

**Social Security Advisory Board
Board Meeting & Fairfax DDS Trip Summary
February 23-24, 2014**

Meeting with Inspector General Patrick P. O’Carroll

SSA Inspector General Patrick O’Carroll was invited to the February 23 meeting to discuss recent audits and investigations that the OIG focused on in 2014, including the two high-profile fraud cases in New York and Puerto Rico. In addition, Mr. O’Carroll provided an update on Cooperative Disability Investigations (CDI) units and plans to establish more of these units in 2015.

New York & Puerto Rico. Both of these fraud cases were initiated in a similar fashion, i.e. through referrals from DDS employees who became suspicious of certain disability claims. After the referral, the OIG sent in undercover informants. In both cases, there was a “ringleader” who paid recruiters to go out and “teach” individuals how to illegally obtain benefits. This typically involved one or more doctors who were being paid to provide falsified medical evidence. In addition, “facilitators” – third party representatives who would guide claimants to the corrupt doctors – were involved.

To date, 75 individuals have been indicted and 39 sentenced in New York, including the ringleader who received a 20-year prison sentence. OIG is also seeking civil and monetary penalties from these individuals in an attempt to restore fraudulently obtained benefits to the trust funds. In Puerto Rico, the OIG found at least 100 egregious cases, and 3,000 cases required a “second look” based on suspicion of fraud. Mr. O’Carroll reported that, as a result of these major fraud cases, the OIG is investigating potential analytics and metrics that could help identify possible “red flags” before potential criminals receive benefits. In addition, the OIG has created new special fraud units in Puerto Rico, Kansas City, and San Francisco.

CDI units. Mr. O’Carroll reported that the OIG currently has 28 CDI units in 24 states. They are opening four more soon in DC, Charleston, St. Paul, and Birmingham. Mr. O’Carroll noted that fraud referrals from SSA are on average much more effective than referrals from the public through the OIG hotline.

Recent Audits. The OIG conducted two major audit reports recently. One of these reports examined ALJ allowance rates from 2007-2013, and found in a sample of over 200 judges that 44 of those judges had allowance rates over 85% and over 700 dispositions per year. The OIG estimates that these results translate into roughly 24,000 questionable allowances and roughly \$2 billion in questionable costs over the seven year period.

The second major audit report discussed at the meeting involved the recent obstacles facing SSA's Disability Case Processing System (DCPS) project. OIG found that SSA needs to establish a more formal, final plan before continuing and funding the DCPS rollout. Additionally, OIG suggested revisiting the utility of outside contractors as opposed to the current in-house approach. SSA has not followed OIG's recommendations, nor has it agreed to them. Because of this, Chairman of the House Subcommittee on Social Security Sam Johnson has granted the OIG authority to attend DCPS executive meetings going forward.

Other projects briefly discussed at the meeting included:

- Immigration
- Fraud definition discrepancies between OIG and SSA
- National Computer Center
- MySSA – progress on reducing fraud

Meeting with former SSA Executives Arthur Spencer and Ken Nibali

Art Spencer and Ken Nibali, both former Associate Commissioners at SSA, were invited to the meeting to give a background on SSA's disability redesign efforts that began in the mid-1990s and led to the 10-state Prototype Model. Prototype Model was created in response to rapidly increasing workloads at SSA, and the plan was to eliminate the reconsideration step of disability adjudication and use the resources saved to conduct better initial evaluations. SSA expected this would lead to slightly higher allowance rates because there had previously been many errors in wrongful denials. The agency also wanted to obtain proper allowances faster for people who deserve them and expected claims to move to the appeals step faster by eliminating the time it took for a reconsideration. Additionally, the agency expected a lower allowance rate at the appeals level because the allowances would get filtered out sooner.

The Prototype Model also included the "single decision maker" (SDM). This change allowed examiners in certain states to make some decisions without consulting a doctor. Doctors were denying more cases than examiners were; SSA believed such cases were ultimately being allowed on appeal anyway. Analysis showed that quality was the same and SDM allowed more cases properly and did it earlier. SDM state allowance rates increased initially, but now are mostly in line with other states.

Mr. Nibali and Mr. Spencer then provided some of their own thoughts on where the disability decision-making process stands currently. For example:

- Mr. Nibali made the argument that DDSs and ALJs need to use same processes to make decisions nationwide, suggesting that DDSs were using more medical evidence than

ALJs were. He stated that the “less-than-full-range-of-sedentary” is a controversial standard that leads to awarding more benefits than appropriate.

- Mr. Spencer argued that the lack of uniformity across states is a problem. He stated that appeal rates and allowance rates vary across states, and that SSA should attempt to unify the process more. He pointed to tools that can force consistency, such as the electronic claims analysis tool (eCAT).
- On DCPS, Mr. Spencer believed that SSA should force states to follow one process instead of allowing for the continuance of unique state processes. Regulations might need to be changed, but funding could force states to comply.
- On the other hand, Mr. Nibali worried that consistency would lead to more allowances and create higher costs for the system. He believes there are more errors in denials. He stated that SSA should be paying people who deserve it, but that actuarial projections will work against SSA.
- Mr. Spencer argued that SSA should have tested the prototype everywhere and implemented it with proper resources. He stated that in the private sector, they always seem to spend more up front to get decision right and provide better documentation for review.

Meeting with ODAR Appeals Officer Teresa Pfender for a Background on the Disability Decision-Making Process

Administrative Review. Ms. Pfender began her presentation by providing a detailed overview of the four administrative review steps: Initial, Reconsideration, Hearing (ALJ), and Appeals Council. This included the methods people can use for applying for disability, as well as what specifically happens at each of the four steps. She emphasized that while each of the adjudicative levels might differ in many ways, each of the first 3 levels are similar in that the evidentiary standard is the “preponderance of the evidence” when making a determination or decision.

However, when the Appeals Council reviews an ALJ decision, it uses the substantial evidence standard. The AC considers the following:

- Are the actions, findings or conclusions of the ALJ supported by substantial evidence?
- Is there an error of law?
- Is there new and material evidence?
- Does there appear to be an abuse of discretion by the ALJ?
- Does this case involve a broad policy or procedural issue that may affect the general public interest?

Federal Courts. Ms. Pfender also explained that when individuals exhaust administrative appeal rights at SSA, they are allowed to pursue review of the Agency decision in the U.S. District Court where the individual lives. This Federal court may dismiss, affirm, remand or reverse the final decision of the Commissioner in whole or in part, or may take any combination of actions where more than one issue is considered on appeal.

The application of Federal district and circuit court decisions is more complicated than application of earlier review steps. Ms. Pfender explained that, until a Social Security Acquiescence Ruling (AR) is issued explaining how SSA will apply a circuit court holding that conflicts with agency interpretation of Social Security law or regulations, SSA decision-makers are bound by the agency's national policy, rather than the court's holding, in adjudicating other claims within that particular circuit. Additionally, if a district court decision conflicts with SSA interpretation of Social Security law or regulation, SSA adjudicators will continue to apply the agency's national policy when adjudicating other claims within the district court's jurisdiction, unless directed otherwise.

Meeting with Sam Bagenstos to discuss Children on Disability Transitioning to Adulthood

Sam Bagenstos, professor of Law at University of Michigan, was invited to discuss his recent article entitled, *The Disability Cliff*, which provides an overview and legislative history of the disability rights movement as well as the challenges that children with developmental disabilities face when they lose their federal entitlement to special education.

The Individuals with Disabilities Education Act (IDEA) is a Federal law that ensures certain services (such as special education) to children with intellectual or developmental disabilities (I/DD) throughout the U.S. However, individuals lose these services and supports completely as soon as they turn 22; this is the disability "cliff" to which Mr. Bagenstos refers. According to Bagenstos, the problem is that these individuals are not adequately prepared for employment in adulthood. In fact, in 2010, 80% of the people served by state intellectual/developmental-disability agencies received services in sheltered workshops or segregated non-work settings. This situation is because special education does not provide people with I/DD the abilities and skills needed for meaningful employment in the national economy.

Mr. Bagenstos also gave an overview on three key policy eras that laid the foundation for modern disability policy in the U.S.:

1. Post-WWI: Vocational Rehabilitation
2. The *Great Society*: Introduction of Medicare & Medicaid
3. The Rights Revolution: Rehabilitation Act of 1973

The problem identified by Mr. Bagenstos is that we have designed different systems in different times for different reasons. There is no real unification of education, supports, and services for those with disabilities. Another issue is that many of these programs are state-based, and since states have limited funding, they are forced to prioritize certain services and individuals over others.

Mr. Bagenstos also discussed his “dream” proposal, which he believes could adequately address these issues. This proposal would establish entitlement to supported employment for people with I/DD who are aging out of IDEA at 22. These employment services would ideally be given by the schools, the same entity that provided the IDEA services in the first place (i.e. no more “cliff”). Funding for these services could be billed to Medicaid, which often pays for the pre-vocational services that would be replaced under this proposal.

Board Business

The Board also met in executive session briefly during lunch and at the end of the day to discuss:

- Future Board meeting dates
 - April 24
 - May 29
 - June 23
- The March Board trip to New York
 - Details are still being worked out but the itinerary was discussed
- Technical Panel progress
 - Upcoming Meetings: There will be no April Tech Panel Meeting. The March Tech Panel Meeting will focus on immigration. There will be a two-day Tech Panel meeting in May.

Joel also provided an overview of the previous Technical Panel Meeting. The Panel discussed replacement rates at length. Some of the other main topics discussed were mortality, disability, and fertility. This panel is different from previous panels because an actuary is leading the discussion on mortality, rather than a demographer.

The group also had a long discussion about the disability program and trust fund; specifically, what was causing the increase in growth of the DI rolls in recent years. There are essentially two schools of thought on what is to blame: program incentives (Autor/Duggan) vs. demographic changes (SSA Actuaries/Trustees). After much deliberation, the panel seemed to conclude that program incentives *and* demographic changes both are contributing to the rise in allowance rates, but in different time periods.

February 24 Fairfax DDS Visit – Summary

On Tuesday, February 24, the Board visited the Fairfax Disability Determination Services (DDS) office, from 9:30 until 1:30. They were joined by DDS staffers Tara Lassiter, Megan Wade, and Tonya Jordan, as well as Leon Scales who is the DDS Director for the state of Virginia. Additionally, Howard Hughes and Jim Steiner were in attendance from SSA's Philadelphia Regional Office.

Disability Determination Process

After brief introductions, DDS representatives began with a discussion of the overall disability determination process. After a claimant fills out basic demographic information and files necessary medical documents with a Social Security field office, the application is then sent to a DDS to be processed. The primary responsibility of the DDS is to assess the medical evidence in the file and gather any additional evidence needed to make a determination (i.e. allowance or denial) on the disability claim.

DDS employees then gave a demonstration on Virginia's case processing system. One challenge that was noticed almost immediately was that employees were required to switch between multiple systems applications (e.g. web-based tools and COBOL applications) throughout the process. Also, field office systems differ from the DDS ones and not all FO information is available to the DDS, making the process even more cumbersome. DDS employees believed that, once completely rolled out, DCPS should address these issues.

Interaction with the Field and Other Stakeholders

DDS interaction with local field office staff and claimant representatives was also discussed. Anecdotally, both DDS employees and SSA regional employees believed that claims that are represented by a third party are not necessarily better documented than claims without representation. Specifically, they felt that paid representatives (like attorneys) do not always do all the work that they are paid to do.

Overall, DDS employees reported that there are much less face-to-face applicants today with the rise in internet applications. However, face-to-face and phone applications are sometimes easier to develop than internet claims since the interviewer can ask probing questions.

Cases involving electronic medical records (health information technology, or "HIT") are growing, and are processed much faster than those without. They also noted that obtaining medical records from health vendors can be very costly for the state agencies, and some are not very cooperative. Another source of cost to the state is paying for consultative examinations (CE).

Case Preparation and Adjudication Process

At the meeting, the Board was able to observe a live Quick Disability Determination (QDD) case. The QDD process uses a computer-based predictive model to screen initial applications to identify cases with key words that indicate that a favorable determination is highly likely and medical evidence is readily available. By identifying QDD claims early in the process, DDS employees are able to prioritize this workload and expedite case processing.

DDS examiners/analysts, like the one who demonstrated the QDD case, undergo extensive in-house training and that it takes about 2 years to become proficient. Most states require a bachelor's degree to be hired. One DDS manager emphasized that it takes a certain type of person to be able to do this job, and that many new hires leave before they are even fully trained because they are not cut out for the demands of the job. Because it takes so long to train examiners, the manager emphasized that hiring freezes can have a particularly large, negative impact on DDS productivity.

Recommendations

Throughout the meeting, DDS and SSA employees gave their own recommendations for how the disability decision-making process could be improved. These included:

- *Single Decision Maker (SDM) should be implemented nationwide in every state and DDS*
 - This can improve processing times, according to DDS and SSA employees.
- *DCPS rollout*
 - This was highly supported and recommended by both DDS and SSA employees as a way to streamline case processing and workloads.
- *DDSs need the ability to strategically plan and hire*
 - Hiring freezes and budget cuts prevent this from happening.
- *Workload balancing and goal/target planning should be done in real-time, instead of annually*
 - DDS/SSA budgets vary from year to year, making it difficult to plan.
 - Goals/targets are not streamlined and are not predictable, i.e. there is no way of knowing with certainty what the volume of applicants will be in a given year. Instead, targets should be set much more frequently and as things change (e.g. monthly, quarterly, semi-annually).