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United States Government Accountability Office  
Washington, DC 20548

January 9, 2009

The Honorable Michael J. Astrue  
Commissioner  
Social Security Administration

Subject: *Social Security Disability: Improving Notices to Denied Claimants*

Dear Commissioner Astrue:

On December 17, 2008, we issued a report concerning our findings on the Social Security Administration's (SSA) collection of medical evidence in the disability determination process.<sup>1</sup> In the course of our review, an issue arose that was outside the scope of our work but is important to how SSA communicates its disability determinations to claimants. During this review, we examined a limited random selection of electronic folders for initial disability determinations for fiscal year 2007. The folders included notices sent to each denied claimant to explain the reasons for the denial of their claim and the evidence used to make the determination.<sup>2</sup> Our findings related to these notices and current SSA policy regarding them is the subject of this report. This report also contains a recommendation that warrants SSA management's consideration.

## Results in Brief

Notices sent to denied claimants may provide inconsistent and sometimes misleading information about the evidence obtained. Our review of a sample of electronic folders with initial determinations revealed, in some cases, that notices provided claimants with a confusing list of reports from medical sources that did not clearly indicate the medical evidence the Disability Determination Services (DDS) used to reach its determination. In response to DDS requests for medical records, some providers responded that they have no records, either for the individual or the period in question. In some cases, the notice sent to these claimants may include only those providers who actually submitted medical records. However, some notices include all providers who responded to the medical records request. By also including those providers who responded that

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<sup>1</sup>GAO, *Social Security Disability: Collection of Medical Evidence Could Be Improved with Evaluation to Identify Promising Collection Practices*, [GAO-09-149](#) (Washington, D.C.: Dec. 17, 2008).

<sup>2</sup>The folders for initial determinations we reviewed included notices identified as "personal decision notice" or "notice of disapproved claim."

they have no records, without distinguishing between these varied responses, SSA is providing additional information that may confuse claimants.

Federal regulations require that notices providing an unfavorable determination to a claimant discuss, in understandable language, the evidence used to reach a determination on the claimant's case. SSA, however, instructs DDSs to include lists of all medical sources that respond to DDS requests, whether or not they provided medical evidence. SSA does not instruct staff to distinguish between sources that provide medical evidence and those that do not. Moreover, the notices typically go so far as to state that the denial was based on input received from specific providers, even those who could not produce any records. Thus, applicants may lack information needed to follow up with specific providers who may have relevant records.

We are recommending that SSA modify its guidance to require that notices to denied claimants identify medical sources in a manner that clearly distinguishes (1) sources that provided requested medical evidence, (2) sources that responded to the request but did not provide evidence, and (3) sources that did not respond. In written comments on a draft of this report, SSA indicated general agreement with our findings and our recommendation. It noted, however, that implementing the recommendation will require more study and some changes to computer systems.

## **Scope and Methodology**

To obtain detailed information about the medical evidence collection process and how the evidence collected is described in notices, we reviewed 100 randomly-selected initial disability claims—electronic folders containing documentation of the disability determination for individual disability claimants.

To select the 100 initial disability claims, we reviewed all initial DDS determinations during fiscal year 2007 for Supplemental Security Income (SSI) and Disability Insurance (DI) disability benefits and excluded reopenings and informal remands.<sup>3</sup> For administrative purposes, we also excluded records that SSA maintained using paper, rather than certified electronic folders. In order to avoid overrepresentation of claimants who filed for both SSI and DI simultaneously (an estimated 30 percent of DDS initial determinations), we eliminated duplicate listings of these claimants in our data set. We then randomly selected 100 cases from among the approximately 2.3 million cases in the data set.<sup>4</sup>

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<sup>3</sup>Reopenings are cases returned due to an error or receipt of additional evidence. Informal remands are cases returned to the DDS when SSA determines there is a strong likelihood that the earlier DDS determination will be reversed.

<sup>4</sup>Although we randomly selected cases to review, our sample of 100 cases does not provide a basis for inferring the prevalence of these cases in the population of 2.3 million initial disability determinations during fiscal year 2007.

These folders contained copies of SSA and DDS forms used in the development of each case, including documentation for both DI and SSI claims. The folders often included medical evidence the DDS received from physicians and other providers; claimant and third-party assessments of the claimant's functional abilities; reports from providers of consultative exams; forms providing evaluations of the evidence by DDS medical consultants; DDS forms for obtaining medical source statements from providers; forms and letters used to request medical and nonmedical evidence; evidence submitted by claimants or their authorized representatives; and documents related to the disability determination, such as SSA Form 831 and notices for denied claims. We compared medical providers' responses to requests for medical evidence and their discussion of evidence in the notices. We conducted our review between November 2008 and December 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Notices to Denied Claimants Provide Inconsistent and, in Some Cases, Misleading Information about the Evidence Obtained**

Our review of a sample of electronic folders for initial determinations revealed, in some cases, that DDS notices provided the claimant with a list of medical sources that did not clearly indicate the medical evidence the DDS used to reach its determination. In response to DDS requests for medical records, some providers indicated that they had no records for the individual or the period in question. Although this was a response to the request, no records were actually provided. In some cases, the notice the claimant received included only those providers who submitted medical records. However, in other cases, the notices also included providers who responded that they had no records, and the notices did not disclose or distinguish between these varied responses.

Among the 100 electronic folders we reviewed, there were 34 in which one or more sources provided no record responses. In 24 of these cases, the claimant received a less than fully favorable determination, and SSA sent a notice listing the medical sources on which the DDS based its determination. In several of these cases (9 of 24), this list included medical sources that provided no record responses, rather than evidence concerning the claimant's conditions, without distinguishing these from responses that included medical records. In the other cases, however, the lists of reports received did not include the providers who responded that they did not have the requested evidence. In some cases, the notices indicated that they had sought but failed to obtain reports from other sources. There were also examples where the notice included a source when something other than medical evidence was received by the DDS. This includes one case where a request letter was returned by the Post Office and another case where the source indicated that they would not provide records until the claimant signed an authorization to release records.

## **SSA Procedures for Notices Fail to Require Easily Understandable Disclosure of the Evidence**

Federal regulations require that notices reporting a determination unfavorable to the claimant discuss, in understandable language, the evidence SSA used to reach a determination on a claimant's case. SSA, however, instructs DDSs to list medical sources that respond, whether or not they provided evidence. Federal regulations require that if SSA's determination is in whole or in part unfavorable to the claimant, the written notice will contain, in understandable language, a statement of the case setting forth the evidence on which the determination is based.<sup>5</sup> Similarly, SSA's Program Operations Manual System directs that when a totally or partially unfavorable disability determination is made, the determination notice must contain a statement of the case written in understandable language discussing the evidence and stating the determination and the reasons for it.<sup>6</sup> SSA directs staff, when creating personalized disability explanations, to list all medical and nonmedical sources that responded, but not to list unresponsive sources.<sup>7</sup> We requested clarification of these policies, and a response from SSA's Office of Disability Policy stated that the notices should include a list of all medical and nonmedical sources that responded to the request for medical evidence, regardless of the content of the response. SSA believes it is important that the claimant is aware that the DDS received a response from a provider supplied by the claimant. Therefore, SSA includes in the notice a list of all providers who responded to requests for information, even those who responded that they had no records for the claimant or that they had no records for the period specified, without distinguishing between the various responses. If they did not include all providers who responded to requests for records, SSA believes the claimant might think SSA did not contact a source provided by the individual.

We agree that a list of medical sources that excludes those sources that indicated they did not locate evidence may leave the claimant wondering whether SSA contacted the source. However, including those sources without specifying that these sources did not provide medical evidence fails to provide claimants a transparent and understandable discussion of the evidence. By distinguishing between the different sources and the content of their responses, SSA could provide claimants clearer, more understandable information about the evidence on which SSA's determination was based and, perhaps, better inform a claimant's decision whether to request an appeal.

### **Recommendation for Executive Action**

In order to provide claimants clearly understandable information concerning the evidence used as a basis for SSA's denial of their disability claims, we are recommending that SSA modify its guidance to require that notices to claimants

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<sup>5</sup>20 C.F.R. §§404.904, 416.1404(a).

<sup>6</sup>DI 26530.001.

<sup>7</sup>DI 26530.020(B)(1).

identify medical sources in a manner that clearly distinguishes (1) sources that provided requested medical evidence, (2) sources that responded to the request but did not provide evidence, and (3) sources that did not respond.

### **Agency Comments and Our Evaluation**

In written comments on a draft of this report, which are reprinted in enclosure I, SSA indicated general agreement with our findings and our recommendation. It noted, however, that implementing the recommendation will require more study and some programming changes in DDSs' legacy computer systems. SSA noted that it is working with DDSs toward a single system to replace these legacy systems, which would make it easier to make the necessary changes

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This report is intended for use by the management of SSA. We are also sending copies to interested congressional committees. The report is also available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staff have any questions concerning this report, please contact me at (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov). Michael J. Collins, Assistant Director; Benjamin P. Pfeiffer; Susan L. Aschoff; Alexander G. Galuten; Suzanne C. Rubins; Meghan H. Squires; Vanessa R. Taylor; and Walter K. Vance, made key contributions to this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,



Daniel Bertoni  
Director, Education, Workforce,  
and Income Security Issues

Enclosure

**Comments from the Social Security Administration**



**SOCIAL SECURITY**

The Commissioner

December 29, 2008

Mr. Daniel Bertoni  
Director, Education, Workforce, and  
Income Security Issues  
U.S. Government Accountability Office  
441 G St., NW  
Washington, D.C. 20548

Dear Mr. Bertoni:

Thank you for the opportunity to review and comment on the draft correspondence, "Social Security Disability: Improving Decision Notices to Denied Claimants" (GAO-09-183R). We appreciate the Government Accountability Office's efforts in conducting this review. Our response to the correspondence findings and recommendation is attached.

Please let me know if we can be of further assistance. You may direct staff inquiries to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Sincerely,

Michael J. Astrue

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

**COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO)  
DRAFT CORRESPONDENCE, "SOCIAL SECURITY DISABILITY:  
IMPROVING DECISION NOTICES TO DENIED CLAIMANTS" (GAO-09-183R)**

In general, we support your findings and recommendation. Currently, a personalized decision notice (PDN) is required for a denial, partially favorable allowance, or closed period of disability, and must include a list of all medical and non-medical sources that responded to the request, regardless of the content of their response. We have also placed a renewed emphasis on improving the clarity of our notices. On July 3, 2008, I announced the creation of the Office of Notice Improvement and Authentication. This office is dedicated to improving notice accuracy and clarity. We issue nearly 350 million notices each year, and each notice is an opportunity to communicate more effectively with the American public. We are committed to making our letters and notices more direct and easily understood.

As indicated in your report, we have an obligation when denying a disability claim to provide a written notice which "contain[s] in understandable language a statement of the case setting forth the evidence on which our determination is based." [See 20 CFR 404.904 and 416.1404(a) (Notice of the initial determination).]

However, the situation is different during other stages of the process. Hearing decisions discuss the evidence that formed the basis for the administrative law judge's (ALJ) conclusions. The Appeals Council (AC) does not routinely undertake medical development; rather, the AC may give the claimant/representative the opportunity to submit additional evidence. Therefore, the claimant knows what evidence has been supplied. Moreover, the Office of Disability Adjudication and Review (ODAR) acknowledges in the AC notice any additional evidence that is received. Thus, the situation at the initial disability determination and reconsideration levels is different than the adjudications at the ALJ and the AC levels.

While we generally agree with your recommendation to improve written notices at the initial disability determination and reconsideration levels, we note that you examined electronic folders containing initial disability determinations. You recommend that we modify guidance on "personal decision notices and similar notices." Although "decision notice" is the term used in your draft letter, please note that we use the term "decision" when referring to adjudications by ALJs and the AC, and use the term "determination" when referring to determinations at the initial and reconsideration levels. Therefore, we suggest a clarification in the draft letter because you refer in the draft specifically to the regulations for "determinations," not "decisions," and you reviewed only notices for initial disability "determinations."

Our response to your specific recommendation is as follows.

Recommendation

In order to provide claimants clearly understandable information concerning the evidence used as a basis for the Social Security Administration's (SSA) decision to deny their disability claims, we recommend that SSA modify its guidance to require that personal decision notices and similar notices to claimants identify sources in a manner that clearly distinguishes: 1) sources that provided requested medical evidence; 2) sources that responded to the request, but did not provide evidence; and 3) sources that did not respond.

Comment

We agree in principle, but the operational and resource constraints described below will influence our efforts in this area. Claimants should receive a clear understandable explanation of the basis for a disability determination that is not fully favorable. However, while we agree that the PDN should provide more information concerning the responsiveness of the medical sources, the practical aspect of implementing this recommendation requires more study. A modification of current policy that instructs the examiner not to include information about non-responsive medical sources would require a thorough examination of the genesis of the policy, the legal implications of disclosure, and the impact on the State agency's relationships with the medical provider community. The recommended changes would also require some programming of the States' legacy systems. Currently, the policy of only identifying medical sources by name and date of receipt fits well with the automated systems' generation/propagation of the list of providers for the notice. We could implement this recommendation provided the automated propagation for the provider information from the legacy systems could be over-ridden or amended to manually show which one of the three situations applied. In addition, we are working with the State DDSs toward a single system that would replace their legacy systems and make it easier to make this type of change. However, this change will require working with all 50 States and a considerable investment of IT funds. We will explore these issues and continue to work towards modifying and standardizing our procedures. We are confident that we will be able to produce a product that will allow a clear, concise explanation of the actual evidence obtained and used in our determination, as well as the attempt to obtain evidence from all medical sources listed by the claimant.

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