

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Social Security
Subcommittee on Income Security and Family Support

Statement for the Record

Joint Hearing on the Social Security Disability Claims Backlogs

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April 27, 2010

Good morning Chairman Pomeroy, Chairman McDermott, Congressman Linder, Congressman Johnson, and members of the subcommittees. Thank you for the invitation to testify today.

The Social Security Administration (SSA) serves the most vulnerable members of our society—the aged and the infirm—and these individuals often rely on SSA benefits to meet their most basic needs. When there is a delay in the delivery of benefits to which they are entitled, the consequences can be devastating, and I share your concerns about backlogs in SSA's initial disability claim process and its hearings and appeals process. These concerns are more grave than ever, as the aging of the baby boom generation and the economic challenges of recent years bring more and more people to SSA for help.

At present, SSA has a backlog of some 755,000 initial disability claims, and 695,000 claimants whose applications were denied are awaiting a hearing on their appeal. These numbers are troubling to us; they are tragic to those who will ultimately receive benefits and are waiting on these funds to pay their rent, heat, or grocery bills and meet other critical needs. The average disability claimant will wait 118 days for an initial decision on his or her claim, and the average disability appellant will wait 442 days for their case to be heard. These numbers are unacceptable.

In 2008, the Office of the Inspector General (OIG) looked at these two processes in tandem in an audit entitled Disability Claims Overall Processing Times, in which we found that no matter the point at which a claim was decided, the claimant's wait would be long. Specifically, we found that:

- For claims decided at the initial level, the process took an average of 131 days;
- For claims decided at the reconsideration level, the process took an average of 279 days;
- For cases appealed to an Administrative Law Judge, the process took an average of 811 days;
- For cases that went to Appeals Council review, the process took an average of 1,053 days; and
- For cases that appealed to the Federal Courts, the process took an average of 1,720 days.

If there is any doubt as to the impact these delays can have on claimants and appellants, that doubt was erased in a subsequent study we conducted in 2009, entitled *Impact of the Social Security Administration's Claims Process on Disability Beneficiaries*. In that report, we found that 80 percent of the claimants we surveyed believed that their finances were impacted by the wait for a disability decision, 30 percent believed that their access to medical care was impacted, and 42 percent believed that their relationships were impacted.

As devastating as the wait for a decision can be, it is perhaps more troubling that, even once a claim is approved, there can be a delay in SSA actually issuing the funds awarded to the claimant. In conducting the survey described above, we discovered that some individuals whose claims were allowed were never paid. As a result, we have commenced an audit entitled *Disability Insurance and Supplemental Security Income Claims Approved But Not Paid*. In this audit, we are examining the extent to which this occurs. Although not completed, our review of almost half a million 2006 disability allowances in the Title II and Title XVI programs revealed initially that 61 deserving claimants had never been paid, and that another 19 did not begin receiving payments as early as they should have. We are still in the process of determining why these cases were not paid timely, and we are also examining records for 2003 to 2005 and 2007 to 2009 to see whether there are other individuals who never received the monies to which they are entitled.

These studies of the overall delays encountered by disability claimants and the impact these delays can have show the extent of the problem; but the problem breaks down into two distinct backlogs with different causes and challenges:

The Initial Claims Backlog

When a claimant applies for disability benefits, the application is processed and a decision made by State Disability Determination Services (DDS). Our December 2008 study found that this process required an average of 131 days. As more and more people apply for benefits, more of a strain is placed on the limited resources available to process these applications. At the end of Fiscal Year 2009, some 770,000 initial cases were pending at the 52 DDSs, an increase of 38 percent over the end of Fiscal Year 2008.

As challenging as these demands are, additional challenges can aggravate the problem. Six months ago, we issued a report entitled *The Impact of State Budget Issues on SSA's Disability Programs*. Of the 52 DDSs, nine states had implemented or were considering furloughs for all DDS employees, and another two states had implemented furloughs for some DDS employees. We found that as a result, about 69,000 disability cases would be delayed over the following 12 months, resulting in the delay in payment of about \$126.2 million to newly disabled claimants.

Congress helped to ease this burden when it provided SSA with \$500 million under the American Recovery and Reinvestment Act of 2009 (ARRA) to process disability and retirement workloads. This funding permitted SSA to hire additional employees in the DDSs, the Office of Operations, and the Office of Disability Adjudication and Review. We conducted three separate reviews of SSA's apportionment of the ARRA funding to these three entities, and generally

found that SSA's plan was operationally sound. While this additional funding cannot eliminate the initial claims backlog, it helps to make a difference.

Along those lines, additional initiatives implemented by SSA serve to improve the process and reduce the backlog.

Compassionate Allowances provide expedited approval to disability applicants with confirmed diagnoses of certain severe impairments. These allowances let SSA quickly target the most obviously disabled individuals for benefits based on objective medical information that SSA can obtain quickly.

Quick Disability Determinations (QDD) are cases that are electronically identified as having a high potential that the claimant is disabled, when evidence of the claimant's allegations can be easily and quickly obtained, and when the case can be processed quickly in the DDS. These cases are prioritized for fast turnaround. We estimate that the Compassionate Allowances and QDD initiatives account for approximately 3.7 percent of initial disability claims.

The Agency's QDD process is part of its plan to reduce the claims backlog, and in 2009, we reviewed the national rollout of this program. We found that SSA was making medical determinations for claims selected for QDD within its recommended timeframe of 20 days or less, that controls were adequate and helped ensure that claimants were paid timely, and that QDD-in which 93 percent of the selected cases were allowed-was working as intended.

SSA has also created a multi-year plan to reduce the initial claims backlog. According to SSA, the key components of this plan are: - increased adjudicatory capacity in the DDSs and Federal processing components;

- improved efficiency through automation;
- expedited IT investments to optimize systems performance;
- expanded use of screening tools to assist in identifying likely allowances; and
- refined policies and business processes to expedite case processing.

Finally, the issue of reconsiderations is one of concern to the Social Security subcommittee. When a disability claimant's initial claim is denied, the first level of appeal is a request for reconsideration by the DDS that denied the claim. In 1999, SSA began piloting the elimination of this step in 10 states. SSA has now decided to assess the effect of reinstating reconsiderations in these states, beginning with Michigan, believing that reinstating this process will get benefits to deserving beneficiaries more quickly than an administrative hearing.

We provided the Social Security subcommittee and SSA with likely outcomes from each of four scenarios in Michigan. Specifically, we found that, for Fiscal Year 2011:

If SSA reinstates and fully funds the reconsideration process in Michigan:

- Initial claims will take 123 days;
- Reconsideration claims will take 276 days; and

- Claims requiring hearings will take 915 days;

If SSA does not reinstate the reconsideration process in Michigan, and there is no additional funding:

- Initial claims will take 123 days; and
- Claims requiring hearings will take 762 days;

If SSA does not reinstate the reconsideration process in Michigan, and the funding that would be used for reconsideration is instead devoted to processing initial claims:

- The DDS could process 25,300 additional claims; and
- While these initial denials would not increase the time for a claim requiring a hearing in 2011, it would increase the time in future years; and

If SSA does not reinstate the reconsideration process in Michigan, and the funding that would be used for reconsiderations is instead devoted to processing hearings

- ODAR could process 17,600 additional hearings per year, though not as early as 2011.

In summary, by reinstating the reconsideration step, some individuals who appeal will get an allowance decision sooner and some would get an allowance decision later. For example, if SSA reinstates the reconsideration step in Michigan, the claimant denied at the initial level could get an allowance decision in 276 days, which is 486 days sooner than if they had to appeal to ODAR without going through the reconsideration step. However, if the claimant is denied at the reconsideration level and appeals to ODAR, it would take 915 cumulative days for a decision, which is 153 days longer than the current processing time (762 days) for cases that go to ODAR without a reconsideration step.

We are hopeful that this data will help to inform the ultimate decision as to the efficiency and efficacy of the reconsideration process.

The Disability Hearing Backlog

The backlog of disability appeals awaiting hearing currently stands at 695,000. The OIG has done, and continues to do, significant and wide-ranging work to assist SSA in reducing this backlog and seeing that claimants receive prompt hearings on denied claims.

As early as 2004, in a report entitled *Best Practices in Highest Producing Hearing Offices*, we encouraged SSA to take steps to share the successes of the most efficient hearing offices with those in need of improvement.

In 2005, we issued a report entitled *The Effects of Staffing on Hearing Office Performance*, in which we pointed out that hearing office receipts had outpaced dispositions over a five-year period, resulting in an increasing backlog. In that report, we found that additional judges were

not always the answer, and that it was critical to maintain an appropriate ratio of hearing office staff to judges.

Additional reports during that period provided SSA with valuable recommendations about ODAR's case processing management system, workload management, and management's use of workload status reports in hearing offices.

In 2008, we examined the caseload performance of Administrative Law Judges (ALJ) and found that SSA had no formal performance accountability process for ALJs, and no minimum number of cases that ALJs were required to process. As a result, cases processed per ALJ in 2006 ranged from 40 to 1,805, with the average being 485. We estimated the effect of ALJs processing 400, 450, 500, and 550 cases per year on the disability backlog, and recommended that SSA establish a performance accountability process.

In a related review, we examined the wide range of factors that affect ALJ and Hearing Office performance, from ALJ motivation and work ethic to DDS case development and staffing levels, and from Agency processes to hearing dockets and favorable rates. We also found that disciplinary actions against ALJs tended to be for misconduct, rather than performance.

When it was suggested that delays in obtaining medical evidence was a factor delaying the hearings process, we conducted a review to determine whether this was the case; it was not. We found no evidence that late submission of medical evidence delayed hearings. Specifically, we found that only 0.2 percent of cases were postponed due to delays in obtaining medical evidence, and that only 1.8 percent of cases were significantly delayed by medical evidence.

More recently, we have examined several new issues affecting the disability backlog, and revisited some areas in which we had not performed work in several years.

One issue that we examined carefully was the treatment of cases that had encountered particularly long delays. In a report entitled *Aged Cases at the Hearing Level*, we studied SSA's Aged Claims Initiative, designed to target and resolve these cases. At the beginning of Fiscal Year 2009, approximately 38 percent of the pending claims exceeded one year in age, and about 4 percent exceeded two years. We found that SSA's efforts in this initiative, combined with several complementary initiatives, were meeting with success, and encouraged the Agency to continue those efforts. In addition, we identified a number of best practices employed in certain regions and hearing offices, and published these in our report, so that other regions and hearing offices might benefit from them.

In February of this year, we revisited the issue of staffing ratios in *Hearing Office Performance and Staffing*. We reported that in Fiscal Year 2009, SSA had increased the number of ALJs in ODAR to about 1,200, an increase of some 19 percent over Fiscal Year 2000, and increased its number of hearing office staff and managers by about 25 percent. While this put ODAR's staff-to-ALJ ratio at 5.1-1, above SSA's goal of 4.5-1, we found that 42 hearing offices did not meet the 4.5-1 goal. Since hearing offices that had at least 1.5 decision writers for each ALJ were 8 percent more productive than those that did not, we opined that these ratios were a critical factor in backlog reduction.

Video hearings are another means SSA has employed in its attempt to reduce the hearings backlog. These hearings may occur at an SSA office, with the ALJ at a different site, or they may occur in the claimant representative's office as part of a project SSA has put in place to bring the hearing directly to that location via video. We have two reviews underway, one in each of these areas:

In a review entitled Representative Video Project, we are examining the use of video hearings being conducted remotely from representative's offices to determine whether the project properly protects the interests of claimants and of the Federal government. We were concerned that SSA had limited external communication with the public, and limited internal communication with its employees, on the role of the project and its operation, and that SSA implemented the project without using a pilot and without targeted performance measures. We will share the results of this review with you as soon as it is completed.

In a review entitled Use of Video Hearings to Reduce the Hearing Case Backlog, we are in the process of examining whether video hearings increase productivity and provide claimants with more timely service. As of Fiscal Year 2008, SSA had 558 video units in hearing offices and remote sites, with another 112 units to be procured and installed in Fiscal Year 2009. Our auditors will be visiting locations to review the equipment and interview staff, as well as reviewing video hearing statistics. Again, we will share our results with you as soon as our work is completed.

In another ongoing review, our auditors are examining whether certain impairments that most often result in ALJs reversing initial denials merit further attention. During analysis of DDS determinations made in Calendar Years 2004 through 2006, we found that the four impairments most likely to be reversed by an ALJ if denied by a DDS were Disorders of the Back, Osteoarthritis and Allied Disorders, Diabetes Mellitus, and Disorders of Muscle, Ligament, and Fascia. Our study will focus on these disorders and analyze characteristics of these cases.

Finally, at the request of the Social Security subcommittee, we recently examined ODAR's application of its "first in-first out," or "FIFO" policy, by which appeals are processed and completed in the order in which they are received. While ODAR is expected to follow FIFO in the processing of hearing claims, their policy allows for a number of exceptions:

Critical Claims, including if the:

- Claimant's illness is terminal;
- Claim is for military personnel injured on active duty;
- Claim is a Compassionate Allowance claim;
- Claimant may be suicidal or homicidal/violent;
- Claimant is without, and unable to obtain, food, medicine, or shelter;
- Claim has been delayed an inordinate time and there is a public, Congressional, or other high priority inquiry on the claim;

Appeals Council and Court remands; Dismissals; and Waived oral or advance notice of a hearing.

ODAR management informed our auditors that they follow FIFO policy when they can, but that a multitude of factors can alter or complicate scheduling. In addition to those stated in ODAR policy, factors such as remote site hearings, incomplete or lost case files, a lack of video equipment, and other issues can cause a departure from a strict FIFO application.

We reviewed 55 claims with the same hearing request date from three offices of various sizes. Our findings reveal wide variances in the processing of these claims. Of these hearing requests, all dated October 13, 2009:

- 43 percent were in process and still had not been scheduled for a hearing;
- 27 percent had been assigned hearing dates;
- 11 percent were still unworked and unscheduled;
- 9 percent were awaiting rescheduling;
- 5 percent had already had a hearing held; and
- 5 percent had already had a decision issued.

We found that a variety of factors contributed to this wide range of processing time, including unavailable staff, rescheduled hearings, and newly hired ALJs. We also found two critical claims among the 55. One case had a decision issued, while the other had a hearing and was being finalized. While the sample is not large enough to extrapolate to the entire country, these cases demonstrate that receipt of a hearing request on the same date does not equate to a hearing before an ALJ on the same date.

We also reviewed a number of initiatives undertaken by ODAR to improve consistency of performance in this area. These include: ODAR's electronic business process initiative, which will automate hearing scheduling; centralization and consolidation of scheduling duties within each hearing office; and the Judicial Automated Calendaring System, which will automate many facets of the process to schedule hearings.

We concluded that these planned improvements, useful management information, and expanded video hearing and hearing office capacity in the most hard-pressed regions will contribute to more predictable and efficient processing of hearings, but that at present, many of the factors outlined above continue to result in inconsistent application of FIFO policy and hearing scheduling.

The OIG has done, and continues to do, work in all areas of the disability claims process, from initial claim through final decision, to provide as much useful information as possible to Agency decision makers and these subcommittees. Our past recommendations have helped SSA to formulate new policies and practices, and to improve its performance and its service to the American people. I look forward to continuing our work, I thank you again for the opportunity to testify today, and I'll be happy to answer any questions that you may have.