

Audit Report

Subsequent Appellate Actions on
Denials Issued by Low-Allowance
Administrative Law Judges

A-12-13-13084 / July 2014

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: July 3, 2014 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: Subsequent Appellate Actions on Denials Issued by Low-Allowance Administrative Law Judges (A-12-13-13084)

The attached final report presents the results of our audit. Our objective was to analyze subsequent appellate actions on Fiscal Year 2010 denials issued by 12 low-allowance administrative law judges.

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

Subsequent Appellate Actions on Denials Issued by Low-Allowance Administrative Law Judges

A-12-13-13084



July 2014

Office of Audit Report Summary

Objective

To analyze subsequent appellate actions on Fiscal Year (FY) 2010 denials issued by 12 low-allowance administrative law judges (ALJ).

Background

A claimant who disagrees with an ALJ's decision may ask for a review by the Office of Disability Adjudication and Review's (ODAR) Appeals Council (AC). The AC may deny, dismiss, or grant the request. If the AC grants the request, it will either (1) issue a decision that affirms, modifies, or reverses the ALJ decision or (2) remand the case to the ALJ with instructions to conduct further proceedings on the case.

ALJ decisions on cases can vary widely. In our February 2012 congressional review, *Oversight of Administrative Law Judge Workload Trends*, we noted that ALJ allowance rates in FY 2010 varied from 9 to 99 percent. We focused on 12 high- and 12 low-allowance ALJs. The allowance rates for these 12 low-allowance ALJs ranged from 9 to 25 percent.

Our Findings

While ALJ decisions on cases may differ for a variety of reasons, including qualified decisional independence, the rate of subsequent actions on denied cases should be relatively consistent among ALJs. Remand and reversal rates on appealed cases can provide indications about the quality of an ALJ's decisions. In addition, time spent processing such cases delays final decisions for affected claimants and reduces the time available for other cases awaiting processing.

For the 12 low-allowance ALJs, we found the following related to their Title II workloads.

- Four had at least 80 percent of their denied cases appealed to the AC, compared to the 67-percent national average. For instance, 84 percent of one ALJ's denied cases were appealed to the AC.
- Six ALJs had AC reversal rates that were more than twice the 2-percent national average. For instance, one ALJ had a 10-percent reversal rate, 5 times the national average.
- One ALJ had a 42-percent AC remand rate, more than twice the 19-percent national average. Overall, the AC remanded the ALJs' decisions at about the same rate as the national average.

ODAR had implemented a number of tools to track ALJ and hearing office performance. However, we believe ODAR could further improve management oversight by

- informing ALJs about the reasons for AC reversals,
- monitoring AC reversal trends to identify ALJs who have high reversal rates, and
- tracking subsequent ALJ actions on remanded cases.

Our Recommendations

We made a number of recommendations to improve the communication and management information related to reversed and remanded cases, and the Agency agreed with all of our recommendations.

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ABBREVIATIONS

AC	Appeals Council
ALJ	Administrative Law Judge
APT	Average Processing Time
C.F.R.	Code of Federal Regulations
Fed. Reg.	Federal Register
FY	Fiscal Year
HMID	How MI Doing?
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
Pub. L. No.	Public Law Number
SSA	Social Security Administration
Stat.	United States Statutes at Large
SSI	Supplemental Security Income
U.S.C.	United States Code

OBJECTIVE

Our objective was to analyze subsequent appellate actions on Fiscal Year (FY) 2010 denials issued by 12 low-allowance administrative law judges (ALJ).

BACKGROUND

Claimants who are denied disability benefits at the State disability determination services can appeal the decision to the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR). ODAR directs a nation-wide field organization staffed with ALJs who conduct impartial hearings and make decisions on appealed determinations involving retirement, survivors, disability, and Supplemental Security Income (SSI) payments.¹ A claimant who disagrees with an ALJ's decision may ask for a review by ODAR's Appeals Council (AC). The AC may deny, dismiss, or grant the request. If the AC grants the request, it will either (1) issue a decision that affirms, modifies, or reverses the ALJ decision or (2) remand the case to the ALJ with instructions to conduct further proceedings. A claimant who disagrees with the AC's final decision can further appeal a case to the Federal court.

Our February 2012 review of *Oversight of Administrative Law Judge Workload Trends*² focused on the FY 2010 workloads of 24 ALJs—12 with the highest decisional allowance rates and 12 with the lowest decisional allowance rates.³ The 24 ALJs had allowance rates that varied from 9 to 99 percent. We found that variances in ALJ allowances were attributed to many factors, most notably ALJ decisional independence and the demographics of claimants served by the hearing office, such as their age, education, and available work. Qualified decisional independence means that ALJs must be impartial in conducting hearings and must decide cases based on the facts of each case and in accordance with the law.⁴ Because of such independence,

¹ SSA manages two programs that provide benefits based on disability or blindness: Social Security Disability Insurance and Supplemental Security Income (SSI). The *Social Security Act* authorizes Social Security Disability Insurance benefits (Section 221 of the *Social Security Act*, 42 U.S.C. § 421), and authorizes SSI payments (Section 1601, et seq. of the *Social Security Act*, 42 U.S.C. §§ 1381, et. seq.). SSA uses the term “concurrent claim” when a claimant files for benefits under programs.

² See SSA, Office of the Inspector General (OIG), *Congressional Response Report: Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138), February 2012. For more information, see Appendix A.

³ We calculated decisional allowance rates by dividing allowances by total decisions (excluding dismissals). We use decisional allowance rates throughout the report.

⁴ See *Final Rules Setting the Time and Place for Hearing Before an Administrative Law Judge*, 75 Fed. Reg. §§, (July 8, 2010) (to be codified at 20 C.F.R. parts 404, 416), which discusses qualified judicial independence. Congress enacted the *Administrative Procedure Act* in 1946 to provide for judicial review of the actions of administrative agencies. See Pub. L. No. 79-404, 60 Stat. 237 (June 11, 1946) (codified in scattered sections of 5 U.S.C.). As part of the *Administrative Procedure Act*, safeguards were put in place to ensure judgments were independent and ALJs would not be paid, promoted, or discharged arbitrarily. See 5 U.S.C. §§ 1305, 3105, 5372 and 7521.

ALJs should make decisions free from Agency pressure or pressure by a party to decide a case, or a percentage of cases, in a particular way.

The FY 2010 allowance rates for the 12 low-allowance ALJs ranged from 9 to 25 percent, and their productivity ranged from 268 to 1,274 dispositions issued. Altogether, these 12 ALJs issued 4,264 denials and 1,118 allowances in FY 2010. In this review, we focused on subsequent appeals on the denials issued by the 12 low-allowance ALJs⁵ to identify any outlier activity. In particular, we were interested in the remand and reversal rates on appealed cases since both can provide indications about the quality of an ALJ's decisions. In addition, time spent processing such cases delays final decisions for affected claimants and reduces the time available for other cases awaiting processing.

If dissatisfied with the ALJ decision, claimants can appeal. Since FY 2007, the number of appealed cases to the AC was greater than dispositions, resulting in a tripling of pending cases. The AC pending levels grew from about 53,000 to about 157,000 cases by the end of FY 2013. The increase in pending claims also resulted in longer average processing times on appeals. Claimants waited about 364 days for an AC action in FY 2013, up from 227 days in FY 2007.⁶

We reviewed the more recent workloads of the 12 low-allowance ALJs to determine whether their allowance rates had changed over time. Overall, their allowance rate had increased over the 4-year period from 21 to 24 percent.⁷ During the same 4-year period, the national ALJ allowance rate⁸ decreased from 67 to 56 percent. By the end of FY 2013, the average allowance rate for the 12 low-allowance ALJs was about 32 percentage points below the national average (see Figure 1). This compares to a gap of about 46 percentage points in FY 2010.

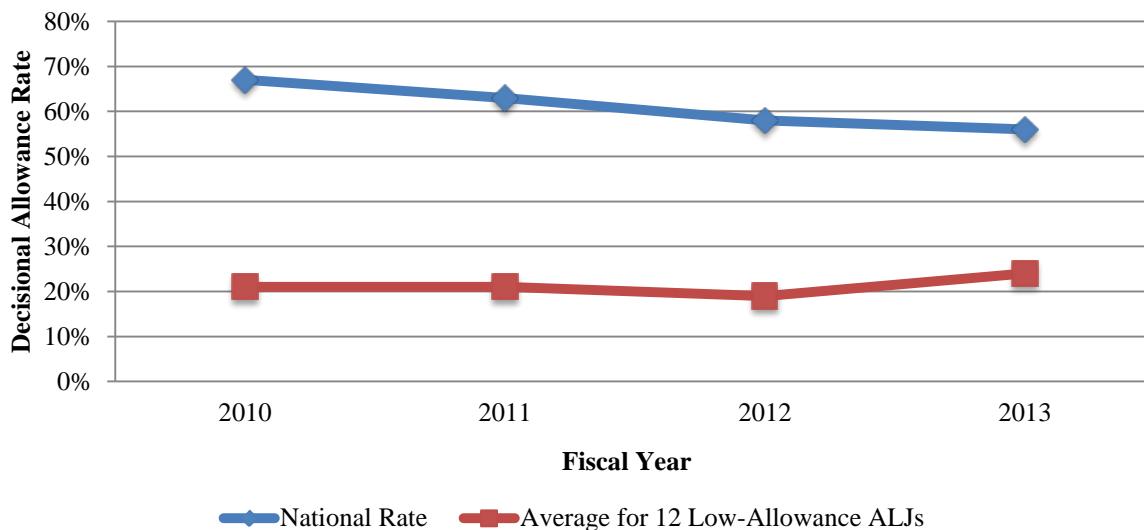
⁵ Our focus was limited to AC actions in this review. We did not include Federal court workloads, though we mention these workloads later in the report. We also did not include subsequent claimant activity, such as filing a new application after being denied by an ALJ.

⁶ For more information about the processing of cases and pending workloads at the AC, see our March 2013 audit report, *Request for Review Workloads at the Appeals Council* (A-12-13-13039).

⁷ Three of the 12 ALJs left the Agency in FY 2012. We reviewed the trends in allowance rates for these three ALJs before their departure and found that the allowance rates for two ALJs had risen and remained the same for the third ALJ. When we calculated the allowance rate with and without these three ALJs, we found the average allowance rate increased at the same rate during this period.

⁸ We removed the on-the-record decisions issued by the senior attorney adjudicators when calculating the ALJ decisional allowance rates.

**Figure 1: 4-Year Trend in Decisional Allowance Rates
(FY 2010 Through FY 2013)**



Note: Three low-allowance ALJs left the Agency in FY 2012. We determined that the loss of the three ALJs did not affect the average decisional allowance rate of the remaining nine ALJs.

To meet our objective, we obtained ODAR's Case Processing and Management System database of FY 2010 closed claims and identified all of the FY 2010 Title II and XVI denials made by the 12 low-allowance ALJs. We then compared this information to the Appeals Review Processing System closed claims database to determine the percent of the low-allowance denials appealed to the AC as well as the actions taken on those appealed cases. Further, we compared the appeal rates and subsequent appellate actions for the other ALJs in the hearing offices where the low-allowance ALJs worked. Finally, we met with ODAR executives, managers, and staff to learn more about the management information systems they use to monitor ALJ and hearing office performance.⁹

RESULTS OF REVIEW

In our review of subsequent appellate actions on the FY 2010 workload for the 12 low-allowance ALJs, we found the following related to their Title II workloads.

- Four ALJs had at least 80 percent of their denied cases appealed to the AC, compared to the national average of 67 percent. For instance, 84 percent of one ALJ's denied cases were appealed to the AC.
- Six ALJs had AC reversal rates that were more than twice the 2-percent national average. For instance, one ALJ had a reversal rate of 10 percent or 5 times the national average.

⁹ See Appendix B for more information on our scope and methodology.

- One ALJ had an AC remand rate of 42 percent, more than twice the 19-percent national average. Overall, the AC remanded the ALJs' decisions at about the same rate as the national average.

ODAR had implemented a number of tools to track ALJ and hearing office performance. However, we believe ODAR could further improve management oversight by

- informing ALJs about the reasons for the AC reversals,
- monitoring AC reversal trends to identify ALJs who have high reversal rates, and
- tracking subsequent actions taken by ALJs on remanded cases.

AC Actions on ALJ Title II Denials

Claimants and their representatives have 60 days from the date they receive their hearing decision or dismissal to file a *Request for Review* with the AC.¹⁰ We compared the AC appeal rate as well as AC reversal and remand rates on appeals of 12 low-allowance ALJ denials to national rates to determine whether the rates were generally uniform. We also compared the low-allowance ALJs to peers at their hearing offices to obtain additional context on variances.¹¹

AC Appeal Rates

Eleven of the 12 low-allowance ALJs had their FY 2010 Title II denials appealed at higher rates than the Title II national average of 67 percent.¹² We found the average rate of appeal among all 12 ALJs was 76 percent.¹³ At least 80 percent of four ALJs' denials were appealed to the AC. ALJ-1 had 86 percent of his denials appealed, the highest among the 12 ALJs, with claimants appealing 121 of his 141 Title II denials. This ALJ also had the lowest allowance rate in the nation in FY 2010.

¹⁰ Per SSA's Hearings, Appeals and Litigation Law Manual, I-3-0-60A, if a claimant is dissatisfied with an ALJ's decision or order of dismissal, the claimant may request that the AC review the decision or action. The claimant must submit the request in writing within 60 days after receipt of the ALJ's decision or dismissal by completing form HA-520, *Request for Review of Hearing Decision/Order*, or by submitting a letter or other written document. SSA presumes the claimant receives the notice of the ALJ's decision or dismissal 5 days after the date of the notice, unless there is a reasonable showing to the contrary.

¹¹ Claimants can apply for Title II and XVI concurrently. We reviewed the Title II and XVI cases separately to understand the subsequent actions associated with each program. Our report focuses on Title II for purposes of conciseness. We found less outlier behavior for the 12 low-allowance ALJs in the AC review of their Title XVI denials. See Appendix C for more information on the subsequent AC action of the Title XVI denied cases.

¹² We calculated the average appeal rate by determining the number of unfavorable Title II ALJ denials that were appealed. The national median in FY 2010 for Title II denials was also 67 percent.

¹³ The number of FY 2010 Title II denied cases among these 12 low-allowance ALJs ranged from 141 cases to 543 cases. The number of appealed cases related to these denial cases ranged from 90 cases to 404 cases, and the appeal rate ranged from 64 percent to 86 percent.

We compared ALJ-1's appeal rate to the other ALJs in the office and found ALJ-1 had the highest appeal rate in the office.¹⁴ However, the average appeal rate for the other ALJs in the office was 74 percent, which was also higher than the national average. We compared all 12 of the low-allowance ALJs' appeal rates to the other ALJs in their offices and found that 11 had a higher appeal rate than the average appeal rate for the other ALJs in their offices. In responding to our finding, ODAR management noted that some claimant representatives may have a tendency to automatically appeal denied cases from these low-allowance ALJs, leading to higher appeal rates.¹⁵

AC Actions

In processing a claimant's appeal, the AC may deny, dismiss, or grant the request for review. When the AC grants review, it will either issue a decision or remand the case back to an ALJ. Reversals and remands represent case quality issues, which together indicate the AC's lack of agreement with the ALJs' initial decisions. Therefore, in addition to focusing on specific rates, we focused on the overall agreement rate for each ALJ.

AC Reversal Rates

We found that 6 of the 12 low-allowance ALJs had AC reversal rates on their Title II denials that were at least twice the 2-percent national average (see Figure 2).¹⁶ ALJ-5 had the highest appellate reversal rate in the nation, with 10 percent of cases reversed or 14 of the 141 appealed cases.¹⁷ When the AC reverses an ALJ's decision, the claimant can receive a favorable decision and become entitled to disability payments, or the AC will issue a new decision to correct some technical aspect of the ALJ's unfavorable decision, but the final decision will remain unfavorable.

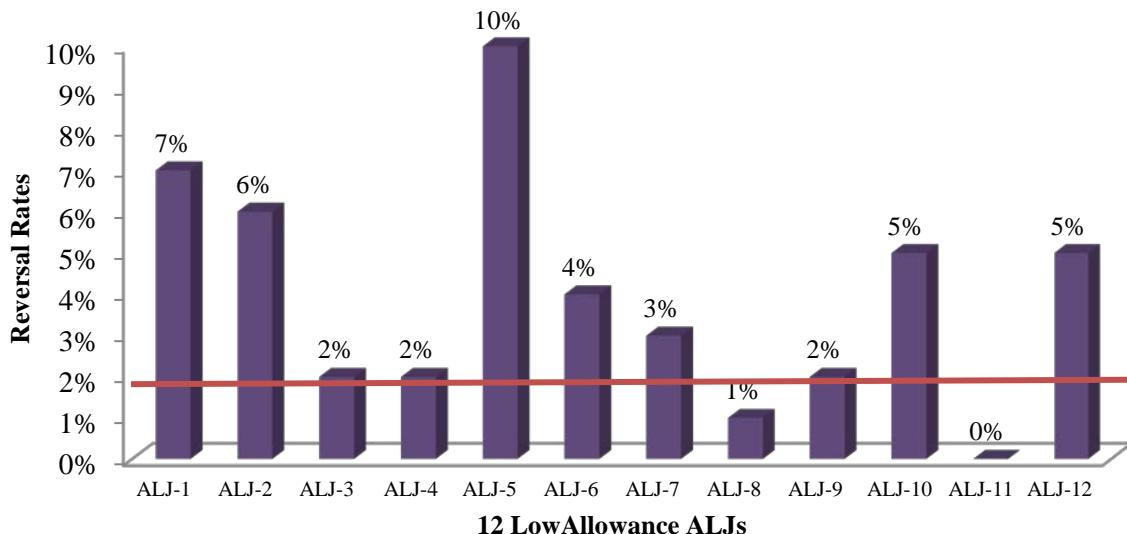
¹⁴ Five of the 12 low-allowance ALJs had the highest appeal rate among the ALJs in their office.

¹⁵ Our review did not include analysis of variances in claimant representative appeal rates among ALJs in the same office.

¹⁶ The number of reversed cases among the 12 low-allowance ALJs ranged from 0 to 14. The national median reversal rate in FY 2010 for Title II denials was 2 percent. Seven of the 12 low-allowance ALJs had reversal rates above the national median rate.

¹⁷ We found that 756 ALJs had at least 50 Title II appeals of their FY 2010 denials. We examined the AC actions on their denials and found that 101 of the 756 ALJs had reversal rates greater than 4 percent, or twice the national average. We used 50 cases as a cutoff to ensure we focused on ALJ workloads similar to that of 12 low-allowance ALJs while also being a sufficient volume to allow us to calculate a more meaningful reversal rate.

**Figure 2: Title II Reversal Rates for FY 2010 Appeals
for 12 Low-Allowance ALJs**



Note: FY 2010 Title II national reversal rate was 2 percent (shown as a red line).

We found the average AC reversal rate among all 12 ALJs was 4 percent, twice the national average. We also compared the low-allowance ALJs to other ALJs in their office. We found 9 of the 12 low-allowance ALJs had higher reversal rates on their Title II appeals than the average reversal rates for the other ALJs in their offices.¹⁸ For example, ALJ-2 had a 6-percent reversal rate compared to a 2-percent average reversal rate in the office.

AC Remand Rates

Overall, the AC remanded the ALJs' decisions at about the same rate as the national average. However, we found that 1 of the 12 low-allowance ALJs had an AC remand rate on Title II denials that was more than twice the Title II national average of 19 percent (see Figure 3).¹⁹ ALJ-12, with 65 cases remanded out of 155 appeals, had a 42-percent remand rate. While the average remand rate for all 12 low-allowance ALJs was 22 percent,²⁰ 7 of the 12 low-allowance ALJs were at or below the Title II national average of 19 percent. In addition, compared to the

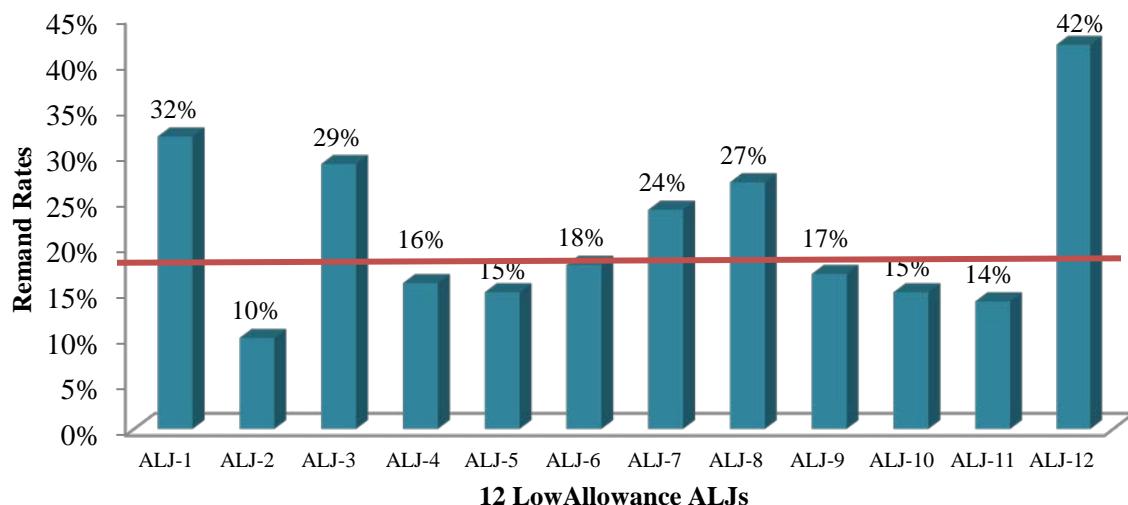
¹⁸ Six of the low-allowance ALJs had the highest reversal rates among the ALJs in their offices.

¹⁹ We found that 756 ALJs had at least 50 Title II appeals related to their FY 2010 denials. We examined the AC actions on their denials and found that 33 of the 756 ALJs had remand rates greater than 38 percent, or twice the national average. As noted earlier, we used 50 cases as a cutoff to ensure we focused on ALJ workloads similar to that of 12 low-allowance ALJs while also being a sufficient volume to allow us to calculate a more meaningful remand rate.

²⁰ The number of remanded cases among the 12 low-allowance ALJs ranged from 13 to 70. The national median remand rate in FY 2010 for Title II denials was 17 percent. Six of the 12 low-allowance ALJs had remand rates above the national median rate.

average remands for all of the other ALJs in their hearing offices, 6 of the 12 low-allowance ALJs had lower remand rates on their Title II cases.²¹

**Figure 3: Title II Remand Rates for FY 2010 Title II Appeals
for 12 Low-Allowance ALJs**



Note: FY 2010 Title II national remand rate was 19 percent (shown as a red line).

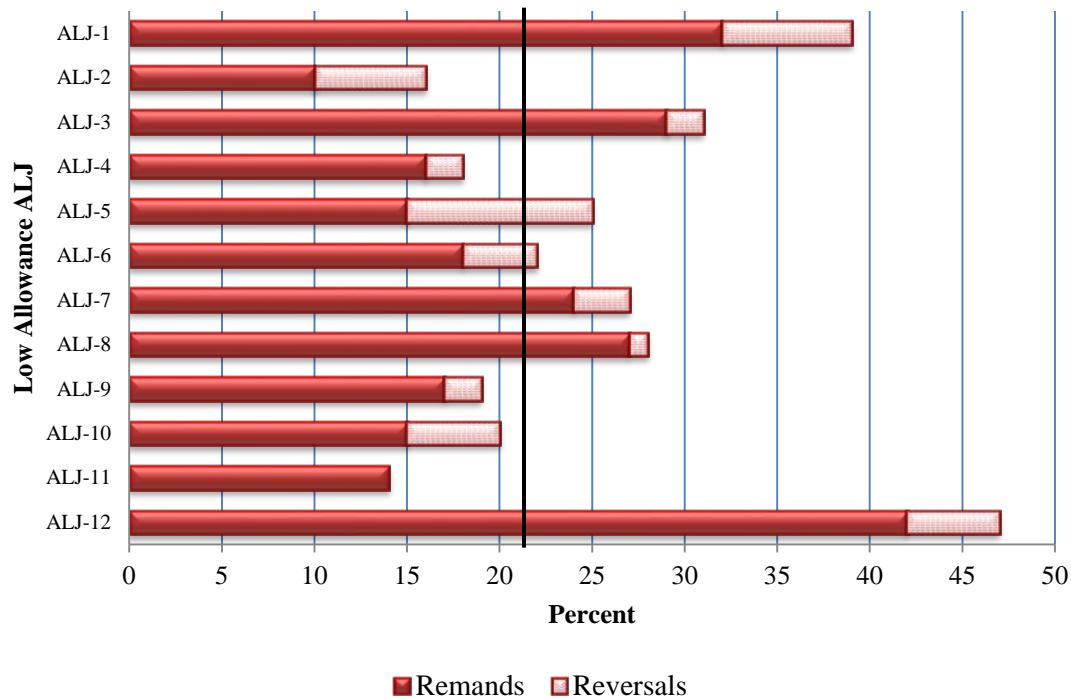
Combined AC Agreement Rate

When we reviewed the overall AC agreement rate on the Title II cases that belonged to the 12 low-allowance ALJs, we found that 7 of the 12 ALJs had a combined reversal and remand rate that exceeded the combined national average rate of 21 percent of appealed cases (see Figure 4).²² In the case of ALJ-12, the combined rate was more than twice the national rate.

²¹ One low-allowance ALJ had the highest remand rate among the ALJs in the same office.

²² We provided the average combined reversal and remand rate. The combined national median reversal and remand rate in FY 2010 for Title II denials was 19 percent. Eight of the 12 low-allowance ALJs and 381 of the 756 ALJs with at least 50 appealed cases exceeded the national rate.

Figure 4: Title II Combined Reversal and Remand Rates for FY 2010 Title II Appeals Among 12 Low-Allowance ALJs



Note: FY 2010 Title II national average combined reversal and remand rate was 21 percent (shown as a black line).

Management Information on Subsequent Appellate Actions

We reviewed ODAR's process for providing feedback to, and communicating with, ALJs on appellate activities related to their hearings. In addition, we spoke with ODAR managers about how they monitored trends associated with ALJ appeals.

Increased Emphasis of Case Quality

In a September 2013 newsletter to staff,²³ ODAR's Chief Judge discussed new metrics for monitoring hearing office goals, which includes the AC's outcome on ALJ cases. Specifically, the newsletter noted,

We are NOT changing our goals - our mission is still the issuance of timely and legally sufficient hearings, decisions and dismissals. However, we are expanding our metrics for HEARING OFFICE performance to reflect the complexity of our work. We are including goals on policy compliance (agree rates for decisions and dismissals), timeliness (average processing time), first in first out (aged case goal) along with dispositional measures (dispositions per day per duty ALJ).²⁴

A separate article in the same newsletter explained the nature of the appellate "agree rates" on ALJ decisions and dismissals, noting that this rate represented the percentage of requests for review that the AC denies compared to the number of request for review dispositions after subtracting those remands that fall outside of an ALJ's control.²⁵

Feedback of ALJ Performance Using How MI Doing?

In August 2011, ODAR implemented its *How MI Doing?* (HMID) tool,²⁶ which allows hearing office staff and ALJs to track their productivity over time and compare their performance at the local, regional, and national levels. HMID provides statistics and graphics that illustrate the productivity of each individual ALJ over time in five areas: (1) dispositions, (2) cases pending, (3) cases scheduled, (4) AC agree rates, and (5) average processing time.

ODAR's local, regional, and national managers can also use HMID to monitor the productivity and timely processing of cases for ALJs and hearing office staff.²⁷ Based on a questionnaire we sent to the 11 Hearing Office Chief ALJs²⁸ in offices where the low-allowance ALJs issued decisions, we learned that 9 were using HMID to track ALJ performance in their hearing offices.

²³ See SSA, *From the Bench*, Office of the Chief ALJ newsletter, September 2013.

²⁴ Id. at p. 1.

²⁵ The excluded remands include cases where new evidence was submitted to the AC, subsequent allowances, and incomplete or inaccurate records because of a lost or inaudible recording, lost record or evidence, or evidence belonging to another claimant.

²⁶ ODAR has continually updated the tool based on feedback from ALJs, staff, and managers in the field.

²⁷ We focused on how management uses HMID to monitor ALJ performance.

²⁸ Two low-allowance ALJs worked in the same hearing office.

While HMID is a useful tool, we noted areas that could be improved. Specifically, while HMID provided ALJs with the reason the AC remanded a case, it did not provide the same information for cases the AC reversed.²⁹ We believe the information on AC reversals, as well as links to related policy sections, could be useful feedback for the ALJ.

Moreover, we were unable to identify a system that tracked the *outcome* of remanded cases—that is, whether the case was allowed or denied following the AC remand action. ODAR managers stated that capturing the ALJ decision on the remand order would provide useful feedback on potential outlier behavior. For instance, managers could identify allowance or denial rates on these remanded cases to ensure the remand orders are being properly addressed. The Office of Appellate Operations may also find the remand outcomes useful in the oversight of its administrative appeals judges since they may highlight variances in responsiveness to the remand orders.

Early Monitoring System

ODAR had also created an early monitoring system to measure ALJ workload performance and identify outlier behavior.³⁰ This monitoring system allows ODAR senior executives to evaluate ALJ performance using a combination of factors, such as number of dispositions, number of on-the-record decisions, and frequency of hearings with the same claimant representative. When the monitoring system identifies outlier ALJ performance, ODAR executives can instruct its Division of Quality to conduct a focused review of the decisions issued by outlier ALJs. At the time of our review, the Division of Quality had conducted focused reviews of the decisions issued by 2 of the 12 low-allowance ALJs³¹ as well as a focused review of the decisions issued by a hearing office where a low-allowance ALJ worked.

In terms of appellate workloads, ODAR’s early monitoring system captures the AC remand rate on ALJ cases, though the system was not tracking AC reversal rates on ALJ decisions at the time of our review.³² We believe ODAR would benefit from a system that monitors ALJs with high reversal rates since such outlier activity, by itself or in combination with other factors, may indicate issues for management follow-up, be it training or other appropriate actions.

²⁹ In FY 2013, the AC remanded about 30,200 cases and reversed about 2,600 ALJ decisions. The AC provides the reason for the remand in the remand order to the ALJ. See Appendix D for the most common reasons the AC remands cases.

³⁰ For more information on the early monitoring system, please see our audit reports, *Identifying and Monitoring Risk Factors at Hearing Offices* (A-12-12-11289), January 2013; and *Analysis of Hearing Offices Using Key Risk Factors* (A-12-13-13044), December 2013.

³¹ In one of the cases, the Division of Quality randomly selected and performed an in-depth review of 60 unfavorable decisions and found 5 areas of concern: (1) inaccurate determination of vocational factors; (2) improper evaluation of past relevant work; (3) no use of medical experts; (4) greater weight inappropriately given to State agency sources rather than the medical opinions of treating sources; and (5) reliance of acquiescence rulings in the ALJ’s decisionmaking.

³² Nor was the system tracking remands and reversals at the Federal court level.

CONCLUSIONS

Eleven of the 12 low-allowance ALJs had appeal rates above the national average. In addition, after reviewing the AC subsequent action taken on the appeals, we found that the AC reversed the denied cases associated with 6 of the 12 low-allowance ALJs at twice the national average rate. Also, while the AC remand rates for most of the low-allowance ALJs were closer to the average rate for all ALJs, we identified an ALJ with an AC remand rate more than twice as high as the national average. Extra time spent processing reversals and remands delays final decisions for affected claimants and reduces the time available for other cases awaiting processing. We believe ODAR management should monitor these appellate actions to ensure consistent quality in the hearings process. ODAR has already taken steps to communicate quality results to ALJs as well as monitor ALJ workloads, and we believe additional communication and management information related to appeal, reversal, and remand rates would provide all ALJs and managers with valuable feedback on quality issues, assist in reducing future workloads at the AC, and improve processing times for claimants.

RECOMMENDATIONS

To improve internal communication on appellate actions and provide additional management information regarding trends in appellate actions, we recommend SSA:

1. Provide feedback to the ALJs on the reasons the AC reversed their decisions.
2. Monitor ALJs with high reversal rates so managers can provide feedback and training to ALJs who have above-average reversal rates.
3. Monitor ALJ decisions on AC remands to identify outlier behavior that may require additional management attention.

AGENCY COMMENTS

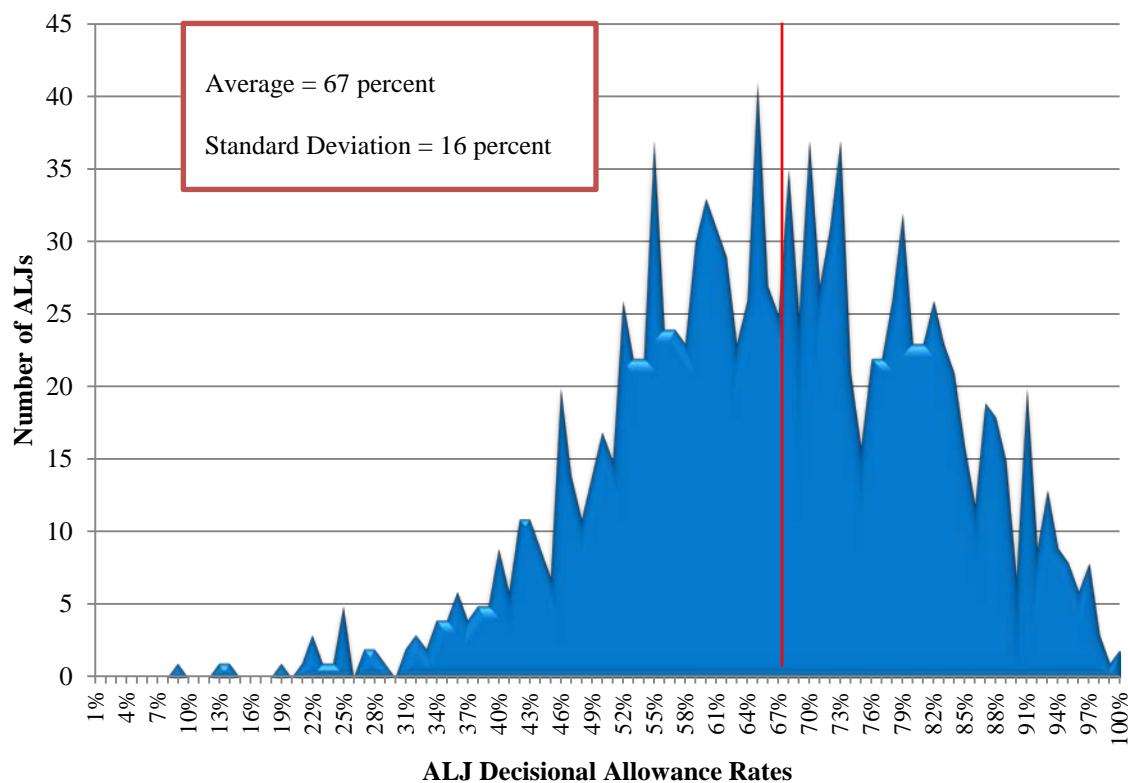
SSA agreed with our recommendations. The Agency's comments are included in Appendix E.

APPENDICES

Appendix A – FINDINGS FROM OVERSIGHT OF ADMINISTRATIVE LAW JUDGE WORKLOAD TRENDS

Among the 1,256 administrative law judges (ALJ) with 200 or more dispositions in Fiscal Year (FY) 2010,¹ the average decisional allowance rate was about 67 percent. ALJ allowance rates ranged from a low of 9 percent to a high of 99 percent (see Figure A–1).

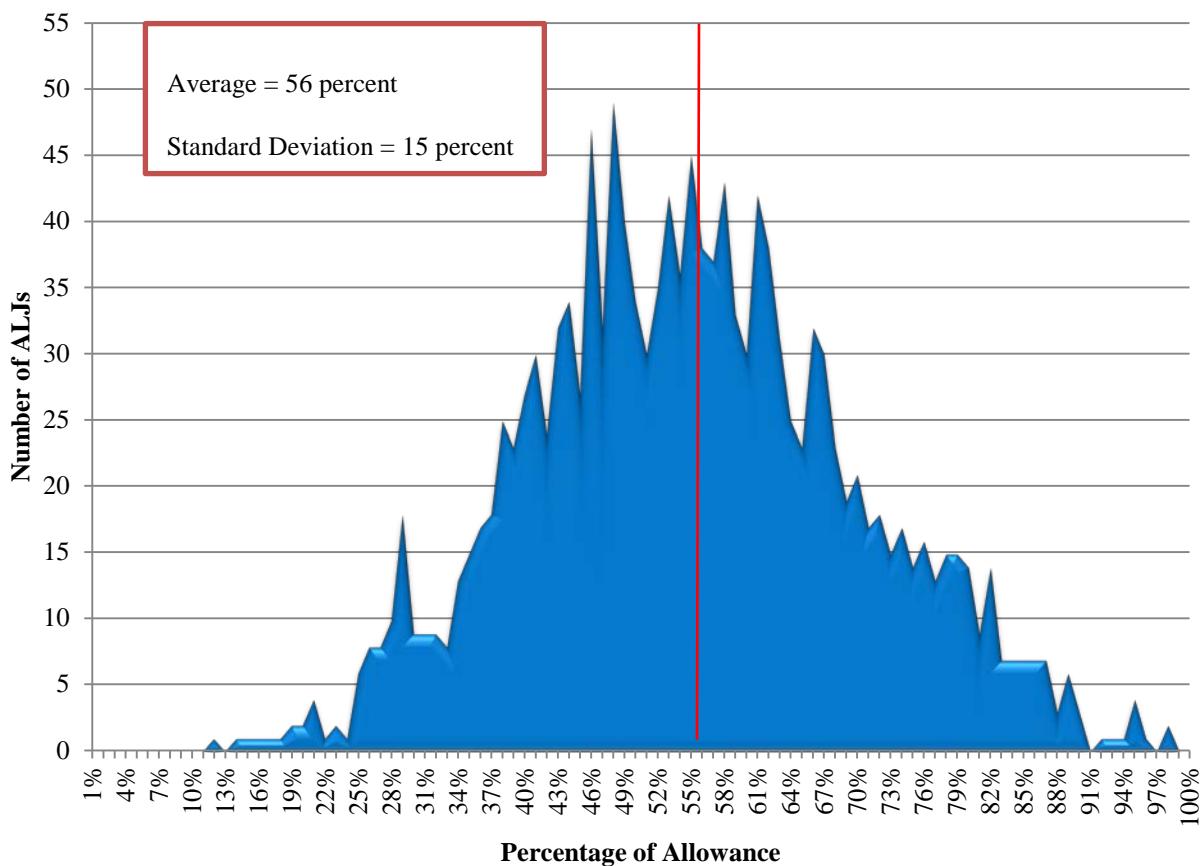
Figure A–1: FY 2010 ALJ Decisional Allowance Rates
(Relates to 1,256 ALJs with at least 200 dispositions)



Among the 1,477 ALJs with 200 or more dispositions in FY 2013, the average decisional allowance rate was about 56 percent. ALJ allowance rates ranged from a low of 12 percent to a high of 98 percent (see Figure A–2).

¹ We excluded ALJs who had fewer than 200 dispositions to exclude ALJs who may have been 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.

Figure A–2: FY 2013 ALJ Decisional Allowance Rates(Relates to 1,477 ALJs with at least 200 dispositions)



Comparing Low-Allowance ALJs with Their Office Peers

The 12 low-allowance ALJs² were in 11 hearing offices in 5 regions. We found the majority of the ALJs in our sample aligned with the allowance rates of other ALJs at their location. For instance, the 11 low-allowance ALJs were in offices where the average allowance rate of other ALJs in the office was below the national average allowance rate. Nonetheless, we still identified large variances within the same hearing office. For instance, one Dallas Region hearing office had one ALJ with a 9-percent allowance rate and another with a 95-percent allowance rate—an 86-percent variance.

² For more information on our analysis of outlier ALJs, see our *Congressional Response Report, Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138), February 14, 2012.

One low-allowance ALJ stated that allowance rates may vary in part because there is a lot of discretion involved with decision-making; different geographic areas have different disabilities and education levels, and some judges may travel more to a particular area than other judges. A different low-allowance ALJ stated that the personal views of judges and the credibility of the evidence and the claimant are the two biggest factors affecting case outcomes. He also mentioned that ALJs view subjective factors such as pain or mental illness differently.

We also found an alignment between productivity and allowance rates. For instance, among the low-allowance ALJs, 8 (67 percent) of the 12 decided fewer cases than the average of their peers. This alignment between productivity and allowance rates is consistent with our earlier findings.³

³ Our August 2008 report, *Congressional Response Report: Administrative Law Judges and Hearing Office Performance* (A-07-08-28094), stated that higher-producing ALJs had higher favorable rates than lower-producing ALJs.

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals and Litigation Law Manual.
- Reviewed prior reports and studies conducted by SSA's Office of the Inspector General, ODAR, and Office of Quality Review.
- Reviewed Agency Management Information reports related to administrative law judge (ALJ) workload performance, including *How MI Doing?* and the early monitoring system.
- Analyzed ODAR's Case Processing and Management System closed cases for Fiscal Years (FY) 2008 to 2013 and compared the FY 2010 denied cases to information in the Office of Appellate Operation's Appeals Review Processing System to identify trends related to ALJ decisions and subsequent appellate activities. Specifically, we identified the outcomes on denied cases by all ALJs to determine the rates at which they were appealed and later remanded or reversed by the Appeals Council. In each case, we focused on ALJs with at least 200 dispositions to ensure a valid comparison between the 12 low-allowance ALJs and all ALJs nationwide.¹ In terms of the reversal and remand rates among all ALJs, we limited our review to ALJs with 50 or more appeals to ensure we focused on ALJ workloads similar to that of 12 low-allowance ALJs while also being a sufficient volume to allow us to calculate a more meaningful reversal rate.
- Interviewed managers and staff at ODAR's headquarters to discuss case processing, feedback to ALJs, and management's monitoring of ALJ and Appeals Council workload trends.
- Sent a questionnaire to managers at 11 hearing offices where the 12 low-allowance ALJs were located in FY 2010 to determine the extent they used management information reports to track subsequent appellate actions.
- Discussed our findings with ODAR staff and management.

We found that the Case Processing and Management System and Appeals Review Processing System data were sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this performance audit from June through December 2013 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.

¹ We used this methodology in our earlier audit, *Congressional Response Report: Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138), February 2012.

Appendix C – SUBSEQUENT ACTIONS ON TITLE XVI DENIALS FOR LOW-ALLOWANCE ADMINISTRATIVE LAW JUDGES (FISCAL YEAR 2010)

Claimants can apply for Title II and XVI benefits concurrently. We reviewed the Title II and XVI cases separately to understand the subsequent actions associated with each program. In the body of our report, we focused on Title II cases for purposes of conciseness. We found less outlier behavior for the 12 low-allowance ALJs in the Appeals Council (AC) review of their Title XVI denials.

Title XVI AC Appeal Rates

Eleven of the 12 low-allowance ALJs had their FY 2010 Title XVI denials appealed at higher rates than the national average of 64 percent.¹ The average appeal rate for all 12 ALJs was 73 percent.² Two ALJs had at least 80 percent of their denials appealed to the AC, with the highest rate among the 12 ALJs being 84 percent. Within their own hearing offices, 10 of the 12 low-allowance ALJs had Title XVI appeal rates that exceeded the average appeals rate for other ALJs working in the same office.³

Title XVI AC Reversal Rates

We found that 5 of the 12 low-allowance ALJs had AC reversal rates on their Title XVI denials that were at least twice the Title XVI national average of 2 percent.⁴ One ALJ had the highest appellate reversal rate, with 10 percent of cases reversed by the AC. Another ALJ had 6 percent of his cases reversed.⁵ Within their own hearing offices, 11 of the 12 low-allowance ALJs had

¹ The national median in FY 2010 for Title XVI denials was 65 percent. Eleven of the 12 low-allowance ALJs had appeal rates above the national median rate.

² The number of FY 2010 Title XVI denied cases among these 12 low-allowance ALJs ranged from 134 cases to 821 cases. The number of appealed cases related to these denial cases ranged from 79 cases to 540 cases, and the appeal rate ranged from 59 percent to 84 percent.

³ Four of the 12 ALJs had the highest Title XVI appeal rate among the ALJs in their office.

⁴ The number of reversed cases among the 12 low-allowance ALJs ranged from 2 to 16, and the reversal rate ranged from 2 percent to 10 percent. In addition, the national median reversal rate in FY 2010 for Title XVI denials was 2 percent. Ten of the 12 of the low-allowance ALJs had reversal rates above the national median rate.

⁵ We found that 816 ALJs had at least 50 Title XVI appeals on their FY 2010 denials. Eighty-three of the 816 ALJs had reversal rates 4 percent or greater, or twice the national average. We used 50 cases as a cut-off to ensure we focused on ALJ workloads similar to that of 12 low-allowance ALJs while also being a sufficient volume to allow us to calculate a more meaningful reversal rate.

Title XVI reversal rates that exceeded the average reversal rate for the other ALJs working in the same office.⁶

Title XVI AC Remand Rates

We found that 1 of the 12 low-allowance ALJs had an AC remand rate on Title XVI denials that was more than twice the Title XVI national average of 17 percent.⁷ With 49 cases of 129 appeals remanded, this ALJ had the highest remand rate of about 38 percent. The average remand rate for all 12 low-allowance ALJs was about 17 percent, with 7 of the 12 ALJs' remand rates on their Title XVI appeals at or below the national rate.⁸ Within their own hearing offices, 6 of the 12 low-allowance ALJs had Title XVI remand rates that exceeded the average remand rate for the other ALJs working in the same office.⁹

Title XVI Combined AC Agreement Rate

When we reviewed the overall AC agreement rate on the Title XVI cases belonging to the 12 low-allowance ALJs, we found that 7 of the 12 low-allowance ALJs had a combined reversal and remand rate that exceeded the combined national average rate for these same outcomes, or 19 percent of appealed cases.¹⁰ One ALJ had a combined rate of about 42 percent—more than twice the national rate.

⁶ Seven of the 12 low-allowance ALJs had the highest reversal rates among the ALJs in their office.

⁷ We found that 816 ALJs had at least 50 Title XVI appeals on their FY 2010 denials. Of the 816 ALJs, 42 had remand rates 34 percent or higher, or twice the national average. As noted earlier, we used 50 cases as a cutoff to ensure we focused on ALJ workloads similar to that of 12 low-allowance ALJs while also being a sufficient volume to allow us to calculate a more meaningful reversal rate.

⁸ The number of remanded cases among the 12 low-allowance ALJs ranged from 7 to 69, and the reversal rate ranged from 9 to 38 percent. The national median remand rate in FY 2010 for Title XVI denials was 15 percent. Six of the 12 low-allowance ALJs had remand rates above the national median rate.

⁹ One of the 12 low-allowance ALJs had the highest reversal rate among the ALJs in his office.

¹⁰ We provided the average combined reversal and remand rate. The combined national median reversal and remand rate in FY 2010 for Title XVI denials was 17 percent. Eight of the 12 low-allowance ALJs and 429 of the 816 ALJs with at least 50 appeals exceeded the national rate.

Appendix D – TOP 18 CITED REASONS FOR REMAND ON APPEALS COUNCIL REQUEST FOR REVIEW

1. Residual Functional Capacity – mental limitations inadequately evaluated
2. New evidence presented upon administrative appeal/review
3. Mental disorder not adequately considered
4. Treating source – opinion not identified or discussed
5. Claimant credibility – failed to discuss appropriate credibility factors
6. Failure to Appear Dismissal – other
7. Treating source – opinion rejected without adequate articulation
8. Residual Functional Capacity – exertional limitations inadequately evaluated
9. Residual Functional Capacity – non-mental non-exertional limitations inadequately evaluated
10. Obesity impairment not adequately considered
11. Past work was not substantial gainful activity
12. Non-examining source – opinion not identified or discussed
13. Failure to Appear Dismissal – notices sent to wrong address
14. Consultative examiner – opinion not identified or discussed
15. Vocational Expert Not Obtained – mental limitations warrant Vocational Expert evidence
16. Consultative examiner – opinion rejected without adequate articulation
17. Incomplete/inaccurate record – lost/inaudible recording
18. Impairment improperly found “not severe”

Appendix E – AGENCY COMMENTS



MEMORANDUM

Date: June 19, 2014

Refer To: S1J-3

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

From: Katherine Thornton *K. Thornton*
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Subsequent Appellate Actions on Denials Issued by Low Allowance Administrative Law Judges" (A-12-13-13084) - 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,
“SUBSEQUENT APPELLATE ACTIONS ON DENIALS ISSUED BY
LOW-ALLOWANCE ADMINISTRATIVE LAW JUDGES” (A-12-13-13084)**

Recommendation 1

Provide feedback to the administrative law judges (ALJ) on the reasons the Appeals Council (AC) reversed their decisions.

Response

We agree. We do not currently collect reversal data in a way that allows us to report AC decisions back to the ALJs. We will explore the means of collecting this data in order to provide feedback to the ALJs. Depending on systems requirements, we plan to complete this by the end of fiscal year (FY) 2015.

Recommendation 2

Monitor ALJs with high reversal rates so managers can provide feedback and training to ALJs who have above-average reversal rates.

Response

We agree. We will consider how best to extract data from our system to monitor ALJs with high reversal rates. We will also explore the possibility of generating internal reports to monitor reversal rates and provide feedback and training as needed. Depending on systems requirements, we plan to complete this by the end of FY 2015.

Recommendation 3

Monitor ALJ decisions on AC remands to identify outlier behavior that may require additional management attention.

Response

We agree. We will determine possible mechanisms for monitoring the outcomes of ALJ decisions on AC remands. We will then create management strategies based on the data gathered. Depending on systems requirements, we plan to complete this by the end of FY 2015.

Appendix F - MAJOR CONTRIBUTORS

Walter Bayer, Director, Chicago Audit Division

Nicholas Milanek, Audit Manager, Crystal City Audit Office

Parham Price, Auditor-in-Charge

Mary Ann Braycich, Senior Program Analyst

Jaime Bicknell, Intern

Brennan Kraje, Statistician

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