



SOCIAL SECURITY
Office of the Inspector General

August 12, 2011

The Honorable Charles Boustany, Jr., M.D.
Chairman, Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Attention: Lauren Savory and Kim Hildred

Dear Chairman Boustany and Chairman Johnson:

This is in response to your August 1, 2011 correspondence asking questions for the record, further to my testimony on June 14, 2011 before the subcommittees on Oversight and Social Security at a hearing on *Social Security's Payment Accuracy*. I appreciate the opportunity to provide additional information regarding this critical issue. Below are responses to your specific questions.

- 1. Cooperative Disability Investigation (CDI) Units often investigate suspect claims to determine if the disability applicant is in fact disabled. When someone is caught applying for benefits despite having no actual disability, are any measures taken against them for trying to cheat the system? Is there any kind of penalty for fraudulent applications and if not, should there be?**

As with any investigation undertaken by the Social Security Administration (SSA) Office of the Inspector General (OIG), we have several remedies available to resolve CDI cases. These remedies include seeking criminal or civil prosecutions through Federal, State, or local courts; referring cases to the OIG Office of Counsel to the Inspector General for civil monetary penalty (CMP) assessments; and/or referring the cases to SSA for the imposition of administrative sanctions, as appropriate.

The majority of CDI cases are investigated, and the claim denied, before any monies are paid; therefore, there typically is no monetary loss to the government, per se. However, these cases do have a fiscal impact through the costs associated with taking, investigating, and adjudicating the

claim. This fiscal year, the CDI Units closed 2,719 investigations; of those, the CDI Units found evidence of fraud in 2,491 (91.6 percent), and SSA either denied the claim or terminated benefits.

The filing of a false application for benefits is a felony under Federal law (18 U.S.C. 1001). However, with no quantifiable pecuniary loss associated with these cases, they usually do not meet Federal, State, or local prosecutorial guidelines.

We also have available the option of imposing CMPs, under section 1129A of the Social Security Act. We can impose a penalty of up to \$5,000 for each false statement, misrepresentation, or omission of material facts used in determining eligibility for, or the amount of, benefits. In addition, we can impose an assessment of up to twice the amount of benefits paid because of the statement, misrepresentation, or withholding of a material fact. We can and do consider CDI cases, even those with no monetary loss, for CMP action. In FY 2010, we initiated 139 such cases and successfully resolved 87 through a settlement agreement, default, or decision by the DHHS Departmental Appeals Board. This resulted in penalties and assessments imposed of over \$3.9 million.

Finally, SSA can impose administrative sanctions on anyone who makes a false statement or misrepresents a material fact, or who omits material facts used in determining eligibility to, or the amount of benefits. The applicable sanctions are:

- For the first offense, loss of benefits for six consecutive months;
- For the second offense, loss of benefits for twelve consecutive months; and,
- For subsequent offenses, loss of benefits for twenty-four consecutive months.

2. One of the ways SSA completed medical Continuing Disability Reviews (CDRs) is by sending beneficiaries questionnaires asking about their medical treatment, work activities, and about their disability generally. Can you tell us more about the role these mailers play in preventing improper Social Security payments and how they work?

We describe below the CDR process and the role mailers play in that process. In summary, CDR mailers are a cost-effective method used to identify beneficiaries who may no longer be disabled, so that, after a full medical CDR, SSA can terminate their benefits if, in fact, the Agency finds that they are not disabled. In our March 2010 report, *Full Medical CDRs*, we estimated, from Calendar Year (CY) 2005 through 2010, SSA will have made benefit payments of between \$1.3 billion and \$2.6 billion that could have been avoided if SSA had conducted the 1.5 million full medical CDRs in the backlog as soon as they became due.

CDR Process

- After an individual is determined to be disabled, SSA is required to conduct periodic CDRs to determine whether the individual continues to be disabled. Review diaries are set based on the likelihood of medical improvement since SSA generally cannot find an individual's disability has terminated without finding medical improvement has occurred.
- SSA employs a profiling system that uses data from SSA's records to determine the likelihood of medical improvement for disabled beneficiaries. SSA's CDR profile includes a

number of factors, including age of the beneficiary, the type of impairment and medical diary type, Medicare usage, length of time on the rolls, indications of work or income information, etc.

- The profile scores are assigned when the beneficiary's data is run through a program developed, and subsequently enhanced and refined, by SSA and contractor support. The program was developed based on the results of 1988/1989 cases; more recent outcomes for FYs 1996 through 2004 have been used to update the profiling techniques and formulae, and the analyses are now refreshed routinely by identifying cases that represent a spectrum of profile and disability case types necessary to keep the formulae accurate and relevant.
- SSA selects beneficiaries' records profiled as having a high likelihood of medical improvement for a full medical CDR by disability determination services (DDS). Full medical CDRs consist of reviewing an individual's medical evidence, developing medical evidence if unavailable or insufficient, and rendering a determination as to whether the individual is still disabled. If SSA determines the person is no longer disabled, the benefits will be stopped. Therefore, CDRs prevent SSA from paying benefits to individuals who no longer meet SSA's definition of disability.
- Beneficiaries profiled as having a medium or low likelihood of medical improvement are sent a mailer questionnaire. Based on the data used to score the case and the responses to the mailer, the review of approximately 97 percent of the low scoring cases can be completed at this point and do not require a full medical review.
- CDR mailers are questionnaires sent to disabled individuals asking whether they have performed any work or their medical condition has changed. If the answers indicate the individual's condition may have improved, the case is referred for a full medical CDR.
- For FYs 2005 through 2010, between 68 and 80 percent of CDRs conducted were mailers. SSA conducts all mailer CDRs that become due each year; therefore, the backlog does not include mailer CDRs.
- When SSA profiles cases to determine the type of CDR, 3 to 5 percent of cases are designated as a Profile Sample (PS) case. PS cases are selected using random sampling techniques. All mailer PS cases will be sent for a full medical CDR, even if they are not initially referred for a full medical CDR. As of February 2011, SSA had a 97.7 percent accuracy rate for the quality assurance review of full medical CDRs.
- Below are the percentages of mailer CDRs that have historically been referred for a full medical CDR. In most FYs, SSA sends CDR mailers for cases that are profiled as having a low likelihood of medical improvement. However, in FYs 2007 and 2008, SSA also sent out mailers for some CDRs profiled as having a medium and high likelihood of medical improvement. Accordingly, in 2007 and 2008, SSA had more mailers that resulted in a referral for a full medical CDR.

2005 – 2%
2006 – 3%
2007 – 24%
2008 – 25%
2009 – 2%

- Mailer CDRs are much cheaper than full medical CDRs.
 - According to SSA, from the period since the enhanced CDR profiling models were implemented in FY 2001 to early FY 2008, the Agency has performed 10.1 million CDRs, including 5.9 million CDR mailers.
 - In May 2010, SSA OIG obtained a file of 593,582 CDR mailers from calendar year 2009. We reviewed a random sample of 1,000 cases and did not find any cases that would need either a medical or work CDR that were not referred for one.
- 3. To become current and stay current on both Supplemental Security Income and all CDR work will require more funding for the SSA. However, given the long-term federal budget situation and the need to keep federal personnel costs in check, what staffing strategies should the SSA pursue to ensure integrity work is completed without significant hiring increases?**

To avoid benefit payments to individuals who are not entitled, SSA needs to conduct all CDRs when they become due. However, SSA faces a challenge in balancing the need to perform the CDRs that become due each year and meet its other service delivery responsibilities. This challenge is heightened by the need to eliminate the full medical CDR backlog.

Below are a few options that SSA could pursue to ensure integrity work is completed without significant hiring increases.

- Use mailer CDRs for children. SSA currently does not use mailers for children, but has developed a profiling system for children to prioritize the release of child CDRs. SSA could use the profiling system to identify the children that should receive a mailer as opposed to a full medical CDR. Not only would this help reduce the CDR backlog, it would also save SSA money.
- Dedicate a set amount of time weekly for field offices and DDSs to conduct program integrity work. For example, field offices could close to the public for a certain number of hours per week and that time could be devoted to program integrity activities. (The public could still obtain service through SSA's 1-800 number or the Internet.) A similar process could be used at DDSs by requiring a certain number of hours per week be used for CDRs.
- Designate specific staff or establish special units to work full-time on program integrity work.
- Establish a self-funding program integrity fund to allow SSA to set aside a portion of overpayment recoveries for future program integrity activities, including work and medical CDRs and SSI redeterminations.

4. What are your recommendations to reduce overpayments?

To reduce overpayments, we recommend an integrity fund, more CDRs, more Cooperative Disability Investigations (CDI) units, and use of additional data sources to detect improper payments sooner.

Integrity Fund

In July 2009, we recommended that SSA continue pursuing the establishment of a self-funding program integrity fund, and SSA agreed to do so. To ensure CDRs are conducted timely, we believe the mechanism to provide funding for CDRs should not depend on annual appropriations nor be subject to SSA's discretion for expending these funds. During the last several years, significant backlogs arose with costs in the billions because SSA chose not to conduct all full medical CDRs as they became due. A permanent, indefinite appropriation will ensure that needed funds are available and SSA cannot use those funds for other purposes.

A proposal for a self-funding program integrity fund could provide authority for SSA to expend a portion of actual collections of erroneous payments on activities to prevent, detect, and collect erroneous payments. Specifically, the proposal would establish permanent indefinite appropriations, subject to Office of Management and Budget apportionment, to make available to SSA up to 25 percent of the actual overpayments collected during the base FY and make available to the Office of the Inspector General up to 2.5 percent of the same collected overpayments.

CDRs

SSA has made, and will continue to make, benefit payments to individuals who would potentially no longer be entitled if the backlog of 1.5 million full medical CDRs had been conducted when they became due. From CY 2005 through CY 2010, we estimate SSA will have made benefit payments of between \$1.3 billion and \$2.6 billion that could have been avoided if the full medical CDRs in the backlog had been conducted when due. Further, although SSA plans to conduct an increased number of full medical CDRs in FY 2011, the 1.5 million full medical CDR backlog will most likely remain. Therefore, we estimate SSA will pay benefits of between \$556 million and \$1.1 billion during CY 2011 that could have been avoided if the full medical CDRs in the backlog had been conducted when due. Further, according to SSA's most recent Annual CDR report to Congress, the savings-to-cost ratio for CDRs was \$12.5 to \$1. Dedicated funds, such as from an integrity fund, coupled with dedicated staff are needed to complete CDRs on a timely basis.

CDI Units

The CDI program's mission is to obtain evidence of material fact sufficient to resolve questions of fraud in SSA's disability programs. CDI Units prepare Reports of Investigations (ROI) and refer them to SSA—typically, the Disability Determination Services (DDS)—for their use in making timely and accurate disability determinations.

Our CDI Program continues to be one of our most successful initiatives contributing to the integrity of SSA's disability programs. Established in 1998 with units in just 5 states, our CDI program now has 23 Units in 21 States. The efforts of our CDI Units during the first half of FY 2011 resulted in more than \$128 million in projected SSA program savings, and over \$82 million in savings to other programs.

Obtaining Data to Identify/Prevent Overpayments

SSA needs timely, accurate data to identify and prevent program overpayments. SSI payments can change when eligibility factors change. For example, if the recipient returns to work, gets married, or leaves the country for 30 days, he/she may no longer be eligible for benefits. However, SSA relies extensively on beneficiary self-reporting to identify such events that can affect a recipient's eligibility. SSA recently obtained access to some bank account data electronically through its Access to Financial Institution (AFI) project. However, SSA needs to do more to obtain timely, electronic data on resources, wages, marriages, foreign travel, etc., integrate these additional data sources into its profiling for CDRs and redeterminations, and thereby improve its payment accuracy.

SSA submitted a proposal as part of its FY 2011 Budget submission to change the Federal wage reporting process from annual to quarterly reporting. A change of this nature would increase the frequency that employers report wages to SSA, improving the timeliness of the work CDR process. Currently, work alerts are not generated until the year following the earnings posting to the Agency's Master Earnings File. This change would permit alerts to be generated and processed in the same year as the work is performed—thereby reducing the number of overpayments made that result when beneficiaries fail to report their work activity timely.

Additionally, the OIG community is pursuing an exemption to the *Computer Matching and Privacy Protection Act of 1988* (5 U.S.C. 552a(o)). Such legislation would exempt OIGs from certain restrictions in the *Privacy Act* that forbid the use of computer matching programs to compare Federal records against other Federal and non-Federal records. Computer matching restrictions undercut OIG efforts to detect improper payments and identify weaknesses that make Federal programs vulnerable to fraud, waste, and abuse. An exemption could allow more computer matching in audits, inspections, and investigations designed to identify weaknesses that make a program vulnerable to fraud, waste, or abuse and to detect improper payments and fraud.

In March 2010, Congress enacted a law excluding the Department of Health and Human Services (HHS) and HHS OIG from complying with certain aspects of the *Computer Matching and Privacy Protection Act* provisions if the computer match activity is to identify potential fraud, waste, and abuse. However, neither SSA nor SSA OIG has a similar exclusion.

Thank you for the opportunity to clarify these issues for the subcommittees on Oversight and Social Security. I trust that I have been responsive to your request. If you have further questions, please feel free to contact me, or your staff may contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General