
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**USE OF MENTAL CONSULTATIVE
EXAMINATIONS BY THE
WISCONSIN DISABILITY
DETERMINATION BUREAU**

August 2003 A-01-03-23090

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: August 22, 2003

Refer To:

To: James F. Martin
Regional Commissioner
Chicago

From: Assistant Inspector General
for Audit

Subject: Use of Mental Consultative Examinations by the Wisconsin Disability Determination Bureau (A-01-03-23090)

Our objective was to determine whether the Wisconsin Disability Determination Bureau (DDB) properly used mental consultative examinations (CE) in determining disability for Social Security beneficiaries.

BACKGROUND

On February 18, 2003, Senator Russell D. Feingold issued a letter to the Social Security Administration's (SSA) Inspector General requesting that the Office of the Inspector General (OIG) review the DDB. In addition to this letter, the Senator provided us a package of information detailing an allegation against the DDB. Senator Feingold requested we determine what measures the DDB instituted regarding a complaint of racial discrimination made by his constituent. In response to the Senator's request, we conducted a review to determine whether the Wisconsin DDB properly used mental CEs in determining disability for Social Security claimants.

In evaluating a mental disorder as a basis for disability benefits, SSA requires evidence to establish both the existence of a medically determinable mental impairment and the degree of limitation caused by the impairment. The existence of a medically determinable impairment must be established by medical evidence consisting of signs, symptoms, and/or laboratory or psychological test findings. Such evidence is typically provided by the individual's treating sources or by purchasing a CE. The CE report is used in combination with all other evidence in the case file to determine the existence and severity of any mental impairment(s) and whether the claim should be allowed. (See Appendix B for more information on CEs.)

In December 2000, Senator Feingold's constituent wrote to the Director of the Wisconsin Office of Affirmative Action and Civil Rights Compliance (AA/CRC) filing a civil rights complaint in which he requested a full and independent investigation of racial discrimination by the DDB. The constituent stated the DDB had selected a specific

named psychologist (and perhaps a second psychologist) to evaluate cases in which malingering¹ was suspected. The constituent also stated, “It was clear to me that both [the named psychologist] and the DDB knew that only pre-selected ‘malingering’ cases were being sent to [the named psychologist].” The constituent also stated

To adjudicators from other offices who do not know how they [the named psychologist’s CE reports] were obtained, these reports appear to be reasonable determinations of attempted fraud, fakery, lack of effort, or malingering. They [the named psychologist’s CE reports] are routinely used by the DDB to deny claims. The SSA Office of Hearing and Appeals, where they [the named psychologist’s CE reports] are used to deny claims upon appeal, also accepts them [the name psychologist’s CE reports] as valid.

AA/CRC referred this allegation to the DDB for analysis. We requested that the DDB provide us with all data it used to determine the allegation’s validity.

SCOPE AND METHODOLOGY

To meet our objective, we:

- reviewed applicable sections of SSA’s policies and procedures;
- reviewed data provided by the DDB and SSA’s Chicago Regional Office staff;
- visited the DDB to discuss work performed regarding the allegation of racial discrimination; and
- met with staff from SSA’s Chicago Regional Office and AA/CRC to discuss their oversight role in assessing the allegation.

We performed our audit at the Wisconsin DDB in Madison, Wisconsin; at SSA’s Regional Office in Chicago, Illinois; and in Boston, Massachusetts, between March and June 2003. The entities audited were the Wisconsin DDB and SSA’s Chicago Regional Office. We conducted our review in accordance with generally accepted government auditing standards.

RESULTS OF REVIEW

To address Senator Feingold’s request that we give full and fair consideration to his constituent’s concerns, we reviewed the actions the DDB took after receiving the allegation. DDB staff informed us that, since it does not require racial information for disability applicants, the DDB did not assess the racial issues alleged by Senator

¹ *The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, 2000* defines malingering as a term used for individuals who intentionally pretend to have symptoms of mental or physical illness to achieve financial or other gain or to avoid criminal conviction or unwanted duty.

Feingold's constituent. Both SSA and the AA/CRC informed us that, since the DDB did not find any basis for the discrimination allegation, both Agencies considered this allegation to be closed. As a result, we cannot draw any conclusions on the merits of the allegation at this time.

Neither SSA nor AA/CRC did independent analysis regarding this allegation—the DDB conducted all analysis performed. SSA advised us that its Regional Office was involved in determining the necessary steps to be taken to respond to the complaint and worked closely with its Regional Office of General Counsel. Further, based on advice provided by Counsel, the SSA Regional Office assumed an advisory role since the complaint was addressed to State entities.

According to DDB and SSA staff, the changes to the DDB's policies and practices (random selection of CE vendors, training vendors on malingering issues, and reviews of CE vendor outliers) were not implemented to address any particular practices or shortcomings on the part of specific CE vendors but were to reduce the potential for discrimination in its CE process.

In June 2001, DDB quality assurance staff reviewed 26 of the named psychologist's and 41 of a second psychologist's CE reports from the prior 6 months and determined that, in all cases, the DDB had made the correct disability decision. However, quality assurance staff determined that four of the named psychologist's reports had comments that appeared to be "less than objective" reporting. (Two cases were allowances/continuances, and two cases were denials/cessations.) In one of the four cases reviewed, a CE vendor review sheet completed by a DDB medical consultant raised further serious questions concerning the named psychologist. The review sheet included the following: "[the named psychologist]...appears to often assume the worst and she is a bit over suspicious. Has a bit of a vigilante attitude. I routinely take her comments w/ [with] a grain of salt."

The DDB completed a *Statistical Study and Analyses of Consultative Examinations Calendar Year 2000* that involved all cases in which a mental impairment was primary and the named psychologist or the second psychologist performed the CEs (the named psychologist performed approximately 197 CEs, and the second psychologist performed approximately 1,003 CEs in Calendar Year 2000). This study found that where these two psychologists performed CEs, DDB allowance rates were consistently lower than when their peers performed the CEs. For some categories, cases for which they performed CEs were two to four times more likely to be denied compared to their peers.

However, the lower allowance rates for the two specific CE providers were not conclusive in indicating a problem because the DDB was allowing the two doctors to be selected for CEs in cases suspected of malingering. For the period October 1999 through July 2000, the named psychologist was specifically requested to perform the CE in 146 of 240 exams (61 percent) scheduled with her, and the second psychologist was specifically requested in 365 of 1,289 exams (28 percent) scheduled with him.

While it is true the DDB did not obtain racial information on all disability applicants, racial information is available from other sources. For example, racial information can be included in CE reports or it can be obtained directly from the claimants. The DDB's protocol for wording psychological reports states "Be consistent across reports in reporting race; do not report it only for minorities. If in doubt about a person's race or what are currently, locally or personally acceptable terms, ask."² After reviewing the 10 CE reports the constituent provided Senator Feingold, we noted that the named psychologist records the race of applicants in her CE reports. We informed DDB staff that the named psychologist included the race of applicants in the 10 CE reports we examined. DDB staff said they had not reviewed the named psychologist's CE reports to determine whether she used "less than full effort" or "less than objective reporting" for minorities more frequently than for non-minorities.³

In August 2001, the DDB informed the named psychologist and a second psychologist they would no longer be used for any CEs at the end of Calendar Year 2001. However, in December 2001, the DDB reversed this decision and, to date, continues to use both doctors.

In September 2001, the Director of AA/CRC sent a letter to Senator Feingold's constituent informing him that, by the end of the year, the DDB would complete an action plan that would resolve the issues he had raised. The action plan included

- the random selection of vendors to perform CEs (effective January 17, 2001 the DDB did this);
- enhancing staff and vendor competencies through training on malingering issues (training for the two psychologists occurred in January 2002); and
- ongoing reviews of CE vendor outliers.

In October 2001, SSA's Chicago Regional Commissioner wrote to the DDB's parent agency to convey his concern about the civil rights complaint filed by Senator Feingold's constituent. The SSA Regional Commissioner urged the State to proceed with a full and expeditious investigation and informed the State that SSA's Center for Disability was ready to assist in whatever way the State required. The Regional Commissioner stated that he asked the DDB to move as quickly as feasible to take the steps outlined by the AA/CRC in addressing the allegations.

² Page 56 of *The Clinician's Thesaurus 3 – The Guidebook for Wording Psychological Reports and Other Evaluations, Third Edition, Revised*.

³ DDB staff defined "less than full effort" as using such wording as "Could have done better if they tried harder." DDB staff defined "less than objective reporting" as editorializing and making remarks that are not germane to the disability decision but could influence the disability decision. For example one of the named psychologist's reports included the following about a mother and a 6-year old child, "She tended to talk irritably to him, and one time, when he told her he had to go the bathroom, she irritably told him to wait. At this point, the examiner asked the claimant's aunt, who was in the waiting room, to take him to the bathroom because it appeared that [the] mother could not be bothered to do that for him."

In February 2003, the DDB received a complaint from the Wisconsin Correctional Service Community Support Program that outlined concerns regarding CEs the named psychologist conducted for the DDB. Regarding one CE written by the named psychologist, the following was written.

I cannot adequately express my bafflement at the decision to deny [the applicant] disability benefits. He is no angel but he did not ask to have this debilitating illness. Believe it or not, [the applicant] is actually a fairly civil and interesting person. If he is stable and on his medications and not engaging in substance use. I believe [the named psychologist's] evaluation has many weaknesses which I have tried to point out, and her report did not help to bring clarity to the question of [the applicant's] disability. If I was a cynic, I might think that there were some folks who, for whatever reasons, did not want to, or felt it was wrong to allow...[the applicant's] claim for disability so they said there needed to be a consultative examination, and then made sure it got assigned to [the named psychologist]. But of course, I am not a cynic. I should point out that I urged [the applicant] to appeal this denial because I thought it was wrong. He had some irrational reason for not wanting to appeal which I can not remember.

At the end of this letter the following was written.

This is very important. I believe there are people who should be getting disability benefits who are being denied eligibility because of her reports. This is unfair to the individual involved, but it is also unfair to the larger community of which this individual is a part. This is even more concerning when you consider that many of these individuals will end up becoming involved in the criminal justice system or entering psychiatric hospitals because of untreated psychiatric problems. Having both an income and medical insurance are both key components for establishing and maintaining stability for any individual with significant psychiatric problems. Some people might see [the named psychologist] as saving the taxpayer money when in fact the human and financial costs that come about as a result of her efforts are probably incalculable.

In March 2003, the DDB received another complaint about the named psychologist. This complaint was made by the mother of a child who had a CE with the named psychologist. The mother stated that for every question, the psychologist encouraged the child to do better and said things like "I know you know the answer." The mother also stated that when she told the psychologist that her child could not sit still, the psychologist replied, "Yes, she can." The complaint also stated that the psychologist commented that the child was "irritating" her and that the psychologist was skeptical that the child heard voices. The child's mother was concerned about the psychologist's overall attitude at the exam.

The DDB received an additional complaint about the named psychologist in April 2003 in which the mother of a child sent to the psychologist called the DDB and was very upset. The mother stated the psychologist was "rude" and "disrespectful."

In May 2003, we obtained from the DDB a report of mental CEs performed in February 2002 and later.⁴ We determined that the allowance rates for the named psychologist and the second psychologist continued to be lower than their peers. However, the allowance rates in their cases were higher after the DDB changed its process to no longer allow selection of specific CE providers in cases suspected of malingering, and the DDB and SSA staff visited the two psychologists to address improving their CE reports.

Allowance Rate Comparisons ⁵	Allowance Rate in the Named Psychologist's Cases (Percent)	Allowance Rate in the 2 nd Psychologist's Cases (Percent)	Allowance Rate for Other Mental CE Providers (Percent)
DDB Study Conducted in January 2001	26.5	28.6	49.3
Analysis Performed by DDB for OIG in May 2003	32.5	35.1	47.8

In May 2003, we obtained the results of the DDB's review of cases in which the named psychologist and the second psychologist performed CEs. Specifically, for the period September through December 2001, in all cases where these two providers performed a CE that led to a denial/cessation, the DDB requested a second CE with a different CE provider. Based on the second CE, 14 of the named psychologist's 73 cases (19.2 percent) and 54 of the second psychologist's 382 cases (14.1 percent) were changed from denials/cessations to allowances/continuances. Under its normal claims processing, applicants denied benefits have appeal rights. Reconsideration is the first level of appeal if an individual disagrees with his or her initial disability determination. A reconsideration is an independent and thorough reexamination of the evidence used for the initial determination.⁶ In addition, during Calendar Year 2002, SSA reversed 14.7 percent of appealed cases during its reconsideration process nationwide.

In June 2003, we obtained from the DDB a list of the names, Social Security numbers and the DDB's results for 2,836 cases with CEs performed by the named psychologist between November 1991 and June 2003. Of these 2,836 cases, 501 (18 percent) were allowances or continuances, and 2,335 (82 percent) were denials or cessations.⁷ The data file provided by the DDB did not include any racial information.

⁴ We asked the DDB to analyze allowance rates for CE reports after February 2002 because the DDB visited the two psychologists to discuss improving their CE reports in January 2002.

⁵ The reports used to prepare this chart did not include racial information.

⁶ Program Operations Manual System, section GN 03102.100 B.

⁷ For initial disability claims, SSA uses the terms "allowance" or "denial." For cases where an individual was determined to be disabled in the past and SSA is completing a review to determine whether the beneficiary is still disabled, SSA uses the terms "continuance" or "cessation."

CONCLUSIONS AND RECOMMENDATIONS

Although DDB staff did not assess the racial issues alleged by Senator Feingold's constituent in his complaint, they did conclude that changes were needed to the DDB's policies and practices. SSA and the AA/CRC relied on the DDB to assess the allegation and did not conduct any independent analysis. Since the DDB, SSA and AA/CRC did not assess the racial issues alleged, we cannot draw any conclusions on the merits of the allegation at this time.

Although the DDB does not require racial information, these data could be obtained from CE reports or other sources. Therefore, to address the issue of possible racial discrimination, we recommend the Agency review a statistically valid sample of the named psychologist's CE reports to determine whether her reports were racially biased.

AGENCY COMMENTS

SSA agreed with our recommendation, stating its plan to develop a methodology to yield a statistically valid comparison of CE reports maintained by the DDS for claimants in the geographic area served by the CE provider. The Agency also stated that, since the audit, the DDB has notified this CE provider that it will no longer schedule CEs with the provider in question. SSA stated that this decision was based on a number of recent complaints unrelated to the OIG's review.



Steven L. Schaeffer

Appendices

Appendix A – Acronyms

Appendix B – Consultative Examinations

Appendix C – Agency Comments

Appendix D – OIG Contacts and Staff Acknowledgments

Appendix A

Acronyms

AA/CRC	Office of Affirmative Action and Civil Rights Compliance
CE	Consultative Examination
DDB	Disability Determination Bureau
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration

Appendix B

Consultative Examinations

In evaluating disability on the basis of a mental disorder, the Social Security Administration (SSA) requires evidence to establish both the existence of a medically determinable mental impairment and the degree of limitation caused by the impairment.¹ The existence of a medically determinable impairment must be established by medical evidence consisting of signs, symptoms and/or laboratory or psychological test findings.² Such evidence is typically provided by the individual's treating sources.

However, under the following circumstances, the Disability Determination Bureau (DDB) may purchase a consultative examination (CE).

1. Additional medical evidence is needed for adjudication, and the evidence is not available from the claimant's medical source(s).
2. The treating source is not an acceptable medical source for evidence of a mental impairment.
3. The treating source's evidence is unobtainable.
4. There is a conflict, inconsistency, ambiguity or insufficiency in the evidence that cannot be resolved by recontacting the treating source(s).³

The CE report is used in combination with all other evidence in the case file to determine the existence and severity of any mental impairment(s). If the existence of a severe mental impairment is established (one that causes more than minimal restrictions in work-related activities), the DDB evaluates the claim to determine whether the criteria for listings-level impairments are met.⁴ In making determinations on claimants age 18 and older, if a finding of disability or no disability cannot be made on current work activity or on medical considerations alone, the DDB determines whether the claimant has the residual functional capacity to perform past relevant work or other work available in the national economy. If the impairment has lasted or is expected to last 12 months and listings-level severity is met or if the claimant cannot perform past work or other work, the claimant is found to be disabled.⁵

¹ Program Operations Manual System (POMS), section DI 24505.025 B.

² POMS, section DI 24501.020 A.

³ POMS, section DI 22510.005 A and B.

⁴ POMS, section DI 22001.020 A.

⁵ POMS, sections DI 22001.025 A and DI 22001.030 B.

Appendix C

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: August 14, 2003 Refer To: S2G5D2

To: Assistant Inspector General for Audit

From: Regional Commissioner
Chicago

Subject: Use of Mental Consultative Examinations by the Wisconsin Disability Determination Bureau
(A-01-03-23090)--(Your Memorandum Dated July 18, 2003)—REPLY

Thank you for the opportunity to provide comments on the above report. We are open to the idea of conducting a study of the examinations by the consultative examination (CE) provider in question. However, given the limitations of the available data, we will need to develop a methodology that would yield a statistically valid study.

In early 2001, a special Quality Assurance study of cases with examinations by this provider found that the decisions were correct in all cases and consistent with the evidence as a whole. We plan to compare CE reports that have been maintained by the DDS for claimants in the geographic area served by the provider. Racial information about claimants is not available on DDS or SSA records unless the provider furnished this information on their CE reports. The provider in question did provide such information. We will attempt to find a sufficient number of reports with racial information from other providers in the area to assess the issues alleged in a statistically valid manner.

Since the audit, the Wisconsin Disability Determination Service has informed us that they have notified this provider that as of the end of August they would no longer schedule consultative examinations with the provider. This decision was based on a number of recent complaints unrelated to the review conducted by your office.

Questions about this memorandum may be directed to Jerry Kayser, Director of the Center for Disability Programs, at 312-575-4201.

/s/
James F. Martin
Regional Commissioner

cc: Deputy Commissioner for Operations

Appendix D

OIG Contacts and Staff Acknowledgments

OIG Contacts

Rona Rustigian, Director, Northern Audit Division (617) 565-1819

Judith Oliveira, Deputy Director, (617) 565-1765

Staff Acknowledgments

In addition to those named above:

David Mazzola, Auditor

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