

Audit Report

Agency Actions After the Huntington
Fraud Scheme

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: September 10, 2020 **Refer To:**

To: The Commissioner

From: Inspector General

Subject: Agency Actions After the Huntington Fraud Scheme (A-12-19-50883)

The attached final report presents the results of the Office of Audit's review. The objective was to assess the Social Security Administration's actions to expand oversight of its hearing process after the Huntington fraud scheme, which involved an administrative law judge.

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



Gail S. Ennis

Attachment

Agency Actions After the Huntington Fraud Scheme

A-12-19-50883



September 2020

Office of Audit Report Summary

Objective

To assess the Social Security Administration's (SSA) actions to expand oversight of its hearing process after the Huntington fraud scheme, which involved an administrative law judge (ALJ).

Background

A claimant who is dissatisfied with the initial decision on his/her SSA disability application can appeal the decision. SSA ALJs conduct hearings throughout the United States in person or through video conferencing (and, in limited situations, by telephone). A claimant may appoint a representative who acts on the claimant's behalf in matters before SSA. SSA policy requires that hearing-level cases be rotated among ALJs in the hearing office.

An Office of the Inspector General investigation revealed that a fraud scheme began in 2004 when David B. Daugherty, a former ALJ in SSA's Hearing Office in Huntington, West Virginia, assigned himself cases that listed Eric C. Conn, a former Kentucky attorney, as the claimant representative. ALJ Daugherty approved Conn's cases based on false medical evidence. ALJ Daugherty retired from SSA in July 2011. Both Daugherty and Conn pleaded guilty in Federal court for their roles in the scheme; a doctor was convicted following a jury trial.

Findings

Case Rotation - SSA added system controls to prevent ALJs from assigning cases to themselves, which eliminated the control weakness that allowed ALJ Daugherty to assign Conn's cases to himself. SSA also added video capacity to minimize case-rotation issues, where a few ALJs decided all the cases from the same claimant representatives at remote hearing sites. Our analysis of Fiscal Year 2019 ALJ decisions did not find case-rotation issues among ALJs and claimant representatives or identify case-rotation issues, similar to the Conn-Daugherty scheme, among the top 25 claimant representatives, who represented at least 1,900 claimants in Fiscal Year 2019.

Oversight - SSA enhanced oversight of hearing offices and ALJs by identifying and monitoring multiple risk factors. If SSA identifies outlier performance, the Division of Quality in SSA's Office of Appellate Operations performs focused quality reviews. SSA uses the results of its reviews and studies to change its policies and procedures, develop training for ALJs and hearing office staff, and issue directives and discipline if needed.

Quality ALJ Decisions - SSA implemented pre- and post-effectuation quality reviews, an in-depth quality review process, and created other reviews to confirm hearing-level decisions were legally sufficient and policy compliant.

Fraud Prevention and Detection - SSA's *Fiscal Years 2018-2022 Agency Strategic and Annual Performance Reports* outline anti-fraud efforts, such as data analytics and predictive modeling, to identify high-risk transactions. SSA updated regulations on medical evidence and rules of conduct for claimant representatives. In Fiscal Year 2014, SSA began requiring that all employees take annual anti-fraud training.

Conclusion

SSA added system controls so ALJs can no longer assign cases to themselves, implemented new measures to identify and take actions on outliers, enhanced its quality review process, and strengthened its fraud detection and protection activities.

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ABBREVIATIONS

ALJ	Administrative Law Judge
CARES	Compassionate And REsponsive Service
C.F.R.	Code of Federal Regulations
FY	Fiscal Year
GAO	Government Accountability Office
HALLEX	Hearings, Appeals and Litigation Law Manual
HO	Hearing Office
HOCALJ	Hearing Office Chief Administrative Law Judge
OHO	Office of Hearings Operations
OIG	Office of the Inspector General
POMS	Program Operations Manual System
RH	Request for Hearing
SSA	Social Security Administration

OBJECTIVE

Our objective was to assess the Social Security Administration's (SSA) actions to expand oversight of its hearing process after the Huntington fraud scheme, which involved an administrative law judge (ALJ).

BACKGROUND

A claimant who is dissatisfied with the initial decision on his/her Old-Age, Survivors and Disability Insurance or Supplemental Security Income application can appeal that decision.¹ SSA's Office of Hearings Operations (OHO) holds hearings and renders decisions on appeals filed under the *Social Security Act*.² A hearing can be held in person; by video teleconference; or, in limited circumstances, by telephone, at locations nationwide.³ A claimant may appoint a representative who acts on the claimant's behalf in matters before SSA.⁴

The Office of the Inspector General started an investigation following a May 19, 2011 *Wall Street Journal* article.⁵ This investigation revealed a fraud scheme that began in 2004 when David B. Daugherty, an ALJ assigned to SSA's Hearing Office in Huntington, West Virginia, sought pending disability cases in which Kentucky attorney Eric C. Conn represented claimants. ALJ Daugherty often reassigned those cases to himself.⁶ A Department of Justice Press Release in September 2017 stated

According to trial evidence . . . [ALJ] Daugherty . . . contacted Conn and identified the cases he intended to decide the following month and further solicited Conn to provide either physical or mental medical documentation supporting disability determinations, whether or not the claimants were actually disabled. When mental medical documentation was requested, Conn solicited [Kentucky clinical psychologist Alfred B] Adkins to sign medical evaluation forms that Conn had previously prepared. Without first reviewing these forms, Adkins signed them; Conn subsequently forwarded the forms to the SSA, primarily to Daugherty, in support of disability determinations. Conn, in turn, paid Daugherty more than \$609,000 for granting benefits in his cases,

¹ 20 C.F.R. §§ 404.900(a) and 416.1400(a) (govinfo.gov 2019); SSA, *Appeal A Decision*, <https://www.ssa.gov> (last visited April 13, 2020).

² *Social Security Act*, 42 U.S.C. §§ 405(b) and 1383(c) (govinfo.gov 2019).

³ 20 C.F.R. §§ 404.936 and 416.1436 (govinfo.gov 2019); SSA, *HALLEX*, vol. I, ch. I-2-3, sec. I-2-3-10 (January 21, 2020).

⁴ SSA, *POMS*, GN 03910.001, C (March 17, 2020).

⁵ Damian Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, *Wall Street Journal*, May 19, 2011.

⁶ An attorney may serve as a claimant's representative if in good standing and admitted to practice law in at least one State, territory, district, or island possession of residence, or before the Supreme Court or a lower Federal court of the United States; not disqualified or suspended from acting as a representative before SSA or another Federal agency; and not prohibited by law from acting as a representative. 20 C.F.R. §§ 404.1705(a) and 416.1505(a) (gov.info.gov 2019); SSA, *POMS*, GN 03910.020 (March 17, 2020).

and almost \$200,000 to Adkins for signing the fraudulent forms. For his part, Conn received more than \$7 million in related attorney's fees.⁷

ALJ Daugherty retired from SSA in July 2011. Both Daugherty and Conn pleaded guilty in Federal court for their roles in the scheme. Daugherty was sentenced to 4 years in prison,⁸ and Conn was initially sentenced to 12 years in prison, but he fled from Federal custody and was not present for his sentencing hearing.⁹ Following his capture in Honduras 6 months later, Conn pleaded guilty to additional charges and was sentenced to 15 years in prison for a total of 27 years' imprisonment.¹⁰ Clinical Psychologist Adkins was convicted of conspiracy, wire fraud, mail fraud, and making false statements and was sentenced to 25 years in prison.¹¹

A report issued by the Senate Committee on Homeland Security and Governmental Affairs concluded that SSA pressured ALJs to decide a high number of cases but failed to ensure they produced quality decisions.¹² The report also concluded "... Judge Daugherty was one of the highest producing ALJs in the nation [despite] ... many of his colleagues who questioned whether his work habits matched his productivity."¹³

We reviewed information on SSA's ALJ and hearing offices' workloads and quality reviews, and SSA's FY 2019 Case Processing and Management System closed claims database to ensure the case rotation policy was in effect. See Appendix A for our scope and methodology.

⁷ Department of Justice, *Former Clinical Psychologist Sentenced to 25 Years in Prison for Role in \$550 Million Social Security Fraud Scheme*, Press Release Number 17-1046 (September 22, 2017).

⁸ Department of Justice, *Former Social Security Administrative Law Judge Sentenced to Four Years in Prison for Role in \$550 Million Social Security Fraud Scheme*, Press Release Number 17-941 (August 25, 2017).

⁹ Department of Justice, *Social Security Disability Lawyer Sentenced to 12 Years in Prison for Role in More Than \$550 Million Social Security Fraud Scheme*, Press Release Number 17-776 (July 14, 2017).

¹⁰ Department of Justice, *Fugitive Lawyer Involved in Largest Social Security Fraud Scheme Sentenced to 15 Years in Prison for His Escape and Related Crimes*, Press Release Number 18-1159 (September 7, 2018).

¹¹ Department of Justice, *Former Clinical Psychologist Sentenced to 25 Years in Prison for Role in \$550 Million Social Security Fraud Scheme*, Press Release Number 17-1046 (September 22, 2017).

¹² Staff of Senate Committee on Homeland Security and Government Affairs, 113th Congress, *How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country's Most Vulnerable: A Case Study of the Conn Law Firm*, p. 14 (Committee Print 2013).

¹³ Staff of Senate Committee on Homeland Security and Government Affairs, 113th Congress, *How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country's Most Vulnerable: A Case Study of the Conn Law Firm*, p. 18 (Committee Print 2013).

RESULTS OF REVIEW

As a result of the Huntington fraud scheme, SSA

- added controls to prevent ALJs from assigning cases to themselves and added video capacity to minimize case rotation issues;
- began to closely monitor and identify outlier hearing offices and ALJ performance;
- increased oversight and quality reviews to ensure hearing level decisions were legally sufficient and policy compliant; and
- enhanced its fraud-prevention and detection efforts.

Case Rotation

According to SSA's case rotation policy,

When the hearing office (HO) receives a valid request for hearing (RH) or an Appeals Council (AC) remand and completes the procedures set forth in the Hearings, Appeals and Litigation Law (HALLEX) manual chapter I-2-0, the Hearing Office Chief Administrative Law Judge (HOCALJ), acting as the Deputy Commissioner's "delegate," will assign the case to an [ALJ] . . . The HOCALJ generally assigns cases to ALJs on a rotational basis, with the earliest (i.e., oldest) RHs receiving priority, unless there is a special situation that requires a change in the order in which a case is assigned.¹⁴

ALJ Daugherty violated this policy by assigning Eric Conn's cases to himself, but this was not the first time we identified case rotation issues at SSA.¹⁵

- In a September 2007 report, we noted that, over a 6-year period, the Fort Lauderdale, Florida, HOCALJ did not follow OHO's policy of assigning claims on a rotational basis. Instead, the HOCALJ operated a pilot program (Pilot) that allowed him to hear claims from selected representatives. The Pilot had no documented goals, objectives, or measures for success. In addition, the HOCALJ operated the Pilot without OHO Headquarters and regional managers' approval or knowledge of its existence. Four claimant representatives had over 50 percent of their caseloads with the HOCALJ, which was unexpected with a case rotation policy.¹⁶

Based on our recommendations, SSA agreed to do the following.

¹⁴ SSA, *HALLEX*, vol. I, ch. I-2-1, sec. I-2-1-55 (April 9, 2019).

¹⁵ See Appendix B for a timeline of SSA's case rotation issues identified by the OIG.

¹⁶ In the case of Fort Lauderdale with 12 ALJs, this would mean that roughly 1 of every 12 cases, or about 8 percent, would be assigned to the HOCALJ.

1. Provide increased oversight of the Fort Lauderdale Hearing Office and independently assess the office's Pilot operations and results to determine if it should continue.
2. Determine if any other hearing offices suspended the rotational policy without knowledge or oversight from . . . Headquarters or Regional Office Managers and take appropriate action to officially authorize or deny any exceptions to this policy.
3. Remind HOCLJs about their duties of assigning claims on a rotational basis unless an exception from official policy is properly authorized.¹⁷

In response to our recommendation, SSA stated it stopped the Pilot in the Fort Lauderdale Hearing Office and instituted an action plan on August 28, 2007 to ensure all hearing offices were following case rotation policy.

- On June 2, 2008, we notified SSA that we had identified “. . . variances in the assignment of workload indicating that the [Harrisburg, Pennsylvania] hearing office was not following the . . . requirement that claims be assigned to [ALJs] on a rotational basis.”¹⁸

Despite SSA's actions in response to our recommendations, ALJ Daugherty continued assigning Conn's cases to himself through April 2011. In June 2011, OHO's Acting Chief ALJ issued a memorandum reminding hearing office managers to follow SSA's rotation policy.¹⁹ SSA also implemented a system control in its Case Processing and Management System²⁰ to prevent ALJs from assigning cases to themselves, and our February 2012 review confirmed this. While we noted SSA implemented system controls over case assignment, in our 2012 report we identified issues with case rotation dismissals, on-the-record decisions, and a disproportionate number of cases heard by one ALJ with a single claimant representative. These issues indicated a continuing exception with case assignment. We concluded the Agency needed to place greater attention on outliers in ALJ performance, be it high or low, and periodically monitor the underlying work processes.²¹

¹⁷ Information regarding this report may be found at SSA, OIG, *Workload Activity at Five Hearing Offices in Region IV, A-12-07-27091* (September 2007).

¹⁸ SSA, OIG, Memorandum to Deputy Commissioner Lisa Desoto, *Assignment of Claims in the Harrisburg Hearing Office*, p. 1 (June 2008).

¹⁹ SSA, Acting Chief Administrative Law Judge Memorandum to All Hearing Office Chief Administrative Law Judges and Hearing Office Directors, *Case Assignment and Other Important Reminders* (June 3, 2011).

²⁰ SSA's Case Processing and Management System is OHO's primary, Web-based system for (1) controlling and processing hearing claims and (2) generating management information.

²¹ SSA, OIG, *Oversight of Administrative Law Judge Workload Trends, A-12-11-01138* (February 2012).

Our March 2013 report noted case-rotation issues at remote hearing sites were due to ALJs choosing which remote sites to visit and other ALJs not wanting to travel to remote sites. Many hearing offices have remote sites generally located 75 miles or further from a parent hearing office. ALJs either travel to the site to conduct in-person hearings or conduct hearings using video technology. We also noted that

- parent hearing offices and remote sites lacked sufficient video hearing capacity and
- claimant representatives declined video hearings even when equipment was available.

We recommended SSA monitor the hearing offices identified in the report and remind hearing office managers to be consistent with rotation policy. SSA agreed to implement the recommendations.²²

We compared video capacity and use in FY 2013 (after we issued our March 2013 report) with FY 2019 capacity and use; see Table 1. To address remote sites lacking sufficient video hearing capacity,²³ SSA increased the number of video hearing equipment rooms available to 1,470 in FY 2019 compared to 1,002 in FY 2013. The percent of video hearings held increased to 30 percent in FY 2019.²⁴

Table 1: Video Capacity and Use (FY 2013 Versus FY 2019)

FY	National Video Hearing Equipment Rooms Available	National Video Hearing Equipment Hearing Room Used	Video Hearings Held	Portion of Video Hearings Held from Total Hearings Held
2013	1,002	818	179,308	26%
2019	1,470	1,084	183,549	30%

²² SSA, OIG, *Hearing Office Case Rotation Among Administrative Law Judges*, A-12-12-11274 (March 2013).

²³ In FY 2016, SSA launched the Compassionate And REsponsive Service (CARES) plan that included an initiative to expand the use of video hearings to balance workloads and eliminate service inequity nationwide. SSA, *Leading the Hearings and Appeals Process into the Future: A Plan for Compassionate And REsponsive Service (CARES)* (January 2016).

²⁴ In 2012, we issued a report on *Current and Expanded Use of Video Hearings*, A-05-12-21287 (June 2012). We are planning another review on *OHO's Use of Video Hearings*, A-05-18-50615. SSA published a final rule in the Federal Register, *Setting the Manner for the Appearance of Parties and Witnesses at a Hearing*, “. . . Our final rule states that we (the agency) will determine how parties and witnesses will appear at a hearing before an ALJ, and that we will set the time and place for the hearing accordingly. We will schedule the parties to a hearing to appear by video teleconference (VTC), in person, or, in limited circumstances, by telephone . . . parties to a hearing will continue to have the ability to opt out of appearing by VTC at the ALJ hearings level.” 84 Fed. Reg. 69298, p. 69298 (December 18, 2019).

SSA stated it developed an analytical model to identify irregular pairings of ALJs and claimant representatives that may be indicative of fraud. Disability experts from SSA's Offices of Quality Review and Appellate Operations²⁵ reviewed the cases, and, in mid-2018, SSA submitted a number of fraud referrals to our Office of Investigations. In 2019, SSA ran the disability fraud model again and reviewed a sample of the new case clusters; however, that review did not reveal activity that supported a fraud referral.

We did not find any case rotation issues among ALJs and claimant representatives in our analysis of FY 2019 hearing-level ALJ decisions. For this analysis, we used the same methodology from our FY 2013 case rotation audit.²⁶ Our analysis did not find case-rotation issues similar to the Huntington fraud scheme among the top 25 claimant representatives who represented at least 1,900 claimants²⁷ in FY 2019. None of the top 25 claimant representatives had more than 10 percent of their cases with the same ALJ, while, in FY 2010, ALJ Daugherty decided 42 percent of claimant representative Conn's cases.

SSA Oversight of Outlier Hearing Offices and ALJ Performance

SSA has enhanced its efforts to identify outlier hearing offices and ALJ performance.

- In our FY 2012 report, we identified the 12 ALJs who had the highest allowance rates and the 12 who had the lowest allowance rates. The majority of the staff we interviewed attributed the variance in allowance rates to ALJs' decisional independence and discretion when interpreting the law, as well as the demographics of the populations in the hearing offices' service areas.²⁸ In a FY 2017 follow-up report, we found the majority of the 24 outlier ALJs who had the highest and lowest allowance rates were no longer among the outlier ALJs because they were no longer working at the Agency or their allowance rates changed.²⁹

²⁵ The Office of Appellate Operations is the final level of administrative review for claims filed under the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs; 20 C.F.R. §§ 404.900(a) and 416.1400(a) (govinfo.gov 2019). Its role is to review ALJ decisions and orders of dismissal, either at the claimants' request or of its own volition. When it conducts a review, it may render the Commissioner's final decision, issue an order of dismissal, or remand the case to an ALJ for further proceedings. 20 C.F.R. §§ 404.967 and 416.1467 (govinfo.gov 2019).

²⁶ SSA, OIG, *Hearing Office Case Rotation Among Administrative Law Judges*, A-12-12-11274 (March 2013), see Appendix B for our methodology.

²⁷ We selected claimant representatives who represented at least 1,900 claimants, since claimant representative Eric C. Conn represented 1,972 claimants in FY 2010.

²⁸ SSA, OIG, *Oversight of Administrative Law Judge Workload Trends*, A-12-11-01138 (February 2012).

²⁹ SSA, OIG, *Administrative Law Judges from Our February 2012 Report Who Had the Highest and Lowest Allowance Rates*, A-12-17-50220 (June 2017).

- In a January 2013 report, we noted SSA did not have a process to rank overall hearing office performance using multiple risk factors. However, our report noted SSA had begun developing an early monitoring system to measure ALJ performance, such as number of on-the-record decisions and frequency of hearings with the same claimant representative, to determine whether a particular ALJ's decision-making needed further review.³⁰
- In a December 2013 report, we developed a model that measured variances at hearing offices using multiple risk factors including ALJ (1) allowance rates, (2) dispositions, (3) on-the-record rates, (4) dismissal rates, and (5) average processing time. In the report, we noted a large variance in these factors at the Huntington Hearing Office, indicating the office was exhibiting outlier performance. Our report stated, "We used FY 2010 and 2011 workload data in our hearing office key risk factor model to determine whether the Huntington, West Virginia, Hearing Office had a high-variance score Among all of the hearing offices, the Huntington Office had the second highest variance score in FY 2010 and third highest score in FY 2011."³¹

In response to our recommendations, in FY 2015, SSA developed *Electronic Hearing Office Performance* reports, to give managers another tool to identify potential issues and risk factors at hearing offices. According to SSA, "... workload management teams at OHO headquarters (HQ) and regional offices have used a variety of hearing office [management information] MI reports³² on a daily basis to identify trends and address workload management concerns rapidly. When issues arise with workload performance, the workload management teams . . . provide support to these hearing offices in order to balance work appropriately or address other management concerns."

- In a November 2014 report, we identified 44 outlier ALJs (about 4 percent of the average number of ALJs available in the Agency) who had 700 or more dispositions and had allowance rates of 85 percent or higher in any 2 FYs between 2007 and 2013. We conducted a sample review of favorable decisions issued by the 44 ALJs and concluded they improperly allowed disability benefits in some cases. SSA took administrative action on 15 of the 44 ALJs.³³

³⁰ SSA, OIG, *Identifying and Monitoring Risk Factors at Hearing Offices*, A-12-12-11289 (January 2013).

³¹ SSA, OIG, *Analysis of Hearing Offices Using Key Risk Factors*, A-12-13-13044 (December 2013).

³² These metrics include average wait times, hearings pending per ALJ, and decision drafts pending at various stages in the hearings process.

³³ SSA, OIG, *Administrative Law Judges with Both High Dispositions and High Allowance Rates*, A-12-14-24092, (November 2014).

Since FY 2011, OHO has been developing and refining a model to measure ALJ performance based on a combination of risk factors, such as number of dispositions, number of on-the-record decisions, and frequency of hearings with the same claimant representative. In FY 2010, the Office of Appellate Operations³⁴ established a Division of Quality to implement the provisions of the regulations that permit the Appeals Council to consider a random or selective sample of unappealed hearing decisions for possible own-motion review.³⁵ OHO management requested the Division of Quality conduct focused quality reviews³⁶ on ALJ-related issues to ensure compliance with Agency policies and procedures. The Division of Quality began conducting these reviews in FY 2011 with a review of ALJ decisions related to medical sources issued by the Huntington Hearing Office. According to SSA, subjects for the Division of Quality's focused quality reviews have included

- problematic policy issues;
- Agency adjudicators;
- sources of expert information provided to the Agency (that is, medical experts, vocational experts, medical support staff, consultative examinations, etc.);
- sources of information provided by claimants (that is, independent medical examiners);
- forum shopping;³⁷ and
- claimants' representatives.

According to SSA, “. . . [when] identifying outlier ALJs, OHO management (at all levels) use internal [management information] MI reports to review trends in Appeals Council remand rates, hearings held per month, hearings scheduled/hearings held, anomalous rates of favorable/unfavorable dispositions, length of time in certain docket statuses, and whether there has been a focused review for policy compliance.”

When OHO managers identify an outlier ALJ, local hearing office managers may address issues with the ALJ to resolve performance. At any time, the HOCALJ may request support from regional and Headquarters ALJ performance teams for guidance, including receiving support

³⁴ Effective October 1, 2017, the Office of Appellate Operations, previously in SSA's Office of Disability, Adjudication and Review, was moved under the Office of Analytics, Review, and Oversight. SSA, *Administrative Message*, AM-17059 (October 2, 2017).

³⁵ 20 C.F.R. §§ 404.969(b) and 416.1469(b) (govinfo.gov 2019).

³⁶ The Division of Quality selects the period and randomly selects the decisions it will review, usually between 60 to 120 cases. Analysts gather general information on the cases and perform a more in-depth review on 25 percent of the cases. Since FY 2016, the Division of Quality has conducted between 15 and 25 ALJ-focused quality reviews each year. None of the focused quality reviews resulted in a fraud referral to the OIG.

³⁷ Forum shopping is the practice of choosing the court in which to bring an action based on a determination of which court is likely to provide the most favorable outcome.

from a Triage Assessment Group.³⁸ The Group meets bi-weekly to evaluate the facts of each ALJ performance situation, including relevant management information and other documentation. The Group provides guidance for the Regional Chief ALJ and HOCALJ to take action regarding an outlier ALJ. The HOCALJ may assign an ALJ a mentor, require that an ALJ take additional training, or issue directives to correct performance. If the outlier ALJ continues having performance issues, OHO's Office of the Chief ALJ considers further action in consultation with SSA's Office of General Counsel.

SSA Emphasis on Quality, Legally Sufficient, and Policy-compliant Decisions

SSA took a number of actions to ensure ALJs were issuing quality, legally sufficient, and policy-compliant decisions.

- **Administrative Conference of the United States Study:** In December 2011, SSA commissioned the Administrative Conference of the United States³⁹ to study SSA's adjudication process. Part of the study reviewed (1) the Appeals Council's role in reducing observed variances in ALJ decisional outcomes and (2) measures SSA could take to identify and address issues posed by outlier ALJs while also improving the quality of ALJ decisions. The report contained several recommendations, including having SSA's Appeals Council review a sample of 5 percent of each ALJ's decisions so ALJs would have greater incentive to take care in writing decisions both allowing and denying benefits. The report also recommended that SSA conduct more extensive pre-effectuation reviews to ensure greater oversight in the disability adjudication process. SSA responded to these recommendations by conducting post/pre-effectuation reviews of ALJ decisions.⁴⁰
- **Post-effectuation Quality Reviews of ALJ Decisions:** In FY 2011, the Division of Quality in the Office of Appellate Operations began conducting post-effectuation reviews in the form of focused quality reviews of ALJ decisions. Post-effectuation means the ALJ decision is final, and the Agency will not take any further action on the case. The Division of Quality conducts post-effectuation focused quality reviews, in part, to identify (a) recurrent decisional issues for incorporation into future focused training and (b) where the Agency may need to change policy or hearing office procedures.

³⁸ OHO's Office of the Chief ALJ formed the Triage Assessment Group in FY 2012. Its members include the Chief ALJ, Deputy Chief ALJ, and Division Directors, as appropriate. For more information, see SSA, *OIG, Identifying and Monitoring Risk Factors at Hearing Offices, A-12-12-11289*, p. 4 (January 2013).

³⁹ The Administrative Conference of the United States is an independent Federal agency that convenes expert representatives from the public and private sectors to recommend improvements to administrative process and procedure. Administrative Conference of the United States, About, ACUS.gov (last visited September 16, 2019).

⁴⁰ Harold J. Krent, IIT Chicago-Kent College of Law & Scott Morris, IIT College of Psychology, *Achieving Greater Consistency in Social Security Disability Adjudication: An Empirical Study and Suggested Reforms* (April 3, 2013).

- **Pre-effectuation Quality Reviews of ALJ Decisions:** Beginning in FY 2011, the Division of Quality began conducting pre-effectuation reviews of randomly selected favorable hearing decisions before SSA made any payments to claimants. The Division of Quality conducts pre-effectuation reviews,⁴¹ in part, to
 - address error-prone adjudication issues and
 - focus on error-prone patterns involving impairments or other specific criteria.
- **Special Studies by the Division of Quality:** According to SSA, the Division of Quality occasionally conducts other studies, such as the FY 2016 Appeals Council remand order study, for quality purposes. The Division of Quality gathered information about the quality of 700 randomly sampled Appeals Council remand orders issued between December 1, 2015 and April 30, 2016.
- **In-line Quality Reviews:** SSA regional office employees conduct in-line quality reviews on a sample of hearing draft decisions to ensure the draft decisions are both policy-compliant and legally sufficient before employees submit the drafts to ALJs for signature. In-line quality review findings allow managers to provide feedback to ALJs when their decision writing instructions affect, contribute to, or cause legal sufficiency, quality, or policy-compliance errors. If hearing office managers begin to see recurring errors, they may determine training is needed for some or all of the hearing office staff and ALJs on those issues. SSA developed the in-line quality review program in 2009. Initially, SSA implemented the program in a limited number of regions because of hiring restrictions. However, in FY 2014, the Agency officially launched the program nationwide. In February 2017, SSA's Office of the Chief ALJ informed us that the regional in-line quality reviews were temporarily suspended because of other critical work.⁴²
- **Quality Initiatives in the CARES Plan:** In January 2016, SSA issued the CARES plan, which outlined initiatives to address the growing number of pending hearings and increasing wait times.⁴³ OHO also expected the plan would help serve as a foundation to explore future initiatives as the Agency continued identifying ways to better serve the public.⁴⁴ SSA updated the CARES plan in 2017 and 2019 by adding new initiatives and discontinuing other initiatives (either because SSA concluded they were completed or were not providing the expected efficiencies or outcomes). One of the CARES initiatives is *Updating Decision*

⁴¹ The regulations provide for two types of pre-effectuation reviews: random sample and selective sample. 20 C.F.R. §§ 404.969(b)(1) and 416.1469(b)(1) (govinfo.gov 2019).

⁴² SSA, OIG, *Oversight of Administrative Law Judge Decisional Quality*, A-12-16-50106, Appendix D (March 2017).

⁴³ For more information, see SSA, OIG, *Compassionate And REsponsive Service Plan to Reduce Pending Hearings*, A-05-16-50167 (September 2016). We are planning to start a follow-up review on the CARES plan in FY 2020.

⁴⁴ SSA, *Leading the Hearings and Appeals Process into the Future: A Plan for Compassionate And REsponsive Service (CARES)* (January 2016).

Writing Tools and Templates, which SSA developed as part of its approach to ensuring policy compliance and national consistency in the tools its employees use to make and prepare draft decisions. Another quality assurance initiative in the CARES plan the Agency-developed is the Insight program. SSA uses Insight to identify policy compliance and internal consistency errors in hearing decisions to improve the consistency and timeliness of the disability adjudication process.⁴⁵ In response to our April 2019 report,⁴⁶ SSA developed metrics to conduct an analysis that showed a 31-percent reduction in quality flags for decisions where employees used Insight compared to when they did not.

- **New Tools Providing Feedback to ALJs on Their Decisions:** OHO managers began monitoring national and individual ALJ agree rates in FY 2011 to assess the level of policy-compliant, legally sufficient decisions. However, it did not set a goal until FY 2013 when OHO management established an 85-percent quality expectation goal for decisions and a 65-percent goal for dismissals.⁴⁷ The decision agree rate represents the extent to which the Appeals Council concludes the ALJ decisions were supported by substantial evidence and contained no error of law or abuse that would justify a remand or reversal. ALJs who have below average agree rates may receive additional training, mentoring, and counseling and, in some cases, may be subject to further review.⁴⁸

Additionally, SSA established an electronic tool called “How MI Doing?” that allows ALJs to compare their productivity and timeliness metrics to hearing office, regional, or national metrics. The tool also provides data on the agree rate for each ALJ as well as the hearing office, regional, and national agree rates. By using this tool, ALJs can learn why the Appeals Council remanded any prior decisions⁴⁹ and access on-demand training pertaining to that reason.

⁴⁵ SSA, *2017 Updated Compassionate And REsponsive Service (CARES) and Anomaly Plan, and Compassionate And REsponsive Service (CARES) Plan: 2018-20119 Update*.

⁴⁶ SSA, OIG, *The Social Security Administration’s Use of Insight Software to Identify Potential Anomalies in Hearing Decisions, A-12-18-50353* (April 2019).

⁴⁷ Effective FY 2015, SSA changed the dismissal goal from 65 to 72 percent.

⁴⁸ SSA, OIG, *Oversight of Administrative Law Judge Decisional Quality, A-12-16-50106* (March 2017).

⁴⁹ The Appeals Council may remand a case to an ALJ if it finds significant evidentiary or procedural deficiencies in the decision. For a list of cases the Appeals Council will review, see 20 C.F.R. §§ 404.970 and 416.1470 (govinfo.gov 2019). In most cases, the Appeals Council will vacate an ALJ’s decision in its entirety when it remands a case. This action requires that the ALJ issue a new decision in the case. SSA, *HALLEX*, vol. 1, ch. I-3-7, sec. I-3-7-1 (April 26, 2016).

In 2017, the Government Accountability Office concluded SSA made efforts to monitor and improve the accuracy and consistency of hearing-level decisions, but quality reviews may overlap and had not been systematically evaluated. SSA agreed with the conclusion, and its next step was to perform a comprehensive assessment and refinement of its oversight roles and processes.⁵⁰ In a September 2019 update, SSA stated its

. . . Office of Analytics, Review, and Oversight (OARO) was created with the purposes of enhancing collaboration, eliminating unnecessary overlap, and enhancing the efficiency of reviews. We are evaluating the current Appellate Operations reviews to recommend improvements.

We developed a review of favorable and unfavorable hearing decisions to assess decisional quality on a national level. We implemented the review throughout [FY] 2019. We will review the results and draft the study report in FY 2020. Once the report is drafted, reviewed, and completed, the Commissioner will be in a better position to accurately assess the agency's quality assurance reviews and strategic use of resources.⁵¹

SSA Efforts to Strengthen Fraud Prevention and Detection

SSA has taken actions to strengthen fraud prevention and detection, such as the following.

- **Performance Measures for Fraud Prevention and Detection:** SSA's *Fiscal Years 2018-2022 Agency Strategic and Annual Performance Reports* outline anti-fraud efforts, such as data analytics and predictive modeling to identify high-risk transactions for further review.⁵²
- **Updated Rules for Medical Evidence:** In 2016, SSA updated its rules and will not consider evidence (absent good cause) from medical sources⁵³ (a) convicted of a felony under sections 208 or 1632 of the *Social Security Act*; (b) excluded from participating in any Federal health care program under section 1128 of the *Social Security Act*; or (c) imposed with a civil monetary penalty, assessment, or both, for submitting false evidence under section 1129 of the *Social Security Act*.⁵⁴

⁵⁰ GAO, *Social Security Disability: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions*, GAO 18-37 (December 2017).

⁵¹ SSA's Audit Recommendation Tracking System.

⁵² SSA, *Fiscal Years 2018-2022 Agency Strategic Plan* (February 2018); *Annual Performance Report Fiscal Years 2017-2019* (February 2018); *Annual Performance Report Fiscal Years 2018-2020* (March 2019); and *Annual Performance Report Fiscal Years 2019-2021* (February 2020).

⁵³ We are planning a review of exclusion of certain medical sources of evidence based on the *Bipartisan Budget Act of 2015*, Pub. L. No. 114-74, § 812, 129 Stat 584, p. 602 (2015).

⁵⁴ *Evidence from Excluded Medical Sources of Evidence*, 81 Fed. Reg. 65536 (September 23, 2016). 20 C.F.R. §§ 404.1503b and 416.903b (govinfo.gov 2019).

- **Social Security Rulings on Fraud and Similar Fault:** On March 14, 2016, SSA published Social Security Rulings that explain the processes for disregarding evidence and making redeterminations in disability claims when there is reason to believe fraud or similar fault was involved in the individual's application and in the providing of evidence.⁵⁵
- **Updated Regulations on Medical Sources:** SSA revised its rules about acceptable medical sources and how SSA considers and articulates consideration of medical opinions and prior administrative medical findings.⁵⁶
- **Updated Rules for Claimant Representative:** In 2018, SSA revised its *Rules of Conduct* to clarify representatives' responsibilities, update a representative's affirmative duties and prohibited actions, and change the qualifications for non-attorney representatives and the representative sanction process.⁵⁷
- **Anti-Fraud Training:** SSA had fraud-related training in place, but, beginning in FY 2014, SSA made it mandatory for all employees.⁵⁸
- **See Something Say Something Mailbox:** In December 2013, OHO launched the *See Something, Say Something* mailbox. According to SSA, as of February 12, 2020, OHO employees made 270 referrals to OIG for further investigation. OHO requests that each employee report suspicious activity, including relationships between representatives and doctors, patterns of medical evidence that are virtually identical for different claimants, or anything else that strikes the employee as unusual.

⁵⁵ Social Security Ruling, 16-1p, *Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) and 1631(e)(7) of the Social Security Act* (2016), and 16-2p, *Titles II and XVI: Evaluation of Claims Involving Similar Fault in the Providing of Evidence* (2016). Although the Rulings do not have the same force and effect as statutes or Regulations, they are binding on all SSA components.

⁵⁶ 20 C.F.R. §§ 404.1520c and 416.920c (govinfo.gov 2019); SSA, *HALLEX*, vol. 1, ch. I-5-3, sec. I-5-3-30 (July 30, 2018). In 1991, SSA adopted new rules that created a uniform national policy about how to consider treating physicians' medical opinions. Based on the state of healthcare at that time, SSA determined opinions from a claimant's treating physician tended to have a special intrinsic value, because he/she was likely to be the medical professional most able to provide a detailed picture of a claimant's impairments. Accordingly, the "treating physician rule" allowed adjudicators to give controlling weight to treating source opinions under certain circumstances. However, since the Agency adopted these rules over 25 years ago, changes in healthcare delivery and SSA's adjudicative experience necessitated the Agency revise them.

⁵⁷ 20 C.F.R. §§ 404.1740 and 416.1540 (govinfo.gov 2019). *Rules of Conduct and Standards of Responsibility for Appointed Representatives*, 83 Fed. Reg. 30849, pp. 30849-60 (July 2, 2018). The revised *Rules of Conduct* require that representatives disclose whether a medical or vocational opinion is drafted, prepared, or issued by an employee or contractor of the representative and whether the representative referred the claimant for treatment.

⁵⁸ SSA, OIG, *The Social Security Administration's Anti-fraud Training*, A-01-16-50035 (September 2015).

CONCLUSION

SSA added controls to its Case Processing and Management System so ALJs can no longer assign cases to themselves. SSA also implemented new measures to identify and take actions on outlier hearing offices and ALJs. Finally, SSA enhanced its quality review process, as well as strengthening its fraud detection and protection activities.

AGENCY COMMENTS

SSA will continue its efforts to combat waste, fraud, and abuse in all its programs. See Appendix C.



Michelle L. Anderson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Hearings Operations’ Hearings, Appeals, and Litigation Law Manual.
- Reviewed Office of the Inspector General reports related to administrative law judges (ALJ) and hearing office workloads as well as recommendations and agency actions in response to the recommendations.
- Reviewed Government Accountability Office (GAO) report, *Social Security Disability, Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions, GAO 18-37* (December 2017).
- Received updates on SSA’s quality review process.
- Analyzed trends in video hearings and installation of video hearing units.
- Reviewed SSA’s mandatory anti-fraud trainings from Fiscal Years (FY) 2015 to 2019.
- Reviewed SSA’s *Annual Performance Report Fiscal Years 2017-2019, Annual Performance Report Fiscal Years 2018-2020, Annual Performance Report Fiscal Years 2019-2021, and Fiscal Years 2018-2022 Agency Strategic Plan*.
- Obtained and analyzed FY 2019 Case Processing and Management System closed claims database to identify any potential case rotation issues between claimant representatives and ALJs. To do this, we
 1. extracted ALJs with at least 200 dispositions;
 2. extracted claimant representatives with at least 50 total dispositions during the FY;
 3. calculated the ALJ to claimant representative-ratio for all ALJs and claimant representatives;
 4. sorted on ALJ to claimant representative ratio from highest to lowest; and
 5. identified any ratio above 50 percent.¹

¹ This is the same methodology we used in our report on *Hearing Office Case Rotation Among Administrative Law Judges, A-12-12-11274* (March 2013), as discussed in Appendix B.

- Analyzed the FY 2019 Case Processing and Management System closed claims database to identify any rotation issues among claimant representatives who represented at least 1,900 claimants² before the same ALJ. To do this, we
 1. extracted all records with a claimant representative;
 2. determined the number of allowances and denials for each claimant representative;
 3. determined the number of allowances and denials for each ALJ;
 4. calculated allowance rates for each claimant representative and each ALJ;
 5. summarized allowance and denials for each claimant representative and each ALJ to determine the number of allowances and denials each ALJ had with each claimant representative;
 6. calculated representative to ALJ ratios for each claimant representative with each ALJ;
 7. identified 25 claimant representatives that represented more than 1,900 claimants;
 8. sorted claimant representative to ALJ ratios from highest to lowest; and
 9. identified the highest claimant representative to ALJ ratio for each of the 25 claimant representatives.

We assessed the significance of internal controls necessary to satisfy the audit objective. This included an assessment of the five internal control components, including control environment, risk assessment, control activities, information and communication, and monitoring. In addition, we reviewed the principles of internal controls associated with the audit objective. We identified the following component and principle as significant to the audit objective.

- Component 5: Monitoring
 - Principle 16: Perform Monitoring Activities

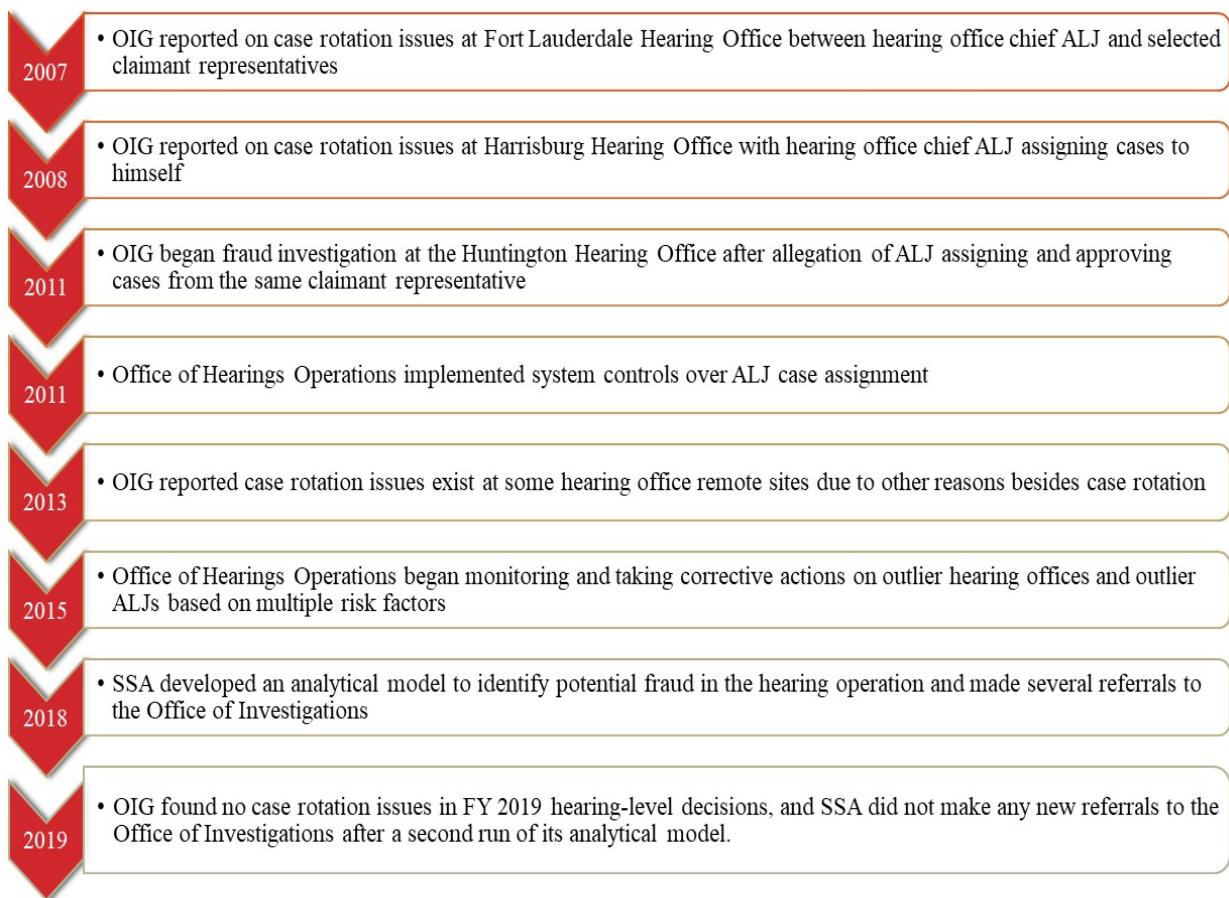
The entity audited was SSA's Office of Hearings Operations and Office of Appellate Operations. We determined the FY 2019 Case Processing and Management System data were sufficiently reliable to meet our objective. We conducted our review between December 2019 and April 2020 in Boston, Massachusetts, and Arlington, Virginia. 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 believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

² We selected claimant representatives who represented at least 1,900 claimants, since Eric Conn represented 1,972 claimants in FY 2010.

Appendix B – TIMELINE OF CASE ROTATION ISSUES

Figure B-1 is a timeline of case rotation issues identified by the Social Security Administration’s (SSA) Office of the Inspector General (OIG) and SSA’s actions to monitor and take actions on outlier hearing office and administrative law judge (ALJ) performance based on multiple risk factors.

**Figure B-1: Timeline of Case Rotation Issues and Monitoring
Outlier Hearing Office and ALJ Performance**



Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: September 3, 2020

Refer To:

To: Gail S. Ennis
Inspector General

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

From: Stephanie Hall
Chief of Staff

Subject: Office of the Inspector General Draft Report, "Agency Actions After the Huntington Fraud Scheme" (A-12-19-50883) – INFORMATION

Thank you for the opportunity to review the draft report. We are pleased the report acknowledges our improved oversight of the hearing process. We will continue our longstanding efforts to combat waste, fraud, and abuse in all of our programs.

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

MISSION

By conducting independent and objective audits, evaluations, and investigations, the Office of the Inspector General (OIG) inspires public confidence in the integrity and security of the Social Security Administration's (SSA) programs and operations and protects them against fraud, waste, and abuse. We provide timely, useful, and reliable information and advice to Administration officials, Congress, and the public.

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Baltimore, Maryland 21235

FAX: 410-597-0118

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