

**Health, Education and Human Services Division**

B-261609

July 28, 1995

The Honorable Sam M. Gibbons
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Dear Mr. Gibbons:

Over the last several years, backlogs and case processing times have increased substantially at the Social Security Administration's (SSA) Office of Hearings and Appeals (OHA). Because of your concerns regarding this issue, on July 15, 1994, you requested that we review SSA's efforts to reduce backlogs at OHA. More specifically, we were asked to determine (1) what steps were taken by SSA in the past to address OHA backlogs and increasing case processing times and what has been achieved, (2) what is currently being done in the short term to reduce backlogs, and (3) what needs to be done in the long term to make the disability determination process more timely and efficient.

Following our briefing to your staff on July 19, 1995, you asked that we provide preliminary information on current short-term efforts to address OHA's growing disability backlogs. This correspondence discusses the growth in OHA backlogs, current initiatives to reduce them, their potential for significantly reducing backlogs, and concerns associated with SSA's efforts.

We conducted our review of SSA's current efforts between January 30 and May 31, 1995. This included a review of SSA's backlog reduction plans, discussions with SSA headquarters officials responsible for the development and implementation of these plans, and visits to 4 of SSA's 10 regional offices (Atlanta, Boston, Dallas, and New York) to determine the implementation status of current initiatives and concerns associated with them.

In summary, SSA has developed a set of short-term initiatives to address OHA's backlogs and processing times from an agency-wide perspective. These initiatives are primarily designed to stem the flow of cases from SSA's field offices and state disability determination services (DDS) to OHA and thereby reduce the number of cases

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requiring an ALJ hearing. Two major STDP initiatives are designed to increase the number of claims awarded without an ALJ hearing by using regional screening units and prehearing conferencing. For these initiatives, case selection is based primarily on profiles of error prone cases or those most likely to result in an on-the-record (OTR) allowance. However, the screening unit case selection criteria has been expanded to include some nonprofiled cases.

The limited impact of the screening units, combined with implementation delays for the prehearing conferencing initiative may prevent SSA from reaching its backlog reduction goals. In addition, concerns have been raised by SSA and OHA personnel regarding the pressures associated with meeting STDP's goals within limited timeframes and the impact of these pressures on decisional accuracy.

BACKGROUND

SSA decides claims for disability insurance (DI) benefits and supplemental security income (SSI) payments under title II and title XVI of the Social Security Act. Applicants file for benefits through an administrative review process that generally consists of several steps. Applications for disability benefits under both programs are filed at SSA's field offices. These applications, along with supporting medical evidence, are then forwarded to the appropriate state DDS for decision. Claimants who are unsatisfied with an initial determination may request reconsideration by the DDS. Those who disagree with the reconsideration decision have the right to a hearing before an ALJ in SSA's Office of Hearings and Appeals. Individuals who disagree with the ALJ decision may pursue their claim with SSA's Appeals Council and ultimately may appeal to a federal district court.

OHA case receipt levels rose from about 302,000 cases in 1989 to 540,000 in 1994. During this same period, backlogs and processing times increased significantly, and continue to grow. Delays in reducing OHA's backlog of appealed cases result in substantial hardship for claimants, particularly those with limited income and no medical insurance. In March 1995, SSA identified 488 pending ALJ cases in one region in which the disability applicants were either in dire need because they were terminally ill, homeless or about to lose their homes to foreclosure, or were without money to buy medicine or food for their children.

In the past, SSA has attempted to reduce OHA backlogs and improve case processing time. These ad hoc efforts focused primarily on shifting OHA resources and making process changes to improve productivity. SSA also hired more ALJs and support staff and increased overtime. (See enclosure 1.) While the previous efforts enhanced OHA productivity, backlogs have continued to grow. In November 1994, SSA issued the Short Term Disability Plan (STDP), which provides activities and targets for reducing disability backlogs and lowering processing times by December 1996. Several months earlier, SSA initiated the Disability Process Redesign, which addresses the systemic problems associated with the disability program, and takes a longer-term approach to addressing the growth in work loads and deteriorating public service. The Disability Process Redesign is scheduled for implementation between 1994 and the year 2000. STDP is designed to expedite the processing of claims in a way that will support SSA's longer-term redesigned disability process.

OHA BACKLOGS
CONTINUE TO GROW

Despite productivity increases, OHA's backlogs grew more than 300 percent, from 159,000 cases to about 486,000 cases, between 1989 and 1994. Case processing times grew more than 140 percent, from 217 days to 305 days, during the same period. In addition, aged cases (cases pending 270 days or more) increased from 11 percent of pending cases to 32 percent. (See enclosure 2.)

While the number of OHA case dispositions grew from 81 per OHA work year in 1989 to 91 per-work-year in 1994, the number of hearings held each month per ALJ has remained relatively constant since 1989. The per-work-year productivity gains noted above may be primarily attributable to other factors, such as an increase in the number of cases being decided OTR without an ALJ hearing. However, productivity increases have not offset the unprecedented growth in disability applications and subsequent requests for appeals.

CURRENT EFFORTS TO
REDUCE OHA BACKLOGS

To address growing backlogs and increased case processing times, SSA issued the STDP in November 1994. The plan includes 19 initiatives designed to expedite the disability determination process and reduce the number of claims requiring an ALJ hearing in a way that will support the

longer-term Disability Process Redesign. When the plan was issued in November 1994 it called for reducing OHA backlogs from the October 1994 level of 486,000 to 375,000, about 23 percent, by December 1996.

To reduce pending OHA work loads, the plan primarily relies on the reallocation of resources and process changes to assist with case preparation and drafting disability decisions. More specifically, 150 OHA and SSA staff from other components will be temporarily detailed to OHA to prepare cases for hearing. An additional 150 personnel will be detailed to draft hearing decisions. STDP also provides for 800 additional computers to be utilized by OHA decision writers and ALJs in preparing and issuing hearing decisions. To lessen the need for OHA prehearing development, process changes include such things as developing a standardized disability claims folder and requiring SSA field offices to obtain additional medical evidence when a request for a hearing is filed.

Two of the 19 initiatives are expected to have the most substantial impact on OHA backlogs. The first initiative increases the effectiveness of regional screening units to stem the flow of cases going to OHA. Before STDP, screening units comprised of non-OHA staff, were established in each SSA region to review error-prone DDS denials to determine if an allowance could be made. Under STDP, existing screening units have been expanded to include OHA staff attorneys who will review cases referred by screening unit examiners and prepare OTR allowances for ALJ concurrence.

Most cases reviewed by the screening units are based on profiles designed by SSA's Office of Program and Integrity Review (OPIR). The profiles identify cases with the highest risks of being erroneously denied at reconsideration. OHA's intent is that the senior attorneys' knowledge of OHA decisional criteria will result in the allowance of additional error-prone cases before an ALJ hearing. Disposing of cases earlier is also less costly than allowing them to reach the ALJ hearing stage.

According to SSA officials, the use of profiling minimizes the risk of making incorrect allowances because cases reviewed are most likely to be inappropriately denied at reconsideration. Nationally, screening units have allowed about 11 percent of the profiled cases screened through June 1995. This figure is fairly consistent with SSA quality review data for 1994, which shows that 8 percent of all DDS reconsideration denials are incorrect. However,

revised agency guidance for this initiative expands the screening units' case selection criteria to include all hearing requests accompanied by additional medical evidence, even if the case does not meet the defined profile. Consequently, screening units are reviewing some cases that are not necessarily error-prone. Because no formal requirement exists for quality assurance reviews of cases allowed by the screening units, decisional errors may not be caught.

The second major initiative involves an expansion of OHA prehearing conferencing. Before STDP, prehearing conferencing involved the screening of profiled cases most likely to result in an OTR decision without a hearing. Staff attorneys conducted limited case development and drafted decisions to be signed by ALJs. Under expanded prehearing conferencing, OHA attorneys will be given additional authority to undertake expanded case development, conduct prehearing proceedings, and issue an allowance without ALJ concurrence. This initiative is intended to expedite OHA's decision process and reduce pending work loads by empowering senior attorneys to make disability decisions.

OHA instructions for the expanded prehearing conference initiative specify that only experienced OHA senior attorneys will be given temporary authority to conduct expanded case development and issue revised reconsideration allowances. These attorneys have extensive exposure to case development and the rationale employed by ALJs in making eligibility decisions as well as experience writing OTR and ALJ hearing decisions.

The prehearing conferencing initiative is consistent with the concept of early dispute resolution detailed in SSA's redesign proposal. For example, the redesign calls for establishing an Adjudicative Officer position to perform duties similar to those that will be performed by OHA attorneys under STDP. The use of prehearing conferencing has also been recommended by the Administrative Conference of the United States as a means to frame the issues, identify matters not in dispute, and decide appropriate cases without a hearing.

SHORT TERM DISABILITY PLAN MAY NOT
ACHIEVE BACKLOG REDUCTION GOALS

Implementation delays related to prehearing conferencing and the limited impact of the screening units may impede SSA's efforts to achieve its backlog reduction goal of

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113,000 cases as specified in STDP. Expanded prehearing conferencing is expected to have the most significant impact under STDP. Although the plan was issued in November 1994, full implementation of prehearing conferencing had not occurred as of May 31, 1995.

To fully implement the initiative, SSA was required to enter into temporary agreements with state DDSs that would place reconsideration denials within OHA jurisdiction and allow senior staff attorneys to issue fully favorable decisions. As of March 1995, only 13 state DDSs entered into such agreements with SSA. Most of the remaining DDSs rejected SSA's requests due to concerns that OHA adjudicative standards might be imposed on a portion of cases under their jurisdiction. They also were concerned about the potential for lawsuits alleging that DDSs were improperly denying claims. Consequently, SSA was required to pursue a regulatory change giving OHA staff attorneys enhanced decisional authority. However, at the time of our review, regulations were not yet finalized and OHA attorneys did not have this expanded decisional authority.

Delays have also occurred with other initiatives needed to support the expansion of prehearing conferencing. Case processing goals associated with this initiative are partly dependent upon initiatives to provide additional computers and staff to assist OHA with case preparation and decision writing. However, SSA was unable to install computers in January 1995 as planned due to procurement delays and protracted union negotiations. In addition, collective bargaining issues associated with the reallocation of personnel hindered SSA's efforts to detail staff to OHA as originally planned. National union negotiations were not finalized until March 1995 and regional level negotiations were still ongoing at the time of our review. The lengthy delay in fully implementing prehearing conferencing and other initiatives makes meeting the initiative's 1995 goals unlikely. In fact, a number of SSA officials told us that these delays may adversely affect the projected impacts of expanded prehearing conferencing.

The limited effectiveness of regional screening units may also impact STDP's backlog reduction goals. These units are not stemming the flow of cases going to OHA as originally projected. Before STDP, existing screening units were expected to review error-prone DDS reconsideration cases and allow about 20,000 cases per year through December 1996. With the addition of OHA senior attorneys into the screening units under STDP, SSA projected that they would allow an additional 18,000 cases

per year. However, reaching the goal of 38,000 allowances in 1995 is doubtful because the screening units allowed a total of only 13,066 cases between August 1994 and June 1995.

In only three of SSA's 10 regions--Boston, New York, and Seattle--are the screening units consistently allowing cases at a rate that may facilitate STDP's goals. SSA officials overseeing the screening unit initiative told us that disparities in allowances may be attributable to the reluctance of some regions to provide sufficient senior attorney support to the screening units. In addition, in the four regions that we visited, procedures dictating the number of error-prone cases reviewed by the screening units varied.

CONCERNS ASSOCIATED
WITH STDP

Since the announcement of STDP, backlogs have increased from 486,000 to 534,000 cases as of April 1995. To achieve the plan's original goal of reducing pending cases to 375,000 by December 1996, SSA will have to increase its backlog reduction targets from the original 113,000 cases to about 159,000 cases during the same timeframe. In commenting on the likelihood of STDP reaching its goals, many officials involved in the design and implementation of the plan did not believe that the 1995 interim goals would be met. A number of these officials were also uncertain as to whether the 1996 goals would be achieved.

Despite substantial slippage in the implementation of STDP, SSA has not revised its backlog reduction goals or the timeframes for accomplishing them. A number of SSA and OHA personnel have expressed concern that the pressures associated with reaching STDP's aggressive goals may lead to incorrect disability decisions. Others are concerned that the prehearing conferencing initiative will divert OHA attorneys from their decision writing duties and that staff details may be insufficient to prevent writing backlogs from increasing.

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We are continuing our review of SSA's efforts to address OHA's backlogs pursuant to your original request. We anticipate issuance of a final report to you in November of this year. If you or your staff have any questions concerning this letter, please contact me at (202) 512-7215.

Sincerely yours,

A handwritten signature in black ink that reads "Jane L. Ross". The signature is written in a cursive style with a large initial "J" and "R".

Jane L. Ross
Director, Income Security Issues

Enclosures - 2

OHA HAS HIRED ADDITIONAL ALJs AND
SUPPORT STAFF AS WELL AS INCREASED
OVERTIME TO ADDRESS GROWING BACKLOGS
(FISCAL YEARS 1989-95)

Fiscal year	ALJs ^a	Support staff ^a	Overtime (hours)
1995	1,006 ^b	4,766 ^b	299,655 ^b
1994	879	4,866	450,532
1993	814	4,332	292,757
1992	838	4,124	193,783
1991	779	4,388	144,397
1990	696	3,899	74,060
1989	694	3,580	^c

^aRepresents the average number on duty during the fiscal year.

^bThrough April 1995.

^cOvertime data is not available for fiscal year 1989.

OHA'S WORK LOAD, BACKLOG, AND
PROCESSING TIME CONTINUE TO GROW
(FISCAL YEARS 1989-95)

Fiscal year	Work load (case receipts)	Backlog (pending cases)	Average case processing time (days)	Percent of aged cases ^a
1995	331,533 ^b	533,884 ^b	344 ^b	37 ^b
1994	539,871	485,837	305	32
1993	509,443	357,564	238	16
1992	391,294	218,423	223	7
1991	329,346	183,471	229	10
1990	310,529	172,756	212	9
1989	302,452	159,268	217	11

^aReflects cases that have been pending 270 days or more.

^bThrough April 1995.