
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**OFFICE OF HEARINGS
AND APPEALS
PRE-EFFECTUATION
REVIEW PROCESS**

September 2005

A-02-03-13083

AUDIT REPORT



Mission

We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

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: September 19, 2005

Refer To:

To: The Commissioner

From: Inspector General

Subject: Office of Hearings and Appeals Pre-Effectuation Review Process (A-02-03-13083)

OBJECTIVE

Our objective was to determine the effectiveness of the Office of Hearings and Appeals' (OHA) Pre-Effectuation¹ Review (PER) process. Specifically, we reviewed whether the OHA PER process helped to improve the implementation of the policies related to administrative law judge (ALJ) decisionmaking.

BACKGROUND

The Social Security Administration (SSA) has two long-term disability programs. Disability Insurance (DI) is authorized under Title II of the Social Security Act. Through the DI program, eligible workers receive monthly benefits if they are found to have a disability that prevents them from engaging in substantial gainful activity² which will last at least 12 months or result in death. Supplemental Security Income (SSI) is authorized under Title XVI of the Social Security Act and provides monthly payments to disabled individuals based on financial need, in addition to meeting the same medical requirements as the DI program.

To establish eligibility, a claimant must file a disability application with SSA. Once an application is received, SSA forwards it, along with any medical or vocational evidence provided by the applicant, to a Disability Determination Services (DDS) office. The DDS

¹ "Pre-effectuation" means that the review was performed after the ALJ's original hearing allowance decision and before the first payment was made (OHA PER Review Process Guide dated May 22, 2003, Exhibit 3).

² "Substantial gainful activity" means the performance of significant physical and/or mental activities in work for pay or profit, or in work of a type generally performed for pay or profit, regardless of the legality of the work. "Significant activities" are useful in the accomplishment of a job or the operation of a business, and have economic value (POMS DI 11010.190) (20 C.F.R. §§ 404.1510, 404.1572, 416.910, and 416.972).

reviews the medical and vocational information provided, and collects additional information if it is needed, to determine each claimant's eligibility for disability benefits. Once DDS staff determines whether an applicant should be awarded disability benefits, SSA informs the applicant of its decision. The decision notice contains instructions on how to file an appeal. The claimant has 60 days from the date the notice is received to file a written appeal for either Title II or Title XVI denials.

If a claimant requests an appeal, SSA reconsiders its initial determination. If the claimant is dissatisfied with the reconsidered determination, the claimant may request a hearing before an ALJ in OHA. A claimant does not have to receive a denial to appeal. For example, a claimant who received a partially favorable decision may also appeal.

At the hearing, the ALJ considers the evidence of the case—including any new evidence concerning the claimant's physical and mental impairments that was submitted subsequent to the initial determination. An ALJ may obtain testimony related to the applicant's disability from medical and/or vocational experts. Further, the claimant has the opportunity to testify in support of their disability claim. After considering the full body of evidence, the ALJ issues a decision on the claimant's eligibility for disability benefits. The ALJ's decision is based on the evidence, relevant law, and published rulings and policies, including Social Security Rulings (SSR).

SSA instituted the OHA PER process in August 1998.³ The OHA PER process is a quality control review of a sample of cases that had favorable decisions by ALJs, i.e., the ALJs disagreed with SSA's initial determinations and found the claimants eligible to receive disability benefits. The OHA PER process was implemented to identify incorrect hearing allowances, to promote consistent case adjudication and to review, as well as to identify policy and procedural issues arising during the review. This process occurs after an ALJ makes a decision on a case, but before the claimant is paid benefits.

The first phase of the OHA PER process involves a review by SSA's Office of Quality Assurance and Performance Assessment (OQA). Since 1998, OQA has selected a sample of approximately 6,400 to 8,500 cases annually that are likely to have a higher rate of error than other cases. OQA staff review each case in the sample. If OQA agrees with the decision an ALJ made on a given case, the process to effectuate the ALJ's decision is continued. If OQA disagrees with the decision made by an ALJ, the case is forwarded to the Appeals Council (AC) for further review. The AC is an appellate body of Administrative Appeals Judges within OHA.

The AC reviews the cases forwarded by OQA. If the AC disagrees with OQA's concerns with a case, the process to effectuate the ALJ's decision is continued. If the AC agrees with OQA's conclusions in a case, it remands the case for additional review to the ALJ who made the initial decision. The remand actions result from the AC's own

³ 63 Federal Register 36560 (July 7, 1998).

motion review authority.⁴ When remanding the case, the AC indicates the identified weaknesses in the case in a remand order to the ALJ. The remand document is an order that vacates the ALJ's earlier decision and directs the ALJ to take some additional action(s), such as developing additional evidence and/or holding a supplemental hearing, before issuing a new decision. Once forwarded, ALJs should address all of the issues identified in the AC remand order, and then issue a final decision.

Our audit focused on the 2,531 cases⁵ that the ALJs finalized after receiving an AC remand order during Fiscal Years (FY) 2000 through 2003, as of March 24, 2004. From this group, we randomly selected 50 cases from each of the FYs included in our audit period, for a total of 200 cases. We selected 50 cases from each year to determine if there were any trends noted from one year to the next in the cases we reviewed between OQA, the AC and the ALJs. Of the 200 sample cases, we were able to retrieve and review files for 191 cases.⁶

RESULTS OF REVIEW

The OHA PER process could be more effective in improving the implementation of the policies related to ALJ decisionmaking. For example, the process consistently identified cases where SSRs were not applied, or were improperly applied, from one year to the next. This condition led to a lack of evidence to support the ALJs' original decisions and prompted the AC to issue remand orders. Additionally, some ALJs did not address the concerns identified in the AC's remand orders before making revised decisions on the eligibility of claimants. Lastly, less than 5 percent of the cases we reviewed ultimately resulted in a change to the original decisions made by ALJs, while the OHA PER process added an average of 342 days to the processing time of the cases.

Social Security Rulings

SSRs are precedent-setting decisions related to all SSA benefit programs and are published under the authority of the Commissioner of Social Security. SSRs may be based on case decisions made at any administrative level of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of General Counsel, or policy interpretations of the laws and regulations. Although SSRs do not have the force and effect of law or regulations, they are binding on all components of SSA and are to be relied on in adjudicating other cases.

⁴ The AC's own motion review includes issuing a new decision, a dismissal, or a remand (20 C.F.R. §§ 404.969(b) and (c), and 416.1469(b) and (c)).

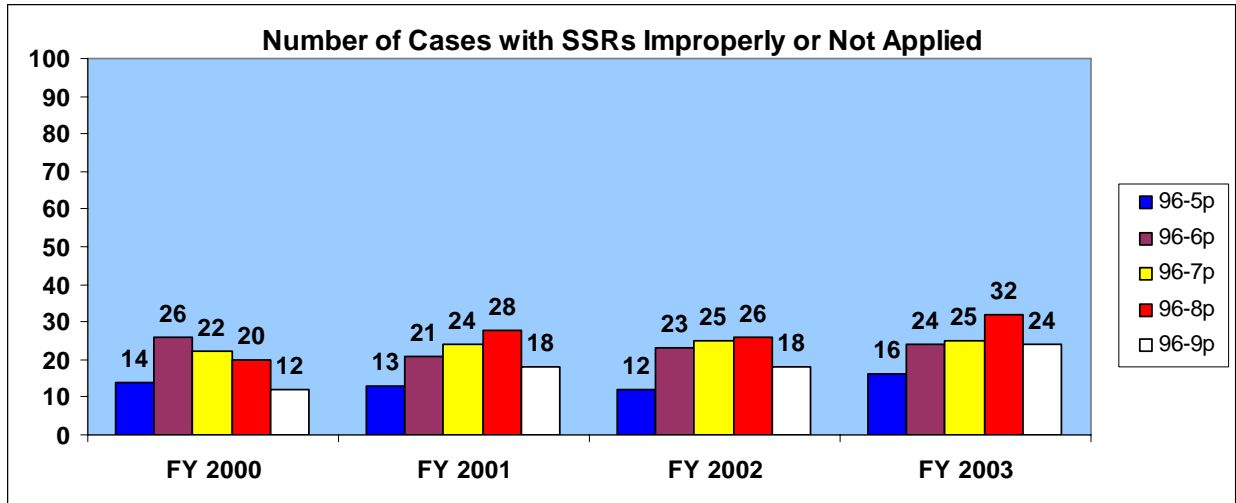
⁵ The 2,531 cases included: 1,255 cases from FY 2000; 851 from FY 2001; 266 from FY 2002; and 159 from FY 2003. The cases were from an OQA PER database as of March 24, 2004. As of February 28, 2005, the ALJs had finalized: 1,377 cases from FY 2000; 1,008 cases from FY 2001; 1,126 cases from FY 2002; and 841 cases for FY 2003 after receiving an AC remand order.

⁶ The 191 cases consisted of the following: 46 from FY 2000; 50 from FY 2001; 46 from FY 2002; and 49 from FY 2003. SSA was unable to locate and provide 9 of the 200 case folders we requested.

In the cases we reviewed, the AC determined that SSRs were not applied, or were improperly applied, when ALJs made their decisions. The AC's remand of a case did not mean the ALJ's decision on whether the individual was disabled was incorrect. A remand meant the AC concluded that a decision by the ALJ did not properly implement an SSR, which indicates there was a lack of consideration or insufficient evidence for the ALJ's decision. Examples of this included:

- SSR 96-6p requires ALJs to address State agency consultant opinions when making a decision. In one case we reviewed, there was no evidence within the ALJ's decision that the findings of the Mississippi Disability Determination Services' medical consultants were considered. Accordingly, the AC requested that the ALJ obtain the evidence from a medical expert to clarify the nature and severity of the claimant's impairments, in accordance with SR 96-6p.
- SSR 96-7p requires ALJs to describe the reasons a claimant statements are credible, particularly when symptoms like the claimant's pain suggest a greater severity of impairment than can be shown by objective medical evidence alone. In a case we reviewed, OQA questioned the credibility of the claimant, since he gave inconsistent information on his work status. The claimant applied for disability benefits in October 1999, due to his disability that left him unable to work. The record also showed that the claimant made statements to doctors about being semi-retired and working past October 1999. The AC requested the ALJ to further evaluate the claimant's complaints and provide rationale in accordance with SSR 96-7p.
- SSR 96-8p requires a narrative discussion describing how the evidence cited by the ALJ supports each conclusion regarding the claimant's ability to work, citing specific medical facts and non-medical evidence. One remand notice to an ALJ stated that the ALJ should give further consideration to the claimant's ability to work and provide rationale to support evidence of any assessed limitations on the ability to work, which is consistent with SSR 96-8p.

The AC consistently cited concerns with the same SSRs when remanding cases to ALJs within the years of our review. The AC often cited concerns with the implementation of multiple SSRs in a single case. (See the chart on the following page.)



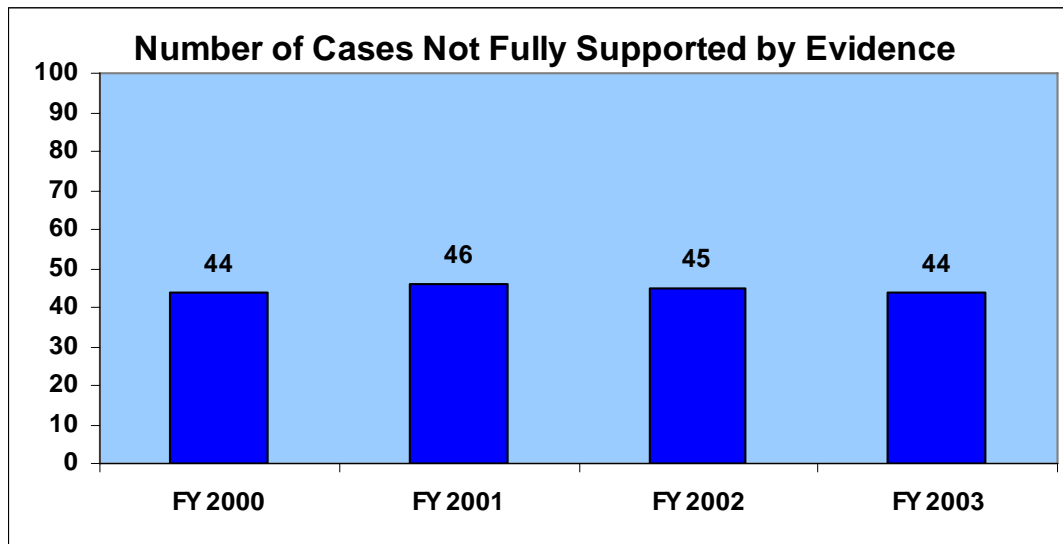
Evidence

In 179 of the 191 cases (93.7 percent) we reviewed, the AC found that the ALJs' original actions, findings, or conclusions were not fully supported by the evidence considered.⁷ Examples of this included:

- A claimant's alleged impairment consisted of a back fracture with chronic back pain. OQA found this type of injury would not normally have a lasting effect and indicated that, with time, the pain would be expected to be resolved. The AC agreed with OQA and stated that the medical records reveal normal functions and that the claimant had few, if any, functional limitations.
- A claimant's alleged impairment was injuries to the nervous system. OQA listened to the tape of the hearing where the medical expert testified that the medical evidence did not document any medical condition that was disabling or resulted in functional limitations. OQA determined that the claimant's limitations were not supported by clinical findings, medical records, or non-medical evidence. The AC agreed with OQA and remanded the case to the ALJ to obtain updated medical records and clarify the claimant's ability to perform work activity.

⁷ 20 C.F.R. §§ 404.970 and 416.1470 indicate that the AC will review a case if the action, findings, or conclusions of the ALJ are not supported by substantial evidence.

The AC consistently found cases that lacked evidence to fully support the ALJs' decisions during the 4 years we reviewed. (See the chart below.)



Remand Orders

ALJs should take any action ordered by the AC in the remand orders. In 24 of the cases we reviewed, there was no evidence the ALJs collected additional evidence in response to the remand orders. In these cases, the ALJs affirmed their original decisions without citing any additional evidence obtained after their original decisions. Examples of this included:

- A claimant's medical disability was found to include degenerative disc disease, chronic pain syndrome, and depression. While the remand order requested that the ALJ obtain new evidence from a medical expert to clarify the nature and severity of the claimant's impairments, the ALJ indicated he was satisfied with the available evidence to establish that the claimant met the requirements of the medical listing.
- A claimant alleged that he was disabled due to an injured right hand. The AC remand order requested that the ALJ give further consideration to the treating source opinion and explain the weight given to that evidence. Further evaluation of the claimant's subjective complaints and symptoms was also requested. The ALJ stated that the prior fully favorable decision was upheld and found that the claimant had a severe right hand dysfunction.

The number of cases where ALJs did not respond to remand orders during our review period ranged from a low of 2 cases in FY 2001 to a high of 12 cases in FY 2003. (See the table on the following page.)

Was Additional Evidence Collected in Response to the AC's Remand Order?

	FY 2000	FY 2001	FY 2002	FY 2003	Total
Yes	41	48	37	34	160
No	4	2	6	12	24
Could Not Determine ⁸	2	0	3	2	7
Total	47	50	46	48	191

SSA incurred administrative costs while reviewing and processing cases submitted by OQA to the AC, and subsequently forwarded from the AC to ALJs for re-evaluation, regardless of the final outcome of the disability decisions. SSA staff reported the costs per case for each part of the process as: \$596 for the OQA review; \$495 for the AC review; \$1,868 for the post-AC remand ALJ hearing; and \$266 for the Federal Disability Determination Services medical review.⁹ In the 24 cases where the ALJs did not address the remand order, SSA incurred the additional costs of the OQA and the AC reviews, while the ALJs reaffirmed their decisions without addressing the concerns identified through their reviews.

ALJ Final Decisions

Of the 191 cases reviewed, we found that ALJs affirmed their original decisions in 175 cases, reversed their original decisions in 8 cases and dismissed 3 cases. For the remaining 5 cases, the folders we obtained did not contain subsequent ALJ decisions, so we could not analyze the ALJs' final decision.

Fewer than 5 percent of the cases (8 of 191 cases) resulted in ALJs reversing their original decisions after cases were remanded to them by the AC, while 342 days elapsed, on average, between the time of the ALJs' initial and revised decisions. We did not review the adequacy of the medical and/or vocational evidence, nor draw conclusions on the accuracy of each case's final decision. Accordingly, we could not determine the cause of the low reversal rate of cases.

The low reversal rate may be caused by one, or a combination of, the following four conditions: (1) the AC remanded cases that included misapplied SSRs or documentation requirements that did not affect the cases' overall merits, so ALJs affirmed their original decisions; (2) the ALJs held a second hearing after remand and obtained additional information from the claimant that supported their original decisions; (3) the AC remanded cases to the ALJs that were not in need of further review; or, (4) the ALJs did not fully consider the deficiencies noted in the AC remand orders.

⁸ Case documentation did not contain the ALJs' subsequent decision, so we could not determine whether the ALJs collected additional evidence in response to the AC's remand order.

⁹ These figures are based on FY 2000 cases, the last year costs were calculated at the time of our review.

CONCLUSION AND RECOMMENDATIONS

We concluded that the OHA PER process could be more effective in improving the consistent application of SSRs and the collection of supporting evidence, and have a greater impact on the final ALJ decisions. In the cases we reviewed, the OHA PER process added three layers of further reviews, increased processing costs and affected the timeliness of the claimants' appeals. Despite these factors, the OHA PER process appeared to have a limited impact on improving the implementation of SSRs and evidence use, as well as the final ALJ decisions. With less than 5 percent of the remanded cases being reversed, a more efficient and cost-effective process needs to be developed. Processes other than a remand notice could be developed to inform ALJs of concerns with the implementation of SSRs, the level of documentation within their cases, or other weaknesses within the original decision, where there is little expectation of a reversal. The OHA PER process would be more effective, and the costs and delays associated with the process would be better justified, if it had a greater impact on the final decisions made by ALJs.

The Agency has taken a number of steps to address some of the issues we noted in this report. For example, SSA has completed 10 region-wide conference calls regarding quality assurance issues that addressed SSR application associated with legal error rates. The conference calls included the perspectives of OQA, the Office of the General Counsel, the AC, and the Office of Appellate Operations. SSA has also developed Interactive Video Training sessions, which are mandatory viewing for related staff, on how to improve the quality of decisions. Some of the topics addressed in these sessions include SSR 96-8p, SSR 96-9p, the use of vocational expert evidence, and ways to avoid remands. Additionally, SSA has established ongoing workgroups that have covered the topics of remands, dismissal, and higher standards for review of post remand decisions.

Accordingly, we recommend that SSA continue to work to improve the OHA PER referral process to ensure that cases forwarded by OQA to the AC, and those remanded by the AC to ALJs, have a higher probability of reversal.

AGENCY COMMENTS

SSA agreed, in part, with our recommendation. It agreed that it should continue efforts to improve the OHA PER process, but stated that the purpose of the process was not to ensure that the cases reviewed have a higher probability of reversal. In general comments to the report, SSA stated that the report placed an inordinate emphasis on non-compliance with SSRs and that the report failed to mention the program cost savings realized by the correction of some erroneous allowances. It also questioned the finding in the report that fewer than 5 percent of the cases remanded to ALJs by the AC resulted in a reversal of the ALJs' original decisions. It noted that OQA data has shown that the denial rate after remand is more than double 5 percent. The full text of SSA's comments may be found in Appendix E.

OIG RESPONSE

We appreciate SSA's efforts to improve the OHA PER process, and the accuracy of disability decisions. Our review of cases led us to conclude that the OHA PER process had a limited impact on improving the implementation of SSRs and evidence use, as well as the final ALJ decisions. Within the sample we reviewed, we found that fewer than 5 percent of the remanded cases were reversed. Based on this finding, and the cost per case reviewed in money and time, we believe that a more efficient and cost-effective process could be developed. Our findings were based, in part, on a review of the documentation contained within each case's folder, including the Notice of Order of AC Remanding Case to ALJ. Within these documents, the AC continually cited problems with the original decisions based on a misapplication of SSRs and/or a lack of evidence. We do not believe that we placed an inordinate emphasis on the SSRs; we simply reported the findings reached by the AC.



Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A - Acronyms

APPENDIX B - Scope and Methodology

APPENDIX C - Description of the Office of Hearings and Appeals
Pre-Effectuation Review Process

APPENDIX D - Flowchart

APPENDIX E - Agency Comments

APPENDIX F - OIG Contacts and Staff Acknowledgments

Acronyms

AC	Appeals Council
ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
DDS	Disability Determination Services
DI	Disability Insurance
FY	Fiscal Year
HOTS	Hearings Office Tracking System
MC	Medical Consultant
NDDSS	National Disability Determination Services System
OHA	Office of Hearings and Appeals
OHACCS	OHA Case Control System
OQA	Office of Quality Assurance and Performance Assessment
PER	Pre-Effectuation Review
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income
SSR	Social Security Rulings

Scope and Methodology

To complete our objective, we focused on the 2,531 cases the Appeals Council (AC) forwarded to the Administrative Law Judges (ALJ) for further review during Fiscal Years (FY) 2000 through 2003. The 2,531 cases were from an Office of Hearings and Appeals (OHA) Pre-Effectuation Review (PER) database, as of March 24, 2004, which is maintained by the Office of Quality Assurance and Performance Assessment (OQA). Of these cases, we sampled 50 cases from each of the 4 years included during our audit period. We were able to retrieve and review 191 of the 200 cases requested.

We used the following criteria in our review:

- OHA PER Process Guide (also known as the “one book”), dated May 22, 2003.
- OHA PER Release 1.0 User Manual.
- OHA PER Release 1.0 Database and Application Requirements Project #2799 Manual, dated August 16, 2002.
- OHA PER Appendix H (Data Collection Form Coding Instructions), revised August 11, 1999.
- 20 C.F.R. Parts 404 and 416 (revised) dealing with the OHA PER process, effective August 6, 1998.
- Government Accountability Office Report, *Social Security Administration: More Effort Needed to Assess Consistency of Disability Decisions* (GAO-04-656), released July 2, 2004.
- Hearings, Appeals and Litigation Law Manual, Chapter I-3-7, Appeals Council Remands.
- OHA PER Results Data: FY 1998 through February 28, 2003.
- Additional policies and laws related to the hearings and appeals process, as needed.

To meet our objective, we:

- Obtained a database from OQA of 43,611 OHA PER cases during the period August 1, 1998 through March 24, 2004.
- Determined and analyzed the population of OHA PER cases during our audit period (FYs 2000 through 2003) consisting of 31,299 OQA cases sampled and 22,831 cases actually worked. Of this population, the AC rendered a final decision in 1,723 cases and there were revised ALJ decisions in 2,531 cases.
- Selected a random sample of 50 cases, from those OHA PER cases with a final decision by the ALJ, for each FY between 2000 and 2003.

- Contacted various Social Security Administration (SSA) field offices, warehouse locations and decisional locations to retrieve the 200 selected case folders.
- Located and reviewed 191 case folders of the 200 cases selected for review. SSA was unable to locate 9 of the 200 case folders we requested. Additionally, of the 191 case folders we received, 9 folders were incomplete. In these 9 cases, some of the documents critical to our analysis were missing.
- Completed a data collection instrument for each OHA PER case reviewed, which summarized the case characteristics obtained from the OQA Referral for AC Own-Motion Review, Notice of Order of AC Remanding Case to ALJ, and OHA Notice of Decision (initial and revised).
- Analyzed the results recorded within the completed data collection instruments and information contained in OHA PER database.
- Determined OHA PER costs for FY 2000 (the most current completed year for which cost information was available) through discussions with SSA staff.
- Discussed the steps of the OHA PER process with staff in the components involved in the OHA PER review (OQA, AC, ALJs).
- Drafted a narrative description of the OHA PER process, which was forwarded for review and concurrence to the staff involved in the OHA PER process.
- Designed a flowchart of the OHA PER process based on the narrative description.

The OHA PER process requires that both OQA and the AC initiate their review of cases selected for review within a total of 60 days, beginning with the date of the ALJ's decision. After this period, the AC advises OQA that it is unable to review the case within the 60-day period so that benefit payments can be started.¹ OQA expressed concerns over the number of OHA PER cases that were not reviewed by the AC within the 60-day time period. To address OQA's concern, we attempted to determine how many cases were paid because the 60-day time limit expired and the reason this situation was occurring. For this analysis, we reviewed the OHA PER database provided by OQA, which contained 43,611 cases. We were unable to review the number of cases within the database paid due to the 60-day rule, since the data we received was incomplete regarding the timeliness of processing by the AC. We concluded that the database was reliable for all of the other analyses we conducted to produce the findings contained in this report.

We performed our review in New York, with field visits to OQA at SSA Headquarters in Baltimore, Maryland. The entities audited were OHA within the Office of Disability and Income Security Programs and OQA within the Office of Finance, Assessment and Management. We conducted our audit fieldwork from June 2004 through February 2005. Our review was conducted in accordance with generally accepted government auditing standards.

¹ 20 C.F.R. §§ 404.969 and 416.1469 describing when the Appeals Council initiates review.

Description of the Office of Hearings and Appeals Pre-Effectuation Review Process

The steps in the Office of Hearings and Appeals (OHA) Pre-Effectuation Review (PER) process are:

Sample Selection - After a hearing office renders a fully or partially favorable decision, the decision data is entered into the Hearing Office Tracking System (HOTS).¹ HOTS then updates the mainframe OHA Case Control System (OHACCS) daily in an overnight batch run. OHACCS sends the data to the National Disability Determination Services System (NDDSS). NDDSS then computes the probability that the case is an incorrect allowance based on specified case characteristics, such as: claim type; date of birth; Disability Determination Services code; body system; regulation basis codes; impairment codes adjudicative level; vocational rehabilitation codes; and title and date of decision. For cases with the probabilities higher than the cutoff score, an alert is automatically generated, within 5 days, in HOTS. Hearing office staff then updates HOTS to reflect the Office of Quality Assurance and Performance Assessment's (OQA) destination routing. The 5-day period is needed to allow for the interface between HOTS, OHACCS and NDDSS. The hearing office then forwards the folder to OQA to conduct an OHA PER review. OQA inputs receipt of OHA PER cases into the OHA PER field of the HOTS.

OQA Process - Upon OQA receipt, the Master Beneficiary Record and/or Supplemental Security Record is annotated to show the claim is selected for OHA PER and that benefit payments should not begin until the review is completed. The file is automatically assigned to a disability examiner, who can enlist the assistance of medical consultants and/or vocational specialists to complete the review. There are two possible outcomes of the review. Agreements occur when OQA accepts the administrative law judge's (ALJ) decision. The claim is then released for payment. Disagreements occur when OQA finds the ALJ's decision is either incorrect or not adequately documented. The claim is then referred to the Appeals Council (AC) for review.²

¹ Since our review, HOTS has been replaced by the Case Processing and Management System. The HOTS system was in place during the timeframe of our audit.

² 20 C.F.R. §§ 404.970 and 416.1470 indicates when the AC will review a case for Title II and Title XVI, respectively.

AC Process - When the AC receives the case, it considers OQA's reasons for referral. An OHA PER review must be initiated by both OQA and the AC within a total of 60 days, beginning with the date of the ALJ's decision. Interim benefits are required to be paid to the claimant 110 days after the ALJ decision.³ The AC advises OQA if it is unable to review the case within the 60-day period. If the AC does not review the case within the 60-day period, benefit payments should begin.

- **Non-Concurrence** -The AC does not always agree with OQA that an AC review is needed. OQA uses the *preponderance-of-evidence standard*, while the AC uses a *substantial evidence standard*. If the AC determines there is substantial evidence to support the ALJ's decision, despite the fact that the evidence may suggest a different conclusion, the AC will not review the case. In this situation, the AC sends a feedback data form to OQA reflecting this information. The case is then sent to the appropriate Field Office or Payment Center for payment.
- **Concurrence** - If the AC concurs with an OQA referral, the AC sends an interim notice to the claimant explaining that it has reviewed the claim and is remanding the case to an ALJ for additional review and/or hearing. The AC also informs the claimant that he or she can submit additional evidence within 30 days. The AC will consider the new evidence prior to remanding the case to the ALJ. The AC advises OQA of this action.

AC Remand – When a case is remanded to an ALJ, a remand order is issued, vacating the original ALJ decision and requiring the ALJ to issue a new decision. In addition, the remand order may direct the ALJ to take further action(s), such as developing additional evidence or holding a supplemental hearing. The remand also indicates why the action is necessary. The AC will remand a case to an ALJ if it finds significant evidentiary or procedural deficiencies. Examples of this include the following: (1) the ALJ applied the wrong law; (2) the ALJ issued the decision on the record but testimony is necessary; (3) evidence from an expert witness is needed; (4) additional development is needed (e.g., consultative examinations, hospital reports, or evidence of work activity); or (5) the ALJ's decisional rationale is insufficient. The ALJ will take any action that is ordered by the AC and may take any additional action that is not inconsistent with the AC's remand order.⁴ If the AC can obtain the additional evidence expeditiously and without adversely affecting the claimant's rights, it may do so and issue a decision.

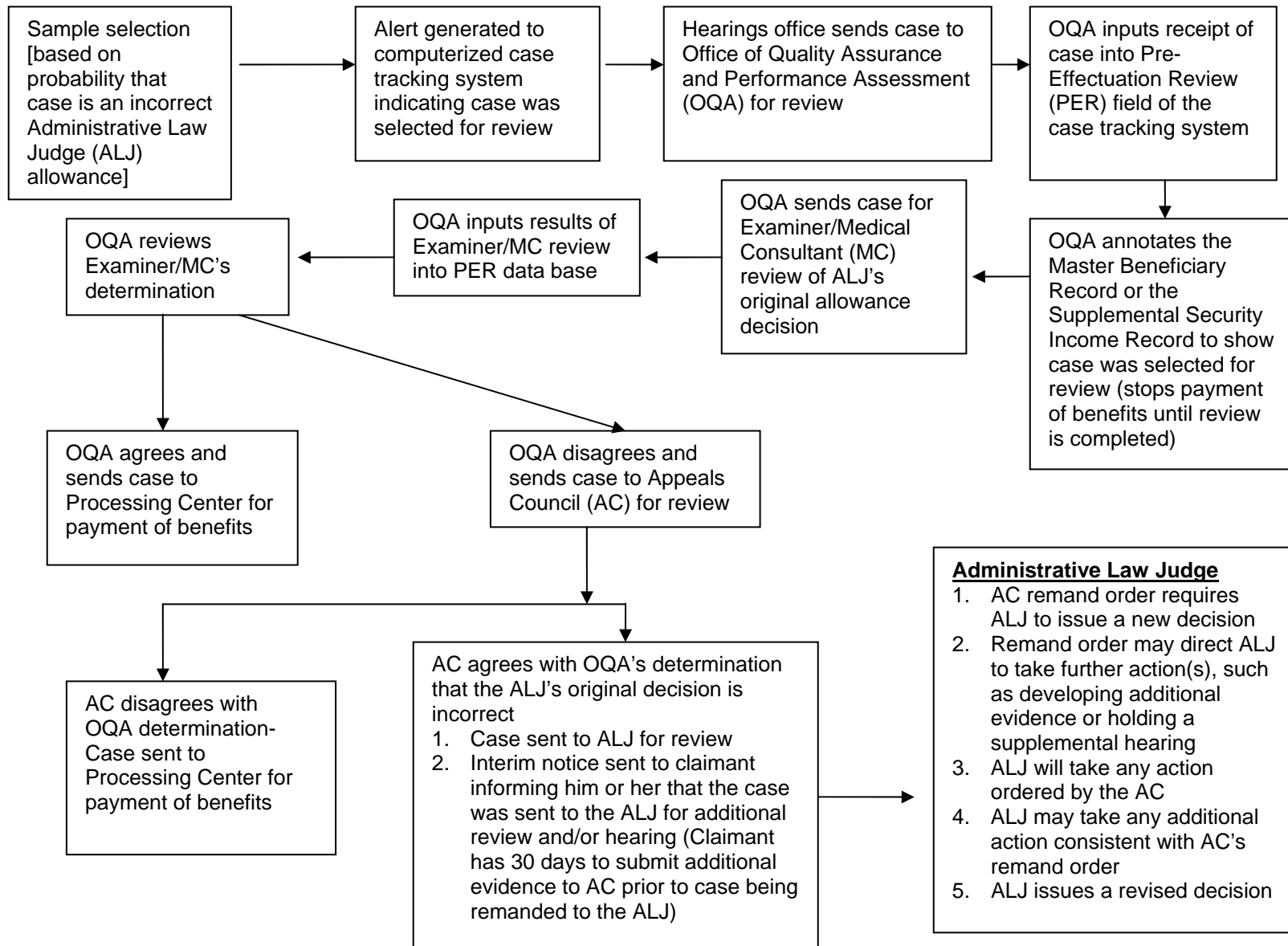
OQA Procedures Following AC Action - To ensure timely actions are taken by the AC and the ALJ, periodic follow-ups are performed on OHA PER cases. A schedule is used by OQA to follow-up on any case where an initial response has not been received

³ Section 223(h) and 1631(a) of the Social Security Act, and POMS sections SI 02007.001 and DI 42010.205. Interim benefits are allowed for if a final decision on a claimant's appeal has not been issued within 110 calendar days after the date of the initial ALJ decision on the entitlement to benefits. Interim benefits are discontinued when a final decision is issued and they are not considered an overpayment unless they are fraudulently obtained, even if the final decision is unfavorable (20 C.F.R. §§ 404.969(d) and 416.1469(d)).

⁴ 20 C.F.R. §§ 404.977(b) and 20 C.F.R. 416.1477(b) for Title II and Title XVI cases, respectively.

from the AC within 120 days of the decision date or a final response is not received within 6 months of the date of the initial AC memo. On a monthly basis, OQA will obtain OHACC queries on all cases remanded to an ALJ where an action has not been taken within 6 months of the remand.

Flowchart



Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: September 2, 2005 101-24-1062
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) Revised Draft Report, "Office Of Hearings And Appeals Pre-Effectuation Review Process" (A-02-03-13083) -- INFORMATION

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

Please 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 PRE-EFFECTUATION REVIEW PROCESS" (A-02-03-13083)

Thank you for the opportunity to review and comment on the revised draft report. We note that the original draft report has been reworked after receiving our comments. Although this version has incorporated many of SSA's earlier comments, we continue to have some serious concerns.

The report still places an inordinate emphasis on non-compliance with the Social Security Rulings (SSR). On page 3, under "Results of Review," the report states that misapplication or failure to apply SSRs led to a lack of evidence to support the Administrative Law Judge's (ALJ) decision. That conclusion is not accurate. It is possible to have a decision that is supported by the evidence but does not comply with one or more SSRs. The report does not mention that the Office of Hearings and Appeals (OHA) Pre-Effectuation Review (PER) process only collects SSR compliance data on decisions that are not supported by a preponderance of the evidence. Except for the first few years, this process does not collect data on SSR compliance when the decision is supported by a preponderance of the evidence. If it did, the data would show that there is also some SSR non-compliance in these decisions as well; this finding in hearing allowance decisions has been substantiated in the Peer Review Reports.

On page 4, in the first full paragraph, the report continues to place emphasis on the SSRs, stating that, "A remand meant the [Appeals Council] AC concluded that a decision by the ALJ did not properly implement an SSR, which indicates there was a lack of consideration or insufficient evidence for the ALJ's decision." The three ensuing bullets that provide examples continue to confuse the process. The report seems to conclude by these examples that non-compliance with the SSRs resulted in the remands. Instead, the proper conclusion is that the remands were the result of insufficient evidence to support the decision and that the SSRs were identified by the AC as the appropriate references for ALJs to follow when developing the required evidence.

On page 6, under "Remand Orders," the report identifies 24 cases where there was no evidence the ALJs collected additional evidence in response to the remand orders. Although this may be correct, we would also note that holding a hearing that resulted in taking additional testimony constitutes new evidence that would make the new decision based on a different record than the original one.

On page 7, we question the report's documentation of OHA PER's administrative costs without any mention of the program cost savings realized by the ultimate correction of some erroneous allowances. As noted in our original comments, SSA's Office of the Chief Actuary has indicated that their analysis of Fiscal Year (FY) 2000 data shows that the actuarial present value of estimated program savings attributable to OHA PER is about \$16.8 million for all programs combined after deducting \$9.8 million in administrative costs. For the combined FY 1999-2000 period, the estimated cumulative program savings amounted to \$37.5 million, or about \$3.10 for every dollar spent. Given these results, we recommend further consideration of the report's statement on page 8 under "Conclusions and Recommendations" that a more cost-effective process needs to be developed.

On pages 3 and 7, we question the report's finding of a 5 percent “reversal” rate. The Office of Quality Assurance and Performance Assessment (OQA) data show that the denial rate after remand is more than double this. Moreover, the report does not consider the impact of dismissals, which are as effective as denials in that benefits are not awarded. Under “ALJ Final Decisions” on page 7, the report indicates that fewer than 5 percent (8 out of 191 cases) resulted in a “reversal” of the original decision. However, what should be reported is that about 6 percent (11 out of 186) were either denied or dismissed and were thus not awarded benefits as they had been in the original decisions. Because the report notes that the final decisions of five cases remain unknown, these cases should be excluded from this computation, reducing the total to 186.

Nonetheless, the purpose of the OHA PER process is not to ensure that the cases reviewed "have a higher probability of reversal," as recommended by the report. The PER process was implemented to ensure the quality of case disposition and ALJ decisionmaking at the hearing level of the administrative review process. Its objectives are to identify incorrect hearing-level allowances, promote consistent case adjudication and review as well as clarify any policy and procedural issues arising out of the review.

Our response to the specific recommendation and some suggested editorial comments are provided below.

Recommendation 1

"... SSA [should] continue to work to improve the OHA PER referral process to ensure that cases forwarded by OQA to the AC, and those remanded by the AC to ALJs, have a higher probability of reversal."

Response

We agree that SSA should continue efforts to improve the ALJ PER process. However, the purpose of the OHA PER process is not to ensure that the cases reviewed "have a higher probability of reversal." The PER process was implemented to ensure the quality of case disposition and ALJ decisionmaking at the hearing level of the administrative review process.

[The Agency also provided editorial comments which have been incorporated as appropriate.]

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