

Audit Report

On-the-Record Favorable Decisions
Processed at Hearing Offices Within
100 Days of Receipt

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: January 21, 2016 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: On-the-Record Favorable Decisions Processed at Hearing Offices Within 100 Days of Receipt (A-12-14-14082)

The attached final report presents the results of the Office of Audit's review. The objectives were to assess the characteristics of fully favorable on-the-record decisions issued by administrative law judges and senior attorney adjudicators within 100 days of receipt at the hearing level.

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



Patrick P. O'Carroll, Jr.

Attachment

On-the-Record Favorable Decisions Processed at Hearing Offices Within 100 Days of Receipt

A-12-14-14082



January 2016

Office of Audit Report Summary

Objective

To assess the characteristics of fully favorable on-the-record (OTR) decisions issued by administrative law judges (ALJ) and senior attorney adjudicators (SAA) within 100 days of receipt at the hearing level.

Background

When an individual applies for disability benefits from the Social Security Administration (SSA), a State disability determination services (DDS) reviews the individual's medical and other related evidence. When the DDS denies a claim, the individual can request a review of the case by an adjudicator at the Agency's Office of Disability Adjudication and Review (ODAR).

While most ODAR cases are decided after a hearing with the claimant, an adjudicator can make an OTR decision when the merits of the case support a decision without a hearing with the claimant. In 2007, the Agency allowed SAs to make favorable OTR decisions on cases, primarily as part of an early screening process of incoming cases at hearing offices.

OTR decisions have become a smaller part of ODAR's dispositions, peaking at about 16 percent of total dispositions in Fiscal Year (FY) 2010 and dropping to approximately 4 percent in FY 2014.

Findings

We reviewed 100 OTR decisions issued in FY 2013 by ALJs and SAs within 100 days of receipt at a hearing office. We determined SAs issued 80 of these OTR decisions, and ALJs issued the remaining 20 decisions.

We found that 50 of the 100 OTR decisions in our sample contained no new medical evidence at the hearings level. These decisions had the following characteristics that may be of interest to Agency managers (some cases overlap into more than 1 category):

- 46 cases where ODAR adjudicators determined the individual had little or no ability to work in the economy;
- 9 cases where medical evidence was posted at the DDS level after a decision had been rendered on the case; and
- 8 cases where ODAR adjudicators noted obesity as a contributing factor in the claimant's impairment, though obesity was not cited at the DDS level.

The treatment of a claimant's ability to work and obesity may relate to differences in approach and related training at the DDS and ODAR. In FY 2008, SSA's Unified Disability Training Workgroup recommended the Agency develop training that follows an individual through the entire disability process. However, the Agency ended the Unified Disability Training effort after creating only one training class.

Recommendations

1. Consider re-establishing the Unified Disability Training Workgroup model to identify and create multi-component training for all disability adjudicators.
2. Consider conducting quality reviews that focus on a sample of cases at each step in the disability process, from the initial to hearings level, to identify any inconsistencies in practices, including factors discussed in our report.

The Agency agreed with our recommendations.

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ABBREVIATIONS

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
DDS	Disability Determination Services
DQ	Division of Quality
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Manual
NAT	National Adjudication Team
NSU	National Screening Unit
ODAR	Office of Disability Adjudication and Review
ODD	Office of Disability Determinations
ODP	Office of Disability Policy
OIG	Office of the Inspector General
OTR	On-the-Record
POMS	Program Operations Manual System
RFC	Residual Functional Capacity
SAA	Senior Attorney Adjudicator
SSA	Social Security Administration
UDT	Unified Disability Training
VSU	Virtual Screening Unit

OBJECTIVE

Our objective was to assess the characteristics of fully favorable on-the-record (OTR) decisions issued by administrative law judges (ALJ) and senior attorney adjudicators (SAA) within 100 days of receipt at the hearing level.

BACKGROUND

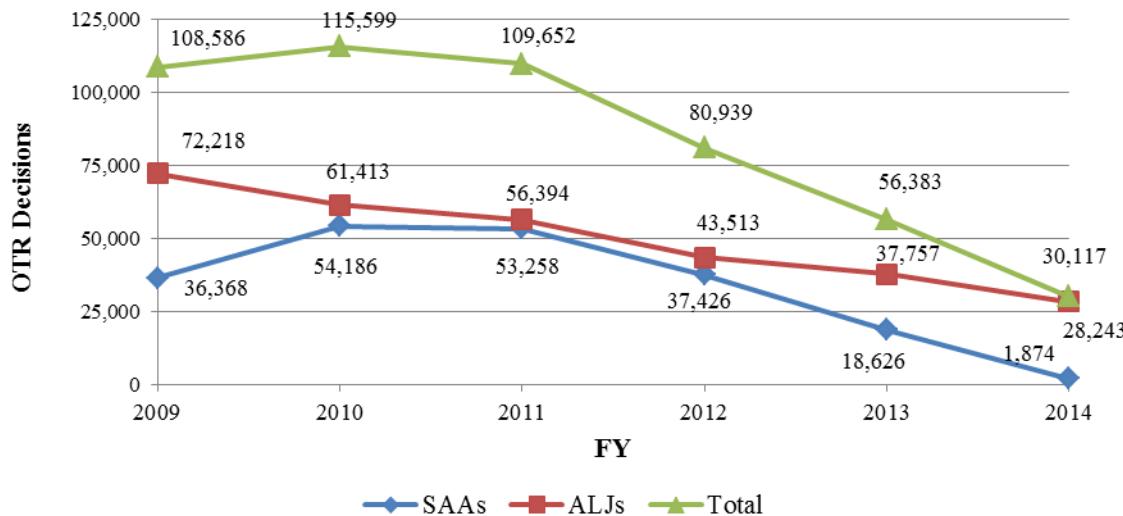
When an individual applies for disability benefits from the Social Security Administration (SSA), a State disability determination services (DDS) reviews the individual's medical and other related evidence. When the DDS denies a claim, the individual can request an adjudicator at the Agency's Office of Disability Adjudication and Review (ODAR) review the case. While most ODAR cases are decided after an ALJ hearing with the claimant, ALJs and SAAs have the authority to issue OTR decisions if the evidence in the hearing record supports a finding in the claimant's favor, based on a preponderance of the evidence, without holding a hearing.¹ ODAR created screening criteria, such as the claimant's age (50 and older) and specific impairments, to help adjudicators identify possible OTR decisions earlier in the process. Adjudicators can also issue OTR decisions for cases involving critical need.² In addition, claimants and their representatives can request the adjudicator issue an OTR decision.

ALJs and SAAs issued approximately 501,000 OTR decisions between FYs 2009 and 2014. However, OTR decisions have become a smaller part of ODAR's workload. OTR decisions as a percent of total dispositions peaked at about 16 percent (approximately 115,600 cases) in FY 2010 and dropped to about 4 percent (about 30,000 cases) in FY 2014 (see Figure 1).

¹ 20 C.F.R. § 404.948(a). In 2007, the Agency began allowing SAAs to issue favorable OTR decisions. *Amendment to the Attorney Advisor Program*, 72 Fed.Reg. § 44763 (August 9, 2007) (to be codified at 20 C.F.R. 404 and 416). Originally, the Agency included a provision to end the program on August 10, 2009. The program has continued since then and was last extended until August 4, 2017.

² ODAR determines a case is "critical" and requires special processing in the following situations: (1) terminal illness, (2) veteran 100-percent permanent and total disability, (3) military casualty/wounded warrior, (4) compassionate allowances, (5) dire need, and (6) potentially violent or suicidal. SSA, HALLEX I-2-1-40—*Critical Cases* (September 19, 2014).

**Figure 1: Trends in OTR Decisions by Adjudicators
(FYs 2009 Through 2014)**



The number of SAA OTR decisions has fallen more rapidly than the number of ALJ OTR decisions. Over the past 6 years, while ALJ OTR decisions have dropped approximately 61 percent since their peak in FY 2009, SAA OTR decisions have dropped about 97 percent since their peak in FY 2010. ODAR managers attributed the overall drop in the number of OTR decisions to changes in the workload as well as the Agency's increased emphasis on quality and additional monitoring of ALJ workloads.³

To meet our objective, we reviewed OTR decisional trends as well as a sample of 100 OTR decisions processed within 100 days of hearing office receipt. We identified case characteristics, including (1) criteria used to identify the case for an OTR, (2) presence of new medical evidence submitted after the DDS review, (3) sequential step used to decide the case, and (4) impairments cited in the DDS denial compared to impairments cited in the OTR decision. In addition, we met with Agency managers as well as staff in the Office of Operations and ODAR to discuss the determination processes at each level. We also discussed training, disability policy, and quality reviews with managers and staff from relevant components.⁴

³ See Appendix A for further discussion on the decline in OTR decisions and changes in the SAA program.

⁴ See Appendix B for more information on our scope and methodology.

RESULTS OF REVIEW

We reviewed 100 OTR decisions issued in FY 2013 by ALJs and SAAs within 100 days of receipt at a hearing office. We determined SAAs issued 80 of these OTR decisions, which is consistent with their role to screen incoming cases.

We found that 50 of the 100 OTR decisions in our sample contained no new medical evidence at the hearings level. The following characteristics may be of interest to Agency managers, including (some cases overlap into more than 1 category):

- 46 cases where ODAR adjudicators determined the individual had little or no ability to work in the economy;
- 9 cases where medical evidence was posted at the DDS level after a decision had been rendered on the case; and
- 8 cases where ODAR adjudicators noted obesity as a contributing factor in the claimant's impairment, though obesity was not cited at the DDS level.

The treatment of a claimant's ability to work and obesity may relate to differences in approach and related training at the DDS and ODAR. In FY 2008, SSA's Unified Disability Training (UDT) Workgroup recommended the Agency develop training using true-to-life scenarios and case-based simulations that follow an individual through the disability process. However, the Agency ended the UDT effort after creating only one training class. We believe greater coordination on training and additional review of decisional differences would assist with more uniform determinations.

Review of OTR Decisions

We reviewed a sample of 100 FY 2013 OTR allowances issued within 100 days of receipt to determine (1) why they were selected for early processing, (2) whether the claimant provided additional medical evidence after the DDS decision, (3) at what step in SSA's 5-step sequential evaluation process⁵ the DDS examiner and ODAR adjudicator made their decision, and (4) what factors that may have contributed to the OTR allowance decision.

⁵ See Appendix C for an explanation of SSA's 5-step sequential evaluation process.

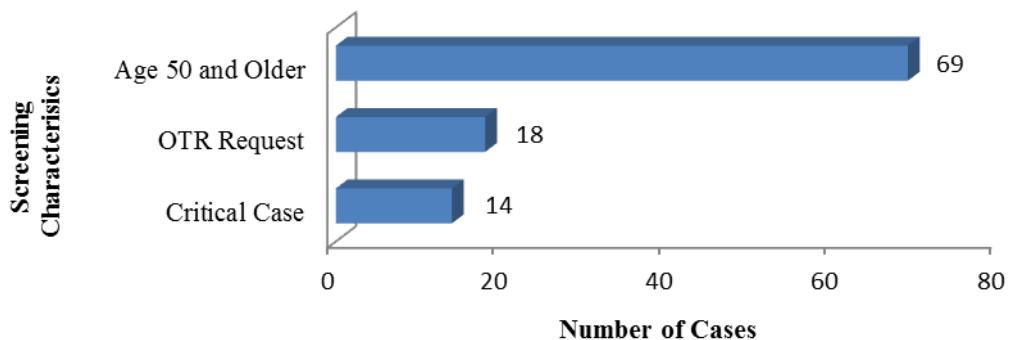
Screening and Selection Criteria

We reviewed 100 sample cases from the approximately 12,700 favorable OTR decisions issued by ODAR adjudicators in FY 2013 within 100 days of receipt into the hearing office.⁶ We found that SAAs issued 80 of these OTR decisions, and ALJs issued the remaining 20.

ALJs and SAAs screened cases as they arrived at the hearing offices to identify potential OTR decisions.⁷ The screening process has changed since FY 2013, with fewer SAAs screening cases and tighter selection criteria as well as greater oversight. In our 100-case OTR sample, we found that 69 were selected under the screening process with the claimant aged 50 and older⁸ and 14 were defined as critical cases (see Figure 2). At the time of our audit, only 21 SAAs were adjudicating cases, and these cases were undergoing quality reviews before being finalized.⁹

We also identified 18 cases where the OTR was requested by the claimant or his/her representative. The remaining seven cases did not fall into the screening criteria, and we did not see evidence of an OTR request.

**Figure 2: Screened OTR Case Characteristics
(100 Sample Cases)**



Note: Cases could have more than one screening criteria. In addition, while 78 claimants were age 50 and older, 69 claims were screened using age as the criteria.

⁶ While ODAR issued approximately 16,000 OTR decisions within 100 days in FY 2013, our sample was limited to 12,673 requests for review that led to allowances and did not include other types of cases, such as remanded and re-opened cases. We identified and removed 649 OTR denials and 412 OTR dismissals among the decisions processed within 100 days. SAAs can only issue OTR allowances, whereas ALJs can issue both OTR allowances and denials.

⁷ On August 14, 2009, ODAR's Division of Workload Management issued a memorandum, *Screening for Targeted Impairments*, that recommending cases be screened for claimants age 50 and older, and targeted impairment codes.

⁸ Grid rules require that DDS examiners and ODAR adjudicators assess a claimant's disability using the claimant's residual functional capacity (RFC), age, education level, and skill level. Individuals aged 50 to 54 are categorized as closely approaching advanced age, and individuals aged 55 and over are categorized as advanced age. The older a claimant is, the more likely he/she will be found disabled under the grid rules.

⁹ See Appendix A for more on the changes to the SAA program.

We also identified 19 cases where claimants obtained a representative for the first time at the hearings level.¹⁰ Our February 2014 audit of claimant representatives at the DDS level¹¹ found that having a representative assisting with claims increases a claimant's chances of obtaining a favorable decision. Conversely, claims without representatives had a lower allowance rate.

Cases with No New Medical Evidence at Hearing Level

In our review of SSA's electronic records, we found 50 sampled OTR cases did not contain new medical evidence at the hearing level, such as a medical evidence of record¹² or a new consultative examination.¹³ As a result, the hearing-level adjudicator allowed the case using the same evidence that was available to the DDS. Upon further review of the 50 cases with no new medical evidence, we found the following characteristics: (1) ODAR adjudicators found claimants had less or no ability to work in the economy, (2) medical evidence was posted at the DDS level after the DDS decision, and (3) ODAR adjudicators gave greater relevance to the claimant's obesity (see Table 1).

Table 1: Evidential Factors Related to the OTR Decision at the Hearing Level with No New Medical Evidence (50 Sample Cases)

Factor	Number of Cases
Claimant's Ability to Work in the Economy	46
DDS Evidence Received after Decision	9
Treatment of Obesity	8

Note: More than one condition could apply to a single claimant.

Claimant's Ability to Work in the Economy

We identified 46 cases¹⁴ where the hearing-level adjudicator determined the claimant was unable to perform work in the economy. Of these 46 cases,¹⁵ we found that DDS examiners denied

¹⁰ Of the remaining 81 cases, 77 claimants already had a representative at the earlier level, and 4 were unrepresented.

¹¹ In our February 2014 report, *Claimant Representatives at the Disability Determination Services Level* (A-01-13-13097), we found that, of the 334,711 allowances in FY 2013, 92 percent of the claimants were represented.

¹² Medical evidence of record is all evidence in the claimant's case record, including relevant evidence in all available prior paper and electronic folders. SSA, POMS, DI 22505.001—*Medical Evidence of Record Policies* (January 14, 2015).

¹³ A consultative examination is a physical or mental examination or test purchased from a medical source, at SSA's request and expense, to provide evidence for a claimant's disability or blindness claim. SSA, POMS, DI 22510.001—*Introduction to Consultative Examinations* (April 8, 2013).

¹⁴ The ODAR adjudicator allowed the other four cases at Step 3 under the criteria of meeting a medical listing.

21 because the claimants were able to perform previous work (Step 4 in the sequential evaluation process) and another 24 because the claimants were able to perform other work in the economy (Step 5).¹⁶ However, in all 46 cases, the hearing-level adjudicators, shortly after the DDS determinations, found the claimants were unable to perform any work in the economy because of debilitating RFC conditions.¹⁷ For example, in one case, the claimant was a 41-year-old woman diagnosed with multiple sclerosis. The DDS determined she was able to perform past relevant work. However, the SAA determined she could not perform any sustained and continuous work because of fatigue and mental limitations. We shared these cases with the Agency for its review.

Medical Evidence Received Late at DDS Level

We found nine cases had medical evidence, such as medical evidence of record and RFC assessments, posted at the DDS level after the DDS examiner had made a determination on the case. For example, in one case, a DDS examiner denied a 27-year-old military casualty/wounded warrior. The claimant had a primary diagnosis of osteoarthritis (physical) at the DDS level, and, on March 4, 2013, the DDS determined he could perform light work in the economy. The DDS examiner also noted that the claimant alleged post-traumatic stress disorder and depression. However, the claimant's primary diagnosis was changed to anxiety-related disorders (mental) at the hearings level, and the ALJ found the claimant disabled based on mental limitations that caused a substantial loss of ability to perform even basic work. The ALJ disagreed with the DDS examiner's earlier medical opinion finding that the claimant had no more than moderate difficulties in performing work. Instead, the ALJ found that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms and limitations preventing work and therefore found the claimant credible. Furthermore, the ALJ found that records received at the DDS level on March 25, 2013 (3 weeks after the DDS decision) from the claimant's treating mental health care providers at the Veterans Affairs Medical Center supported greater limitations than was determined by the DDS.¹⁸ The

¹⁵ Of the 46 cases, we identified 9 where the claimants were disabled under both a different primary diagnosis and underlying body system. For instance, the DDS adjudicator opined on a mental condition whereas the ODAR adjudicator allowed the claimant under a physical condition. In our August 2010 report, *Disability Impairments on Cases Most Frequently Denied by Disability Determination Services and Subsequently Allowed by Administrative Law Judges* (A-07-09-19083), we looked at a similar issue on changes in claimant's impairments.

¹⁶ In the last case, the DDS determined the claimant did not have a disability that met the severity and duration requirements (Step 2 in the sequential disability process).

¹⁷ Ordinarily, RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting 8-hours a day, 5-days a week or an equivalent work schedule. Also, the RFC assessment must include a discussion of the individual's abilities on that basis. ALJ decisions must discuss the relative weight assigned to medical opinions (treating source, non-treating source, and non-examining source). The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved. SSA, Social Security Ruling 96-8p—*Policy Interpretation Ruling Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims* (July 2, 1996).

¹⁸ We identified 252 pages of medical evidence of record from the Veterans Affairs Medical Center in the electronic records at the DDS level that were processed after the DDS decision with a note left in the electronic folder to disregard this medical information.

ALJ noted that the Department of Veteran Affairs found the claimant 100-percent disabled in October 2012.¹⁹ This information, if available before the DDS determination, would have supplied the DDS examiner with additional relevant evidence before finalizing a determination on the case.²⁰

Treatment of Obesity

We identified eight cases at the hearing level where the adjudicators noted obesity as a contributing factor in the claimant's impairment, though DDS examiners did not cite obesity.²¹ SSA considers obesity to be a medically determinable impairment, and adjudicators must consider its effects when evaluating disability.²² SSA policy reminds adjudicators that the combined effects of obesity and other impairments can be greater than the effects of each impairment separately.²³ Policy also instructs adjudicators to consider the effects of obesity under the listings and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's RFC.²⁴ Disability adjudicators will generally rely on the judgment of a physician who has examined the claimant and reported his/her appearance including, build, weight, and height.²⁵ The diagnosis made by a treating source or consultative examination is also acceptable.

In one case, the claimant alleged his diabetes mellitus was debilitating, and stated he could not continue working. He was 58-years-old when he applied for disability and was laid off from his job as a machine operator in an automobile factory. The claimant was 5 feet 10 inches tall and

¹⁹ SSA and VA have different criteria in their disability programs. A claimant's VA compensation rating of 100 percent permanently and totally disabled does not guarantee that the claimant will receive SSA disability benefits. SSA, POMS, EM-15034 C—*Revised Verification and Case Processing Procedures Related to Claimants with a Department of Veterans Affairs (VA) 100% Permanent and Total Disability Compensation Rating - Instructions Will Follow Shortly* (October 6, 2015)

²⁰ In our July 2014 report, *Completeness of the Social Security Administration's Disability Claims Files* (A-01-13-23082), we found that 94 of the 275 hearing cases reviewed contained medical evidence that did not appear in the file at the DDS level, even though it existed at the time. In this case, the DDS had the evidence in its files, but it was uploaded after a decision had been made on the case. A fully documented decision at the DDS level could lead to a more timely allowance for the claimant.

²¹ From our 100-case sample, obesity was cited in 29 ODAR decisions and 16 DDS decisions. While an April 2014 Division of Quality (DQ) study we noted later in this report did not find obesity as a major factor resulting in a favorable hearing decision, the study was not designed to track how obesity contributed to the RFC determination.

²² A 2012 U.S. Senate report recommended that the Office of Appellate Operations train all ALJs regarding adequate articulation in opinions of determinations that involve both obesity and drug and alcohol abuse. Senate Report, *Social Security Disability Programs: Improving the Quality of Benefit Award Decisions*, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, September 13, 2012.

²³ SSA, Social Security Ruling 02-1p—*Titles II and XVI: Evaluation of Obesity* (September 12, 2002).

²⁴ Id.

²⁵ SSA's Office of Learning offers training on the effects of obesity, which is available to disability adjudicators.

weighed 280 pounds with a Body Mass Index of 40.1,²⁶ but the case file at the DDS did not indicate the claimant was obese. The DDS conducted a consultative examination, and the DDS examiner determined the claimant had the capacity to do other work in the economy. Upon appeal, the SAA considered obesity as a contributing factor, along with the claimant's other impairments, and the primary diagnosis was changed to disorder of the back. When evaluating the claimant's condition, the SAA determined that obesity contributed to his lower back condition, and he was unable to perform any work in economy, thus finding the claimant disabled.

ODAR Review of OTR Decisions with No New Medical Evidence

The objective of our review was to provide case characteristics related to 100-day OTR decisions, not to determine the appropriate outcome of the cases. However, DQ in ODAR's Office of Appellate Operations conducted its own study²⁷ on 423 OTR decisions by ODAR adjudicators where no new medical evidence was provided after the DDS determination.²⁸ As part of the April 2014 study, DQ evaluated the decisions based on the preponderance of evidence in the file. DQ found the DDS determination was more supported by the preponderance of the evidence than the hearing decision in about half the cases, and the ODAR decision was more supported than the DDS determination in the remaining half of the cases. DQ noted that hearing-level adjudicators determined the claimants had less ability to work in 89 percent of the OTR decisions issued.²⁹ In addition, DQ found that RFCs formed the focal point of ALJ decisions and the source of many remands.³⁰

²⁶ The National Institutes of Health established medical criteria for the diagnosis of obesity. These guidelines classify overweight and obesity in adults according to Body Mass Index, defined as the ratio of an individual's weight in kilograms to the square of his/her height in meters. A person is considered obese if his/her Body Mass Index is 30 or above, and morbidly obese with a Body Mass Index over 40, representing the greatest risk for developing obesity-related impairments. National Institutes of Health, *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults*, 98-4083, September 1998.

²⁷ SSA DQ, *What Factors Lead to More Favorable Hearing Decisions When No New Medical Evidence is Submitted after the DDS Level* (internal working document), April 2014.

²⁸ DQ's study examined all OTR decisions with no new medical evidence, and not just OTR decisions issued within 100 days of receipt into the hearing office.

²⁹ The Government Accountability Office (GAO) issued a report on SSA's decisionmaking process at both the DDS and hearings level. They found inconsistencies between ALJ and DDS determinations based on differences in assessing RFC. GAO, *SSA Must Hold Itself Accountable for Continued Improvement in Decision-Making*, HEHS-97-102, August 1997.

³⁰ ODAR's Appeals Council similarly found that the top five causes for remands under the FY 2011 pre-effectuation review of favorable ALJ decisions related to issues with an RFC assessment. In October 2011, ODAR implemented mandatory ALJ continuing education through its Continuing Education Program. The AC and the Office of the Chief ALJ collaborated in the development and production of this ongoing series of quarterly video training products that incorporate opportunities for the submission of questions, as well as providing an on-demand resource on topics that are a high risk for remand. SSA, Appeals Council, *Findings from the First Three Years of Random Sample Case Reviews*, December 2014.

Training at DDS and ODAR Levels

DDS and ODAR training can emphasize different aspects of the disability process, which could lead to different approaches in decisions on cases, such as the case discussed earlier regarding the role of obesity.³¹ Office of Disability Policy (ODP) managers told us they reviewed the majority of training for DDS examiners and ODAR adjudicators to ensure it complied with Agency policy. In addition, ODP used a team of medical consultant contractors who provided training on body systems to both DDS and ODAR to ensure a consistent message across the Agency. The Agency also established a Training Advisory Committee in 2010 to identify DDS training needs and provide needed training material. The Committee comprises members from the DDSs, Regional Offices, ODD, ODP, and the Offices of Central Operations and Learning.

Most training is developed and delivered by the components with a focus on component-specific issues. As a result, some components may develop more training than others, and that training may have greater emphasis on particular policy or procedural points to address specific needs. Within ODAR, while SSA policy training is consistent, new hires and existing employees receive programmatic training specific to their job functions. Additional training includes a standard course of supplemental ALJ training approximately 1 year after their appointment, quarterly training through ODAR's Continuing Education Program,³² and desktop training programs.³³

According to ODD management, training of DDS employees may vary because DDS offices are State-run and are responsible for their own training. DDS offices supplement Agency-provided training by developing their own training based on Office of Quality Review feedback on quality reviews performed on DDS determinations.³⁴ While ODD oversees DDS training, one ODD manager noted it was difficult to monitor the level of training received by staff because of differences between States and the high attrition rate for DDS examiners.³⁵

³¹ In our March 2012 report, *Training at Offices that Make Disability Determinations* (A-01-11-21169), we noted that “. . . several offices created materials for the same training topics.... Thus, SSA was funding these duplicative efforts.” We recommended the Agency promote communication among offices that make disability determinations to minimize duplicative efforts. The Agency agreed with this recommendation.

³² ODAR’s Continuing Education Program training, which is mandatory for ALJs and decision writers, started in January 2012 and covers common decisional issues, such as RFC, evaluating medical evidence, and assessing credibility. Classes are recorded and later available online through Video-on-Demand.

³³ ODAR noted that desktop training courses have covered topics such as fee agreements, video hearings, and the electronic Bench Book.

³⁴ The Office of Quality Review conducts pre-effectuation reviews on 50 percent of allowances for Title II and concurrent and Title XVI adult cases. They also perform targeted denial reviews on approximately 50,000 cases per year. Office of Quality Review managers told us that these targeted denial reviews are performed on the most error-prone cases.

³⁵ According to ODD, the DDS attrition rate was 13.6 percent in FY 2014.

ODD also started facilitating regional meetings between DDS and ODAR employees in the Kansas City and Denver Regions.³⁶ According to a regional manager, the first meeting provided an opportunity to discuss and address regional issues, share best practices, and clarify variances in policies. As a result of this meeting, ODAR may institute refresher training on what to expect from a consultative examination based on DDS guidelines. We believe greater oversight of existing component training, as well as more joint-component training, could help create a uniform approach to disability determinations.

In prior years, the Agency attempted greater inter-component coordination and training. For example, a 2008 report by the Agency's UDT Workgroup recommended the establishment of a cross-component national training cadre to address training development and delivery.³⁷ The UDT issued a report on *Substantial Gainful Activity as it Relates to Past Relevant Work*, and it was made available on SSA's Office of Learning Website. The UDT Workgroup recommended the Agency develop training using true-to-life scenarios and case-based simulations following an individual through the entire disability process. However, Agency managers told us that the UDT effort led to only one course and the UDT Workgroup no longer exists.

CONCLUSIONS

Overall, OTR decisions have become a smaller part of ODAR's dispositions, decreasing by 74 percent from FYs 2010 to 2014. Moreover, SAA OTR decisions, which represented most of the sample cases, decreased at a faster pace over this period because of increasing centralization to address quality issues. By FY 2014, ALJs made about 94 percent of all OTR decisions.³⁸ We focused our review on 50 percent of the sample OTR decisions from FY 2013 containing no new medical evidence because these cases appeared to raise more questions. We identified a number of characteristics related to these cases that may have contributed to a different decision on claimant cases. This includes the following: (1) ODAR adjudicators found that the individual had little or no ability to work in the economy, (2) initial medical evidence uploaded into the electronic folder after the DDS decision, and (3) ODAR adjudicators placed greater emphasis on obesity. ODAR had taken steps to address the first issue. Moreover, we found that the differences in adjudicatory practices could relate, in part, to training emphasis provided to each component. ODAR's own study of OTR decisions found inconsistencies in practices at the DDS and ODAR levels. While the DDS and ODAR appear to be aware of their own training needs based on their own quality reviews, this "stovepipe" approach misses opportunities to improve the process across components, and thereby, create a more consistent and timely process for

³⁶ Meeting participants included regional executive management, Hearing Office Chief ALJs from the regions, representatives from ODD, ODP, Office of the Chief ALJ, the Office of Quality Improvement, and regional DDS administrators. Similar training is planned for all regions.

³⁷ The UDT Workgroup included members from ODAR, ODD, ODP, Office of Learning, Office of Quality Performance, and the Office of Public Service and Operations Support.

³⁸ In our June 2013 report, *Effects of the Senior Attorney Adjudicator Program on Hearing Workloads* (A-12-13-23002), we recommended that SAA and ALJ OTR decisions be reviewed under similar criteria.

disability claimants. Enhanced coordination between the components, as well as related inter-component quality reviews, would help the Agency identify and resolve problem areas, and ultimately, ensure a more uniform disability process.

RECOMMENDATIONS

To improve decision making and adjudicator oversight, we recommend the Agency:

1. Consider re-establishing the UDT Workgroup model to identify and create multi-component training for all disability adjudicators.
2. Consider conducting quality reviews that focus on a sample of cases at each step in the disability process, from the initial to hearings level, to identify any inconsistencies in practices, including factors discussed in our report.

AGENCY COMMENTS

The Agency agreed with our recommendations (see Appendix D).

A handwritten signature in black ink, appearing to read "Steven L. Schaeffer".

Steven L. Schaeffer, JD, CPA, CGFM, CGMA
Assistant Inspector General for Audit

APPENDICES

Appendix A – DECLINE IN ON-THE-RECORD DECISIONS

Office of Disability Adjudication and Review (ODAR) managers attributed the overall drop in the number of on-the-record (OTR) decisions to changes in the workload as well as the Agency's increased emphasis on quality and additional monitoring of administrative law judge (ALJ) workloads. For instance, in early years, Agency managers stated OTR decisions were more likely with older cases where a substantial amount of time had passed since the DDS decision, which often led to the addition of new evidence and/or the deterioration of the claimant's condition.¹ Towards the end of Fiscal Year 2007, ODAR implemented the Senior Attorney Adjudicator (SAA) program to address its older pending hearing workloads with a renewed focus on aged cases. Since that time, average processing time started to improve,² and the *Aged Case Initiative* continued to reduce the oldest cases in the backlog.³ In addition, ODAR's increased focus on quality decisions, including allowances now subject to more pre- and post-effectuation reviews, has led to a reduction in the number of OTR decisions by ALJs, as well as the number of SAAs performing adjudication duties. Moreover, those OTR decisions SAAs do issue are subject to greater quality review, as we discuss below.

The SAA program was designed to provide additional adjudication capacity by allowing SAAs to issue fully favorable OTR decisions. During FYs 2008 through 2013, over 600 SAAs issued about 200,000 OTR decisions.⁴ However, Agency's review of SAA decisions began to reveal quality concerns.⁵ Consequently, beginning in FY 2014, ODAR started placing tighter restrictions on the SAA program (see Figure A-1). In November 2013, ODAR created the National Screening Unit (NSU) pilot where a staff of six SAAs selected cases with the highest probability for potential OTR decisions and distributed them to SAAs nationwide.⁶ Under the NSU, SAAs were allowed to issue OTR decisions but under stricter criteria.⁷ Because of these

¹ This condition does not apply to the cases reviewed in this report since the decisions were issued within 100 days of receipt by hearing offices.

² However, as noted in our September 2015 Informational Report, *Hearing office Average Processing Times* (A-05-15-50083), average processing time has worsened in recent years.

³ SSA, Office of the Inspector General (OIG), *Aged Claims at the Hearing Level* (A-12-08-18071), September 2009.

⁴ In our June 2013 report, *Effects of the Senior Attorney Adjudicator Program on Hearing Workloads* (A-12-13-23002), we recommended that SSA evaluate the benefits of conducting focused quality reviews on ALJ and SAA OTR decisions using a consistent set of criteria so results are comparable, common OTR issues could be identified, and appropriate training developed.

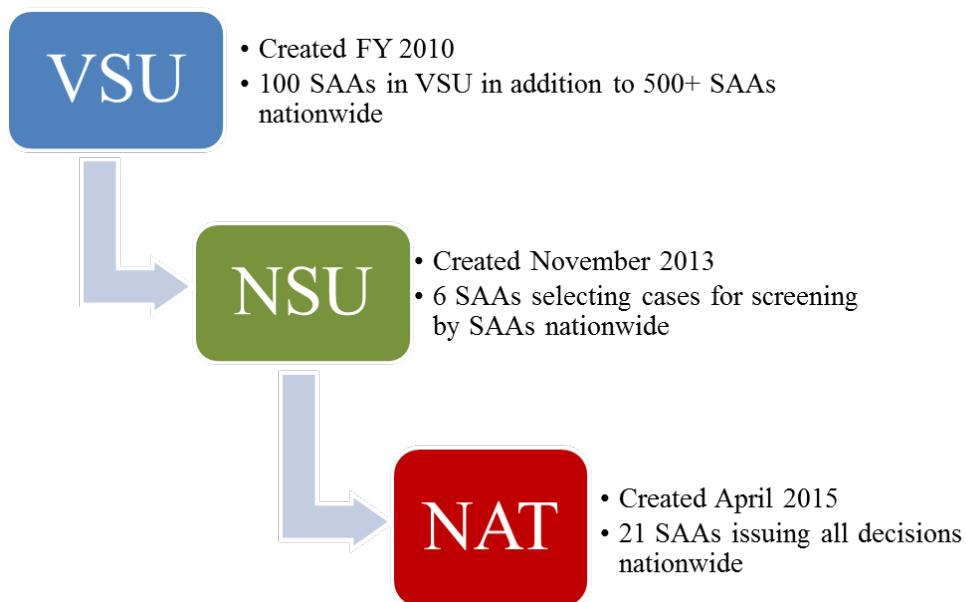
⁵ SSA, Office of Quality Performance, *Review of Senior Attorney Advisor Disability Decisions: Midyear 2012*, December 2012. The Office of Quality Performance later became the Office of Quality Review.

⁶ SAA efforts have been partially centralized in earlier periods. In FY 2010, ODAR centralized some of the SAA activities in a Virtual Screening Unit (VSU).

⁷ For instance, SAAs could only issue a favorable decision if a case met or medically equaled (based on medical expert evidence) a medical listing (Step 3 of the sequential evaluation process), or the decision relied on direct application of the medical-vocational guidelines (Step 5), also called the "grid" rules. See Appendix C for more information on the Social Security Administration's 5-step sequential evaluation process.

restrictions, cases with physical/exertional limitations were targeted in the NSU, while cases that have more difficult issues to assess, such as mental impairments and non-exertional limitations, were largely avoided. ODAR further centralized the SAA program in April 2015 with the National Adjudication Team (NAT) pilot, limiting adjudication duties to only 21 SAAs nationwide. SAAs in the NAT could issue both Step-3 and Step-5 decisions with fewer restrictions than the NSU. As part of the pilot, NAT members and in-line quality staff in the Philadelphia Region reviewed many SAA decisions before their effectuation to ensure they met quality standards.⁸

Figure A-1: Transition of the SAA Program



Because of tighter quality controls, SAAs issued only 1,874 OTR decisions in FY 2014 and another 607 OTR decisions in FY 2015. SAAs issued 198 OTR decisions under the NAT pilot in FY 2015. ODAR managers expected to evaluate the results of the pilot by the end of Calendar Year 2015.

⁸ SSA, ODAR Chief Judge Bulletin 15-02 – *National Adjudication Team Implementation Instructions*, June 29, 2015.

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed the Social Security Administration’s (SSA) policies and procedures; Hearings, Appeals and Litigation Manual; and Program Operations Manual System guidelines relevant to processing disability claims.
- Reviewed previous Office of the Inspector General reports, relevant SSA studies, and Government Accountability Office reports.
- Obtained data and reviewed trends for on-the-record (OTR) decisions during Fiscal Years (FY) 2007 to 2015.
- Reviewed changes to the Senior Attorney Adjudicator (SAA) program since implementation in FY 2007 and trends in SAA OTR decisions. We interviewed managers and staff in the Office of Disability Adjudication and Review (ODAR) to learn about the national SSA screening efforts.
- Obtained and reviewed ODAR Case Processing and Management System closed claims data for FYs 2013 and 2014 for favorable OTR decisions processed by hearing offices within 100 days. We focused on cases with new requests for hearings. We analyzed a random sample of 100 OTR decisions, identifying the (1) criteria used to identify the case for an OTR, (2) presence of new medical evidence submitted after the disability determination services (DDS) review, (3) sequential step used to decide the case, and (4) impairments cited in the DDS denial compared to impairments cited in the OTR decision.
- Interviewed managers and staff in ODAR’s Offices of Appellate Operations, Quality Review, and Chief Administrative Law Judge to discuss quality reviews performed on hearing-level decisions. We also interviewed management in the Disability Quality Review Branch to learn about quality reviews performed on DDS decisions. We interviewed managers and staff in ODAR and the Offices of Operations, Learning, and Disability Policy to learn about training offered to DDS examiners and hearing-level adjudicators.
- Shared our sample cases with ODAR and the Office of Operations to obtain their feedback.

We found the CPMS data in SSA’s systems were sufficiently reliable to meet our objectives. The entity audited was the Office of the Deputy Commissioner of Disability Adjudication and Review. We conducted this performance audit from February through August 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C – 5-STEP SEQUENTIAL EVALUATION PROCESS

The Social Security Administration (SSA) applies a 5-step sequential evaluation process for determining whether an individual is disabled.¹ Adjudicators at all levels use the five-step sequential evaluation process to make disability determinations for both the Disability Insurance and Supplemental Security Income programs.

The five steps of the sequential process are as follows.

Step 1- Is the Claimant Engaging in Substantial Gainful Activity?

SSA considers a claimant's work activity, if any. If a claimant is doing substantial gainful activity,² SSA will find the claimant not disabled regardless of the claimant's medical condition, age, education, and work experience. If the claimant is not doing substantial gainful activity, the process moves to the next step.

Step 2 - Does the Claimant Have a Severe Medical Impairment?

SSA considers the medical severity of a claimant's impairment(s). If the claimant does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the Agency will find that a claimant is not disabled.³ If the claimant meets these criteria, the process moves to the next step.

¹ 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4).

² Substantial gainful activity means work that involves doing significant and productive physical or mental duties for pay or profit. 20 C.F.R. §§ 404.1510 and 416.910; 20 C.F.R. §§ 404.1572, and 416.972. In Calendar Year 2014, employees' "countable earnings" indicate substantial gainful activity, and self-employed individuals' "countable income" is "substantial" if the amount averages more than \$1,070 per month for non-blind individuals or \$1,800 for blind individuals. SSA, POMS, DI 10501.015—*Tables of Substantial Gainful Activity Earnings Guidelines and Effective Dates Based on Year of Work Activity* (October 24, 2014).

³ The claimant must have a severe impairment. If a claimant does not have any impairment or combination of impairments that significantly limits his/her physical or mental ability to do basic work activities, the Agency will find that the claimant does not have a severe impairment and is, therefore, not disabled. SSA will not consider a claimant's age, education, and work experience at this step. However, it is possible for a claimant to have a period of disability for a time in the past even though he or she does not currently have a severe impairment.

Step 3 - Does the Severity of the Claimant's Impairment Meet or Equal the Listings?

SSA again considers the medical severity of a claimant's impairment(s). If the claimant has an impairment(s) that meets or equals⁴ one of the Agency's *Listing of Impairments*⁵ and meets the duration requirement,⁶ SSA will find that the claimant is disabled.⁷ If the claimant does not meet these criteria, the process moves to the next step.

Step 4 - Can the Claimant Perform Past Relevant Work?

SSA considers its assessment of the claimant's residual functional capacity (RFC) and the claimant's past relevant work.⁸ If the claimant can still do his or her past relevant work, SSA will find that the claimant is not disabled. If the claimant does not meet this criterion, the process moves to the next step.

Step 5 - Can the Claimant Perform Any Work in the National Economy?

In the final step, SSA considers its assessment of the claimant's RFC, age, education, and work experience to determine whether the claimant can adjust to other work. If the claimant can adjust to other work, the Agency will find that the claimant is not disabled. If the claimant cannot adjust to other work, SSA will find that the claimant is disabled.

SSA uses the medical-vocational guidelines (grids) in this step. If the claimant's RFC and vocational factors (age, education, and work experience) coincide with all the criteria of a particular rule in the grid, then that rule directs a conclusion as to whether the individual is or is

⁴ SSA, POMS, DI 28090.040—*Rationale Content – Meets or Equals* (August 26, 2015).

⁵ The *Listing of Impairments* describes, for each major body system, impairments considered severe enough to prevent an individual from doing any gainful activity (or in the case of children under age 18 applying for Supplemental Security Income, severe enough to cause marked and severe functional limitations).

⁶ Unless the impairment is expected to result in death, it must have lasted, or must be expected to last, for a continuous period of at least 12 months.

⁷ If the claimant has an impairment(s) that meets the duration requirement and is listed in the Agency's *Listing of Impairments* or is equal to a listed impairment(s), the Agency will find the claimant disabled without considering his or her age, education, and work experience.

⁸ If a claimant's impairment(s) does not meet or equal the Agency's *Listing of Impairments*, SSA will assess and make a finding about the claimant's RFC based on all the relevant medical and other evidence in the claimant's case record. In the fourth step, SSA will compare the RFC assessment with the physical and mental demands of the claimant's past relevant work.

not disabled. If a rule's criteria are not precisely met, the grids do not direct a conclusion, and the grids are used as a framework for a determination or decision.⁹

The grids use the following factors:

- the claimant's RFC,
- the claimant's age,
- the claimant's educational level,
- the skill level of the claimant's past relevant work, and
- whether the claimant gained any skills from past relevant work that can be used in a different job.

⁹ In framework cases, adjudicators consider the grid rules that most closely fit the claimant's RFC along with the claimant's age, education, and past work experience.

Appendix D – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: December 28, 2015 Refer To: S1J-3

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

From: Frank Cristaudo /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, “On-the-Record Favorable Decisions Processed at Hearing Offices Within 100 Days of Receipt” (A-12-14-14082) -- 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,
“ON-THE-RECORD FAVORABLE DECISIONS PROCESSED AT HEARING OFFICES
WITHIN 100 DAYS OF RECEIPT” (A-12-14-14082)**

General Comments

We take seriously our responsibility to effectively, efficiently, and accurately administer our programs in accordance with our policies. We disagree with your characterization that the Office of Disability Adjudication and Review (ODAR) and the Office of Disability Determinations (ODD) develop training based on their individual needs using a “stovepipe” approach. Our Office of Retirement and Disability Policy (ORDP) develops training materials that are available to all components through the Disability Examiner Basic Training Program (DEBTP) and through the Disability Evaluation Training webpage. Further, ORDP reviews training materials prepared by ODAR to ensure consistency with agency policy.

Multi-component training often has great value. We note that many of the differences presented in the report between training materials for Disability Determination Services (DDS) and at ODAR employees are due to the differences in their business processes. Our Unified Disability Training (UDT) pilot highlighted the need to account for how policy is applied in real-world situations and in an operationally feasible manner in specific components.

Recommendation 1

Consider re-establishing the UDT workgroup model to identify and create multi-component training for all disability adjudicators.

Response

We agree. We initiated a cross-component workgroup similar to the UDT model to ensure consistent policy for all components at all adjudicative levels. We implemented a more unified application of policy training. In addition, we are updating the DEBTP, which will assist with the current training needs in the DDS offices. We have various workgroup activities that have involved cross-component collaboration, such as:

- The Medical Listing Workgroup
- The Failure to Cooperate Workgroup
- Opinion Evidence/Acceptable Medical Source Workgroup
- Symptom Evaluation and Credibility Assessment Workgroup
- Inability to Sustain Workgroup
- Borderline Age Workgroup
- Disability Training Cadre (includes staff members from the Office of Learning, ORDP, ODAR, DDS, Office of Quality Review, and Office of Operations).

Recommendation 2

Consider conducting quality reviews that focus on a sample of cases at each step in the disability process, from the initial to hearings level, to identify any inconsistencies in the practices, including factors discussed in our report.

Response

We agree. We are in the planning stages of conducting a study of ALJ reversals of DDS determinations in the second quarter of fiscal year 2016. Once the study is completed and the results reviewed, if inconsistencies in policy are identified, we will address them.

In addition to this study, the DDS offices have internal quality assurance checks in place; the Disability Quality Branch has external reviews. Additionally, using the Request for Program Consultation (RPC) and the Policy Feedback System (PFS) to identify DDS quality trends and training needs, we work with the DDS offices to resolve quality issues and update training. Finally, we recently launched a new project using advanced quality trend analytics, which relies on PFS, RPC, the Office of Quality Review Dashboard and other quality data tools. We will share proactive quality measures and guidance on policy areas with the Regions and DDS offices.

Appendix E – ACKNOWLEDGMENTS

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