

Audit Report

Controls over Claimant
Representative Fee Petition Payments

A-05-13-13061 / September 2014

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: September 29, 2014 **Refer To:**
To: The Commissioner
From: Inspector General
Subject: Controls over Claimant Representative Fee Petition Payments (A-05-13-13061)

The attached final report presents the results of our audit. Our objectives were to determine whether claimant representative fee petition payments were (1) authorized by required parties, (2) paid in the appropriate amount, (3) supported by sufficient evidence, and (4) tracked by management.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

Controls over Claimant Representative Fee Petition Payments

A-05-13-13061



September 2014

Office of Audit Report Summary

Objective

To determine whether claimant representative fee petition payments were (1) authorized by required parties, (2) paid in the appropriate amount, (3) supported by sufficient evidence, and (4) tracked by management.

Background

The Social Security Administration (SSA) must authorize any fees payable for services performed by an appointed claimant representative. Appointed claimant representatives may seek the Agency's authorization for their fee by following one of two alternative and mutually exclusive processes: (1) a fee agreement filed before a favorable decision is rendered or (2) a fee petition that is generally filed when services have ended.

Based on the information submitted with the fee petition, such as hours worked and services provided, SSA will authorize a reasonable fee. A claimant representative may request that the Agency pay the authorized fee out of a claimant's past-due benefits if the claimant representative is an attorney or a non-attorney who has met certain prerequisites. Authorized fee amounts that are not available from past-due benefits must be collected from the claimant.

Our Findings

Our control testing of 50 fee petition payments that exceeded \$6,000 in Fiscal Year 2012 found controls were not always working as intended. Specifically, while we found sufficient support authorizing the fee payments, SSA did not always (1) pay fees in accordance with SSA policies and the petition specifications, (2) maintain required documentation for the fee petition process, or (3) adequately track fee petitions in its management information systems. For example, we identified payment processing errors in 16 (32 percent) of the 50 cases we reviewed. In seven instances, SSA incorrectly issued direct fee payments to former claimant representatives who withdrew or had been discharged, before the favorable decision.

In 2011, an Office of Disability Adjudication and Review Fee Petition Workgroup identified weaknesses in fee petition processing similar to those identified in our review. The workgroup recommended increased training, system improvements, and greater centralization of the process. At the time of our review, SSA was still in the planning stages to integrate claimant-specific and related claimant representative data maintained in approximately 19 separate systems. While the Agency has provided additional training and guidance on fee petitions, it still needs to integrate the various claimant representative systems to improve the underlying fee petition process.

Our Recommendations

We recommend that SSA:

1. Provide additional training and guidance to employees to improve payment processing, documentation, and management information associated with fee petitions.
2. Expedite implementation of an integrated management information system that will provide complete and timely information and facilitate inter-component communication on fee petitions.
3. Review the error cases in our sample and take the necessary actions to resolve these errors, as appropriate.

SSA agreed with our recommendations.

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ABBREVIATIONS

AC	Appeals Council
ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
CPMS	Case Processing and Management System
FAcTS	Fee Action Tracking System
HALLEX	Hearings, Appeals, and Litigation Law Manual
NDMIS	National Docketing and Management Information System
NHC	National Hearing Center
OAO	Office of Appellate Operations
OCALJ	Office of the Chief Administrative Law Judge
ODAR	Office of Disability Adjudication and Review
OGC	Office of the General Counsel
OIG	Office of the Inspector General
POMS	Program Operations Manual System
RO	Regional Office
SPS	Single Payment System
SSA	Social Security Administration
U.S.C.	United States Code
WebAFS	Web-based Attorney Fee System

OBJECTIVE

To determine whether claimant representative fee petition payments were (1) authorized by required parties, (2) paid in the appropriate amount, (3) supported by sufficient evidence, and (4) tracked by management.

BACKGROUND

The Social Security Administration (SSA) must authorize any fees payable for services performed by an appointed claimant representative. Appointed claimant representatives may seek the Agency's authorization for their fee by following one of two alternative and mutually exclusive processes: (1) filing a fee agreement before rendering a favorable decision or (2) filing a fee petition when services have ended.

The amount specified in a fee agreement cannot exceed the lesser of 25 percent of the total amount of past-due benefits or \$6,000,¹ whereas a greater amount can be paid under the fee petition process.² An appointed representative can request that the Agency pay the authorized fee directly out of a claimant's past-due benefits if he/she is an attorney or a non-attorney who has met certain prerequisites. SSA will withhold a potential fee payment from the claimant's past-due benefits if it expects to make a fee payment to a claimant representative. If past-due benefits are not available, claimant representatives must collect authorized fee amounts directly from the claimant.

When submitting a fee petition, a claimant representative must file a Form SSA-1560-U4, *Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration*, with SSA. Agency guidelines require that fee petitions include

- dates of services,
- services provided,
- time spent on each service,
- fee requested,
- fees or charges for the same matter before any State or Federal court,
- amounts received toward payment of the fee held in trust or escrow account,
- list of expenses and amount incurred he/she has been paid or expects to be paid, and
- statement affirming he/she sent a copy of the petition and any attachment(s) to the claimant.

¹ Social Security Act §§ 206(a)(2)(A) and 1631(d)(2)(B), 42 U.S.C. §§ 406(a)(2)(A) and 1383(d)(2)(B). For fee agreements processed on or after June 22, 2009, the maximum fee amount is \$6,000. SSA, HALLEX I-5-1-18—*Increased Dollar Cap for Fee Agreements* (June 19, 2009).

² SSA only withholds up to 25 percent of a claimant's benefits for potential fees when the claimant representative is eligible for direct pay. The claimant representative must collect amounts above the 25 percent from the claimant.

Based on the information submitted with the fee petition, SSA can authorize a reasonable fee to the claimant's representative after considering criteria in the regulations, including the

- extent and type of services performed,
- complexity of the case,
- skill and competence required,
- time spent,
- results,
- level of review reached, and
- amount requested.³

SSA receives and processes fee petitions at all levels of the benefit adjudication process (see Table 1).

Table 1: SSA Components and Parties Processing Fee Petitions at Various Levels

Operations – Initial and Reconsideration Levels
<i>For claims at the initial and reconsideration levels, program service center employees adjudicate fee petitions up to \$10,000. The Attorney Fee Branch in the Office of Appellate Operations adjudicates petitions above \$10,000.</i>
Office of the Chief Administrative Law Judge – Hearings
<i>For claims at the hearings level, administrative law judges (ALJ) at hearing offices adjudicate fee petitions up to \$10,000. Regional Chief ALJs adjudicate petitions above \$10,000.</i>
Office of Appellate Operations – Appeals
<i>For claims at the appeals level, the Attorney Fee Branch adjudicates fee petitions for cases decided by the Administrative Appeals Judges in the Appeals Council.</i>
Federal Courts – Federal Appeals
<i>For claims at the Federal level, Federal judges adjudicate fee petitions.</i>

In Fiscal Year (FY) 2012, SSA paid approximately \$1.6 billion in fee agreements and fee petitions to claimant representatives, with fee agreements constituting the majority of these

³ 20 CFR 404.1725(b), 416.1525(b); SSA, HALLEX I-1-2-57—*Evaluating Fee Petitions* (February 25, 2005); SSA, POMS GN 03930.010—*Determining a Reasonable Fee Under the Fee Petition Process* (February 28, 2005); and SSA, POMS GN 03930.105—*Determining the Fee for Services Provided Below the Hearing Level* (January 21, 2010).

payments.⁴ SSA also assesses a user fee or service charge on claimant representatives who receive direct payment of fees from SSA by withholding the amount from his/her fee payment.⁵

To meet our objective, we selected a random sample of 50 closed cases for FY 2012 where the claimant's representatives received payments that exceeded \$6,000 related to a fee petition. Our 50 cases involved approximately \$540,000 in fee petition payments, ranging from a low of \$6,170 to a high of \$26,622. Of these cases, 46 related only to the Title II program, 3 related only to the Title XVI program, and 1 related to both programs. For each sample item, we reviewed electronic disability folder information, payment systems, management information tracking systems, and other Agency records to meet our audit objective. We also met with Agency staff in ODAR and the Offices of Operations, General Council, and Systems at the field and Headquarters levels to discuss the fee petition process and related systems. See Appendix A for more on our methodology.

RESULTS OF REVIEW

Our control testing of 50 fee petition payments that exceeded \$6,000 in Fiscal Year 2012 found sufficient support authorizing the fee payments, though SSA did not always (1) pay fees in accordance with SSA policies and petition specifications, (2) maintain required documentation for the fee petition process, and (3) adequately track management information for fee petitions. For example, we identified payment processing errors in 16 (32 percent) of the 50 cases we reviewed.

- In seven cases (14 percent), the fee petition payments were incorrectly paid directly to former representatives who withdrew, or had been discharged, before the favorable decision.
- In seven cases (14 percent), claimant past-due benefits were not properly withheld to reimburse the claimant representatives.
- In six cases (12 percent), fee assessments on the direct payments were in the wrong amount (four overlapped with other cases above).

In 2011, an ODAR workgroup reviewed the fee petition process and identified weaknesses similar to those identified in our review. The workgroup recommended increased training and centralization of the process. At the time of our review, SSA was still in the planning stages to integrate claimant-specific and related claimant representative data maintained in approximately 19 separate systems. While the Agency has provided additional training and guidance on fee

⁴ Coding in the Agency's Single Payment System (SPS) used to make payments to claimant representatives indicated about 4 percent of the fee payments in FY 2012 related to petitions. However, about 26 percent of the fee payments lacked coding indicating whether a fee agreement or fee petition was involved. As we note within this report, SSA lacks a comprehensive management information system for fee payments that would provide greater detail on the breakout between agreements and petitions.

⁵ SSA, POMS GN 03920.019 —*Assessment on Representatives Who Receive Direct Payment* (December 2, 2013). The flat rate assessment effective December 1, 2013 is \$89.00 or 6.3 percent of the fee payment, whichever is less.

petitions, it still needs to integrate the various claimant representative systems to improve the underlying fee petition process.

Authorization and Payment of Fee Petition Amounts

We found sufficient evidence that the adjudicators appropriately authorized the fee petition payments made to claimant representatives. However, we identified a number of issues related to the Agency's payment and support for fee petitions in FY 2012.

Fee Petition Authorization

Our review of the 50 control sample cases found sufficient evidence that the adjudicators appropriately authorized the fee petition payments made to claimant representatives involved in the cases.⁶ To complete this step, we reviewed the contents of fee petition documents and authorizing statements by the adjudicators. In some cases, more than one adjudicator was involved in the determination of petition fees payable to the claimant representatives. For instance, in one of our sample cases, a Federal judge remanded a claimant's appeal back to the ALJ who originally denied the case. In this instance, the ALJ allowed the case and authorized the amount of fees payable to the claimant representative for the work done at the Agency level. The Federal judge then authorized an additional amount for the claimant representative's work before the Federal Court.

Fee Petition Payment Accuracy

Of the 50 fee petition cases we reviewed, we identified payment processing errors in 16 cases (32 percent). Specifically, in seven cases, SSA was not supposed to pay the fee directly to the claimant representative. In seven other cases, SSA paid all of the claimant's past-due benefits without deducting the fee owed the claimant representative. Additionally, while minor in monetary impact, in six cases, SSA incorrectly assessed user fees.⁷

Fees Incorrectly Paid Directly to the Claimant Representative

Per SSA policy, when more than one representative files a fee petition and requests direct payment for a particular claim, only eligible representatives should receive direct payment from SSA.⁸ SSA policy states that, while claimant representatives who withdraw or have been

⁶ We discuss the level of documentation related to these authorizations later in this report.

⁷ Four of the six cases with user fee issues were also among the seven cases already mentioned where SSA was not supposed to pay the fee directly to the claimant representative.

⁸ SSA, POMS, GN 03920.017—*Payment of Representative's Fees* (July 25, 2012). SSA does not withhold benefits for potential direct payment of fees to any representative whose appointment is no longer in effect as a result of a final disqualification or suspension decision by the Office of the General Counsel (OGC), or a withdrawal or revocation of appointment that occurs before a favorable decision. Although a representative who has withdrawn or been discharged from representing a claimant may petition for approval of a reasonable fee for his/her services, collection of the authorized fee would be between the claimant and the former representative.

discharged from representing a claimant may petition for approval of a reasonable fee for his/her services, collection of the authorized fee is between the claimant and the former representative. However, we found seven cases in which SSA paid about \$23,000 to claimant representatives who withdrew or had been discharged before the favorable decision. For instance, in one case, two representatives received \$9,557 in direct payments for the same claimant's case. However, one of the representatives had withdrawn from the case 8 months before the ALJ's payment authorization. The ALJ authorized the former claimant representative to collect \$7,153 on the case, though he also ordered the representative to go to the claimant for payment. However, Agency staff directly paid the former representative the full-authorized amount within 2 weeks of the ALJ's payment authorization.

Fees Not Withheld from Claimants' Past-Due Benefit Payments

We found seven cases, totaling approximately \$62,400, where SSA released the past-due benefits to the claimant before it paid the claimant representative.⁹ In such cases, the claimant representatives are to seek payment from the claimant rather than SSA. If the claimant does not pay the representative the authorized fee, SSA will directly pay the claimant representative, establish an overpayment on the claimant's record, and withhold amounts from the claimant's future benefits to reimburse the Agency.¹⁰ In one case, SSA authorized \$9,500 to be paid to the representative but only withheld \$6,000 from the claimant's past-due benefits.¹¹ SSA ordered the representative to collect the remaining \$3,500 from the claimant. However, when the claimant representative was unable to collect the fee after approximately 9 months, SSA paid the \$3,500 directly to the representative. SSA also established a \$3,500 overpayment on the claimant's record and began collecting these funds.

In one of the seven cases, SSA did not set up an overpayment on the claimant's record for the \$14,448 it paid on the claimant's behalf. We shared this case with SSA management to ensure collection of the overpaid funds from the beneficiary.¹²

⁹ SSA terms the early release of funds set aside for claimant representatives as an "inadvertent release" in its communications with the public. Five of the seven cases were processed at the Federal court level.

¹⁰ We discussed this issue and related problems in our October 2012 audit of *Claimant Representative Fees Paid but Not Withheld from Title II Past-Due Benefits* (A-04-11-11102). In the report, we recommended the Agency (1) issue a reminder to staff to take the necessary actions to withhold the representative fee from past due benefits and (2) periodically assess Title II disability claims to ensure overpayments did not occur.

¹¹ In this case, 25 percent of the past-due benefit was \$10,072, but the Agency released all funds in excess of \$6,000 to the claimant before it paid the claimant representative.

¹² We learned from Agency records that the claimant died in July 2011. The Agency has alternate collection procedures in such cases, including contacting family members and the individual handling the claimant's estate.

User Fees Assessed in the Wrong Amount

We found six cases¹³ where SSA incorrectly assessed the claimant representative's user fee.¹⁴ Per Agency policy, the user fee assessment on each case was limited to the lesser of 6.3 percent of the claimant representative's payment or \$83/\$86.¹⁵ In three overcharge cases, the fees were \$153, \$166, and \$169. For example, in one case, SSA charged two claimant representatives related to the same claimant the full user fee of \$83 each. Rather than charge the user fee to the current representative, SSA charged user fees to both the current and former representatives.¹⁶ For the remaining three undercharged cases, SSA charged \$75, \$75, and \$43.

Time Limit for Filing Fee Petitions

The Agency's Form SSA-1560-U4, *Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration*, indicates the representative must submit a fee petition, or written notice of intent to file a request, within 60 days of the date a favorable decision is mailed if he/she wants SSA to directly pay them.¹⁷ Allowing claimant representatives to provide a notice of intent to file a fee petition extends the period for submitting the actual fee petition beyond 60 days. Delayed fee petitions can lead to extra burdens on the Agency as it must continue tracking and corresponding with the claimant representative regarding the pending petitions.

For instance, in one of our sample cases the claimant representative submitted a fee petition almost 3 years after SSA issued a favorable decision for his claimant in December 2004. The claimant representative did not submit a fee petition until November 2007 for services provided from July 1997 to February 2005.¹⁸ SSA authorized an \$8,743 fee to the claimant representative in December 2008. Regardless, by that time, SSA had released all past-due benefits to the

¹³ We also identified three incorrect fee amounts related to the fee cut-off date. For example, SSA was required to charge an \$86 user fee after December 1, 2011. The three fee payments were authorized before this date while SSA staff processed the actual fee payments after this date without increasing the user fee from \$83 to \$86.

¹⁴ Four of the six cases were among the previously mentioned seven cases where SSA was not supposed to pay the fee directly to the claimant representative.

¹⁵ SSA, POMS, GN 03920.019 A—*Assessment on Representatives Who Receive Direct Payment* (December 2, 2013). The flat-rate dollar amount was \$83 effective December 1, 2008 and increased to \$86 effective December 1, 2011.

¹⁶ We noted this issue in a prior audit report. See SSA OIG, *Controls over Payments Made to Claimant Representatives at the Hearings Level* (A-05-12-11239), December 2012. In the report, we recommended the Agency review the excessive user fee cases identified in our review and take the necessary actions to resolve these errors as well as improve the accuracy of future assessments.

¹⁷ If the claimant representative does not request direct payment from SSA, the Agency has set no time limit for representatives to submit a fee petition.

¹⁸ The Agency sent at least one reminder notice to the claimant representative before receiving the petition.

claimant after other Agency staff assumed the claimant representative was not seeking reimbursement for services. SSA directly paid the claimant representative in December 2011.¹⁹

Fee Petition Supporting Evidence

We focused our review on the key documents that were essential to the fee petition process, such as appointment forms, fee petition requests, and payment authorization documents. We were not able to locate some of the documents, including fee petition requests in 13 cases (see Table 2). However, we were able to find other supporting documents in SSA's records that provided us with sufficient evidence to complete our review of the fee petition payments. For instance, while we might not have had a copy of the fee petition provided to the Federal judge, we were able to locate the judge's decision on the case referencing the fee petition document, the hours charged, and the fee amount requested.²⁰

Table 2: Documentation Issues Related to 50 Sample Cases

Document Type	Number Missing/ Incomplete
Fee Petition Request Document	13
Claimant Representative Appointment Document	4
Signed Fee Authorization Document	2

Note: The 19 documents cited above related to 14 unique sample cases since some cases had more than 1 identified problem.

Fee Petition Management Information

We found that SSA did not effectively track fee petition payments. Our review of the system data, as well as our sample cases within those systems, indicated ODAR did not have a reliable system or set of systems that can provide complete information on the number of pending or completed fee petition actions. While other financial systems, such as SSA's SPS, contain information on fees paid to claimant representatives, information on the break out between fee agreements and the more time-consuming fee petitions was not readily available for Agency managers.²¹

¹⁹ This case is also among the seven cases where SSA released the past-due benefits to the claimant before it paid the claimant representative. After multiple letters from the claimant representative to the claimant as well as the Agency seeking reimbursement, SSA paid the claimant representative \$8,743 in December 2011 and established an overpayment on the claimant's record. At the time of our audit, the Agency was still attempting collection on this amount. Because of a lack of documentation in SSA's systems, we were not able to determine whether the claimant representative had notified the Agency of his intent to file a petition and therefore remained eligible for direct pay.

²⁰ The Agency houses copies of the fee documents in a variety of electronic folder locations, which we discuss in greater detail in the next section.

²¹ Even SPS has limitations since it only records authorized fees that are directly paid by the Agency. Fees collected directly from the claimant by the claimant representative are not recorded in this system.

The Agency used several information systems to track fee petitions.²² However, these systems were in various SSA components and not integrated or reconciled. For instance, fee petitions at the hearing office level were entered into CPMS and ODAR's Fee Action Tracking System (FAcTS). The Appeals Council tracked fee petitions via a separate system called web Attorney Fee System (WebAFS), and OGC used the National Docketing and Management Information System (NDMIS).²³

CPMS is an online system. However, FAcTS, WebAFS, and NDMIS operated as stand-alone systems that relied primarily on staff manually inputting case-related data. The responsible SSA components did not generally share information from these systems with other components. For instance, FAcTS information was input by regional office staff and collected nationally by the Office of the Chief ALJ (OCALJ), but it was not available to the program service centers and field offices responsible for direct payment of fee amounts to claimant representatives.

As shown in Table 3, of the 41 sample cases that should have been tracked in the ODAR systems,²⁴ we found no information in any of the systems for 12 (29 percent) cases. We found OAO's WebAFS to be the most complete in its tracking of the sample cases, whereas the region's FAcTS was the most incomplete of the three systems.²⁵

²² While all of our sample cases related to the hearing and subsequent appellate levels, we did not identify any one system monitoring fee petitions at the Operations levels. We found that claimant representative fee information was often available in the Agency's Master Beneficiary Record and Supplement Security Income Record, while the accompanying documents were stored similar to cases at the hearings and AC levels.

²³ At the time of our review, OGC was implementing a new system, the Legal Automated Workflow System, to replace NDMIS and interface with other Agency systems. This system will give OGC accessibility to the Electronic Disability Folder.

²⁴ The remaining nine cases related to the Federal Court level and did not involve fee actions at the ODAR level.

²⁵ In our discussions with ODAR regional managers, we learned that confusion about FAcTS reporting requirements and limited flexibility in the CPMS system may have contributed to the incomplete information in these systems.

Table 3: Sample Cases Tracked in ODAR Systems

Information System	Cases that Should Be Tracked in the System	Cases Found in the System	Percent of Cases Found
CPMS	34	23	68%
FAcTS	9	4	44%
WebAFS	6	6	100%

Note: Sample cases could be tracked in more than one system.

Planned System Upgrades

In a December 2012 audit,²⁶ we reported that the Agency did not maintain comprehensive management information on claimant representative appointments and fee approvals at all levels – initial, reconsideration, and hearing and appeals. In 2012, we noted that SSA maintained this claimant-specific and related claimant representative data in approximately 19 separate systems. We also noted that SSA had initiated a data migration project to place all of this information in one system. As part of this audit, we spoke to SSA managers to obtain the status of this migration effort and they stated the project was still in the planning and analysis stage.

As we noted in our earlier report, without a comprehensive claimant representative database, the Agency is limited in its ability to produce data on the number of represented claimants, as well as the related fee agreements and fee petitions SSA authorized or denied, for claims adjudicated at any level. In our current review, we noted that the Agency continues operating multiple stand-alone systems with varying reliability that are unavailable to components that would benefit from the fee information being tracked, such as the program service centers and field offices that are part of the fee payment process.

Fee Petition Workgroup

In 2011, ODAR established a Fee Petition Workgroup that identified similar issues with the fee petition process and recommended some changes to the process.²⁷ The workgroup made three recommendations related to increased training, system improvements, and greater centralization of the process. While the Agency has partially implemented one of the recommendations by providing additional training and guidance on fee petitions, it still needs to integrate the various claimant representative systems to improve the underlying fee petition process. We commend ODAR for convening this workgroup to improve the fee petition process and suggest that the Agency use this as a model to revisit fee petition controls. While ODAR plays an important role in the process, we suggest that SSA add other involved Agency components in fee payment

²⁶ SSA OIG, *Controls over Payments Made to Claimant Representatives at the Hearing Level* (A-05-12-11239), December 2012.

²⁷ See Appendix B for more on ODAR's Fee Petition Workgroup.

workgroups to ensure uniform processing and sufficient communication among all components responsible for this workload.

CONCLUSION

We found controls were not working as intended during our control testing of 50 fee petition cases. For instance, we found 16 cases had payment processing errors. Moreover, we found the tracking systems were incomplete and useful information was unavailable for management to monitor the process. Finally, while we commend the Agency for establishing the Fee Petition Workgroup and providing additional training on the issues identified by the workgroup, the agency still needs to integrate the various claimant and claimant representative systems to improve the underlying fee petition process.

RECOMMENDATIONS

To improve the monitoring and tracking of fee petitions within the Agency, we recommend SSA:

1. Provide additional training and guidance to employees to improve payment processing, documentation, and management information associated with fee petitions.
2. Expedite implementation of an integrated management information system that will provide complete and timely information and facilitate inter-component communication on fee petitions.
3. Review the error cases in our sample and take the necessary actions to resolve these errors, as appropriate.

AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix C.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To address our objectives, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures, including applicable sections of the Hearings, Appeals and Litigation Law Manual.
- Reviewed prior Office of the Inspector General audits.
- Reviewed the results in the Office of Appellate Operations (OAO) Fee Petition Workgroup study.
- Interviewed staff and management in the Office of the Chief Administrative Law Judge and OAO in the Office of Disability Adjudication and Review; Office of Operations at the field office, program service center and Headquarters levels; and the Offices of General Counsel and Systems to learn about the fee payment process.
- Obtained fee payments data from the Agency's Single Payment System (SPS) for Fiscal Year (FY) 2012 and identified a population of 6,771 unique claimants where 1 or more claimant representatives had combined payments in excess of \$6,000. We selected 50 sample cases for control testing from this population. To obtain the 50 sample items that met our criteria, we reviewed a total of 123 cases in the order of selection and excluded 73 cases where the payment amount may have exceeded \$6,000 in SPS, but the underlying documents indicated a payment issue that did not meet our petition criteria. For instance, SPS may have contained two payments for \$3,500 totaling to more than \$6,000, but on closer observation, one of the payments was returned to SSA. For the 50 sample cases we selected, the actual payments were \$540,274, and the actual user fees were \$3,996.
- For each sample item, we reviewed information in the Case Processing and Management System (CPMS), electronic disability folder information, Master Beneficiary Record, Supplemental Security Record, and Treasury Check Information System to meet our audit objective. It was not part of our objective to recalculate the past-due benefit amount as part of this review, but instead we ensured the Agency's fee payments were consistent with the past-due benefit amounts payable to the claimants.
- Obtained an understanding of the various Agency systems used to track fee payments, including CPMS, the Fee Action Tracking System (FACTS), the Attorney Fee System (WebAFS), and the National Docketing and Management Information System. Using both online and electronic copies of these tracking systems, we attempted to locate sample items that would normally be tracked by ODAR management in CPMS, FACTS, and WebAFS.

We found the FY 2012 SPS payment data used in this review to be sufficiently reliable to meet our objective. The entities audited included the Office of the Chief Administrative Law Judge and OAO under the Office of the Deputy Commissioner of Disability Adjudication and Review; the Office of Central Operations under the Office of the Deputy Commissioner for Operations; and the Office of Program Law under the Office of the General Counsel. We conducted this performance audit from July 2013 through May 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and conduct the audit to

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B – FEE PETITION WORKGROUP

In 2011, the Office of Disability Adjudication and Review (ODAR) formed a Fee Petition Workgroup that comprised individuals in the Office of Appellate Operations, Office of the Chief Administrative Law Judge (OCALJ), and various ODAR administrative components. The workgroup's goal was to improve ODAR operations connected to the adjudication of fee agreement and petition appeals filed by claimants and their representatives.¹ The workgroup was set up to address complaints from program service centers, Office of Operations staff, and claimant representatives about the delays in its fee processing. The workgroup determined that much of the delay occurred at the hearing level because of a variety of factors, including administrative law judges (ALJ) and staff who were unfamiliar with the fee petition process, Case Processing and Management System limitations, manual processes without sufficient systems support or management controls, and inconsistent fee petition processing at the various regional levels.

The workgroup recommended increased training and centralization of the process, as follows.

- **Recommendation 1:** Transfer most of the regional office and OCALJ fee appeal workload to an ODAR centralized national fee unit located in the Office of Appellate Operations.
- **Recommendation 2:** Transfer hearing office and National Hearing Center (NHC) administrative and procedural tasks necessary for processing fee petitions or appeals of the amount authorized under the fee agreement to a centralized administrative unit. The decision maker in the hearing office/NHC (ALJ or attorney advisor) would retain responsibility for reviewing the prepared material and authorizing the fee.
- **Recommendation 3:** Apply process, systems, and training improvements to the existing fee adjudication structure regardless of whether Recommendations 1 and/or 2 were adopted.

ODAR managers stated senior management implemented Recommendation 3. As a result, ODAR developed and provided training on the fee agreement and fee petition processes to adjudicators at its Judicial Training conference in 2013. It also began developing virtual fee agreement and fee petition training for use in ODAR. ODAR also rewrote the Hearing, Appeals, and Litigation Law Manual (HALLEX) instructions regarding representation and published these changes in October 2011. ODAR managers stated it has continued to update HALLEX provisions relating to representative's fees and additional updates were expected in 2014.

¹ The workgroup first met on February 23, 2011 and ultimately developed three recommendations, which they presented to Agency executives on May 6, 2011.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: September 17, 2014 Refer To: S1J-3

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

From: Katherine Thornton /s/
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Controls over Claimant Representative Fee Petition Payments" (A-05-13-13061) --INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
"CONTROLS OVER CLAIMANT REPRESENTATIVE FEE PETITION PAYMENTS"
(A-05-13-13061)**

Recommendation 1

Provide additional training and guidance to employees to improve payment processing, documentation, and management information associated with fee petitions.

Comment

We agree. We will provide additional training and guidance to improve the payment and processing of fee petitions. While we have ongoing adjudicator and staff meetings, providing an annual reminder to review all policy and procedures related to the fee process is appropriate. Starting October 2014, we plan to issue this reminder at the beginning of each fiscal year.

Recommendation 2

Expedite implementation of an integrated management information system that will provide complete and timely information and facilitate inter-component communication on fee petitions.

Comment

We agree. We implemented two systems enhancements to improve the timeliness and accuracy of representative information and inter-component communication on fee petitions.

On June 26, 2014, we made systems modifications to the web Attorney Fee System and to the Fee Action Tracking System to provide each claimant representative with a representative payment report that computes total fees paid, year to date. In addition, our Attorney Fee Branch (AFB) in the Office of Appellate Operations, Office of Disability Adjudication and Review, now use an Appeals Review Processing scanner, which allows payment centers, field offices, and hearing offices to view and retrieve AFB-processed petitions, agreements, and administrative review decisions when releasing payments or handling claimant and representative inquiries.

While our updates did not create an integrated management information (MI) system, we believe our improvements provide complete and timely information and inter-component communication. Creating a new integrated MI system would require additional resources.

Recommendation 3

Review the error cases in our sample and take the necessary actions to resolve these errors, as appropriate.

Comment

We agree. We will review the cases and take any corrective action by September 30, 2014.

Appendix D – MAJOR CONTRIBUTORS

Walter Bayer, Director, Chicago Audit Division

Deborah Kinsey, Audit Manager, Chicago Audit Office

Wai Ho Yung, Auditor-in-Charge

Monica Albor, Intern

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