



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

*Audit Report*

Deficit Reduction Leave Payments to  
New York State Division of  
Disability Determination Employees

A-02-18-50611 / March 2019

# OIG

Office of the Inspector General  
SOCIAL SECURITY ADMINISTRATION

## MEMORANDUM

**Date:** March 20, 2019 **Refer To:**

**To:** Frederick M. Maurin  
Regional Commissioner  
New York

**From:** Assistant Inspector General for Audit

**Subject:** Deficit Reduction Leave Payments to New York State Division of Disability Determination Employees (A-02-18-50611)

The attached final report presents the results of our review. The objective was to determine the amount of Deficit Reduction Leave payments New York State paid Office of Temporary and Disability Assistance, Disability Determination Division employees and claimed as costs of determining disabilities for the Social Security Administration from Fiscal Years 2015 through 2018.

If you wish to discuss the final report, please call me or have your staff contact Tim Nee, Director, New York Audit Division, at (212) 264-5295.



Rona Lawson

Attachment

cc:

Trae Sommer, Director for Audit Liaison Staff  
Samuel Roberts, Commissioner of Office of Temporary Disability Assistance

# Deficit Reduction Leave Payments to New York State Division of Disability Determination Employees

## A-02-18-50611



March 2019

Office of Audit Report Summary

### Objective

To determine the amount of Deficit Reduction Leave (DRL) payments New York State paid Office of Temporary and Disability Assistance, Disability Determination Division (DDD) employees and claimed as costs of determining disabilities for the Social Security Administration (SSA) from Fiscal Years (FY) 2015 through 2018.

### Background

In 2011, the Governor of New York negotiated new labor contracts with two unions that represented DDD employees. DRL was included in both new contracts as a means of reducing workforce costs. Depending on the contract, the State agreed to repay DDD employees part or all of the value of the DRL in installments beginning in April 2015. The State paid DDD employees who separated before they received all installment payments the balance they were owed when they separated.

SSA advised New York State the DRL payments were not reimbursable. However, SSA did not disallow the State's requests to reimburse these costs because they were not specifically identified in the reimbursement requests.

### Findings

New York State paid DDD employees about \$3 million in DRL payments and related fringe benefits for FYs 2015 through 2018. As of FY 2018, the State had fully reimbursed all DDD employees all DRL-related payments they were due.

	DRL Payment	Fringe Benefit	Total
2015	\$752,954	\$403,342	\$1,156,296
2016	1,109,992	601,016	1,711,008
2017	56,654	32,471	89,125
2018	92	55	147
<b>Total</b>	<b>\$1,919,692</b>	<b>\$1,036,884</b>	<b>\$2,956,576</b>

In 2015, we determined the State paid about \$600,000 in DRL payments and related fringe benefits in FYs 2012 through 2014. Combining this amount with the DRL payments identified in this report, the State reimbursed DDD employees about \$3.6 million from FYs 2012 through 2018.

Per New York State, as of the date of this review, SSA had reimbursed the State for about \$3.3 million of the claimed DRL payments. However, New York State subtracted the total amount of the FY 2013 DRL-related costs it had claimed on an earlier version of a *State Agency Report of Obligations for SSA Disability Programs* (Form SSA-4513) when it submitted its final FY 2013 Form SSA-4513. The State reported it had not revised its claims for DRL costs for any other FY.

### Conclusion

While New York State was advised that DRL-related costs were not reimbursable as costs of determining disabilities, it still claimed about \$3.6 million for these costs from FYs 2012 through 2018. Because SSA only asked us to quantify the amount of DRL payments made, which we have included in the findings above, this report does not include any recommendations.

## TABLE OF CONTENTS

## **ABBREVIATIONS**

C.F.R.	Code of Federal Regulations
DDD	Disability Determination Division
DDS	Disability Determination Services
DRL	Deficit Reduction Leave
Form SSA-4513	<i>State Agency Report of Obligations for SSA Disability Programs</i>
FY	Fiscal Year
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration

## OBJECTIVE

Our objective was to determine the amount of Deficit Reduction Leave (DRL) payments New York State paid to Office of Temporary and Disability Assistance, Disability Determination Division (DDD) employees and claimed as costs of determining disabilities for the Social Security Administration (SSA) from Fiscal Years (FY)<sup>1</sup> 2015 through 2018.

## BACKGROUND

The Disability Insurance program<sup>2</sup> provides benefits to wage earners and their families in the event the wage earner becomes disabled. The Supplemental Security Income<sup>3</sup> program provides payments to financially needy individuals who are aged, blind, or disabled. Under these programs, disability determination services (DDS) in each State make disability determinations in accordance with Federal regulations.<sup>4</sup> Each DDS is responsible for determining claimants' disabilities and ensuring adequate evidence is available to support its determinations.

SSA reimburses DDSs for 100 percent of allowable expenditures up to their approved funding authorization. At the end of each quarter of the Fiscal Year (FY), each DDS submits a *State Agency Report of Obligations for SSA Disability Programs* (Form SSA-4513) to account for program disbursements and unliquidated obligations.<sup>5</sup> The Form SSA-4513 reports expenditures and unliquidated obligations for Personnel, Medical, Indirect, and All Other Non-personnel costs.<sup>6</sup>

New York's Office of Temporary and Disability Assistance's DDD performs the disability determination function in New York State. DDS employees who perform the disability determination function are State employees.

## DRL Payments

In 2011, the Governor of New York negotiated new labor contracts with two unions that represented DDD employees. DRL was included in both new contracts as a means of reducing workforce costs.

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<sup>1</sup> Unless otherwise noted, we refer to Federal FYs throughout this report. Federal FYs begin October 1 and end September 30 of the following year.

<sup>2</sup> *Social Security Act*, 42 U.S.C. §§ 401 and 402 (govinfo.gov 2017).

<sup>3</sup> *Social Security Act*, 42 U.S.C. § 1381 (govinfo.gov 2017).

<sup>4</sup> *Social Security Act*, 42 U.S.C. §§ 421(a)(1)-(2) and 1382c(a)(3)(H)(i) (govinfo.gov 2017).

<sup>5</sup> SSA, POMS, DI 39506.201, A (March 12, 2002).

<sup>6</sup> SSA, POMS, DI 39506.201 (March 12, 2002). See Appendix B for Form SSA-4513.

One contract reduced non-professional DDD employees' salaries by the value of 5 days' pay in the State FY that started April 1, 2011 and 4 days' pay in the State FY that started April 1, 2012.<sup>7</sup> The employees were required to take 5 days' DRL during the State FY that started April 1, 2011 and 4 days' DRL during the State FY that started April 1, 2012. Per the contract, the State would reimburse the affected employees the value of the 4 days' DRL from the State FY that started April 1, 2012 in equal installments beginning on March 24, 2016. There was no provision to repay employees the value of the 5 days' DRL from the FY that started April 1, 2011. Per the contract, the State paid employees the balance owed them if they separated from service before they were fully repaid for the DRL they took in the FY that started April 1, 2012.

The other labor contract reduced the salaries of non-clerical DDD employees by 4.198 percent for 10 consecutive payroll periods in the State FY that started April 1, 2011 and 1.847 percent for 26 pay periods in the FY that started April 1, 2012. Per the contract, the State credited employees with 9 days' DRL, which had to be used before March 31, 2013. Beginning with the pay period that included April 1, 2015, the State repaid employees the value of the 9-day reduction in equal amounts over 39 payroll periods. Also, the State paid employees the balance owed them if they separated from service before they were fully repaid for the 9-day DRL.

The State began including the cost of the DRL payments for reimbursement from SSA on Form SSA-4513 in March 2012.<sup>8</sup> It reported the cost of DRL payments on all subsequent Forms SSA-4513 for the FYs we reviewed.

## **Disallowance of Reimbursement for DRL Payments**

In September 2012, SSA advised the State the DRL payments to DDD employees were not reimbursable under relevant SSA regulations and guidelines. Therefore, the Agency would not reimburse them. In October 2015, the State requested that SSA reconsider the disallowance. In February 2016, SSA's Acting Commissioner affirmed the DRL payments had been disallowed. The State appealed SSA's decision to the Department of Health and Human Services' Departmental Appeals Board. In September 2016, the Board sustained SSA's disallowance and, in February 2017, rejected the State's request for reconsideration of the Board's initial decision thereby upholding SSA's disallowance of the DRL payments.

While the Agency determined the DRL costs were not reimbursable, it did not actually deny reimbursement for the DRL payments the State included on the Forms SSA-4513. The State included DRL costs with other costs on those Forms and did not separately list them.

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<sup>7</sup> The State's FY begins April 1 and ends March 31 of the following year.

<sup>8</sup> In April 2015, New York State began repaying employees the value of the DRL they took in equal installments. However, it reimbursed employees who separated from service before April 2015 the balance they were owed when they separated. Therefore, the State began incurring DRL costs in FY 2012.

## Prior Office of the Inspector General Report

In July 2014, SSA's New York Regional Commissioner requested that we quantify the amount of DRL payments charged to SSA. In our April 2015 report,<sup>9</sup> we concluded that, from FYs 2012 to 2014,<sup>10</sup> New York State reimbursed separating DDD employees \$614,349: \$398,006 in DRL payments and \$216,343 in related fringe benefits (see Table 1).

**Table 1: DRL Payments and Fringe Benefits for FY 2012 Through 2014**

FY	DRL Payments	Fringe Benefits	Total
2012	\$77,115	\$38,149	\$115,264
2013	199,954	111,777	311,731
2014	120,937	66,417	187,354
<b>Total</b>	<b>\$398,006</b>	<b>\$216,343</b>	<b>\$614,349<sup>11</sup></b>

The State included these payments as a cost of determining disabilities on Forms SSA-4513 it submitted to SSA for reimbursement. As of the date of our review, SSA had reimbursed the State for all \$614,349 in DRL costs. In September 2017, the New York Regional Commissioner requested that we quantify the total amount of DRL payments charged to SSA after the period covered by our April 2015 report.

## RESULTS OF REVIEW

From FYs 2015 through 2018, New York State paid DDD employees about \$3 million: approximately \$1.9 million in DRL payments and about \$1 million in related fringe benefits. As of FY 2018, the State had fully reimbursed all DDD employees all the DRL-related payments they were due.

We previously determined the State paid about \$600,000 in DRL payments and related fringe benefits in FYs 2012 through 2014. Combining this amount with the DRL payments identified in this report, overall, the State reimbursed DDD employees about \$3.6 million from FYs 2012 to 2018. Per New York State, as of the date of this review, SSA had reimbursed the State about \$3.3 million in DRL payments made and related fringe benefits claimed.

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<sup>9</sup> SSA, OIG, *Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees*, A-02-15-25036 (April 2015).

<sup>10</sup> In the April 2015 review, we determined the State paid \$645,619 in DRL payments and related fringe benefits to DDD employees from FY 2012 through the early part of FY 2015 based on the payroll data the State provided from January 18, 2012 to November 5, 2014. For this report, we used the information collected for our 2015 report only for the full FYs covered.

<sup>11</sup> Each number in the "DRL Payments" and "Fringe Benefits" columns is rounded to the nearest dollar. Because of this rounding, the actual total amounts may differ by \$1 from the total amounts in the Table. The actual total amount of DRL payments and related fringe benefits in FYs 2012 through 2014 was \$614,349.98.

## DRL Payments from FYs 2015 to 2018

From FYs 2015 to 2018, the State paid DDD employees about \$1.9 million in DRL payments and about \$1 million in related fringe benefits, for a total of about \$3 million. The State reported the cost of DRL payments on Forms SSA-4513 and included the DRL costs as part of the Personnel Service or Indirect costs, depending on how it recorded the employees' regular salary (see Table 2).

**Table 2: DRL Payments and Fringe Benefits for FYs 2015 Through 2018**

FY	DRL Payments	Fringe Benefits	Total
2015	\$752,954	\$403,342	\$1,156,296
2016	1,109,992	601,016	1,711,008
2017	56,654	32,471	89,125
2018 <sup>12</sup>	92	55	147
<b>Total</b>	<b>\$1,919,692</b>	<b>\$1,036,884</b>	<b>\$2,956,576<sup>13</sup></b>

We previously determined the State paid about \$600,000 in DRL payments and related fringe benefits in FYs 2012 through 2014. Combining this amount with the DRL payments identified in this report, the State reimbursed DDD employees about \$3.6 million<sup>14</sup> from FYs 2012 to 2018.

## Reimbursement for DRL Payments

Although SSA advised the State that DRL-related costs were not reimbursable as costs of determining disabilities, the State still claimed about \$3.6 million for these costs from FYs 2012 through 2018. Per New York State, as of the date of this review, SSA had reimbursed the State for about \$3.3 million of the claimed DRL payments. However, when the State submitted its final FY 2013 Form SSA-4513, it subtracted the total amount of the FY 2013 DRL-related costs for which it had previously been reimbursed, effectively eliminating the claim for the FY 2013

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<sup>12</sup> FY 2018 began on October 1, 2017. Per New York State, the last DRL payment to DDD employees was made on November 29, 2017.

<sup>13</sup> Each number in the "DRL Payments" and "Fringe Benefits" columns is rounded to the nearest dollar. Because of this rounding, the actual total amounts may differ by \$1 from the total amounts in the Table. The actual total amount of DRL payments and related fringe benefits in FYs 2015 through 2018 was \$2,956,576.76.

<sup>14</sup> The actual total amount of DRL payments and related fringe benefits in FYs 2012 through 2018 was \$3,570,926.74.

DRL-related costs for that year.<sup>15</sup> The State reported it had not revised its claims for DRL costs for any other FY.

## CONCLUSIONS

New York State paid DDD employees about \$3 million in DRL payments and related fringe benefits in FYs 2015 through 2018. As of FY 2018, the State had fully reimbursed all DDD employees all DRL-related payments they were due.

Combining this amount with the DRL payments identified in our previous report, the State reimbursed DDD employees about \$3.6 million<sup>16</sup> from FYs 2012 to 2018. The State claimed these costs for determining disabilities for SSA and, as of the date of this review, the Agency had reimbursed the State about \$3.3 million.

Because SSA only asked us to quantify the amount of DRL payments made, which we have included in the results above, this report does not include any recommendations.

## AGENCY AND OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE COMMENTS

SSA agreed with our conclusion. Similarly, the New York State Office of Temporary and Disability Assistance agreed with the amounts and dates summarized in our conclusion. See Appendix C for the full text of SSA's comments to our report. See Appendix D for the full text of the Office of Temporary and Disability Assistance's comments to our report.



Rona Lawson  
Assistant Inspector General for Audit

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<sup>15</sup> Per SSA, New York State's final Form SSA-4513 for FY 2013, dated August 8, 2018, reduced the DRL amount claimed under personnel service costs in an earlier Form SSA-4513 by the amount of \$311,732. This amount matched the sum of DRL payments and related fringe benefits the State paid to DDD employees in FY 2013. However, New York State increased the sum of indirect costs claimed in the final FY 2013 Form SSA-4513 in an amount greater than the DRL-related costs subtracted.

<sup>16</sup> The actual total amount of DRL payments and related fringe benefits in FYs 2012 through 2018 was \$3,570,926.74.

# *APPENDICES*

## **Appendix A – SCOPE AND METHODOLOGY**

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To accomplish our objective, we:

- Reviewed applicable Federal laws and regulations, pertinent parts of the Social Security Administration's (SSA) Program Operations Manual System and other criteria relevant to costs claimed by the Disability Determination Division (DDD) and the drawdown of SSA program appropriations.
- Spoke with staff at the New York State Office of Temporary and Disability Assistance and SSA's New York Regional Office about the Deficit Reduction Leave (DRL) provisions and how DRL-related payments were claimed as costs of determining disabilities for SSA.
- Obtained an understanding of the DRL payment records and procedures the State used to report the DRL and related fringe benefits on the quarterly Forms SSA-4513, *State Agency Report of Obligations for SSA Disability Programs*.
- Obtained from the New York State Office of Temporary and Disability Assistance records of DRL payments made to DDD employees. Per the records, the State's DRL payments to DDD employees began on January 18, 2012 and ended on November 27, 2017.
- Determined the amount of fringe benefits associated with the DRL payments. The State calculated fringe benefits as noted in Table A-1.

**Table A-1: New York State Fringe-benefit Rate**

<b>Period</b>	<b>Fringe-benefit Rate</b>
April 1, 2011 to March 31, 2012	43.27%
April 1, 2012 to March 31, 2013	50.16%
April 1, 2013 to March 31, 2014	58.75%
April 1, 2014 to March 31, 2015	53.48%
April 1, 2015 to March 31, 2016	53.58%
April 1, 2016 to March 31, 2017	54.61%
April 1, 2017 to March 31, 2018	59.97%

- Reviewed the Forms SSA-4513 submitted by DDD for Fiscal Years 2012 through 2018.

We conducted our review from September to December 2018 in New York, New York. We determined the data provided by DDD were sufficiently reliable to meet our objectives. 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 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 B – STATE AGENCY REPORT OF OBLIGATIONS FOR SSA DISABILITY PROGRAMS (FORM SSA-4513)

Social Security Administration

Form Approved OMB No. 0960-0421

### STATE AGENCY REPORT OF OBLIGATIONS FOR SSA DISABILITY PROGRAMS

(See instructions for completing form on reverse)

NAME OF AGENCY		STATE		
FISCAL YEAR	FOR PERIOD			
	From:			To:
REPORTING ITEMS - ALL TITLES		(A) DISBURSEMENTS	(B) UNLIQUIDATED OBLIGATIONS	(C) TOTAL OBLIGATIONS
<b>1. Personnel Service Costs</b>		<b>0</b>	<b>0</b>	<b>0</b>
<b>2. Medical Costs</b> <i>(sum of 2a+2b)</i>		<b>0</b>	<b>0</b>	<b>0</b>
a. Consultative Examinations <i>(sum of a1+a2+a3)</i>		<b>0</b>	<b>0</b>	<b>0</b>
1) Disability Insurance (DI) Claims				0
2) Supplemental Security Income (SSI) Claims				0
3) Concurrent DI/SSI Claims				0
b. Medical Evidence of Record <i>(sum of b1+b2+b3)</i>		<b>0</b>	<b>0</b>	<b>0</b>
1) Disability Insurance (DI) Claims				0
2) Supplemental Security Income (SSI) Claims				0
3) Concurrent DI/SSI Claims				0
<b>3. Indirect Costs</b> <i>{see attached addendum}</i>				<b>0</b>
<b>4. All Other Nonpersonnel Costs</b>		<b>0</b>	<b>0</b>	<b>0</b>
a. Occupancy				0
b. Contracted Costs (exclude EDP)				0
c. EDP Maintenance				0
d. New EDP Equipment/Upgrades				0
e. Equipment Total		<b>0</b>	<b>0</b>	<b>0</b>
1) Purchases				0
2) Rental				0
f. Communications				0
g. Applicant Travel				0
h. DDS Travel				0
i. Supplies				0
j. Miscellaneous				0
<b>5. Total:</b> <i>(sum of 1 thru 4)</i>		<b>0</b>	<b>0</b>	<b>0</b>
<b>6. Cumulative Obligational Authorization</b>				

7. SSA-871 Attached? YES  NO

**I CERTIFY THAT THE ABOVE REPORT AND ANY SUPPORTING STATEMENTS ARE TRUE  
STATEMENTS OF DISBURSEMENTS AND UNLIQUIDATED OBLIGATIONS FOR DETERMINATIONS  
OF DISABILITY UNDER THE PROVISIONS OF THE SOCIAL SECURITY ACT, AS AMENDED.**

SIGNATURE	TITLE	DATE
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Form SSA-4513 (6-2001)

Destroy All Prior Editions

## **Appendix C – AGENCY COMMENTS**

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### **SOCIAL SECURITY**

#### **MEMORANDUM**

Date: March 15, 2019

To: Rona Lawson  
Assistant Inspector General for Audit

From: Deputy Regional Commissioner  
New York

Subject: Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees (A-02-18-50611)

The New York Region appreciates the opportunity to comment on the draft report to determine the amount of Deficit Reduction Leave (DRL) payments New York State paid to Division of Disability Determinations employees and claimed as a cost of determining disabilities for the Social Security Administration.

We concur with both the DRL payment amounts cited in the audit findings and the audit conclusion.

Please direct any questions or concerns regarding this matter to Emmanuel Fernandez, Deputy Center Director, at (212) 264-4005, or Eric Wolf, Disability Program Administrator in the Center for Disability and Program Support at (212) 264-0339.

/s/

A handwritten signature in blue ink, appearing to read "Raymond Egan".

Raymond Egan

## **Appendix D– OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE COMMENTS**

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ANDREW M. CUOMO  
Governor

### **Office of Temporary and Disability Assistance**

MICHAEL P. HEIN  
Acting Commissioner

BARBARA C. GUINN  
Executive Deputy Commissioner

February 22, 2019

Ms. Rona Lawson  
Assistant Inspector General for Audit  
Social Security Administration -OIG  
6401 Security Boulevard  
Baltimore, MD 21235-0001

Dear Ms. Lawson:

This letter is in response to your draft report, "Deficit Reduction Leave Payments to New York State Division of Disability Determination Employees" (A-02-18-50611) dated January 23, 2019. The Office of Temporary and Disability Assistance (OTDA) agrees with the amounts, numbers and dates set forth in the Results of Review and Conclusion sections of the report.

The sole stated objective of the Office of the Inspector General review was to determine the amount of Deficit Reduction Leave New York State paid to OTDA's Disability Determination Division employees and claimed as costs of determining disabilities for the Social Security Administration from Fiscal Years 2015 through 2018. As noted above, OTDA does not dispute the cited data, and therefore, OTDA has no objection to the draft report.

Thank you for the opportunity to respond.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Kehmna".

Kevin Kehmna, Director  
Audit and Quality Improvement

cc: Timothy Nee  
Annah Geiger  
Kathleen Murphy  
Renee Nowicki  
Eric Schwenzeier

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