



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Interim Benefits Paid After a
Disability Claim is Denied

A-02-18-50543 | September 2018

MEMORANDUM

Date: September 13, 2018

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Interim Benefits Paid After a Disability Claim is Denied (A-02-18-50543)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration stopped paying interim benefits timely after it denied a disability claim.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

Interim Benefits Paid After a Disability Claim is Denied

A-02-18-50543



September 2018

Office of Audit Report Summary

Objective

To determine whether the Social Security Administration (SSA) stopped paying interim benefits (IB) timely after it denied a disability claim.

Background

SSA issues IB payments to Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) claimants when (1) administrative law judges' (ALJ) disability decisions are favorable to the claimants and (2) the Appeals Council initiates review of the ALJ decisions but does not issue final decisions within 110 days of the date of the ALJ decisions. SSA will continue these payments until it issues a final decision. SSA stops paying IB under OASDI the month before the month in which the Agency issues a final decision and SSI the month SSA issues a final decision. SSA's Office of Appellate Operations (OAO) should notify the Office of Operations when a final decision has been made so it can stop the IB payments.

We identified and reviewed the cases of 491 claimants who received (1) a favorable ALJ decision, (2) an Appeals Council remand of the favorable ALJ decision, and (3) an unfavorable decision or dismissal because of the remand in Fiscal Years 2010 through 2016.

Findings

SSA did not always stop paying IB payments timely and prematurely stopped paying some IB payments. In total, SSA stopped paying IB payments to 290 of the 491 claimants either before or after the Agency's final decision date, improperly paying them \$2,142,834.

IB payments, including those released after a final decision, cannot be charged as overpayments unless they were fraudulently obtained. SSA should not record the IB payments as overpayments or try to collect these funds. However, SSA recorded 20 overpayments for IB payments that did not appear to be fraudulently obtained.

After SSA reviews the ALJs' decision and issues an unfavorable decision, SSA's OAO waits until the end of a 60-day appeal period to notify the Office of Operations that it should stop IB payments. We asked SSA's Office of the General Counsel whether this practice adhered to policy, and it confirmed it did. However, 177 claimants received an additional \$308,479 in IB payments during the 60-day appeals period without appealing SSA's unfavorable decisions.

Recommendations

We recommend that SSA:

1. Review and take appropriate actions to correct the cases we determined were not accurately processed.
2. Reassess its policy to stop IB payments after the 60-day appeals period. SSA can stop payments after it makes its decision and restart IB payments should a claimant file a timely appeal.

SSA agreed with our recommendations.

TABLE OF CONTENTS

Objective	1
Background	1
Results of Review	2
Timeliness of IB Payment Stoppage	3
OASDI IB Payments	4
SSI IB Payments	4
Non-payment Errors	5
Policy Interpretation for Stopping Payments	5
Conclusions	5
Recommendations	6
Agency Comments	6
Appendix A – Scope and Methodology	A-1
Appendix B – Agency Comments	B-1

ABBREVIATIONS

ALJ	Administrative Law Judge
IB	Interim Benefits
OASDI	Old-Age, Survivors and Disability Insurance
OAO	Office of Appellate Operations
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) stopped paying interim benefits (IB) timely after it denied a disability claim.

BACKGROUND

SSA issues IB payments to Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) claimants if an attorney advisor's or administrative law judge's (ALJ) disability decision favors the claimant and the Appeals Council initiates review of the ALJ decision but does not issue a final decision within 110 days of the date of the ALJ decision.¹ SSA continues payments until it issues a final decision.² For OASDI benefits, IB payments end the month before the month of the final decision.³ For SSI payments, IB payments end the month of the final decision.⁴

The Appeals Council can make the final decision or it can remand the case to an ALJ.⁵ If the claimant disagrees with an ALJ's decision, he or she can appeal the ALJ's decision to the Appeals Council.⁶ If the Appeals Council makes an unfavorable decision, the claimant can file a civil action by filing a complaint with the U.S. District Court.⁷

Per SSA, if SSA's new final decision is favorable, the effectuating component receives the automatic alert it receives in all favorable decisions. The Office of Operations then stops the IB payments and begins the claimants' regular benefit payments.⁸ If SSA's new final decision is unfavorable, SSA's Office of Appellate Operations (OAO) sends the Office of Operations a stop-payment order.⁹

¹ *Social Security Act*, 42 U.S.C. §§ 423 (h)(1) and 1383(a)(8)(A) (2016); 20 C.F.R. §§ 404.969(d) (govinfo.gov 2018) and 416.1469(d) (govinfo.gov 2018); and SSA, POMS, DI 42010.205, A (November 07, 2016), SI 02007.001, A (January 11, 2018).

² SSA, POMS, DI 42010.230, A and B (October 17, 2017); SI 02007.001, D (January 11, 2018).

³ SSA, POMS, DI 42010.205, C.2 (November 07, 2016).

⁴ SSA, POMS, SI 02007.001, A (January 11, 2018).

⁵ SSA, POMS, GN 03106.036, B.3 (November 3, 2017).

⁶ SSA, POMS, GN 03101.001, B.3 (July 25, 2014).

⁷ SSA, POMS, GN 03106.005 (May 22, 2002).

⁸ SSA, POMS, DI 42010.230, A (October 17, 2017); SI 02007.001, D (January 11, 2018).

⁹ SSA, POMS, DI 42010.230, B (October 17, 2017) and SI 02007.001, D (January 11, 2018). We reviewed SSA's eView and Paperless System. The electronic files did not always have evidence of the stop orders. Since the Paperless System has different retention indicators for the electronic action control records, we did not consider the absence of the stop order as an error.

According to OAO, when SSA issues unfavorable decisions for a claimant receiving IB payments, following a remand from the Appeals Council on its own motion review, OAO waits until the end of a 60-day appeals period to send the stop-payment order to the Office of Operations. Claimants can request reviews of SSA's unfavorable decisions within those 60 days.¹⁰ According to OAO, the decision becomes administratively final if the claimant does not file an appeal within that period and the Appeals Council does not review on its own motion. If, however, the claimant files an appeal, the decision would not be the Commissioner's final decision until the Appeals Council denies or dismisses the request for review, or grants review or takes own motion review to issue its own decision or to remand the matter to an ALJ. If the Appeals Council remands the case, the claimant continues to receive IB payments because no final decision has been issued.

In an April 2017 review, we found instances where SSA paid IB after it denied a disability claim.¹¹ In that report, we noted we would determine the extent of such cases through another audit. Using the Office of Hearing Operations Case Processing and Management System data from Fiscal Years 2010 through 2016, we identified 491 claimants who received (1) a favorable ALJ decision, (2) an Appeals Council remand of the favorable ALJ decision, and (3) an unfavorable decision or dismissal because of the remand.

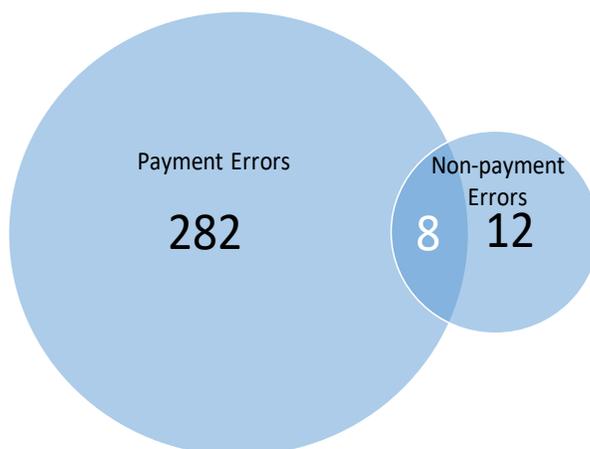
RESULTS OF REVIEW

SSA did not always stop paying IB payments timely and prematurely stopped paying some IB payments. In total, SSA stopped paying IB payments to 290 of the 491 claimants either before or after the Agency's final decision date, improperly paying them \$2,142,834. We also identified non-payment errors in 20 cases where SSA recorded IB payments as overpayments when it should not have. Eight cases had both payment and non-payment errors (see Figure 1).

¹⁰ SSA, *POMS*, GN 03104.100, B.4 (July 9, 2018) and 03106.005 (May 22, 2002).

¹¹ SSA, OIG, *Accuracy of Critical Payment System Payments*, A-02-17-34020, p. 9 (April 2017).

Figure 1: Interim Benefit Errors in 491 Appeals Reviewed



After SSA reviews the ALJs’ decision and issues an unfavorable decision, SSA’s OAO waits until the end of a 60-day appeal period to notify the Office of Operations that it should stop IB payments. SSA’s Office of the General Counsel confirmed this practice adhered to policy. However, 177 claimants received an additional \$308,479 in IB payments during the 60-day appeals period without appealing SSA’s unfavorable decisions.

Timeliness of IB Payment Stoppage

SSA stopped paying IB payments to 290 of the 491 claimants either before or after the Agency’s final decision date, improperly paying them \$2,142,834. Specifically, it improperly paid 130 of the 491 claimants \$683,592 in IB payments after the date of the Agency’s final decisions and stopped IB payments to another 160 claimants before the date of the final decisions, thereby underpaying them \$1,459,242.

The policy on when IB payments should stop differs slightly for OASDI and SSI cases.¹² We found payment errors in both types of cases (see Table 1).

Table 1: Payment Errors by Program

	OASDI	SSI	Total
Stopped After Final Decision	116	14	130
Stopped Before Final Decision	117	43	160
Total	233	57	290

¹² SSA, POMS, DI 42010.205, C.2 (November 07, 2016) and SI 02007.001, A (January 11, 2018).

OASDI IB Payments

SSA should stop paying IB payments under OASDI the month before the month in which the Agency issues a final decision.¹³ In 233 OASDI cases, SSA did not stop payments timely, leading to \$1,772,140 in improper payments.

SSA continued paying 116 of the 233 OASDI claimants after the final decision dates. Of the 116 cases, the improper payments, totaling \$94,850, were returned or not negotiated in 9 cases.¹⁴ Of the remaining 107 cases, SSA paid \$619,714 in IB payments after the final decision date. SSA paid 21 of the 107 claimants for 1 year or longer after the final decision date.

Conversely, SSA improperly stopped 117 of the 233 payments before the month before a final decision was issued. In these cases, SSA should pay the claimants the difference from the month benefits were stopped through the month before the month the final decision was issued. SSA underpaid these claimants \$1,152,426.

In unfavorable final decisions, SSA cannot consider IB payments as overpayments unless the benefits were fraudulently obtained, even if the payments are not stopped timely.¹⁵ Therefore, SSA is unlikely to recover \$619,714 in improper payments paid after SSA's final decisions.

SSI IB Payments

SSA should stop paying IB under SSI the month it issues a final decision.¹⁶ In 57 SSI cases, SSA did not stop paying IB the month of the final decision, which led to \$370,695 in improper payments.

SSA continued paying 14 of the 57 claimants \$63,878 after it issued final decisions. Similar to the OASDI payments, SSA is unlikely to recover the SSI funds unless fraud was involved.¹⁷ SSA paid 2 of the 14 SSI claimants for 1 year or longer after the final decision date. As of August 2018, SSA was still paying one claimant's IB payments.¹⁸

Conversely, SSA improperly stopped 43 of the 57 SSI IB payments before the month of a final decision. In these cases, SSA should pay the claimants the difference from the month payments

¹³ SSA, *POMS*, DI 42010.205, C.2 (November 07, 2016).

¹⁴ The \$94,850 was not included in the improper payment total of \$1,772,140 because there was no net improper payment error in these cases.

¹⁵ SSA, *POMS*, DI 42010.205, E (November 07, 2016).

¹⁶ SSA, *POMS*, SI 02007.001, A (January 11, 2018).

¹⁷ SSA, *POMS*, SI 02007.001, A (January 11, 2018).

¹⁸ The final decision date for this claimant's case was August 23, 2013.

were stopped through the month of the final decisions. SSA underpaid these claimants \$306,817.

Non-payment Errors

SSA should not record IB payments, including those released after the final decision date, as overpayments or try to collect these funds.¹⁹ However, SSA improperly recorded IB payments, totaling \$385,642, as overpayments to 20 individuals.²⁰ In 6 of the 20 cases, SSA recorded IB payments issued after the final decision date as overpayments. In another nine cases, SSA stopped payments timely but still recorded an overpayment. Finally, SSA recorded overpayments in five cases where we determined it underpaid claimants.

In February 2018, we advised SSA of the 20 cases. As of June 2018, the Agency had deleted 2 of the overpayments from its records—leaving 18 overpayments. Also, SSA started collecting the overpayments in four cases.

Policy Interpretation for Stopping Payments

After SSA issues an unfavorable decision, OAO waits until the end of a 60-day appeal period to notify the Office of Operations it should stop IB payments. SSA's Office of the General Counsel confirmed this practice adhered to policy of stopping IB payments after a final decision. However, 177 claimants received an additional \$308,479 in IB payments during the 60-day appeals period without appealing SSA's unfavorable decisions.

CONCLUSIONS

In some cases, SSA underpaid claimants because it stopped IB payments too early. In other cases, SSA overpaid claimants because it did not stop payments timely. While SSA must pay the 160 claimants whose IB payments it stopped too early, it should not collect the IB payments it issued after the final decision dates because IB payments generally cannot be charged as overpayments. However, we found that SSA improperly established overpayments on the records of 20 claimants for IB payments. SSA should remove these overpayments from the claimants' records unless it determines fraud was involved. Also, SSA was improperly paying one SSI claimant IB payments nearly 5 years after it made its final decision. SSA should stop these payments.

OAO waits 60 days after unfavorable decisions before requesting that the IB payments be stopped. We found this practice allowed 177 claimants to receive \$308,479 more in benefits during this waiting period even though they did not request further appeals. We find this policy

¹⁹ SSA, *POMS*, DI 42010.205, E (November 07, 2016), SI 02007.001, A (January 11, 2018).

²⁰ The recorded overpayments were either in a protest status or the claimants' records were in a non-payment status.

to be problematic because it allows continued payments to claimants who do not file an additional appeal, and those payments are not recoverable by SSA.

RECOMMENDATIONS

We recommend SSA:

1. Review and take appropriate actions to correct the cases we determined were not accurately processed.
2. Reassess its policy to stop IB payments after the 60-day appeals period. SSA can stop payments after it makes its decision and restart IB payments should a claimant file a timely appeal.

AGENCY COMMENTS

SSA agreed with our recommendations. The Agency's comments are included in Appendix B.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable Federal laws and regulations as well as sections of the Social Security Administration’s (SSA) policies and procedures.
- Used Case Processing and Management System data from Fiscal Years 2010 through 2016 to identify claimants who received (1) a favorable ALJ decision, (2) an Appeals Council remand of the favorable ALJ decision, and (3) an unfavorable decision or dismissal because of the remand. We used SSA’s eView to verify the dates of the documents.
- Extracted Payment History Update System and Supplemental Security Record payment history data to determine which claimants received Critical Payment System or force payments, which indicated they received interim benefits (IB).
- Identified 373 Old-Age, Survivors and Disability Insurance (OASDI) and 118 Supplemental Security Income (SSI) claimants by combining the Case Processing and Management System data with Payment History Update System and payment history information where a final decision was issued.
- Compared the final decision date to the final IB payment. For OASDI, IB payments end the month before a final decision is issued.¹ For SSI, IB payments end the month of the final decision.² We applied the Office of Appellate Operations’ 60-day waiting period plus a 15-day grace period to allow SSA operations time to stop the IB payments.
- Calculated improper payments based on the comparison of SSA’s final decision date to the final IB payment date. We also credited any returned or non-negotiated payments. For cases where IB payments stopped too soon, the underpayment amount is the total from the point where the benefits stopped through the appropriate end month. We added cost-of-living adjustments and accounted for any possible SSI windfall offset for the applicable months in our scope. For payments that continued beyond the final decision, we calculated the improper payment total by first applying the Office of Appellate Operations’ 60-day waiting period and a 15-day grace period to the final decision date then totaling all payments after that date. SSA cannot charge overpayments for IBs that were not stopped timely, unless they were fraudulently obtained.³

¹ SSA, *POMS*, DI 42010.205, C.2 (November 07, 2016).

² SSA, *POMS*, SI 02007.001, A (January 11, 2018).

³ *Social Security Act*, 42 U.S.C. §§ 423 (h)(1), 1383(a) (8)(A) (2016).

- Noted cases where the Office of Appellate Operations sent operations a termination notice to cease IB payments or when SSA had initiated follow-up to determine whether the Commissioner issued a final decision.
- Provided SSA the IB cases we identified as errors for its review. SSA stated it reviewed 10 OASDI and 7 SSI cases and provided us its comments, which we considered when we reached our final conclusions on these cases.
- Consulted the Offices of the General Counsel to SSA and Counsel to the Inspector General concerning policy on when IB payments end.

We determined the computer-processed data were sufficiently reliable for our intended use. We conducted tests to determine the completeness and accuracy of the data. These tests allowed us to assess the reliability of the data and achieve our audit objective.

We performed our audit in New York, New York, between February and June 2018. The entities reviewed were the Offices of the Deputy Commissioner for Operations and Appellate Operations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – AGENCY COMMENTS



Social Security

MEMORANDUM

Date: September 10, 2018

Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

Stephanie Hall

From: Stephanie Hall
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Interim Benefits Paid After a Disability Claim is Denied" (A-02-18-50543) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

Attachment

SSA COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT, “INTERIM BENEFITS PAID AFTER A DISABILITY CLAIM IS DENIED” (A-02-18-50543)

GENERAL COMMENTS

Since 2011, the pre-effectuation reviews conducted by the Appeals Council on its own motion have significantly improved the quality of the disability hearing process and our ability to identify policies that may need clarification or modification. We will continue to closely monitor the processing of pre-effectuation reviews to minimize the time during which interim benefits are paid, and will reevaluate our policy as recommended.

Recommendation 1

Review and take appropriate actions to correct the cases we determined were not accurately processed.

Response

We agree.

Recommendation 2

Reassess its policy to stop interim benefit (IB) payments after the 60-day appeals period. SSA can stop payments after it makes its decision and restart IB payments should a claimant file a timely appeal.

Response

We agree. Any changes to the policy must fall under the authority of the current statutory and regulatory provisions or must be accomplished through an amendment of the statute or through notice and comment rulemaking.

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