awarded an \$11,776.40 retroactive lump-sum payment and \$232 in monthly payments.

--On April 28, 1962, a 55-year-old miner was killed in a coal mining accident. On April 9, 1973, the miner's widow filed a black lung claim stating that the miner had worked 31 years in coal mine employment and that he had shortness of breath. SSA substantiated 29 years of coal mine employment from his employers. SSA denied the claim on June 21, 1973, because (1) the miner was killed in a mine accident, (2) no autopsy was performed, and (3) there was no medical evidence of complicated pneumoconiosis. After the 1977 amendments, SSA approved the claim on August 21, 1978, because over 25 years of coal mine employment established disability for the miner and there was no rebutting evidence. The widow was awarded an \$11,092.50 retroactive lump-sum payment and \$219.90 in monthly payments.

### CONCLUSIONS

Our review of SSA's re-review of previously denied claims showed that, in most cases, SSA's subsequent approval was based on little or no medical evidence. Based on the results of our sample of approved black lung case files, we believe there was little medical evidence that most of the miners involved in successful awards were totally disabled by or died from black lung.

The Federal Coal Mine Health and Safety Act of 1969, as amended, permitted SSA to (1) accept statements by survivors of miners to establish disability or death from black lung, (2) approve claims when there was contradictory or inconclusive medical evidence, and (3) use presumptions based on years of coal mine employment to establish disability from black lung.

We believe that medical evidence should be the basis for determining disability and death from black lung. We also believe awarding benefits based on years of employment seems more appropriate for pension programs than disability programs.

SSA is no longer responsible for processing new black lung claims. However, Labor is responsible for the continuing administration of the black lung program. Although we believe that medical evidence should be used as the basis for determining eligibility for black lung benefits; we are not making any legislative recommendation at this time. This review covered only SSA's administration of the program. We are currently reviewing Labor's administration of the black



lung program. Accordingly we are deferring any legislative recommendation until the completion of our current review.

AGENCY COMMENTS AND OUR EVALUATION

The Department of Health and Human Services was unable to provide written comments on our draft report within the required time period, and the Department of Labor decided not to comment on the report. SSA, however, provided oral comments in a meeting held on May 21, 1980.

SSA officials stated that the report is factually correct and the conclusions are valid. They said that the legislation was amended to permit approval of claims without medical evidence of disability, and that SSA's actions in approving black lung claims were therefore not contrary to law.

### CHAPTER 3

#### SCOPE OF REVIEW

Our review of SSA's re-review of previously denied black lung claims included reviewing

- the legislative requirements of the Federal Coal Mine Health and Safety Act of 1969 and the 1972 and 1977 amendments;
- SSA's policies, procedures, and regulations for processing black lung claims, including the standards used to establish disability;
- whether SSA's procedures and eligibility standards used for adjudicating black lung claims complied with the black lung legislation; and
- whether medical evidence established coal miner disability.

We also interviewed SSA and Labor officials.

Our work was performed primarily at SSA headquarters in Baltimore, Maryland, and at Labor's headquarters in Washington, D.C. We analyzed a random sample of 200 black lung claims that SSA had approved for payment to ascertain whether SSA complied with eligibility criteria. The sample was from a universe of black lung claims that had been previously denied, but were later approved using the amended procedures developed after the 1977 amendments.

#### SAMPLE SELECTION

Our random sample was taken from a list provided by SSA of claims re-reviewed and approved as of May 1979. We used a statistical sampling formula that provided a 90-percent confidence level with a plus or minus 5-percent confidence sampling error rate. The list of claims, which were in social security number sequence, was numbered, and two sets of random numbers were generated. The first random number indicated the page, and the second random number indicated the claim record on that page to be sampled.

We selected our sample from the 14,789 claims approved as of May 1979. The total number of claims finally approved was 23,178. We computed the sample size based on expected

total approvals of 25,000. In addition, our projections were made to the 23,178 total approvals. Therefore, we are assuming that the additional 8,389 claims approved after our sample selection are similar in the characteristics being evaluated to those from which the sample was drawn.

OUR CRITERIA FOR ESTABLISHING  
DISABILITY OR DEATH FROM BLACK LUNG

We reviewed the case files for the following information, which enabled us to conclude whether medical evidence was adequate to establish total disability or death from black lung:

- Medical evidence showing that the miner had pneumoconiosis, including other respiratory and pulmonary impairments; X-rays to determine the presence of pneumoconiosis, although X-rays sometimes will not detect simple pneumoconiosis in its early stages; and autopsy and biopsy reports, if available, to establish the presence of pneumoconiosis.
- Medical evidence showing that the miner was disabled, including X-rays showing complicated pneumoconiosis; autopsy and biopsy reports; lung function studies and exercise blood gas studies; and statements of disability by physicians which indicated medical evidence existed to support disability or death from black lung.
- Medical evidence showing that the miner died from pneumoconiosis or other respiratory or pulmonary impairment, including death certificates and autopsy reports that listed a respiratory or pulmonary impairment as the primary or secondary cause of death.

In evaluating lung function studies, we used the test values originally established for the black lung program (permanent standards).

The cases in our random sample for which our auditors questioned the adequacy of medical evidence were reviewed by our consultant, a physician. He agreed with the criteria we used to establish disability or death from black lung and reviewed cases, in detail, in which there was a question relating to medical evidence. In these cases he noted whether medical evidence was adequate to establish disability.

OUR REPORTS ON REVIEWS OF ADMINISTRATION  
OF THE BLACK LUNG BENEFITS PROGRAM  
UNDER THE FEDERAL COAL MINE HEALTH  
AND SAFETY ACT OF 1969, AS AMENDED

1. Report to the Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, on problems being encountered by the Bureau of Mines, Department of the Interior, in its implementation of the provisions of the act relating to inspecting coal mines and correcting unsafe and unhealthy conditions (B-170686, May 13, 1971).
2. Report to the Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce, on our examination of certain questions on the processing of claims for black lung benefits by SSA, HEW (B-170686, Aug. 3, 1971).
3. Report to the Congress on achievements, administrative problems, and costs of paying black lung benefits to coal miners and their widows by SSA, HEW (B-164031(4), Sept. 5, 1972).
4. Report to Senator Marlow Cook on alternatives to the payment of black lung benefits by the coal mining industry (B-164031(4), Mar. 13, 1973).
5. Report to Congressman John N. Erlenborn on information on attorney fees paid for State black lung workmen's compensation claims in Kentucky; SSA, HEW (B-164031(4), Jan. 8, 1974).
6. Report to the Special Studies Subcommittee, House Committee on Government Operations, on the need for further improvements in processing of widow's claims for black lung benefits; SSA, HEW (MWD-75-44, Dec. 31, 1974).
7. Report to the Congress on improvements still needed in coal mine dust-sampling program and penalty assessments and collections; Departments of Interior and HEW (RED-76-56, Dec. 31, 1975).

8. Report to the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, on examination of allegations concerning administration of the black lung benefits program (MWD-76-72, Jan. 14, 1976).

9. Report to the Senate Committee on Human Resources, on Labor's administration of the Black Lung Benefits Act of 1972 (HRD-77-77, July 11, 1977).

10. Report to Congressman John N. Erlenborn on SSA's reduction of Federal black lung benefit payments for State workmen's compensation payments (HRD-78-109, May 16, 1978).

11. Report to the Chairman, House Committee on Education and Labor, and the Chairman, Senate Committee on Human Resources, on the black lung benefits paid by Labor and SSA to miners and survivors who also received workmen's compensation payments (HRD-78-157, Sept. 6, 1978).

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