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Report for
RECOMMENDATION 87-6

STATE DISABILITY SERVICES' PROCEDURES FOR DETERMINING AND REDETERMINING SOCIAL SECURITY CLAIMS FOR THE SOCIAL SECURITY ADMINISTRATION

by

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Disability Determination Procedure: An Overview *

I. The Multiple Procedural Levels - Four "de novo" reviews leading to the District Court

The initial step in applying for social security disability benefits (Title II or Title XVI) usually takes place at a Field Office (formerly called a District Office) of the Social Security Administration. After an application is filed there, the Field Office is responsible for determining certain preliminary matters. It is important to understand that although Field Office employees have extensive training in the overall requirements of the social security system, they generally lack specialized training in the medical aspects of the disability program. The time of initial contact at the Field Office has both benefit and administrative significance that should be noted. The beginning date for benefits may depend upon the date of application. For administrative purposes, processing time is generally calculated from the date of submission of the initial application for benefits.

If non medical requirements are met the file is then transmitted to a state disability determination service (DDS) for a disability determination. In the DDS teams of examiners and physicians, who are by training and background oriented towards the medical and vocational aspects of the disability program, make the disability determinations.

Within the state DDS system there are two adjudication levels, an initial determination, and (if a denial results and the claimant requests it within 60 days) a reconsideration of the initial determination. New evidence may be submitted at the reconsideration stage either by the claimant or through the examiner requesting more information. Such additional evidence may include a consultative medical examination (CE). The initial determination and reconsideration determinations are, however, made in the state DDS agencies by two different teams of examiner and physician. While there is a variety of administrative detail among the various state agencies, it appears to be fairly common that the more experienced state agency examiners (often at different and higher pay grades) participate in reconsideration level determinations.

At each of the initial and reconsideration stages the panel of examiner and physician is charged with making the correct decision. This is a de novo determination at each level, for indeed, a "different" case may be presented to each panel as a result of the changing content of the file. However, it is important to understand that this is primarily a paper process for initial applications. While there may be some telephone contact between the examiner and claimant, such contact is quite limited.

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* This report could not have been completed without the assistance of substantial preceding works. While specific citations and attributions have not been made, the author wishes to recognize the pervasive influence (inter alia) of Professor Mashaw's works, Mashaw, et al, Social Security Hearings and Appeals, (1978) and Bureaucratic Justice, Managing Social Security Disability Claims, (1983), as well as Dixon's earlier work, Social Security Disability and Mass Justice, (1973).

If the result continues to be adverse to a claimant, an "appeal" to an Administrative Law Judge (ALJ) within the Office of Hearings and Appeals of the Social Security Administration may be requested within 60 days. However, appeal is a misnomer, for new evidence may be submitted at the ALJ stage, including the testimony of the claimant. The ALJ is then charged with making the correct decision, thus this is also de novo review. Once again, since new evidence may be placed before the ALJ, the case may be quite different from that seen at earlier stages. Under the normal system of processing disability applications, there is no face to face contact between the claimant and anybody in the state DDS, so that the first face to face contact with a decisionmaker ordinarily takes place at the ALJ stage. The only face to face contact below the ALJ level is typically at the Social Security Field Office with personnel who lack expertise in the disability determination process.

If the claimant is dissatisfied with the result at the ALJ stage, an appeal may be taken to the Appeals Council within 60 days. 20 CFR Sections 404.968, 416.1467. Although review at that level is ordinarily based upon the material contained in the file, regulations permit "additional evidence it [the Appeals Council] believes is material" 20 CFR Sections 404.976(b), 416.1476(b) either through remand to an ALJ or directly obtaining the evidence itself "unless it will adversely affect [the claimant's] ... rights." 20 CFR Sections 404.976(b), 416.1476(b). [The evidence must relate to the period on or before the date of the ALJ decision.] The claimant may attempt to submit "new and material evidence" with the request for review. 20 CFR Sections 404.970(b), 416.1470(b). While submission of additional evidence or the addition of such evidence through Appeals Council intervention, may be infrequent, this level is also de novo review, for the Appeals Council clearly has the power to make the "correct" decision if the Appeals Council actually takes the case. If the case is remanded by the Appeals Council to the ALJ, the submission of additional evidence occurs regularly.

If the Appeals Council decision is adverse to the claimant, the claimant then has a right to file an appeal in the United States District Court within 60 days. 42 U.S.C. Sec. 405(g), see also Bowen v. City of New York, 476 U.S. ___, 54 L.W. 4536 (1986) (time not jurisdictional). Review in the District Court consists of review of the record under the substantial evidence test. However, the statute provides for a possible remand to the Secretary for additional fact finding for the addition of "new medical evidence" for which "good cause is shown for failure to incorporate" such evidence into the record. 42 U.S.C. Sec. 405(g). Strictly speaking, only in the District Court is review for the first time not de novo review. However, even in the District Court it is widely held that something akin to de novo review instead of substantial evidence review may actually take place, particularly by District Judges who have considerable expertise in disability matters. (See, "Recent Studies Relevant to the Disability Hearings and Appeals Crisis," Dec. 20, 1975, Subcommittee on Social Security of the Committee on Ways and Means, House of Representatives, 94th Cong., 1st Sess., p. 133, n.7. Many attorneys, as well as many DDS and SSA personnel, agree with this conclusion.)

II. Sequential Determination

After evaluation at a Social Security Field Office that a Title II claimant or Title XVI claimant meets certain eligibility tests, the disability application is referred to a state agency (DDS) to make a disability determination. At that point a five step sequential evaluation procedure is mandated by regulations. The object of that sequential evaluation is to determine whether the basic statutory disability standard is met, i.e. whether the claimant has an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months...." 42 U.S.C. Sec. 423(d)(1)(A) and Sec. 1382 c.(a)(3)(A).

Step one determines whether the claimant is engaged in "substantial gainful activity.(SGA)" If she is, disability benefits are denied. 20 CFR Sections 404.1520(b), 416.920(b)(1986). Earning more than $300 per month (or if the claimant is blind and applying for Title II benefits, $680/month (1987 figure)) are ordinarily deemed to demonstrate that a claimant is engaged in SGA. [This determination is made at the Field Offices.]

Step two determines whether the claimant has a medically severe impairment or combination of impairments. That determination is governed by the severity regulation considered by the Supreme Court in Bowen v. Yuckert, 55 LW 4735 (June 8, 1987). That decision upheld on its face the requirement that a medical impairment be severe as a condition for eligibility, although the Court expressed some doubts about the manner in which the test is applied. If the medical condition or combination of conditions is not considered severe, the disability claim is denied. No further evaluation takes place in such cases. 20 CFR Sections 404.1520(c), 416.920(c).

Step three involves a determination as to whether the impairment meets or equals one of the "listed" impairments considered by the Secretary to be so severe as to preclude substantial gainful activity. If a listing is met or equaled, the claimant is conclusively presumed to be disabled. Evaluation for such claimants stops at this point. If a listing is not met or equaled, evaluation proceeds to step four. 20 CFR Sections 404.1520(d),416.920(d); 20 CFR pt. 404, subpt. P, App. 1 (1986).

Step four involves a determination as to whether the claimant can perform work that she has performed in the past. If the claimant can perform such work, she is not disabled. 20 CFR Sections 404.1520(e), 416.920(e). If the claimant cannot perform past work, the evaluation goes to step five.

Step five involves whether the claimant is able to perform other work in the national economy in view of her age, education, and work experience. The claimant is entitled to disability benefits only if she is not able to perform other work which exists in significant numbers in the national economy, regardless of whether or not the claimant would actually be hired, and regardless of whether or not such other work is available in the community or state in which the claimant lives. 20 CFR Sections 404.1520(f), 416.920(f).

Most cases that proceed as far as the District Court stage are disputes about steps four and five. Rarely are steps one and three critical for District Court review.

III. Continuing Disability Review Cases (CDR), Personal Appearance Demonstration Projects (PAD), and Decision Review

Two other disability review procedures merit mention at this point. The first is CDR (Continuing Disability Review) which has a direct legislative relationship to the Demonstration Projects. The second type of procedure is Decision Review.

A. Continuing Disability Review

CDR involves cases in which at some time in the past a claimant had been determined eligible for disability payments under either Title II or Title XVI. The law requires that benefits be paid only to people who initially meet -- and continue to meet --all the legal and medical requirements for eligibility. Congress has mandated that all disabled beneficiaries must have their cases periodically reviewed to determine if they are still disabled and eligible for payments. These reviews were resumed in January 1986 following a moratorium that began in 1984. In certain of these cases medical improvement is expected and in others it is considered possible. A medical improvement statutory standard applies now, which generally requires that medical improvement (MI) exist before payments may be terminated. Certain cases involve no expected medicl improvement and are referred to as MINE (medical improvement not expected). Cases may also be categorized as MIP (medical improvement possible) or MIE (medical improvement expected).

During 1984 all CDRs were halted by the Secretary in anticipation of the passage of Public Law 98-460 and subsequently until the new law could be implemented. The Medical Improvement Review Standard regulations were published on December 6, 1985 and CDRs resumed. However, the moratorium of CDRs plus the slow rate with which CDRs appear to have come back through the system means that there is a substantial backlog of CDR cases. In addition, the CDR determinations performed to date involve cessation rates far below what had been anticipated. [In part this is because a decision was made to concentrate on the class actions and individually named court cases relating to medical improvement which were remanded to SSA for review and also to include other CDR categories such as MINE (Medical Improvement Not Expected) cases to test out the new CDR procedures. Among other benefits this enabled Hearing Officers to have an opportunity to become familiar with the new hearing process.]

CDR decisions involve the same type of team decision as in an initial determination, ie., disability examiner and physician determinations. Public Law 97-455 mandated, however, for Title II cases that a face to face evidentiary hearing be conducted by the Secretary or the State Agency at the reconsideration level for CDR [the Secretary expanded this requirement to Title XVI medical cessation cases by regulation].

B. Demonstration Projects

Some of the considerations behind Congressional establishment of a right to a hearing in CDR cases also led to mandated experiments with "personal appearance interviews" in demonstration projects. A House Committee Report subsequent to enactment of the CDR "hearing" requirement, reports that part of the purpose of this face-to-face "CDR hearing" requirement was to give the state agencies experience

with such face to face procedures before anticipated implementation of a requirement of face to face interviews at the initial determination level. [House Ways and Means Committee Report, March 14, 1984, H.98th Cong. 2nd Sess. 98-618, p. 16.]

That House Committee report endorsed the concept of instituting face-to-face pre denial "interviews" at the initial State level, and of abolishing the reconsideration stage for initial claims as well as for CDR cases. However, such changes were understood as substantial changes to the existing system, and it was explained that as a result the Secretary was required to establish demonstration face-to-face evidentiary projects and to report the experience of such projects to Congress.

The statute eventually passed, Public Law 98-460, mandated such personal appearance demonstration projects in a minimum of five states for Title II or XVI cessation of continuing benefits, as well as in five states for initial disability claims. The report to Congress was due by December 31, 1986.

However, commencement of the demonstration projects was delayed for a number of reasons, to the point that all of the 10 states participating were stated by the Secretary to be actively involved by March 1, of 1987, with the final report expected by September 30, 1988.

For such personal appearance demonstration projects the proper terminology for the personal appearance is an "interview." By contrast, CDR cases involve "hearings." However, while there are some differences between the two procedures, for most intents and purposes the same type of procedure occurs. The hearing officer goes through a comprehensive set of questions relating to medical problems and functional abilities. While CDR "hearings" may be more factually complex and take somewhat longer than most "interviews," it is doubtful that a claimant could detect any difference in tone or conduct between an "interview" and a "hearing."

It should be noted that very few mandated face-to-face CDR hearings had been conducted nationwide before January of 1987 under the requirements of P.L. 97-455 primarily because of the CDR moratorium. Although SSA had conducted training from 1984 to 1986 in holding such hearings at McGeorge Law School for 300 - 400 state level hearing officers, few hearing officers actually had much opportunity to use this training until the late Spring of 1987. As of the end of July, 1987 many state level hearing officers are yet to hold their first CDR hearing or first interview within the demonstration projects. Many other hearing officers have held less than 5 hearings, and few hearing officers have held more than 15. Obviously any data is quite limited, and must be viewed with considerable skepticism at this point. In particular, since it is possible that the more complicated cases, those cases requiring additional factual development (through CEs for example), will likely come through the system at a later time period, early results may be biased towards simpler, less expensive cases to process. For this reason, it is strongly urged that any policy changes and statutory changes await completion of the personal appearance demonstration projects and final data analysis.

C. Decision Review

Another significant category of cases in the disability system

at this time are decision review cases. These are primarily CDR cases involving named plaintiffs or unnamed class members of federal court cases that date back to and before the 1984 moratorium. Approximately 40,000 cases fall into this category. All necessitate significant administrative burdens for the state DDS as well as SSA, and involve procedures somewhat different from normal CDR review. This category of cases was not a primary focus of this investigation. However, one should minimize neither the volume of such cases nor their complexity added on to an otherwise complicated, multi-leveled administrative scheme. By June, 1987, 24,000 of these cases had been processed by SSA, and it was anticipated that the great bulk would be completed by the end of fiscal year 1987.

IV. Reconsideration

A. A Historical Overview

Reconsideration in the disability determination process is a creation of the Secretary, rather than a statutory requirement. Indeed, the first statutory mention of reconsideration relates to the 1983 amendments (Public Law 97-455) mandating a face-to-face reconsideration hearing prior to medically terminating benefits through CDRs. Reconsideration was made mandatory by 1959 regulations. Prior to that time the applicant had the option of having his claim considered by the state agency or going directly to a hearing. It is likely that it was begun to cope with the extraordinary case volume that confronted SSA and the state agencies.

At one point in time it was clear that reconsideration was a "significant step," by which is meant a step that involved significant numbers of reversals. Over time the reversal rate has changed considerably, although it is still true that the total number of reversals remains substantial. Reversal rates at reconsideration have gone down from 33 percent to under 15 percent from 1970 to 1987. The historical data is reported in the following table:

Reconsideration Determinations on Initial Disability Claims and Allowance Rates for Workers, Widows(ers), and Children, Fiscal Years 1970-87.

Fiscal year	Decisions	Allowances (%)
1970#	approx. 100,000	33
1972#	" 150,000	36
1974#	" 200,000	34
1975#	" 225,000	33
1976#	" 230,000	29
1977#	" 210,000	28
1978#	" 260,000	19
1979#	" 285,000	17
1980#	" 303,000	15) same yr
1980*	405,163	15) data diff.
1981*	437,953	13
1982	370,506	11
1983	357,763	13
1984	372,315	15
1985	378,952	14
1986	380,425	17
1987 (10/86-2/87)	194,956	14

#. Source is Bellmon Report, Number of Disability Insurance Determinations, excludes applications solely for SSI disability benefits, p. 9, numbers of cases are estimated. Remaining data in table includes Title II, Title XVI and Titles II/XVI concurrent disability claims.
* Includes continuing disability review (CDR) cases. Data not available separately for initial and CDR cases.

Criticism has been voiced that reconsideration today does little more than add to delay in the process and constitutes an obstacle to ALJ review, if only by tiring out some claimants. Drops in reversal rates at reconsideration are cited as evidence for the lack of utility of reconsideration. Obviously, determining the reasons for change in reconsideration allowances over time becomes a relevant question.

1. The Impact of Shortening Time for Seeking Reconsideration

One minor factor in this drop in allowances at reconsideration is the shortening of time for requesting reconsideration. At one time a request for both an ALJ hearing and for reconsideration could be made within six months of notice of the determination for title II cases. To accelerate the process, partly because most reconsideration requests came within 60 days, the 1976 amendments to the Social Security Act shortened this period to 60 days for requesting ALJ hearings. (Public Law 94-202, effective Feb. 29, 1976) Texts of House and Senate Committee reports indicate an intention to extend this shortened time frame to both ALJ hearing requests and requests for reconsideration (although the latter was provided for only by regulations). The Secretary proceeded to implement this policy and extended it to title XVI reconsiderations as well, so that the time

frames for Title II and Title XVI were similar. (SSR 78-15) However, as a by product the time period during which a medical condition could worsen so as to make the claimant disabled was also cut down. With a shortened time frame prior to reconsideration, fewer claimants would be expected to have significant changes in medical conditions before final determination at the reconsideration stage. Some part of that "time-worsening" effect upon medical condition might be expected to appear later at the ALJ stage in the form of more allowances. Indeed, the ALJ reversal rate did go up as reconsideration allowances declined.

However, this factor by no means explains the size of the drop over time, although it does coincide quite closely with the sharp drop in reversal rate in the data beginning with 1978.

2. Addition of SSI Claimants to the DDS system

Another factor, whose impact on the drop in reconsideration allowances is far harder to estimate, is the addition of the SSI program under the 1972 Social Security Amendments which "federalized" the state programs for the needy aged, blind and disabled into Title XVI. Payments under that program began in January of 1974 through grandfathering in of disabled or blind persons already on the state programs before December 1973. Very significant increases in DDS and SSA case loads occurred during the middle 1970s. By 1978 the first significant drop in reconsideration allowance rates was apparent in Title II program data. By that time as well, the number of Title II reconsideration requests had more than doubled from 1970, while the number of initial claims for Title II benefits had gone up nearly 40 percent. This must be seen as a very substantial increase in case load for what might be called the largest adjudication system in the world. (albeit an administrative system)

That addition had impacts besides case load upon the state DDS agencies. At times differences between the typical Title II claimant (by definition a worker who has acquired enough quarters of covered employment to become eligible) and Title XVI claimants were described as great. Differences as simple as punctuality in keeping CE appointments impacted upon the system. Thus the administrative process was encumbered by not only significantly more claimants, but also by claimants of different types who may have required special types of treatment at various points.

3. State and Private Incentives to Force Disability Applications

Another factor must be considered as well. Once the SSA disability system was expanded to encompass SSI, each of the states acquired distinct fiscal incentives in seeing that as many of their general assistance welfare recipients or AFDC welfare recipients as possible qualified for the federal SSI program. Title XVI eligibility shifted such recipients from the state welfare rolls (or for AFDC recipients, from a matching federal-state fund program) to federal rolls. While a state could choose to supplement Title XVI SSI payments, such supplements were not required and were unlikely to be as large as a state general assistance payment.

Many states do appear to have decided to attempt to shift as many of such persons as possible to the SSI rolls. That has taken the form of policy or statutory requirements that a state welfare applicant (AFDC included) apply for SSI and/or DI, sometimes on an

annual basis, and sometimes with a requirement that such persons carry their application through the reconsideration stage, or even through the ALJ stage. The fact that some states pay attorneys' fees if the attorneys are successful in having a client placed upon the SSI disability rolls is one measure of state economic interest.

Not only do such requirements swell the number of annual initial applications, reconsideration requests, and ALJ hearing requests, it is possible that they increase the number of applications that are not meritorious. For example, a state AFDC policy that all pregnant recipients must apply for federal disability because of pregnancy almost certainly involves a clear denial case. Pregnancy doesn't last more than 12 months, and few women are disabled by pregnancy alone. Of course, certain such "forced" applicants do properly qualify for the federal disability program, and thus attention to the concerns of such claimants is important.

The natural result of more "unmeritorious claims" would be a drop in the allowance rates, both at initial and at reconsideration. Such drops did occur. At the ALJ level, however, other factors may mask the reality of the situation. For example close cases may also be a significant proportion of the cases that go up to the ALJ. It is possible that ALJ reversal rates might actually increase overall as a result of a larger proportion of "frivolous" cases. More allowances may result from close cases now appearing to be clear winners by comparison. As long as the shifting of close cases to clear winners exceeds the proportion of "frivolous" cases, the net impact may raise ALJ allowance rates. Obviously this "counterintuitive possibility" is raised in the absence of confirmatory data, and it may not obtain at all.

Conversely, the state DDS agencies may like such "frivolous" cases, for although they do cost some time and money to process, such cases may be easier and quicker to process than many other cases. Quality review accuracy measures may improve while processing time per case may be lowered from such "frivolous" cases.[1]

Ultimately, the question is whether the additional administrative costs placed on the federal budget and administrative burden upon the state DDS-SSA system are fully justified for state welfare mandated applications to disability. Is there for example, a solution that recognizes that many such claimants are disability eligible, but many other claimants have no reason to be in the system even as applicants? Can such "frivolous" cases be identified and removed from the system at an early stage? Can repeated applications be curtailed in a fair and equitable way, perhaps by requiring

1. Note: The Auditor General of California has issued a report indicating that the California DDS staff substituted cases in the random case selections for SSA quality review, thereby understating the number of errors. We cannot overlook internal pressures on DDS agencies to look good by whatever measures are chosen to monitor administrative efficiency by SSA. Such alleged practices include delaying the official application date at the Field Office until a file is "complete," so that when the file is transferred to the DDS processing can go forward quickly.

demonstration of a worsened medical condition prior to accepting a second filing from an applicant? None of these questions have easy answers.

Another similarly situated group of claimants are those persons forced to apply for federal disability by private disability insurance carriers. Such private insurance policies typically provide that benefits are reduced dollar for dollar for benefits paid by the federal Title II or Title XVI program. Private insurance carriers thus have clear financial incentives for also forcing appeals to reconsideration, ALJ and stages beyond. As a result they have established teams of personnel whose job is solely to see that their "clients" present the best case possible for federal disability payments. However, many such private insurance policies pay if the claimant cannot perform a past job or other comparable salaried job with an employer. That is a totally different standard from the federal disability requirement. This is yet another source of "frivolous" cases which may have entered the administrative system as private disability coverage widened. While some rules do exist on technical denials, perhaps different methods of discouraging "frivolous" applications might be considered for such types of cases.

However, it must be noted that the current intake process at the Field Office does not attempt to collect information on who, if anyone, has suggested that a claimant apply for federal disability. While many applicants volunteer information that they were required to apply, there is really no accurate measure of the size of the claimant group forced by state requirements or private insurance to apply to the federal system. The author was told frequently by DDS and SSA personnel that claims of this type seem to have risen substantially in recent years. No one could cite any hard data to support this assertion, presumably because such data has not been collected.

B. Reconsideration Today

What is reconsideration producing in the way of "changes in decision" when largely a "paper process?" National data regarding quality review of the results at reconsideration level sheds some light on this question. In Fiscal Year 1986 at the reconsideration level 17 per cent of decisions were reversed. (380,536 reconsiderations, 64,592 allowances).

Quality review examined in detail 2,422 cases that involved a reversal at the reconsideration level. SSA quality review data then broke the reasons down for reversing a decision. Each of three reasons for reversal explain slightly over 10 percent of the reversed cases sampled. These reasons include an increase in severity (12.1 percent), discovery of an additional impairment (11.3 percent) and different medical evaluation (14.4 percent). Obviously each of these reasons explain significant numbers of the reversals nationwide. However, the most significant single reason for reversal was additional documentation, either of the primary or secondary impairment (49.1 percent). Nearly half of all reversals are attributed to this single explanation. In some social security regions nearly 58 percent of reversals can be attributed to this single reason.

It is hard, thus, to conclude that nothing is achieved by a second look at a file by a the DDS even if that look consists primarily of paper review. Nationally approximately 32,000 allowances

were made in FY 86 based upon the reconsideration level examiner seeking additional documentation of something already partially reflected in the file. As a comparative measure of case load, that single category of reconsideration "allowances" is approximately equal to 80 percent of the total caseload of the Appeals Council and 16 percent of the caseload of ALJ dispositions in FY 86.

Were reconsideration abolished without another system established to cope with this "second look" at a claimants's file aspect, the case load impact upon ALJs would be serious. Indeed, if one categorizes the reasons of identification of additional impairment and a different medical evaluation as both factual supplements to the case file, nearly 3/4 of all reconsiderations that result in allowances involve factual supplements were achieved in a relatively short time. Such cases equal approximately 120 percent of the Appeals Council current case load, and 23 percent of the ALJ caseload.

The waterfall gross case statistics for FY 86 are incorporated herein at appendix 1 (Table 4). The key figures for reconsiderations are the combination of allowance rates of 17 percent (83 percent denial) and the difference between the cases that are not taken from reconsideration to the ALJ stage. In FY 1986 there were 380,536 reconsiderations, including 315,746 affirmations of the initial denial, but only 204,332 ALJ dispositions. From one view the appeal rate of 65 percent of such affirmations appears substantial, but the flip side is that 35 percent do not appeal. Complete elimination of the reconsideration stage (with no other change in the system of appeals) might very well nearly double the caseload at the ALJ stage. (Approximately an 86 percent increase in ALJ caseload)

To the extent that data supplied by SSA regarding Component Workload Unit Cost (Appendix 2) are accurate, this involves shifting decisions from state agencies that had unit costs per decision of approximately $290 per case to the ALJ level where decisions cost approximately $900 per case. (These are approximates, and include subfigures of $299.98 for DI reconsiderations, $291.65 for SSI reconsiderations, and $275.78 for concurrent SSI/DI reconsiderations. The comparable ALJ level figures are respectively $871.02, $836.70, and $913.48) The additional annual expected administrative costs would be approximately $50,000,000 (after subtracting all reconsideration costs). For comparative purposes, the total administrative unit costs attributed to reconsideration in FY 1986 were approximately $115,000,000, and to ALJ determinations of DI, DI/SSI, and SSI Hearings approximately $179,000,000. Elimination of reconsideration has a potential for increasing the administrative costs to the system by a factor of approximately 17 percent.

However, other impacts of complete elimination of reconsideration must be considered as well. Reconsideration determinations while the subject of complaints for taking too long, do have one distinct advantage over ALJ determinations. They are made in a far shorter time frame. Thus for the cases that are currently reversed at reconsideration level in approximately two months (for Title II cases, mean time Oct. 1986-Apr. 1987 61.3 days, see appendix 3) one would be trading off for a system that currently has an average processing time of something on the order of six months after filing of the notice of appeal (172 days Av. processing time, FY 1986 (see Appendix 4). [The average time for filing a notice of appeal is 39 days, and thus this step actually adds another seven to seven and a

half months onto the process. However, time also runs during the period after receipt of the initial determination before requesting reconsideration. The current system thus has two periods of dead time, each involving a wait on the claimant's decision to appeal.]

Framing the picture from the claimant's perspective: reconsideration provides one chance in six of a positive payment decision within two months; an appeal to the ALJ stage provides one chance in two of a positive payment decision within six months. Would most applicants desire a complete elimination of an early payment decision opportunity in favor of the alternative later payment decision system? That seems doubtful. Many claimants complain payments already take too long a time to come.

Another factor is the impact of reconsideration on case development. It is frequently the case that additional information is included in the file at the reconsideration level. Even if a denial results, that information may become part of the data employed later to justify an ALJ allowance (or denial). The value of such subsequent impact is nearly impossible to measure, and indeed may be marginal in many cases. (And irrelevant to cases not appealed beyond the reconsideration stage.)

An additional factor to be considered from the claimant's perspective is the reduction in net benefits attributed to legal representation (although not all representation generates fees, such as representation by legal aid). At current rates of legal (and non legal) representation at the ALJ stage (estimated to be as high as 85 percent), the net amount paid on an allowance for those who are allowed at the ALJ stage can be reduced by the withholding of up to 25 percent of past due benefits for legal fees. The ultimate result is that the beneficiary loses approximately 2 to 3 months of benefits through payment of her attorney. Since very few claimants are represented at the reconsideration stage, attorneys fees apply to few allowances at the reconsideration stage (and then represent no more than 25 percent of a far shorter payment stream, perhaps equivalent to a single month's payment). [Of course, without attorneys these claimants lost below.]

Thus one impact of complete elimination of reconsideration would be to shift certain payments from beneficiaries to payments to attorneys for those cases that would have been otherwise allowed at reconsideration. Such a payment shift on a per case basis represents more than the unit cost of ALJ processing: thus this would not be a de minimus financial impact. Since the program is designed for claimant beneficiaries, this shift in resources appears to have little ready justification. Only substantial increases in "efficiency" or "accuracy" or "acceptability" factors could justify such a shift as a matter of policy.

In addition, some percentage of the claimants who apply for reconsideration who fail to appeal to an ALJ (approximately 100,000 in FY 1986) might have been found disabled by an ALJ. Were the 50 percent reversal rate at the ALJ stage to remain constant, the cost of additional disability payments to such claimants could dwarf the extra administrative costs. Of course, if these extra ALJ allowances are correct decisions, the purposes of the disability system would be well served. But the potential fiscal impact cannot be ignored. If the ALJ reversal rate remained consistent at about 50 percent, based upon the number of FY 1986 cases, approximately 23,000 additional

allowances might have been expected, representing something over $1,010,000,000 in overall program cash benefit costs. This does not include medicare benefits, or other non cash benefits and administrative expenses which would add an additional 52 percent cost figure, or somewhat less than $1.5 billion dollars.

These are not annual costs, but the present value of lifetime cash benefits. This is based upon 23,000 allowances at total present value figure for December 31, 1985 of $43,921 for Title II cases. Payments under Title XVI are at a much lower level and thus the figures overstate the net expected costs, but they indicate the order of magnitude. The additional annual cash benefit costs for the first year could be well over $100,000,000. The figure of 23,000 additional allowances is derived by applying the 50 percent ALJ reversal rate to all FY 1986 reconsideration requests and assuming that all such requests for reconsideration were instead requests for an ALJ hearing. This probably overstates the likely result, for some persons who requested reconsideration in FY 1986 might have decided not to appeal to an ALJ. Of course it is also possible that some persons who failed to request a reconsideration before the same DDS that had already rejected them, might request an ALJ hearing, although the number of such persons is likely to be low.

Another potential impact of complete elimination of reconsideration should also be considered, the impact upon the current system of legal representation. Three principal types of attorneys appear to typify representation of clients at the ALJ stage. There are relatively few attorneys who can be considered specialty practitioners in the Social Security disability area. They normally operate on high volume with relatively small margins. Average fees per case are the area of $1,500 (FY 1985 Hearings and Appeals Council Average Fee request $1,525.55; average fee allowance, $1,358.86). These fees come from a percentage of past due benefits won for clients. Such practice is not very profitable. As a result, such attorneys constitute a small segment of the bar anyplace in the United States. In large geographic areas of the United States, however, these are the only attorneys willing or able to take such cases.

There are also legal aid offices around the country who represent disability clients. Such offices usually operate on very low budgets derived from charities or governmental support. Staffing is limited. In many cases former legal aid attorneys become the specialty practitioners in the disability area (as sometimes do former disability claims examiners).

The last type of legal representation is performed by attorneys who have only isolated contact with the social security system. Such attorneys may take a case or two a decade as a favor to a friend or because an old client or client's relative has a disability problem. Such attorneys are very reluctant to take additional cases because the system is complex both legally and medically, requires considerable expenditure of time for a novice to accomplish anything, and is considered unprofitable. Such representation is considered pro bono representation. Often the major result of such an attorney's first social security case is a firm resolve to take no more such cases even if the representation achieved a successful result. Disability examiners who have contact with such attorneys express the opinion that they seldom add much for the client. However, since there are few contacts with attorneys at the

DDS level, such observations should not be given undue weight. It may well be the case that at the ALJ stage most such "novice" attorneys do a good job for their clients.

The capacity of the private bar or of legal aid to double the rate of representation of clients, particularly in the short run, is quite doubtful, absent financial incentives that are unlikely to occur. Indeed, there are some indications the financial constraints on disability attorneys are being pulled in exactly the opposite direction.

One must also recall that a significant proportion (approximately 15 percent) of representation at the ALJ stage comes from various non-lawyers, such as paralegals, as well as representatives from various non-profit agencies. It is difficult to estimate the degree to which these entities could substantially expand their representation. However, the possibility of such expansion, perhaps associated with federal financing under the model of the Legal Assistance Corporation, for disability representation, should not be ruled out as an option.

In short, elimination of the entire reconsideration stage would almost certainly raise processing costs to the system, likely increase payments to lawyers to the detriment of some claimants who would have been allowed at reconsideration, and would, at least in the short run, present significant case load problems for the persons representing disability claimants at the ALJ level. Given assumptions that the ALJ staff is unlikely to immediately increase in any way proportionate to the anticipated increase in appeals, it is likely that case processing times at the ALJ stage will increase, perhaps to the point of limiting the advantage of time saving through eliminating reconsideration. State DDS agencies may perceive that such a change would create serious personnel problems, requiring reductions in staff, and result in less flexibility to respond to changing case loads as peaks and valleys occur in applications. The need to move staff around to respond to administrative necessity is a significant concern in many DDS agencies.

V. The Value of Face to Face Procedures at the DDS level: History

Reconsideration as well as initial consideration of a disability claim at the DDS level has largely been a matter of paper review, with isolated telephone contact with claimants. The only person "representing" the state DDS they may have seen in person would be the CE physician if a CE is involved.

With that in mind, SSA has conducted various experiments with face to face procedures at the DDS level. Some of the more significant results from those studies are reported below. What can be said about such experiments is that the results are at the most suggestive, but ultimately inconclusive. In more than a few situations the data either was incomplete, or considered so unreliable that no final report of the experiment was produced. An SSA staff person who has perhaps the longest exposure to these experiments over time states that the experiments do appear to raise allowance rates at the DDS level, but have little or no impact upon appeal rates or ALJ allowances. On the other hand, the fact that allowance rates do tend to go up at the DDS level, and appear to do so in each experiment, suggests some utility to face-to-face "interviews."

A. The Bellmon Report with Particular Emphasis on Its Examination of Face to Face Procedures

The Bellmon report (Implementation of Section 304(g) of Public Law 96-265, Social Security Disability Amendments of 1980" (Jan. 1982) sheds some light on the utility of a face to face interview in the disability system. For purposes of the Bellmon report hypothetical paper reviews of files were conducted with the ALJ and Appeals Council receiving transcripts of the actual ALJ hearings in the cases. No decisions were changed as a result of these reviews. The executive summary of the project reported:

> "Results for the review suggest that the in-person appearance of claimants at ALJ hearings may make a difference. The ALJ hearing is the first time that the claimant appears before a decisionmaker. As part of this review, all information related to the claimant's in-person appearance was removed from a special subsample of case folders and these folders were then distributed to other ALJs, the Appeals Council, or OA, for readjudication based on the case record. The original ALJ allowance rate of more than 60 percent dropped to 46 percent when the in-person information was removed from the case." (p. ii)

Additional Evidence

The Bellmon Report also suggested that the existence of additional medical evidence after the DDS decision significantly affects ALJ allowance rates. "The ALJ allowance rate dropped from 46 percent to 31 percent when all evidence added after the final DDS decision was deleted from folders in the sample."

Different Standards

The Bellmon report also indicated substantial differences in allowance rates based upon the entity making the decision and the standards being applied:

> "The ALJs allowed 64 percent of the cases. The Appeals Council, applying ALJ standards, allowed 48 percent. OA [Office of Assessment within SSA], applying DDS standards, allowed only 13 percent."

Different Decisionmakers

The Bellmon report examined for 3,600 cases the results of the Appeals Council determinations, the ALJ determinations and the OA determinations. ALJ's operate as sole decisionmakers. For most intents and purposes, so does the Appeals Council, although a panel of several decisionmakers ordinarily become involved in decisions that involve changes. The Bellmon report does not indicate whether a panel approach was used by the Appeals Council for these cases. The OA determinations involved a panel in each case, for a two person team of a disability examiner and a physician on the Medical Consultant Staff made each OA determination. Thus the OA determinations replicated the method of determination made at reconsideration, while Appeals Council and ALJ determinations are similar in method.

Agreement between Appeals Council and ALJ

The Bellmon report indicated that on the sample cases, ALJ allowance rates were 64 percent, and the Appeals Council 48 percent. That masks some of the differences between these decisionmakers, for the Appeals Council denied 37 percent of the cases which the ALJs allowed, and allowed 21 percent of cases the ALJs denied. (Bellmon Report, p. 14). [OA resulted in a far lower overall allowance rate of

13 percent. Nevertheless, confidence in accuracy is not bolstered by examining these in detail. OA would have allowed 4 percent of cases that the ALJs denied, and 7 percent of cases which the Appeals Council would have denied.]

Lack of Consistency in Reasons

The Bellmon report further examined the reasons given by ALJs and the Appeals Council for denying or allowing eligibility. "A detailed examination of the cases on which both groups agreed, however, shows that the Council agreed with the ALJs as to the basis for an allowance or denial much less frequently than it agreed on whether the case should be allowed or denied. The Council agreed that a case should be allowed because the claimant met or equaled the Medical Listings in 41 percent of the cases that the ALJs allowed on this basis, and agreed with an ALJ allowance based on vocational rules in 38 percent of the cases."(Bellmon Report, p. 23) [Overall the Council agreed with the ALJs on allowance decisions roughly 50 percent of the time.]

B. DARE (Disability Appeals Reform Experiments): Face to Face Part (DARE 3)

In some ways the DARE experiments are the most interesting ones conducted by SSA, particularly DARE 3. The DARE projects examined the effect of different procedures at various stages: (1) testing mandated CEs in every case at reconsideration if CEs had not before been conducted, a RFC assessment, and expanded notices of determinations (DARE 1); (2) testing DARE 1 procedures with hearing cases informally remanded to the DDS (DARE 2); and (3) testing face to face reconsideration by an interviewer at various stages (DARE 3). Examination of the preliminary data on DARE 3, no final report having been published, is worthwhile. It should be noted, however, that SSA considered the statistical validity of the study questionable, and that explained the decision not to publish final results.

The DARE 3 Experiments were conducted on a sample of cases at reconsideration stage to study the impact of face to face meetings with disability examiners on ultimate disability determinations for a sample of cases from 4 states during the period May 1981 to May 1982. Unlike the Bellmon study, these cases involve actual determinations with impact upon real world allowances. While the other DARE Experiments appear to have demonstrated few impacts upon allowance rates, DARE 3 did appear to increase the rate of reconsideration allowances on a fairly consistent basis across the 4 states, particularly whenever the face to face meeting took place "Late." Early interviews were either immediate interviews by the DDS or DO (District Office, now called Field Offices), while late interviews were defined as prior to a denial determination or reconsideration determination. For late interviews before DDS examiners a net increase of allowances of five to ten percent appeared in each of the test states. (See appendix 5, Dare 3, table 3.1 Reconsideration allowance rates by State and treatment group, is a table from a December 22, 1982 report to the Director of Office of Disability Programs regarding these experiments.)

The DARE 3 allowance rates were:

State	Group	Allowance Rates	Percent above Control
Ariz.	Total	18.8	3.1
	DDS Early	16.9	1.2
	DDS Late	26.6	10.9
	DO Early	13.6	- 2.1
	DO Late	21.4	5.7
	Control	15.7	
Conn.	Total	19.2	4.5
	DDS Early	17.9	3.2
	DDS Late	24.9	10.2
	DO Early	15.3	0.6
	DO Late	24.3	9.6
	Control	14.7	
Geor.	Total	10.8	2.7
	DDS Early	12.7	4.6
	DDS Late	13.0	4.9
	DO Early	9.7	1.6
	DO Late	10.8	2.7
	Control	8.1	
Oreg.	Total	13.9	1.3
	DDS Early	15.7	3.1
	DDS Late	19.1	6.5
	DO Early	16.6	4.0
	DO Late	13.4	0.8
	Control	12.6	

On the other hand, the rate of filings of appeals of denials in DARE 3 from reconsideration to the ALJ stage demonstrated little consistent pattern, certainly no substantial decline in appeals. A summary of data is attached as appendix 6.

DARE 3 data indicated an actual increase in the rate of filing appeals in one state of from 3 to 12 percent (average 6 percent), and drops in three states (two states about one percent drop, and one state about a 5 percent drop). These differences are not statistically significant by treatment group (I.E. DDS late, or early, etc.), but are significantly different by state. (Other DARE 3 data suggested that increased appeal rates are associated with securing additional medical evidence and (to a lesser extent) the securing of additional vocational evidence. It is not known whether these relationships are due to the fact that additional evidence was secured, or to the difference in case characteristics between those cases in which such evidence was added and those in which it was not.)

DARE 3 also examined the impact of these face to face meetings upon ALJ determinations on appealed cases. Small but statistically insignificant decreases (by types of treatment) in allowances at the ALJ stage resulted. The limited raw data suggests that ALJs allowed from one to seven percent fewer claims, and may modestly suggest that fewer meritorious cases were going up on appeal, but state to state variations were far more important. The data is reported in Appendix 7.

It should be noted that DARE 3 data suggested, however, that increases in ALJ allowances occurred in those cases in which additional medical evidence was secured below. If the fact of securing additional medical evidence is taken as a surrogate for the disability examiner determining that these were close cases (or alternatively as an indication to the claimant that there is more hope if the case is continued), there may be a modest case made for the "appropriateness" of an increased ALJ allowance rate in such close cases. The data is reported in Appendix 8.

The overall allowance rates (after reconsideration and ALJ appeals) for cases in the DARE 3 experiment were not significantly higher as a group than for the control cases. The overall allowance rates were within a range of 0.2 percent lower to 3.1 percent higher. Somewhat more variation appeared within certain treatment categories, particularly DDS Late, from 7.4 percent higher to 0.4 percent lower. The data is reported in Appendix 9.

However, the fact that in three of four states the allowance rates for DDS late cases exceeded the allowance rates for the control cases after reconsideration and ALJ determinations is modestly promising, in that some procedural changes do make a difference in outcome.

Conclusion regarding DARE 3

In many ways the last reported result, that the overall allowance rates did not substantially change, is the most surprising result of the DARE 3 experiments. The fact that overall allowance rates did not change may testify to the efficiency of the current system. However, looking at ultimate allowance rates doesn't say anything about the case mix. It may be impossible to define a "correct" disability decision or the "correct" allowance rates. We do not know in any ultimate sense the number of truly disabled claimants

who drop out of the application process because of frustration with that process, while disproportionate numbers of "not really disabled" claimants persevere.

Within such reservations, we may speculate that there may be more "correct" decisions in the DARE 3 experiment sample cases than in the control group cases. In other words, those cases which went up on appeal may have been proper close cases, ones in which close judgment calls were involved. These cases may have been appealed because the claimants were better educated regarding DDS and SSA standards and procedures. Conversely, improper cases may not have gone up on appeal as much. There may have been more improper ALJ determinations in the control case sample than in "experimental" cases. If it were possible to know the truth of the matter, the ultimate results both at the DDS level and the ALJ level may have been that more "correct" decisions were made.

The problem is that we cannot tell. Data from such experiments cannot be put on the same level of data from physics laboratory experiments. Large numbers of people are involved in any such experiment, both on the claimant side and on the DDS side. Hawthorne experimental effects cannot be ignored. Nor can we ignore potential hostility to such experiments from DDS personnel who may like the way the system has been working. Both these and many other potential reasons suggest that the results of such experiments must be viewed with caution.

C. A Pilot CDR Study

Very limited results have been reported on an early 1980s project involving 1100 Title II, XVI and concurrent cases of CDR reconsideration hearings in Texas, New Mexico and California. A memo by Louis B. Hays, Acting Deputy to Deputy Commissioner for Programs and Policy, states that in the study cases, "The DDSs favorably reconsidered their own initial determinations in an average of approximately 18 percent of these cases, thus reducing the number of cases in which hearings were required. Of the cases sent to the Disability Hearings Units (DHUs) for hearings, approximately 24 percent were favorably decided by the hearing officers on the basis of testimony and additional evidence presented at the hearing with an accuracy rate of about 96 percent ...."(Sept. 8, 1983 memo., p.2) The memo also stated, " While cumulative data for a final report are still being collected and analyzed, the available information suggests that the face-to-face procedure allows for a fuller, more meaningful reconsideration process."

It is understood that some doubts exist about the validity of data from this experiment, and it is also understood that no final "formal" report has been prepared. However, comparison of these allowance rates with the overall (very low) allowance rates at reconsideration for the 1981-83 period indicate that the experimental project rates were substantially higher, and perhaps, thus, closer to the "norm" for reconsideration. A presentation to the Subcommittee on Oversight of Government Affairs, United States Senate, 98th Cong., First Session, June 8, 1983, indicated an overall reversal rate for the pilot was 38 percent. Whatever the validity of detailed data from this experiment, it also generally testifies to the utility of face-to-face procedures.

VI. Current Face to Face Proceedings at the DDS Level

During the course of this project the author was able to visit four different state DDS agencies (Missouri, Michigan, Wisconsin and Maryland) (and observed a face-to-face hearing in Illinois as well as having had an opportunity to talk to Illinois personnel). State agency personnel were most cooperative at every level to any request for assistance and information (however burdensome and unreasonable) made by the author. Significant parts of these visits included interviews with the state agency hearing officers with experience at conducting either PAD project interviews or CDR hearings. In addition, the author was permitted to observe several interviews and hearings conducted by different examiners and hearing officers (with the permission of the claimants obtained beforehand).

Similar cooperation with the author was given on an open and willing basis by SSA agency personnel from Baltimore. Such personnel deserve particular commendation. In several instances site visits were coordinated with trips by experienced SSA personnel to the state DDS agencies. In connection with the visit to Maryland, the author was also able to interview various SSA personnel at Social Security headquarters in Baltimore. A very preliminary opportunity was also given to examine the PAD (Personal Appearance Demonstration project) interview reports from New Mexico (which by early July had completed its sample of PAD cases).

A. Field Observations

Perhaps the most striking impression the the author had after visiting the small sample of state DDS agencies was the degree of variation between the different state agencies. For example, on the Missouri DDS visit, it was learned that Missouri has considerable experience with face to face proceedings, including home visits, that go back over a decade and a half. That experience and the belief by Missouri DDS personnel in the utility of face to face proceedings is likely to color results. Conversely, in another state (not in the PAD project) claims examiners who were not themselves conducting face to face interviews and who had no prior exposure to such interviews were highly dubious of the value of such interviews. Such examiners were fearful of loss of objectivity. In that same state, however, fellow claims examiners who did, by accident, have such face to face experience, were most enthusiastic about both the idea and the utility of such interviews. In another state, not one visited, a PAD project was not implemented (and thus shifted to another state), in part, because the state DDS had recruited claims examiners on criteria that excluded talent for face to face hearings as a job qualification, and also apparently promised that no such direct claimant contact would attach to the job. Only by a site visit could one possibly understand such variations from state to state, and indeed, within the same state DDS agency.

It is also the case that in each of the PAD site visits SSA personnel from Baltimore also discovered significant information regarding implementation of the PAD projects that suggest that ultimate data from the different state projects will not be fully and exactly comparable. It is important to understand that these variations occurred despite the best efforts of SSA and local DDS agencies to produce "identical laboratory experiments" in the PAD states. Still, variations in treatment of files between different

states have occurred. With luck, these variations in file treatment will have little impact on final data. But this experience, plus the fact of different geographic and institutional situations in the different PAD states, only highlights the difficulty in drawing conclusions from such demonstration projects.

With those caveats, certain overall impressions can still be drawn at even this early stage. Based on interviews with the hearing officers who conducted PAD interviews or CDR hearings in the sites visited, strong consensus existed about certain points.

First, the experience of every single hearing officer interviewed was that claimants liked the opportunity for an interview, and virtually each claimant invited to an interview accepted the offer and actually came. New Mexico data coincides regarding the high rate of attendance.

Second, again to a person, every single hearing officer interviewed reported that the claimants who came to an interview seemed satisfied with the interview experience. Since the decision is not rendered at the time of the interview, this does not mean that claimants will not appeal an adverse result. The claimant does, however, hope that post interview action will be favorable. Of course the likelihood of adverse results may be fairly clear in many interviews. For example, in one of the hearings observed by the author, the claimant clearly understood the restrictive criteria for disability for the federal system by the end of the interview, and recognized that there were jobs in the economy that he could still perform. The claimant commented, "Perhaps I really should consider retirement, I don't really want to do some of those kinds of jobs." At the end of the interview, this particular claimant was polite and expressed satisfaction with the interview.

Third, virtually in every case claimants were polite, and expressed willingness to cooperate with the hearing officer. (Some fears exist about the potential for violence of certain claimants. No violence or threats of violence had taken place in the experience of any of the hearing officers interviewed.) No feelings were expressed by hearing officers that claimants were intentionally trying to hide any medical information so as to be able to surprise the ALJ with new medical information.

Fourth, almost never were claimants represented by anyone at the interviews actually conducted. In very few cases in each state an attorney had actually attended (two or three times overall per group of hearing officers per state at the time of the site visit). The attorney was usually judged by the hearing officers to have contributed little, and appeared more to be observing the interview. In only one case did the hearing officer attribute much utility to the attorney's presence, that being through ability to draw information out of the claimant. It should be noted that the expressions of utility of legal representation is based upon a miniscule number of times that an attorney actually attended such an interview. In two particular cases (in different states), an attorney failed to attend the hearing although the claimant expected the attorney to come. In each of these cases, the claimant went forward with the interview without the attorney.

Fifth, rarely did the claimant attend with any witness. In those cases in which a witness came, the witness was usually another family member. In some of these cases the witness was useful.

Sixth, the hearings were generally about an hour in length. Some more complicated CDR interviews went as much as two hours. A few were as short as 20 minutes.

Seventh, claimants normally did come in shortly before the interview to review their file in the half hour given for such review.

Eighth, those hearing officers with significant numbers of interviews (more than five or six) uniformly reported that the interviews made a difference to them in deciding the cases. Either they reported that the interview assisted them in making an allowance decision, or else a decision to deny was strengthened by the interview.

Ninth, each of the hearing officers performing CDR reviews who had conducted a significant number of such reviews reported they were required to continue disability paymentsfor claimants they are convinced never were disabled in the first place because of the lack of any medical improvement. In most such cases the claimants had been found eligible by an ALJ. These were seen as clear ALJ errors, not just close judgments on which reasonable persons might differ.

Tenth, hearing officers frequently reported that objective evidence was seen at the personal interviews that impacted upon their determinations. Such evidence rarely was available in the paper file alone. In one case, for example, the hearing officer reported being shown a nitro patch on the chest of a cardiac claimant, as well as many other nearby marks on the chest confirming that nitro patches were routinely in use. This helped confirm the existence of chest pain. In other cases hearing officers were able to add data relating to ease of ambulation, problems relating to mental retardation, frequency of epileptic seizures, and recent worsening of medical condition impacting upon daily activities. In one interview a painter with a claim involving an apparently minor limitation with one arm appeared for the interview. Only at the interview was it learned that the hand on the other arm had been lost years before, but since that loss hadn't affected ability to work it hadn't been mentioned by the claimant or the Field Office! In another case involving "varicose veins," the fact that the claimant was a deaf mute hadn't been mentioned in the paper file. In many cases, all that the Field Office learns about, and includes in the file, is the last event that tipped the scale against ability to work.

Eleventh, hearing officer status was normally considered at a higher level than other claims examiners within the state DDS. In some, but not all, states this took the form of pay grade jumps, or transfers to different pay lines. Hearing officers were in part a self selected group, chosen from volunteers with an eye to the prior performance of the applicants. Normally, but not always, some of the claims examiners with the best performance records were selected as hearing officers. However, other skilled and highly rated claims examiners did not choose to seek "promotion" or assignment to hearing officer status.

Twelfth, claimants on the whole responded very quickly to an offer of a hearing, with requests for a hearing frequently being returned within two weeks.

B. The States Visited

1. Missouri

Missouri presents a unique example of face to face interviews, with a history of such interviews going back decades. It was guestimated that face to face interviews over the years had resulted in an additional 20 percent reversal of earlier DDS decisions. New and significant evidence was discovered in approximately 20 percent of the cases. As a result, Missouri has implemented a policy of holding as many interviews as possible, when staff time is available, in selected initial and reconsideration claims. (Attached hereto as appendix 10 are the guidelines employed for selecting such cases.) Three types of cases were frequently seen in which a personal interview has proved valuable. They include: 1) retardation, 2) mental impairment, and 3) musculoskeletal impairments. [National Data indicates that these categories represent approximately 60 percent of all recon. allowances Jan. - Dec. 86, with the addition of cardiac categories they represent nearly 75 percent of all reconsideration allowances.]

As a result of the Missouri experience with, and confidence in, selecting cases for interviews, it is suggested that the option of selective interviews at the DDS level should seriously be considered, should the costs of mandated interviews for all claimants appear excessive. It is recognized that this suggestion involves some potential due process objections. However, it is believed that such selective granting of interviews would be well within the scope of administrative discretion permitted by Mathews v. Eldridge, 425 U.S. 319 (1976) so long as appeal to an ALJ continues to exist.

The Missouri experience with selective interviews is that approximately five initial interviews per day can be conducted by an interviewer. This rate is fairly normal even when a Missouri claims examiner spends a day on the road. Missouri is a state in which the decentralized DDS offices still cover claimants from large geographic areas.

Over the years there has been much concern with security in such interviews. Potential client hostility against the hearing officer in recent mandated hearings has been curtailed by ensuring that the hearing officer had not participated in making the earlier cessation decision. Indeed, certain hearing officers described going through the file for the first time with the claimant present, demonstrating, in a very graphic way, that they had not prejudged the case. The hearing officer didn't really know what the case was about. However, actual incidents involving hostility have been very rare over the years, and none have occurred in recent time.

The Missouri hearing experiences: VERY PRELIMINARY RESULTS: USE WITH EXTREME CAUTION

Preliminary results of the Missouri CDR hearings as well as the use of screening criteria (for initial denials) are encouraging regarding the value of interviews. For example, the monthly report for June indicates that 56 allowances were made in 207 CDR cases, a 27 percent reversal rate. Without considering RAD [request additional development] time, the average time to process such a hearing case was 23.0 days, and considering RAD time, 28.1 days. It is worth noting

that the reversal rate within different offices in Missouri for June ranged from 12 percent to 89 percent. The April reversal rate had been 21 percent, with offices ranging from 10 percent to 34 percent reversal rates. The average time for processing in April was 18.3 days without RAD time being considered and 23.6 days with RAD time included. In both months, these are short processing times, and demonstrate reversal rates above recent reconsideration reversal rates.

Preliminary results of the PAD cases are also promising, albeit very limited in numbers. For example, the monthly report for June indicates that 5 allowances were made in 17 cases, a 29 percent reversal rate. Without considering RAD time, the average time to process such a hearing case was 54.0 days and considering RAD time, 58.1 days. The requirement that a claimant be given notice of a hearing 25 days prior explains the different time periods involved. The reversal rate within different offices in Missouri for June ranged from 14 percent to 100 percent. The April reversal rate had been 36 percent (5 reversals of 14 cases), with offices ranging from 0 percent to 100 percent reversal rates. The average time for processing in April was 39.6 days without RAD time being considered and 45.7 days with RAD time included. Once again, in both months, after consideration of the mandated 25 day notice period, these were short processing times, and demonstrate reversal rates above recent national reconsideration reversal rates.

During the site visit it appeared that after a case has been classified as a potential cessation, and slated for transmission to the hearing unit, the case was further reviewed by a supervisor or another claims examiner. (In Missouri the hearing unit conducted both hearings and interviews.) While not a formal "reconsideration," this paper review acted as such. Certain cases were thus converted to allowances at this stage, and thus never made it to the hearing stage. This effect, similar to one observed in the pilot programs in Texas, Oklahoma, and New Mexico project conducted in 1983, must be considered in final overall evaluation of PAD projects.

Each of the Hearing Officers in Missouri happens to have a masters degree. Claims examiners who are not Hearing Officers also have substantial experience in claimant interviews.

2. Michigan

Michigan did not have a tradition of claimant interviewing so prevalent in Missouri. Thus the initial claims PAD project in Michigan may report results more "typical" of the states as a whole.

However, while the PAD in Michigan was purportedly at the initial consideration level, the reality appeared to be better described as reconsideration. After a preliminary decision to deny had been formulated in Michigan, that tentative decision was communicated to the claimant through a "we plan to deny letter." The claimant was then offered the possibility of an interview. For internal processing purposes, these cases were labeled in house as "reconsideration" cases and appeared to be treated as such. There were even some differences from office to office in terms of the precise time at which a case is passed to the Hearing Unit. In two offices, which employ a two examiner system on PAD cases, the second examiner is involved after the predecision notice is sent. In two offices, the second examiner is involved with the file before the

predecision notice. In these offices should the second examiner determine that an allowance is appropriate, and a physician agree, there would not be an interview held. This same pattern of a second examiner in effect overruling the first examiner was also seen in Missouri (as well as other demonstration projects). It was estimated that approximately 10 percent of the cases "initially slated for denial" are converted to allowances during this transfer.

Michigan Conclusions: DATA SO LIMITED CONCLUSIONS VIRTUALLY IMPOSSIBLE

The very preliminary data available for the year to date (through 6/26/87) interview results, indicate that very few reversals (8 percent) resulted from an interview (7 reversals, 88 denials after interviews). A frequent report regarding an interview was that the interview focused the hearing officer on the need for particular additional medical work up such as a CT scan for brain tumor, or a breathing study for a file listed as scoliosis. In some of these cases, the result was additional development time, which showed up as nearly twice as many "no decision" demonstration project interview cases as in control cases (no interviews) (46 versus 27).

Very preliminary results on the average number of days from initial receipt to signed final decision indicate ranges in Michigan offices of between 70 days to 83 days (through 6/26/87).

While there had been few reversals as a result of the limited interviews conducted in Michigan at the time of the site visit, each such reversal involved observations at the interview that were seen as significantly aiding the hearing officer. If nothing else, the very sketchy data available regarding results emphasizes the necessity of waiting for full results before drawing conclusions after each and every case has been fully processed though the system.

3. Maryland

Maryland is not involved in the demonstration projects, but does conduct hearings for CDR cases. It was visited to give the author a sense of current practices regarding paper reconsiderations as well as an opportunity to interview hearing officers conducting mandated CDR hearings.

Very few mandated hearings had been conducted by early July 1987. Descriptions of the few hearings were consistent with those from Missouri and Michigan regarding most matters. Even though approximately half of the CDR cases involved attorneys representing claimants, attorney attendance at an interview was rare. Family members were the most frequent additional witness. In several hearings, visual observation by the hearing officer of medical condition was seen as important.

Paper reconsideration review otherwise is an apt description for the Maryland procedure for initial and reconsideration of claims. At the most brief telephone calls were made to claimants. The reconsideration allowance rate was reported at about 14 percent. The author is somewhat puzzled by the difference between that estimate and Quality Review Estimates of a 21 percent allowance rate for Maryland at reconsideration for Jan. 86-Dec. 86.

4. Illinois

Illinois is not a participant in the PAD project, but conducts CDR hearings. Unlike all of the other states visited, the Hearing Officers have conducted a significant number of decision review disability hearings. That fact may have a major impact upon the overall reversal rate. The reversal rate in the DHU (Disability Hearing Unit) is relatively high (48.7 percent (253 determinations by September 1987)). In addition, approximately 9 percent of the cases are reversed prior to transfer to the DHU by a prehearing unit.

Most claimants take advantage of coming to a hearing (less than 6 percent are no shows, and 7 percent waived the hearing). Attorneys have come to approximately 30 percent of the CDR or decision review hearings (58 of 189). Most claimants are perceived as pleased by having had the opportunity to appear.

The Hearing Officer who conducted a hearing which the author observed, was of the opinion that hearings were valuable in certain classes of cases. These include musculoskeletal, mental retardation, mental impairment and cardiac cases. For example, in cardiac cases hearings were seen as useful for the description of chest pain for nearly all such cases involve issue of claimant pain.

5. Wisconsin

Wisconsin is not a participant in the PAD project, but conducts CDR hearings. While those conducted to date have been primarily MIE cases, they have resulted in significant numbers of decision reversals (Approximately 30 percent). The Wisconsin experience with the hearing process appears similar to that of the other states visited. Most claimants did attend hearings. Most claimants are perceived as pleased by the hearing process.

There has been a relatively high rate of appearance of representatives (mostly lawyers) at such hearings (as of 7/29/87, approximately 20 percent have had representatives (38 of 191 total cases)). While the overall reversal rate was 30 percent, it was 26 percent for those without representation, and 45 percent for those who were represented.

While hard data is not readily available, it is estimated that reversals occur in approximately 7 to 10 percent of cases in the Hearing Unit without actually going to a hearing. (This is particularly impressive since Wisconsin had streamlined the transfer process to the DHU (Disability Hearing Unit) so that the transfer occurred without further staff review after a request for an appeal is filed. The paper review of the Hearing Officer was enough to reverse such decisions. It should be noted, however, that additional medical development may also occur to explain these paper reversals. Subsequently, it was learned that this streamlining may have violated 20 CFR Sections 404.916 and 404.1416 and the Wisconsin process has been changed. However, the time saving effected through that process may outweigh the extra burden imposed upon the hearing unit. It is suggested that consideration be given to altering the regulations to permit what Wisconsin had been doing.)

Wisconsin Hearing Officers appeared to value the hearings just as much as did hearing officers (or interviewers) in other states visited. Hearings were seen as valuable sources of information, particularly for pain issues, as well as for discovering more subjective evidence that may be critical to certain disability

determinations, especially mental impairment and mental illness cases.

Indeed, in one classic case, a CDR for a recent kidney transplant patient, it was only at the hearing that it became clear for the first time that the claimant was retarded. Although there was a very voluminous medical file on the claimant, intense review after the hearing found at the most a single, nearly illegible, scribbled comment in the medical notes by one physician that had raised the issue. In another case, a file comment regarding "hygiene problem" meant more when the hearing room had to be fumigated after the hearing. The impact of mental illness upon functioning ability was thus graphically conveyed. (Since a significant number of cases come into the system through teleclaims, these cases may not reflect any oversights at the Field Offices.)

Reconsideration reversals in Wisconsin are currently running approximately at a 20 percent rate.

The most interesting information to come out of the Wisconsin visit was discovery that during the period of the CDR moratorium Wisconsin had done an experiment on a limited basis with its hearing officers employing face to face hearings for reconsideration level determinations in selected cases. This project thus employed the skills of the recently trained Hearing Officers. Particular attention was paid to psychiatric and pain claims. The overall result was a DHU reversal rate of 37 percent. Cases involving pain and/or mental restrictions were reversed twice as frequently as cases not involving those restrictions. [That finding is somewhat comparable to national data for January 1986 - December 1986 which estimates a reversal rate averaging 30 percent at reconsideration level for cases classified by body system - mental.]

Personnel interviewed were confident that the face-to-face project had been worthwhile, i.e. produced better decisions, not only in that more reversals occurred but also in the sense of higher confidence that the final decision, allow or deny, was correct. Moreover, they were confident that case screening could be done to separate out cases in which such interviews were likely to be productive of useful information.

It appears that over a period of time Wisconsin employed different screening mechanisms for selecting cases for face to face interviews, including both different body system case selection as well as limiting geographical areas to control travel costs.

Given the limited scope of the study, the small number of cases included in the study, variations in law during the study period, all such results have to be considered as tentative. However, they appear to be strongly supportive of the Missouri experience: i.e. a policy of selective face-to-face hearings makes sense to many of the more experienced DDS claims examiners.

One minor part of the study (involving a claimant satisfaction questionnaire) deserves passing mention. Some of the respondents knew the result at reconsideration when completing this questionnaire, others did not. Ninety one percent of all respondents said they would appeal or had appealed their decision if denied. While the responses may have been made to an ambiguous question, since all had already appealed their case to the reconsideration stage, the ninety one percent figure would suggest that a high number of claimants should be expected to appeal from any face-to-face hearing determination if the

decision is adverse. Moreover, such data may suggest that any change in appeal rates may take years or even decades to appear. Changes in expectations may happen slowly. High reversal rates at the ALJ stage may be expected to encourage appeals.

VII. Attorney Views on Reconsideration Determinations and Face-to-Face Proceedings at the DDS Level

Telephone interviews were held with a number of attorneys involved in disability litigation across the country. These were by no means a scientific sample of attorney sentiment but rather provide anecdotal evidence. The interviews were helpful in framing the issues. However, it must be noted that few attorneys really know very much about reconsideration. Typically, their first contact with a claimant is after rejection of a claim upon reconsideration. Their primary contact with the federal disability system is thus at the ALJ stage. A consensus did appear to exist about a number of points.

First, it is not reasonable to expect the current "system" of legal representation to begin to function at due process hearings at the DDS level.

This conclusion stems from some very practical considerations. There are simply too many DDS offices around the country to hold hearings in close enough proximity to the offices of knowledgeable attorneys to allow the attorneys to function efficiently. Travel time and waiting time considerations, plus the small payments that could be expected for representation at such an early stage, simply makes such representation at DDS hearings impossible. One attorney reported that she would consider such representation only if because of language problems or serious mental retardation or other problems, she thought the claimant couldn't cope with such an interview alone. It would require a system of routine transfer of hearings to facilities close to attorneys offices before such a system could work. (Some states do report that they already do this upon request.)

In addition, as a practical matter attorneys report that obtaining access to claimant files before they are transferred to the ALJ unit is impracticable in certain states. Missouri reports that the file is available until the hearing and photocopying of all or part of a file upon attorney request is routinely done. Other states report that photocopying is done on a limited basis, or involves a required photocopying fee. Review of a file in the half hour prior to a DDS hearing hardly permits significant representation, although files may be made available to attorneys for weeks prior to the hearing in many states. If such availability were coupled with offers to duplicate parts or all of the file to send to attorneys prior to the hearing, such difficulties could be overcome. This might very well require regulatory changes to mandate such DDS policies in states which do not currently make files as readily available.

Today, however, the current organization with a few centrally located ALJ units in a state, where access to files is more readily available, allows significant legal representation of clients at that stage, but no earlier. That is by no means the only constraint upon legal representation for claimants; it is, however, an important one.

The fact that the current system of representation cannot be expected to work readily at the DDS level without changes such as

easing file availability and perhaps centralizing hearings or transferring hearings to be accessible to the attorney, while true, misses a major, related point. Many claimants are never represented by attorneys at any stage of the administrative proceeding. For such claimants, such problems with effective legal representation are irrelevant.

Nor are attorneys a comprehensive source of reliable information about claimants who drop out of the system at an early level, or who are not represented at the ALJ level. However, such attorneys do have some insight to such drop outs, for they frequently report representing clients who confess to having dropped out of the system on earlier claims. Such claimants report they just plain gave up in frustration. (One significant manner in which attorneys help in such cases is through a motion to reopen a past case, something rarely, if ever, considered sua sponte by an ALJ. DDS personnel may reopen if they make a favorable decision.) On the other hand, it isn't clear that any more reliable information is available about claimants who choose not to seek reconsideration or fail to go the ALJ stage.

For such claimants, some entirely different sort of representation at the DDS level, might offer potential benefits.

Second, although there were some doubts about the matter, most such attorneys think that DDS face-to-face interviews are worth trying. Concern was expressed by one attorney about the apparent lack of discretion involved in the conduct of such interviews; "The interviewer just filled out the form." However, there were also reports that legal aid offices told their clients, "Go to the interview, they won't try to trick you." In one state a legal aid office is reported to have said, "If you write reversals, you will see us, if not, you won't." In other words, it legal representatives begin to see reconsideration as a significant stage where their participation might significantly affect the outcome, they might then go to reconsideration "interviews."

Third, strong consensus existed that it was important to preserve the present ALJ level, substantially as it functions today. [Factors of judicial independence, qualification level, and broader discretion were frequently mentioned as important.]

Fourth, concerns were expressed about the conduct of such face-to-face interviews. Privacy concerns were frequently mentioned (don't hold sensitive hearings out in the middle of a large open office complex) and a fear that short time limits would be imposed. (It should be noted that no such problems existed at any of the sites visited during this study, and no current reports of such problems have emerged.)

Fifth , attorneys believed that they did add significantly to the case development at the ALJ level. What is particularly impressive is the consensus that appears to exist about the work up time needed prior to an ALJ hearing for a disability claimant. Average times of 12 to 14 hours of pre ALJ hearing work ups were reported for attorneys who were familiar with the disability system. If one assumes that such attorneys both accurately report their time

and allocate such time in a cost effective manner, the real cost of such representation approximates or exceeds the current federal unit cost for holding an ALJ hearing.

VIII. Summary Tentative Recommendations

1. Given the complexity of the Disability System, any changes should be slowly and carefully instituted with an eye towards minimizing potential harm to the system. (Least Harm Principle)

2. Face to face procedures appear quite promising. Full implementation of face to face proceedings, however, for all initial &/or reconsideration stages should be delayed until a final report on the current experimental projects is submitted.

3. At that point, should costs appear to militate against full face to face procedures for all claimants, strong consideration should be given to selective face to face proceedings - holding such interviews only for cases in which either the file, medical condition, or sense of the disability examiner is that such a personal interview may be of significant assistance to the ultimate determination.

4. Should the recommendation such as in 3 above be adopted, consideration should be given to implementing pilot projects on a state by state basis looking to the phased in implementation of such face to face hearings across the country employing current hearing unit staff.

5. Variations between state DDS agencies should considered to be a normal state of affairs. Unless an unlikely policy decision were made to federalize the state DDS agencies, legislative, regulatory, and administrative actions must anticipate and consider potential state by state variations, including unknown variations.

6. There seems little possibility that due process "hearings" or "interviews" at the state DDS level can adequately substitute for federal "ALJ" hearings without significant alterations to the system. Moving the ALJ hearing level to the DDS level does not appear to be a realistic, immediate alternative.

7. It appears that there is substantial room for adding elements to the DDS reconsideration level with a potential for higher benefits at a lower cost than complete elimination of reconsideration would be likely to achieve. However, it is not that clear that "the formal reconsideration level" is all that different from initial consideration leading to "predecision notices" and subsequent transfers to a second team (claims examiner and physician) for making the final determination.

8. The record should not be closed at any point before a hearing stage at which claimants are likely to be represented by attorneys. At the moment, this is the ALJ level. Should the decision be made to provide only one due process hearing at the reconsideration level in the state DDS, unless attorneys actually represent claimants at such hearings [which they are not now doing] such a change must be

understood as a major impairment of the rights of future claimants. Everything else being held equal, this would be seen as, and probably would be, a significant tilt in the system against claimants. For such a tilt not to occur, significant changes would be required such as transfer of hearings to be close to attorney offices, increaaed file availability to attorneys, routine photocopying of files, or something even more radical such as an entirely different manner of representing claimants at the DDS level.

9. Close scrutiny must be given to any measures of efficiency and accuracy employed by SSA to monitor the state DDS agencies. The conversion to a national data base currently underway by SSA may assist in producing more comparable, accurate measures.

10. However, measures of processing time that do not consider time spent on requests for additional development (RAD) (such as a CE, or otherwise obtaining records for the claims examiner-physician team, or for the ALJ) should not be the primary measures of efficiency. RAD time should be treated separately at all levels of file handling for otherwise efficiency measures of state DDSs and ALJs will penalize requests for appropriate additional information.

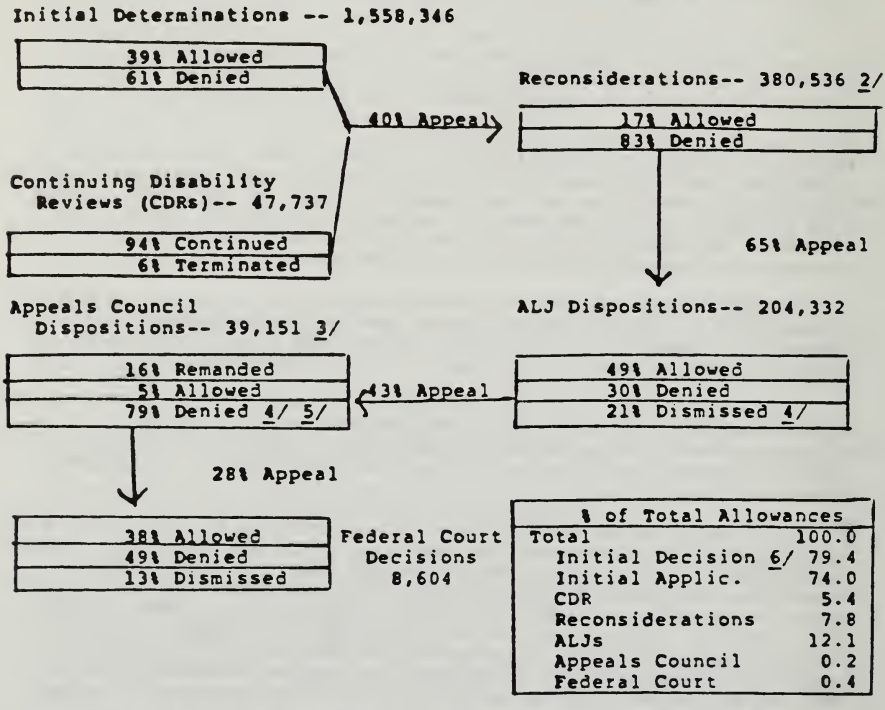
11. Thought should be given to collecting data on reference sources of claimants - i.e. were they sent over by a welfare agency or private disability insurance carrier. Only after such data is developed can policy judgments be made about appropriate responses.

12. If face to face hearings are instituted across the country as any significant part of the initial and reconsideration levels (restructured or substantially as is), decentralization of state DDS units, at least into hearing units, appears necessary to minimize travel costs.

13. Nationwide mandating of face-to-face hearings or interviews will impose substantial personnel burdens upon state DDS agencies. Neither talent for, nor desire to conduct face to face interviews, were considered when hiring claims examiners in the past. It takes several years before a claims examiner really knows the job. Thus the fact that selected claims examiners were trained to be hearing officers at McGeorge Law School both illustrates the desire of SSA and DDS for properly trained personnel, and also the type of training necessary. This cannot happen overnight without careful planning and training.

TABLE 4.—DISABILITY DETERMINATIONS AND APPEALS, FISCAL YEAR 1986

Title II, Title XVI and Concurrent Title II and XVI Decisions For Disability Claims by Workers, Widows, Widowers and Disabled Adult Children 1/



	% of Total Allowances
Total	100.0
Initial Decision 6/	79.4
Initial Applic.	74.0
CDR	5.4
Reconsiderations	7.8
ALJs	12.1
Appeals Council	0.2
Federal Court	0.4

1/ The data relate to workloads processed at the various levels in FY 86, but include some cases where the initial level decision was made in a prior period. The data include determinations on initial applications as well as continuing disability reviews (both periodic reviews and medical diary cases).

2/ Title II only. Title XVI and concurrent Title II/XVI cessation cases go directly to an ALJ hearing.

3/ Includes ALJ decisions cases not appealed further by the claimant but reviewed by the Appeals Council on its "own-motion" authority.

4/ Includes periodic review cases in which benefits were reinstated under Secretary Heckler's suspension of the continuing disability review process in April 1984.

5/ Includes dismissals, denials of request for review, and affirmations of denial.

6/ Initial determinations plus CDRs.

COMPONENT WORKLOAD UNIT COST

Workload	FY 1984 Count	FY 1984 Dollars	FY 1984 Unit Cost	FY 1985 Count	FY 1985 Dollars	FY 1985 Unit Cost	FY 1986 Count	FY 1986 Dollars	FY 1986 Unit Cost
Office of Hearings and Appeals 1/									
RSI Hearings Request	7,446	4,390,755	589.68	10,126	7,924,636	782.60	9,829	8,302,629	844.71
DI Hearings Request	188,791	105,245,885	557.47	104,612	78,152,897	747.07	90,881	79,159,092	871.02
DI/SSI Hearings Request	81,628	48,824,326	598.13	72,708	58,156,706	799.87	65,535	59,864,674	913.48
SSI Hearings Request	54,165	30,695,171	566.70	53,978	41,304,974	765.22	48,458	40,544,611	836.70
RSI Reviews Before Council	1,477	502,506	340.22	2,098	961,226	458.16	2,859	1,504,343	526.18
DI Reviews Before Council	50,504	10,901,194	215.85	29,179	8,913,608	305.48	18,383	8,292,784	451.11
DI/SSI Reviews Before Council	21,791	5,014,975	230.14	21,123	6,909,650	327.11	13,216	6,345,193	480.11
SSI Reviews Before Council	12,150	3,268,145	268.98	13,134	4,453,021	339.05	8,609	4,299,780	499.45
Disability Determination Service 2/ State Agencies									
DI Initial Disability Deter.	625,822	175,945,491	281.14	605,249	194,459,092	321.29	642,392	227,036,886	353.42
SSI Blind & Disabled Deter.	488,986	135,407,171	276.91	501,486	160,893,548	320.83	583,706	206,207,658	353.27
DI/SSI Initial Disability Deter.	415,225	114,396,557	275.50	410,382	128,141,855	312.25	495,334	167,012,645	337.17
DI Reconsiderations	199,926	49,626,217	248.22	163,590	50,870,213	310.96	155,880	46,760,855	299.98
SSI Reconsiderations	102,013	23,423,776	229.62	108,336	28,491,981	263.00	115,961	33,819,608	291.65
DI/SSI Reconsiderations	120,968	24,548,734	202.94	122,764	28,985,617	236.11	126,128	34,783,751	275.78

1/ For workload definitions, refer to the Documentation Handbook for FY 1986, pgs. 65-71.
2/ For workload definitions, refer to the Documentation Handbook for FY 1986, pgs. 143-147.

Appendix 3

Title II Reconsideration: Mean Processing Time by State and Social Security region for all months October 1986-April 1987 (Source Social Security Administration)

State	Number of Cases	Mean Processing Time in days
Alabama	3821	52.3
Alaska	229	71.2
Arizona	1766	60.4
Arkansas	2828	51.0
California	16159	65.6
Colorado	1505	72.1
Connecticut	1103	55.7
Delaware	272	63.4
D. C.	233	99.0
Florida	6615	55.1
Georgia	4889	51.1
Hawaii	281	101.8
Idaho	597	57.7
Illinois	7165	76.7
Indiana	3764	42.8
Iowa	1704	52.1
Kansas	1279	51.4
Kentucky	4299	39.8
Louisiana	6817	42.7
Maine	707	65.7
Maryland	1695	106.9
Massachusetts	2242	95.5
Michigan	8330	56.3
Minnesota	2013	59.3
Mississippi	3218	34.1
Missouri	3669	48.3
Montana	735	42.4
Nebraska	802	54.2
Nevada	650	77.5
New Hampshire	364	102.1
New Jersey	3452	86.6
New Mexico	1099	55.2
New York	10481	87.2
North Carolina	4471	44.9
North Dakota	288	48.1
Ohio	5694	67.0
Oklahoma	2946	49.6
Oregon	2036	62.0
Pennsylvania	9662	53.9
Puerto Rico	3277	135.2

State	Number of Cases	Mean Processing Time in days
Rhode Island	686	116.3
South Carolina	2797	61.1
South Dakota	343	49.3
Tennessee	2902	75.3
Texas	10882	50.1
Utah	568	68.0
Vermont	257	94.0
Virginia	3855	39.3
Washington	2986	58.3
West Virginia	3345	57.8
Wisconsin	2702	52.1
Wyoming	224	38.8
Region:		
Boston	5359	86.4
New York	17233	96.1
Philadelphia	19061	57.0
Atlanta	33012	51.0
Chicago	29668	61.4
Kansas City	7454	50.3
Dallas	24572	48.3
Denver	3663	59.5
San Francisco	18856	66.1
Seattle	5848	60.0
Summary	164726	61.3

NATIONAL SUMMARY - HEARINGS

FISCAL YEAR	ADJUSTED RECEIPTS		DISPOSITIONS		PENDING (END OF)	AVG. NO. ALJS ON DUTY 1/	AVG.SUP. STAFF RATIO 2/	AVG. DISP. PER ALJ1/	AVG. PROCESSING TIME REC'D TO HEAR	AVG. PROCESSING TIME HEAR HELD TO DISP.	AVG. PROCESSING TIME REC'D TO DISP.3/	AVG. NO. OF CASES PENDING PER ALJ 1/	AVG. AGE OF PENDING CASES 4/	DAYS WORTH OF REC. PEND.
FY 73	72,202		68,356		36,780	420	2.2	14			174	117	N.A.	184
FY 74	121,504		80,783		77,233	478	2.7	13			164	122	N.A.	224
FY 75	154,962		121,026		111,169	591	2.9	16			262	173	219	260
FY 76	157,688		179,088		89,769	647	3.6	21			288	153	285	203
FY 76 T.Q. 5/	45,418		50,271		84,916	637	3.6	21			233	137	236	187
FY 77	193,657		186,822		91,751 6/	629	3.8	25			215	136	185	163
FY 78	196,428		215,445		74,747	657	3.9	27			179	128	133	134
FY 79	226,240		210,775		90,212	655	4.3	27			151	141	104	138
FY 80	252,023		232,599		109,636	669	4.4	30			159	169	109	152
FY 81	281,737		262,609		128,764	699	4.4	32			164	188	119	163
FY 82	320,680		296,548		152,896	754	4.7	34	121	65	174	203	124	168
FY 83	363,533		342,998		173,431	797	4.6	37	121	77	184	228	124	167
FY 84	271,809		337,459		107,781	763	4.7	37	121	77	185	144	126	157
FY 85	245,090		245,829		107,042	730	4.5	29	108	69	167	154	113	154
FY 86	230,655		220,313		117,384	703	4.6	27	115	74	172	173	109	161
FY 87	MO.	CUM.	MO.	CUM.										
October	22,575	22,575	17,561	17,561	122,398	694	4.5	26	115	71	176	180	111	165
November	19,904	42,479	15,492	33,053	126,810	693	4.6	23	116	72	178	187	116	172
December	21,388	63,867	17,557	50,610	130,641	692	4.6	26	116	75	181	193	121	179
1st Qtr.	68,273	68,273	52,415	52,415	133,242	693	4.6	26	116	75	179	196	121	177
January	18,400	86,673	17,072	69,487	134,570	683	4.6	26	120	83	194	201	126	184
February	22,695	109,368	17,075	86,562	140,190	679	4.5	26	124	83	195	212	127	190

1/ FY 77 - FY 82 includes RCALJs. Beginning FY 83 ALJ average dispositions are calculated using one-fourth of a work month for each RCALJ, and adjustments for ALJs on leave. ALJ average dispositions are calculated to include the learning curve for new ALJs.

2/ Permanent Staff FY 73 - FY 78; FY 79 - FY 82 includes ORCALJ and temporary positions; beginning FY 83 includes only hearing office full-time permanent staff excluding interpreters.

3/ Median Times for FY 73 - FY 74; beginning FY 75 mean times - SSI cases not included until FY 76 transition quarter.

4/ SSI cases not included until FY 76 transition quarter.

5/ T.Q. = transition quarter which covers period June 20, 1976 - October 2, 1976.

6/ Adjusted up 2,013 cases from FY 77 due to conversion from a manual to an automated reporting system.

NOTE: Some statistics in the various categories throughout the report may be affected by temporary interruptions to the processing of certain types of cases because of various class action court orders and pending implementation of the 1984 Disability Amendments. This data includes pending and processing times for sanction cases which began in 1983.

TABLE 3.1.--Reconsideration allowance rates by State and treatment group

State	Group	Number			Allowance rates		
		Total	Allow	Deny	Total	Allow	Deny
ARIZ	TOTAL	800	150	650	100.0	18.8	81.2
	DDS EARLY	160	27	133	100.0	16.9	83.1
	DDS LATE	154	41	113	100.0	26.6	73.4
	DO EARLY	154	21	133	100.0	13.6	86.4
	DO LATE	154	33	121	100.0	21.4	78.6
	CONTROL	178	28	150	100.0	15.7	84.3
CONN	TOTAL	1,061	204	857	100.0	19.2	80.8
	DDS EARLY	196	35	161	100.0	17.9	82.1
	DDS LATE	201	50	151	100.0	24.9	75.1
	DO EARLY	216	33	183	100.0	15.3	84.7
	DO LATE	210	51	159	100.0	24.3	75.7
	CONTROL	238	35	203	100.0	14.7	85.3
GEOG	TOTAL	3,424	370	354	100.0	10.8	89.2
	DDS EARLY	686	87	599	100.0	12.7	87.3
	DDS LATE	633	82	551	100.0	13.0	87.0
	DO EARLY	703	68	635	100.0	9.7	90.3
	DO LATE	702	76	626	100.0	10.8	89.2
	CONTROL	700	57	643	100.0	8.1	91.9
OREG	TOTAL	884	136	748	100.0	13.9	86.1
	DDS EARLY	178	28	150	100.0	15.7	84.3
	DDS LATE	168	32	136	100.0	19.1	80.9
	DO EARLY	175	29	146	100.0	16.6	83.4
	DO LATE	172	23	149	100.0	13.4	86.6
	CONTROL	191	24	167	100.0	12.6	87.4

Appendix 6

DARE 3: RATE OF APPEALS TO ALJ STAGE

State	Group	Filing Rate	Percentage below Control
Ariz.	Total	57.1	0.9
	DDS Early	63.2	-5.2
	DDS Late	59.2	-1.2
	DO Early	52.6	5.4
	DO Late	52.1	5.9
	Control	58.0	
Conn.	Total	45.5	4.3
	DDS Early	44.1	5.7
	DDS Late	45.0	4.8
	DO Early	44.3	5.5
	DO Late	43.4	6.4
	Control	49.8	
Geog.	Total	57.6	1.2
	DDS Early	58.8	0
	DDS Late	54.3	4.3
	DO Early	56.1	2.7
	DO Late	59.1	-.3
	Control	58.8	
Oreg.	Total	52.0	-5.9
	DDS Early	58.7	-12.6
	DDS Late	54.4	-8.3
	DO Early	49.3	-3.2
	DO Late	52.4	-6.3
	Control	46.1	

Appendix 7

DARE 3: ALJ ALLOWANCE RATES

State	Group	Allowance Rates	Percentage below Control
Ariz.	Total	77.6	3.7
	DDS Early	73.8	7.5
	DDS Late	83.6	2.3
	DO Early	81.5	-0.2
	DO Late	67.2	14.1
	Control	81.3	
Conn.	Total	68.4	3.2
	DDS Early	56.1	15.5
	DDS Late	73.3	-1.7
	DO Early	68.5	3.1
	DO Late	72.1	-0.5
	Control	71.6	
Geog.	Total	61.9	1.6
	DDS Early	61.5	2.0
	DDS Late	62.3	1.2
	DO Early	59.3	4.2
	DO Late	62.5	1.0
	Control	63.5	
Oreg.	Total	53.3	7.0
	DDS Early	51.8	8.5
	DDS Late	46.3	14.0
	DO Early	65.2	-4.9
	DO Late	44.9	15.4
	Control	60.3	

Appendix 8

DARE 3: ALLOWANCE RATES RELATED TO SECURING ADDITIONAL MEDICAL EVIDENCE AT THE RECONSIDERATION STAGE

State	Additional Medical Evidence	Recon. Allowance Percentage	Hearing Filing Percentage	ALJ Allowance Percentage
Ariz.	Total	18.8	57.1	77.6
	Yes	20.9	58.3	79.2
	No	9.1	52.3	70.0
Conn.	Total	19.2	45.5	68.4
	Yes	21.0	48.8	69.5
	No	13.6	35.9	63.8
Geog	Total	10.8	57.6	61.9
	Yes	12.4	60.1	66.6
	No	9.1	55.0	56.4
Oreg	Total	15.4	52.0	53.3
	Yes	16.9	54.3	51.8
	No	11.0	45.8	58.1

Appendix 9

DARE 3: OVERALL ALLOWANCE RATES

State	Group	Overall Allowance Rate (ALJ & Recon.)	Percentage above Control
Ariz.	Total	52.1	-0.2
	DDS Early	53.8	1.5
	DDS Late	59.7	7.4
	DO Early	48.1	-4.2
	DO Late	46.8	-5.5
	Control	52.3	
Conn.	Total	41.7	0.5
	DDS Early	36.7	-4.5
	DDS Late	46.8	5.6
	DO Early	38.4	-2.8
	DO Late	45.2	4.0
	Control	41.2	
Geog.	Total	40.9	-0.1
	DDS Early	42.4	1.4
	DDS Late	40.6	-0.4
	DO Early	37.7	-3.3
	DO Late	42.9	1.9
	Control	41.0	
Oreg.	Total	37.1	3.1
	DDS Early	39.3	5.3
	DDS Late	37.5	3.5
	DO Early	41.1	7.1
	DO Late	33.7	-0.3
	Control	34.0	

INTEROFFICE MEMORANDUM

TO: All DDS Hearing Officers

FROM: Carol Fee, Director

DATE: February 3, 1984

SUBJECT: Non-Mandated Hearing Cases

At the meeting held in Central Office on January 30 and 31, we decided to hold hearings on cases other than mandated CDRs. The cases that we decided upon were as follows:

1. Mental impairment cases with one or more of the following criteria.

   a. Long history of psychiatric problems and probably hospitalizations.

   b. One year prior treatment for a psychiatric impairment.

   c. Sheltered workshop employees who we are proposing to deny.

   d. Cases on which we are proposing a denial and there is a court appointed guardian.

   e. People with IQ's between 60 and 80.

2. Orthopedic cases that meet either of the following on which we propose a denial.

   a. Long standing rheumatoid arthritis which is no longer active but where there has been joint deformity.

   b. Multiple back surgeries with allegations of pain where there is ongoing medical treatment.

3. Persons who have had cardiac surgery and we are proposing a denial.

4. Multiple impairment cases.

5. Medical vocational denial where the claimant is of advanced age, has a limited education and transferrable skills.

6. Any other case that the Hearing Officer in Charge determines would benefit from a hearing.

You need to talk with the appeals counselor about this criteria and encourage them to bring to the attention of the Hearing Officer in Charge any case they feel should have a hearing. You need to also make them aware of the fact that we will conduct non-mandated hearings

Appendix 10

(document not original)

as time allows and that similar cases may not always be treated in the same manner as far as hearings are concerned primarily because of time constraints.

If you have any questions, please telephone.

psh