
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**Office of Hearings and Appeals
Reversal of Disability Denial Decisions
Involving Investigative Information
from Cooperative Disability
Investigations Units**

January 2006

A-07-05-15091

AUDIT REPORT



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By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: January 20, 2006

Refer To:

To: The Commissioner

From: Inspector General

Subject: Office of Hearings and Appeals Reversal of Disability Denial Decisions Involving Investigative Information from Cooperative Disability Investigations Units (A-07-05-15091)

OBJECTIVE

The objective of this audit was to identify circumstances that may have resulted in the allowance of benefits at the hearings level when a prior investigation conducted by Cooperative Disability Investigations (CDI) Units may have contributed to a denial.

BACKGROUND

The Social Security Administration (SSA) is responsible for implementing policies for the development of disability claims under the Disability Insurance (DI) and Supplemental Security Income (SSI) programs. Disability determinations under both DI and SSI are performed by Disability Determination Services (DDS) in each State, Puerto Rico and the District of Columbia in accordance with Federal regulations.¹ In carrying out its obligation, each DDS is responsible for determining claimants' disabilities and ensuring that adequate evidence is available to support its determinations. If the DDS suspects possible fraud or similar fault² in a case, it is referred to a CDI unit if one exists in the State.^{3, 4}

¹ 20 C.F.R. §§ 404.1601 *et seq.* and 416.1001 *et seq.*

² SSA, POMS, DI 23025.005 B.1.a,b provides that fraud exists when any person knowingly, willfully and with intent to defraud makes or causes a false statement to be made or conceals or misrepresents a fact that is material to eligibility or payment amount. Similar fault exists under the same circumstances except intent to defraud is not required.

³ The highest percent of CDI referrals are from DDSs; however, field offices and the public can also make referrals.

⁴ If there is not a CDI unit in a State, the DDS will develop and determine whether a finding of fraud or similar fault is appropriate. The DDS may need field office assistance to help resolve the potential fraud or similar fault issue.

The SSA Offices of Operations and Disability Programs, and the Office of the Inspector General (OIG) manage the CDI program. The CDI units' mission is to obtain evidence of material fact sufficient to resolve questions of fraud in SSA's disability programs.

There are currently 19 CDI units located in 17 states. These units are typically comprised of OIG special agents, State or local law enforcement, SSA Office of Operations personnel, and DDS personnel. During the period July 1999 through July 2005, CDI investigative results were used to support over 8,000 DDS decisions to deny SSA disability benefits. This allowed SSA to avoid improper payments of approximately \$492 million.⁵ See Appendix B for additional background on the CDI units.



CDI units report facts uncovered during the course of an investigation in a standard report of investigation. The investigative report is provided to the appropriate DDS for use in the determination of disability. The DDS reviews the investigative report, gives careful consideration to the results of the investigation, and considers other relevant evidence in the case folder. If the investigative report is material to the decision, the DDS will make reference to the report and a copy will be included in the case folder. After the DDS makes a medical decision, the case folder is returned to the SSA field office as an allowance and/or denial for processing.⁶

A claimant whose application is denied at the DDS, during the initial and reconsideration steps of the administrative review process, may request a hearing. The Office of Hearings and Appeals (OHA) is responsible for conducting hearings and issuing decisions determining whether a person may receive benefits. Hearings are held before an Administrative Law Judge (ALJ), who considers the evidence that is in the file and any new evidence, provides an opportunity for a hearing, applies the SSA disability standards, and issues a new decision, which affirms or reverses the DDS decision. The OHA organization consists of 10 regional offices, approximately 140 hearing offices, and over 1,150 ALJs.

⁵ SSA program savings are projected at a flat rate of \$66,500 for initial claims that are denied as a result of CDI investigations, using a formula jointly developed by the OIG and the Office of Disability. When a CDI investigation supports the cessation of an in-pay case, the SSA program savings are projected by multiplying the actual monthly benefit times 60 months.

⁶ SSA, POMS, DI 23025.020 B.1.

Not all cases where fraud is suspected are accepted for investigation.⁷ Likewise, not all claimants, who have their case denied by the DDS, choose to appeal to OHA. See Appendix C for an overview of possible actions for a case from the identification of potential fraud through the appeals process.

RESULTS OF REVIEW

During the period July 1999 through April 2004, CDI units conducted investigations on 4,712 cases⁸ denied at the initial level or at a continuing disability review (CDR) of which 907 cases were subsequently appealed to OHA.⁹ Of these cases, OHA reversed the decision for 526 cases or 58 percent, which will result in the payment of approximately \$33 million in benefits.¹⁰

Based on our review of case folders, ALJs may not have always been aware that a CDI unit investigation was conducted and may not have always considered the investigative report in making the disability decision. These circumstances may have resulted in the allowance of benefits when a prior investigation by a CDI unit contributed to a denial decision. Specifically, our review of case folders for 100 ALJ decisions found:

- 97 case folders were not clearly marked to indicate an investigation was conducted and that the investigative report was included in the case folder;
- 40 investigative reports were missing from case folders;
- 28 investigative reports were not included on the exhibit list used to identify documents for consideration at the hearing; and
- 59 investigative reports were not discussed in the ALJ case decision write-up.

We also obtained comments from ALJs on CDI unit investigations. Overall, the ALJs responded that the CDI units provided evidence beneficial to their disability decisions. The ALJs also provided suggestions related to CDI unit investigations that would make them even more beneficial to the OHA disability decision process.

⁷ Cases referred to a CDI unit are accepted for investigation based upon the type of claim, type of fraud, workload of the CDI unit, location of claimant, and resources available.

⁸ This is not intended to represent all cases that were investigated by a CDI unit for this time period because CDI units also conducted investigations on cases that were allowed at the initial level and at a continuing disability review.

⁹ Of the 907 cases denied by the DDS and subsequently appealed to OHA, 718 were initial claims and 189 were CDRs. See Appendix B for additional information on the scope and methodology of our review.

¹⁰ The \$33 million that SSA will pay in benefits is based on the program savings that were previously identified by CDI units for the 526 cases for which OHA reversed the decision.

RESULTS OF CASE FOLDER REVIEW

Case Folder Not Clearly Marked

For 97 of the 100 cases we reviewed, the outside of the paper folder did not identify that a fraud investigation was conducted as required by the Hearings, Appeals, and Litigation Law Manual (HALLEX).¹¹ In addition, on the three remaining paper folders, the indicator was on the outside of the folder; however, it could not be easily identified because other documents were stapled on top of the indicator. Without proper notification of an investigation on the outside of the paper folder, ALJs may not have always been aware that a CDI unit investigation was conducted.

HALLEX¹² indicates that when a CDI investigation has been conducted the paper folder is generally identified by a distinctively colored label or flag bearing the Special Agent seal and/or the acronyms OIG CDI or OIG/CDI.¹³ Accordingly, the distinctively colored label or flag should be on the outside of the paper folder when it arrives at OHA. However, we could not identify what SSA component was responsible for placing the flag on the folder after a CDI investigation was conducted.

SSA stated that it never intended to mark the paper folder to indicate that an investigation was conducted and also, each adjudicative level is responsible for reviewing the case folder to determine the evidence to be evaluated. During the course of our audit, OHA revised HALLEX¹⁴ and issued a memorandum¹⁵ to OHA staff on how to identify the investigative report. Accordingly, we are making no recommendation related to the absence of the label or flag on the paper folders.

¹¹ Although an indicator was included in 5 of the 97 case folders, it was not attached to the outside of the folder as required by HALLEX I-5-1-15, Attachment 1, Question 1. A red sheet of paper that identified an investigation had been conducted was loosely inserted in the case folder. It appeared that the indicator may have been stapled to the outside of the folder but had been subsequently removed.

¹² HALLEX provides guiding principles, procedural guidance, and information to OHA staff. It also defines procedures for carrying out policy and provides guidance for processing and adjudicating claims at the Hearing, Appeals Council and Civil Actions levels.

¹³ HALLEX I-5-1-15, Attachment 1, Question 1, provides general background information to OHA (updated 6/15/01).

¹⁴ HALLEX I-2-1-15 (updated 9/28/05).

¹⁵ OHA, *Memorandum for Adjudicating Cases Involving Potential Fraud, Similar Fault, and Abuse Issues – REMINDER*, October 31, 2005.

SSA is in the process of implementing electronic folders (EF), which will be the repository that stores the claimant's disability information. Therefore paper folders will be replaced by the EFs in most cases.¹⁶ The Program Operations Manual System (POMS)¹⁷ for the EFs do not mention placing an indicator or flag in the EFs to indicate a CDI unit investigation occurred.¹⁸ SSA informed us that a specific flag is not available in the EF to identify a CDI unit investigation occurred, but a Special Handling Flag – F (Alert/High Risk) could be used. The flag would remain with the EF after the case is closed (See Appendix D). We believe a flag to indicate that a CDI unit investigation occurred would provide an additional level of assurance that the investigative report will be considered. Accordingly, SSA should include detailed instructions in POMS to permanently mark the EFs, including identification of the SSA component responsible to place the indicator or flag on the folder.

Investigative Reports Missing From Case Folders

The investigative report was missing from 40 of the 100 case folders that we reviewed.^{19, 20} Accordingly, we could not determine if the ALJ was aware that a CDI unit investigation was conducted on these cases. The CDI unit forwards the investigative report to the DDS with a transmittal and receipt form. Once the DDS makes a determination, the transmittal form is sent back to the CDI unit, indicating whether the claim was allowed or denied, or in the case of a CDR, continued or ceased. The receipt of the transmittal form from the DDS is the CDI unit's verification that the investigative report was received.

We were unable to determine why the investigative report was missing from the 40 case folders. Specifically, we do not know if the DDS failed to place the investigative report in the case folder or if it was removed from the folder during the DDS or OHA determination processes. For example, when the Hearing Office staff receives a case folder, the proposed exhibits are selected, arranged in proper order, and marked before the exhibit list is prepared.²¹ Therefore, the investigative report may have been removed from the folder during this process.

¹⁶ Paper folders will continue to be used for cases such as CDRs, mainframe exclusions, foreign claims, age 18 redeterminations, and reopenings.

¹⁷ POMS is used for issuing instructions within SSA.

¹⁸ SSA, POMS, DI 80701.070 B.

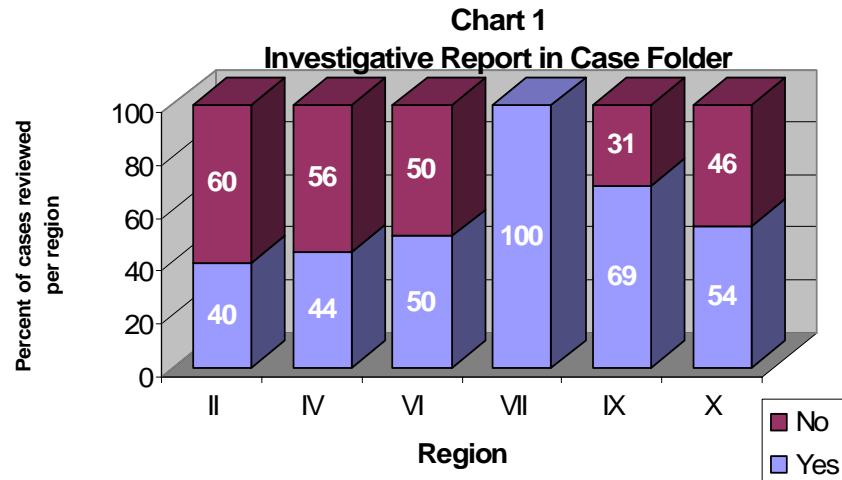
¹⁹ We obtained copies of the missing investigative report from the CDI units for use in our analysis.

²⁰ In addition, 57 of the 100 cases we reviewed did not have the investigative report filed correctly in the case folder. SSA, POMS DI 70005.005 B.6, provides that the investigative report should be filed on top of all documents in the medical evidence section of the paper folder.

²¹ HALLEX I-2-1-20 (updated 9/28/05).

For the Region VII case folders in our sample, we found all investigative reports (See Chart 1).²² This may be the result of the St. Louis CDI unit sending a memorandum to the DDS when the case is accepted for

investigation and again when the investigative report is sent to the DDS at the completion of the investigation. This memorandum includes such information as marking the folder with the CDI unit investigation indicator, as well as instructions on where to place the investigative report in the folder. This is a best practice that other CDI units may want to consider using.²³



Upon implementation of the EF, SSA plans to have the CDI unit place the investigative report in the EF. Although the investigative report cannot be deleted from the EF, DDS and OHA staff will have access that will allow them to delete the link for the investigative report.²⁴ Once the link is deleted, subsequent users may not be aware that an investigative report existed. Accordingly, restrictions should be placed on the EF to ensure the link to the investigative report cannot be removed. Further, since paper folders will continue to be used for CDRs, current policies should be strengthened to ensure the investigative report is always included in the folder.

Investigative Report Not Identified on Exhibit List

The investigative report was not identified on the exhibit list for 28 of the 100 cases we reviewed. Furthermore, we were unable to determine if the investigative report was identified on the exhibit list for 16 additional cases, because the exhibit lists were not

²² Less than 5 cases were included in our sample from each of Regions I, III, V, VIII, and Headquarters. Therefore, these cases were excluded from our analysis because there was an insufficient number of cases in these regions to reach a reasonable conclusion on filing investigative reports. The cases from these regions were included in other analysis presented in this report.

²³ According to CDI unit management, they are in the process of developing procedures for all CDI units to use a similar memorandum.

²⁴ Although the link is deleted, the investigative report will remain in the document management architecture. However, the document management architecture is not where EF users would normally expect to gain access to the investigative report.

included in the case folders and were unavailable from OHA.²⁵ Accordingly, we were unable to determine if the ALJ was aware of or considered the investigative report in making decisions on these cases.

The hearing office staff prepares an exhibit list that identifies documents pertinent and material to the case.²⁶ The ALJ uses the exhibit list to determine documents that will be admitted as evidence to issue a decision on the claimant's disability. In the EF an exhibit list tab is included for cases at the hearing level. This tab mirrors the paper exhibit list that OHA currently uses to identify pertinent and material documents for the hearing.

For the cases we reviewed, instructions did not exist on how to specifically address the investigative report on the exhibit list.²⁷ However, during the course of our audit OHA revised HALLEX²⁸ and issued a memorandum²⁹ to OHA staff instructing them to list the investigative report as a document on the exhibit list. Accordingly, we are not making any recommendations related to the identification of the investigative report on the exhibit list.

ALJ Did Not Discuss the Investigative Report in the Case Decision Write-up

In 59 of the 95 ALJ case decision write-ups we reviewed,³⁰ the ALJ did not discuss the investigative report.³¹ Accordingly, we were unable to determine if the ALJ considered the investigative report in making the disability decisions on these cases. When ALJs write decisions they are required to consider medical opinions in the case record together with the rest of the relevant evidence received.³² The ALJs should provide the rationale for the findings on the relevant issues and the ultimate conclusion, which

²⁵ HALLEX I-2-1-20 (updated 9/28/05) states in a fully favorable decision, the exhibit list does not need to be prepared, however, exhibits such as investigative reports still need to be selected, arranged, and marked within the paper folder.

²⁶ HALLEX I-2-1-15 (updated 9/28/05).

²⁷ HALLEX I-2-1-15.A (last updated 8/3/04).

²⁸ HALLEX I-2-1-15.E.6 (updated 9/28/05).

²⁹ OHA, *Memorandum for Adjudicating Cases Involving Potential Fraud, Similar Fault, and Abuse Issues – REMINDER*, October 31, 2005.

³⁰ We could not review five of the ALJ case decision write-ups because they were missing from the case folder and SSA was not able to provide them for our analysis.

³¹ Results of our review found 36 ALJs mentioned the investigative report in their decision, however, only 24 of the cases had the investigative report included in the case folder at the time of our review. Although the investigative report was missing from 40 case folders, it is possible that the investigative report was included in the case folder at the time of the ALJ's review. Further, even though the exhibit list for 28 of these cases did not identify the investigative report as evidence to be considered by the ALJ, they may have identified the investigative report themselves.

³² 20 C.F.R. §§ 404.1527(2)(b) and (c) and 416.927(2)(b) and (c).

includes a discussion of the weight assigned to the various pieces of evidence used to resolve conflicts in the documents presented in the claimant's disability case folder.³³ CDI evidence is to be weighed with the other relevant evidence and accorded no special weight simply because it came from a CDI unit.³⁴ Recent HALLEX instructions dated September 2, 2005, state that if SSA's OIG has conducted a formal investigation on a particular disability claim, the OIG investigative report, as well as any supporting evidence documented in the report, should be addressed in the ALJs decision.³⁵

The investigative report can provide valuable information for a finding of fraud or similar fault and should be addressed in the ALJ case decision write-up. Accordingly, the Chief ALJ should formally remind the ALJs of the new requirements to address the investigative report when writing their decisions.

ALJ COMMENTS

We surveyed 20 ALJs that each issued decisions on 10 or more cases in our population. Sixteen ALJs responded.^{36, 37} The ALJs stated that overall the CDI units provided evidence beneficial to their disability decisions. Examples of comments from the ALJs included:

“The CDI unit's report regarding the claimant's activities of daily living and the individual's social interactions with others gives me a better perspective of what the individual is actually doing compared to most of the self-serving testimony I receive from the claimant and his family members at the hearing.”

“I have had good results with the CDI cases I have come into contact with during the past several years. I appreciate the CDI unit's efforts in striving to be objective and not bias the case in any way other than to report the facts they have discovered. I wish them continued funding and success in the future.”

³³ HALLEX I-2-8-25.C.2.c (updated 10/16/03).

³⁴ HALLEX I-5-1-15, Attachment 1, Question 33 (updated 6/15/01).

³⁵ HALLEX I-2-8-25.C.2.c (updated 9/2/05).

³⁶ The four ALJs that did not respond to our survey were located in Region IX. Region IX was the region with the highest number of cases we reviewed (42 of 100) of which the ALJs allowed benefits for 18 cases.

³⁷ ALJs provided numerous comments, however, the comments were not associated specifically to the 100 cases we reviewed.

The ALJs also provided suggestions on some areas of the investigation that would make them even more beneficial to their disability decisions.³⁸ Specifically:

- A longer period of surveillance tailored to the claimant's alleged impairments would provide more complete evidence on some cases.
- Only factual observations about the claimant's abilities identified during the investigation should be included in the investigative report. For example, when the claimant is observed walking only one block, the investigative report should not conclude the claimant can walk long distances.
- Specific details of the investigation, such as the length of time the claimant was observed, the distance the claimant walked, or the size of objects lifted should be reported in the investigative report.
- Standards applied to the CDI Unit's observations should be placed in proper perspective. For example, investigative reports that indicate the claimant's pace and gait were normal should provide a context for normal, such as pace and gait were similar to other people walking near the claimant.
- Documents that support statements made in the investigative report should be presented for consideration. For example, the investigative report states that medical evidence submitted by the medical provider for a different claimant was very similar to the medical evidence for the claimant under investigation, which could indicate duplicative use of medical evidence. Therefore, the CDI unit should provide the medical evidence from the other case to support their statement.

In addition, the ALJs identified factors that influenced their use of the investigative report, which might have led to allowance of benefits. Specifically, the ALJs identified circumstances that caused the investigative report to conflict with other evidence in the case folder. For example, evidence submitted by medical or vocational experts conflicts with the results of the investigation or the investigative report, which includes interviews with third-parties that ALJs consider as hearsay. When circumstances result in the investigative report conflicting with other evidence, the ALJ should not disregard the results of the investigation. Rather, the ALJ should request the CDI investigator to testify at the hearing to clarify the results of the investigation³⁹ or request third-parties to testify at the hearing.⁴⁰ In addition, the ALJ should request, in writing, from SSA or the

³⁸ Our audit did not provide evidence to prove or negate the ALJs' comments.

³⁹ HALLEX I-5-1-15, Attachment 1, Question 34, states that ALJs may request CDI Special Agents to testify at the hearing if the ALJ believes that an aspect of an OIG submission requires exploration in oral testimony (updated 6/15/01).

⁴⁰ HALLEX I-5-1-15, Attachment 1, Question 34, states that hearsay rules, such as courts apply to determine the admissibility of evidence, do not apply in the informal, nonadversarial hearings conducted by the ALJs of SSA. However, the ALJ can request the appearance of a witness in any instance which full inquiry into the issues will require testing of the evidence in oral questioning (updated 6/15/01).

DDS that additional evidence be obtained by the CDI unit.⁴¹ In Fiscal Year (FY) 2004, CDI units conducted investigations on 2,231 cases that were denied at the DDS. Based on historical data, we estimate that at least 32 percent of these cases, or about 717, were appealed to OHA. However, during FY 2005 – the time period during which OHA would have made decisions on a large number of the estimated 717 cases – CDI unit investigators were asked to testify at OHA hearings only 23 times and CDI units were asked to provide additional evidence on only 16 cases.

Based on our population, OHA allowed 58 percent of the cases where a CDI unit investigation was conducted. However, OHA rarely requested additional information or testimony from the CDI units. Accordingly, we question whether ALJs are exercising their ability to request additional information and secure investigator/third party testimony.

Availability of Videos

The ALJs responded that surveillance videos and pictures were beneficial to make the disability decision. For example, one ALJ made the following statement about the surveillance video:

“When we have the video tape itself at the hearing, it is usually difficult for the claimant to explain away. This allows the claimant and his representative to comment on it and to use it in the record as actual evidence. Sometimes it is so incriminating that the claimant does not even want to see it.”

Currently, surveillance videos are recorded on Hi 8, Digital 8, Mini digital video disk (DVD), and DVD, which are stored at the CDI units.⁴² Most CDI units provide copies of surveillance to the DDS and OHA in videotape format (VHS) on tapes. Since the VHS tapes are bulky, a copy of the tape is not placed in the paper folder. If the tape was located in the paper folder, the folder would be hard to store and the tape could be lost or broken when stored or transported. To request a copy of the surveillance video, the Hearing Office staff must send a request to the CDI unit, and then wait to receive the video. Once requested, videos are sent via overnight delivery, certified mail and/or hand carried to OHA.

⁴¹ HALLEX I-5-1-15, Attachment 1, Question 24, states that the ALJ should request a CDI unit to investigate an issue of fraud or similar fault if the case presents an issue of fraud or similar fault (updated 6/15/01).

⁴² CDI units are transitioning to record surveillance videos on compact disks (CD) and DVDs, as funds become available to purchase the technology. From our review of the case folders, we found that the Tampa CDI Unit included the surveillance on a DVD submitted with the investigative report. The St. Louis CDI Unit recently started sending key segments of surveillance videos on CDs to the DDS.

We are concerned that ALJs may not request videos due to the time factor involved in obtaining the videos and the urgency to reduce OHA's case backlogs. In fact, during FY 2005, surveillance videos were requested for only 26 cases. This represents a small percentage of the cases sent to OHA annually by CDI units where surveillance video was available.

A multimedia evidence section was incorporated into the architecture of the EF for the purpose of integrating audio and video evidence into the folder.⁴³ The EF holds the promise of integrating all the evidence into one readily accessible location. Further, the EF will reduce the time it takes to receive information, eliminate the need to wait for and store the paper folder, and eliminate the need to associate mail with paper folders.

SSA stated that including surveillance videos in the EF would result in system slowdowns and deplete available memory. However, SSA did not have any information to support its position and stated that no studies were conducted to determine the impact of including surveillance video in the EF.

Inclusion of surveillance videos in the EF should not cause substantial system slowdowns or deplete excessive system memory. In fact, there are a very limited number of cases that have surveillance video. For example in FY 2005, there were approximately 2,800 investigations conducted and about half had surveillance recorded on video. However, even if all 2,800 investigations had surveillance video, the impact on the EF from a slowdown or memory capacity perspective would be very limited.⁴⁴ Accordingly, SSA should not dismiss the benefits of including surveillance videos in the EF. SSA should take advantage of the EF's ability to provide all levels of adjudication with a complete file of evidence including surveillance videos. In doing so, ALJs will make greater use of surveillance videos and SSA beneficiaries and trust funds will be advantaged by ensuring that all available evidence is considered in making disability determinations.

⁴³ SSA, POMS, DI 80701.020.A.

⁴⁴ After numerous discussions between SSA and OIG, the OIG's Office of Investigations stated in April 2005 that it would not request CDI surveillance be included in the EF. However, upon further analysis of the EF's capabilities with regards to storage of multimedia, the Office of Investigations supports the inclusion of surveillance videos to ensure that all available evidence is readily available for all adjudicative levels.

CONCLUSION AND RECOMMENDATIONS

Procedures developed for the EF will assist in eliminating circumstances that may have resulted in the allowance of benefits at the hearings level when a prior investigation was conducted by CDI units, such as ensuring the investigative report is filed in the EF. However, additional changes are still needed to ensure the flag to identify that a CDI investigation was conducted is placed on the EF, and the link to the investigative report is not removed. In addition, procedures to file the investigative report need to be strengthened, since a paper folder will still be used for some cases. Further, actions are needed by OHA to ensure that the investigative report is considered in its decision-making process. Lastly, OHA's use of surveillance videos should increase if available in the EF.

We recommend that SSA:

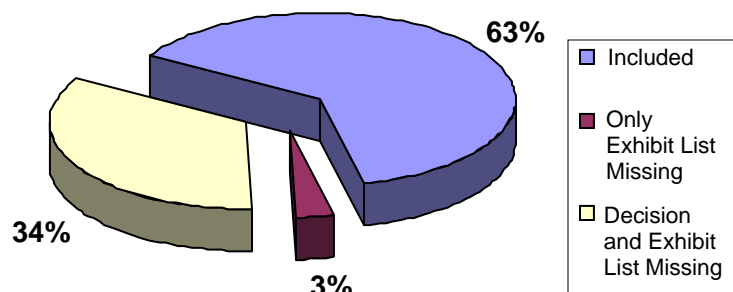
1. Provide instructions in POMS on what component is responsible to: (a) file the investigative report in the paper folder and (b) flag the EF to identify cases in which a CDI unit investigation was conducted.
2. Place restrictions on the EF to ensure the link to the investigative report cannot be removed.
3. Request the Chief ALJ to remind ALJs of the September 2005 instructions to document the use of the investigative report in the disability decision write-up.
4. Request the Chief ALJ to encourage ALJs to request CDI unit investigators and third parties to testify at hearings when clarification of the investigative report is needed, particularly the testimony of third parties, which might otherwise be construed as hearsay evidence.
5. Request the Chief ALJ to encourage ALJs to request from SSA and DDSs additional evidence from CDI units when warranted by case circumstances.
6. Require surveillance videos to be included in the multimedia evidence section of the EF.

OTHER MATTERS

For 34 of the 100 cases we reviewed, both the ALJ decision and the exhibit list were missing from the folder.^{45, 46} In addition, three case folders were missing only the exhibit list (See Chart 2).

The ALJ decision and attachments should be filed in the Payment Documents/Decision section of the paper folder.⁴⁷ It is important that all information related to the claimant's disability be included in the case folder. If information is excluded from the case folder the processing of disability cases is slowed down due to the wait time to acquire documents from other sources. Also, there is no assurance that the missing documents can be obtained from other sources. OHA should ensure that the ALJ decision and exhibit list are filed in the case folder.

Chart 2
ALJ Case Decision Write-ups and Exhibit Lists



Agency Comments

In commenting on our draft report, SSA agreed with the intent of our recommendations. However, it did not agree to immediately implement recommendations 2 and 6. In response to recommendation 2, SSA stated that it would not be cost-effective at this time to place restrictions on the EF to ensure the link to the investigative report cannot be removed. Specifically, business rules, requirements and software modifications would be needed. With regards to recommendation 6, SSA stated that technology does not currently exist to allow inclusion of surveillance videos in the EF. However, SSA stated that it is making strides in maintaining multimedia in the EF. See Appendix E for the full text of SSA's comments.

⁴⁵ We requested the missing ALJ case decision write-ups and exhibit lists from SSA, however only 29 ALJ case decision write-ups and 21 exhibit lists were provided for our analysis.

⁴⁶ HALLEX I-2-1-20 (updated 9/28/05) states in fully favorable decisions, the exhibit list does not need to be prepared, however, exhibits will still be required to be selected, arranged, and marked in the paper folder.

⁴⁷ SSA, POMS, DI 70025.001.E.5.b.

OIG Response

Although the Agency stated that it disagreed with recommendations 2 and 6, SSA's comments to the recommendations indicate agreement with the intent of our recommendations. Accordingly, we continue to believe SSA should take the corrective actions when they become cost effective and technologically possible.

SSA should place restrictions on the EF to ensure the link to the investigative report cannot be removed. This will prevent a user from improperly deleting the link to the investigative report. Accordingly, this enhancement to the EF should be prioritized with other EF modifications and implemented at the appropriate time.

SSA should make surveillance videos available in the EF. By doing so, ALJs may make greater use of surveillance videos and SSA beneficiaries and trust funds will be advantaged by ensuring that all available evidence is considered in making disability determinations. Accordingly, exploration of maintaining multimedia in the EF should continue.



Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Background, Scope and Methodology

APPENDIX C – Overview of Actions for a Case from the Identification of Potential Fraud through the Appeals Process

APPENDIX D – Electronic Case Folder

APPENDIX E – Agency Comments

APPENDIX F – OIG Contacts and Staff Acknowledgments

Acronyms

ALJ	Administrative Law Judge
CD	Compact Disk
CDI	Cooperative Disability Investigations
CDR	Continuing Disability Review
C.F.R.	Code of Federal Regulations
DDS	Disability Determination Services
DI	Disability Insurance
DVD	Digital Video Disk
eDib	Electronic Disability
EF	Electronic Folder
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Law Manual
NADE	National Association of Disability Examiners
OHA	Office of Hearings and Appeals
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income
VHS	Videotape format

Background, Scope and Methodology

BACKGROUND

Fraudulent activity in connection with claims for disability benefits is a major concern. The Social Security Administration (SSA) is committed to assuring the integrity of its various programs. One of SSA's major anti-fraud initiatives is the Cooperative Disability Investigations (CDI) unit program. SSA's Offices of Operations and Disability Programs, and the Office of the Inspector General (OIG) manage the CDI unit program. CDI units use the combined skills and specialized knowledge of OIG special agents, personnel from SSA's Office of Operations, the Disability Determination Services (DDS), and State or Local law enforcement. The CDI program mission is to:

- Provide evidence for DDSs to make timely and accurate disability determinations;
- Seek criminal and/or civil prosecution of applicants and beneficiaries and refer cases for consideration of civil monetary penalties and administrative sanctions, as appropriate; and
- Identify, investigate and seek prosecution of doctors, lawyers, interpreters, and other third parties who facilitate disability fraud.

Since Fiscal Year 1998, investigative units have become fully operational at 19 sites in 17 states: Atlanta, Georgia; Baton Rouge, Louisiana; Boston, Massachusetts; Chicago, Illinois; Cleveland, Ohio; Dallas, Texas; Denver, Colorado; Houston, Texas; Iselin, New Jersey; Los Angeles, California; Nashville, Tennessee; New York City, New York; Oakland, California; Phoenix, Arizona; Richmond, Virginia; Salem, Oregon; St. Louis, Missouri; Seattle, Washington; and Tampa, Florida.

The National Association of Disability Examiners (NADE), a strong supporter of the CDI units' mission, encouraged Congress and SSA to provide resources to expand the CDI units to the remaining 33 states. NADE further commented, *"CDI units are cost effective and provide a visible and effective front-line defense against fraud, waste, and abuse in the SSA and SSI disability programs; they also provide valuable protection to the Social Security Trust Fund, to the American taxpayer and to the victims of those who are attempting to defraud the program."*¹

By referring a case to the CDI unit, the DDS is able to obtain crucial information to assist in making the correct decision on a case. CDI units gather information that is not routinely available to DDSs when making a disability decision. The CDI unit can perform surveillance to observe the claimant's activities at their residence or when they go out and can conduct unannounced interviews of the claimant and neighbors or other

¹ NADE Position Paper, Expansion of the Cooperative Disability Investigations Units, July 1, 2004.

third parties. During formal investigations, obvious inconsistencies are often found between what a claimant alleges and what they are actually observed doing or formal investigations can confirm the limitations alleged by the claimant. In addition, CDI units are often able to obtain information from employers, neighbors, motor vehicle records and other sources to identify unreported or under reported work activity.

SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed –
 - Program Operations Manual System DI 23025, DI 70005, DI 80501, DI 80620, DI 80701, and GN 03103,
 - Hearings, Appeals, and Litigation Law Manual I-2-1-5, I-2-1-15, I-2-1-20, and I-5-1-15,
 - 20 Code of Federal Regulations 404 and 416,
 - CDI Manual, and
 - OIG Special Agent Handbook.
- Obtained a file of 4,712 claimants² denied disability benefits after an investigation conducted by a CDI unit between July 1999 and April 2004. We tested the data for accuracy and completeness and determined it to be sufficiently reliable to meet our audit objective.
- From the file of 4,712 claimants, we excluded:
 - 2,969 claimants - who did not file an appeal with the Office of Hearings and Appeals (OHA) as of August 2, 2004,
 - 607 claimants - who filed an appeal; however, the appeal was still open as of August 2, 2004, and
 - 229 claimants - who had their appeal dismissed by OHA.

Of the remaining 907 cases, we divided the cases based upon decision – 526 claimants were allowed benefits by an Administrative Law Judge (ALJ) and 386 claimants were denied benefits by an ALJ.³

² This is not intended to represent all cases that were investigated by a CDI unit for this time period because CDI units also conducted investigations on cases that were allowed at the initial level and continuing disability review.

³ Some disability claimants that appealed concurrent benefits received different ALJ decisions on their Title II and Title XVI disability claim. Disability claimants that received favorable decisions on one claim and an unfavorable on another claim were included as both an allowance and a denial. Therefore, the total number of allowances and denial decisions totaled 912.

- Reviewed case folders for a sample of 50 allowance decisions⁴ and 50 denial decisions⁵ issued by ALJs after an investigation was conducted by a CDI unit. Our review identified circumstances that may have resulted in OHA allowing disability benefits although an investigation was conducted by a CDI unit.
- Sent a questionnaire to 20 ALJs who each heard 10 or more cases where a CDI unit investigation was conducted to obtain information on the ALJs use of the investigative report in making their decision.⁶ We received responses from 16 ALJs, or 80 percent.

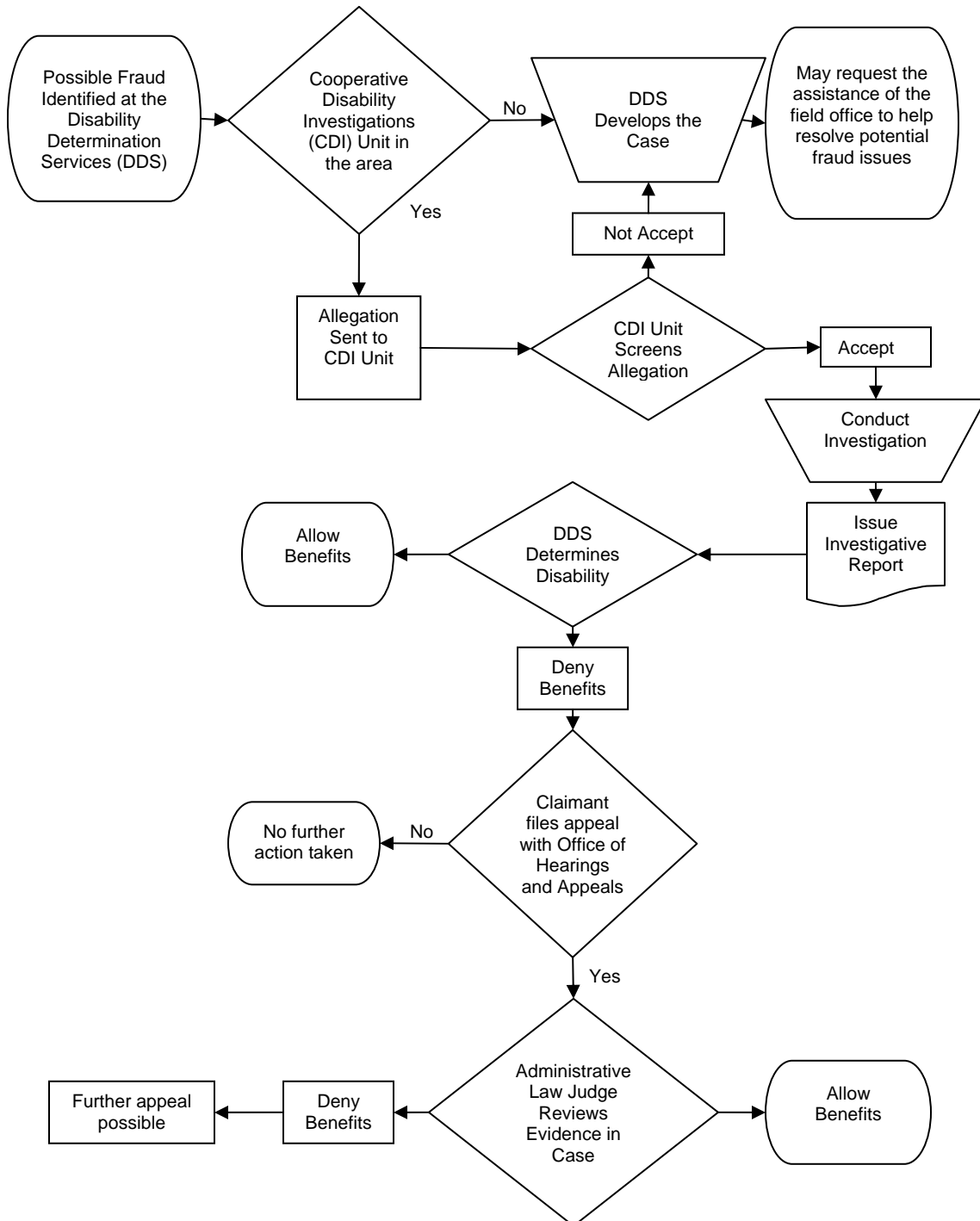
We conducted our audit between December 2004 and July 2005 in Kansas City, Missouri. The entity audited was OHA within the Office of Disability and Income Security Programs and CDI units managed by SSA's Office of Operations, Office of Disability Programs and OIG. Our audit was performed in accordance with the generally accepted government auditing standards.

⁴ To obtain case folders for 50 allowance decisions, we had to request 55 case folders.

⁵ To obtain case folders for 50 denial decisions, we had to request 68 case folders.

⁶ These 20 ALJs issued decisions on 30 percent of the cases in our population.

Overview of Actions for a Case from the Identification of Potential Fraud through the Appeals Process



Electronic Case Folder

In 2002, the Social Security Administration (SSA) announced plans to improve the disability process by moving to an electronic disability case folder through the Electronic Disability (eDib) project. Beginning in 2004, Social Security offices and Disability Determination Services (DDS) throughout the country began to implement various components of the electronic claim process at varying intervals.

Once the changes are fully implemented:

- Disability adjudicators will be able to request and receive medical evidence electronically.
- Evidence received as paper will be scanned. SSA and DDS staff will work with images of medical evidence.
- Cases will be electronically routed from office to office, rather than mailed.

Although the electronic folder (EF) will resemble the current paper folder, procedures will be different to: (1) mark the EF to alert a user that a Cooperative Disability Investigations (CDI) unit has conducted an investigation, (2) file the CDI unit's investigative report in the EF, and (3) create the exhibit list to be used by Administrative Law Judges (ALJ) to identify documents for consideration at the hearing.¹

Mark the Electronic Folder

Flags are placed on the EF to alert other components of the need for special processing of the disability claim or to provide additional case processing information. SSA indicated that a specific flag is not available in the EF to indicate a CDI unit investigation occurred, but a Special Handling Flag – F (Alert/High Risk) could be used. Once a flag has been placed on the folder, it remains on the folder unless removed.

Flags are displayed on the title bar in the EF (See Illustration 1). If there are more than two flags, then the title bar displays the word "More." To view additional flags a user must select the "View Details/Edit" link to the left of the first flag.

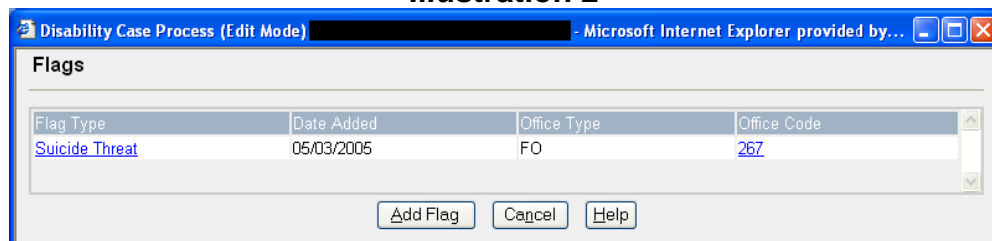
¹ Illustrations used do not specifically show a special flag associated with an investigation conducted by a CDI unit or list the investigative report. The illustrations are provided as a general overview of how flags and documents are presented.

Illustration 1



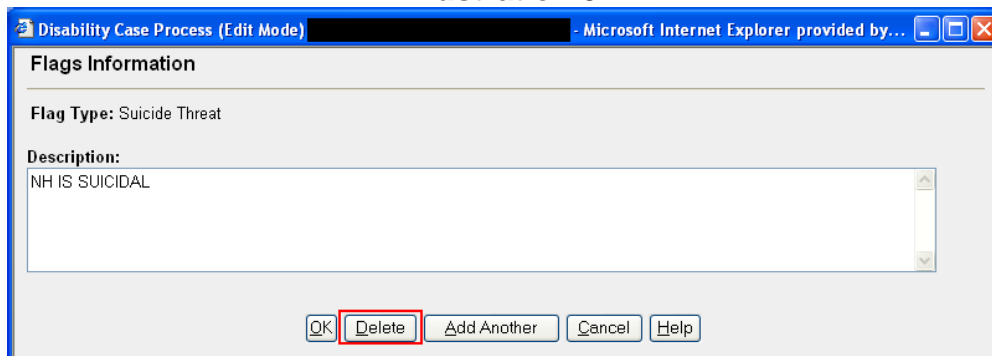
The “Flags” page displays a summary of the flags (See Illustration 2). Special flags will be displayed first in the list in descending alphabetical order, followed by the rest of the flags in descending alphabetical order.

Illustration 2



To view the flag description, edit, or delete an existing flag a user must select the flag. Once the flag is opened you can add or modify the description or select the “Delete” button to remove the flag (See Illustration 3).²

Illustration 3



File the Investigative Report

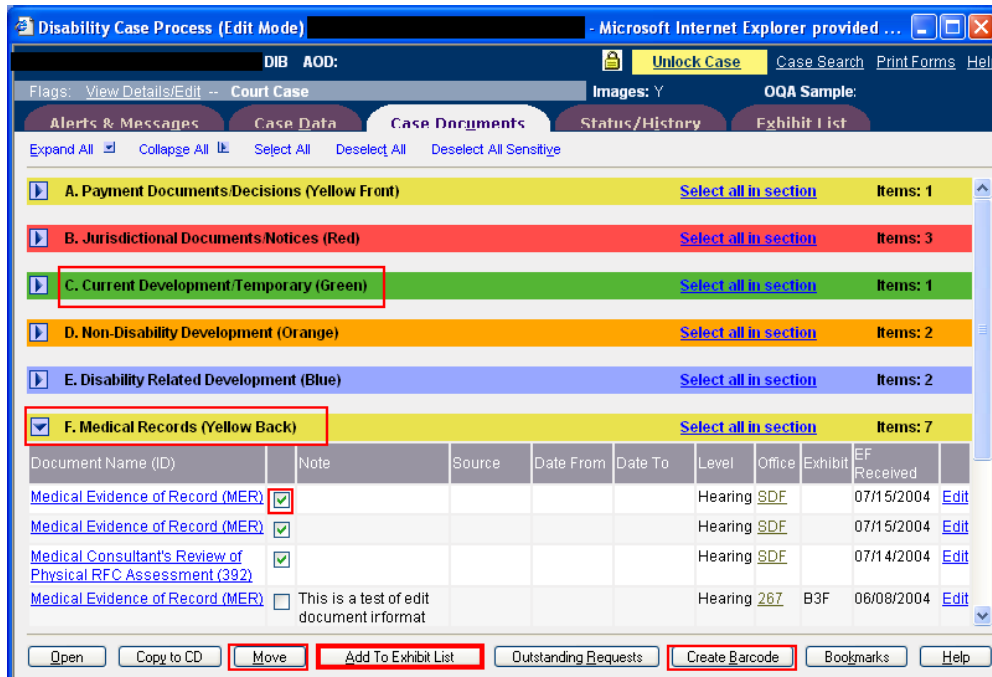
The investigative report should be filed in the EF as evidence to be considered when the disability determination is made. SSA plans to change procedures to allow CDI units to directly place the investigative report in the Medical Records section of the “Case Documents” tab in the EF (See Illustration 4). Once this access is established

² Only employees with the permission to add, delete, or modify flags can remove a flag.

the CDI units will create and print a barcode that contains identifying information. The investigative report will then be faxed and electronically placed directly into the folder based on the information provided in the barcode. The investigative report will be viewable in the Medical Records section of the EF.

Once the investigative report is placed in the EF, DDS and Office of Hearings and Appeals (OHA) staff will have access that will allow them to view the investigative report for use in making the disability decision. To view the investigative report click on the title of the document.

Illustration 4



Evidence should not be removed from the Medical Records section, however, staff at the DDS and OHA will have systems permission access that will allow them to move the link for the investigative report to the temporary section of the EF. When the case is closed, the temporary section of the EF is purged, thereby removing access to the investigative report. The investigative report still remains; however, the link to access the investigative report has been removed.

Create the Exhibit List

The electronic exhibit list was created to mirror the current paper exhibit list used by ALJs to identify documents to be considered during the hearing. OHA users create the exhibit list based on the documents in the EF. An exhibit list is created from the case documents section of the EF. Electronic documents are selected using the checkboxes to the right of the document. The “Add to Exhibit List” button is used to create an exhibit list with the selected documents (See Illustration 4).

Illustration 5

The screenshot shows the "Disability Case Process (Edit Mode)" interface in Microsoft Internet Explorer. The "Exhibit List" tab is active, displaying a table of documents. The table is organized into sections: "Payment Documents/Decisions", "Jurisdictional Documents/Notices", "Non-Disability Development", and "Disability Related Development". Each section has a "Select all in section" link and an "Items" count. The "Jurisdictional Documents/Notices" section contains three items, with item 1B "Representative Fee Agreement" selected (checkbox checked). The "Mark Exhibit No. on Images" button at the bottom is highlighted with a red box.

No.	Description	Document Date	Received	Pg.	Marked	Action	Move
Payment Documents/Decisions Select all in section Items: 1							
1A	Misc Payment Documents/Decisions			3	No	Edit	
Jurisdictional Documents/Notices Select all in section Items: 3							
1B	Representative Fee Agreement	12/10/2003	Subsequent to hearing	1	No	Edit	Down
2B	Appointment of Representative			1	No	Edit	Up Down
3B	Waiver of Right to Appear at Disability Hearing	10/10/2003		2	No	Edit	Up
Non-Disability Development Select all in section Items: 2							
1D	Application for Disability Insurance Benefits	03/31/2004		8	No	Edit	Down
2D	Request for WC/PDB Information			3	No	Edit	Up
Disability Related Development Select all in section Items: 2							
1E	Misc Non-Disability Development			5	No	Edit	Down

To mark documents with the exhibit number and page numbers, select the “Mark Exhibit No. on Images” button (See Illustration 5). The images of the electronic documents will be permanently marked with exhibit and page numbers at the top right corner of every page. After the documents are permanently marked they cannot be deleted from the exhibit list.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: January 11, 2006

Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report "Office of Hearings and Appeals Reversal of Disability Denial Decisions Involving Investigative Information from Cooperative Disability Investigation Units" (A-07-05-15091) -- INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report content and recommendations are attached.

Let me know if we can be of further assistance. Staff inquiries may be directed to Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, "OFFICE OF HEARINGS AND APPEALS REVERSAL OF DISABILITY DENIAL DECISIONS INVOLVING INVESTIGATIVE INFORMATION FROM COOPERATIVE DISABILITY INVESTIGATIONS UNITS" (A-07-05-15091)

Thank you for the opportunity to review the above-subject audit report. Overall, we support the purpose of this audit but have several concerns regarding the results.

It is difficult to identify the most effective solutions to address the missing ROIs. The draft report is not conclusive as to why the ROIs are missing from the folder and at what point in the adjudicative process they were not included in the folder. This poses problems when assessing the effectiveness of the recommendations. However, possible reasons for the omission of the report and corrective actions have already been discussed. It is our understanding that OIG is considering a change to the confidentiality statement on the ROI, since that may be causing confusion for the staff filing the ROI in the folder. In addition, OHA issued two memorandums in October to remind ALJs about the law, policy, and responsibilities of OHA adjudicators when a CDI ROI is involved.

The OIG draft report (page 6) also cites memorandum communications between the CDI and the DDS and notes that, in Region VII, there was a 100 percent finding of investigative reports being in the case folder. This finding indicates that enhanced communications and “best practices” (as cited on page 6) may considerably improve the problem of absent ROIs in the folder.

Since the cause of missing reports may be occurring at any stage of administrative appeal, increased communications from the CDI unit may significantly alleviate this problem of missing investigative reports. To that end, we will discuss with OIG the feasibility of posting, on the cover sheet of the ROI, a summary (with citations) of the POMS and the HALLEX instructions for handling the ROI. This would give prominent and direct notice to anyone who may mistakenly believe that the ROI does not belong in the medical evidence section. It would clearly remind staff of the folder handling procedures for the report and serve as an alert about inappropriate removal of the report.

Our responses to the specific recommendations are as follows:

Recommendation 1

Provide instructions in POMS on what component is responsible to: (a) file the investigative report in the paper folder and (b) flag the EF to identify cases in which a CDI unit investigation was conducted.

Comment:

We agree.

Our responses to the specific subparts of this recommendation are as follows:

a) We agree. With regard to component responsibility for filing the CDI report in the folder, the relevant component instructions are already in place to ensure that the ROI is placed in the folder. DDS processing procedures (POMS DI 70005.005 B.6, DI 70005.005 F, and DI 70025.001) instruct that the investigative report in the paper folder be readily available and should be filed on top of all material in the medical records section. HALLEX I-2-1-15 D.6. instructs that the ROI be filed on top of all medical material. This is reiterated at HALLEX I-2-1-15 E.6. Each component is responsible to ensure that the ROI is properly filed per POMS and HALLEX and that the report is addressed by the respective adjudicator.

b) We agree. Instructions already exist to implement this recommendation. POMS DI 80540.045 and DI 80740.045 both explain how to add a high risk factor flag to the electronic folder.

Recommendation 2

Place restrictions on the EF to ensure the link to the investigative report cannot be removed.

Comment:

We disagree. In order to implement the recommendation that the link to the investigative document cannot be removed, business rules, requirements, and software modifications would be needed, and this enhancement would need to be prioritized with other requests for EF modifications. Given existing procedures, implementation of this recommendation would not be cost-effective at this time.

Recommendation 3

Request the Chief ALJ to remind ALJs of the September 2005 instructions to document the use of the investigative report in the disability decision write-up.

Comment:

We agree and have implemented this recommendation. On September 28, 2005, OHA issued revised provisions in the HALLEX to instruct OHA personnel to include the ROI in the claimant file. See HALLEX I-2-1-15.

In addition, OCALJ issued “Reminders” about CDI information on October 29 and October 31, 2005, to all OHA employees. These reminders emphasized to OHA ALJs and to Decision Writers (DW) the evidentiary value of the ROI. ALJs and DWs were also reminded of the need to address the ROI in the written decision when it is relevant as explained in HALLEX I-2-8-25. Also, the appropriate employees were reminded of where to place the ROI in the claim folder and on the Exhibit list according to HALLEX.

In FY 2005, an ALJ Steering Committee comprised of subject matter experts and training specialists was formed to update the training materials for future ALJ training, including CDIs and ROIs.

Finally, OCALJ is scheduled to prepare and deliver during the fourth quarter of FY 2006 an interactive video training program for OHA employees on fraud and abuse issues.

Recommendation 4

Request the Chief ALJ to encourage ALJs to request CDI unit investigators and third parties to testify at hearings when clarification of the investigative report is needed, particularly the testimony of third parties, which might otherwise be construed as hearsay evidence.

Comment:

We agree. OHA will inform ALJs of CDI unit investigators' availability as hearing witnesses to clarify the ROI and of the option of requesting additional evidence from a CDI unit when warranted by case circumstances.

Recommendation 5

Request the Chief ALJ to encourage ALJs to request from SSA and DDSs additional evidence from CDI units when warranted by case circumstances.

Comment:

We agree. See our response to Recommendation 3 regarding training and reminders.

Recommendation 6

Require surveillance videos to be included in the multimedia evidence section of the EF.

Comment:

We disagree. Under current EF technology, this capability does not exist and, therefore, should not be required. However, we note that we are making strides in maintaining multimedia.

With the release of eView 9.0 in late November 2005, SSA introduced the first item that can be stored in the multimedia section of the EF: a digital recording of a hearing shown as a zipped file. The zipped file can be downloaded so that the reviewer can listen to the hearing at his/her computer without using an audio compact disc or tape. However, currently there is no standard format for videos that can be stored in EF and then retrieved into all OHA, DDS, and SSA systems equipment. Additionally, all CDI units have copies of the surveillance video that are available for OHA when the ALJ begins to review the case.

OIG Contacts and Staff Acknowledgments

OIG Contacts

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Acknowledgments

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For additional copies of this report, please visit our web site at www.ssa.gov/oig or contact the Office of the Inspector General's Public Affairs Specialist at (410) 965-3218. Refer to Common Identification Number A-07-05-15091.

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OA conducts and/or supervises financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management and program evaluations and projects on issues of concern to SSA, Congress, and the general public.

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OCCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Finally, OCCIG administers the Civil Monetary Penalty program.

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