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SOCIAL SECURITY DISABILITY

SSA Actions to Reduce Backlogs and Achieve More Consistent Decisions Deserve High Priority

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Social Security Disability: SSA Actions to Reduce Backlogs and Achieve More Consistent Decisions Deserve High Priority

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify on the Social Security Administration's (SSA) management of the Disability Insurance (DI) and Supplemental Security Income (SSI) programs. In 1995, these programs paid benefits approaching $60 billion a year and served nearly 7 million working-age adults. As you are aware, SSA's process has been overwhelmed with a large number of appealed cases, which grew from about 225,000 in fiscal year 1986 to about 498,000 in fiscal year 1996.

Today I will discuss actions that SSA undertook, beginning in 1994, to improve the timeliness, efficiency, and consistency of disability decisions. Its actions resulted from a realization that the lengthy and complicated decision-making process and the inconsistency of decisions between adjudicative levels compromise the integrity of disability determinations. More specifically, I will describe SSA's actions to reduce the current backlog of cases appealed to the agency's administrative law judges (ALJ). Then I will discuss how functional assessments, differences in procedures, and quality review contribute to inconsistent results between different decisionmakers and describe SSA's strategy to obtain greater decisional consistency. My testimony is based on our reports and our ongoing studies of SSA's disability programs being conducted for the Chairman of the Subcommittee. (See the list of related GAO products.)

In summary, our work shows that while SSA has developed broad-based plans to improve the management of its disability programs, many initiatives are just beginning and their effectiveness can be assessed only after a period of full-scale implementation. For example, in the short term, SSA has taken action to try to deal with the backlog crisis, but it is still about 116,000 cases over its December 1996 goal of 375,000 cases. In the longer term, SSA needs to come to grips with the systemic factors causing inconsistent decisions, which underlie the current high level of appealed cases and, in turn, the backlog crisis. For example, we found that differences in assessments of functional capacity, different procedures, and weaknesses in quality reviews contribute to inconsistent decisions. Although SSA is on the verge of implementing initiatives to deal with these factors, we are concerned that other congressionally mandated workload pressures, such as significantly increasing the number of continuing disability reviews and readjudicating childhood cases, could jeopardize the agency's ability to move ahead with its initiatives to reduce inconsistent decisions.

Background

SSA's disability programs provide cash benefits to people with long-term disabilities. The DI program provides monthly cash benefits and Medicare eligibility to severely disabled workers; SSI is an income assistance program for blind and disabled people. The law defines disability for both programs as the inability to engage in substantial gainful activity because of a severe physical or mental impairment that is expected to last at least 1 year or result in death.

Both DI and SSI are administered by SSA and state disability determination services (DDS). SSA field offices determine whether applicants meet the nonmedical criteria for eligibility and at the DDSs, a disability examiner and a medical consultant (physician or psychologist) make the initial determination of whether the applicant meets the definition of disability. Denied claimants may ask the DDS to reconsider its finding and, if denied again, may appeal to an ALJ within SSA's Office of Hearings and Appeals (OHA). The ALJ usually conducts a hearing at which applicants and medical or vocational experts may testify and submit new evidence. Applicants whose appeals are denied may request review by SSA's Appeals Council and may further appeal the Council's decision in federal court.

Between fiscal years 1986 and 1996, the increasing number of appealed cases has caused workload pressures and processing delays. During that time, appealed cases increased more than 120 percent. In the last 3 years alone, average processing time for appealed cases rose from 305 days in fiscal year 1994 to 378 days in fiscal year 1996 and remained essentially the same for the first quarter of fiscal year 1997. In addition, "aged" cases (those taking 270 days or more for a decision) increased from 32 percent to almost 43 percent of the backlog.[1]

In addition to the backlog, high ALJ allowances (in effect, "reversals" of DDS decisions to deny benefits[2]) have been a subject of concern for many years. Although the current ALJ allowance rate has dropped from 75 percent in fiscal year 1994, ALJs still allow about two-thirds of all disability claims they decide. Because chances for award at the appeals level are so favorable, there is an incentive for claimants to appeal. For several years, about three-quarters of all claimants denied at the DDS reconsideration level have appealed their claims to the ALJ level.[3]

[1]Processing time represents total OHA workloads, which include appealed Medicare cases.

[2]ALJ decisions are said to be de novo, or "afresh."

[3]About one-third of claimants denied at the initial DDS-level appeal, while the rest abandon their cases.

In 1994, SSA adopted a long-term plan to redesign the disability decision-making process to improve its efficiency and timeliness. As a key part of this plan, SSA developed initiatives to achieve similar decisions on similar cases regardless of whether the decisions are made at the DDS or the ALJ level. In July 1996, several of these initiatives, called "process unification," were approved for implementation by SSA's Commissioner. SSA expects that process unification will result in correct decisions being made at the earliest point possible, substantially reducing the proportion of appealed cases and ALJ allowance rates as well.

Because SSA expects that implementation of its redesigned disability decision-making process will not be completed until after the year 2000, SSA developed a Short Term Disability Project Plan (STDP) to reduce the existing backlog by introducing new procedures and reallocating staff. STDP is designed to expedite processing of claims in a way that will support redesign and achieve some near-term results in reducing the backlog. SSA expects that STDP's major effect will come primarily from two initiatives—regional screening unit and prehearing conferencing activities. In the screening units, DDS staff and OHA attorneys work together to identify claims that could be allowed earlier in the appeals process. Prehearing conferencing shortens processing time for appealed cases by assigning OHA attorneys to perform limited case development and review cases to identify those that could potentially be allowed without a formal hearing. The plan called for reducing the backlog to 375,000 appealed cases by December 31, 1996.

Despite SSA's Efforts, SSA Still Faces a High Backlog

Despite SSA attempts to reduce the backlog through its STDP initiatives, the agency did not reach its goal of reducing this backlog to 375,000 by December 1996.[4] SSA attributes its difficulties in meeting its backlog target to start-up delays, overly optimistic projections of the number of appealed cases that would be processed, and an unexpected increase in the number of appealed cases. The actual backlog in December was about 486,000 cases and has risen in the last few months to 491,000 cases, still about 116,000 over the goal. Although SSA did not reach its backlog goal, about 98,000 more cases may have been added to the backlog if STDP steps had not been undertaken. The contribution made by STDP underscores the need for SSA to continue its short-term effort while moving ahead to address the disability determination process in a more fundamental way in the long term.

[4]SSA's goal included Medicare claims, which ALJs also decide. However, the STDP initiatives focused only on disability claims, which represented about 94 percent of the backlog in fiscal year 1996.

Decision-Making Process Yields High Degree of Inconsistency Between DDSs and ALJs

In addition to the backlog problem, SSA's decision-making process has produced a high degree of inconsistency between DDS and ALJ awards, as shown in table 1. Although award rates representing DDS decision-making vary by impairment, ALJ award rates are high regardless of the type of impairment. For example, sample data showed that DDS award rates ranged from 11 percent for back impairments to 54 percent for mental retardation. In contrast, ALJ award rates averaged 77 percent for all impairment types with only a smaller amount of variation among impairment types.

Table 1: Award Rates at DDS and ALJ Levels by Impairment Type

	DDS award rates (percent)	ALJ award rates (percent)
Physical	**29**	**74**
Musculoskeletal	16	75
Back cases	11	75
Other musculoskeletal	23	76
Other physical	36	74
Mental	**42**	**87**
Illness	39	87
Retardation	54	84
All impairments	**30**	**77**

Note: ALJ data are from an ongoing SSA study. Data include ALJ cases decided from September 1, 1992, through April 30, 1995. Study samples excluded certain types of cases, such as children's cases. DDS data for the same period and types of cases were obtained from SSA's administrative database.

Disability Determinations Require Complex Judgment

SSA's process requires adjudicators to use a five-step sequential evaluation process in making their disability decisions (see table 2). Although this process provides a standard approach to decision-making, determining disability often requires that a number of complex judgments be made by adjudicators at both the DDS and ALJ levels.

Table 2: Five-Step Sequential Evaluation Process for Determining Disability

Step	Questions asked in the sequential process	Action or decision taken if answer to question is: Yes	No
1	Is the claimant engaging in substantial gainful activity?	Stop—claimant is not disabled	Go to step 2
2	Does the claimant have an impairment that has more than a minimal effect on the claimant's ability to perform basic work tasks and is expected to last at least 12 months?	Go to step 3	Stop—claimant is not disabled
3	Do the medical facts alone show that the claimant's impairment meets or equals the medical criteria for an impairment in SSA's Listing of Impairments?	Stop—claimant is disabled	Go to step 4
4	Comparing the claimant's residual functional capacity with the physical and mental demands of the claimant's past work, can the claimant perform his or her past work?	Stop—claimant is not disabled	Go to step 5
5	Based on the claimant's residual functional capacity and any limitations that may be imposed by the claimant's age, education, and skill level, can the claimant do work other than his or her past work?	Claimant is not disabled	Claimant is disabled

As the application proceeds through the five-step process, claimants may be denied benefits at any step, ending the process. Steps 1 and 2 ask questions about the claimant's work activity and the severity of the claimant's impairment. If the reported impairment is judged to be severe, adjudicators move to step 3. At this step, they compare the claimant's condition with a listing of medical impairments developed by SSA. Claimants whose conditions meet or are medically equivalent to the listings are presumed by SSA to be unable to work and are awarded benefits. Claimants whose conditions do not meet or equal the listings are then assessed at steps 4 and 5, where decisions must be made about the claimant's ability to perform prior work and any other work that exists in the national economy. To do this, adjudicators assess the claimant's capacity to function in the workplace.

DDS and ALJ adjudicators exercise considerable judgment when making these functional assessments. They must consider and weigh all available

evidence, including physician opinions and reported symptoms, such as pain. Mental impairment assessments include judgments about the claimant's ability to understand, remember, and respond appropriately to supervision and normal work pressures. For physical impairments, adjudicators judge the claimant's ability to walk, sit, stand, and lift. To facilitate this, SSA has defined five levels of physical exertion ranging from very heavy to sedentary. However, for those claimants unable to perform even sedentary activities, adjudicators may determine that a claimant can perform "less than a full range of sedentary" activities, a classification that often results in a benefit award.

DDSs and ALJs Differ Primarily Over Claimants' Functional Abilities

Our analysis found that differing functional assessments by DDSs and ALJs are the primary reason for most ALJ awards. Since most DDS decisions use all five steps of the sequential evaluation process before denying a claim, almost all DDS denial decisions appealed to ALJs included such a functional assessment. On appeal, the ALJ also follows the same sequential evaluation process as the DDS and also assesses the claimant's functional abilities in most awards they make.

Data from SSA's ongoing ALJ study indicate that ALJs are much more likely than DDSs to find that claimants have severe limitations in functioning in the workplace (see table 3).

Table 3: DDS and ALJ Differences in Functional Assessment Classifications for Physical Impairment Awards

Level of physical exertion determined by functional assessment	Percentage of awards: Quality reviewers using DDS approach	Percentage of awards: Original awarding ALJs
Heavy work (or no limiting effect on physical effort)	0	0
Medium work	22	1
Light work	56	8
Sedentary work	15	25
Less than the full range of sedentary work	6	66

Note: Data are for ALJ awards made from September 1992 through April 1995.

Most notably, in the view of the awarding ALJs, 66 percent of the cases merited a functional capacity assessment of "less than the full range of sedentary" work—a classification that is likely to lead to an award. In

contrast, reviewers using the DDS approach found that less than 6 percent of the cases merited this classification.

Functional assessment also played a key role in a 1982 SSA study, which controlled for differences in evidence. This study indicated that DDS and ALJ decisionmakers reached different results even when presented with the same evidence.[5] As part of the study, selected cases were reviewed by two groups of reviewers—one group reviewing the cases as ALJs would and the other reviewing the cases as DDSs would. Reviewers using the ALJ approach concluded that 48 percent of the cases should have received awards, while reviewers using the DDS approach concluded that only 13 percent of those same cases should have received awards.

The use of medical expertise appears to influence the decisional differences at the DDS and ALJ levels. At the DDS level, medical consultants are responsible for making functional assessments. In contrast, ALJs have the sole authority to determine functional capacity and often rely on claimant testimony and the opinions of treating physicians. Although ALJs may call on independent medical experts to testify, our analysis shows that they do so in only 8 percent of the cases resulting in awards.

To help reduce inconsistency, SSA issued nine rulings on July 2, 1996, which were written to address pain and other subjective symptoms, treating source opinions, and assessing functional capacity.[6] SSA also plans to issue a regulation to provide additional guidance on assessing functional capacity at both the DDS and ALJ levels, specifically clarifying when a "less than sedentary" classification is appropriate.[7] In addition, based on the nine rulings, SSA completed nationwide process unification training of over 15,000 adjudicators and quality reviewers between July 10, 1996, and February 26, 1997. In the training, SSA emphasized that it expects the "less than sedentary" classification would be used rarely. In the longer term, SSA plans to develop a simplified decision-making process, which will expand the role of functional capacity assessments. Because differences in functional capacity assessments are the primary reason for inconsistent decisions, SSA should proceed cautiously with its plan to expand the use of such assessments.

[5] Implementation of Section 304 (g) of Public Law 96-265, Social Security Disability Amendments of 1980: Report to the Congress by the Secretary of Health and Human Services, SSA, Department of Health and Human Services (Jan. 1982). This report is commonly known as the "Bellmon Report."

[6] Federal Register, 61 F.R. 34466-34492 (July 2, 1996).

[7] SSA told us that the notice of proposed rulemaking on the "less than sedentary" regulations is ready for release but did not provide the date when it would be issued.

Procedures Limit Use of DDS Decisions as a Foundation for ALJ Decisions

Procedures at the DDS and ALJ levels limit the usefulness of the DDS decision as a foundation for the ALJ decision. Often, ALJs are unable to rely on DDS decisions because they lack supporting evidence and explanations of the reasons for denial, laying a weak foundation for the ALJ decision if the case is appealed. Moreover, although SSA requires ALJs to consider the DDS medical consultant's assessment of functional capacity, procedures at the DDS level do not ensure that such assessments are clearly explained. In a 1994 study, SSA found that written explanations of critical issues at the DDS level were inadequate in about half of the appealed cases that turned on complex issues.[8] Without a clear explanation of the DDS decision, the ALJ could neither effectively consider it nor give it much weight.

At the ALJ level, claimants are allowed to claim new impairments and submit new or additional evidence, which also affects consistency between the two levels. Moreover, in about 10 percent of cases appealed to the ALJ level, claimants switch their primary impairment from a physical claim to a mental claim. In addition, data from a 1994 SSA study show that claimants submit additional evidence to the ALJ in about three-quarters of the sampled cases and that additional evidence was an important factor in 27 percent of ALJ allowances.

To address the documentation issues, SSA plans to take steps to ensure that DDS decisions are better explained and are based on a more complete record so that they are more useful if appealed. On the basis of feedback during the process unification training, SSA plans further instructions and training in May 1997 for the DDSs on how and where in the case files they should explain how they reached their decisions. SSA also plans to issue a regulation clarifying the weight given to the DDS medical consultants' opinions at the ALJ level.[9]

To deal with the potential effect of new evidence, SSA plans to return to the DDSs about 100,000 selected cases a year for further consideration when new evidence is introduced at the ALJ level. In cases where the DDS would award benefits, the need for a more time-consuming and costly ALJ decision would be avoided. SSA plans to implement this project in May 1997. Moreover, SSA's decision to limit such returns to about 100,000 cases may need to be reassessed in light of the potential benefits that could accrue from this initiative.

[8] Findings of the Disability Hearings Quality Review Process, Office of Program and Integrity Reviews, SSA (Sept. 1994).

[9] SSA told us that the notice of proposed rulemaking on the DDS medical consultants' opinions is in final clearance within SSA.

Quality Reviews Do Not Focus on Inconsistency Between DDSs and ALJs

Although SSA has several quality review systems to examine disability decisions, none is designed to identify and reconcile factors that contribute to differences between DDS and ALJ decisions. For example, although ALJs are required to consider the opinion of the DDS medical consultant when making their own assessment of a claimant's functional capacity, such written DDS opinions are often lacking in the case files. Quality reviews at the DDS level do not focus effectively on whether or how well these opinions are explained in the record, despite the potential importance of such medical opinion evidence at the ALJ level. Moreover, SSA reviews too few ALJ awards to ensure that ALJs give appropriate consideration to the medical consultants' opinions or to identify means to make them more useful to the ALJs. Feedback on these issues could help improve consistency by making the DDS decision a more useful part of the overall adjudication process.

To improve consistency, SSA is completing work on a notice of proposed rulemaking, with a target issue date of August 1997 for a final regulation, to establish the basis for reviewing ALJ awards, which would require ALJs to take corrective action on remand orders from the Appeals Council before benefits are paid. SSA has just started conducting preliminary reviews of ALJ awards, beginning with 200 cases a month. After the regulation is issued, they plan to increase the number of cases per month. SSA has set a first-year target of 10,000 cases to be reviewed, but this reflects only about 3 percent of approximately 350,000 award decisions made by ALJs in 1996. Ultimately, SSA plans to implement quality review measures to provide consistent feedback on the application of policy. By doing this, the agency hopes to ensure that the correct decision is made at the earliest point in the process.

Competing Workloads Could Jeopardize Initiatives to Improve Consistency of Decisions

At the same time that SSA is trying to begin implementation of its process unification initiatives, it faces significantly increasing workloads at all levels of adjudication. In particular, efforts to improve decisional consistency will compete with specific congressional mandates for time and resources. For example, the Social Security Independence and Program Improvements Act of 1994 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 require hundreds of thousands of more continuing disability reviews (CDR) to ensure that beneficiaries are still eligible for benefits. By law, SSA will be required to conduct CDRs for at least 100,000 more SSI beneficiaries annually through fiscal year 1998. Last year, the Congress increased CDR requirements for children on SSI, requiring them at least every 3 years for children under age

18 who are likely to improve and for all low-birthweight babies within the first year of life. In addition, SSA is required to redetermine, using adult criteria, the eligibility of all 18-year-olds on SSI beginning on their 18th birthdays and to readjudicate 332,000 childhood disability cases by August 1997. Finally, thousands of noncitizens and drug addicts and alcoholics could appeal their benefit terminations, further increasing workload pressures.

Concluding Observations

Despite SSA's Short Term Disability Project Plan, the appealed case backlog is still high. Nevertheless, because the backlog would have been even higher without STDP, SSA will need to continue its effort to reduce the backlog to a manageable level until the agency, as a part of its long-term redesign effort, institutes a permanent process to ensure timely and expeditious disposition of appeals.

In addition, SSA is beginning to move ahead with more systemwide changes in its redesign of the disability claims process. In particular, it is on the verge of implementing initiatives to redesign the process, including ones for improving decisional consistency and the timeliness of overall claims processing. However, competing workload demands could jeopardize SSA's ability to make progress in reducing inconsistent decisions.

We urge the agency to follow through on its initiatives to address the long-standing problem of decisional inconsistency with the sustained attention required for this difficult task. To do so, SSA, in consultation with this Subcommittee and others, will need to sort through its many priorities and do a better job of holding itself accountable for meeting its deadlines. Otherwise, plans and target dates will remain elusive goals and may never yield the dual benefits of helping to restore public confidence in the decision-making process and contributing to permanent reductions in backlog.

Mr. Chairman, this concludes my prepared statement. At this time, I will be happy to answer any questions you or the other Subcommittee members may have.

Contributors

For more information on this testimony, please call Cynthia Bascetta, Assistant Director, at (202) 512-7207. Other major contributors are William Hutchinson, Senior Evaluator; Carol Dawn Petersen, Senior Economist; and David Fiske, Ellen Habenicht, and Carlos Evora, Senior Evaluators.

Related GAO Products

Appealed Disability Claims: Despite SSA's Efforts, It Will Not Reach Backlog Reduction Goal (GAO/HEHS-97-28, Nov. 21, 1996).

Social Security Disability: Backlog Reduction Efforts Under Way; Significant Challenges Remain (GAO/HEHS-96-87, July 11, 1996).

Social Security Disability: Management Action and Program Redesign Needed to Address Long-Standing Problems (GAO/T-HEHS-95-233, Aug. 3, 1995).

Disability Insurance: Broader Management Focus Needed to Better Control Caseload (GAO/T-HEHS-95-233, May 23, 1995).

Social Security: Federal Disability Programs Face Major Issues (GAO/T-HEHS-95-97, Mar. 2, 1995).

Social Security Disability: SSA Quality Assurance Improvements Can Produce More Accurate Payments (GAO/HEHS-94-107, June 3, 1994).

Social Security: Most of Gender Difference Explained (GAO/HEHS-94-94, May 27, 1994).

Social Security: Disability Rolls Keep Growing, While Explanations Remain Elusive (GAO/HEHS-94-34, Feb. 8, 1994).

Social Security: Increasing Number of Disability Claims and Deteriorating Service (GAO/HRD-94-11, Nov. 10, 1993).

Social Security: Rising Disability Rolls Raise Questions That Must Be Answered (GAO/T-HRD-93-15, Apr. 22, 1993).

Social Security Disability: Growing Funding and Administrative Problems (GAO/T-HRD-92-28, Apr. 27, 1992).

Social Security: Racial Difference in Disability Decisions Warrants Further Investigation (GAO/HRD-92-56, Apr. 21, 1992).

Social Security: Results of Required Reviews of Administrative Law Judge Decisions (GAO/HRD-89-48BR, June 13, 1989).

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