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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**CONTROLS OVER PAYMENTS  
MADE TO CLAIMANT REPRESENTATIVES  
AT THE HEARINGS LEVEL**

**December 2012**

**A-05-12-11239**

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**AUDIT REPORT**

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## **Mission**

**By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.**

## **Authority**

**The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:**

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

**To ensure objectivity, the IG Act empowers the IG with:**

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

## **Vision**

**We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.**

**MEMORANDUM**

**Date:** December 4, 2012

**Refer To:**

**To:** The Commissioner

**From:** Inspector General

**Subject:** Controls over Payments Made to Claimant Representatives at the Hearings Level (A-05-12-11239)

**OBJECTIVE**

Our objectives were to (1) review controls surrounding payments made to claimant representatives at the hearings level and (2) determine whether the Social Security Administration (SSA) properly approved, paid, and reported the related payments. We also examined sample case characteristics at the hearings level.

**BACKGROUND**

Individuals claiming Social Security benefits or Supplemental Security Income (SSI) payments may appoint a qualified individual as a representative to act on his/her behalf in matters before the Agency, including the Office of Disability Adjudication and Review (ODAR).<sup>1</sup> An appointed representative may seek SSA's authorization for the fee he/she wants to charge and collect by following one of two mutually exclusive processes: (1) a fee agreement filed before the favorable decision is rendered or (2) a fee petition, generally filed when services have ended.<sup>2</sup> Claimants must sign the fee agreement but are not required to sign the fee petition.

In general, SSA must authorize any fees payable for services performed by an appointed representative. The fee specified in the agreement cannot exceed the lesser

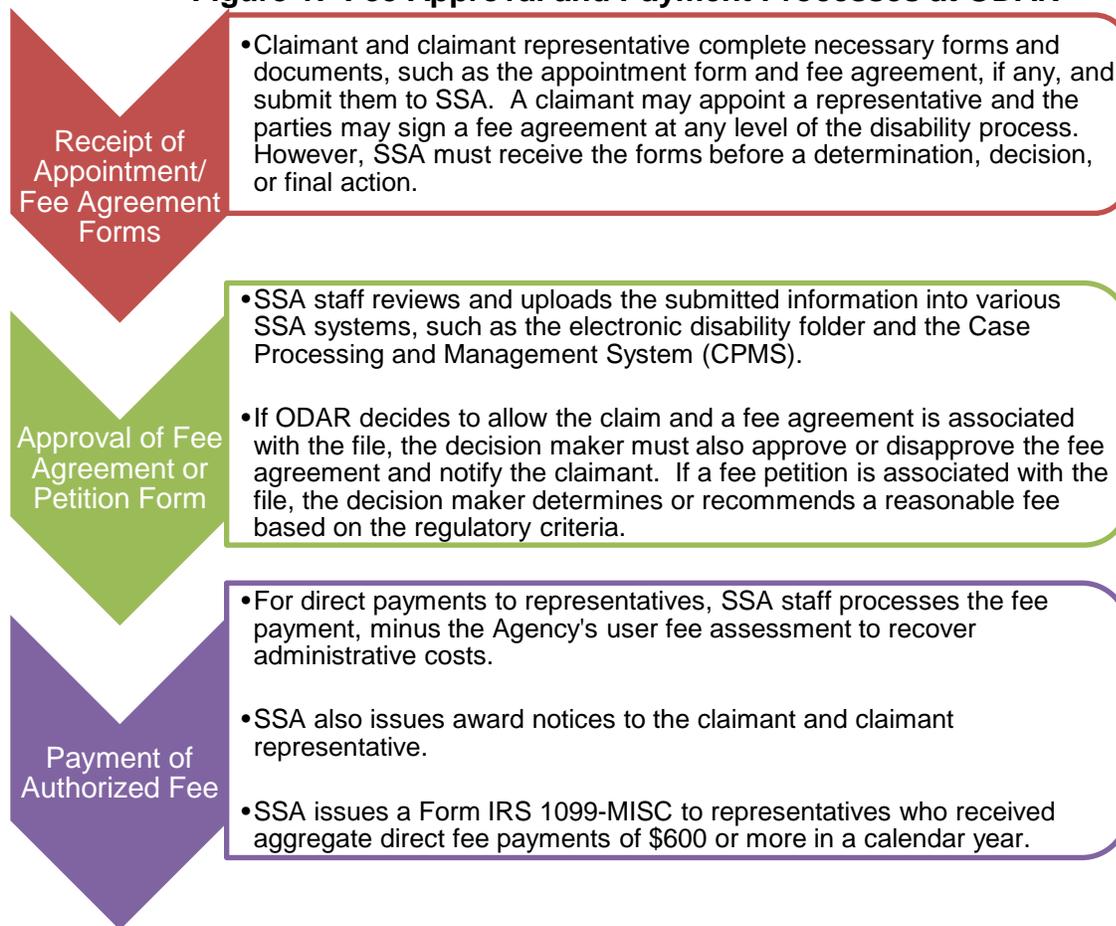
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<sup>1</sup> *Social Security Act (Act)* §§ 206 and 1631(d)(2), 42 U.S.C. §§ 406 and 1383(d)(2). Claimants must sign and file a Form SSA-1696-U4, *Appointment of Representative*, or equivalent written statement constituting proof of appointment. Please see Appendix B for an exhibit of the Form.

<sup>2</sup> SSA, POMS, GN 03920.001 – *SSA's Fee Authorization Processes* (effective date August 31, 2009). Unlike fee agreements, which are contracts between the claimant and representative, a representative may use Form SSA-1560-U4, *Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration*, or equivalent written document to request SSA's approval. Please see Appendix C for further detail on the fee authorization and payment processes.

of 25 percent of the total amount of past-due benefits or \$6,000.<sup>3</sup> There is no maximum fee under the fee petition process. An appointed representative may also request that the Agency pay the authorized fee directly out of a claimant's past-due benefits if the appointed representative is an attorney or a non-attorney who has met certain prerequisites. SSA will withhold the lesser of 25 percent or \$6,000 of the claimant's past-due benefits if a fee payment is approved. Figure 1 highlights major aspects of the fee authorization and payment processes.

**Figure 1: Fee Approval and Payment Processes at ODAR**



For this review, we selected a random sample of 150 closed hearing cases (50 allowances, 50 denials, and 50 dismissals) for Fiscal Year (FY) 2011 and reviewed the controls and documentation associated with each case. Please see Appendix D for further detail on our scope and methodology.

<sup>3</sup> *Social Security Act* §§ 206(a)(2)(A) and 1631(d)(2)(B), 42 U.S.C. §§ 406(a)(2)(A) and 1383(d)(2)(B). For fee agreements approved on or after June 22, 2009, the maximum fee amount is \$6,000.

## RESULTS OF REVIEW

In our review of a random sample of 150 closed hearing cases from FY 2011, we found that while SSA staff was generally following controls pertaining to the authorization and payment of fees to claimant representatives, we identified one issue pertaining to fee approval as well as instances of excessive user fee assessments and claimant representative payments not reported to the Internal Revenue Service (IRS). For instance, we found that all but one of the allowed cases involving a claimant representative contained the necessary appointment and fee approval documents when ODAR decided the case. In the one exception, the claimant representative's appointment and fee agreement documents were uploaded to SSA's systems after the ODAR decisionmaker allowed the claim, and we could find no evidence the decisionmaker approved the fee agreement before SSA paid the claimant representative a fee. In addition, SSA charged an excessive assessment fee in 2 of the 41 cases directly paid by the Agency. Moreover, we found SSA did not report direct payments related to 4 of the 41 cases to the IRS via Forms 1099-MISC. Finally, while reviewing the 150 hearing cases, we also identified some characteristics related to claimant representation. For example, dismissals had the lowest rate of representation among all dispositions. In addition, about 58 percent of claimants had appointed representatives before SSA processed the claims at the hearings level.

## REVIEW OF SAMPLE CASES

We reviewed a sample of 150 closed hearing cases from FY 2011—50 allowances, 50 denials, and 50 dismissals (see Table 1)—and found that adjudicators and staff were generally processing these cases consistent with established controls. SSA directly paid about \$161,813 to the claimant representatives associated with the 50 allowances in our sample, with the payments ranging from \$818 to \$6,917.<sup>4</sup> In Table 2, we outline the various steps we performed on each case to ensure all the necessary conditions were met before payments to the related claimant representatives were made, if appropriate.<sup>5</sup>

**Table 1: Types of Dispositions and Related Counts in FY 2011**

Hearing Disposition Type	Total Population	OIG Sample Size
Allowances	446,367	50
Denials	236,181	50
Dismissals	111,015	50

<sup>4</sup> SSA withheld about \$3,462 in user fee assessments to cover its administrative costs, charging between \$54.98 and \$166 per case. We discuss these user fees later in the report. We plan to conduct a more detailed review of user fee assessments in a future audit.

<sup>5</sup> See Appendix E for the sample tests and results.

**Table 2: Key Controls Reviewed Related to the Approval, Payment, and Reporting Processes**

Tests
<b>Test 1:</b> Appointment Form was Properly Prepared and Signed by Claimant and Claimant Representative
<b>Test 2:</b> Fee Agreement or Fee Petition was Properly Prepared
<b>Test 3:</b> Claimant Representative was Eligible for Direct Payment
<b>Test 4:</b> Appointed Claimant Representative Attended the Hearing
<b>Test 5:</b> Fee Agreement or Fee Petition was Properly Approved by Decisionmaker
<b>Test 6:</b> Approved Fees were the Lesser of 25 percent of Past-Due Amount or \$6,000 Per Fee Agreement or the Amount Per the Fee Petition
<b>Test 7:</b> SSA Properly Withheld Assessment on Direct Payment
<b>Test 8:</b> SSA Issued 1099-MISC Tax Form to Direct Pay Claimant Representative Recording the Payment Amount

### Approval and Payment of Fees

We found 1 case among the 50 allowance cases where SSA staff issued payments totaling \$1,818 to the claimant representative even though the decisionmaker on the case, a senior attorney adjudicator (SAA),<sup>6</sup> had not approved the fee agreement. According to SSA policy, the SAA should have approved the fee agreement before any fee payment to the claimant representative, whether paid by SSA or the claimant.<sup>7</sup> SSA policy also states, “Unless the claimant or representative submits a fee agreement before the date SSA makes the first favorable decision . . . SSA assumes the representative will either file a fee petition or waive a fee.”<sup>8</sup>

We found that field office personnel uploaded the claimant representative’s appointment form and fee agreement to SSA’s systems after the SAA allowed the case. While the SAA decided to allow the case on April 14, 2011, the appointment and fee agreement were uploaded on April 18, 2011. In addition, the signature page was missing from the fee agreement, and neither the appointment form nor the fee agreement had a date associated with the signatures.<sup>9</sup> Since this case was an OTR decision, the SAA did not

<sup>6</sup> Both administrative law judges (ALJ) and SAAs can decide cases. However, SAAs can only issue on-the-record (OTR) allowances.

<sup>7</sup> SSA, POMS, GN 03940.010 E – *Receipt of the Fee Agreement in the Field Office and Processing Center* (effective date September 30, 2011). POMS states that when the SSA staff receives a fee agreement after SSA had made a favorable decision that the staff needs to “. . . determine who made the decision on the claim; and refer the fee agreement to the decision maker for a determination . . . .”

<sup>8</sup> SSA, POMS, GN 03940.001 A – *Fee Agreement Process – Overview* (effective date February 7, 2011).

<sup>9</sup> We reviewed additional fee agreements related to this claimant representative and found that he was using the same two-page agreement in each case, with the second page containing the necessary signatures and dates. Since the document in the electronic disability folder contained only the first page, it is possible SSA failed to scan and upload the second page.

conduct a hearing with the claimant or claimant representative.<sup>10</sup> At the time of our review, CPMS did not reflect any information pertaining to the claimant representative and instead showed the claimant as unrepresented. We referred this case to ODAR for further review so it could determine whether additional documentation and approvals were needed for the payment to the claimant representative. Agency staff indicated that the SAA handled the situation correctly since there was no fee agreement in the record when the favorable decision was issued. SSA also agreed the claimant representative payment was made in error since no fee agreement had been approved for this case.

### User Fee Assessments

We found two instances involving fee agreements where SSA assessed the claimant representatives excessive user fees. Per Agency policy, the assessment on each case was limited to the lesser of 6.3 percent of the claimant representative's payment or \$83.<sup>11</sup> In cases involving fee agreements, the assessments are the same regardless of the number of claimant representatives because the fees resulting from the approved fee agreements are split into equal shares.<sup>12</sup> In the first case in question, SSA assessed \$166 in user fees on a \$5,834 payment split between two attorneys, with each attorney receiving \$2,917 after subtracting an \$83 user fee from each payment. In the second case, SSA assessed \$104 in user fees instead of \$83. We were informed by SSA staff that the \$166 user fee most likely related to a system coding error where the claimant appeared to have only one claimant representative. The \$104 user fee, paid over a 4-month period, was associated with concurrent benefits involving three payments to a single claimant representative from two programs.

### Tax Reporting

We found that SSA did not inform the IRS of direct payments totaling \$17,980<sup>13</sup> for 4 of the 41 cases (about 10 percent) via the 1099-MISC process. For instance, we found one attorney who received a payment of \$5,917 in February 2011, but the payment amount was not included on the Form 1099-MISC. Staff in the Office of Retirement and Survivors Insurance Systems (ORSIS) explained that the Agency did not issue Forms

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<sup>10</sup> Our review of the 50 allowances determined that 39 cases (78 percent) involved the claimant or claimant representative, if represented, attending a hearing before an ALJ, while the remaining 11 cases (22 percent) were OTR decisions by an ALJ or SAA.

<sup>11</sup> SSA, POMS, GN 03920.019 A – *Assessment on Representatives Who Receive Direct Payment* (effective date January 26, 2012). The user fee assessment is capped at a flat-rate dollar amount or 6.3 percent of the fee payment, whichever is lower. The flat-rate dollar amount was \$83 effective December 1, 2008 and increased to \$86 effective December 1, 2011.

<sup>12</sup> For fee petitions, the user fee is calculated based on the pro rata share of each representative's payment. See SSA POMS, GN 03920.019.E – *Assessment on Representatives Who Receive Direct Payment* (effective date January 26, 2012).

<sup>13</sup> This \$17,980 represents about 11 percent of the \$161,813 paid to the 41 direct-pay claimant representative cases in our sample.

1099-MISC in FY 2011 to report approximately \$184 million of the \$1.7 billion<sup>14</sup> in fee payments, or about 11 percent of total payments to claimant representatives. SSA was unable to provide documentation to support that the four payments in question were included in the 1099-MISC process. According to ORSIS staff, Forms 1099-MISC were not issued to claimant representatives for a number of reasons, including (1) payments did not contain the representative's Social Security number, which SSA did not require for cases represented before January 1, 2007;<sup>15</sup> (2) the claimant representative had a foreign address; and (3) SSA reissued the payment.<sup>16</sup>

## CHARACTERISTICS AMONG SAMPLE CASES

We reviewed the 150 sample cases to identify trends related to (1) rate of representation, (2) fee requests, (3) direct payment requests, and (4) level of claimant representative appointment.

### Represented Claimants

We found that 109 of the 150 (73 percent) claimants in our sample appointed a representative, with allowed cases having a higher rate of representation than denied or dismissed cases<sup>17</sup> (see Figure 2). Moreover, attorneys (82 percent) rather than non-attorneys (18 percent) performed the majority of the representations.

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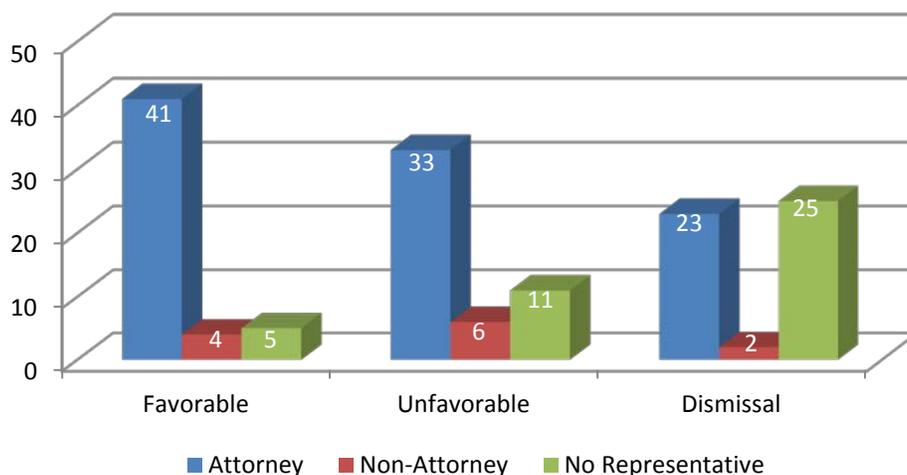
<sup>14</sup> In FY 2011, SSA paid \$1.7 billion in fee payments to claimant representatives providing services at all levels of the disability process. This amount is net of the administrative user fees withheld from the fee payments, which totaled about \$37 million in FY 2011.

<sup>15</sup> SSA, POMS, GN 03920.017 B. 3 – *Payment of Representative's Fee* (effective date July 25, 2012). POMS states effective January 1, 2007, a representative must be registered on the Agency's Appointed Representative Database to receive direct payment of authorized fees.

<sup>16</sup> We plan to conduct a separate audit on the 1099-MISC reporting process for claimant representatives.

<sup>17</sup> See Appendix F for characteristics of the denial and dismissal sample cases we noted in our review.

**Figure 2: Representation Among 150 Sample Cases (FY 2011)**



### Fee Requests

While 99 (91 percent) of the 109 cases with claimant representatives in our sample requested fees using fee agreements, 6 claimant representatives waived fees for their services, and 2 claimant representatives submitted fee petitions (see Table 3).<sup>18</sup>

**Table 3: Requested Fees Among 150 Sample Cases (FY 2011)**

Hearing Disposition Type	Claimants Represented	Waived Fees	Submitted Fee Agreements	Submitted Fee Petitions
Allowances	45	2	42	1
Denials <sup>1</sup>	39	3	33	1
Dismissals	25	1	24	0
<b>Total</b>	<b>109</b>	<b>6</b>	<b>99</b>	<b>2</b>

**Note 1:** For two sample unfavorable decision cases, the claimant representatives had not submitted a fee agreement or fee petition at the time of our review. SSA, POMS, GN 03920.001.C.3 – SSAs Fee Authorization Processes (effective date August 31, 2009), states that unless a representative files a fee agreement before the date SSA makes the first favorable determination or decision, the Agency presumes that he/she will either file a fee petition or waive a fee. In addition, ODAR staff indicated they did not pursue the fee agreements because fee agreements cannot be approved on denials and dismissals. According to ODAR management, ODAR staff is not required to follow up with a claimant representative to obtain a fee agreement.

<sup>18</sup> We plan to conduct a more detailed review of fee petitions in a future audit.

## Direct Payment Requests

Of the 101 claimant representatives in our sample who were requesting a fee, 99 (98 percent) requested SSA pay them directly (see Table 4). The two who did not request direct payment were non-attorneys who were not eligible for direct payment.<sup>19</sup>

**Table 4: Request for Direct Payment Among 150 Sample Cases (FY 2011)**

Hearing Disposition Type	Claimant Representatives Requesting Fees	Claimant Representatives Requesting Direct Payment
Allowances	43	41
Denials	34	34
Dismissals	24	24
<b>Total</b>	<b>101</b>	<b>99</b>

## Level of Claimant Representative Appointment

Of the represented claimants in our sample, we found that 63 (58 percent) of the 109 represented claimants had appointed representatives before their claim was processed at the hearings level. As shown in Table 5, in the majority of the allowed and dismissed cases, the claimants appointed representatives at the initial or reconsideration levels of the disability process. Among dismissals, 80 percent of the representatives were appointed before the hearings level, versus 58 percent of allowances and 44 percent of denials.

<sup>19</sup> On February 27, 2010, the *Social Security Disability Applicants' Access to Professional Representation Act of 2010* amended sec. 206 of the Act to permanently extend the fee withholding provisions to attorneys for Title XVI and those non-attorneys who qualify. See Pub. L. No. 111-142, 124 Stat. 38 (2010), as codified at 42 U.S.C. 406(e). These provisions had been temporarily established by sections 302 and 303 of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203, 118 Stat. 493, 519-521 (2004). To be eligible for direct payment of fees, a non-attorney representative must fulfill the following statutory requirements: (1) possess a bachelor's degree or at least 4 years of relevant professional experience and either a high school diploma or General Education Development certificate, (2) pass a written examination that tests knowledge of the relevant provisions of the Act and recent developments in Agency and court decisions affecting Titles II and XVI, (3) secure professional liability insurance or equivalent insurance, (4) pass a background check; and (5) demonstrate completion of relevant continuing education courses. The Act also allows SSA to assess a reasonable fee to defray administrative costs. Non-attorney applicants must pay the fee to complete their application package (Section 303(b) of the *Social Security Protection Act of 2004*, 118 Stat. 521, see also 76 FR 45184, 45185, July 28, 2011; and, 20 C.F.R. §§ 404.1717(a) and 416.1517(a)).

**Table 5: Claimant Representative Level of Appointment  
Among 150 Sample Cases  
(FY 2011)**

Level of Appointment	Allowed Cases	Denied Cases	Dismissed Cases	Total
Initial	10	7	10	27
Reconsideration	16	10	10	36
Hearing	18	22	5	45
Unknown <sup>1</sup>	1	0	0	1
<b>Total</b>	<b>45</b>	<b>39</b>	<b>25</b>	<b>109</b>

**Note 1:** Although CPMS reflected a claimant representative for one of the sample allowance cases, we could not locate a Form SSA-1696-U4 to determine at what level the claimant appointed the representative.

## CONCLUSION AND RECOMMENDATIONS

Our review of a random sample of 150 FY 2011 hearing dispositions disclosed that controls surrounding claimant representative payments at the hearing level generally resulted in the proper authorization and payment of fees to the claimant representatives, though we found one fee approval issue as well as user fee and the tax reporting issues. We found one instance where SSA paid a claimant representative without the proper fee authorization. In addition, we found two instances where SSA assessed the claimant representatives excessive user fees. Finally, we determined SSA did not report four payments made to claimant representatives to the IRS. We shared the specifics of all the sample case problems with Agency staff to assist in the resolution of the issues.

To improve controls over the claimant representative approval, payment, and reporting processes, we recommend SSA:

1. Review the two excessive claimant representative user fees from our sample cases and take the necessary actions to resolve these errors as well as improve the accuracy of future assessments.
2. Review the four claimant representative direct payments from our sample cases that SSA did not report to the IRS to improve future 1099-MISC tax reporting.

## AGENCY COMMENTS

SSA agreed with the recommendations. See Appendix G for the Agency's comments.

## OTHER MATTERS

During our review, we found management information issues that were outside the scope of our review or selected sample items that we thought warranted SSA management's attention.

While SSA maintains data on the volume and amount of direct payments to appointed claimant representatives, the Agency does not maintain comprehensive management information on claimant representative appointments and fee approvals at all levels – initial, reconsideration, and hearing and appeals.

The Appointed Representative Database houses identifiers on all claimant representatives who requested direct payment from SSA<sup>20</sup> to assist the Agency with the Form 1099-MISC process, though this database does not maintain information specific to claimant representatives who do not receive direct payment. SSA maintains this claimant-specific data and related claimant representative data in approximately 19 separate systems. According to Agency staff, SSA initiated a data migration project to place all of this information into one system, but the project was on hold at the time of our review. Without a comprehensive claimant representative database, the Agency is limited in its ability to produce data on the number of represented claimants, as well as the related fee agreements and fee petitions SSA approved or denied for claims adjudicated at any level.<sup>21</sup>

We also found issues with ODAR's ability to track fee petitions at the hearings level. ODAR staff stated limitations in CPMS prevented staff from making petition-related corrections after closing cases. At the time of our review, ODAR was developing a separate Fee Action Tracking System database to track fee petitions over \$10,000.<sup>22</sup> While this change will address the high value fee petitions processed at the regional level, it will not address fee petitions processed at the hearing office level.<sup>23</sup>



Patrick P. O'Carroll, Jr.

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<sup>20</sup> SSA, POMS, GN 03910.042 – *Forms 1099-MISC and Employer Registration* (effective date July 13, 2012).

<sup>21</sup> We plan to initiate a separate review of representation of claimants at the initial and reconsiderations levels, which will provide us with a fuller understanding of available data.

<sup>22</sup> SSA, POMS, GN 03920.001 B.1 – *SSA's Fee Authorization Processes* (effective date August 31, 2009). In a fee petition, SSA approves a "reasonable" fee (under 206(a)(1) of the *Act*) for the specific services provided. In determining a reasonable fee, SSA considers criteria the regulations prescribe.

<sup>23</sup> We plan to conduct a separate audit of the fee petition process.

# Appendices

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APPENDIX A – Acronyms

APPENDIX B – Form SSA-1694-U4 *Appointment of Representative*

APPENDIX C – Flowchart and Description of the Fee Approval, Payment, and Reporting Processes

APPENDIX D – Scope and Methodology

APPENDIX E – Sample Testing Methodology and Results

APPENDIX F – Characteristics of Fiscal Year 2011 Denial and Dismissal Sample Cases

APPENDIX G – Agency Comments

APPENDIX H – OIG Contacts and Staff Acknowledgments

### Acronyms

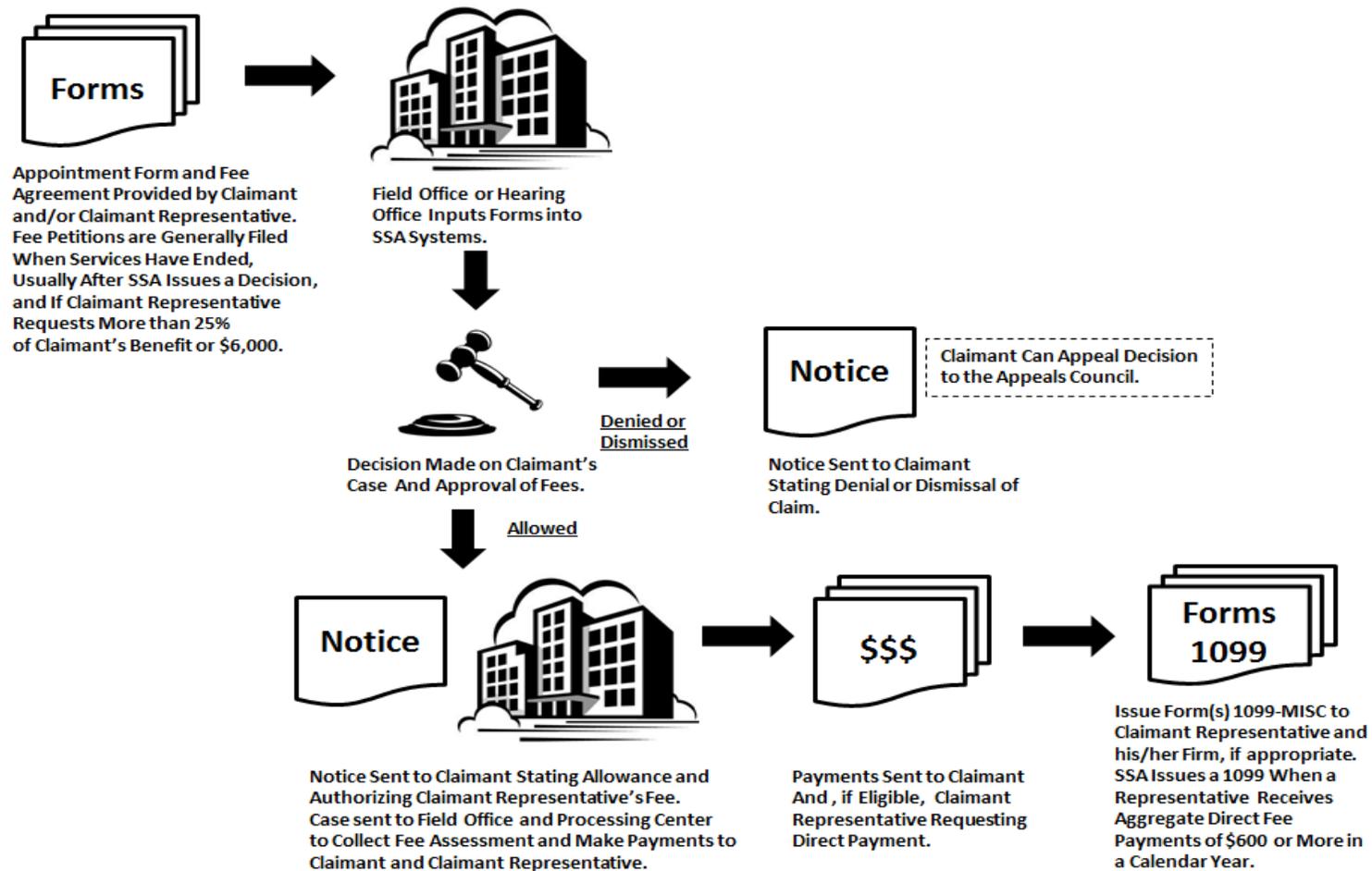
Act	<i>Social Security Act</i>
ALJ	Administrative Law Judge
CFRMS	Claims File Records Management
CPMS	Case Processing and Management System
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law Manual
IRS	Internal Revenue Service
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
ORSIS	Office of Retirement and Survivors Insurance Systems
OTR	On-the-Record
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SAA	Senior Attorney Adjudicator
SPS	Single Payment System
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

### *Forms*

HA-501-U5	<i>Request for Hearing by Administrative Law Judge</i>
IRS 1099-MISC	<i>Miscellaneous Income</i>
SSA-1560-U4	<i>Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration</i>
SSA-1694	<i>Request for Business Entity Taxpayer Identification</i>
SSA-1695-F3	<i>Identifying Information for Possible Direct Payment of Authorized Fees</i>
SSA-1696-U4	<i>Appointment of Representative</i>
SSA-1699	<i>Registration for Appointed Representative Services and Direct Payment</i>



# Flowchart and Description of the Fee Approval, Payment, and Reporting Processes



The following documents are the principal forms SSA, claimants, and claimant representatives use to provide information related to fee requests and payments.

- Form SSA-1694, *Request for Business Entity Taxpayer Identification*: Form used to provide SSA information about a claimant representative's employer.
- Form SSA-1695-F3, *Identifying Information for Possible Direct Payment of Authorized Fees*: A claimant representative must submit this form in connection with each claimant he/she represents to request direct payment of fees.
- Form SSA-1696-U4, *Appointment of Representative*: Form used to appoint a representative. The claimant must sign the Form, and the claimant representative should indicate whether he/she is requesting direct payment or waiving fees.
- Form SSA-1699, *Registration for Appointed Representative Services and Direct Payment*: Form used to register a claimant representative seeking fees via direct payment.
- Form SSA-1560-U4, *Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration*: Form used when a claimant representative petitions for a fee after his/her services were completed.
- Fee agreement: A contract between the claimant and claimant representative.
- Internal Revenue Service (IRS) Form 1099-MISC, *Miscellaneous Income*: Tax form SSA sends to a claimant representative who received direct fee payments of \$600 or more in a calendar year. If a representative's employer is registered with SSA, a copy of the 1099-MISC will also go to the claimant representative's employer, as appropriate.

If a claimant is denied benefits at the initial or reconsideration levels, he/she can file a Form HA-501-U5, *Request for Hearing by Administrative Law Judge*, to appear before an administrative law judge (ALJ). If the claimant is represented, Office of Disability Adjudication and Review (ODAR) staff will review the Form SSA-1696-U4 and the fee agreement, if one was submitted, and note this in the Case Processing and Management System (CPMS). If the claimant appoints a different representative before the ALJ renders a decision, ODAR staff must review the Form SSA-1696-U4 and fee agreement submitted by the new representative, update CPMS, and ensure the former representative is closed out, if necessary.

If the ALJ issues an unfavorable decision, there is no further processing by ODAR staff of the representative fee agreement unless the claim is appealed. If the ALJ issues a favorable decision, the ALJ reviews the fee agreement in accordance with policy and either approves or disapproves the fee agreement. To be approved, the fee specified in the agreement cannot exceed the lesser of 25 percent of the total amount of past-due benefits or \$6,000.<sup>1</sup> ODAR staff generally sends a notice to the claimant and claimant representative along with the favorable decision. If no agreement was submitted, there will be no order regarding a fee agreement attached to the decision. If there is no fee agreement or a fee agreement is disapproved, the representative would need to submit a fee petition to seek authorization for a fee. As part of the fee petition, the

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<sup>1</sup> For fee agreements submitted on or after June 22, 2009, the maximum fee amount is \$6,000. For fee agreements submitted on February 1, 2002 through June 21, 2009, the maximum fee amount was \$5,300.

representative must submit an itemization of the hours spent working on the case. For hearing level cases, the decisionmaker authorizes fees under a fee petition up to and including \$10,000. If the decisionmaker recommends a fee under a fee petition that exceeds \$10,000, he/she refers the fee to the Regional Chief Administrative Law Judge<sup>2</sup> to authorize a reasonable fee.<sup>3</sup>

For fee agreements, ODAR staff annotate in SSA systems whether the fee was approved, the ALJ who approved it, and the date it was approved. An order is then sent to the claimant and representative with the favorable decision. If the claimant representative requested direct pay of fees, the processing center and/or field office are notified of the fee agreement approval and process the payment to the claimant representative. As part of this process, SSA will assess a user fee on each case of the lesser of 6.3 percent of the claimant representative's payment or \$83. At the conclusion of the tax year, if the claimant representative's payment(s) exceed \$600, SSA will send an IRS Form 1099-MISC to the claimant representative and his/her firm, as appropriate, notifying the various parties of their tax liability.

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<sup>2</sup> SSA, Hearings, Appeals, and Litigation Law Manual, I-1-2-6.A.2 – *Delegation of Authority to Authorize Fees* (effective date February 25, 2005).

<sup>3</sup> SSA, POMS, GN 03920.001 B.1 – *SSAs Fee Authorization Processes* (effective date August 31, 2009). In a fee petition, SSA approves a “reasonable” fee (under 206(a)(1) of the *Act*) for the specific services provided. In determining a reasonable fee, SSA considers criteria the regulations prescribe.

# Scope and Methodology

To address our objectives, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures, including applicable sections of the Hearings, Appeals and Litigation Law Manual.
- Interviewed staff and management in the Offices of Disability Adjudication and Review, Public Service and Operations Support, and Retirement and Survivors Insurance Systems. In addition, we interviewed staff in the Great Lakes Program Service Center.
- Obtained closed claim information from the Case Processing and Management System (CPMS) for Fiscal Year (FY) 2011 and randomly selected 150 sample cases—50 allowances, 50 denials, and 50 dismissals.
- For each sample item, we reviewed electronic disability folder information, hearing digital audio recordings, payment systems, 1099-MISC tax information, and other Agency records to meet our audit objective. We did not recalculate the past-due benefit amount as part of this review. We outline our sample test methodology and results in Appendix E.
- We identified trends associated with the 150 sample items related to representation and payments that would provide SSA managers with additional context.

We determined the computer-processed data from the CPMS 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 objectives. We performed audit work in Chicago, Illinois, from March to July 2012. The principle entities audited were the Offices of the Deputy Commissioner for Disability Adjudication and Review, and Operations. We conducted our work 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 objectives.

## Sample Testing Methodology and Results

**Table E-1: Sample Review Results: Allowances (50 Sample Items)**

Condition to be Tested	Yes	No
Claimant Appointed a Representative <sup>1</sup>	45	5
Claimant and Representative Submitted a Fee Agreement or a Fee Petition <sup>2</sup>	43	2
Claimant Representatives Requested Direct Payment of Fee <sup>3</sup>	41	2
Hearing Held Between Represented Claimant and an Administrative Law Judge (ALJ) <sup>4</sup>	35	15

**Note 1:** We identified all cases with a Form SSA-1696-U4 *Appointment of Representative* or when the Office of Disability Adjudication and Review's (ODAR) Case Processing and Management System (CPMS) reflected a claimant representative since we were unable to obtain the paper file for one case to view the SSA-1696-U4.

**Note 2:** We identified all cases with a fee agreement or Form SSA-1560-U4, *Petition to Obtain Approval of a Fee for Representing a Claimant Before the Social Security Administration*, on file. On two of the cases, claimant representatives waived their fees.

**Note 3:** Among the 43 cases with claimant representatives requesting a fee, 41 cases had claimant representatives who requested direct payment and 2 cases had claimant representatives who were not eligible for direct payment.

**Note 4:** Social Security Administration (SSA) rendered on-the-record (OTR) decisions in 10 represented cases, which did not require hearings. Five cases were unrepresented.

Test Performed	Items Tested	Problems Identified
<b>Test 1:</b> SSA-1696-U4 was Properly Prepared and Signed by Claimant and Claimant Representative	44	1
<b>Test 2:</b> Fee Agreement or Fee Petition was Properly Prepared	42	1
<b>Test 3:</b> Claimant Representative was Eligible for Direct Payment	41	0
<b>Test 4:</b> Appointed Claimant Representative Attended the Hearing	35	0
<b>Test 5:</b> Fee Agreement or Fee Petition was Properly Approved by Decisionmaker	43	1
<b>Test 6:</b> SSA Issued the Lesser of 25 percent of Past-Due Amount or \$6,000 on Approved Fee Agreement or Paid the Appropriate Amount Per the Fee Petition	41	0
<b>Test 7:</b> SSA Properly Withheld Assessment on Direct Payment	41	2
<b>Test 8:</b> SSA Issued 1099-MISC to Direct Pay Claimant Representative Recording the Payment Amount	41	4

### **Additional Explanation of Tests:**

**Test 1:** We were able to obtain only 44 of the 45 appointment forms since SSA was not able to locate the paper folder containing the SSA-1696-U4. In one case, the claimant and claimant representative's signatures on the SSA-1696-U4 were not dated. Since this form was also uploaded after the decision on the case (see Test 5), this date would have assisted in determining the order of events.

**Test 2:** We were able to obtain only 42 of the 43 fee-related documents SSA was not able to locate the paper folder. In one case, the claimant and claimant representative's signatures and related dates were not present on the fee agreement. Since this form was also uploaded after the decision on the case (see Test 5), this date would have assisted in determining the order of events.

**Test 3:** We reviewed SSA's *List of Sanctioned Representatives* (dated May 21, 2012) and determined none was listed as a sanctioned representative. We also located public data and determined that the attorney representatives associated with our cases were licensed to practice law.

**Test 4:** We checked the electronic disability folder and listened to all available hearing audio recordings to identify representatives who attended the hearing. We found ODAR held hearings for 35 of 45 represented cases, and we verified that the representative named during the hearing was listed on Form SSA-1696-U4, the fee agreement or fee petition, and the decision letter.

**Test 5:** We reviewed decision notices in electronic or paper files, or the Claims File Records Management System (CFRMS), to verify that administrative law judges (ALJ) or Senior Attorney Adjudicators (SAA) approved the fee agreement or fee petition. We found one case where the SAA did not approve the fee agreement because it was not part of the electronic disability folder when the decision was rendered.

**Test 6:** We reviewed the Single Payment System (SPS) to identify fee payment amounts for all cases. We found SSA properly paid representatives related to 40 approved fee agreements and the 1 approved fee petition.

**Test 7:** We reviewed SPS to verify that SSA collected the appropriate assessment amount. We found one case that was represented by two employees of a law firm, and SSA charged each representative \$83 for a total of \$166. In the second case, SSA assessed \$104 in user fees instead of \$83. SSA, POMS, GN 03920.019.E—*Assessment on Representatives Who Receive Direct Payment* states representatives will share in paying the assessment in proportion of the fee amount SSA pays to each representative.

**Test 8:** We reviewed a Form 1099-MISC data file to determine whether SSA issued the tax form to representatives recording the payment amount in our sample items. We found four instances where some or the entire amount paid by SSA was not reported to the IRS on a 1099-MISC, for a total of \$17,980.

**Table E-2: Sample Review Results: Denials (50 Sample Items)**

Condition to be Tested	Yes	No
Claimant Appointed a Representative <sup>1</sup>	39	11
Claimant and Representative Submitted a Fee Agreement or a Fee Petition <sup>2</sup>	36	3
Claimant Representative Requested Direct Payment <sup>3</sup>	34	2
Hearing Held Between Represented Claimant and an ALJ	39	0

**Note 1:** We identified all cases with a Form SSA-1696-U4.

**Note 2:** We identified all cases with a fee agreement or Form SSA-1560-U4 on file. Three claimant representatives waived their fees.

**Note 3:** Among the 36 claimant representatives requesting a fee, 34 requested a direct payment and 2 were eligible for direct payment but did not request such payment.

Test Performed	Items Tested	Problems Identified
<b>Test 1:</b> SSA-1696-U4 was Properly Prepared and Signed by Claimant and Claimant Representative	39	0
<b>Test 2:</b> Fee Agreement or Fee Petition was Properly Prepared	36	2
<b>Test 3:</b> Claimant Representative was Eligible for Direct Payment	34	0
<b>Test 4:</b> Appointed Claimant Representative Attended the Hearing	39	1
<b>Test 5:</b> Fee Agreement or Fee Petition was Not Approved by Decision Maker on Denials	39	0
<b>Test 6:</b> SSA Did Not Issue a Fee to the Claimant Representative	39	0

**Additional Explanation of Tests:**

**Test 1:** We did not find any problems among the items we tested.

**Test 2:** We found fee agreements were missing for two denied cases. ODAR staff indicated they did not pursue the fee agreements because fee agreements cannot be approved on denials and dismissals. According to ODAR management, ODAR staff is not required to follow up with a claimant representative to obtain a fee agreement. In addition, had the cases been allowed, the claimant representatives would have had the opportunity to submit fee petitions.

**Test 3:** We reviewed SSA's *List of Sanctioned Representatives* (dated May 21, 2012) and determined none was listed as a sanctioned representative. We also located public data and determined 34 cases had attorney representatives who were licensed to practice law. The remaining two cases had non-attorney representatives who were listed on SSA's *Eligible Non-Attorney Representatives List*, which authorized them for direct payment. However, the two non-attorney representatives did not request direct payment.

**Test 4:** We checked the electronic disability folder and listened to all available hearing audio recordings to identify representatives who attended the hearing. We found the SSA held hearings for 39 of 50 cases, and we verified in all except one hearing that the representative named during the hearing was listed on Form SSA-1696-U4, the fee agreement or fee petition, and the decision letter. According to ODAR, one digital recording was lost and therefore unavailable.

**Test 5:** We reviewed decision notices in electronic or paper files, or CFRMS, to verify that ALJs denied the claim. Hearings, Appeals, and Litigation Law Manual (HALLEX) I-1-2-21.C.1—*Fee Agreement-Hearing Office Procedures* states the ALJ will make a determination on a fee agreement only when the ALJ decides the claim wholly or partially in the claimant’s favor.

**Test 6:** We reviewed SPS to identify fee payment amounts for all cases. We found SSA did not issue payments on the denial cases.

**Table E-3: Sample Review Results: Dismissals (50 Sample Items)**

Condition to be Tested	Yes	No
Claimant Appointed a Representative <sup>1</sup>	25	25
Claimant and Representative Submitted a Fee Agreement or a Fee Petition <sup>2</sup>	24	1
Claimant Representatives Requested Direct Payment <sup>3</sup>	24	1

**Note 1:** We identified all cases with a Form SSA-1696-U4.

**Note 2:** We identified all cases with a fee agreement or Form SSA-1560-U4 on file. One claimant representative waived the fee.

**Note 3:** We found that all 24 claimant representatives requesting a fee also requested direct payment.

Test Performed	Items Tested	Problems Identified
<b>Test 1:</b> SSA-1696-U4 was Properly Prepared and Signed by Claimant and Claimant Representative	25	0
<b>Test 2:</b> Fee Agreement or Fee Petition was Properly Prepared	24	0
<b>Test 3:</b> Claimant Representative was Eligible for Direct Payment	24	0
<b>Test 4:</b> Fee Agreement or Fee Petition was Not Approved by Decision Maker on Denials	24	0
<b>Test 5:</b> SSA Did Not Issue a Fee to the Claimant Representative	24	0

**Additional Explanation of Tests:**

**Tests 1 and 2:** We did not find any problems among the items we tested.

**Test 3:** We reviewed SSA’s *List of Sanctioned Representatives* (dated May 21, 2012) and determined not one was listed as sanctioned representatives. We also located public data and determined all cases had attorney representatives who were licensed to practice law. In addition, we determined the non-attorney representatives were listed on SSA’s *Eligible Non-Attorney Representatives List*.

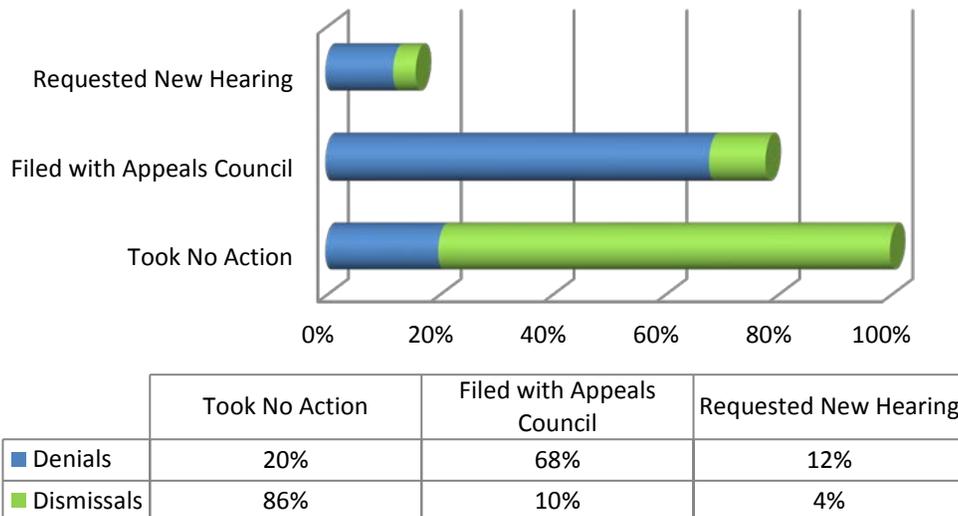
**Test 4:** We reviewed decision notices in electronic or paper files, or CFRMS, to verify that ALJs dismissed the claim. Per HALLEX I-1-2-21.C.1, the ALJ will make a determination on a fee agreement only when the ALJ decides the claim wholly or partially in the claimant’s favor.

**Test 5:** We reviewed SPS to identify fee payment amounts for all cases. We found SSA did not issue payments on the dismissed cases.

## Characteristics of Fiscal Year 2011 Denial and Dismissal Sample Cases

Based on our review of 100 of the 150 randomly selected hearing dispositions (50 denials and 50 dismissals) from Fiscal Year 2011, we found that about 68 percent of claimants with a denied case subsequently filed an appeal with the Appeals Council, and another 12 percent requested a new hearing (see Figure F-1). However, only 10 percent of claimants with dismissed cases subsequently filed an appeal, and 4 percent requested a new hearing.<sup>1</sup> Of the appealed denials, 12 percent was remanded back to an administrative law judge (ALJ) for further action.<sup>2</sup> In the case of the dismissals, one case was remanded back to the ALJ, and the ALJ issued a favorable decision.

**Figure F-1: Subsequent Hearings and Appeals Among Sample Denial and Dismissal Cases (FY 2011)**

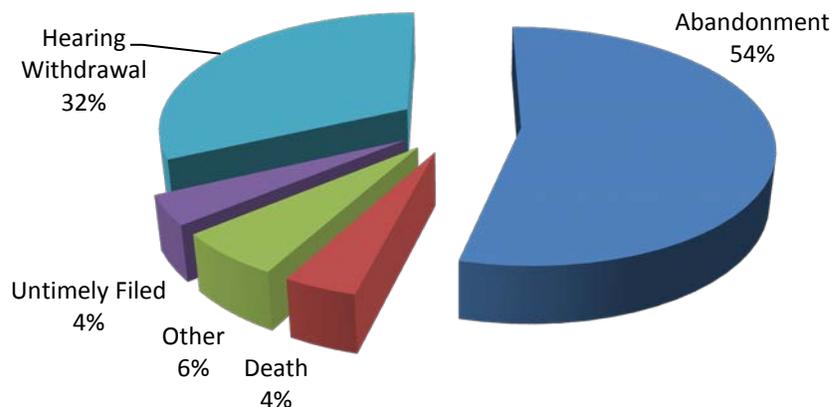


We also reviewed the reasons for dismissals in our sample and found claimants abandoned 54 percent of claims, while 32 percent withdrew the request for a hearing (see Figure F-2). We could not locate documentation that reflected if the claimant provided a reason why they abandoned the case or withdrew the hearing request.

<sup>1</sup> As of June 2012, the subsequent hearings related to the denial and dismissal cases were still pending.

<sup>2</sup> As of June 2012, the remaining appealed cases were still under review by Appeals Council.

**Figure F-2: Reasons for Dismissals Among Sample Cases (FY 2011)**



Based on a prior OIG recommendation,<sup>3</sup> SSA's Office of Quality Performance conducted a study and noted disagreement with 30 percent of the dismissals reviewed, with the greatest disagreement related to withdrawal dismissals. The report provided suggestions for improving dismissal quality.<sup>4</sup> Agency improvements in dismissal quality may assist unrepresented claimants who are more likely to have their cases dismissed than represented claimants.

<sup>3</sup> SSA OIG, *Office of Disability Adjudication and Review Hearing Request Dismissals (A-07-10-20171)*, December 2010, page 10.

<sup>4</sup> SSA, Office of Quality Performance, *Dismissal Quality Review Report*, December 2011, page 3.

## Agency Comments



## SOCIAL SECURITY

### MEMORANDUM

**Date:** November 2, 2012 **Refer To:** SIJ-3

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

**From:** Dean S. Landis /s/  
Deputy Chief of Staff

**Subject:** Office of the Inspector General Draft Report, "Controls over Payments Made to Claimant Representatives at the Hearings Level" (A-05-12-11239)—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 Amy Thompson at (410) 966-0569.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
"CONTROLS OVER PAYMENTS MADE TO CLAIMANT REPRESENTATIVES AT  
THE HEARINGS LEVEL" (A-05-12-11239)**

**Recommendation 1**

Review the two excessive claimant representative user fees from our sample cases and take the necessary actions to resolve these errors as well as improve the accuracy of future assessments.

**Response**

We agree.

**Recommendation 2**

Review the four claimant representative direct payments from our sample cases that SSA did not report to the IRS to improve future 1099-MISC tax reporting.

**Response**

We agree.

## OIG Contacts and Staff Acknowledgments

### *OIG Contacts*

Walter Bayer, Director, Chicago Audit Division

Deborah Kinsey, Audit Manager, Chicago Audit Office

### *Acknowledgments*

In addition to those named above:

Elizabeth Ochoa, Auditor-in-Charge

Sherri Holmes, Auditor

Linda Smid, Auditor

For additional copies of this report, please visit our web site at <http://oig.ssa.gov/> or contact the Office of the Inspector General's Public Affairs Staff at (410) 965-4518. Refer to Common Identification Number A-05-12-11239.

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