



SOCIAL SECURITY

The Commissioner

December 5, 2012

The Honorable Xavier Becerra
Ranking Member, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Becerra:

Thank you for your July 16, 2012 letter requesting additional information to complete the record for the hearing on the disability appeals process. Enclosed you will find the answers to your questions.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,



Michael J. Astrue

Enclosures

**Questions for the Record
For the June 27, 2012 Hearing
On the Disability Appeals Process**

Questions from Representative Becerra

- 1. Does SSA use objective diagnostic criteria in determining whether non-exertional impairments or limitations are of such severity that the individual meets the eligibility criteria to receive disability benefits? Please discuss.**

Yes we do. Allegations of pain or other non-exertional (i.e., non-strength related) impairments or limitations are not sufficient for us to award disability benefits. We require objective medical evidence and laboratory findings that show: 1) a claimant has a medical impairment that could reasonably be expected to produce the pain or other symptoms alleged, and 2) when considered with all of the other evidence, meets our disability requirements.

- 2. How extensive is the variability in allowance and denial rates between Administrative Law Judges (ALJs) - that is, do the majority of judges cluster within a middle range, or are they widely distributed? Might there be legitimate circumstances where an ALJ could have allowance rates that are higher or lower than the average? What steps is SSA taking to address concerns that some judges may not be properly following SSA's criteria and procedures for weighing evidence and making determinations?**

The majority of ALJs cluster within a narrow range of the mean, with a reduction in the significant outliers in the last few years. Some variance is expected in decision-making because of the variation expected in the random allocation of claims each judge reviews and judicial independence required to adjudicate a claim. Our main concern with outliers is whether their decisions are policy compliant and accurate.

To ensure adjudicators issue policy compliant decisions, we continue to improve training programs and create better individual feedback tools, such as "How MI Doing?" This resource gives adjudicators information about their remands, including the reasons for remand, as well as information on their performance in relation to other ALJs in their office, their region, and the Nation. Currently, we are developing training modules related to each of the 170 identified reasons for remand that we will link to the "How MI Doing?" tool. Further efforts to promote policy compliance include a test pilot of the Electronic Bench Book (eBB) later this year. The eBB is a policy compliance web-based tool that aids in documenting, analyzing, and adjudicating a disability case in accordance with our regulations to improve decisional accuracy and consistency.

Our Office of Appellate Operations created the Division of Quality (DQ) to perform focused, post-effectuation reviews of hearing offices, ALJs, representatives, doctors, and other subjects. We identify potential subjects for focused reviews from data collected through our systems, findings from pre-effectuation reviews, and internal and external referrals received from various sources regarding potential non-compliance with our regulations and policies. Focused reviews allow us to examine how ALJs and hearing offices adjudicate cases, and, if

necessary, help develop training programs, materials, tools, and software to support ALJs and hearing offices. A focused review also allows us to provide feedback regarding our findings.

3. What fraction of all allowances are made at each decisional level - DDS, reconsideration, ALJ, Appeals Council, and federal court? Are ALJs responsible for the recent growth in the number of disability beneficiaries? What are the reasons that an ALJ would allow benefits that have been denied previously by the DDS?

The longitudinal data for claimants who filed claims in a given year provides the most accurate information on the percentage of total allowances at each level. It can take several years for a cohort of claimants to move through the appeals process; therefore, the most recent cohort for which we have the most complete data are claimants who applied for disability benefits in 2007. We tracked those claims through October 2011, and the breakdown of allowances is:

- Initial level (DDS): 69.4 percent of all allowances
- Reconsideration: 5.6 percent of all allowances
- Hearing level (ALJ): 24.9 percent of all allowances
- Appeals Council and Federal Court levels: 0.1 percent of all allowances

Our ALJs are not responsible for the growth in the number of beneficiaries. Allowance rates have dropped at the initial and ALJ levels. The growth in beneficiaries is not surprising as the Baby Boom generation enters its most disability prone years and the increase in women working has increased the size of the workforce that may be eligible for benefits.

There are several reasons why ALJs allow previously denied claims. For example, claimants' conditions worsen over time; claimants may submit new medical evidence at the hearing level that was not previously available; they may hire an attorney or non-attorney to represent them; and a claimant's age at the time of the decision may require different evaluation criteria. In addition, hearing cases involve complex issues with conflicting evidence.

4. What is SSA's view on the question of whether the ALJ process is constitutional?

It is constitutional.

5. What is your perspective on some of the proposals made by Professor Pierce in his testimony - such as revising the ALJ discipline process, eliminating non-exertional impairments as a basis for qualifying for benefits, and eliminating appeals before an ALJ? Would these require statutory changes?

Changes regarding any of these complex issues would require Congressional action. Some relevant citations include 5 U.S.C. § 7521, 42 U.S.C. § 423(d), and 42 U.S.C. § 405(b).

- 6. How many requests for review does the Appeals Council receive each year? What is the average length of time to log a request for review into the system, and once logged, to make a determination on that request for review? What safeguards are in place to ensure that all requests for review are indeed logged and processed? Given that all other administrative appeals must now be filed electronically, have electronic requests for review been considered?**

In recent years, the Appeals Council has experienced a substantial increase in requests for review. In FY 2011, the Appeals Council received 173,332 requests for review, nearly 35 percent more than the 128,703 requests received in FY 2010. Through June 2012, the Appeals Council received 128,750 requests for review, an increase of 15.5 percent over the same time period in FY 2011.

Despite this significant increase in the Appeals Council's workload, the average processing time (APT) at the Appeals Council increased only 15 days from 345 days in FY 2010 to 360 days in FY 2011 and another 18 days to 378 days through June FY 2012 because we focused on adjudicating our most aged, complex cases first, which increases the APT.

We recently improved our business process to ensure that once we receive a request for review it is logged into our system within five business days. We agree that electronic requests for Appeals Council review would be beneficial; however, we must prioritize our limited resources, and we have many other higher priority initiatives that will help us better fulfill our responsibilities to serve the public.

- 7. What is the average length of time that a case spends at the Appeals Council? In responding to these questions, please provide yearly data for the prior 10 years to date. What is the longest a case has spent at the Appeals Council? Are there any goals or processes in place to reduce the length of time for Appeals Council proceedings? Once a case is at the Appeals Council, how long has that claimant typically been in the application and appeals process?**

Below is a chart with the APT for Appeals Council decisions for the last ten fiscal years.

Fiscal Year	APT
2002	412
2003	294
2004	251
2005	242
2006	203
2007	227
2008	238
2009	261
2010	345
2011	360
2012 (though 6/29/12)	378

Currently, the oldest request for review pending before the Appeals Council is from October 18, 2007. Although our business process does not support electronic filing of requests for review, we accepted this request for review using the process for accepting evidence electronically, which misfiled the request in the closed hearing folder. Once we realized that this type of misfiling could happen, we developed a computer program to search for such lost requests and found this one. We discovered this particular case on November 2, 2012, and we are expediting the case. Of the more than 160,000 requests for review currently pending, we have only 30 pending requests for review dated prior to 2010.

We have implemented changes in our business processes, systems, and training, and as noted above, we are continuing to evaluate other ways to improve our processes. For example, we are currently developing clustering analysis technologies to identify cases that involve similar issues. Assigning cases with similar issues concurrently will help improve training and consistency while providing quicker decisions for all claimants. In FY 2012, our goal is to handle 80 percent of the cases pending over 365 days and 99 percent of the cases pending more than 545 days. We are currently on pace to achieve these goals.

At each level of adjudication, the processing time ends when we make a decision; therefore, we do not currently capture the information on the average time between initial application and an appeal to the Appeals Council.

8. What percentage of requests for review are granted by the Appeals Council and what percentage of requests for review are denied? What percentage of reviewed cases are affirmed? What percentage of reviewed cases are overturned or remanded? In the event a case is overturned or remanded, what are the most common reasons that the Appeals Council makes that decision?

The enclosed chart provides the requested information.

The Appeals Council captures data on approximately 170 reasons for remand, but the most common reasons for Appeals Council remands are: improper evaluation of treating source opinions; inadequate evaluation of exertional and mental limitations; failure to discuss the required factors when assessing credibility; improper dismissal of a hearing request; inadequate consideration of mental impairments; and new evidence presented at the Appeals Council.

The most common reasons for Appeal Council reversals relate to improper evaluation of the listings and misapplication of the Medical-Vocational Guidelines.

9. What percentage of denials of review result in a civil action? Are there any estimates regarding the change in number of civil actions filed (increase or decrease) if the Appeals Council were eliminated? Is there any evidence regarding the cost of an Appeals Council denial versus a civil action?

As the data below indicate, the percentage of Appeals Council denials resulting in a civil action has decreased in recent years.

Fiscal Year	Number of denials issued	Number appealed to Federal court	Percentage of denials appealed
2002	81,208	16,431	20.2
2003	71,053	18,191	25.6
2004	68,216	15,053	22.1
2005	66,596	14,455	21.7
2006	66,159	13,006	19.7
2007	59,511	11,868	19.9
2008	59,781	12,257	20.5
2009	63,891	12,167	19.0
2010	73,879	12,420	16.8
2011	92,145	13,955	15.1
2012 (thru March 30, 2012)	55,892	7,648	13.7

The data above suggest that eliminating the Appeals Council would negatively affect Federal courts. Some of the cases that the Appeals Council remands or reverses (i.e., issues a favorable decision) would be directly appealed to Federal District Court. In FY 2011, the Appeals Council remanded 26,909 cases and reversed 3,122 cases. In the absence of an Appeals Council review, we estimate that Federal District Courts could receive at least 15,000 more cases a year, which would more than double Federal District Court case filings.

Eliminating the Appeals Council would also negatively affect claimants. The Appeals Council protects the integrity of a national disability program, thus ensuring consistent treatment for claimants residing in different areas of the country. Further, the Appeals Council’s oversight of the ALJ hearing process provides an appellate review for all claimants, without the cost of court filing fees. In FY 2011, the Appeals Council review provided a more favorable administrative action (remand or favorable decision) for claimants in over 30,000 cases.

The Appeals Council has several other crucial roles. It is the only administrative body that can reverse, reopen, or revise hearing-level decisions on behalf of the Commissioner. Appeals Council review not only ensures that ALJs apply appropriate policies, but also provides structured data to evaluate agency disability processes and policies. The Appeals Council also performs focused reviews of hearing-level decisions to ensure policy compliance and identify possible ALJ training needs. Appeals Council feedback and review has resulted in several policy and procedural changes, thereby saving resources and improving our disability process.

In FY 2011, the average cost of an Appeals Council review was \$1,405. We do not know all costs involved with a civil action in Federal court.

10. Statistics from 2011 kept by the National Organization of Social Security Claimants Representatives show that 49% of appeals to federal court result in a remand for either payment of benefits or a new hearing. Given this statistic, are there any goals or processes in place to improve the quality of Appeals Council review and reduce the number of cases filed in federal court?

We have seen a decline in the percentage of cases remanded to the Appeals Council from Federal District Courts. In FY 2004, the remand rate was nearly 63 percent. By contrast, the remand rates for FY 2011 and the first half of FY 2012 were 42 percent and 39 percent, respectively. We continue to work in a variety of areas to maintain this trend by ensuring that our decisions are factually accurate and procedurally adequate and that the courts understand the rules we follow.

For example, last year we assigned administrative appeal judges to the Division of Civil Actions to analyze court remands and requests for voluntary remands, provide feedback, and conduct trend analyses. Additionally, we reinstated the quality assurance sample review conducted by the Appeals Council so that we can offer training to improve quality and reduce the number of court cases remanded from district courts.

For several years, we have collected data on the reasons for remand from the Appeals Council and Federal District Courts. With innovative techniques that arrange data in heat map formats, we can identify variances and areas of concern. Heat maps for FY 2010 and FY 2011 show inconsistencies among the Federal District Courts regarding the percentage of cases remanded, showing the need to further evaluate how certain courts apply our policies. These maps suggest trends in the reasons for remand. In Federal District Courts, the top two reasons for remand are: 1) evaluation of the claimant's credibility; and 2) treating physician opinions. These reasons also rank high among remands from the Appeals Council.

To address the evaluation of credibility issue, we formed a workgroup to revise decisional language addressing credibility and the decisional templates that ALJs and decision writers use to evaluate credibility. We anticipate these revisions will be available early in 2013.

We are also considering how Federal Courts' interpretations of our treating physician policy affect remands. The courts have influenced our rules in this area. While courts generally agreed that adjudicators should give special weight to treating source opinions, they have formulated differing rules about how adjudicators should evaluate treating source opinions. In 1991, we issued regulations that articulate how we evaluate treating source opinions. However, the courts have continued to interpret this rule in conflicting ways.

The Administrative Conference of the United States (ACUS) is currently studying the treating physician rules. We have asked ACUS to analyze the effect of these rules on Federal Courts' reviews of disability decisions and consider measures that we could take to reduce

the number of cases remanded to the Appeals Council. We have also requested that ACUS study the role of the Appeals Council in reviewing cases to reduce any observed variances in adjudication. This study will consider issues such as expanding the Appeals Council's existing authority to conduct reviews of ALJ decisions. We will be happy to work with the Subcommittee on this issue.

While we wait for the report from ACUS, the Appeals Council is evaluating the consistency of its actions and performing quality assurance reviews. Using these initiatives, we will be able to offer training to improve quality and reduce the number of cases remanded from district courts.

11. What is the annual cost of the Appeals Council stage of the Social Security claims process? What fraction does this represent of the entire amount spent by SSA on adjudicating disability claims?

For FY 2011, Appeals Council costs were \$178 million. This amount represents 3 percent of the total amount spent on our disability process.

Despite having a relatively small percentage of the agency workforce, the Appeals Council handles critical functions in addressing the most complex cases pending with the agency and performing a variety of other responsibilities to assure quality. Many of the cases pending at the Appeals Council involve very difficult and complex issues that were unable to be resolved at a lower level of adjudication. Especially in regards to cases involving non-disability issues, the Appeals Council frequently encounters issues that are novel and require extensive research. Notwithstanding the complexity of these issues, however, the Appeals Council is on pace to meet the FY 2012 processing goal of clearing 80 percent of the cases pending over 365 days, and 99 percent of the cases pending over 545 days. Due to significant improvements in the process, the Appeals Council has continued to increase the number of dispositions.

For many years, the Appeals Council was not adequately staffed or funded to perform its oversight responsibilities, and there were significant efforts to eliminate the Appeals Council altogether. Recently, with additional staffing, the Appeals Council was able to implement quality assurance initiatives and improve judicial training, both of which have had a substantial positive impact on the agency. By utilizing more of its oversight role, the Appeals Council has been instrumental in driving a dramatic decline in programmatic errors, unexpected outcomes, and the allowance rate, resulting in substantial costs savings and a decrease in overpayments to claimants.

Enclosure

APPEALS COUNCIL GRANT REVIEW RATES 1999-2012												
Fiscal Year	Receipts	Pending	Total	Deny	Dispositions					Grant Review Rates*		
					Remand	Dismissal	Reversal	Affirm				
1999	115,150	144,525	91,173	66,100	20,135	2,794	1,824	320	24.44%			
2000	106,358	127,687	125,235	93,746	26,012	3,257	1,923	297	22.54%			
2001	78,833	95,355	110,666	80,235	25,417	2,720	2,064	230	25.04%			
2002	83,063	59,781	115,467	81,208	27,636	3,066	2,619	938	27.01%			
2003	92,047	51,078	100,750	71,053	24,801	2,526	2,164	206	26.97%			
2004	92,540	45,911	97,701	68,216	24,811	2,362	2,072	240	27.76%			
2005	89,430	41,258	94,083	66,596	22,739	2,357	2,173	218	26.71%			
2006	94,755	44,032	93,538	66,159	23,083	2,117	2,009	170	27.01%			
2007	96,260	53,163	87,129	59,511	23,121	2,131	2,070	296	29.25%			
2008	93,423	62,210	83,407	59,781	18,765	2,365	2,001	495	25.49%			
2009	106,965	80,040	89,066	63,891	19,700	2,840	2,094	541	25.08%			
2010	128,703	106,664	102,062	73,879	22,215	2,726	2,591	651	24.94%			
2011	173,332	153,004	126,992	92,145	26,909	3,828	3,122	988	24.43%			
2012**	128,750	159,924	119,545	89,917	22,099	4,588	2,170	771	20.95%			

*The grant review rate includes the remands, reversals, and affirmations divided by the total number of dispositions (including dismissals)

** Through June 29, 2012