

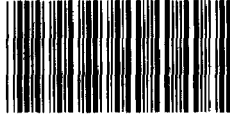


UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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HUMAN RESOURCES
DIVISION



June 10, 1983

B-211533

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The Honorable Howard M. Metzenbaum
United States Senate

Dear Senator Metzenbaum:

Subject: SSA Needs to Protect Against Possible Conflicts
of Interest in Its Disability Programs
(GAO/HRD-83-65)

In a December 16, 1981, letter, you asked us to address several concerns you had about the Social Security Administration's (SSA's) review of the disability rolls and the large number of persons losing their benefits as a result of this effort. Included in your request were specific questions about the consultative examinations used in making the eligibility decisions.

We addressed the broader issues affecting SSA's disability investigations in a briefing presented to your office in May 1982 and in testimony provided to two congressional subcommittees in May and August 1982.¹ However, because of the importance and complexity of the consultative examination issue, we agreed to study this matter separately. We began a survey of the consultative examination process in September 1982.

We have concluded that SSA's policies need to be revised to protect against possible conflicts of interest on the part of physicians working for the various State Disability Determination Services (DDSs) and under contract to SSA. We identified a "loophole" in SSA's policies whereby physicians are prohibited from performing consultative examinations (unless there is no other qualified medical resource available), but are permitted to have familial or financial interests in firms or organizations performing them.

¹We also testified on April 7 and May 20, 1983, before the Senate Special Committee on Aging and the House Select Committee on Aging, respectively, regarding SSA's adjudication process for mentally impaired persons.

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CONTRACTUAL DUTIES OFCHIEF REGIONAL MEDICAL ADVISOR

1. Participates as a member of the technical evaluation panel for regional office medical consultants.
2. Assists in orienting new regional office medical consultants to medical aspects of SSA disability programs.
3. Provides second review on questionable cases where the question involves a medical issue and provides other technical assistance as required.
4. Provides advice, as required, on proper distribution of case files for expeditious and competent review of disability claims by the proper medical consultants.
5. Provides guidance to State Disability Determination Service (DDS) Chief Medical Consultants.
6. Participates in the training and orientation of DDS medical consultants.
7. Provides medical guidance to pertinent nonmedical personnel engaged in case review operations.
8. Identifies medical problems arising in DDS or regional office and helps resolve them.
9. Works with central office medical consultant service physicians to resolve medical documentation and evaluation problems.
10. Participates in central office issue meetings as required.
11. Works with Government and non-Government agencies with related interest within the region to provide medical interpretations of the SSA program and its objectives.

Current SSA policy pertaining to physician independence states that "All implications of possible conflicts of interest must be avoided." We believe this policy should be strengthened and enforced to prohibit all SSA and DDS physicians, whether under contract or employees, from having any familial or financial interests in firms or organizations doing consultative examinations for the disability programs.

As a result of SSA's current policy, a situation existed in one of SSA's regional offices, where the Chief Regional Medical Advisor and one other medical consultant were associated with a firm receiving almost \$2 million in 1982 for performing consultative examinations. While these arrangements were approved in advance by SSA and did not violate Government standards of ethics, and thus were not illegal, they did create a conflict of interest situation. Both medical consultants terminated their contracts with SSA on May 6, 1983.

BACKGROUND ON CONSULTATIVE EXAMINATIONS

Medical evidence is the key factor in SSA's disability decisions. Evidence from existing sources, such as treating physicians and institutions, is considered the best source of information. However, if there are no existing sources, if the available evidence is not sufficient to make a decision, or if there are material conflicts in the evidence, an independent medical (consultative) examination should be purchased.

In recent years, SSA has increased the use of consultative examinations and has significantly increased the total amount spent for this service. About 24 percent of the disability claims processed in fiscal year 1976 involved a consultative examination. This rate increased to about 40 percent in fiscal year 1982. Likewise, program funds spent for medical examinations rose from \$56 million to \$145 million during the same period. The congressional mandate to review the disability rolls--the periodic review requirement of Public Law 96-265--has contributed to this growth. The purchase rate in these review cases was about 54 percent in fiscal year 1982, and SSA has budgeted for a 60-percent rate for fiscal years 1983 and 1984.

To meet SSA's increased demand for these purchased medical examinations, some physicians, groups of physicians, hospitals, and clinics have devoted all or a major portion of their practice to doing examinations for SSA's disability programs. Many States have turned to these "volume providers" to handle the increased demand for consultative examinations and to fill shortages in certain medical specialties or in underserved areas.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our survey of the consultative examination process included visits to several DDSs. Our work initially focused on reviewing the DDSs' procedures for selecting, reviewing, and reimbursing the various consultative examination sources employed. Included in this work was a review of the relative independence or separation of duties existing at the DDSs in the operational units involved with consultative examinations.

During our visits, we learned of a possible conflict of interest situation in SSA's Chicago Regional Office, where two physicians working for SSA as contractors were reported to also be involved with a firm doing consultative examinations for the Illinois DDS. We were provided details about the alleged situation.

We verified that the situation existed and reviewed the scope of the physicians' contractual responsibilities and activities for SSA. We discussed these activities with various personnel from SSA and with DDS officials in Springfield, Illinois. At SSA, we met with regional and headquarters officials involved with the disability programs, and specifically those officials responsible for the work being done by the physicians. We also spoke to the physicians involved.

We reviewed SSA's policies pertaining to physician independence and conflict of interest situations. There were no Federal guidelines pertaining to contractors in this area, so we focused on SSA's policies.

Early in our survey we recognized that SSA knew of the physicians' involvement with the firm doing consultative examinations. We were told by SSA officials that this had been approved in advance. Our methodology centered on determining whether the situation raised potential conflict of interest concerns and warranted changes to SSA policies.

We limited our work to the situation identified in Chicago. We did not determine if similar situations existed elsewhere at either the SSA or the DDS level. The survey was performed in accordance with generally accepted government audit standards.

This report pertains only to the situation identified in Chicago and to SSA policies regarding consultative examinations. Other issues regarding consultative examinations are being explored separately and are not discussed in this report.

SSA POLICIES ALLOW MEDICAL
CONSULTANTS TO HAVE FINANCIAL
INTERESTS IN CONSULTATIVE
EXAMINATIONS

Current SSA policy pertaining to physician independence states that "All implications of possible conflicts of interest must be avoided." We believe this policy needs to be strengthened and enforced to prohibit all SSA and DDS physicians, whether under contract or employees, from having any familial or financial interests in firms or organizations doing consultative examinations for the disability programs. Although SSA had such a policy pertaining to DDS physicians dating back at least to July 1967,² it apparently never had a similar policy for physicians working directly for SSA (except for a 3-month period in 1981 as discussed below). Changes made to SSA's policies since December 1981 have created a "loophole" whereby familial or financial interests are no longer prohibited for SSA or DDS physicians.

In September 1981, after public and congressional concerns focused attention on volume providers, SSA issued a policy statement concerning SSA regional medical consultants and consultative examinations. The September 11, 1981, memorandum from SSA's Associate Commissioner for Operational Policy and Procedures to SSA's Regional Commissioners referred to the policy on DDS physicians and required that regional medical consultant contracts be amended to include the following provision:

"Contractor agrees not to (1) perform consultative examinations for any Disability Determination Service; or (2) acquire or maintain, directly or

²The policy contained in section DI 2026 B.2 of the Program Operating Manual stated:

"Where a consultative examination is needed, none of the DDS reviewing physicians should perform it, unless there is no other qualified medical resource available. To avoid implications of possible conflict of interest, extend this policy to physicians associated with DDS reviewing physicians in medical partnerships or similar relationships."

This policy was rescinded in May 1982.

indirectly, including any member of his/her family, any financial interest in a medical partnership or similar relationship in which consultative examinations for Disability Determination Services are provided.

"In addition, contractor agrees to disqualify himself/herself from any case in which he/she has prior knowledge or experience."

This policy remained in effect for only 3 months. In December 1981 the Associate Commissioner issued another policy statement to the Regional Commissioners which removed the restriction on financial interest in medical firms that do examinations for the DDSs. One official in SSA's Office of Operational Policy and Procedures said the policy was relaxed because of negative feedback from the SSA regional offices and State DDSs. SSA Chicago regional officials said they were very vocal in their protest of this policy because it would mean they would lose their Chief Regional Medical Advisor.

Similarly, on March 15, 1982, a Program Policy Statement (No. 63) was issued by the Office of Operational Policy and Procedures which contained no restriction on financial interests in firms doing consultative examinations. Under the heading of "Physician Independence" for sources of consultative examinations, this policy statement contained the following provision:

"All implications of possible conflict of interest must be avoided. For example, the physician doing the examination or test must not be a full-time or part-time employee of a State DDS or any component of SSA unless there is no other qualified medical resource available. In such instances, the physician cannot participate in the disability decisionmaking or review process on that claim. Also, the physician must not have any familial, financial, or other relationship to the claimant, e.g., as an actual or potential representative payee."

The draft of this policy that was sent to various SSA components and State agencies for comment in September 1981 originally contained the restriction on financial interests that was in the September 11 memorandum. The file of background information on this policy statement contained input from various organizational components. A few DDSs and SSA regional offices expressed concern that the program might lose some of its medical consultants because the policy on physician independence was

too restrictive. Some felt that it precluded the DDS and SSA physicians from having any affiliation with medical groups, even loose affiliations where office space may be shared and nothing more.

We believe SSA's revised policies are too loose and permit situations that could jeopardize the integrity of its disability programs and its professional staff. Although DDS and SSA physicians are prohibited from doing consultative examinations, situations in which they may have financial interests should also be prohibited because of the conflict of interest situation that may result.

A situation identified in SSA's Chicago Regional Office highlights this problem. Two physicians, including the former Chief Regional Medical Advisor, have interests in a firm doing almost \$2 million worth of examinations for the Illinois DDS in fiscal year 1982. As discussed in more detail below, we believe this situation presented a "conflict" and should not have been permitted by SSA.

SSA MEDICAL CONSULTANTS AND
CONSULTATIVE EXAMINATIONS, INC.

One of the top volume providers in the country in fiscal year 1982, in terms of dollar receipts, was Consultative Examinations, Inc. (CEI)--a firm established by Dr. Sandor Berendi, the Chief Regional Medical Advisor for SSA's Chicago Regional Office.

Dr. Berendi assumed that position in 1977. The Chief Regional Medical Advisor and the other medical consultants in the Chicago region are contractors rather than SSA employees. The scope of Dr. Berendi's contractual duties is described in the enclosure.

Dr. Berendi established CEI in July 1980 to do examinations for SSA and for other Government and private programs. CEI's 1982 Annual Report to the Illinois Secretary of State shows that Dr. Berendi is the firm's president, secretary, and treasurer.

Several of the other key staff at CEI are, or were, also associated with the SSA Chicago Regional Office. The firm's business manager since its beginning had been a financial management specialist with the Regional Office until August 1980. While employed at SSA, the manager was primarily responsible for working with the six State DDSs in the region on all budgetary and financial matters--including the consultative examination budgets.

Six of the original physicians employed by Dr. Berendi to do the medical examinations at CEI were also medical consultants at the SSA Regional Office when the firm began serving the Illinois DDS in September 1980. Five of those physicians terminated either their relationship with SSA or their relationship with CEI by December 1981. Only one--Erlinda Berendi, Dr. Sandor Berendi's wife--was both a medical consultant to the Regional Office at the time of our review and affiliated with CEI.

CEI, located in Chicago, does a great deal of work for the Illinois DDS. In fiscal year 1981, its first year of operation, CEI received \$845,236 from the Illinois DDS. In fiscal year 1982, the firm's receipts from the DDS more than doubled to \$1,734,957. The 1982 figure represents about 28.5 percent of the Illinois DDS' total expenditures for consultative examinations for that year.

SSA officials approved Dr. Berendi's financial interest in CEI

SSA headquarters and regional officials have been aware for more than 2 years of Dr. Sandor Berendi's financial interest in CEI. Although SSA at one time issued a policy prohibiting such a relationship with its regional consultants, as discussed on page 5, that policy was rescinded after 3 months, and current policy does not preclude medical consultants from having a financial interest in firms that do examinations for SSA.

Before CEI began working for the Illinois DDS in September 1980, Dr. Berendi discussed his plans with SSA Chicago Regional officials. Regional officials sought an opinion from the Department of Health and Human Services' (HHS') Regional Attorney on the propriety of regional medical consultants, including Dr. Berendi, performing consultative examinations for the Illinois DDS. We were told by regional officials that, based on an opinion from the Acting Regional Attorney, and after discussing the issues with SSA headquarters officials, they gave Dr. Berendi approval to proceed with his plans. The approval was based on the absence of any internal policies or conflict of interest regulations governing contractors.

Because they were contractors and not employees, Drs. Sandor and Erlinda Berendi were not subject to the Government's standards and policies pertaining to conflicts of interest.

Currently, there are no Federal regulations pertaining to contractors and conflicts of interest.³

The Federal Government's regulations on standards of conduct provide a clear message to Government employees--they must earn and maintain the public's confidence in the Government's integrity by avoiding conflicts of interest and favoritism in dealing with those who do business with the Government. Specifically, employees are prohibited from having a direct or indirect financial interest that conflicts substantially with their Government duties and responsibilities or from gaining financially from information obtained through Government employment. A conflict may exist even though there is no reason to believe the employee will resolve the situation to his or her personal advantage rather than in an objective manner. Employees, therefore, are told to avoid participation not only in matters where a conflict actually exists, but also in situations where a conflict is likely to arise.

Contractors' duties create conflict situation

While the Berendis' relationship with SSA and their concurrent interests in CEI did not technically violate existing standards and policies, because they were not Government employees, we believe the situation should be evaluated in light of the spirit and intent of the standards. Particular consideration should be given to the impact of any real or apparent conflict on the public's confidence in SSA's disability adjudication process and in the overall operation of the programs.

We believe Dr. Sandor Berendi's duties as Chief Regional Medical Advisor gave him an unfair competitive advantage over other existing and potential examination sources and placed him in a position to possibly gain financially from his SSA duties.

³The Office of Management and Budget has drafted Federal Acquisition Regulations that will cover contractors. These draft regulations contain the following language:

"Organizational conflict of interest means a situation in which the nature of the work under a proposed Government contract and a prospective contractor's organizational, financial, contractual, or other interests are such that (a) award of the contract may result in an unfair competitive advantage or (b) the contractor's objectivity in performing the contract work may be impaired."

In his capacity as Chief Regional Medical Advisor, he had access to program information that could be advantageous to his outside business--from program and policy changes at the national level, to workload and operational information at the DDS level. He also worked with the DDS personnel whose responsibilities included selecting consultative examination sources.

As part of their duties at the SSA Regional Office, both physicians reviewed disability cases to determine if the DDSs had made the correct eligibility decisions and had adequately documented the decisions. If a case is not properly documented, it can be returned to the DDS for additional documentation. Often this means purchasing a consultative examination. Potentially, cases--particularly cases in which the beneficiary resides in the Chicago area--could be returned to the Illinois DDS requesting more documentation, with the knowledge that the DDS could possibly order an examination from CEI, the largest volume provider in the Chicago area.

We believe the physicians' involvement with CEI could have impaired (1) their objectivity in their consulting roles for SSA and (2) the objectivity of other SSA regional staff responsible for reviewing disability cases from the Illinois DDS. Other physicians on the regional medical consultant staff worked with Dr. Erlinda Berendi and under the leadership of Dr. Sandor Berendi, who recruited and trained the medical consultant staff.

The physicians terminated their contracts with SSA on May 6, 1983.

CONCLUSIONS

SSA's policies regarding physician independence on consultative examinations are too loose and permit situations like the one identified in Chicago. Although DDS and SSA physicians are prohibited from doing consultative examinations, situations in which they may have a financial interest should also be prohibited because of the conflict of interest situation that may result.

Dr. Sandor Berendi's relationship with SSA and his concurrent financial interest in CEI did not violate existing Government standards of ethics because he was a contractor and not a Government employee. However, because of the significant amount of time he spent working with SSA each year, the specific duties and responsibilities as Chief Regional Medical Advisor, and the importance and visibility of this position, we believe a conflict of interest situation existed. We believe the potential existed for Dr. Berendi to gain financially from his SSA position. We have similar concerns about Dr. Erlinda Berendi, who

served as a medical consultant to SSA and was also involved with CEI.

RECOMMENDATIONS

To protect against possible conflicts of interest in the disability programs, we recommend that the Secretary of HHS require that the Commissioner of SSA revise SSA's policies regarding physician independence on consultative examinations to prohibit all SSA and DDS physicians, whether under contract or employees, from having familial or financial interests in firms or organizations doing consultative examinations. Contracts with physicians should be modified to include this prohibition.

We also recommend that the Secretary have the Commissioner determine whether conflict situations, such as the one identified in Chicago, exist elsewhere at either the State or SSA level. Although we have no knowledge at this time of any other such situation, we are concerned that some DDSs apparently felt that including a financial interest prohibition would result in some consultants resigning (see page 5).

SSA AND MEDICAL CONSULTANTS' COMMENTS

As instructed by your staff, we did not take the additional time needed to obtain written agency comments on the matters discussed in this report. We did, however, discuss the report with SSA officials on April 29, 1983. On May 19, we also discussed the report with Drs. Sandor and Erlinda Berendi.

Both physicians were greatly concerned about the report and how they may be viewed. They pointed out that (1) they had prior approval for the firm's role in doing consultative examinations and (2) SSA and the Illinois DDS were pleased with the quality of their work.

We appreciate their concerns. But their activities with SSA, although approved by SSA and not illegal, indicate the inadequacies of SSA's policies. Both SSA and DDS officials spoke to us very favorably about the physicians' work and that of CEI. SSA officials commented particularly about the outstanding contributions these physicians have made to the disability programs.

Following our meeting with SSA officials on April 29, SSA began a study to identify if any other situations exist at the State or Federal level where physicians may have financial interests in firms doing consultative examinations for the disability programs. The officials have agreed to provide us with their findings. Further, they indicated that they will

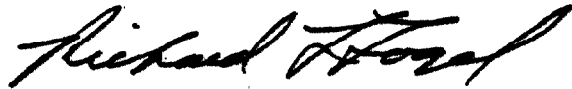
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wait until the study is completed before making a decision regarding establishing a policy on financial interests for SSA contract physicians or DDS physicians.

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We are sending copies of this report to the Chairmen of the Senate Committees on Finance and on Governmental Affairs and the House Committees on Ways and Means and on Government Operations; the Secretary of HHS; the Director, Office of Management and Budget; the Commissioner of Social Security; the Director, Office of Personnel Management; and other interested parties.

Sincerely yours,



Richard L. Fogel
Director

Enclosure