

July 1996

SOCIAL SECURITY DISABILITY

Backlog Reduction Efforts Under Way; Significant Challenges Remain





United States
General Accounting Office
Washington, D.C. 20548

**Health, Education, and
Human Services Division**

B-261609

July 11, 1996

The Honorable Sam M. Gibbons
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Dear Mr. Gibbons:

This report, prepared at your request, examines the growth in the backlog of pending cases at SSA's Office of Hearings and Appeals, agency initiatives to reduce it, and concerns associated with SSA's efforts.

As arranged with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from its issue date. At that time we will send copies to other interested parties. We will also make copies available to others upon request.

Please contact Roland Miller, Assistant Director, at (202) 512-7246 if you have any questions. Other GAO contacts and major contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in cursive script that reads 'Jane L. Ross'.

Jane L. Ross
Director, Income Security Issues

Executive Summary

Purpose

The Social Security Administration (SSA) operates the nation's largest programs providing cash benefits to people with severe long-term disabilities. In 1995, about 5.7 million disabled workers and their dependents received Disability Insurance (DI) benefits, up from 3.9 million at the end of 1985. During this same period, the number of disabled recipients of Supplemental Security Income (SSI) increased from 2.5 million to 4.9 million. Over the past decade, SSA has struggled to deal with unprecedented growth in appeals of its disability decisions and the resulting backlog of cases awaiting a hearing decision. Processing delays related to a backlog of more than half a million appealed cases have created hardships for disability claimants, who often wait more than a year for a final disability decision.

As a result of the impact of these long delays on applicants, the former chairman of the House Committee on Ways and Means asked GAO to determine (1) those factors contributing to the growth in the backlog of appealed cases, (2) what steps SSA has taken in the past to address this backlog problem, (3) what SSA is currently doing to reduce the appellate backlog, and (4) what needs to be done in the long term to make the disability appeals process more timely and efficient.

Background

SSA, together with state agencies called disability determination services (DDS), makes the initial eligibility determination. Claimants whose initial benefit claim is denied may request a reconsideration of their claim by different staff at DDS. If the reconsideration review results in a second denial, claimants may appeal to an administrative law judge (ALJ) located in SSA's Office of Hearings and Appeals (OHA).

Despite numerous studies of SSA's disability programs and continued agency attempts to improve the disability appeals process, between 1985 and 1995, OHA's pending case backlog—the number of appealed cases waiting for a decision—grew from 107,000 to 548,000, and case-processing time increased from 167 to 350 days. At the rate claims are currently being processed, it would take more than a year to dispose of the claims now awaiting an OHA decision.

Results in Brief

The growth in OHA's backlog of pending cases and increasing case-processing time are the result not only of a surge in initial applications and appeals to OHA but also of SSA's inattention to several long-standing problems. These problems include (1) multiple levels of claims

development and decision-making, (2) fragmented program accountability, (3) decisional disparities between DDS and OHA adjudicators, and (4) SSA's failure to consistently define and communicate its management authority over the ALJs.

Despite agency initiatives taken over the last decade to handle increasingly larger workloads, the backlog of appealed cases has outpaced OHA's case-processing capacity. In 1994, SSA initiated both short- and long-term efforts in response to criticism of its ability to effectively manage the disability determination and appeals process. SSA's Short-Term Disability Plan (STDP) represents its near-term effort to reduce OHA's backlog of pending cases to a manageable level by December 1996. The plan relies primarily on the temporary reallocation of agency resources and process changes to stem the flow of cases requiring an ALJ hearing and reduce OHA's backlog of cases. Although STDP is under way, start-up delays and the limited impact of key initiatives have affected SSA's ability to achieve its backlog reduction goals. Some SSA and OHA officials are also concerned that pressure to meet the plan's goals within increasingly limited time frames may put the agency at risk of incorrectly allowing claims. However, SSA is closely monitoring and tracking STDP allowances to ensure decisional accuracy. In contrast to STDP, SSA's Plan for a New Disability Claim Process—commonly referred to as the “redesign plan”—represents the agency's long-term strategy for addressing the systemic problems contributing to inefficiencies in its disability programs and significantly reducing the time it takes for claimants to receive a disability decision.

SSA's redesign plan includes initiatives still in the early implementation and planning stages that SSA believes will improve program efficiency in the first three problem areas mentioned above. The plan does not, however, address the need for SSA to consistently define and communicate to regional and hearing office management the types of management actions that are legally permissible for managing ALJ activities without hindering judicial independence. Because this issue has not been adequately addressed, SSA has found that many ALJs believe they are legally exempt from nearly all management control, and the agency has been continually frustrated in its efforts to manage the appeals process and reduce its backlog of pending cases.

Principal Findings

Increasing Workloads and Long-Standing Problems Have Contributed to OHA's Case Backlog

Between 1985 and 1995, initial applications for DI and SSI increased by 57 percent, from 1.6 million to 2.5 million. During the same period, appeals to OHA increased more than 140 percent, and the number of cases awaiting an OHA decision grew from 107,000 to about 548,000. Many factors have contributed to the growth in disability applications and the accompanying growth in OHA's case backlog, including an expansion of the disability eligibility criteria, program outreach efforts, and poor economic conditions. GAO also found that long-standing problems associated with SSA's disability programs have contributed further to the backlog. These problems fall into four basic categories: multiple levels of claims development and decision-making, fragmented program accountability, decisional disparities between DDS and OHA adjudicators, and SSA's failure to consistently define and communicate its management authority over the ALJS.

Despite Previous Efforts, OHA's Backlog Has Continued

Over the last decade, SSA has relied primarily on hiring more ALJS and support staff and the use of overtime to handle increasingly larger workloads. Between 1985 and 1995, SSA increased ALJ staffing levels by 49 percent and field office support staff by about 45 percent. The use of overtime has also increased more than 850 percent since 1990. In addition to allocating more resources to OHA, SSA conducted at least three reviews between 1990 and 1992 to examine the issues affecting SSA's disability programs and recommend improvements to the disability process. Despite SSA's efforts, the backlog of appealed cases has outpaced OHA's case-processing capacity. Key SSA and OHA officials told GAO that previous initiatives attempted to make the hearings process more efficient, but that their impacts were limited by SSA's focus on minor process changes and applying more resources to the appeals process rather than addressing the long-standing problems central to the backlog of claims awaiting processing.

In the Near Term, Backlog Reduction Efforts Focus on STDP

STDP represents SSA's current effort to achieve some near-term reductions in OHA's pending case backlog. STDP addresses the backlog crisis from an agencywide perspective, rather than viewing it as an SSA or OHA problem, and establishes specific case-processing goals and timeframes for accomplishing them. STDP also relies heavily on temporary reallocations of

program resources and process changes to reduce OHA's backlog to 375,000 cases by December 1996. The plan's goals are being addressed primarily by two key initiatives that expand OHA prehearing conferencing proceedings and SSA regional screening unit activities. These initiatives target certain appealed cases for review, and possible allowance, by either OHA attorneys or SSA regional staff before beginning more costly and time-consuming ALJ hearings.

Implementation delays associated with the expanded prehearing conferencing initiative and the limited impact of regional screening units have impeded SSA's ability to achieve STDP's goals. To fully implement prehearing conferencing, SSA was required to pursue regulatory changes giving OHA attorneys the authority to issue allowance decisions for certain appealed cases. However, the process of defining the specific authority and responsibilities these attorneys would have under STDP was lengthy, and the initiative was delayed for almost 6 months. Also, SSA originally projected that including OHA staff attorneys in regional screening units would result in 38,000 screening unit allowances by December 1995. However, this goal was not met, and the screening units allowed a total of only 28,376 cases through February 1996.

From the time STDP was announced in November 1994 to the end of fiscal year 1995, OHA's case backlog increased from 488,000 to 548,000 cases. In order to reach its goal of reducing OHA's backlog to 375,000 cases by December 1996, SSA will have to increase its efforts considerably. Many SSA and OHA officials have voiced concern that agency pressure to reach STDP's goals within increasingly limited timeframes could result in inappropriately awarded cases. SSA intends to closely monitor management and quality assurance information to identify any effect STDP may have on overall program allowance rates.

SSA's Redesign Plan Is Aimed at Addressing Several Long-Standing Problems, but a Key Issue Remains Unresolved

SSA's redesign plan represents SSA's long-term strategy for improving the quality, accuracy, and efficiency of disability claims service to the public. The plan includes initiatives that SSA believes will address several long-standing problems contributing to program inefficiencies. These initiatives aim to streamline complex claims processes, improve organizational and process accountability, and provide more consistent decisional policies to DDS and OHA adjudicators. With full implementation of the plan, SSA expects average case-processing time through the hearings stage to decrease from more than a year in 1995 to 225 days by 2000. At the time of GAO's review, however, SSA was engaged in the early planning and

testing stages of the redesign effort, and none of the initiatives had been fully implemented.

A significant problem the redesign plan does not address, however, is the need for SSA to consistently define and communicate its management authority over the ALJs. Since the 1970s, many ALJs have successfully opposed certain agency initiatives to increase their productivity on the grounds that SSA's actions violated portions of the Administrative Procedure Act (APA) that protect ALJ decisional independence. As a result of the long-standing controversy regarding the management constraints imposed by APA, SSA has been continually frustrated in its efforts to manage nondecisional ALJ activities, such as directing hearing office work flow, establishing clear lines of authority within hearing offices, and implementing uniform policies and procedures.

Addressing the APA issue continues to be important today, because the success of the redesign plan may be affected by the degree of ALJ cooperation received and the extent to which SSA can mandate ALJ compliance with the plan's initiatives. If SSA does not address this matter, it may jeopardize its efforts to reduce OHA's backlog of pending cases and achieve its long-term service delivery goals.

Agency Comments

In its written comments on a draft of this report, SSA agreed with GAO's conclusion that the scope of SSA's management authority over its ALJs should be clarified. SSA also provided comments and observations about those areas in which it believed adjustments should be made to the report. Where appropriate, the report has been revised. A number of SSA's specific comments and GAO's evaluation of these comments are included in chapter IV; the full text of SSA's comments and GAO's response are included as appendix III.

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Abbreviations

AO	adjudication officer
ALJ	administrative law judge
APA	Administrative Procedure Act
DDS	disability determination services
DI	Disability Insurance
HHS	Department of Health and Human Services
HOCALJ	hearing office chief administrative law judge
OHA	Office of Hearings and Appeals
POMS	Program Operations Manual System
RCALJ	regional chief administrative law judge
SSA	Social Security Administration
SSI	Supplemental Security Income
STDP	Short-Term Disability Plan

Introduction

The Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) programs are the nation's two largest federal programs providing cash payments to people with severe long-term disabilities. Between 1985 and 1995, the number of DI recipients increased almost 50 percent to about 5.7 million, and the number of disabled SSI recipients increased from 2.5 million to 4.9 million. In fiscal year 1995, the Social Security Administration (SSA) distributed over \$61 billion in disability benefits for its DI and SSI programs.

Over the past decade, SSA's Office of Hearings and Appeals (OHA) has experienced unprecedented growth in both its backlog of DI and SSI hearings requests and the time it takes to process a disability appeal. While the agency has undertaken several efforts over the years to address the backlog issue, workload increases and long-standing problems associated with the program have impeded their success. The rapid growth in OHA's pending case backlog and longer case-processing times have caused hardship for those disability claimants who are unable to work or to afford needed medical treatment while awaiting a final decision. On average, it takes more than a year to receive a final OHA decision from the time a claimant first files an application of disability. This extended waiting period has raised congressional concerns about SSA's disability decision-making process.

The Disability Determination Process

The DI program, enacted in 1956 under title II of the Social Security Act, provides monthly cash insurance benefits to insured severely disabled workers. The SSI program, enacted in 1972 under title XVI, provides monthly cash payments to aged, blind, or disabled people whose income and resources fall below a certain threshold. The Social Security Act defines disability under both programs as an inability to engage in substantial gainful activity by reason of a severe physical or mental impairment. The impairment must be medically determinable and expected to last at least a year or result in death.

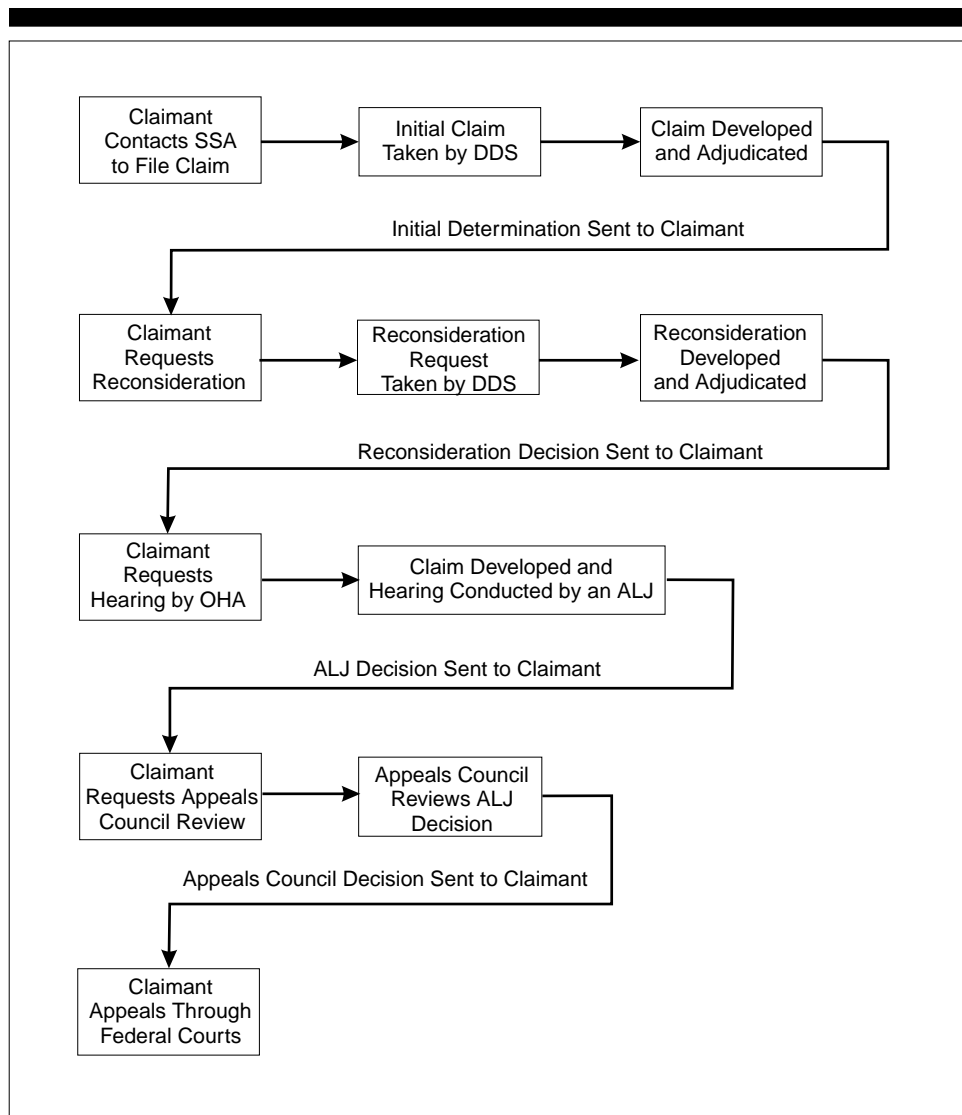
Claimants file an application for disability benefits—both DI and SSI—with one of SSA's over 1,300 field offices. Applications, along with supporting medical evidence, are then forwarded to the appropriate state disability determination service (DDS). SSA arranges with state DDSS to make the initial medical determination of eligibility in accordance with SSA's policies and procedures. Claimants who are dissatisfied with the initial DDS determination may request a "reconsideration" of the claim within 60 days of their notice of decision. During the reconsideration review, all evidence

is reevaluated by DDS personnel who were not involved in the original decision, and a new, independent decision is made on the merits of the case.

Claimants who disagree with the reconsideration decision have the right to a hearing before an administrative law judge (ALJ) in SSA's OHA. A request for hearing may be filed by mail or telephone, or in person at either an SSA field office or an OHA hearing office. Upon receipt of a hearing request, hearing office support staff review and prepare the case file for hearing. If necessary, staff may recommend to the ALJ that additional medical evidence be developed before holding a hearing. The hearing is generally the first time in the disability determination process that a claimant has the opportunity for a face-to-face meeting with a decisionmaker. At the hearing, the claimant and witnesses—who may include medical or vocational experts—provide testimony. The ALJ inquires into the issues, receives relevant documents into evidence, and allows the claimant or the claimant's representative to present arguments and examine witnesses. If necessary, the ALJ may further update the evidence after the hearing. When this process is completed, the ALJ issues a decision based on his or her assessment of the evidence in the case.

Claimants who disagree with an ALJ denial are given another 60 days to request that the case be reviewed by SSA's Appeals Council. A request for review must be filed through either a field office or a hearing office or directly with the Appeals Council. The Appeals Council may dismiss the request, affirm an ALJ's decision, remand the case to an ALJ for further action, or issue a new decision. To determine the appropriate action, Council members, assisted by a large staff of analysts, decide whether the decision was supported by the evidence. The Appeals Council's decision—or the decision of the ALJ, if the Appeals Council dismisses the request—becomes SSA's final decision. After all SSA administrative remedies are exhausted, a claimant has further appeal rights within the federal court system, up to and including the U.S. Supreme Court. (See fig. 1.1.)

Figure 1.1: Disability Determination and Appeals Process



ALJ Decisional Independence Is Protected by the Administrative Procedure Act

The Administrative Procedure Act (APA), enacted by the Congress in 1946, protects the decisional independence of ALJs. To ensure ALJ independence, APA grants ALJs certain specific exemptions from normal management controls. For example, federal agencies may not apply performance appraisal requirements to ALJs and may remove ALJs only for “good cause,” as determined by the Merit Systems Protection Board.

These safeguards were put in place to ensure that ALJ judgments were independent and that ALJs would not be paid, promoted, or discharged arbitrarily or for political reasons by the agency. However, ALJ independence is not unlimited. Because they are SSA employees, ALJs are subject to agency rules and regulations, and they must apply even those with which they disagree. Further, ALJ independence does not negate SSA's authority to implement procedures for supervising and reviewing the ALJ decision-making process to ensure that agency policies and procedures are followed.

The role of ALJs at SSA differs from that of other ALJs in the federal government in that SSA ALJs are responsible for both developing the hearing evidence and deciding the case. In other executive branch agencies, the responsibility for developing evidence is left to the claimants and their representatives. SSA hearings also differ from those of other executive branch agencies in that they are informal, nonadversarial proceedings; that is, SSA does not present a case challenging a claimant's disability claim.¹ Most other executive branch ALJs hold hearings that are formal, adversarial, and similar to a trial. During such hearings, attorneys on both sides present witnesses and documentary evidence and cross-examine witnesses in order to present the facts in a light favorable to their case.

OHA Administration

OHA headquarters is located in Falls Church, Virginia, apart from SSA headquarters in Baltimore. OHA operates 10 regional offices, 132 hearing offices, 3 class action management centers, and 5 word processing centers. Of OHA's 7,100 employees, about 1,000 are located in Falls Church. OHA is headed by the Associate Commissioner for Hearings and Appeals, who is responsible for administering the hearings and appeals process and reports directly to SSA's Deputy Commissioner for Programs and Policy. (See app. I for an SSA organization chart and app. II for an OHA organization chart).

OHA's Chief ALJ reports directly to the Associate Commissioner for Hearings and Appeals and is responsible for managing about 5,000 hearing office employees located in 10 regions. Each OHA region is headed by a regional chief ALJ (RCALJ), who is responsible for the operations of hearing offices in his or her respective region. In every hearing office, a hearing

¹Although the government does not present a case during an SSA hearing, an ALJ retains the authority to call impartial medical and vocational experts to present evidence about a claimant's medical condition or vocational capabilities.

office chief ALJ (HOCALJ) oversees day-to-day office operations and provides guidance to ALJs, professional staff, and support personnel.

Objectives, Scope, and Methodology

Due to the rapid growth in OHA backlogs and case-processing times and their impact on public service, in July 1994 the former Chairman, and now Ranking Minority Member, of the House Committee on Ways and Means asked us to examine SSA's efforts to address the problem. More specifically, the objectives of our assignment were to determine (1) those factors contributing to the growth in the backlog of appealed cases, (2) what steps SSA has taken in the past to address this backlog problem, (3) what SSA is currently doing to reduce the appellate backlog, and (4) what needs to be done in the long term to make the disability appeals process more timely and efficient.

In conducting our review, we

- analyzed data on OHA workloads, backlogs, and processing times;
- reviewed over 50 government and nongovernment studies conducted over the past 20 years on the disability determination and appeals process (see app. IV);
- examined SSA's previous initiatives to address OHA backlogs and improve the hearings and appeals process; and
- reviewed SSA's Short-Term Disability Plan (STDP) and the agency's longer-term Plan for a New Disability Claim Process (redesign plan).

To supplement information obtained from the various reports and initiatives outlined above, we

- interviewed key SSA and OHA headquarters and regional management officials, as well as managers responsible for the development and implementation of SSA's STDP and redesign plan;
- obtained the views of hearing office officials—chief ALJs, supervisory staff-attorneys, and hearing office managers—regarding SSA's previous and current efforts to improve program efficiency and address OHA's pending case backlog; and
- interviewed officials at state disability determination services in Florida, Georgia, Massachusetts, New York, and Texas to obtain their views on the status and expected impacts of the STDP initiatives.

Our review was performed at SSA and OHA headquarters; four SSA regions—Atlanta, Boston, Dallas, and New York; and five OHA

regions—Atlanta, Boston, Dallas, New York, and Philadelphia. By examining workload and performance indicators, we judgmentally selected regions and OHA hearing offices that would provide us with varied workload levels as well as varied experiences in managing their workloads. The selected offices also provided us with some geographical dispersion. We conducted our review between July 1994 and February 1996 in accordance with generally accepted government auditing standards.

Increasing Workloads and Long-Standing Problems Have Contributed to OHA's Case Backlog

Over the last decade, OHA's backlog of pending cases and case-processing times have grown rapidly, and claimants are waiting longer for disability decisions. SSA has acknowledged that current workload levels have placed the disability program under increasing public and congressional pressure, and that aggressive measures are necessary to address this "crisis" situation.

The growth in OHA's backlog of cases has been caused, in part, by the rapid surge in disability program applications and ever-increasing appeals to OHA. But backlog growth has also resulted because SSA has not adequately addressed several long-standing problems associated with its disability programs. These problems have been identified in numerous internal and external studies conducted over the last 2 decades. We reviewed these studies and found that SSA's key long-standing problems can be classified into four basic categories: multiple levels of claims development and decision-making, fragmented program accountability, decisional disparities between DDS and OHA adjudicators, and SSA's failure to consistently define and communicate its management authority over the ALJS.

Hearings Backlog and Case-Processing Times Have Increased With Workload Growth

The number of disabled beneficiaries has steadily increased over the last decade. In 1985, there were 3.9 million DI recipients. In 1995, almost 5.7 million disabled workers and their dependents received more than \$40 billion in DI benefits. Most of this growth occurred in the last 3 years, when 1.1 million beneficiaries were added to the rolls. The SSI program grew even more over the last decade, when the number of SSI recipients increased from 2.5 million to 4.9 million.

Many factors have contributed to the number of people seeking disability benefits and the subsequent growth in the OHA workload, including the expansion of DI eligibility criteria, program outreach efforts, and poor economic conditions.² Between 1985 and 1995, initial DI and SSI applications increased by 57 percent, from 1.6 million to 2.5 million. DDS denial rates for initial applications also increased during the same period, further enlarging the pool of applicants who could request an appeal. The number of requests for OHA hearings increased by 140 percent, from 245,000 in 1985 to 589,000 in 1995.

²GAO reported in February 1994 that increasing unemployment and expanding eligibility requirements, along with several other factors, contributed to growth in the disability rolls. See *Social Security: Disability Rolls Keep Growing While Explanations Remain Elusive* (GAO/HEHS-94-34, Feb. 8, 1994).

As we have reported previously, the rising rates at which applications for disability benefits and accompanying appeals are being filed have caused tremendous workload pressures and processing delays for OHA.³ Between 1985 and 1995, OHA's pending case backlog grew from 107,000 to about 548,000 cases. In addition, the average processing time for cases appealed to OHA—measured from the time a request for hearing is filed by the claimant—increased 110 percent, from 167 days to 350 days. Moreover, aged cases (those pending 270 days or more) increased from 5 percent of pending cases to 39 percent during the same period. Some applicants who have been awarded benefits on appeal to OHA after twice being denied by DDSS have waited more than a year after first applying. Table 2.1 shows the rapid growth in OHA's workload, pending case backlog, and the time it takes to process an appealed case.

Table 2.1: Growth in OHA's Workload, Backlog, and Case-Processing Times, 1985-95

Fiscal year	Workload (case receipts)	Backlog (pending cases)	Average case-processing time (days)	Percentage of aged cases^a
1985	245,090	107,042	167	5
1986	230,655	117,384	172	4
1987	278,440	148,398	198	9
1988	290,393	158,892	216	9
1989	302,452	159,268	217	11
1990	310,529	172,756	212	9
1991	329,346	183,471	229	10
1992	391,294	218,423	223	7
1993	509,443	357,564	238	16
1994	539,871	485,837	305	32
1995	588,596	547,690	350	39

^aCases that have been pending 270 days or more.

Long-Standing Program Problems Have Contributed to OHA's Case Backlog

In addition to the dramatic increases in workload discussed above, long-standing problems associated with the disability determination and appeals process have contributed to the backlog growth and increased case-processing time at OHA. In 1992, as part of its efforts to develop a number of strategic priority goals, SSA reviewed numerous internal and external studies of the disability determination and appeals process,

³Disability Insurance: Broader Management Focus Needed to Better Control Caseload (GAO/T-HEHS-95-164, May 23, 1995) and Social Security Disability: Management Action and Program Redesign Needed to Address Long-Standing Problems (GAO/T-HEHS-95-233, Aug. 3, 1995).

several of which were completed more than 20 years ago. The agency acknowledged that, despite rapid workload increases and enormous changes in available technology, demographics, and the types of disabilities qualifying for benefits, disability processes had remained basically the same since the DI program was established in the 1950s.

We also reviewed the above studies, and several other government and nongovernment reviews conducted over the last several decades, and categorized the key long-standing problems affecting SSA's disability programs as (1) multiple levels of claims development and decision-making, (2) fragmented accountability for claims processing, (3) decisional disparities between DDS and OHA adjudicators, and (4) SSA's failure to consistently define and communicate its management authority over the ALJS. The relationship of these problems to OHA's pending case backlog and increased case-processing time is discussed below.

Multiple Levels of Claims Development and Decision-Making

SSA's internal planning documents show that multiple levels of claims development and decision-making throughout the disability program have negatively affected OHA's ability to provide timely and efficient service to all claimants who appeal. Within SSA, a denied disability claim may pass through as many as four decision-making levels (initial, reconsideration, ALJ hearing, and Appeals Council) before a final decision is rendered. As a claim moves from one level to the next it is readjudicated, and multistep procedures for review, evidence collection, and decision-making are employed.

In addition to delays associated with multiple layers of review and decision-making, delays also occur as a claim moves from one employee or facility to another and waits at each employee's desk to be processed. As workloads have grown, the amount of time a claim waits at each processing point has increased. Since 1985, average case-processing time at OHA has grown from 167 days to about 350 days. Following a 1992 review of OHA operations, SSA found that claimants can wait as long as 550 days to receive a hearing decision notice.⁴ The same report noted that, in the case of one claim, only 4 days of the 550 involved actual work on the claim. Some of the delay is necessary, however, because of scheduling and due process notice requirements. Other delays are often claimant initiated and may lead to hearing postponements or the need to further develop the evidentiary record.

⁴Department of Health and Human Services, SSA, Office of Workforce Analysis, Process Review Report: The Office of Hearings and Appeals (Washington, D.C.: HHS, June 1992).

Fragmented Program Accountability

SSA has acknowledged that no single organizational component is accountable for the overall efficiency of disability claims processing, and that fragmentation issues have negatively affected the efficiency of the process. Currently, several organizational components are involved in disability claims processing—field offices, DDSS, hearing offices, and the Appeals Council—and each is accountable and responsible for reaching its own goals without responsibility for the overall disability claims process. SSA's own internal reviews have found that poor coordination among components has reinforced a lack of understanding among OHA staff of the roles and responsibilities of other components and created the perception that no one is in charge of the disability programs.

Fragmentation in the disability process is further evidenced by OHA's organizational and operational separation from the rest of SSA. OHA's headquarters is located in Falls Church, Virginia, while SSA's headquarters is located in Baltimore. OHA regional staff are also separated from SSA regional staff. SSA's own reviews have found that organizational fragmentation has led to a lack of interaction between OHA and the rest of SSA and fostered a "stepchild" mentality among many OHA employees. For example, SSA found that OHA staff had little sense of belonging to the wider SSA and were unfamiliar with its organizational structure, philosophy, and goals. This mentality has affected SSA's ability to implement operational plans for the disability programs.

Finally, SSA lacks a common automated database for managing claims as they move through the various components involved in the disability determination process. Consequently, as a claim moves from one organizational level to another, some data must be manually reentered into the computer by the various components, and the status of disability claims is not adequately recorded for reference by others. Outdated manual processes and fragmented automated systems have made improving the disability determination and appeals process difficult.

Decisional Disparities Between DDS and OHA Adjudicators

In 1994, ALJs allowed benefits in about 75 percent of the cases they decided. By awarding a relatively high percentage of cases that DDSS have previously denied, ALJs may encourage more appeals to OHA. While all of the reasons for decisional disparities are not conclusively known, many have hypothesized that possible causes include the de novo hearings process, which allows claimants to submit additional evidence upon appeal; face-to-face interviews between ALJs and claimants; decisional

errors by both DDSS and ALJs; and different applications of disability decisional policies at the DDS and ALJ levels.

Some decisional disparities may be attributable to OHA's de novo hearings process. Under this process, the ALJ does not review the DDS' decision or rule on its adequacy. Instead, the ALJ conducts what is called a de novo hearing in which evidence is considered and weighed again, and the ALJ issues a decision based on his or her own findings. With the de novo hearing, claimants may submit new evidence to the ALJ that may not have been available at the time of the DDS review and decision. SSA's reviews have found that more than a quarter of ALJ awards are based on such new evidence, which may include claimant testimony that their condition has worsened since the original DDS review. Thus, by design, some differences in decisional results are built into the system.

Also, face-to-face interviews between ALJs and claimants may lead to disparate decisions. The ALJ hearing is generally the first time that claimants have the opportunity for a meeting with a decisionmaker. Unlike DDSS, which perform a paper review of the file to determine disability, ALJs personally interview claimants concerning their disability claim. A 1982 SSA study reported that a personal appearance by claimants during the hearing increased the likelihood of an ALJ allowance.⁵ In 1989, we reported that hearings provide ALJs with the opportunity to extensively question claimants and that, as a result, ALJs often reverse DDS decisions because they determine that claimants are more limited in their activities than DDSS had perceived.⁶

Errors made by both DDS staff and ALJs may also contribute to disparities. In a 1994 SSA study, a group of medical consultants and disability examiners found a 29-percent DDS error rate for cases appealed to OHA.⁷ In the same study, a group of ALJs found a 19-percent error rate in ALJ allowances. These relatively high rates of error suggest that obtaining consistency across the two levels may be difficult.

Finally, some disparities may be attributable to SSA's differing mechanisms for providing decisional guidance to DDSS and ALJs. To determine disability,

⁵Secretary of HHS, Report on Implementation of Section 304(g) of P.L. 96-265, Social Security Disability Amendments of 1980 (the Bellmon Report) (Washington, D.C.: HHS, Jan. 1982).

⁶Social Security: Selective Face-to-Face Interviews With Disability Claimants Could Reduce Appeals (GAO-HRD-89-22, Apr. 20, 1989).

⁷HHS, SSA, Office of Program and Integrity Reviews, Findings of the Disability Hearings Quality Review Process (Washington, D.C.: HHS, Sept. 1994).

SSA has a single standard composed of various statutes, regulations, Social Security Rulings, and court rulings governing eligibility. DDS decisionmakers are required to use SSA's Program Operations Manual System (POMS), which is SSA's detailed interpretation of the standard. ALJs, on the other hand, are not required to use POMS, which provides little decisional latitude. Instead, they base their decisions on their own interpretation of the statutes, regulations, Social Security Rulings, and court rulings. To an undetermined extent, different interpretations of the same disability standard may cause DDSS and ALJs to reach disparate decisions on the same claim.

Problems With SSA's Management Authority Over ALJs

APA protects ALJ decisional independence. Although ALJs are SSA employees, APA prohibits SSA management from taking actions that might interfere with an ALJ's ability to conduct full and impartial hearings. However, SSA has not consistently defined and communicated to regional and hearing office management the types of management actions that are legally permissible for managing ALJs without hindering judicial independence.

SSA's 1992 Office of Workforce Analysis report found that many ALJs are operating under the belief that they are exempted by APA from nearly all management control. As a result, SSA has experienced numerous legal and operational challenges to its efforts to better manage the appeals process. SSA management has also been reluctant to exercise its management authority over ALJs for fear it will violate APA. The APA issue continues to be important today, because the success of the redesign plan may be affected by the degree of ALJ cooperation and the extent to which SSA can mandate ALJ compliance with the plan's initiatives.

In 1989, we reported that, since the 1970s, ALJs had successfully opposed management initiatives to increase their productivity on the grounds that such SSA actions interfered with their decisional independence.⁸ Many ALJs believe they need to closely protect their judicial independence because of what they perceive as past excesses of agency authority. For example, in 1977 several ALJs sued SSA when it attempted to impose case production quotas on them. The ALJs alleged that SSA's actions violated their decisional independence under APA and the Fifth Amendment of the Constitution. SSA ultimately settled the lawsuit, rescinded its policy of establishing quotas for ALJ dispositions, and revised transfer and training policies to remove any mention of production figures. In the early 1980s, SSA began targeting

⁸Social Security: Many Administrative Law Judges Oppose Productivity Initiatives (GAO-HRD-90-15, Dec. 7, 1989).

the decisions of ALJs with high award rates for special review. According to SSA, these reviews were conducted in response to congressional concerns that ALJs with high allowance rates could be more prone to errors. As a result of these reviews, some ALJs were to be subject to retraining and possible disciplinary actions. The initiative prompted a lawsuit by the Association of Administrative Law Judges, which claimed that the practice of targeting selected ALJs violated their decisional independence. Before the court's ruling, SSA entered into a settlement agreement with the ALJs and rescinded its practice of targeting individual decisionmakers.

Although APA is an important safeguard of due process, SSA's own studies confirm that, in many instances, the act has been interpreted in a way that has impeded SSA's ability to effectively manage day-to-day hearing office work and to implement uniform policies and procedures. For example, SSA's 1992 Office of Workforce Analysis report noted that an "extreme" interpretation of APA by many ALJs had led to a lack of clear lines of management authority within hearing offices and impeded effective service delivery. SSA also found that hearing offices lacked procedural consistency and effective mechanisms to share "best practices," because many ALJs believed judicial independence entitled them to establish their own "unique" work flow procedures. The report also noted that inconsistent procedures resulted in significant variations in the content and organization of hearing office files and created obvious problems when case files were transferred among offices to balance OHA's workloads.

SSA also reported a wide variety of organizational configurations among hearing offices, despite an agency effort to actively encourage "pooling" hearing office resources to increase efficiency and distribute work more evenly. Many ALJs opposed the pooling initiative, preferring instead a "unit" system in which each ALJ had his or her own personal staff. SSA reported that several ALJs had rejected the pooling configuration despite the agency's findings that the "unit" system unnecessarily increased case-processing time. However, the report did not include any directives or recommendations for mandating ALJ compliance with SSA's pooling efforts.

In an early 1990s plan to improve the disability appeals process, SSA noted that significant ambiguities existed regarding the limits APA imposed on SSA management practices and that APA issues underlie many of the problems affecting the disability program's variations in hearing office procedures,

Chapter 2
Increasing Workloads and Long-Standing
Problems Have Contributed to OHA's Case
Backlog

work flow, and workload management. In April 1995, SSA once again acknowledged the constraints APA imposed on its ability to manage and called for better clarifying APA principles.

Our most recent field work confirmed that SSA still has not consistently defined and communicated the types of management actions that are legally permissible under APA. During our review, a number of SSA and OHA managers and staff told us that despite SSA's recognition of the problems associated with ensuring ALJ compliance with agency initiatives, it has not resolved the issue. Staff commonly complained that ALJs often used APA protections to oppose initiatives they did not agree with and conceded that managers were reluctant to mandate ALJ compliance for fear of violating the act. They also told us that ALJ opposition to prior agency initiatives to improve the appeals process has contributed to the growth in OHA's backlog of cases and that reducing the backlog will be difficult unless SSA addresses the APA issue. Officials in SSA's Office of General Counsel also noted that while SSA is aware of the management tools available to it, there have been inconsistencies in the way this information has been communicated agencywide. In their opinion, SSA needs to develop a consistent APA message and thoroughly communicate it to both SSA and OHA field personnel.

Backlog Reduction and Process Redesign Initiatives Under Way

During the past decade, OHA's backlog of pending cases continued to grow, even though SSA hired more professional and support personnel and increased its reliance on overtime to service the appeals workload. In 1994, SSA initiated both short- and long-term plans in response to the continued rapid growth in OHA's pending case backlog and increasing criticism of SSA's ability to effectively manage the DI and SSI caseloads.

STDP represents SSA's near-term effort to reduce OHA's backlog of pending cases and improve case-processing times. The plan does not directly address the long-standing problems affecting SSA's disability appeals process but instead relies on temporary "emergency" measures to alleviate workload pressures at OHA until SSA's longer-term strategy is under way. Although STDP's initiatives are now under way, implementation delays and the limited impact of key initiatives may impede SSA's short-term efforts to achieve its backlog reduction goals.

SSA's second initiative—its Plan for a New Disability Claim Process, or redesign plan—when fully implemented, is intended to result in significant long-term improvements in the quality, accuracy, speed, and efficiency of disability claims processes. The plan is scheduled to be implemented in phases that will be completed sometime in fiscal year 2000. The redesign effort, which provides a framework for radically reengineering the entire disability process, is aimed at addressing three of the four long-standing problems we identified: multiple levels of claims development and decision-making, fragmented program accountability, and inconsistent decisions between DDS and OHA adjudicators.

While SSA believes the redesign plan will eventually address many systemic program problems, the plan was still in the early implementation and testing stages at the time of our review. More importantly, the redesign plan does not include an initiative to clearly and consistently define and communicate SSA's management authority over the ALJS. APA constraints have been a source of considerable management difficulties for many years, and if SSA does not act to address this issue, it may be hindered in its current efforts to reduce OHA's pending case backlog and improve case-processing times.

Previous SSA Efforts Did Not Reduce Backlog

Over the last decade, SSA attempted to address the growth in OHA's backlog of pending cases. Between 1985 and 1995, SSA increased field office ALJ staffing levels by 49 percent and support staff by about 45 percent (see table 3.1). From 1990 to 1995, the agency also increased its use of overtime

**Chapter 3
Backlog Reduction and Process Redesign
Initiatives Under Way**

more than 850 percent, from about 74,000 hours to 713,000 hours. Although the number of cases OHA processed annually increased from 246,000 in 1985 to about 527,000 in 1995, the growth in OHA’s workload during that time outpaced its case-processing capacity.

Table 3.1: OHA Field Office Staffing Levels, 1985-95

Fiscal year	ALJs^a	Support staff^a
1995	1,053	5,044
1994	1,002	4,743
1993	830	4,316
1992	819	4,143
1991	859	4,308
1990	786	3,809
1989	703	3,571
1988	715	3,636
1987	651	3,498
1986	699	3,444
1985	707	3,478

^aRepresents the average number on duty during the fiscal year.

In addition to devoting more staff resources and overtime to the backlog crisis, SSA initiated at least three major studies between 1990 and 1992 to identify issues affecting the performance of its disability programs.⁹ These reviews resulted in recommendations for improving program efficiency through such actions as standardizing some hearing office procedures, sharing agency “best practices” among offices, and improving access to training and automation for OHA personnel. During our field work, a number of SSA and OHA officials told us that prior agency initiatives were limited in their effectiveness because SSA focused primarily on minor process changes and applying additional resources to the disability program rather than addressing long-standing, systemic problems central to the backlog of cases awaiting processing. Several officials also noted that previous initiatives for improving the appeals process were limited in their effectiveness because SSA was reluctant to mandate ALJ compliance with them.

⁹HHS, SSA, Office of Workforce Analysis, Process Review Report: The Office of Hearings and Appeals (Washington, D.C.: HHS, June 1992); HHS, SSA, Management and Administrative Systems Review Team, Implementation of the Commissioner’s Decisions on Enhancing OHA Management and Administrative Systems (Washington, D.C.: HHS, Oct. 22, 1992); and HHS, SSA, Workgroup on OHA Workload Issues, Recommended Actions to Address Hearings Workload (Washington, D.C.: HHS, Dec. 22, 1992).

Backlog Reduction Efforts Focus on STDP

SSA issued its STDP in 1994 in order to make some immediate progress toward reducing OHA's backlog of pending cases. STDP includes 19 initiatives to expedite the disability determination process and reduce OHA's pending case workload from its October 1994 level of 488,000 to 375,000 cases by December 1996. The plan's goals are based primarily on two key initiatives that expand OHA prehearing conferencing proceedings and SSA regional screening unit activities. These initiatives target certain appealed cases for review and possible allowance by OHA attorneys or SSA regional staff before the ALJ hearing stage is reached.

Resource Reallocations Are a Component of STDP

STDP relies heavily on the temporary reallocation of program resources to help OHA prepare cases and draft disability decisions. Under the plan, 150 OHA and SSA staff have been detailed to help prepare cases for hearings. Case preparation includes assembling and reorganizing claimant files, date stamping exhibits, and preparing evidence lists. Reallocating resources is intended to ensure that case files are organized in a way that facilitates the processing of disability cases. An additional 150 nonhearing office personnel have also been detailed to help draft hearing decisions.

To further improve decision-writing capacity, 800 additional computers have been provided for use by OHA personnel. This influx of computers is intended to reduce OHA's current dependence on manual processes and support personnel during the preparation of hearing decisions and to limit the movement of documents back and forth between staff for proofreading and editing.

Prehearing Conferencing Initiative Has Experienced Delays

The initiative expected to have the greatest impact on reducing OHA's backlog of cases involves the expansion of OHA prehearing conferencing. However, implementation delays associated with prehearing conferencing have affected SSA's ability to achieve STDP's goals.

Before STDP, prehearing conferencing involved the review of certain appealed cases by OHA staff attorneys and paralegal specialists in the various OHA regions. These individuals conferred with claimant representatives after reviewing cases, conducted limited case development, and drafted decisions to be reviewed and approved by ALJs. With expanded prehearing conferencing under STDP, OHA attorneys have been given quasi-judicial powers, such as the authority to issue allowance decisions for certain appealed cases without ALJ involvement or approval. Under the initiative, OHA attorneys now engage in extensive development

of the case record, conduct conferences with claimant representatives and sources of medical and vocational evidence, and are empowered to issue allowance decisions. If they cannot allow the claim on the basis of their review of the evidence, it is scheduled for hearing before an ALJ.

OHA guidelines for prehearing conferencing give 595 senior attorneys the authority to issue allowance decisions. To fully implement the initiative, SSA had to pursue a regulatory change giving OHA staff attorneys the authority to decide certain appealed cases that were formerly limited to ALJ jurisdiction. But the process of defining the specific duties and responsibilities these attorneys would have under STDP was lengthy, and implementation did not begin until July 1995, or almost 6 months after the projected start date. Delays also occurred with other initiatives designed to support prehearing conferencing. For example, backlog reduction goals for prehearing conferencing are partly dependent upon STDP initiatives to provide more computers and staff to assist OHA with case preparation and decision-writing. But due to protracted collective bargaining negotiations with SSA's union and other difficulties, full implementation of these initiatives was delayed for several months. Through expanded prehearing conferencing, SSA had originally expected to process 98,000 additional cases by December 1995 and 126,000 more by December 1996. However, 1995 goals were not achieved, and senior staff attorneys issued only 22,271 additional allowance decisions nationwide through February 1996.

Screening Units Are Not Sufficiently Reducing the Number of Cases Requiring an ALJ Hearing

A second major initiative under STDP is intended to further reduce the flow of cases from DDSS to OHA hearing offices by increasing the effectiveness of SSA regional screening units. However, these units have not performed as expected.

Before STDP, SSA established screening units in each region to review DDS reconsideration denials. Before an ALJ hearing occurred, screening unit examiners reviewed these cases to determine if an allowance could be made on the basis of evidence in the case file. Although screening unit allowances required ALJ approval, they expedited the decision-making process and prevented many cases from going into OHA's hearings backlog.

Under STDP, OHA staff attorneys have been assigned to all SSA regional screening units to dispose of more appealed claims before they reach an ALJ hearing. The decision to add OHA attorneys was based upon the experiences of SSA's Boston and New York regional offices, which had tested the use of OHA attorneys in screening units and were obtaining

higher allowance rates. According to SSA, the opportunity for screening unit examiners to discuss issues with an attorney gives examiners helpful insight into the intent of the POMS requirements and enables them to reverse incorrect DDS reconsideration denials earlier in the process.

Most cases reviewed by the screening units are selected on the basis of computer-generated profiles that identify disability claims likely to be incorrectly denied by DDSS. SSA officials contend that “profiling” minimizes the risk of making incorrect allowances. However, to increase screening unit outputs, the case selection criteria were expanded in January 1995 to include all hearing requests accompanied by any additional evidence, even if the case did not meet the profile. Consequently, screening units are now reviewing some cases that are not necessarily error prone.

Screening units, like prehearing conferencing, are not achieving STDP’s allowance goals. Before STDP, existing screening units were expected to allow about 20,000 cases per year. With the introduction of OHA senior attorneys, SSA expected to allow 38,000 cases annually, or about 3,167 cases per month. However, screening units had allowed a total of only 28,376 cases through February 1996. Only two of SSA’s screening units—Boston and New York—are allowing cases at a level that may facilitate reaching STDP’s 1996 goals. SSA officials overseeing the initiative told us that regional differences in allowances were primarily due to the reluctance of some hearing offices to provide sufficient staff and senior attorney support to the regional screening units.

STDP May Have Unintended Effects

Despite slippage in the implementation of STDP’s major initiatives, SSA management has not revised its original backlog reduction goals or the timeframes for accomplishing them. As a result, a number of SSA and OHA personnel involved in the design and implementation of STDP are concerned that the plan may have unintended negative impacts.

When STDP was announced in November 1994, it called for reducing OHA’s backlog from 488,000 to 375,000 (113,000 cases) by December 1996. However, by the end of September 1995, OHA’s backlog had increased to 548,000 cases. To achieve the plan’s original goal of reducing pending cases to 375,000, SSA would have to increase its backlog reduction target from the original 113,000 cases to about 173,000 during the remaining timeframe. Many SSA and OHA officials have expressed concern that the growth in OHA’s pending case backlog over the last several months, combined with STDP’s aggressive goals, may create pressure to

inappropriately allow cases. As a means of determining STDP's impact on OHA decision-making, SSA management is closely monitoring and tracking OHA allowance rates.

Finally, the prehearing conferencing initiative under STDP has diverted almost 600 attorneys from their regular decision-writing duties. SSA intends to offset this loss in decision-writing resources with 150 temporary detailees from various components and increased overtime for support and professional staff. However, many SSA and OHA officials are concerned that the number of detailees is insufficient to offset the loss of experienced decision-writers.

SSA's Redesign Plan Is Aimed at Addressing Several Long-Standing Problems

Unlike STDP, the redesign plan includes initiatives that SSA believes will address some of the program's long-standing problems: multiple levels of claims development and decision-making, fragmented program accountability, and decisional disparities between DDS and OHA adjudicators. In announcing the plan in September 1994, SSA acknowledged that a longer-term strategy was needed to address the systemic problems placing the DI and SSI programs under increasing stress. The agency also noted that, to substantially improve the level of service to claimants, incremental improvements to the process were no longer feasible. At the time of our review, SSA was in the early implementation planning and testing stages of the redesign effort, and none of the initiatives had been fully implemented.

To address the problem of multiple levels of claims development and decision-making, the redesign plan includes initiatives to eliminate both DDS reconsideration and Appeals Council reviews. In place of the reconsideration review, SSA plans to establish an Adjudication Officer (AO) position as the focal point for prehearing activities. The AO's duties will include (1) identifying the specific issues in dispute, (2) determining if additional evidence development is needed to support a claim, (3) reaching agreement with claimants or their representatives on the issues not in dispute, and (4) deciding appealed claims on the basis of the evidence developed. By focusing prehearing responsibilities on a single adjudicator, SSA expects that the time needed to ensure the completeness of the record will be substantially reduced and that more appealed cases will be resolved without ALJ involvement.

The redesign plan also includes initiatives that SSA believes will address the problem of fragmented program accountability. To improve overall

accountability for claims processing, SSA plans to revise its management information processes to better assess the agency's service to claimants. Information regarding staff actions at each step of the process is to be made available to all components, and a single measure of time from the claimant's first point of contact with SSA until final notification of a decision will be developed. SSA has proposed developing or revisiting other measures related to cost, productivity, pending workload, and accuracy to better assess the performance of each participant, and the agency as a whole. The plan also calls for installing a common database for claims control and management purposes, rather than relying on the currently fragmented automated systems.

To address organizational fragmentation issues, SSA plans to emphasize accountability and teamwork throughout the disability claim process. At the initial DDS level, a Disability Claims Manager position will be established as the focal point for moving the claim through the earliest stages. For OHA's prehearing activities, the AO position will be the responsible agent. At the hearing level, the ALJ will be the responsible official. SSA plans to hold these individuals accountable for their part of the disability determination and appeals process and require them to work with other components to ensure timely case processing.

The disability redesign plan also includes several initiatives to reduce decisional disparities between DDS and OHA decisionmakers by (1) providing an opportunity for the initial decisionmaker to meet claimants face-to-face, (2) improving SSA's quality assurance processes, and (3) unifying policy guidance at both the DDS and ALJ levels. Under the redesigned process, claimants will be provided the opportunity to meet with a DDS decisionmaker before the claim is initially decided. This meeting is intended to ensure that all available evidence has been presented and that claimants understand what evidence will be considered in reaching the decision. SSA also plans to improve its quality assurance processes by extending such reviews to all levels of the adjudicatory process and using the results to identify areas for improving agency policies and training.

To further ensure consistent standards for decision-making, the redesign plan includes an initiative to develop a single presentation of all substantive policies used in the determination of disability. Both DDS and ALJ adjudicators will be required to follow these same policies. SSA plans to provide policy clarifications and nationwide training to both DDS and ALJ decisionmakers to facilitate the use of the new policies. However, SSA has

not proposed any changes to the de novo hearings process and the ability of claimants to submit new medical evidence upon appeal. According to SSA, revising these processes would require a legislative change, which was not within the scope of the plan at its initial stage.

Redesign Does Not Address SSA's Management Authority Over ALJs

SSA's disability redesign plan includes initiatives that SSA believes will address several of the long-standing problems affecting program performance, but the plan does not specifically address how SSA will consistently define and communicate its management authority over the ALJs.

Although APA is an important safeguard of due process, SSA has not consistently defined and communicated to its field staff the actions that can be legally employed by managers to increase program efficiency without hindering judicial independence. For years, SSA has acknowledged the management difficulties associated with the APA issue, and the need to develop specific guidelines of allowed and prohibited practices that are fully understood by everyone involved. More recently, the Director of SSA's redesign effort again acknowledged that APA procedures and mandates should be better clarified and refined to fit SSA's mass adjudication approach to its disability programs.

Conclusions, Agency Comments, and Our Evaluation

SSA's disability programs have been the subject of numerous internal and external studies over the last 2 decades. Despite these studies and continuing agency efforts to improve the disability determination and appeals process, OHA's case backlog has reached crisis levels. In an environment of unprecedented disability program growth, SSA has both a short- and a long-term approach to better service its DI and SSI workloads. In the near term, STDP is designed to expedite the disability appeals process and reduce OHA's pending case backlog to a manageable level. In developing its long-term Plan for a New Disability Claim Process, SSA has also acknowledged the need for the agency to move ahead with more dramatic program changes.

Considering the current backlog crisis at OHA, STDP's approach for temporarily reducing OHA backlogs is reasonable in that it establishes specific goals and timeframes for reducing OHA backlogs. It also represents an SSA-wide commitment involving the reallocation of resources from both within and outside OHA, and coordination and cooperation among all organizational components involved in the adjudication process. Disposing of cases earlier in the decisional process may also be less costly and time consuming than allowing them to reach the ALJ hearing stage.

Although backlog reduction efforts are receiving greater agencywide emphasis under STDP, implementation delays associated with prehearing conferencing and the limited impact of regional screening have adversely affected SSA's ability to achieve the plan's backlog reduction goals. Many OHA and SSA staff are also concerned that the continued growth in OHA's pending case backlog and SSA's reluctance to adjust the plan's goals may affect the quality of decisions and lead to increased pressure to inappropriately award cases.

To ensure decisional accuracy, SSA intends to monitor the quality of STDP decisions and the overall allowance rate for its disability programs. The agency's reliance on computer-generated profiles to select certain error-prone cases for review under STDP is also intended to reduce the risk of inappropriate decisions. However, the screening unit case selection criteria have been expanded to include some nonprofiled cases, and prehearing conferencing regulations do not preclude OHA senior attorneys from reviewing nonprofiled cases in the future.

Although the redesign plan includes initiatives that SSA believes will address several long-standing program problems, it does not specifically address the need to consistently define and communicate the types of

management actions SSA can legally employ to better manage ALJ activities. For years, SSA has recognized that ALJ management issues underlie many of the problems affecting its disability programs, and that it should better define and thoroughly communicate a consistent APA message to field staff. We believe that addressing the APA issue will be a challenge for SSA. However, it is a challenge that must be overcome if SSA is to resolve the current disability backlog crisis and achieve its long-term service delivery goals.

SSA's Comments and Our Evaluation

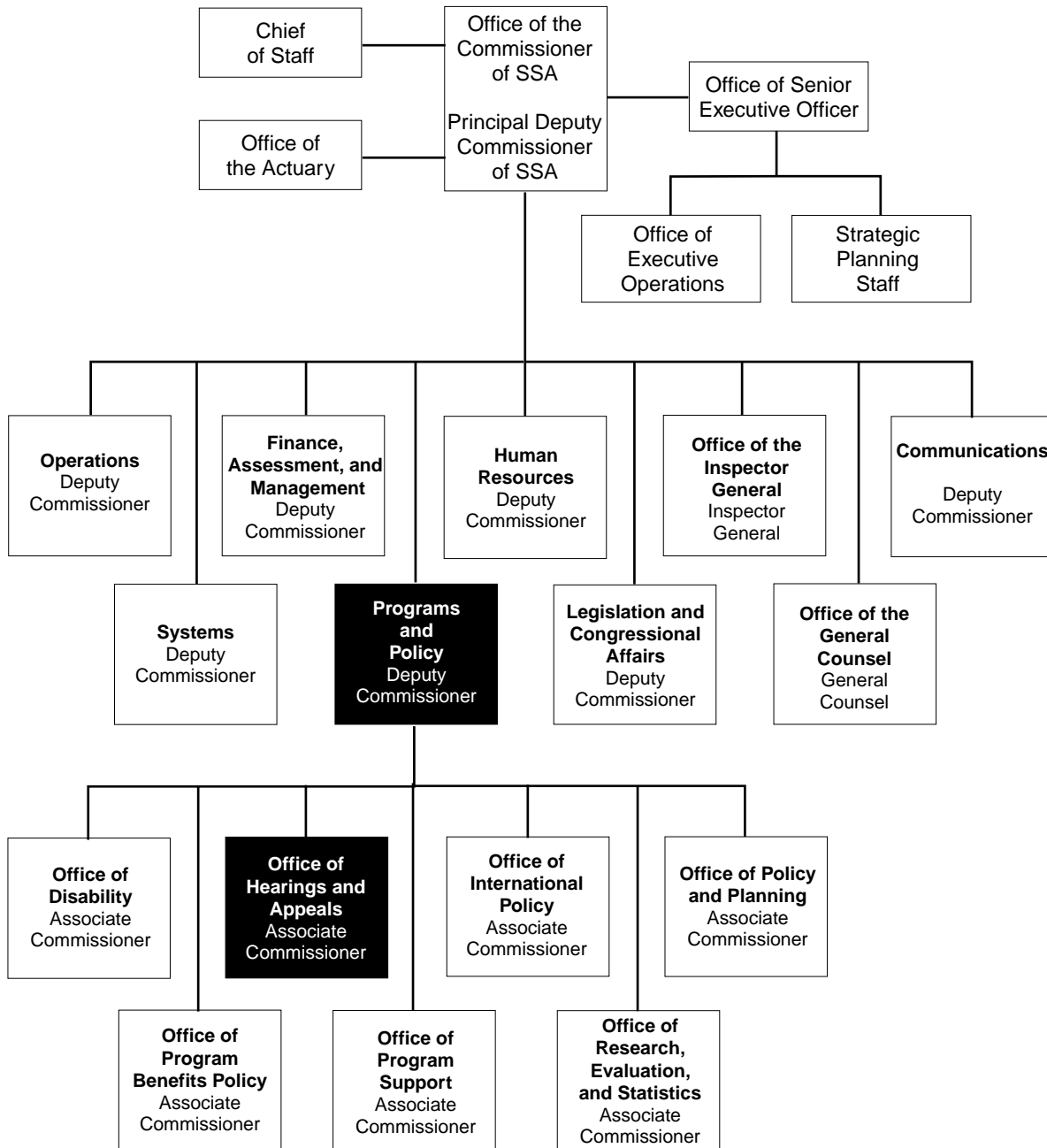
In providing comments on this report, SSA identified a number of actions that it has taken since 1992 to streamline and expedite the processing of hearing workloads. These actions include developing a plan to standardize disability claim file preparation, creating a Practices and Procedures Exchange Workgroup within OHA, suspending the preparation of medical summaries, standardizing decision-writing instructions, and encouraging ALJs to write some of their own decisions. However, the agency did not provide data regarding the impact of these initiatives on reducing OHA's backlog of pending cases. Our data show that, despite SSA's efforts, OHA's backlog has continued to grow since 1992.

In regard to STDP, SSA acknowledged that, because of increases in hearing receipt projections and the pace of STDP implementation, the plan's backlog reduction goals would not be met by December 1996. However, SSA officials stated that a shortfall in screening unit allowances would have only a limited impact on meeting STDP's overall goals. We disagree with SSA's assessment, since SSA originally intended that the screening units would be second only to prehearing conferencing in terms of impact and would result in 38,000 additional allowances through December 1996. Not meeting screening unit allowance targets will, in our opinion, hinder OHA's backlog reduction efforts. SSA did not provide us with revised backlog reduction goals for STDP or any documentation indicating that they would be changed in the near future.

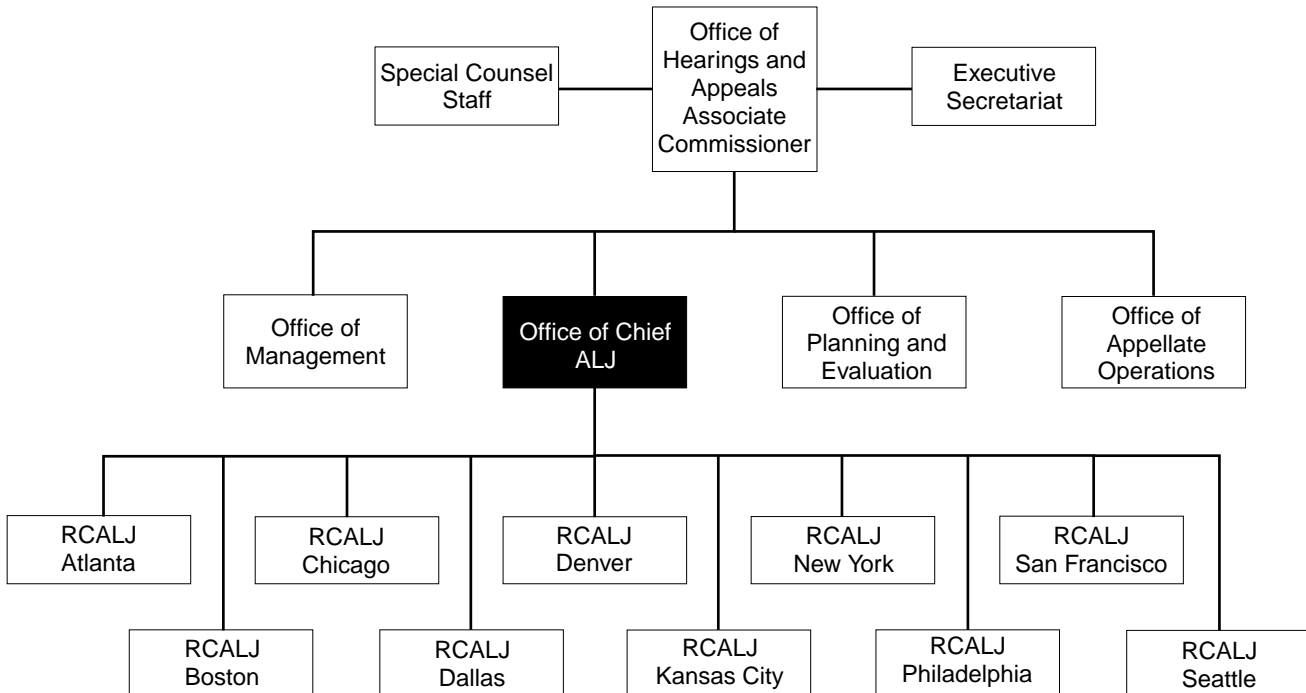
Regarding our concerns that pressure to meet STDP's goals may have unintended effects, SSA has advised its adjudicators that STDP should not be interpreted to inappropriately allow cases. SSA also noted that through the deployment of resources not previously devoted to hearing office workloads, the decision-writing pending workload has been reduced from over 43,000 to about 28,000 cases.

Finally, SSA agreed that clarifying the scope of its authority over ALJs under APA would be appropriate and stated it is developing such a document. However, the agency questioned the statement in our report that many ALJs believe they are exempt from nearly all management control. This was not our conclusion, but one that was reported by SSA's Office of Workforce Analysis following its 1992 review of OHA operations. SSA also disagreed with our statement that ALJs have successfully opposed agency productivity initiatives. However, ALJ opposition to agency initiatives to improve productivity has been documented in prior SSA and GAO reviews and through field work conducted during this assignment. The full text of SSA's comments and our response are included in appendix III.

SSA Organizational Chart



OHA Organizational Chart



Comments From the Social Security Administration and Our Evaluation

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



SOCIAL SECURITY

Office of the Commissioner

May 14, 1996

Ms. Jane L. Ross, Director
Income Security Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Ross:

Thank you for the opportunity to comment on the draft report, "Social Security: OHA Backlog Reduction Efforts Are Underway, But Significant Challenges Remain" (GAO/HEHS-96-87).

I share your concern about the unprecedented rise in the number of hearing requests filed in recent years and the resulting effect on increased hearing case backlogs. I also appreciate the significant note your report makes of our efforts to address this situation. As you know, the Social Security Administration (SSA) has initiated a number of short-term backlog reduction efforts to address this problem. As a result, hearing backlogs have been shrinking in recent months. Because of our aggressive response, we expect a nearly 50 percent cumulative 2-year increase in the number of hearing case dispositions from fiscal year (FY) 1994 through FY 1996.

As indicated in your report, our redesigned disability process, which we are now implementing, will improve all phases of the disability determination process, including the hearing process. We believe this long-term solution will result in a significant reduction in the time required to process disability cases through the hearing stage. We also are examining issues relating to organization of our Office of Hearings and Appeals and expect our examination to address some of the issues raised in this General Accounting Office report.

Enclosed are our specific comments on the report. If you have any questions, please call me or have your staff contact Mark Welch at (410) 965-0374.

Sincerely,

Handwritten signature of Shirley S. Chater in cursive.

Shirley S. Chater
Commissioner
of Social Security

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

**Appendix III
Comments From the Social Security
Administration and Our Evaluation**

COMMENTS OF THE SOCIAL SECURITY ADMINISTRATION (SSA) ON THE
GENERAL ACCOUNTING OFFICE'S (GAO) DRAFT REPORT, "SOCIAL SECURITY:
OHA BACKLOG REDUCTION EFFORTS ARE UNDERWAY, BUT SIGNIFICANT
CHALLENGES REMAIN" (GAO/HEHS-96-87)

We appreciate that this GAO report makes significant note of SSA's long- and short-term actions taken and underway to deal more effectively with hearing case workloads. In order to address the unprecedented rise in the number of new hearing requests filed in recent years, we have initiated a number of aggressive short-term backlog reduction efforts, many of which are part of our Short Term Disability Plan (STDP). As a result, hearing case backlogs have been shrinking in recent months. In fiscal year (FY) 1995, we issued 25 percent more hearing case dispositions than we did in FY 1994; we anticipate that in FY 1996 we will issue about 20 percent more hearing case dispositions than we did in FY 1995.

We believe our redesigned disability process, when implemented, will improve all phases of the disability determination process, including the hearing process. These efforts will result in a significant reduction in the time it takes to process disability cases through the hearing stage.

We are also examining issues relating to the organization of the SSA Office of Hearings and Appeals (OHA) and expect our examination to address some of the issues raised in this GAO report. In addition, we are developing a statement clarifying the scope of SSA's management authority over its Administrative Law Judges (ALJ) under the Administrative Procedure Act (APA).

The following are our specific comments on this GAO report. We have organized our comments to be consistent with the stated objectives of GAO's review and the problem areas identified in the report.

Growth in the Hearing Backlogs

We believe the report analysis significantly understates the relationship between the dramatic rise in the number of new hearing requests filed in recent years and the corresponding increase in pending cases and processing times. Table 1 of the report (page 22) shows that hearing receipts have increased by an average of almost 65,000 cases each year since FY 1991, and the growth in pending cases and processing times has closely paralleled these dramatic workload increases. The GAO report notes that the SSA ALJ corps has increased by 39 percent, and support staff by 47 percent, between 1985 and 1995. It is also true that hearing case receipts grew by 140 percent during the same period and by 90 percent in the last 5 years alone. We believe evaluation of the causes of the backlogs should identify

See comment 1.

Now on p. 17.

**Appendix III
Comments From the Social Security
Administration and Our Evaluation**

2

this unprecedented level of growth in hearing receipts as the single most significant factor contributing to the backlog.

Steps that SSA has Taken in the Past to Address Backlogs

The GAO report indicates that SSA efforts to manage increasing hearing workloads during the past decade have been largely limited to use of overtime and hiring new ALJs and support staff (page 35). A close examination of OHA field staffing levels presented in Table 2 of GAO's report reveals that the most significant staffing increases occurred after FY 1990, a period corresponding to that in which the hearing workload has grown dramatically. We believe that staffing and overtime allocations have been fully warranted and represent one effective way to address rapidly expanding workloads.

SSA has also taken other important actions to address the backlogs. In December 1992, SSA undertook a number of initiatives designed to streamline and expedite the processing of hearing workloads. One such innovation was a plan to standardize disability claim file preparation throughout SSA, an idea which provided the impetus for the modular disability folder now being implemented. This initiative will enable users to file case evidence more efficiently by segregating material into different segments of the overall hearing and appeals process.

In addition, SSA also created a Practice and Procedures Exchange Workgroup within OHA that provides a vehicle through which creative local initiatives are evaluated and shared with other offices for potential use in their own operations.

Other initiatives include suspension of preparing medical summaries, standardization of decisionwriting instructions and encouraging ALJs to write some of their own decisions. These efforts have gained widespread acceptance and have provided a foundation for subsequent workload management efforts, such as the STDP.

Current Actions Geared to Reducing Hearing Backlogs

As noted above, the hearings backlogs have begun to decrease in recent months, and ALJ productivity has been increasing in recent years. Despite these gains and because of changes in hearing receipt projections and the pace of STDP implementation, the backlog reduction target level set in 1994 (375,000 cases by December 1996) will not be met.

Regarding GAO's concern about screening units not achieving STDP allowance goals (page 41), it is important to note that screening unit determinations or decisions are expected to represent only

See comment 2.

Now on p. 25.

See comment 3.

Now on pp. 27-28.

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about 6 percent of all hearing dispositions. A shortfall in this workload will have a limited effect on meeting overall hearing backlog reduction targets.

About concerns over diverting almost 600 attorneys from regular decisionwriting duties to prehearing conferencing, the need for backfilling decisionwriting was anticipated and has been met by deploying SSA resources not previously devoted to hearing workloads. Through an STDP initiative, the decisionwriting pending workload has been reduced from over 43,000 to about 28,000 cases in recent months. We expect to eliminate decisionwriting backlogs by the end of FY 1996.

Regarding concerns that STDP goals may create pressure to inappropriately allow cases (page 42), our allowance rate data do not indicate this concern to be warranted. We are unaware of any concerns being expressed by adjudicators that they feel pressure to allow cases. SSA has advised adjudicators that the STDP should not be interpreted as pressure to inappropriately allow cases.

SSA's Management Authority Over ALJs

While there have been occasional disagreements between SSA and some ALJs, we believe the GAO report overstates the role that ALJ management issues have played in the increase in hearing backlogs and longer processing times. For example, we question the conjectural conclusion (page 29) that many ALJs believe they are exempted from nearly all SSA management control. The record on ALJ performance in recent years does not support the conclusion (page 30) that ALJs have successfully opposed SSA initiatives to increase ALJ productivity on the grounds that such initiatives interfere with ALJ decisional independence. As indicated below, ALJ productivity has consistently increased since FY 1991, when the number of hearing receipts has grown rapidly.

<u>Fiscal Year</u>	<u>Average Monthly Dispositions Per ALJ</u>
1992	37
1993	39
1994	44
1995	44

(The average monthly dispositions per ALJ listed above for FY 1995 excludes dispositions by non-ALJ staff that occurred under STDP initiatives and reflects a higher proportion of more complex cases as a result of those initiatives.)

ALJ productivity has increased by about 52 percent in the period since FY 1985, when ALJs issued an average 29 dispositions per

Now on pp. 28-29.

See comment 4.

Now on p. 21.

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month. These data indicate that SSA's ALJs are responding well to the challenges presented by unprecedented workloads.

Regarding our efforts to manage ALJ activities not related to the decisional aspects of hearing and deciding of cases, SSA has established effective guidelines and procedures for such issues as ALJ time and attendance and the assignment of travel cases. Since 1990, we have pursued 18 ALJ disciplinary actions, including a number seeking removal. In addition, 6 ALJs terminated their employment after being counseled and informed of the Agency's intention to initiate disciplinary action.

Now on p. 21.

The report indicates (page 29) that the APA protects ALJ decisional independence. We are concerned that this broad statement can be interpreted to mean that ALJs operate independent of any policy or are free to apply their own interpretation of binding policy. To the contrary, an ALJ is not "policy independent" and is subject to SSA on matters of law and policy. In addition, the concept of "decisional independence" can be misinterpreted--the key to the concept is that impartiality of the ALJ and the hearing process is maintained.

See comment 5.
Now on p. 22.

The GAO report indicates (page 31) the presence of variations in hearing office organizational configurations that are contrary to an official Agency policy of "pooling." In fact, no official policy mandates "pooling" or otherwise dictates hearing office organization. The "unit" system (as it relates to ALJs directly supervising the work of support staff) has been eliminated in hearing offices. However, because of variations in staffing and workloads, local management is given the necessary latitude to establish an organizational structure and workflows that best meet the needs of an individual office, with the guidance and concurrence of SSA's Office of the Chief ALJ in OHA.

SSA agrees with the GAO that clarifying the scope of SSA's management authority over its ALJs under the Administrative Procedure Act would be appropriate, and we are developing such a document.

Multiple Levels of Claims Development and Decisionmaking

See comment 6.
Now on p. 18.

The report cites (page 24) an SSA Office of Workforce Analysis report that indicates that the total number of days actually spent working on a typical hearing case is 4 days. This may give the erroneous impression that this work occurs during only 4 days of the much longer processing cycle. Not mentioned is that numerous actions on a hearing case are required at various stages in the process, and that some "delays" are necessarily present, resulting from such factors as scheduling and due process notice requirements. Other delays are often claimant initiated and may

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lead to postponement of a hearing or a need to further develop the evidentiary record.

Decisional Disparities Between State Disability Determination Service (DDS) and OHA Adjudicators

The report suggests that errors by DDS adjudicators and ALJs are one reason for disparities in decisional outcomes and cites the results of quality reviews to support that conclusion (page 28). GAO's analysis of SSA's quality assurance data does not take into account the highly judgmental aspects of disability decisionmaking, particularly as it relates to the evaluation of symptoms and medical opinions. Because of this element of disability evaluation, courts have recognized that there is a "zone of choice" in administrative decisionmaking, under which two opposite yet equally supportable decisions can be made in a case. As a result, caution must be exercised in reaching conclusions on data about the degree of consistency among adjudicators as an indicator of the quality of decisions made.

Other Matters

The report (page 11) provides data concerning numbers of disabled beneficiaries and recipients and related program outlays. The following are the correct figures for the time period cited by GAO. In FY 1995, 5.7 million disabled workers and their dependents received \$40.4 billion in Disability Insurance benefits. This is up from 3.9 million beneficiaries and \$18.6 billion in FY 1985. In FY 1995, 4.9 million disabled Supplemental Security Income recipients received \$20.8 billion, up from 2.5 million recipients and \$6.7 billion in FY 1985.

The report (page 30) indicates that in the early 1980's SSA began a special review of decisions of ALJs with high allowance rates. It should be noted that SSA initiated this review in order to respond to concerns addressed by Senator Bellmon in introducing the "Bellmon Amendment" (section 304 (g) of P.L. No. 96-265) that ALJs with high allowance rates could be more prone to errors in decisionmaking. SSA did not institute this review in order to influence the impartiality of the hearing process.

The report (page 35) provides data concerning OHA use of overtime and OHA case dispositions. OHA actually used 104,700 hours of overtime in FY 1990 and 713,000 hours in FY 1995, an increase of about 600 percent. The correct number of OHA case dispositions for FY 1995 is 527,000.

See comment 7.

Now on p. 20.

See comment 8.

Now on p. 10.

Now on pp. 21-22.

Now on p. 25.

The following are GAO's comments on the Social Security Administration's letter dated May 14, 1996.

GAO Comments

1. Our analysis notes that the growth in OHA's backlog of pending cases has been due to the "rapid surge" in disability program applications, ever-increasing appeals to OHA, and SSA's not addressing several long-standing problems associated with its disability programs.
2. This report does not challenge SSA's staffing and overtime allocations. However, it does confirm that SSA has relied heavily on increasing OHA staffing levels and the use of overtime to address the backlog problem. Although SSA identified a number of additional actions taken over the last several years to expedite the hearings process, it did not provide data regarding their impact on reducing OHA's backlog. Our data show that, despite SSA's efforts, the backlog has continued to grow.
3. We disagree with SSA's statement that a shortfall in screening unit allowances will have only a limited impact on meeting STDP's goals. It was originally intended that the screening units would be second only to prehearing conferencing in terms of impact and result in 38,000 additional allowances by the end of December 1996. Therefore, not meeting screening unit allowance targets will hinder SSA's backlog reduction efforts.
4. SSA disagreed with the statement in our report that many ALJs believe they are exempt from nearly all management control. While SSA viewed this as "conjectural," it should be noted that this was not our conclusion, but one that was reported by SSA's Office of Workforce Analysis in 1992. SSA also disagreed with our statement that ALJs have opposed agency efforts to improve productivity. However, ALJ opposition to agency productivity initiatives has been documented in prior SSA and GAO reviews and through field work conducted during this assignment.
5. Upon review of the source documents, our reference to an "official" agency policy of pooling hearing office staff was revised. However, our data still support the statement that ALJs opposed SSA's efforts to actively encourage the "pooling" of hearing office resources to increase efficiency and distribute work more evenly.

6. Upon review of the source documents and SSA's comments, the report was revised to better reflect the range of factors affecting overall case processing time at OHA.

7. We are aware of the judgmental aspects of disability decision-making and the "zone of choice" under which decisions can be rendered. However, SSA's own reviews have reported a relatively high error rate for both DDS and OHA decisions. Errors at any level may contribute further to decisional inconsistencies between the two levels.

8. Where source documents were provided by SSA, changes were made to the report to more accurately reflect the growth in the DI and SSI programs from 1985 to 1995, and the total number of OHA case dispositions for fiscal year 1995. We also incorporated SSA's statement that a previous agency effort to review the decisions of ALJs with high allowance rates was initiated in response to Senator Bellmon's concern that these decisions could be more prone to errors.

Studies on SSA's Disability Decision-Making Process

This appendix is divided into two parts: the first contains studies done by the Department of Health and Human Services (HHS), of which SSA was a part until 1995; the second contains studies done by others.

Studies Done by HHS

Dr. Shirley Chater, Commissioner of Social Security. "Reinventing" the Social Security Administration, testimony before the Subcommittee on Social Security, Committee on Ways and Means. Washington, D.C.: HHS, Oct. 28, 1993.

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Appendix IV
Studies on SSA's Disability Decision-Making
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Acknowledgments

In addition to those named above, the following individuals made important contributions to this report: Diana Eisenstat, Associate Director, Income Security Issues; Robert Rosensteel, Senior Evaluator; William Hutchinson, Senior Evaluator; and Carlos Evora, Evaluator.

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