

OIG

Office of the Inspector General  
SOCIAL SECURITY ADMINISTRATION

*Evaluation Report*

Deficit Reduction Leave Payment to  
New York State Division of  
Disability Determination Employees

*A-02-15-25036 | April 2015*



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: April 14, 2015

Refer To:

To: Frederick M. Maurin  
Regional Commissioner  
New York

From: Inspector General

Subject: Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees (A-02-15-25036)

The attached final report presents the results of our review. Our objective was to determine the amount of Deficit Reduction Leave payments New York State paid to Division of Disability Determinations employees and claimed as a cost of determining disabilities for the Social Security Administration.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

A handwritten signature in black ink, appearing to read 'Patrick P. O'Carroll, Jr.' with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.

Attachment

cc:

Ann Robert, Acting Associate Commissioner for Disability Determinations  
Carla Krabbe, Associate Commissioner for Financial Policy and Operations  
Gary S. Hatcher, Senior Advisor for Records Management and Audit Liaison Staff  
Sharon Devine, Acting Commissioner, Office of Temporary and Disability Assistance  
Valerie Boyd, Audit Liaison, Office of Temporary and Disability Assistance

# Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees

## A-02-15-25036



April 2015

Office of Audit Report Summary

### Objective

To determine the amount of Deficit Reduction Leave (DRL) payments New York State paid to Division of Disability Determinations (DDD) employees and claimed as a cost of determining disabilities for the Social Security Administration (SSA).

### Background

In 2011, the Governor of New York negotiated with unions representing DDD employees to reduce workforce costs. One measure negotiated to reduce workforce costs was DRL. Per the DRL provision, the State reduced DDD employees' salaries by the value of 9 days in Fiscal Years 2011 through 2013. The employees were required to take 9 days of DRL in those years. Per the negotiated agreements, the State would repay DDD employees for part, or the full value, of the reduction in their salaries starting in 2015 or 2016. Additionally, the State would pay employees the balance owed them if they separated from service before they were fully repaid for DRL taken.

In July 2014, SSA's New York Regional Commissioner requested that we quantify the amount of DRL payments charged to SSA. This report provides the requested information.

### Findings

From January 18, 2012 to November 5, 2014, New York State paid \$418,379 in DRL payments and claimed \$227,239 in related fringe benefits (for a total of \$645,618) to reimburse 219 separating DDD employees. The State included most of these payments as a cost of determining disabilities on Forms SSA-4513 submitted to SSA for reimbursement. SSA released funds to the State based on the SSA-4513s submitted.

Per New York State, as of the date of this review, it had been reimbursed for \$614,349 of the \$645,618 in DRL payments made and related fringe benefits claimed. It plans to include the remaining balance of payments on the next Form SSA-4513 it submits to SSA for the quarter ended December 31, 2014.

In total, the State expects to issue an additional \$3 million in payments over the next 3 years to reimburse DDD employees for DRL they were required to take.

### Conclusion

As it has for the DRL payments already paid, the State plans to claim future DRL-related payments as a cost of determining disabilities for SSA. The State expects to pay DDD employees an additional \$3 million over the next 3 years to reimburse them for DRL.

While SSA advised the State that the DRL payments to DDD employees were not reimbursable under relevant SSA regulations and guidelines, the Agency did not actually deny reimbursement for the payments because it did not know the amount of DRL payments made. SSA provided us with a letter containing its determination that the DRL payments were not reimbursable. As SSA only asked us to quantify the amount of DRL payments made, our work focused on that specific objective. Our report quantifies the amount of DRL payments made as of November 5, 2014.

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## **ABBREVIATIONS**

C.F.R.	Code of Federal Regulations
DDD	Division of Disability Determinations
DDS	Disability Determination Services
DRL	Deficit Reduction Leave
FY	Fiscal Year
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration

## OBJECTIVE

Our objective was to determine the amount of Deficit Reduction Leave (DRL) payments New York State paid to Division of Disability Determinations (DDD) employees and claimed as a cost of determining disabilities for the Social Security Administration (SSA).

## BACKGROUND

The Disability Insurance program<sup>1</sup> provides benefits to wage earners and their families in the event the wage earner becomes disabled. The Supplemental Security Income<sup>2</sup> program provides payments to financially needy individuals who are aged, blind, or disabled. Under these programs, disability determination services (DDS) in each State make disability determinations in accordance with Federal regulations.<sup>3</sup> Each DDS is responsible for determining claimants' disabilities and ensuring adequate evidence is available to support its determinations.

SSA reimburses DDSs for 100 percent of allowable expenditures up to their approved funding authorization. At the end of each quarter of the Fiscal Year (FY), each DDS submits a *State Agency Report of Obligations for SSA Disability Programs* (Form SSA-4513) to account for program disbursements and unliquidated obligations. The SSA-4513 reports expenditures and unliquidated obligations for Personnel, Medical, Indirect, and all other Non-personnel costs.<sup>4</sup>

New York's Office of Temporary and Disability Assistance includes the DDD, which performs the disability determination function in the State on SSA's behalf. DDS employees who perform the disability determination function are State employees.

## DRL

In 2011, the Governor of New York negotiated new labor contracts with two unions that represented DDD employees. DRL was included in both new contracts as a means of reducing workforce costs.

One contract reduced non-professional DDD employees' salaries by the value of 5 days' pay in FYs 2011 and 2012 and 4 days' pay in FYs 2012 and 2013. The employees were required to

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<sup>1</sup> The DI program was established in 1954 under Title II of the *Social Security Act*. See *Social Security Amendments of 1954*, Pub. L. No. 83-761, Title I, § 106, 68 Stat. 1052, 1079 (1954), codified at *Social Security Act*, § 220 *et seq.*, 42 U.S.C. § 420 *et seq.*

<sup>2</sup> In 1972, Congress enacted the SSI program under Title XVI of the *Social Security Act*. See *Social Security Amendments of 1972*, Pub. L. No. 92-603, Title III, § 301, 86 Stat. 1329, 1465 (1972), codified at *Social Security Act* § 1601 *et seq.*, 42 U.S.C. § 1381 *et seq.*

<sup>3</sup> *Social Security Act* §§ 221(a)(1) and 1614(a)(3)(H)(i), 42 U.S.C. §§ 421(a)(1) and 1382c(a)(3)(H)(i); see also 20 C.F.R. §§ 404.1601 *et seq.* and 416.1001 *et seq.*

<sup>4</sup> SSA, POMS, DI 39506.201, March 12, 2002.

take 5 days' DRL during FYs 2011 and 2012 and 4 days' DRL during FYs 2012 and 2013. Per the contract, the State would reimburse the affected employees the value of the 4 days' DRL from FYs 2012 and 2013 in equal installments beginning on March 24, 2016. There was no provision to repay employees the value of the 5 days' DRL from FYs 2011 and 2012. Per the contract, the State would pay employees the balance owed them if they separated from service before they were fully repaid for the DRL they took in FYs 2012 and 2013.

The other labor contract reduced the salaries of non-clerical DDD employees by 4.198 percent for 10 consecutive payroll periods in FYs 2011 and 2012 and by 1.847 percent for 26 pay periods in FYs 2012 and 2013. Per the contract, the State credited employees with 9 days' DRL, which had to be used before March 31, 2013. Beginning with the pay period that includes April 1, 2015, the State will repay employees the value of the 9-day reduction in equal amounts over 39 payroll periods. Also, the State will pay employees the balance owed them if they separate from service before they are fully repaid for the 9-day DRL.

SSA previously advised the State that the DRL payments to DDD employees were not reimbursable under relevant SSA regulations and guidelines and that SSA would not reimburse them. When SSA sent an advisory letter to that effect, it did not actually deny reimbursement for the payments because it did not know the amount of the DRL payments made. In July 2014, SSA's New York Regional Commissioner requested that we quantify the amount of DRL payments charged to SSA.

## **RESULTS OF REVIEW**

While New York State has not begun to fully reimburse all DDD employees for DRL, it paid \$418,379 in DRL payments to reimburse 219 separating DDD employees and claimed \$227,239 in related fringe benefits, for a total of \$645,618, from January 18, 2012 to November 5, 2014.

The State included the costs of the DRL payments and claimed fringe benefits on Forms SSA-4513 submitted to SSA for reimbursement as the expenses were incurred. SSA released funds to the State based on the SSA-4513s submitted. Per New York State, as of the date of this review, it had been reimbursed \$614,349 of the \$645,618 paid to separating DDD employees. The State plans to include the outstanding balance not yet reimbursed on the Form SSA-4513 it submits for the quarter ended December 31, 2014.

### **DRL Payments**

From January 18, 2012 to November 5, 2014, New York paid 219 separating DDD employees \$418,379 in DRL payments to reimburse DRL taken. Additionally, the State claimed \$227,239 in related fringe-benefit payments at the federally approved rates, which was calculated as a percentage of the DRL payments the employees received. See Table 1 for the DRL payments paid and fringe benefits claimed in each FY.

**Table 1: DRL Payments and Fringe Benefits Claimed by FY**

<b>FY</b>	<b>DRL Payment</b>	<b>Fringe Benefit</b>	<b>Total</b>
<b>2012</b>	\$77,115	\$38,149	\$115,264
<b>2013</b>	199,954	111,777	311,731
<b>2014</b>	120,937	66,417	187,354
<b>2015<sup>5</sup></b>	20,373	10,896	31,269
<b>Total</b>	<b>\$418,379</b>	<b>\$227,239</b>	<b>\$645,618</b>

New York State issued the first DRL payments on January 18, 2012. The State began to report the cost of the DRL payments on the Form SSA-4513 for the quarter ended March 31, 2012.<sup>6</sup> It has reported the cost of DRL payments on all subsequent Forms SSA-4513. The State included the DRL costs as part of the Personal Service<sup>7</sup> or Indirect costs<sup>8</sup> on the Form SSA-4513, depending on how it recorded the employee's regular salary. See Appendix B for a sample of the Form SSA-4513.

Per SSA, it approved the Forms SSA-4513 submitted by the State. Therefore, the Agency reimbursed the State for the submitted costs on the Forms SSA-4513, including the costs of DRL payments and related fringe benefits. Per New York State, it was reimbursed \$398,006 in DRL payments and \$216,343 in related fringe benefits paid to separating DDD employees. It plans to include the remaining balance of payments on the next Form SSA-4513 it submits to SSA for the quarter ended December 31, 2014.

Over the next 3 FYs, the State estimates it will issue an additional \$3 million in DRL payments and related fringe benefits to separating employees. Table 2 estimates future DRL payments provided by the State.

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<sup>5</sup> Federal FY 2015 began on October 1, 2014. The DRL payments and claimed fringe benefit amounts are based on payments made to separating employees from October 1 to November 5, 2014. The State expects to report these costs on the SSA-4513 for the quarter ended December 31, 2014.

<sup>6</sup> DRL payments are reported in the quarter in which they are made.

<sup>7</sup> Personal Service costs consist of all wages, salaries, and fringe benefits paid to DDS personal for time devoted exclusively to SSA disability programs.

<sup>8</sup> Indirect costs are agency costs that cannot be directly associated with the administration of a particular program and therefore cannot be charged as a direct program expenses. Indirect costs include, but are not limited to, physical overhead, space occupancy, utilities, and information technology costs.



**Table 2: Projected DRL Payments and Related Fringe Benefits for FY 2015 Through 2017**

<b>FY<sup>9</sup></b>	<b>DRL Payment</b>	<b>Fringe Benefit</b>	<b>Total</b>
<b>2015</b>	\$601,508	\$342,137	\$943,645 <sup>10</sup>
<b>2016</b>	1,237,070	712,669	1,949,739
<b>2017</b>	68,107	40,258	108,365
<b>Total</b>	<b>\$1,906,685</b>	<b>\$1,095,064</b>	<b>\$3,001,749</b>

## CONCLUSIONS

From January 18, 2012 to November 5, 2014, New York State paid \$418,379 in DRL payments to separating DDD employees to reimburse them for DRL taken and claimed \$227,239 in related fringe benefits. The State claimed these costs for determining disability for SSA and received reimbursement from the Agency for most of these payments. The State plans to request reimbursement for the outstanding balance on the Form SSA-4513 it submits to SSA for the quarter ended December 31, 2014. The State expects to pay DDD employees an additional \$3 million over the next 3 years to reimburse them for DRL. As it has for the DRL payments already paid, the State plans to claim future DRL related payments as a cost of determining disabilities for SSA.

While SSA previously advised the State that the DRL payments to DDD employees were not reimbursable under relevant SSA regulations and guidelines, the Agency did not deny reimbursement for the payments because it did not know the amount of DRL payments made. SSA provided us with a letter containing its determination that the DRL payments were not reimbursable (see Appendix C). As SSA only asked us to quantify the amount of DRL payments made, our work focused on that specific objective. Our report quantifies the amount of DRL payments made as of November 5, 2014.

## AGENCY AND OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE COMMENTS

SSA agreed with our conclusion. See Appendix D for the full text of SSA's comments to our report.

The New York State Office of Temporary and Disability Assistance agreed with the amounts, numbers, and dates set forth in the report. See Appendix E for the full text of the comments to our report.

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<sup>9</sup> The yearly payments and related fringe benefit costs by year are estimates because the State cannot determine when employees will separate from service.

<sup>10</sup> New York State made \$31,269 in DRL payments and related fringe benefit to separating DDD employees from October 1 through November 5, 2014. Per the State, the \$31,269 was part of the projected payment for FY 2015.

# *APPENDICES*

## Appendix A – SCOPE AND METHODOLOGY

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To accomplish our objective, we:

- Reviewed applicable Federal laws and regulations, pertinent parts of the Social Security Administration’s (SSA) Program Operations Manual System and other criteria relevant to costs claimed by the Division of Disability Determinations (DDD) and the drawdown of SSA program appropriations.
- Spoke with staff at the New York State DDD and SSA’s New York Regional Office about the Deficit Reduction Leave (DRL) provisions and how DRL-related payments were claimed as costs of determining disabilities for SSA.
- Obtained an understating of the DRL payment records and procedures the State used to report the DRL and related fringe benefits on the quarterly Forms SSA-4513.
- Obtained from the New York State Office of Temporary and Disability Assistance records of DRL payments to DDD employees who separated from service issued between January 18, 2012 and November 5, 2014.
- Determined the amount of fringe benefits associated with the DRL payments. The State calculated fringe benefits as 43.27 percent of personnel costs paid from April 1, 2011 through March 31, 2012, 50.16 percent of personnel costs from April 1, 2012 through March 31, 2013, 58.75 percent from April 1, 2013 through March 31, 2014, and 53.48 percent from April 1, 2014 through March 31, 2015.
- Reviewed the Forms SSA-4513 submitted by DDD for Federal Fiscal Years 2012 through 2014.

We determined the data provided by DDD were sufficiently reliable given our objectives, and the intended use of the data should not lead to incorrect or unintentional conclusions

We conducted our review in New York, New York, from November to December 2014. We conducted our review in accordance with the Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation*.

# Appendix B – STATE AGENCY REPORT OF OBLIGATIONS FOR SSA DISABILITY PROGRAMS

Social Security Administration

Form Approved OMB No. 0950-0421

## STATE AGENCY REPORT OF OBLIGATIONS FOR SSA DISABILITY PROGRAMS

(See instructions for completing form on reverse)

NAME OF AGENCY		STATE		
FISCAL YEAR	FOR PERIOD			
	From:		To:	
REPORTING ITEMS - ALL TITLES	(A) DISBURSEMENTS	(B) UNLIQUIDATED OBLIGATIONS	(C) TOTAL OBLIGATIONS	
<b>1. Personnel Service Costs</b>			<b>0</b>	
<b>2. Medical Costs</b> <i>(sum of 2a+2b)</i>	<b>0</b>	<b>0</b>	<b>0</b>	
a. Consultative Examinations <i>(sum of a1+a2+a3)</i>	0	0	0	
1) Disability Insurance (DI) Claims			0	
2) Supplemental Security Income (SSI) Claims			0	
3) Concurrent DI/SSI Claims			0	
b. Medical Evidence of Record <i>(sum of b1+b2+b3)</i>	0	0	0	
1) Disability Insurance (DI) Claims			0	
2) Supplemental Security Income (SSI) Claims			0	
3) Concurrent DI/SSI Claims			0	
<b>3. Indirect Costs</b> <i>[see attached addendum]</i>			<b>0</b>	
<b>4. All Other Nonpersonnel Costs</b>	<b>0</b>	<b>0</b>	<b>0</b>	
a. Occupancy			0	
b. Contracted Costs (exclude EDP)			0	
c. EDP Maintenance			0	
d. New EDP Equipment/Upgrades			0	
e. Equipment Total	<b>0</b>	<b>0</b>	<b>0</b>	
1) Purchases			0	
2) Rental			0	
f. Communications			0	
g. Applicant Travel			0	
h. DDS Travel			0	
i. Supplies			0	
j. Miscellaneous			0	
<b>5. Total:</b> <i>(sum of 1 thru 4)</i>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>6. Cumulative Obligational Authorization</b>				

7. SSA-871 Attached?

YES  NO

I CERTIFY THAT THE ABOVE REPORT AND ANY SUPPORTING STATEMENTS ARE TRUE STATEMENTS OF DISBURSEMENTS AND UNLIQUIDATED OBLIGATIONS FOR DETERMINATIONS OF DISABILITY UNDER THE PROVISIONS OF THE SOCIAL SECURITY ACT, AS AMENDED.

SIGNATURE	TITLE	DATE
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Form SSA-4513 (6-2001)  
Destroy All Prior Editions

## Appendix C – SSA LETTER TO NEW YORK STATE ON DEFICIT REDUCTION LEAVE PAYMENTS

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### SOCIAL SECURITY

Office of the Regional Commissioner  
26 Federal Plaza Rm. 40-100  
New York, NY 10278

October 18, 2012

Ms. Elizabeth Berlin  
Executive Deputy Commissioner  
Office of Temporary and Disability Assistance  
New York State  
40 North Pearl Street  
Albany, New York 12243

Dear Ms. Berlin:

I am writing regarding the payment of Deficit Reduction Leave (DRL) payments to Division of Disability Services (DDS) employees, pursuant to labor agreements New York State entered into with the Civil Service Employees Association (CSEA) and the Public Employees Federation (PEF). I recently became aware that such payments were already made to some DDS employees at the time of their separation from service. We want to inform you that SSA will not reimburse the DDS for the cost of any DRL payments.

We have concluded that the DRL payments to DDS employees are not reimbursable under relevant SSA regulations and guidelines. See 20 C.F.R. §§ 404.1626(a), 404.1602, 404.1626, 404.1633; Office of Management and Budget Circular A-87; POMS DI 39506.001, DI 39518.040. The DRL payments are being made, and will be made, for time that DDS employees spend out of the office, and not for services furthering the disability determination function. Such costs would not benefit SSA's mission in any way. Rather, DRL takes DDS employees away from this critical work.

In addition, DDS was required to seek and obtain SSA approval for these costs before incurring them. See 20 C.F.R. § 404.1626. Despite apparently incurring this cost, DDS has not sought or obtained approval from SSA.

In summary, SSA will not reimburse the DDS for the cost of the DRL payments. I am available, if you have any questions.

Sincerely,

Beatrice M. Disman  
Regional Commissioner

## Appendix D– AGENCY COMMENTS

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## SOCIAL SECURITY

### MEMORANDUM

**Date:** April 7, 2015

**To:** Patrick P. O'Carroll, Jr.  
Inspector General

**From:** Regional Commissioner  
New York

**Subject:** Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees (A-02-15-25036)

The New York Region appreciates the opportunity to comment on the draft report to determine the amount of Deficit Reduction Leave (DRL) payments New York State paid to Division of Disability Determinations employees and claimed as a cost of determining disabilities for the Social Security Administration.

We concur with both the DRL payment amounts cited in the audit findings and the audit conclusion.

Please direct any questions or concerns regarding this matter to [Joseph Cafaro](#), Acting Center Director, at [REDACTED], or [Susan Palais](#), Disability Program Administrator in the Center for Disability Programs at [REDACTED].

/s/

Frederick M. Maurin

# Appendix E – OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE COMMENTS

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ANDREW M. CUOMO  
Governor

## Office of Temporary and Disability Assistance

SHARON DEVINE  
Executive Deputy Commissioner

April 3, 2015

Patrick P. O'Carroll, Jr.  
Inspector General  
Office of the Inspector General  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235-0001

Dear Mr. O'Carroll:

This letter is in response to your draft report, "Deficit Reduction Leave Payment to New York State Division of Disability Determination Employees (A-02-15-25036)" dated February 11, 2015. New York State (NYS) agrees with the amounts, numbers and dates set forth in the Findings sections of the report. As the sole stated objective of the Office of the Inspector General (OIG) review was to determine the amount of Deficit Reduction Leave (DRL), these findings are acceptable. Determination of whether OTDA should be reimbursed by the Social Security Administration (SSA) for these payments is a separate and distinct issue from this audit. OTDA reserves the right to address DRL reimbursability with SSA.

Thank you for the opportunity to respond to the draft report. We would appreciate it if our response is included in its entirety as an appendix to the final report.

Sincerely,

Kevin Kehmna, Director  
Bureau of Audit and Quality Improvement

cc: Sharon Devine  
Nancy Maney  
Linda Glassman  
Krista Rock  
Wilma Brown-Phillips  
Valerie Boyd

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40 North Pearl Street, Albany, NY 12243-0001 | [www.otda.ny.gov](http://www.otda.ny.gov)

## Appendix F – MAJOR CONTRIBUTORS

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Tim Nee, Director, New York Audit Division

Christine Hauss, Audit Manager

Vincent Huang, Program Analyst



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