

Audit Report

Medical Improvement Review
Standard Exceptions Other Than
Failure to Cooperate

MEMORANDUM

Date: June 6, 2019 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: Medical Improvement Review Standard Exceptions Other Than Failure to Cooperate
(A-01-18-50347)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration properly used Medical Improvement Review Standard exceptions, other than failure to cooperate, during continuing disability reviews conducted in Calendar Year 2017.

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



Gail S. Ennis

Attachment

Medical Improvement Review Standard Exceptions Other Than Failure to Cooperate

A-01-18-50347



June 2019

Office of Audit Report Summary

Objective

To determine whether the Social Security Administration (SSA) properly used Medical Improvement Review Standard (MIRS) exceptions, other than failure to cooperate, during continuing disability reviews (CDR) conducted in Calendar Year 2017.

Background

Under MIRS, an individual's disability continues unless (1) his/her disabling condition has improved since the last favorable disability determination and (2) the individual can engage in substantial gainful activity.

The *Social Security Act* provides exceptions to MIRS. These exceptions allow SSA to find disability ceased in limited situations without showing there was medical improvement, but evidence shows the person should no longer be, or never have been, considered disabled.

In a prior audit, we found issues with the reason coded for cessation for some types of exceptions. The Agency could not determine why the data for these cases were incorrect, and therefore evaluated the use of MIRS exceptions nationwide.

Since our preliminary work found MIRS exception codes were used properly for failure to cooperate cessations but not always for other MIRS exceptions, we focused our current review on the non-failure to cooperate MIRS exception codes.

Findings

Although SSA had provided additional training on the proper use of MIRS exceptions since our prior audit, employees were still miscoding cases as MIRS exceptions. We estimated the Agency did not properly use MIRS exception codes in about 1,900 of the 2,814 CDRs ceased for MIRS exception codes, other than failure to cooperate, in Calendar Year 2017.

Of the 50 sampled cases, the State disability determination services (DDS) incorrectly used MIRS exception codes in 34. Furthermore, MIRS exception errors contributed to three incorrect disability cessations. In these three cases, the DDS incorrectly determined the beneficiaries were no longer disabled even though evidence in the files supported that their disabilities continued. All three cases were ceased but later corrected on appeal.

SSA needs to ensure new and existing DDS staff are properly trained in the correct use of MIRS exceptions since errors can lead to incorrectly ceasing beneficiaries' payments and/or unnecessary appeals.

Recommendation

We recommend SSA provide employees, at the Agency and the State DDSs who make disability determinations, additional training and guidance on the proper use of MIRS exceptions. SSA agreed with the recommendation.

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ABBREVIATIONS

CDR	Continuing Disability Review
C.F.R.	Code of Federal Regulations
CY	Calendar Year
DDS	Disability Determination Services
DI	Disability Insurance
FY	Fiscal Year
MIRS	Medical Improvement Review Standard
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SGA	Substantial Gainful Activity
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) properly used Medical Improvement Review Standard (MIRS) exceptions, other than failure to cooperate, during continuing disability reviews (CDR) conducted in Calendar Year (CY) 2017.

BACKGROUND

SSA pays Disability Insurance (DI) and Supplemental Security Income (SSI) disability payments to eligible individuals. The DI program provides monthly benefits to insured workers and their families if the worker becomes disabled.¹ SSI is a means-tested program that provides a minimum level of income to financially needy individuals who are aged, blind, or disabled.²

Once individuals begin receiving DI benefits or SSI payments, SSA is required to periodically perform CDRs to determine whether they remain medically eligible for the DI or SSI program.³ In addition, SSA is required to use MIRS in determining whether disability benefits should continue.⁴ Under MIRS, an individual's disability continues unless (1) his/her disabling condition has improved since the last favorable disability determination or comparison point decision and (2) he/she can engage in substantial gainful activity (SGA).⁵

The *Social Security Act* provides exceptions to MIRS.⁶ These exceptions allow SSA to find disability ceased in limited situations without showing medical improvement occurred, but evidence clearly shows the person should no longer be, or never have been, considered disabled.⁷ There are two groups of exceptions to MIRS. Group I exceptions require a finding that the individual is not disabled (that is, a finding the individual is able to engage in SGA) before any finding under the CDR evaluation process that disability has ended. The Group I exceptions are

¹ *Social Security Act*, 42 U.S.C. § 423 (govinfo.gov 2017).

² *Social Security Act*, 42 U.S.C. § 1381a (govinfo.gov 2017).

³ Generally, the frequency of CDRs depend on SSA's assessment of the likelihood of medical improvement. 20 C.F.R. §§ 404.1590(d) and 416.990(d) (govinfo.gov 2018).

⁴ MIRS was established with Pub. L. No. 98-460, 98 Stat. 1794 (1984). *Social Security Act*, 42 U.S.C. §§ 423(f) and 1382c(a)(4) (govinfo.gov 2017). However, MIRS does not apply to SSI age-18 redeterminations. These disability redeterminations are conducted under the adult standards for initial claims. 20 C.F.R. § 416.987 (govinfo.gov 2018); SSA, *POMS*, DI 23570.010 (February 23, 2005).

⁵ SSA determines SGA for DI and SSI adult cases. 20 C.F.R. §§ 404.1594(f) and 416.994(b)(5) (govinfo.gov 2018). SSA, *POMS*, DI 28005.001 (June 3, 2015), DI 28010.105 (January 13, 2016) and DI 28020.050 (September 4, 2015). In CY 2017, SSA considered earnings above \$1,170 per month for disabled individuals and \$1,950 per month for blind individuals to reflect SGA; SSA, *POMS*, DI 10501.015 (December 28, 2018).

⁶ *Social Security Act*, 42 U.S.C. §§ 423(f) and 1382c(a)(4) (govinfo.gov 2017).

⁷ *Social Security Act*, 42 U.S.C. §§ 423(f) and 1382c(a)(4) (govinfo.gov 2017); 20 C.F.R. §§ 404.1579, 404.1594, and 416.994 (govinfo.gov 2018); SSA, *POMS*, DI 28020.001 (September 4, 2015).

- advances in medical or vocational therapy or technology,
- vocational therapy (any additional education or training that improves the individual's ability to meet the vocational requirements of more jobs),
- new or improved diagnostic or evaluative techniques,
- substantial evidence demonstrates that any prior disability decision was made in error, and
- the individual has engaged in SGA.⁸

Group II exceptions do not require a medical determination of disability and are

- fraud or similar fault,⁹
- failure to cooperate or whereabouts unknown,¹⁰ and
- failure to follow prescribed treatment.¹¹

See Appendix A for additional information on MIRS and the exceptions.

Generally, State disability determination services (DDS) make the initial CDR determination using SSA's regulations.¹² If an individual disagrees with the initial determination, SSA's regulations give him/her the right to file an appeal within 60 days from the date of notification of the determination. In most cases, an individual may request up to four levels of appeal:

⁸ This exception applies when a DI beneficiary completes a trial work period or extended period of eligibility and continues to perform SGA. DI beneficiaries are granted trial work periods during which they may test their ability to work while receiving benefits. SSA, *POMS*, DI 13010.035 (March 9, 2016). If SSA determines a beneficiary continues to be disabled after the trial work period ends, benefits can continue during an extended period of eligibility. SSA, *POMS*, DI 13010.210 (January 13, 2010).

⁹ Fraud exists when a claimant (or a person acting on the claimant's behalf) with intent to defraud either makes or causes to be made a false statement or a misrepresentation of a material fact for use in determining rights to DI benefits or SSI payments; or conceals or fails to disclose a material fact for use in determining rights to DI benefits or SSI payments. Similar fault does not require fraudulent intent. It exists when a claimant or any other person either knowingly makes an incorrect or incomplete statement that is material to the determination or knowingly conceals information that is material to the determination. 20 C.F.R. §§ 404.1594(e)(1) and 416.994(b)(4)(i) (govinfo.gov 2018). SSA, *POMS*, DI 27505.015 (April 27, 2017).

¹⁰ A failure to cooperate or whereabouts unknown issue may arise at any point during a CDR when a disabled individual does not furnish medical or other evidence, fails to attend a consultative examination by a certain date, or cannot be located. 20 C.F.R. §§ 404.1594(e)(2), 404.1594(e)(3), 416.994(b)(4)(ii) and 416.994(b)(4)(iii) (govinfo.gov 2018). SSA, *POMS*, DI 28075.005 (December 28, 2012).

¹¹ If treatment can restore the ability to work, an individual must follow prescribed treatment to receive benefits. If prescribed treatment is not followed without good cause, SSA should cease benefits when performing a CDR. 20 C.F.R. §§ 404.1594(e)(4) and 416.994(b)(4)(iv) (govinfo.gov 2018). SSA, *POMS*, DI 23010.006 (January 3, 2019).

¹² CDRs are performed by DDSs in each of the 50 States plus the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and SSA Federal units, including SSA's Offices of Central Operations.

(1) reconsideration by a DDS, (2) hearing by an administrative law judge, (3) review by the Appeals Council, and (4) review by a Federal court.¹³

In a prior audit related to CDRs processed in CY 2012, we reviewed a sample of cases from each type of MIRS exception.¹⁴ Although the Agency's disability cessation determinations were correct, we found issues with the reasons coded for some types of exceptions. The Agency could not determine why the data for these cases were incorrect but planned to evaluate the use of MIRS exceptions nationwide. Therefore, we initiated this review to follow up on this issue.

For our current review, we obtained a file of all CDRs processed in CY 2017 and identified 58,600 individuals with CDR cessations because of a MIRS exception. This included 55,786 individuals' (95 percent) CDRs ceased for failure to cooperate and 2,814 individuals' (5 percent) CDRs ceased for other MIRS exceptions. Our preliminary review found MIRS exception codes were used properly for failure to cooperate cessations but not always for other MIRS exceptions. Therefore, we focused our audit on the 2,814 individuals with MIRS exception codes other than failure to cooperate. We randomly selected 50 cases from the 2,814 for review.¹⁵ For our scope, methodology, and sample results, see Appendix C.

RESULTS OF REVIEW

Although SSA had provided additional training on the proper use of MIRS exceptions since our prior report, employees were still miscoding cases as MIRS exceptions. We estimated the Agency did not properly use MIRS exception codes in about 1,900 of the 2,814 CDRs ceased for MIRS exceptions other than failure to cooperate¹⁶ in CY 2017. Additionally, the 34 MIRS exception errors in our sample contributed to 3 incorrect cessation determinations. In these three cases, the DDSs incorrectly determined the beneficiaries were no longer disabled.

¹³ 20 C.F.R. §§ 404.900 through 404.985 and 416.1400 through 416.1485 (govinfo.gov 2018).

¹⁴ SSA, OIG, *The Medical Improvement Review Standard During Continuing Disability Reviews*, A-01-13-23065 (May 2014). We reviewed a sample of cases from each type of MIRS exception from CDR cessations processed in CY 2012. These included 100 sample cases from Group I exceptions and 96 samples cases from Group II exceptions. For our current audit, we pulled 50 sample cases from CDR cessations processed in CY 2017 with MIRS exceptions other than failure to cooperate. We did not pull a separate sample from each type of MIRS exception for our current audit.

¹⁵ The 50 sample cases included 39 adults and 11 children. SSA uses different adjudicative standards for CDRs for adults and children. The Agency has an 8-step evaluation process for adult CDRs and a 3-step evaluation process for child SSI CDRs. See Appendix B for additional information. In addition, some Group I exceptions ("Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology" or "Vocational Therapy") do not apply to children receiving SSI. In addition, SGA is not a reason for determining that a child's disability has ceased. SSA, *POMS*, DI 28005.010 (August 19, 2015), DI 28005.025 (June 14, 2005), and DI 28005.030 (July 7, 2017).

¹⁶ In Fiscal Year (FY) 2017—which runs from October through September—SSA processed about 870,000 medical CDRs. Therefore, the 1,900 estimated cases miscoded as MIRS exceptions in CY 2017 (January to December) was not significant when compared to the number of full medical CDRs the Agency conducted.

Sample Results

Our review of 50 sample cases found SSA properly used MIRS exceptions in 16 cases (32 percent), but did not properly use MIRS exceptions in 34 cases (68 percent).¹⁷ Of these 34 exception errors, the Agency improperly ceased benefits in 3 cases. In these three cases, the DDSs incorrectly determined the beneficiaries were no longer disabled even though evidence in the files when the CDRs were conducted supported determinations the individuals continued to be disabled. See Appendix D for our results by DDS.

MIRS Exceptions Not Used Properly

We referred the 34 cases to SSA for review, and the Agency agreed MIRS exceptions were not used properly in these cases. The 34 cases included 33 cessations where a MIRS exception did not apply¹⁸ and 1 cessation where a MIRS exception applied, but the wrong exception was used.¹⁹

Medical Improvement Related to the Ability to Work

Of the 33 cases where MIRS exceptions did not apply, 29 were cessations due to medical improvement related to the ability to work—not a MIRS exception. For example, in September 2017, the Illinois DDS conducted a CDR for a 33-year-old beneficiary who had been receiving benefits since 2015 because of liver disease. The DDS determined his disability had ceased because he was capable of engaging in SGA, and SSA terminated his benefits. However, in processing the case, the examiner incorrectly used the code for MIRS exception “Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology.”

In another example, a 35-year-old New Hampshire woman was allowed DI and SSI disability benefits in 2005 because of depression and social phobia. During a CDR in February 2014, the DDS determined her disability had ceased because she had medically improved and was capable of engaging in SGA. The beneficiary appealed the determination. On reconsideration in March 2017, the second examiner affirmed the February 2014 cessation determination and stated no MIRS exceptions applied—but incorrectly used the code for MIRS exception “Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology.” The beneficiary appealed the determination and an administrative law judge upheld the cessation in

¹⁷ The 34 cases included 19 initial-level CDRs and 15 reconsideration-level CDRs. Additionally, 19 of the 34 appealed the Agency’s cessation determinations. Of the 19 that were appealed, 11 were overturned on appeal (that is, the cessations were reversed), 3 were upheld on appeal, and 5 were pending as of January 2019.

¹⁸ For 1 of the 33 cases, while SSA agreed a MIRS exception did not apply, it was unable to determine the reason for the cessation because of inconsistencies in the electronic case file.

¹⁹ For one case, in November 2017, the Texas DDS conducted a CDR for a 40-year-old SSI recipient and determined her disability ceased because she failed to cooperate and attend two clinical interviews. However, instead of citing her for failure to cooperate, the examiner incorrectly used MIRS exception for SGA. (SSA agreed with our conclusion that the wrong MIRS exception was used.) On reconsideration, the recipient cooperated and the examiner reversed the cessation because the evidence supported a continuance. As of October 2018, the recipient was receiving \$750 in monthly SSI disability payments.

September 2018. SSA properly terminated the \$11 monthly SSI payment when it effectuated the disability cessation but did not stop the DI benefit. Based on our referral, SSA stopped the monthly \$780 DI benefit in January 2019.

Incorrect Cessation Determinations

Of the 33 cases where MIRS exceptions did not apply, the DDSs incorrectly determined that 3 beneficiaries were no longer disabled. The DDSs should have determined their disabilities continued based on the evidence in their files at the time of the CDRs. All three beneficiaries were receiving benefits as of October 2018 because the cessation determinations were overturned on appeal.

For example, a 36-year-old woman was allowed SSI payments in 1994 because of mental disorders and became entitled to DI benefits in 2001. During a CDR in April 2017, the Tennessee DDS determined the 2001 medical determination was incorrect and used a MIRS exception to find she was not entitled to disability benefits.²⁰ On reconsideration, another examiner determined the wrong prior medical determination was used for comparison. However, few documents from the prior determination were available in the beneficiary's claim folder for the examiner's review. Therefore, the examiner re-developed the claim as a new disability claim and determined the beneficiary was disabled (reversing the cessation determination). As of October 2018, the beneficiary was receiving \$632 in monthly DI benefits and \$138 in monthly SSI payments.

SSA needs to ensure new and existing DDS staff are properly trained in the correct use of MIRS exceptions since errors can lead to beneficiaries' payments being incorrectly ceased and/or unnecessary appeals.

Actions to Ensure Proper Use of MIRS Exceptions

In FY 2017, SSA completed approximately 870,000 full medical CDRs. Additionally, in FY 2018, SSA reached a milestone by eliminating the backlog of full medical CDRs and completed about 896,500 full medical CDRs. Therefore, the 1,900 estimated cases miscoded as MIRS exceptions in CY 2017 was not significant when compared to the number of full medical CDRs the Agency conducted each year.²¹

²⁰ The DDS applied the following MIRS exception: "Substantial Evidence Demonstrates That Any Prior Disability Decision Was in Error."

²¹ SSA reports the number of CDRs it completes each year by FY—which runs from October to September. The 1,900 estimated miscoded cases were projected from the population of 2,814 CDRs ceased for MIRS exception codes other than failure to cooperate in CY 2017 (January to December).

However, in our prior audit, we reviewed a sample of cases from each type of MIRS exception from CDRs processed in CY 2012—100 Group I sample cases and 96 Group II sample cases—and we found MIRS exceptions were properly used in 99 percent of the Group II sample cases but not used properly in 68 percent of the Group I sample cases. Therefore, we recommended SSA identify and correct the cause of MIRS exception coding issues so the Agency would have accurate information on how often the exceptions are used. SSA agreed with our recommendation and developed a special quality case review that focused on determining whether it should update existing MIRS policies and provide additional training.

The Agency determined the cessation determinations were correct in the sample cases in our prior audit. Therefore, SSA did not take action to correct the incorrect codes in the sampled cases. However, the Agency announced a CDR training curriculum for the DDSs in April 2016.²² The training curriculum provided documents and supplemental training material to assist with CDRs—including training and guidance on such topics as MIRS exceptions. In addition, SSA published a desk guide to assist with MIRS exceptions in 2017.

For our current audit, we focused on CDRs ceased for MIRS exception codes other than failure to cooperate in CY 2017 and selected 50 sample cases for review.²³ Although SSA provided additional training on the proper use of MIRS exceptions, 34 of our current sample cases (68 percent) were miscoded as MIRS exceptions. All 34 cases were processed in CY 2017—after the April 2016 training. However, only 14 of the 34 miscoded cases were processed after the desk guide was published in 2017. The Agency should provide additional training and guidance on the proper use of MIRS exceptions. See Table 1 for the results of the 50 sample cases by MIRS exception codes. Additionally, Table D-1 lists the 50 sample cases by DDS.

²² SSA, DDS Administrators' Letters, DDSAL 927 (January 30, 2015).

²³ For our current audit, we did not pull a separate sample from each type of MIRS exception. In addition, our preliminary review found MIRS exception codes were used properly for failure to cooperate cessations. Therefore, we did not include MIRS exceptions for failure to cooperate in our current audit.

Table 1: MIRS Exceptions — Sample Cases by Results²⁴

Exception	Number of Sample Cases	Exception Used Properly	Exception Not Used Properly
Group I Exceptions			
Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology	14	1	13
New or Improved Diagnostic Techniques or Evaluation Show Impairment(s) Not as Disabling as Considered to be Previously	12	1	11
Prior Favorable Medical Determination of Entitlement Was Based on Error	10	7	3
Vocational Profile Enhanced By Vocational Therapy	6	1	5
SGA (for field office use only)	5	3	2
Subtotal	47	13	34
Group II Exceptions			
Whereabouts Unknown	1	1	0
Failure to Follow Prescribed Treatment	2	2	0
Subtotal	3	3	0
Total	50 (100%)	16 (32%)	34 (68%)

CONCLUSIONS

Although SSA had provided training and guidance to employees on MIRS exceptions since our prior audit, employees were still miscoding cases as MIRS exceptions. We estimated the Agency did not properly use MIRS exception codes in about 1,900 of the 2,814 CDRs ceased for MIRS exceptions other than failure to cooperate, in CY 2017. Furthermore, MIRS exception errors we identified contributed to three incorrect cessations in our sample. In these three cases, the DDS staff incorrectly determined three beneficiaries were no longer disabled even though evidence in their files at the time of the CDRs indicated their disabilities continued. All three cases were corrected upon appeal.

²⁴ We pulled 50 sample cases from all CDRs that resulted in disability cessations for MIRS exceptions other than failure to cooperate in CY 2017. Therefore, MIRS exception for failure to cooperate is not included in the table under Group II exceptions.

RECOMMENDATION

We recommend SSA provide employees, at the Agency and the State DDSs who make disability determinations, additional training and guidance on the proper use of MIRS exceptions.

AGENCY COMMENTS

SSA agreed with the recommendation; see Appendix E.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – THE MEDICAL IMPROVEMENT REVIEW STANDARD

The Medical Improvement Review Standard (MIRS) was established under the *Social Security Disability Benefits Reform Act of 1984*.¹ One of the basic purposes of this legislation is to re-emphasize congressional intent that there be national uniformity in the disability programs under standards established by Congress. In general, this legislation allowed the Social Security Administration (SSA) to terminate disability benefits only if there was substantial evidence the individual's disability had medically improved, and the individual could perform substantial gainful activity.

Specifically, information concerning the individual's impairment(s) during the prior determination is reviewed in deciding whether the individual is still disabled under MIRS. For a Disability Insurance beneficiary or adult Supplemental Security Income (SSI) recipient, disability will cease only when

1. there has been any medical improvement (related to the ability to work) in the individual's impairment(s) or certain exceptions to medical improvement apply and
2. the physical and/or mental impairment(s), together with the vocational profile (that is, age, education and work experience), where appropriate, does not prevent the individual from engaging in substantial gainful activity, unless an exception applies (that is, fraud, error on the face of the original determination, etc.).²

¹ Pub. L. No. 98-460, 98 Stat. 1794 (1984). Before 1980, SSA reviewed a small percentage of disability cases in which (1) at the time of the initial determination, it was expected the beneficiary's medical condition would improve; (2) the beneficiary's earnings record indicated work activity; or (3) a beneficiary voluntarily reported work activity or medical improvement. The *Social Security Disability Amendments of 1980*, Pub. L. No. 96-265, 94 Stat. 441, p. 460 (1980) require that SSA review the status of all non-permanently disabled Title II beneficiaries every 3 years. As a result of this process, SSA terminated benefits to large numbers of individuals whose benefits were later found to have been erroneously terminated and reinstated after appeal. Most of the courts of appeal ruled that SSA must apply some form of a medical improvement standard or apply a presumption of continuing disability before benefits could be terminated. The *Social Security Disability Benefits Reform Act of 1984* includes establishment of MIRS to address unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions may not have changed from the time they were awarded benefits.

² SSA uses different adjudicative standards for continuing disability reviews (CDR) for adults and children. The Agency has an 8-step evaluation process for adult CDRs and a 3-step evaluation process for child SSI CDRs. In addition, some Group I exceptions ("Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology" or "Vocational Therapy") do not apply to children receiving SSI. In addition, SGA is not a reason for determining that a child's disability has ceased. SSA, *POMS*, DI 28005.010 (August 19, 2015), DI 28005.025 (June 14, 2005), and DI 28005.030 (July 7, 2017).

CDRs and Profiling Process

SSA conducts CDRs using one of two methods—some cases are sent to the disability determination services (DDS) for full medical reviews while others are completed by using the mailer process. The mailer process consists of two tools: (1) a profiling system that uses data from SSA's records to determine the likelihood of medical improvement for disabled beneficiaries and (2) the individuals' responses to a brief mailer questionnaire.³

Most cases profiled as having a high likelihood of medical improvement are sent to the DDSs for full medical reviews. Generally, other cases profiled as having a medium or low likelihood of medical improvement are sent a mailer. If, based on a review of the completed mailer, there is an indication of medical improvement, SSA sends the case for a full medical review. Otherwise, SSA decides based on the mailer response not to initiate a full medical review and the case is scheduled for a future CDR.

Exceptions to MIRS

The *Social Security Act* provides exceptions to MIRS.⁴ These exceptions allow SSA to find disability ceased in limited situations without showing medical improvement occurred, but evidence clearly shows the person should no longer be considered disabled or never should have been considered disabled.⁵ There are two groups of exceptions to MIRS.

Group I Exceptions to MIRS

Group I exceptions require a finding that the individual is not disabled (that is, a finding that the individual is able to engage in substantial gainful activity) before any finding under the CDR evaluation process that disability has ended. The Group I exceptions are as follows.

- **Individual Has Benefited from Advances in Medical or Vocational Therapy or Technology.** This exception may apply when evidence shows the individual is receiving services that reflect advances in medical or vocational therapy or technology (related to the individual's ability to work). This exception does not apply to children receiving SSI.
- **Vocational Therapy.** Vocational therapy (related to the individual's ability to work) includes any additional education or training that improves the individual's ability to meet the vocational requirements of more jobs. This exception does not apply to children receiving SSI.

³ The mailer process is not used for disabled children receiving SSI.

⁴ *Social Security Act*, 42 U.S.C. §§ 423(f) and 1382c(a)(4) (govinfo.gov 2017).

⁵ *Social Security Act*, 42 U.S.C. §§ 423(f) and 1382c(a)(4) (govinfo.gov 2017); 20 C.F.R. §§ 404.1579, 404.1594, and 416.994 (govinfo.gov 2018); SSA, *POMS*, DI 28020.001 (September 4, 2015).

- **New or Improved Diagnostic or Evaluative Techniques.** Changing methodologies and advances in medical and other diagnostic techniques or evaluations have improved methods for diagnosing, measuring, and documenting the effects of various impairments on individuals' ability to do work. Where, by such new or improved methods, substantial evidence shows an impairment(s) is not as severe as was determined at the time of the most recent favorable decision, such evidence may serve as a basis for finding the individual is no longer disabled, if the individual can engage in substantial gainful activity. Under this exception, however, the new or improved techniques must have become generally available after the date of the most recent favorable decision.
- **Substantial Evidence Demonstrates that Any Prior Disability Decision Was An Error.** There are three types of errors considered under this exception.
 - *Error on the Face of the Record.* The evidence shows on its face that the decision in question should not have been made, including cases where evidence was misread or an adjudicative standard was misapplied.
 - *Required and Material Evidence was Missing.* If, at the time of the prior decision, required and material evidence of the severity of the impairment(s) was missing and the evidence in question becomes available upon review and shows that if it had been present before, the beneficiary would not have been found to be disabled.
 - *New Evidence Related to the Prior Determination.* If new evidence related to the prior determination refutes the conclusions that were based on the prior evidence and substantial evidence shows that, had the new evidence been considered at the time of the prior decision, the claim would not have been allowed or continued.
- **Substantial Gainful Activity.** This exception applies when an individual is working and engaging in substantial gainful activity.⁶ This exception is a field office determination only. The DDS must return a file to the field office to apply this exception.

⁶ This exception is applied subject to any trial work period or extended period of eligibility. Disability Insurance beneficiaries are granted trial work periods during which they may test their ability to work while still receiving benefits. SSA, *POMS*, DI 13010.035 (March 9, 2016). If SSA determines a beneficiary continues to be disabled after the trial work period ends, benefits can continue to be paid during an extended period of eligibility. SSA, *POMS*, DI 13010.210 (January 13, 2010).

Group II Exceptions to MIRS

Group II exceptions do not require a finding of current disability. The Group II exceptions are as follows.

- **Fraud or Similar Fault.** Fraud exists when a claimant (or any other person acting on the claimant's behalf) with intent to defraud either makes or causes to be made a false statement or a misrepresentation of a material fact for use in determining rights to Old-Age, Survivors and Disability Insurance benefits or SSI payments; or conceals or fails to disclose a material fact for use in determining rights to the benefits/payments. Similar fault does not require fraudulent intent. It exists when a claimant or any other person either knowingly makes an incorrect or incomplete statement that is material to the determination; or knowingly conceals information that is material to the determination.⁷
- **Failure to Cooperate or Whereabouts Unknown.** This may arise at any point during a CDR when a disabled individual does not furnish medical or other evidence, fails to attend a consultative examination by a certain date, or cannot be located.⁸
- **Failure to Follow Prescribed Treatment.** If treatment can restore the ability to work, an individual must follow prescribed treatment to receive benefits. If prescribed treatment is not followed without good cause, an individual cannot be found disabled or under a continuing disability, or blind, if currently receiving benefits.⁹

⁷ SSA, *POMS*, DI 27505.015 (April 27, 2017).

⁸ SSA, *POMS*, DI 28075.005 (December 28, 2012).

⁹ SSA, *POMS*, DI 23010.006 (January 3, 2019).

Appendix B – CONTINUING DISABILITY REVIEW PROCESS

The Social Security Administration (SSA) uses different adjudicative standards for continuing disability reviews (CDR) for adults and children. The Agency uses an 8-step evaluation process for adult CDRs (Figure B–1) and a 3-step evaluation process for child Supplemental Security Income (SSI) CDRs (Figure B–2).

Figure B–1: SSA’s 8-Step CDR Process for Adults

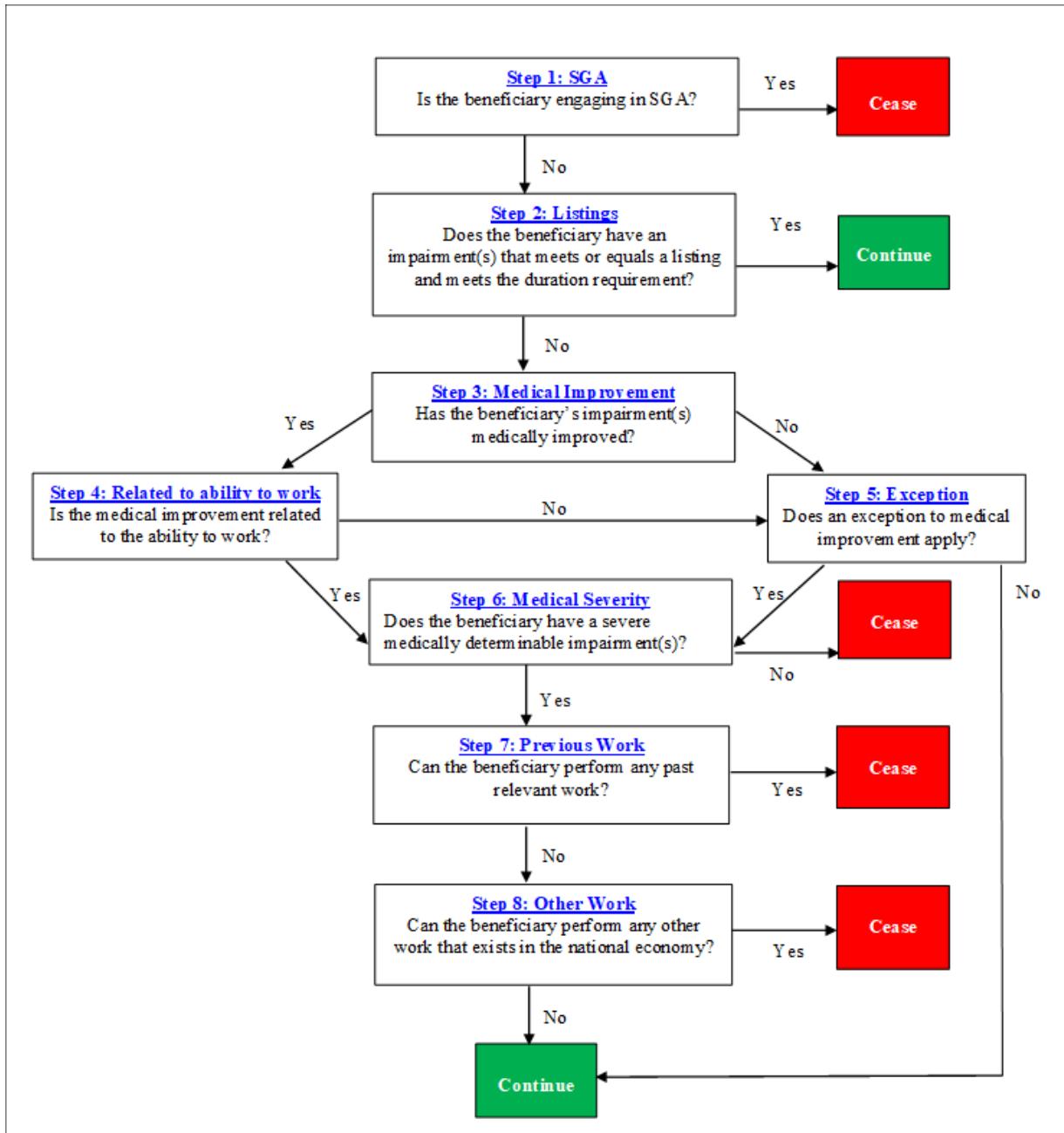
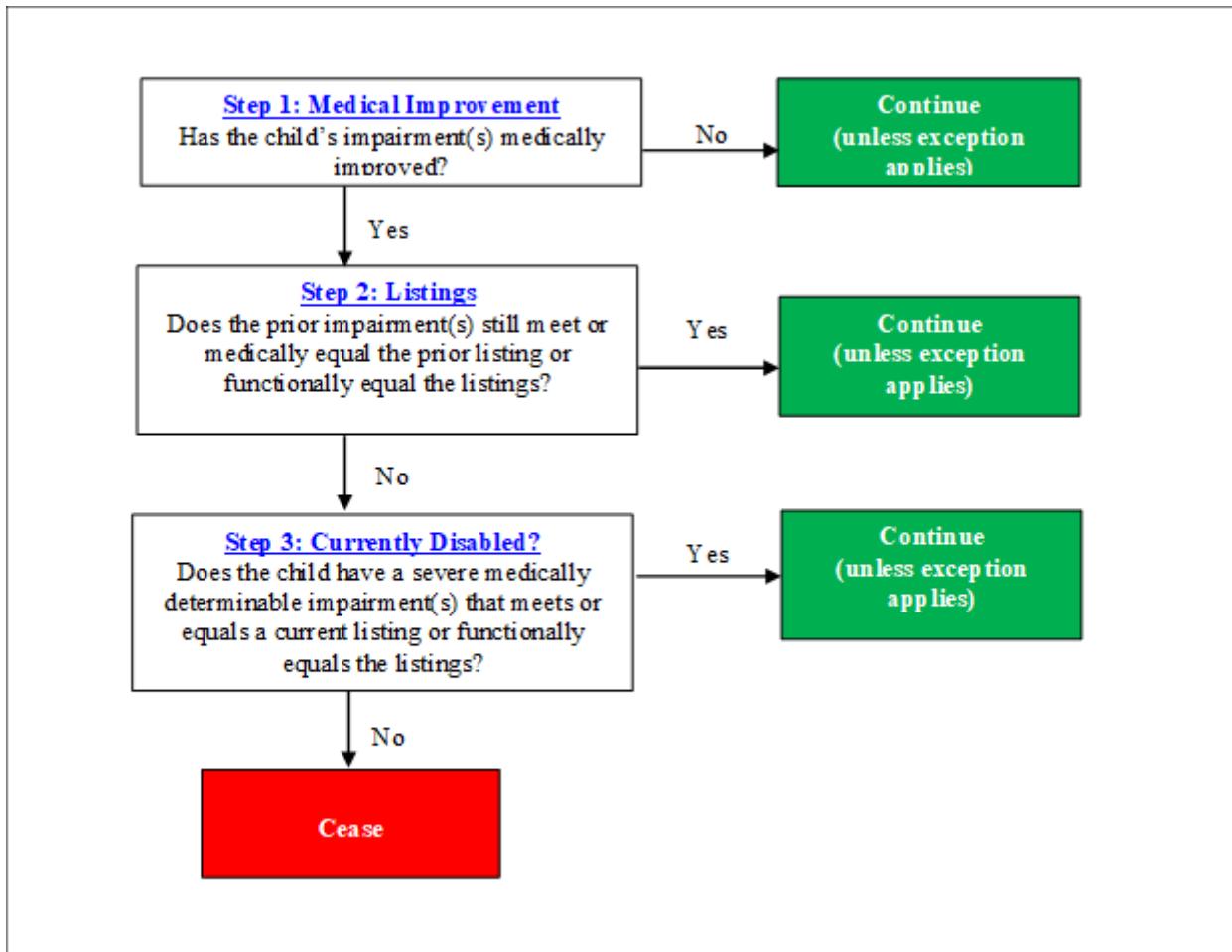


Figure B–2: SSA’s 3-Step CDR Process for Children Receiving SSI



Appendix C – SCOPE, METHODOLOGY, AND SAMPLE RESULTS

To achieve our objective, we:

- Reviewed applicable sections of the *Social Security Act* and Social Security Administration's (SSA) regulations, rules, policies, and procedures.
- Reviewed our prior May 2014 report, *The Medical Improvement Review Standard During Continuing Disability Reviews* (A-01-13-23065).
- Reviewed SSA's *Annual Report of Continuing Disability Reviews* for Fiscal Years 2011 through 2014.
- Obtained data on all medical continuing disability reviews (CDR) processed in Calendar Year (CY) 2017 from SSA's records of CDR determinations, known as the SSA-832/833 file.
- Identified 58,600 individuals with CDR cessations because of the Medical Improvement Review Standard (MIRS) exceptions. This included 55,786 individuals' CDRs ceased for failure to cooperate and 2,814 CDRs ceased for other MIRS exceptions. Our preliminary review found MIRS exception codes were used properly for failure to cooperate cessations but not always for other MIRS exceptions. Therefore, we focused on the population of 2,814 individuals with CDRs ceased for MIRS exception codes other than failure to cooperate. See below for the 2,814 population by type of exception code.
 - 767 individuals – Benefited from Advances in Medical or Vocational Therapy or Technology.
 - 590 individuals – New or Improved Diagnostic Techniques or Evaluation Show Impairment(s) Not as Disabling as Considered to be at the Time of the Most Recent Prior Favorable Medical Determination.
 - 482 individuals – Vocational Profile Enhanced by Vocational Therapy.
 - 482 individuals – Substantial Evidence that Any Prior Favorable Medical Determination of Entitlement to Benefits Was Based on Error.
 - 206 individuals – Whereabouts Unknown.
 - 177 individuals – Substantial Gainful Activity.
 - 110 individuals – Failure to Follow Prescribed Treatment.
- Selected a random sample of 50 cases¹ from the population of 2,814 for detailed analysis and performed the following.

¹ We replaced 2 of the 50 cases because the medical analysis was not in SSA's electronic disability folder.

- Reviewed the electronic disability folder for each case and SSA's systems to determine (1) any characteristic related to using MIRS exceptions, including whether the disability determination services properly used the MIRS exception; (2) whether the cessation determinations were correct; and (3) whether the cessation determinations were appealed.
- Referred cases to SSA where it appeared MIRS exceptions were not properly used.

We conducted our review between November 2018 and January 2019 in Boston, Massachusetts. The entities audited were the Office of Disability Determinations under the Office of the Deputy Commissioner for Operations and the Office of Disability Policy under the Office of the Deputy Commissioner for Retirement and Disability Policy. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We tested the data obtained for our audit and determined them to be sufficiently reliable to meet our objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Sample Results

- Population: 2,814
- Sample Size: 50

Table C–1: MIRS Exception Not Used Properly

	Beneficiaries
Sample Results	34
Point Estimate	1,914
Projection Lower Limit	1,566
Projection Upper Limit	2,214

Note: All projections were calculated at the 90-percent confidence level.

Appendix D—SAMPLE CASE RESULTS BY DISABILITY DETERMINATION SERVICES

The disability determination services (DDS) perform continuing disability reviews in each of the 50 States, plus the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and Social Security Administration Federal units, which include SSA's Office of Central Operations. See Table D–1 for the results of the 50 sample cases by DDS.

Table D–1: Sample Results by DDS

DDS	Exception Used Properly	Exception Not Used Properly	Total
Alabama	1	1	2
Arizona	1	0	1
Arkansas	1	2	3
California	2	6	8
Connecticut	1	0	1
District of Columbia	0	1	1
Florida	0	3	3
Georgia	1	1	2
Illinois	0	2	2
Maryland	2	0	2
Minnesota	1	0	1
Mississippi	0	1	1
New Hampshire	0	1	1
New Jersey	0	2	2
New York	2	0	2
North Carolina	1	0	1
Oregon	0	1	1
Pennsylvania	0	2	2
South Carolina	1	0	1
Tennessee	1	2	3
Texas	0	8	8
Utah	0	1	1
Washington	1	0	1
Total Sample Cases	16	34	50

Appendix E – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: May 21, 2019 Refer To: S1J-3

To: Gail S. Ennis
Inspector General

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

From: Stephanie Hall
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Medical Improvement Review Standard Exceptions Other Than Failure to Cooperate" (A-01-18-50347) -- INFORMATION

Thank you for the opportunity to review the draft report. We agree with OIG's recommendation to provide employees additional training and guidance on the proper use of MIRS exceptions.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

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