

Audit Report

Administrative Law Judges' Appeals
Council Remand Decisions



MEMORANDUM

Date: September 12, 2019 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: Administrative Law Judges' Appeals Council Remand Decisions (A-12-18-50290)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration processed Appeals Council remands as a priority workload.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.

A handwritten signature in black ink that reads "Gail S. Ennis".

Gail S. Ennis

Attachment

Administrative Law Judges' Appeals Council Remand Decisions

A-12-18-50290



September 2019

Office of Audit Report Summary

Objective
To determine whether the Social Security Administration (SSA) processed Appeals Council remands as a priority workload.
Background
Administrative law judges (ALJ) decided 49,579 Appeals Council remand decisions from Fiscal Years (FY) 2016 through 2018. Appeals Council remands represent the modification of a prior hearing decision often because the ALJ applied the wrong law, additional claimant or other witness testimony was needed, the claimant did not receive a fair hearing, or the ALJ decisional rationale was insufficient.
SSA's policy states that remands should be processed as a priority workload. Hearing offices are required to flag remands when they are docketed into the hearing office and assign them immediately to an ALJ for review.
To manage and track cases, hearing office employees assign status codes to cases as they move through the hearing process. SSA's <i>No Status Change</i> report has benchmarks (measured in days) to alert hearing office managers if a case stays in a status code past the benchmark number of days.

Findings

Although remands should be processed as a priority workload, SSA does not define "priority" and does not have a processing time goal for this workload. Of the 49,579 remands processed in FYs 2016 through 2018,

- 22,144 were processed in fewer than 270 days,
- 10,043 took between 270 and 360 days,
- 5,191 took between 361 and 430 days,
- 7,179 took between 431 and 595 days,
- 4,717 took between 596 and 999 days, and
- 305 took 1,000 days or longer to process.

Our sample analysis found some remands took longer to process because they were not always input immediately in the hearing offices' master docket or the remands stalled in the *Ready to Schedule*, *ALJ Review Pre-hearing*, or *ALJ Review Post-hearing* stages.

In November 2018, to address scheduling issues, SSA proposed a rule to (1) retain the right to determine how (in-person, video teleconference, or telephone) parties and witnesses appear at a hearing before an ALJ and (2) set the time and place for the hearing. Also, SSA launched a Web-based, medical-vocational expert system to allow schedulers nationwide access when they need to schedule experts for a hearing.

Recommendations

1. Define "priority" for processing the remand workload and measure the processing time pursuant to the definition.
2. Require hearing office managers to review the *Remand Case Listing* each work day and ensure staff enter remands immediately into the master docket.
3. Require hearing office managers to review the *No Status Change* report regularly to identify stalled cases and take action on the cases as necessary.

SSA agreed with the recommendations.

TABLE OF CONTENTS

Objective	1
Background	1
Methodology	2
Results of Review	4
Processing Remands as a Priority Workload	4
Processing Delays Caused by Untimely Input into Master Docket	5
Processing Delays When Remands Surpass the SSA Benchmarks	7
Ready to Schedule Benchmark – 60 Days	7
ALJ Review Pre-hearing Benchmark – 14 Days	8
ALJ Review Post-hearing Benchmark – 14 Days.....	10
Conclusions.....	11
Recommendations.....	11
Agency Comments.....	11
Other Matters	12
Appendix A – Office of Hearings Operations Benchmarks	A-1
Appendix B – Results of Sample Analysis	B-1
Appendix C – Scope and Methodology	C-1
Appendix D – Agency Comments.....	D-1

ABBREVIATIONS

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Law Manual
OHO	Office of Hearings Operations
OIG	Office of the Inspector General
SSA	Social Security Administration

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) processed Appeals Council remands¹ as a priority workload.

BACKGROUND

SSA's Office of Hearings Operations (OHO) directs a nation-wide hearing office organization staffed with administrative law judges (ALJ)² who conduct hearings and decide on appealed determinations involving Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income payments.³

If a claimant is dissatisfied with an ALJ's decision or dismissal of a hearing request, the claimant may request that SSA's Appeals Council review it.⁴ The Appeals Council may deny or dismiss the request for review or grant the request and issue a new decision or remand the case to an ALJ for further development and proceedings.⁵ Common reasons for an Appeals Council remand include (1) the ALJ decision contained an error of law, (2) additional claimant or witness testimony or evidence is needed, (3) the claimant did not receive a fair hearing, or (4) the ALJ's decisional rationale was insufficient.⁶ From Fiscal Years (FY) 2016 through 2018, ALJs adjudicated 2,088,683 hearing dispositions, of which 49,579 (2.4 percent) were remand decisions.⁷

¹ We focused our review on initial Appeals Council remands, which are coded as hearing type 30 in SSA's system.

² In addition to ALJs, hearing offices include managers and support staff.

³ The Old-Age, Survivors and Disability Insurance program provides benefits to wage earners and their families who meet certain criteria in the event the wage earner retires, becomes disabled, or dies. 20 C.F.R. §§ 404.310, 404.315, 404.330, and 404.335 (govinfo.gov 2018). The Supplemental Security Income program provides payments to financially needy individuals who are aged, blind, or disabled. 20 C.F.R. § 416.110 (govinfo.gov 2018). SSA's administrative review process generally consists of an initial determination, a reconsideration, a hearing before an ALJ, and an Appeals Council review. 20 C.F.R. §§ 404.900(a) and 416.1400(a) (govinfo.gov 2018). Also, see 20 C.F.R. §§ 404.929, 404.930, 416.1429, and 416.1430 (govinfo.gov 2018).

⁴ The Appeals Council may grant review and remand a case to an ALJ for further review and a new decision if (1) there is the appearance of an abuse of discretion by the ALJ; (2) the ALJ decision contained an error of law; (3) the ALJ's actions, findings, or conclusions were not supported by substantial evidence; (4) there is a broad policy or procedural issue that may affect the general public interest; or (5) subject to certain criteria, the Appeals Council receives additional evidence. 20 C.F.R. §§ 404.970 and 416.1470 (govinfo.gov 2018). The Appeals Council may also decide on its own motion to review an ALJ decision that was not appealed to determine whether it is factually and legally supported; 20 C.F.R. §§ 404.969 and 416.1469 (govinfo.gov 2018). SSA uses this and other quality review data to provide feedback to adjudicators, improve training, and clarify policies and procedures.

⁵ 20 C.F.R. §§ 404.967 and 416.1467 (govinfo.gov 2018).

⁶ SSA, HALLEX, I-3-7-1 (April 26, 2016).

⁷ According to SSA, in FY 2018, the most common reason for remands was that ALJs did not adequately evaluate claimants' mental limitations.

OHO policy states that remands should be processed as a priority workload.⁸ When hearing offices receive remands, they are required to flag the remands and assign them immediately for processing. In our 2008 review,⁹ we reported hearing offices did not give all remands priority treatment. At that time, there were approximately 2,100 remands that took longer than 1,000 days to process.

Hearing office employees track the progress of each case as it moves through the hearing process by inputting the case into SSA's master docket and assigning a status code in the Agency's Case Processing and Management System (CPMS). The status code identifies the processing stage, location of the case, and hearing office employee who has control of the case.

OHO created a *No Status Change* report with benchmarks (measured in days) for hearing office managers to track each case as it moves through the hearing process. (See Appendix A for an explanation of the *No Status Change* benchmarks.) If a case stays in a status beyond the benchmark, it appears in the *No Status Change* report where it stays until a hearing office employee changes its status and moves it to another stage in the process.

Methodology

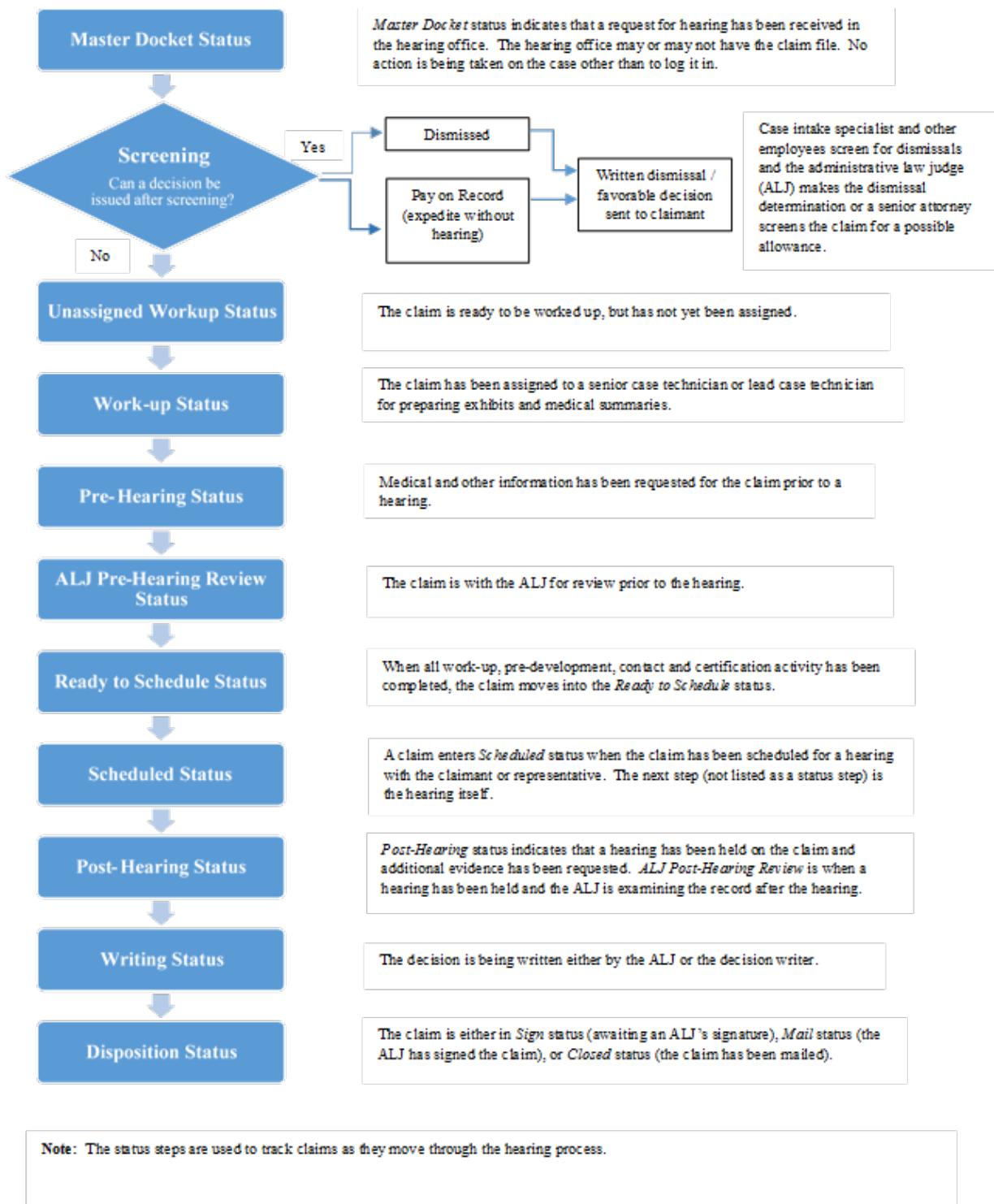
We analyzed the number of days it took SSA to process remands in FYs 2016 through 2018. We also reviewed 4 random samples, totaling 150 remand decisions, that exceeded the national average processing time for FYs 2016 and 2017.¹⁰ We calculated how long each case spent in each status code as it moved through the hearing process (Figure 1) to identify where the cases had stalled. We also analyzed CPMS data on remand decisions processed in FYs 2016 through 2018. See Appendix B for more information on our samples and Appendix C for additional information on our scope and methodology.

⁸ SSA, HALLEX, I-2-1-55 D.6 (April 9, 2019).

⁹ SSA, OIG, *Hearing Office Remand Processing*, A-12-08-28036 (September 2008).

¹⁰ We sampled 25 FY 2016 and 25 FY 2017 remands with processing times equal to or greater than 1,000 days. We also sampled 50 FY 2016 and 50 FY 2017 remands that were greater than the national average processing time for the FY, but less than 1,000 days. OHO's national average processing time for cases processed in FYs 2016 and 2017 were 543 days and 605 days, respectively.

Figure 1: Hearing Office Process Flow Diagram



RESULTS OF REVIEW

Although remands should be processed as a priority workload, SSA does not define “priority” and does not have a processing time goal for this workload. Our review of our samples found some remands took longer to process because they were not input immediately into the hearing offices’ master docket, as required. Also, some remands stalled during the following stages: (a) *Ready to Schedule*, (b) *ALJ Review Pre-hearing*, and (c) *ALJ Review Post-hearing*.¹¹ When remands are not worked as a priority workload, claimants wait longer to receive a decision as to whether they will receive benefits from SSA.

Processing Remands as a Priority Workload

Since SSA does not have a specific processing time goal for remands, we summarized remand processing time into the following intervals:

- 270 days: this is a goal in SSA’s Compassionate And REsponsive Service (CARES) plan the Agency wants to achieve by the end of FY 2021;¹²
- 360 days: the average processing time for remands in FY 2018;
- 430 days: SSA’s *Annual Performance Plan* target for processing hearings for those individuals who waited the longest in FYs 2016, 2017, and 2018,¹³
- 595 days: OHO’s national average processing time for all hearing cases in FY 2018; and
- 1,000 days: to allow us to compare the results to information in our 2008 report.

As shown in Table 1, 22,144 (45 percent) of the 49,579 remands were processed in fewer than 270 days. However, the remaining 27,435 remands (55 percent) took 270 days or longer. It took SSA 1,000 days or longer to process 305 remands, which is fewer than the 2,100 remands we noted in our 2008 report.¹⁴

¹¹ SSA refers to *Ready to Schedule* as RTS status, *ALJ Review Pre-hearing* as ARPR status, and *ALJ Review Post-hearing* as ALPO status.

¹² As stated in SSA’s *CARES Plan*, the Agency’s goal is to eliminate the hearings backlog by having an average wait time for a hearing decision of 270 days by the end of FY 2021. SSA, *Compassionate and Responsive Service (CARES) Plan: 2018-2019 Update*, p. 1.

¹³ SSA, *Annual Performance Report Fiscal Years 2018-2020*, Performance Measures – Strategic Objective 1.1a, Performance Results, Target for FYs 2016, 2017, 2018, p. 10 (March 18, 2019).

¹⁴ SSA, OIG, *Hearing Office Remand Processing*, A-12-08-28036, p. 3 (September 2008).

Table 1: Processing Time for Remands in FYs 2016 Through 2018

FY	Fewer than 270 Days	270 to 360 Days	361 to 430 Days	431 to 595 Days	596 to 999 Days	1,000 Days or Longer	Total
Remands in FY 2016	9,389	3,663	1,913	2,457	1,429	74	18,925
Remands in FY 2017	6,819	3,247	1,628	2,214	1,610	95	15,613
Remands in FY 2018	5,936	3,133	1,650	2,508	1,678	136	15,041
Total	22,144	10,043	5,191	7,179	4,717	305	49,579

Additionally, analysis of our sample of cases that exceeded the national average processing time for FYs 2016 and 2017 revealed that 128 (85 percent) of the 150 remands had processing times longer than the specific hearing offices' average processing times. For example, one FY 2016 remand decision had a processing time of 657 days, while the hearing office's average processing time was 507 days, and the national average was 543 days.

In our 2008 report, we noted the average processing time for remands in FY 2007 was 339 days.¹⁵ For our current audit, the average processing time of remands increased each year—from 316 days in FY 2016 to 343 days in FY 2017 and to 360 days in FY 2018. Also, in our 2008 report, we recommended SSA “consider establishing separate or subsidiary performance indicators related to remand productivity and timeliness” since SSA’s performance indicators did not differentiate between initial hearings and remands, which may minimize management’s ability to properly monitor this workload.¹⁶ However, SSA did not do this. Instead, SSA clarified the definition for its processing time target for hearings included both initial hearings and remands.¹⁷

Processing Delays Caused by Untimely Input into Master Docket

To initiate processing the remands, hearing office staff inputs the remand information into a master docket.¹⁸ According to SSA policy, staff should “flag and assign the case immediately.”¹⁹ As shown in Table 2, SSA input 13 of the 150 remands from our sample into the master docket immediately (on the day the hearing for the remand was requested) and input 81 remands within

¹⁵ SSA, OIG, *Hearing Office Remand Processing*, A-12-08-28036, p. 5 (September 2008).

¹⁶ SSA, OIG, *Hearing Office Remand Processing*, A-12-08-28036, pp. 6, 13, and E-2 (September 2008).

¹⁷ SSA, *Performance and Accountability Report Fiscal Year 2008*, pp. 49-51 (November 7, 2008).

¹⁸ The hearing office receives a request for hearing and it may or may not have the case file. No action is taken on the case other than logging it into CPMS and placing it in the *Master Docket* status.

¹⁹ SSA, *HALLEX*, I-2-1-55 D.6 (April 9, 2019). SSA, Legal Assistant Training Program, Master Docket, p. 47 (2012-1).

7 days. However, hearing office staff took 50 days or longer to enter 24 of the remands (16 percent) into the master docket.²⁰

Table 2: Number of Days to Input Remand into Master Docket

	0 Days	1 to 7 Days	8 to 14 Days	15 to 49 Days	50 to 100 Days	101 to 999 Days	1,000 Days or Longer	Total
Number of Remands	13	81	12	20	7	10	7	150
Percent	8.7%	54.0%	8.0%	13.3%	4.7%	6.6%	4.7%	100%

We shared the 24 remands that took 50 days or longer with the Agency, and it provided the following information:

- 10 were paper²¹ cases that caused issues when the remands were input in the master docket,
- 6 had no remarks to explain why the case was not timely input to the master docket,
- 3 were delayed because of attrition in the office followed by staff training and transitions of the master docket function,
- 3 were misrouted or lost,
- 1 involved a hearing office with staff performance management issues, and
- 1 involved an issue with the Appeals Council routing the remand action to the hearing office.

In 2008, SSA created a new *Remand Case Listing*.²² This Listing provides hearing office managers with remand information, including the date the Appeals Council remanded the case to the hearing office. Hearing office managers should review this report to identify the remands coming into the office from the Appeals Council, and ensure remands are entered immediately into the master docket. We estimate 1,396 (37.6 percent) of the 3,711 remands (that took longer than the national average processing time in FYs 2016 and 2017) were not entered in the hearing office's master docket within 7 days.²³

²⁰ Average time was 517 days, and median time was 295 days.

²¹ Because of system exclusions or limitations, certain cases must be processed in paper form. Examples of these cases include, but are not limited to, cases with multiple periods of entitlement and end-stage renal disease.

²² This report, *T10 AC Remand Case Listing*, was part of SSA's Disability Adjudication Reporting Tools.

²³ See Table B-3 in Appendix B.

Processing Delays When Remands Surpass the SSA Benchmarks

Our random sample analysis determined that some remands stayed in the *Ready to Schedule*, *ALJ Review Pre-hearing*, and *ALJ Review Post-hearing* stages beyond the benchmark number of days. The benchmarks are a guide for processing all OHO cases and are not specific to remands, which should be processed as a priority workload.

Ready to Schedule Benchmark – 60 Days

Hearing office staff places a case in *Ready to Schedule* status when all workup, pre-development, and contact has been completed. The SSA benchmark for this status is 60 days. Our analysis of 150 sampled remand decisions showed that 129 (86 percent) stayed in *Ready to Schedule* status for longer than 60 days. The time the cases stayed in this status ranged from 61 to 749 days.²⁴ The remaining 21 remands (14 percent) were in this status for 60 days or fewer.

For example, one of the FY 2017 remand decisions took 820 days to process—the case was in *Ready to Schedule* status for 442 days. In its remand order, the Appeals Council noted the claimant submitted a statement indicating he was incarcerated and did not receive the *Notice of Hearing*. The Appeals Council instructed the ALJ to consider additional information to decide whether the claimant had a good reason for not appearing at the hearing. In December 2015, the hearing office staff sent a letter to the claimant at the prison they thought he was in, but the letter was returned indicating the claimant was no longer at that prison. A month later, the claimant's aunt called the hearing office to report the claimant had been moved to a new prison and provided SSA the new address for the prison. Hearing office staff moved the case to *Ready to Schedule* status in December 2015, and it stayed in that status until February 2017. The hearing office made several attempts to notify the claimant of the June 8, 2017 hearing date; however, the claimant did not respond and he did not appear for the hearing.²⁵ Therefore, the claim was dismissed in July 2017. OHO reviewed four of the cases we identified as staying in *Ready to Schedule* status longer than the 60-day benchmark and provided the following information.

- Case 1, which was in *Ready to Schedule* status for 401 days: This case remained in this status while the ALJ and the representative worked to locate an uncooperative claimant.
- Case 2, which was in *Ready to Schedule* status for 335 days: The assigned ALJ provided scheduling instructions for his cases, which often left cases in *Ready to Schedule* status for extended periods. The ALJ was a union steward who heard cases 25 percent of the time and has retired.

²⁴ Average time the 150 remands spent in *Ready to Schedule* status was 253 days and the median was 238 days. Of the 129 sampled remands that were in this status longer than 60 days, 108 were in *Ready to Schedule* status for longer than 120 days (or twice the 60-day benchmark).

²⁵ A hearing can be held in person; by video teleconference; or, in limited circumstances, by telephone. 20 C.F.R. §§ 404.936 and 416.1436 (govinfo.gov 2018). SSA, HALLEX, I-2-3-10 (August 13, 2018).

- Case 3, which was in *Ready to Schedule* status for 604 days: After moving the case into *Ready to Schedule* status, the hearing office received an in-person hearing request from the claimant's representative. This remand was initially assigned to the wrong ALJ, and it stayed in *Ready to Schedule* status. Once the hearing office corrected the problem, the ALJ took 6 months (October 2014 through April 2015) to grant the in-person hearing request. It took several attempts to find availability for the claimant's representative.
- Case 4, which was in *Ready to Schedule* status for 589 days: The hearing office erroneously placed the case in *Ready to Schedule* status in June 2015 where it was held until February 1, 2017. The case moved out of that status; and CPMS remarks indicated that, on February 9, 2017, the subsequently filed Old-Age, Survivors and Disability Insurance and Supplemental Security Income claims were joined with the paper Appeals Council remand case, and an updated exhibit list was sent to the representative. The ALJ reviewed the file, the case was placed back in *Ready to Schedule* status, and a hearing took place on March 9, 2017.

In previous reviews,²⁶ we reported that cases stayed in *Ready to Schedule* status because of

- scheduling conflicts with experts and claimant representatives,
- unavailability of medical and vocational experts, and
- scheduling difficulties with incarcerated claimants.

In our March 2019 discussion, OHO executives and staff stated these scheduling issues still existed. SSA had taken action to improve the efficiency of its scheduling process. In November 2018, SSA proposed to revise its rules by (1) retaining the right to determine how (in-person, video teleconference, or telephone) parties and witnesses appear at a hearing before an ALJ and (2) setting the time and place for the hearing.²⁷ Also, in March 2019, SSA informed us that it was launching a Web-based, medical-vocational expert system²⁸ to allow hearing office schedulers nationwide access to experts.

ALJ Review Pre-hearing Benchmark – 14 Days

Hearing office staff places a case in *ALJ Review Pre-hearing* status when the ALJ is reviewing it before the hearing. The ALJ determines whether (1) there is enough evidence to hold a hearing and (2) expert witnesses are needed. The benchmark for *ALJ Review Pre-hearing* is 14 days.

²⁶ SSA, OIG, *Management's Use of Workload Status Reports at Hearing Offices*, A-12-06-26130 (March 2007), and *Office of Disability Adjudication and Review's Process for Scheduling Hearings When Cases are in "Ready to Schedule" Status*, A-08-12-21293 (August 2012).

²⁷ *Setting the Manner for the Appearance of Parties and Witnesses at a Hearing*, 83 Fed. Reg. 57368, pp. 57368-57378 (November 15, 2018). As of June 2019, the proposed rule had not been finalized.

²⁸ SSA informed us that it started implementing the medical-vocational expert system in hearing offices that historically had difficulty scheduling experts.

Our analysis of 150 randomly sampled remand decisions showed that 66 (44 percent) stayed in *ALJ Review Pre-hearing* status for longer than 14 days. These cases stayed in this status from 15 to 310 days.²⁹ The remaining 84 cases (56 percent) were processed in 14 days or fewer.

In one example, a remand stayed in *ALJ Review Pre-hearing* status on two occasions—once for 142 days and once for 126 days—for a total of 268 days. Overall, the decision took almost 1,100 days to process. The Appeals Council remanded the case in August 2014 instructing the ALJ to

- re-examine the claimant’s substantial gainful activity,
- obtain additional evidence concerning the claimant’s medically determinable impairments to complete the administrative record, and
- consider whether vocational expert testimony was warranted to determine whether the claimant had acquired any skills that were transferrable to other occupations.

SSA’s systems showed the hearing office obtained

- updated claimant work history,
- updated medical treatment records, and
- vocational expert testimony at the hearing about the claimant’s transferrable skills to other occupations.

There were no remarks in CPMS to explain why the case was held in *ALJ Review Pre-hearing* status for 142 and 126 days. In August 2017, the ALJ issued the decision, which was unfavorable to the claimant.

OHO reviewed four cases from our sample and reported that, in three cases, management was working with the ALJ to adhere to the benchmark or was taking performance management actions with the ALJ. The remaining case was placed in *ALJ Review Pre-hearing* status in error.

In our March 2007 report on *Management’s Use of Workload Status Reports at Hearing Offices*, we reported that cases were stalling in *ALJ Review Pre-hearing* status.³⁰ We also noted that ALJs stated

- some cases contained a significant amount of evidence to examine, which caused them to miss the *ALJ Review Pre-hearing* benchmark, and

²⁹ Average time the 150 remand decisions stayed in *ALJ Review Pre-hearing* status was 29 days with a median of 10 days. Of the 66 sampled remands that were in this status longer than 14 days, 46 were in *ALJ Review Pre-hearing* for longer than 28 days (twice the 14-day benchmark).

³⁰ SSA, OIG, *Management’s Use of Workload Status Reports at Hearing Offices*, A-12-06-26130, p. 9 (March 2007).

- they had too many cases on their dockets and therefore they were constantly balancing the quality of the decisions with the Agency's processing time goal.

In our interview with OHO executives and staff in March 2019, we were told that ALJ issues can cause processing delays for remands placed in ALJ review pre- and post-hearing statuses. Some ALJs can be out for extended periods for illness or vacation. Furthermore, OHO may take performance management action against some ALJs; it also delays a case if it is moved to another ALJ to review medical evidence in the file.

ALJ Review Post-hearing Benchmark – 14 Days

Hearing office staff places a case in *ALJ Review Post-hearing* status after the hearing is held. This status code indicates the ALJ is examining the record either after the hearing or after post-hearing development³¹ has been received or any other time after the hearing but before the writing and review of the decision. The benchmark for cases in *ALJ Review Post-hearing* is 14 days. Our analysis of 150 randomly sampled remands showed that 79 (53 percent) stayed in this status for longer than 14 days. The time these cases were in *ALJ Review Post-hearing* ranged from 15 to 488 days.³² The remaining 71 cases (47 percent) were in this status for 14 days or fewer.

For one case in our sample, the remand was in *ALJ Review Post-hearing* for 73 days. In December 2014, the Appeals Council remanded the case stating that SSA's contact requirements were not met, and it directed the ALJ to give the claimant another opportunity for a hearing. After multiple attempts to contact the claimant and multiple hearings scheduled but not held because the claimant failed to appear, the ALJ dismissed the case in July 2017 based on abandonment. This case was rescheduled five times, and was in *Ready to Schedule* status for a total of 360 days. There were no remarks in CPMS to indicate why the case was in *ALJ Review Post-hearing* status for 73 days.

OHO reviewed four of our sample cases that stayed in *ALJ Review Post-hearing* status longer than 14 days and indicated the ALJs had docket management issues. Two of the ALJs are retired, one ALJ left SSA, and a hearing office chief ALJ took performance management actions with the remaining ALJ.

³¹ *Post-hearing development* status indicates the hearing was held and additional evidence was requested.

³² Average time the 150 remand decisions stayed in *ALJ Review Post-hearing* status was 46 days with a median of 17 days. Of the 79 sampled remands that were in this status longer than 14 days, 61 were in *ALJ Review Post-hearing* for longer than 28 days (or twice the 14-day benchmark).

CONCLUSIONS

SSA does not define “priority” for the processing of remands and does not have a specific processing time goal for this workload. Therefore, to assess the remand processing times, we compared them to SSA’s (a) processing time goal in its *CARES* plan (270 days by the end of FY 2021), (b) average processing time for remands in FY 2018 (360 days), (c) *Annual Performance Plan* target for processing hearings for those individuals who waited the longest in FYs 2016, 2017, and 2018 (430 days) and (d) average processing time for all hearing cases in FY 2018 (595 days). Of the 49,579 remands processed in FYs 2016 through 2018,

- 22,144 (45 percent) were processed in fewer than 270 days,
- 10,043 (20 percent) took between 270 and 360 days,
- 5,191 (10 percent) took between 361 and 430 days,
- 7,179 (14 percent) took between 431 and 595 days,
- 4,717 (10 percent) took between 596 and 999 days, and
- 305 (1 percent) took 1,000 days or longer to process.

Based on our sample analysis, some remands took a long time to process because they were not always input immediately in the hearing offices’ master docket or the remands stalled in the *Ready to Schedule*, *ALJ Review Pre-hearing*, or *ALJ Review Post-hearing* stages.

RECOMMENDATIONS

We recommend SSA:

1. Define “priority” for processing the remand workload and measure the processing time pursuant to the definition.
2. Require hearing office managers to review the *Remand Case Listing* each work day and ensure staff enter remands immediately into the master docket.
3. Require hearing office managers to review the *No Status Change* report regularly to identify stalled cases and take action on the cases as necessary.

AGENCY COMMENTS

SSA agreed with the recommendations, see Appendix D.

OTHER MATTERS

In a prior report,³³ we discussed how OHO attempted to improve the quality of ALJ decisions and thereby reduce the number of remands from the Appeals Council. OHO created an *Agree Rate* report to track ALJ decisional and dismissal agree rates. The agree rate represents the extent to which the Appeals Council concluded the ALJ decisions and dismissals were supported by substantial evidence and contained no error of law or abuse of discretion, thereby not requiring a remand or reversal. Using the results from the *Agree Rate* report, OHO provides individualized training to ALJs.

In March 2019, OHO's Chief ALJ explained to us that he uses management reports to examine ALJ performance in terms of policy compliance, dispositions, remand rates, timeliness, and agree rates. OHO has about 1,500 ALJs. We identified nine ALJs who met the criteria below in FY 2018 and at least 1 other FY.

- Remand rates equal to or greater than 6 percent (twice the FY 2016 rate).
- Dispositions equal to or greater than 200.
- Decisional agree rate equal to or less than 80 percent (FY 2018 goal was 85 percent).

We shared this information with OHO, and they stated they conducted focused quality reviews³⁴ and provided training to some of the nine ALJs. Further, OHO issued workload directives to some of these nine ALJs.³⁵ We encourage OHO to conduct focused quality reviews and provide training to those ALJs who have not received these services.



Rona Lawson
Assistant Inspector General for Audit

³³ SSA, OIG, *Oversight of Administrative Law Judge Decisional Quality*, A-12-16-50106 (March 2017).

³⁴ A team of Division of Quality managers and attorney-adviser analysts perform the focused quality reviews, which take 4 to 5 days each. The team screens a random sample of cases for a period against several criteria, collecting data and information that might reveal issues of concern or patterns that may conflict with Agency policies or regulations. Some criteria that may be included are how long the hearing lasted; whether a claimant submitted additional evidence after the initial determination; and whether the file includes opinion evidence from treating, examining, or non-examining sources. Division of Quality staff then conduct a more in-depth review of about 25 percent of screened cases and report on those findings.

³⁵ Some ALJs received more than one directive.

APPENDICES

Appendix A – OFFICE OF HEARINGS OPERATIONS BENCHMARKS

The Office of Hearings Operations (OHO) created benchmarks (measured in days) in its *No Status Change* report. Table A–1 describes some of the key benchmarks.

Table A–1: Benchmarks for Processing Hearing Determinations

Status Codes	Benchmark (Days)	Explanation of Status Code
<i>Pre-Hearing Development</i>	77	Hearing office staff review case for prior filings and request additional evidence.
<i>Temp</i>	42	Case temporarily transferred to another hearing office for preparation or drafting decision and returned to the original hearing office.
<i>Decision Writer Review</i>	7	Pre-hearing case review by decision writer.
<i>Workup</i>	7	Case workup (assembly/development/analysis).
<i>Administrative Law Judge (ALJ) Review Pre-Hearing</i>	14	ALJ reviews case before a hearing.
<i>Ready to Schedule</i>	60	When all workup, pre-development, and contact has been completed, the case is ready to be scheduled for a hearing.
<i>ALJ Review Post-hearing</i>	14	ALJ examines records before writing decision.
<i>Post-Hearing Development</i>	77	Hearing held and ALJ requests additional evidence on the case.
<i>Unassigned Writing</i>	30	Hearing held and post-hearing development completed. Awaiting assignment to decision writer.
<i>ALJ Drafting Decision</i>	14	ALJ drafts decision.
<i>Decision Writer Drafting</i>	7	Decision writer drafts decision.
<i>Correction</i>	7	Typographical corrections being made on ALJ decision.
<i>Edit</i>	7	ALJ edits final written decision.
<i>Sign</i>	7	ALJ signs decision and it is ready for release.
<i>Mail</i>	7	Decision released.

Appendix B – RESULTS OF SAMPLE ANALYSIS

From the Office of Hearings Operations' (OHO) Fiscal Years (FY) 2016 and 2017 Case Processing and Management System (CPMS) closed claims databases, we extracted and compiled Appeals Council remand decisions (hearing type 30 cases) adjudicated by administrative law judges (ALJ), and sorted them by processing times, see Table B–1 and Table B–2.

- FY 2016 average processing time for all hearing cases was 543 days.
- FY 2017 average processing time for all hearing cases was 605 days.

Table B–1: ALJ Remand Decisions - FY 2016

Category	ALJ Remand Decisions	Percent of Total
Number of ALJ remand decisions processed	18,925	
Number of ALJ remand decisions less than or equal to 543 days	16,832	88.9%
Number of ALJ remand decisions longer than 543 days but fewer than 1,000 days	2,019	10.7%
Number of ALJ remand decisions longer than or equal to 1,000 days	74	0.4%

Table B–2: ALJ Remand Decisions - FY 2017

Category	ALJ Remand Decisions	Percent of Total
Number of ALJ remand decisions processed	15,613	
Number of ALJ remand decisions less than or equal to 605 days	13,995	89.6%
Number of ALJ remand decisions longer than 605 days but fewer than 1,000 days	1,523	9.8%
Number of ALJ remand decisions longer than or equal to 1,000 days	95	0.6%

We then randomly selected cases in four samples. We reported on actual results for the samples. We also used a stratification approach to project the number of remands that took longer than 7 days to be entered into the hearing office's master docket.

- Sample 1—50 ALJ remand decisions from population of 2,019 in FY 2016 with processing times longer than 543 days but fewer than 1,000 days.
- Sample 2—25 ALJ remand decisions from population of 74 in FY 2016 with processing times equal to or longer than 1,000 days.

- Sample 3—50 ALJ remand decisions from population of 1,523 in FY 2017 with processing times longer than 605 days but fewer than 1,000 days.
- Sample 4—25 ALJ remand decisions from population of 95 in FY 2017 with processing times equal to or longer than 1,000 days.

SSA took longer than 7 days to enter 56 of the 150 sampled remands into the hearing office master docket, see Table B-3.

Table B-3: Sampled Remands That Took Longer than 7 Days to be Entered into the Master Docket

Sample	Population	Sample Size	Sampled Remands That Took Longer than 7 Days to be Entered into Master Docket	Point Estimate	Upper Limit	Lower Limit
1. FY 2016 remands took longer than 543 days but fewer than 1,000 days	2,019	50	18	727		
2. FY 2016 remands took equal to or longer than 1,000 days	74	25	10	30		
3. FY 2017 remands took longer than 605 days but fewer than 1,000 days	1,523	50	20	609		
4. FY 2017 remands took equal to or longer than 1,000 days	95	25	8	30		
Total	3,711	150	56	1,396	1,112	1,680

Using CPMS *No Status Change* benchmarks, we identified where the remands stalled in the hearing process, see Table B-4, Table B-5, Table B-6, and Table B-7.

Table B-4: Sample 1
50 FY 2016 Remands That Were Longer Than 543 Days and Less Than 1,000 Days

Status Codes	OHO Benchmark	Remands Exceeding the Benchmark		Remands Exceeding Twice the Benchmark	
<i>Pre-Hearing Development</i>	77	1	2%	0	0%
<i>Temp</i>	42	0	0%	0	0%
<i>Decision Writer Review</i>	7	4	8%	2	4%
<i>Workup</i>	7	16	32%	11	22%
<i>ALJ Review Pre-hearing</i>	14	19	38%	12	24%
<i>Ready to Schedule</i>	60	48	96%	37	74%
<i>ALJ Review Post-hearing</i>	14	23	46%	15	30%
<i>Post-Hearing Development</i>	77	6	12%	1	2%
<i>Unassigned Writing</i>	30	2	4%	0	0%
<i>ALJ Drafting Decision</i>	14	0	0%	0	0%
<i>Decision Writer Drafting</i>	7	16	32%	4	8%
<i>Correction</i>	7	2	4%	1	2%
<i>Edit</i>	7	16	32%	8	16%
<i>Sign</i>	7	1	2%	1	2%
<i>Mail</i>	7	0	0%	0	0%

Table B-5: Sample 2
25 FY 2016 Remands That Were Equal to or Longer Than 1,000 Days

Status Codes	OHO Benchmark	Remands Exceeding the Benchmark		Remands Exceeding Twice the Benchmark	
<i>Pre-Hearing Development</i>	77	9	36%	5	20%
<i>Temp</i>	42	0	0%	0	0%
<i>Decision Writer Review</i>	7	2	8%	2	8%
<i>Workup</i>	7	6	24%	4	16%
<i>ALJ Review Pre-hearing</i>	14	11	44%	8	32%
<i>Ready to Schedule</i>	60	20	80%	16	64%
<i>ALJ Review Post-hearing</i>	14	16	64%	14	56%
<i>Post-Hearing Development</i>	77	10	40%	6	24%
<i>Unassigned Writing</i>	30	0	0%	0	0%
<i>ALJ Drafting Decision</i>	14	0	0%	0	0%
<i>Decision Writer Drafting</i>	7	5	20%	3	12%
<i>Correction</i>	7	0	0%	0	0%
<i>Edit</i>	7	7	28%	3	12%
<i>Sign</i>	7	2	8%	1	4%
<i>Mail</i>	7	1	4%	0	0%

Table B–6: Sample 3
50 FY 2017 Remands That Were Longer Than 605 Days and Less Than 1,000 Days

Status Codes	OHO Benchmark	Remands Exceeding the Benchmark		Remands Exceeding Twice the Benchmark	
<i>Pre-Hearing Development</i>	77	7	14%	5	10%
<i>Temp</i>	42	0	0%	0	0%
<i>Decision Writer Review</i>	7	2	4%	2	4%
<i>Workup</i>	7	18	36%	10	20%
<i>ALJ Review Pre-hearing</i>	14	21	42%	15	30%
<i>Ready to Schedule</i>	60	41	82%	35	70%
<i>ALJ Review Post-hearing</i>	14	27	54%	20	40%
<i>Post-Hearing Development</i>	77	12	24%	4	8%
<i>Unassigned Writing</i>	30	14	28%	6	12%
<i>ALJ Drafting Decision</i>	14	0	0%	0	0%
<i>Decision Writer Drafting</i>	7	21	42%	9	18%
<i>Correction</i>	7	1	2%	1	2%
<i>Edit</i>	7	18	36%	9	18%
<i>Sign</i>	7	0	0%	0	0%
<i>Mail</i>	7	0	0%	0	0%

Table B-7: Sample 4
25 FY 2017 Remands That Were Equal to or Longer Than 1,000 Days

Status Codes	OHO Benchmark	Remands Exceeding the Benchmark		Remands Exceeding Twice the Benchmark	
<i>Pre-Hearing Development</i>	77	10	40%	2	8%
<i>Temp</i>	42	0	0%	0	0%
<i>Decision Writer Review</i>	7	1	4%	0	0%
<i>Workup</i>	7	9	36%	8	32%
<i>ALJ Review Pre-hearing</i>	14	15	60%	11	44%
<i>Ready to Schedule</i>	60	20	80%	20	80%
<i>ALJ Review Post-hearing</i>	14	13	52%	12	48%
<i>Post-Hearing Development</i>	77	8	32%	3	12%
<i>Unassigned Writing</i>	30	1	4%	0	0%
<i>ALJ Drafting Decision</i>	14	0	0%	0	0%
<i>Decision Writer Drafting</i>	7	11	44%	5	20%
<i>Correction</i>	7	1	4%	1	4%
<i>Edit</i>	7	9	36%	5	20%
<i>Sign</i>	7	0	0%	0	0%
<i>Mail</i>	7	0	0%	0	0%

Appendix C – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

- Reviewed Social Security Administration (SSA) policies and procedures, including the Office of Hearings Operations (OHO) Hearings, Appeals, and Litigation Law Manual.
- Reviewed Office of the Inspector General reports related to remands.
- Reviewed OHO’s management reports, including its *Electronic Key Workload Indicator* reports, Case Processing and Management System (CPMS) *Caseload Analysis Workload* report, *No Status Change* report, *Benchmarks for Quality Case Processing* report, and *Agree Rate* reports.
- Extracted and compiled hearing type 30 (Appeals Council remand decisions) records from CPMS for Fiscal Years (FY) 2016, 2017, and 2018, and sorted them by processing times.
- Calculated the average processing time for remands in FYs 2016, 2017, and 2018.
- Compared the processing time for remands to SSA’s (a) *Compassionate And REsponsive Service (CARES)* plan goal (270 days), (b) average processing time for remands in FY 2018 (360 days), (c) *Annual Performance Plan* target for processing hearings for those individuals who waited the longest in FYs 2016, 2017, and 2018 (430 days), and (d) average processing time of hearing cases in FY 2018 (595 days).
- Determined how many remands took 1,000 days or longer to process.
- Analyzed remands from four random samples.
 - Sample 1—50 remand decisions from population of 2,019 in FY 2016 with processing times longer than 543 days but less than 1,000 days. (OHO’s average processing time in FY 2016 was 543 days.)
 - Sample 2—25 remand decisions from population of 74 in FY 2016 with processing times equal to or longer than 1,000 days.
 - Sample 3—50 remand decisions from population of 1,523 in FY 2017 with processing times longer than 605 days but less than 1,000 days. (OHO’s average processing time in FY 2017 was 605 days.)
 - Sample 4—25 remand decisions from population of 95 in FY 2017 with processing times equal to or longer than 1,000 days.
 - Reported on actual results for the samples and used a stratification approach to project the number of remands that took longer than 7 days to be entered into the hearing office’s master docket.
- Queried SSA’s CPMS online database to obtain the case histories for the remand decisions in our samples. We calculated the number of days each case spent in each of the statuses tracked by the *No Status Change* report. We calculated the time each case stayed in status by subtracting the date the case left the status from the date the case entered the status. Based on this analysis, we then identified three status codes where the sampled cases had stalled in the hearing process.

- Interviewed OHO executives and staff.
- Quantified ALJ performance.
 - Using FYs 2016, 2017, and 2018 CPMS closed claims databases, we extracted administrative law judges (ALJ) who had equal to or more than 200 dispositions.¹
 - Identified the number of remands adjudicated by each ALJ in all 3 FYs.
 - Calculated remand rates for each ALJ and identified ALJs with remand rates equal to or greater than 6 percent (twice the FY 2016 national remand rate) over the last 3 FYs.
 - Identified ALJs with decisional agree rates less than 80 percent (national goal 85 percent).
 - Identified 9 ALJs who had over 200 dispositions, remand rates greater than or equal to 6 percent, and decisional agree rates less than 80 percent in at least 2 of the last 3 FYs.

We conducted our review between January and May 2019. The principal entity audited was the Office of Hearings Operations. We tested the reliability of the FY 2016, 2017, and 2018 CPMS closed claims databases, and found the data was reliable. In a follow-up to a previous review,² we determined in this review that remand dates in CPMS no longer contained date-coding errors, and the dates of the remand decisions were reliable. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹ In our *Congressional Response Report: Oversight of Administrative Law Judge Workload Trends*, A-12-11-01138, (February 2012), we excluded ALJs from our analysis who had fewer than 200 dispositions. The purpose was to exclude ALJs who may be in a situation where lower productivity was expected, such as ALJs with administrative duties or part-time schedules, as well as new ALJs and ALJs on extended leave. Therefore, we did the same for our current review on remands.

² SSA OIG, *Hearing Office Remand Processing*, A-12-08-28036, p. 9 (September 2008).

Appendix D– AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: August 28, 2019 Refer To: S1J-3

To: Gail S. Ennis
Inspector General

A handwritten signature in blue ink that reads "Stephanie Hall".

From: Stephanie Hall
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Administrative Law Judges' Appeals Council Remand Decisions" (A-12-18-50290) -- 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 Trae Sommer at (410) 965-9102.

GENERAL COMMENTS

Expedited processing of Appeals Council (AC) remands is a priority for hearings operations staff, and managers are required to assess numerous reports daily to ensure we are tracking remands. As we enter our 32nd month of decreased pending hearing requests, our overall average processing time (APT) for remands continues to trend downward. In fiscal year (FY) 2018, the APT for remands was 361 days while in FY 2019 APT is currently 322 days and it continues to decrease. We are confident that AC remand case processing time will continue to improve. Below are our responses to the recommendations.

Recommendation 1

Define “priority” for processing the remand workload and measure the processing time pursuant to the definition.

Response

We agree. We currently prioritize AC remands using expedited handling and schedule them for hearings as soon as possible. To date, FY 2019 APT for AC remands is well below the national APT of 513 days for all hearing level cases. We aim to achieve an APT for AC remands of 250 days in FY 2020.

Recommendation 2

Require hearing office managers to review the *Remand Case Listing* each workday and ensure staff enter remands immediately into the master docket.

Response

We agree. We currently require managers to review the *Remand Case Listing* daily, along with several other reports. We will continue to issue reminders to our managers to ensure they review these reports on a daily basis. We will also remind staff to enter remands into the master docket immediately.

Recommendation 3

Require hearing office managers to review the *No Status Change* report regularly to identify stalled cases and take action on the cases as necessary.

Response

We agree. We currently require managers to review the *No Status Change* report. We will continue to reinforce with our managers the importance of regularly reviewing this report.

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