

SSA DISABILITY ADMINISTRATION  
DISABILITY ADJUDICATION PROJECT

Project Outline

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**Background**

The Social Security Administration (SSA) administers the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. Under these programs, state agencies make initial disability determinations pursuant to federal guidelines. Dissatisfied claimants may seek a hearing before a federal Administrative Law Judge (ALJ). In turn, individuals whose claims are denied by an ALJ may appeal to the SSA's Appeals Council and from there to the federal courts. The Appeals Council may also review cases on its own motion. Currently, there are approximately 700,000 hearings before ALJs each year, and, last year, the Appeals Council adjudicated over 126,000 requests for review and 2,700 cases on its own motion, and performed a small number of post effectuation reviews. Approximately half of the cases appealed from the Appeals Council to the courts result in reversals or remands.

**Research Objective**

The principal objective is to study and recommend improvements to adjudication of the SSDI and SSI programs with a focus on the role of the Appeals Council and high remand rates from district courts on the treating physician rule. Many have criticized the adjudicatory process for resulting in observed variances. Indeed, both the U.S. House of Representatives and the Social Security Administration Office of the Inspector General have issued reports criticizing these variances.<sup>1</sup> Accordingly, this project will inquire into the possible reasons for these variances to provide suggestions on the role of the Appeals Council in reviewing cases to reduce any of these observed variances, relying on statistical analyses and correlations. In doing so, the project will investigate whether reviewing favorable decisions on a pre-effectuation random sample basis is sufficient to enable the agency to directly address problems that it identifies, or if there is a need for additional methods of review. The project will also review judicial remand rates including the importance of the treating physician rule, given the rule's apparent centrality as a reason for remand from the courts. The rule will be evaluated considering the changes in the doctor-patient relationship and increase in collaborative medical practices within the past 30 years.

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<sup>1</sup> See e.g., Joint Hearing of the House Committee on the Judiciary and the House Subcommittee on Social Security of the Committee on Ways and Means: Role of Social Security Administrative Law Judges, July 11, 2011, Serial Number 112-67, available at [http://judiciary.house.gov/hearings/printers/112th/112-67\\_67308.pdf](http://judiciary.house.gov/hearings/printers/112th/112-67_67308.pdf); Social Security Administration Office of the Inspector General, *Congressional Response Report Oversight of Administrative Law Judge Workload Trends* (A-12-11-01138), available at [http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-01138\\_0.pdf](http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-01138_0.pdf) (Feb. 14, 2012), Social Security Administration Office of the Inspector General, *Congressional Response Report. The Social Security Administration's Review of Administrative Law Judges' Decisions* (A-07-12-21234), available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-12-21234.pdf> (Mar. 19, 2012).

## **Methodology**

Structured interviews to assess various perspectives on the research objectives were initially conducted to assist in framing the issues in this project. In addition, we have made appointments with (and will continue to contact) ALJs, SSA management, SSA General Counsel, decision writers, and claimant representatives to gain their perspectives. A number of affected individuals and stakeholders have contacted us directly. We have discussed pertinent issues with SSA ALJs both inside and outside the union. We also have addressed the relevant issues with federal district court judges to tap their expertise. We are canvassing available literature to benefit from the considerable scholarship addressing SSA adjudications. From these conversations and readings, we will identify correlates to study empirically. Separate analyses will be conducted for various aspects of adjudications. In addition, we will engage in variance partitioning analysis, which will identify the extent that adjudication outcomes vary with each variable studied. The analysis will consist of both bivariate correlation analyses, examining each determinant variable separately, as well as multiple regression analyses, which will model multiple determinants at the same time. Additional literature review and interviews with various individuals and groups may be conducted as the research progresses.

## **Study Plan**

### ***The Role of the Appeals Council and Observed Variances***

In 1940, when the Social Security Administration established the hearings and appeals process in the Office of Appeals Council, the individuals responsible for conducting hearings and issuing hearing decisions, then known as referees (later to be renamed administrative law judges), were under the direct supervisory control of the Appeals Council. The members of the Appeals Council reviewed all of the decisions issued by the referees. As presently constituted, the Appeals Council does not have the resources to review every ALJ determination. Rather, it reviews decisions denying claims that are appealed, and two members of the Council must concur in each decision.

In addition to reviewing appeals by dissatisfied claimants, the Council reviews two different categories of claims. First, under so-termed own-motion review, the Council reexamines a few thousand cases a year by random sample. Individual ALJs are not targeted in any way because regulations 20 CFR §§ 404.939 and 416.1439 only provide for pre-effectuation review of a random sampling of cases. Second, the Appeals Council now performs a limited number of focused reviews for a variety of reasons, including referrals from other parts of ODAR or the agency and based on trends of problems identified in pre-effectuation reviews. The Council's review of any decision in the context of focused reviews is performed post-effectuation as a means to assess the quality of ALJ determinations and learn from the process.

The Council preliminarily has found that ALJ "errors" are higher than expected in fully favorable decisions. From the Council's findings in the review of fully favorable cases, it may be appropriate for the Council to consider expanding the composition of the cases it reviews on own motion. In addition, initial focused reviews conducted by the Appeals Council revealed

some observed variances in the adjudicatory process. The project will examine other possible variables in cases that may or may not be related to the observed variances in decisions, such as variations in State Disability Determination Service (DDS) payment rates, geographic distribution of certain impairments, methods of hearings (including use of video hearings), ALJ disposition numbers, etc. Based on findings regarding these observed variances, this research study will recommend areas for consideration in future focused reviews.

Another way to enhance the adjudication process is to enhance Appeals Council expertise with that of ALJs. Many members of the Appeals Council have never presided over hearings, and many ALJs have little understanding of how the Appeals Council members review cases. Already, there has been a request to detail ALJs to the Appeals Council, although OPM has imposed a 120-day limit on such details. It may be appropriate for OPM to consider relaxing the rule to permit SSA ALJs to serve a longer time with the Appeals Council.

Moreover, ALJs, as a group, currently do not receive notice of Appeals Council decisions clarifying, reversing or remanding ALJ determinations. Typically, only the ALJ and Chief Judge receive copies of the opinions. To the extent that all ALJs might benefit from discussions in some Appeals Council decisions, publication of these decisions could be considered. Weekly meetings to go over common themes in Appeals Council decisions could be considered. Indeed, some chief ALJs hold such meetings currently.

### ***The Treating Physician Rule and High Remand Rates from Courts***

Since the inception of the Social Security hearing process in 1940, ALJs have had the responsibility to weigh the evidence of record and provide rationales in support of their conclusions. Early on, it was clear that the courts would give deference to agency decisions that were factually accurate, well reasoned and policy compliant. Over time, the courts became proactive and began developing standards for the agency to follow on how to weigh evidence, and what types and extent of rationales were required. After the agency strengthened its guidance by re-crafting some of its regulations and issuing rulings designed to describe the level of articulation of rationale required in agency decisions, the courts largely have been quiescent about this issue, with the exception of how treating source opinion evidence should be evaluated. Although this remains the primary reason for remand among district court judges, there appears to be significant variance in the district court application of this rule. Therefore this study will look to whether the agency's rules, as written, are the best approach to obtaining a policy compliant, factually accurate and procedurally adequate result in a case, or if changes are needed regarding how these opinions should be weighed.