



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Factors Related to Decreased
Administrative Law Judge
Productivity

A-12-18-50289 | September 2017

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: September 11, 2017

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Factors Related to Decreased Administrative Law Judge Productivity (A-12-18-50289)

The attached final report presents the results of the Office of Audit's review. The objective was to examine the factors that have led to a decrease in administrative law judge productivity.

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

Factors Related to Decreased Administrative Law Judge Productivity

A-12-18-50289



September 2017

Office of Audit Report Summary

Objective

To examine the factors that have led to a decrease in administrative law judge (ALJ) productivity.

Background

The Office of Disability Adjudication and Review (ODAR) administers the Social Security Administration's (SSA) disability hearings and appeals program. ALJs issue decisions at hearing offices nationwide. To assist the ALJs, hearing offices employ decision writers who draft and write ALJ decisions and support staff who prepare and schedule cases.

At the end of Fiscal Year (FY) 2016, ODAR's pending hearings backlog had increased to over 1.1 million cases, average processing times had worsened to over 540 days, and ALJ productivity had decreased nationwide since FY 2011. ALJ productivity is defined by dispositions per day per available ALJ. ALJs produced an average of 2.42 dispositions per day in FY 2011, but that decreased to 1.9 dispositions per day in FY 2016. While there were 139 more ALJs in FY 2016, total ALJ dispositions decreased about 14 percent from FY 2011 levels.

ODAR created the Compassionate And REsponsive Service plan to address the hearings backlog based on two essential components—people and quality—and this review examined both of these components.

Findings

- At the end of April 2017, decision writer-to-ALJ ratios had decreased 22 percent, hearing office staff-to-ALJ ratios had decreased 22 percent, and ALJ productivity had decreased by 22 percent from FY 2011 levels. In April 2017, decision-writing backlogs increased 182 percent, and cases in ready-to-schedule status had decreased 30 percent from FY 2015 levels.
- ODAR conducts pre-decision and post-quality reviews to ensure ALJs produce policy-compliant and legally sufficient decisions. Also, after the fraudulent scheme in the West Virginia hearing office was uncovered, in June 2011, ODAR's Chief ALJ issued a memorandum reminding all Hearing Office Chief ALJs and directors about Agency policy over ALJ case assignments and case rotations. This focus on quality caused ALJs to look more closely at their cases and spend more time reviewing the medical evidence, which slowed ALJ productivity.

Other factors related to decreased ALJ productivity were (a) a change in regulations that led to an increase in medical evidence claimants must submit for their hearing and (b) an increase in cases being denied at the hearing level because denials typically take longer to process since the denial decision must be fully developed in case of future appeals.

Recommendation

We recommend SSA consider ODAR staffing ratio goals when hiring decision writers and support staff in hearing offices. SSA agreed with the recommendation.

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ABBREVIATIONS

ALJ	Administrative Law Judge
CARES	Compassionate And REsponsive Service
CPMS	Case Processing and Management System
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
SSA	Social Security Administration

OBJECTIVE

Our objective was to examine the factors that have led to a decrease in administrative law judge (ALJ) productivity.

BACKGROUND

The Office of Disability Adjudication and Review (ODAR) administers the Social Security Administration's (SSA) hearings and appeals program. The hearing process begins when a claimant files a hearing request after his/her claim is denied by a State disability determination services office. ALJs issue decisions at hearing offices nationwide.

At the end of Fiscal Year (FY) 2016, ODAR had 352 full-time employees working at its national headquarters and 9,123 full-time employees working in its 10 regional offices, 164 hearing offices, 5 national hearing centers, 2 satellite offices, and 4 national case assistance centers.

Hearing offices have a management team¹ that includes the Hearing Office Chief ALJ and Hearing Office Director, who supervise, plan, organize, and control operating activities in a hearing office. Decision writers assist ALJs by drafting and writing ALJ decisions. Support staff² assists ALJs by conducting initial case screening and preparation, maintaining a control system for all hearing office cases, conducting pre-hearing case analysis, developing additional evidence, scheduling hearings, and preparing notices.

Decreasing ALJ Productivity

In FY 2011, ODAR had 705,367 pending cases and an average processing time of 426 days. By the end of FY 2016, the number of pending cases had increased to over 1.1 million, and the average processing time had worsened to 543 days. During this time, ALJ productivity decreased by about 21 percent. ODAR measures ALJ productivity by dispositions per day per available ALJ. In FY 2011, ALJs produced an average 2.42 dispositions per day; however, in FY 2016, it decreased to 1.9 dispositions per day.

SSA has used its scarce resources to continue hiring ALJs to address a growing hearings backlog. Although there were 139 more ALJs issuing dispositions in FY 2016, overall ALJ dispositions decreased about 14 percent compared to FY 2011 (see Table 1).

¹ For more information on the hearing office structure, see Appendix A.

² Support staff includes group supervisors, case technicians, case intake specialists, receptionists, and contact representatives.

Table 1: Comparing FYs 2011 and 2016

FY	Number of ALJs Who Issued at Least 1 Disposition	Total Dispositions
2011	1,515	739,537
2016	1,654	636,033

According to SSA, it hired 196 ALJs in FY 2015 and 264 ALJs in FY 2016. New ALJs are placed on a learning curve, and, as they gain experience, they are expected to increase the number of dispositions they issue. For the first 3 months, new ALJs are not expected to issue any dispositions. In month 4, ALJs are expected to issue between 10 and 15 dispositions. This gradually increases each month, and, by month 10, new ALJs are expected to issue between 40 and 45 dispositions per month.

In FY 2016, regional ALJ disposition rates decreased in all 10 regions compared to FY 2011 rates. The Seattle Region had the largest decrease at 30 percent, while 5 other regions decreased by more than 20 percent (see Table 2).

Table 2: Comparing Regional ALJ Disposition Rates

Region	FY 2011	FY 2016	Percent Change
Boston	2.48	1.92	-23%
New York	2.30	1.74	-24%
Philadelphia	2.47	1.85	-25%
Atlanta	2.40	1.90	-21%
Chicago	2.27	1.86	-18%
Dallas	2.58	2.12	-18%
Kansas City	2.25	1.84	-18%
Denver	2.34	1.95	-17%
San Francisco	2.32	1.83	-21%
Seattle	2.31	1.62	-30%
National Average	2.42	1.90	-21%

ODAR created the Compassionate And REsponsive Service (CARES) plan to address the hearings backlog based on two essential components—people and quality—and this review examined these components. We (a) analyzed trends in ALJ productivity as well as decision writer and hearing office support staff ratios; (b) examined ODAR’s renewed focus on quality and its effect on ALJ productivity; and (c) interviewed ODAR executives, managers, ALJs, and decision writers. See Appendix B for more information on our scope and methodology.

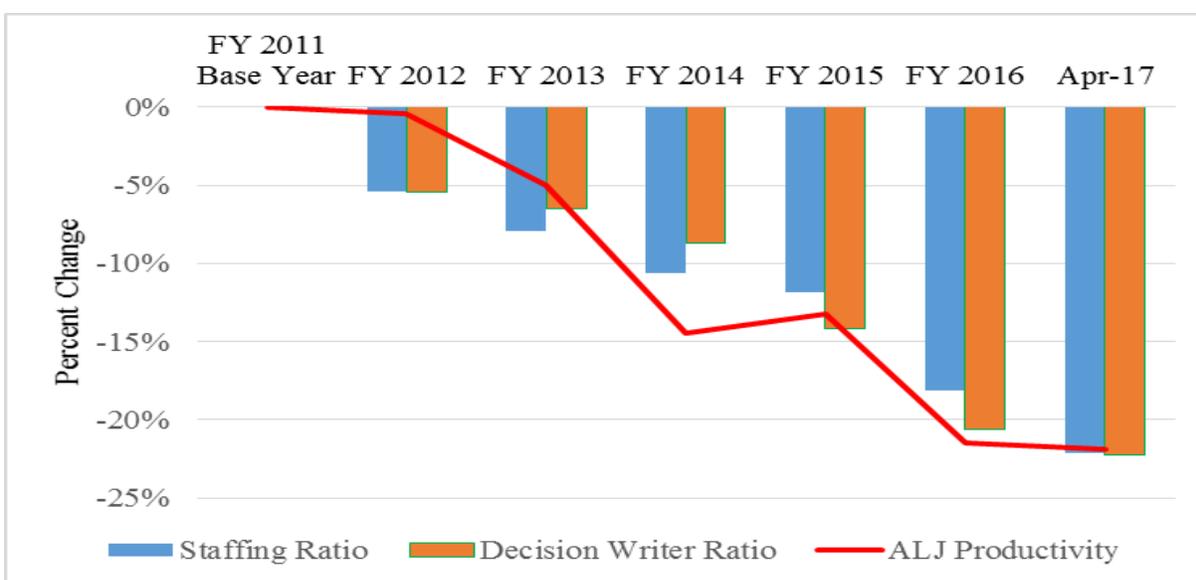
RESULTS OF REVIEW

Two main factors related to decreasing ALJ productivity include decreased staffing ratios and a renewed focus on quality. Other factors related to decreased ALJ productivity were (a) a change in regulations that increased the medical evidence claimants must submit for their hearings and (b) an increase in the number of denied cases at the hearing level since denial decisions typically take longer to process.

Hearing Office Staffing Ratios

Adequate staffing ratios allow ALJs to remain productive. However, by the end of April 2017, decision writer-to-ALJ ratios had decreased 22 percent from FY 2011 levels, and hearing office staff-to-ALJ ratios had decreased 22 percent. During the same period, ALJ productivity—as measured by dispositions per day per ALJ—had decreased 22 percent (see Figure 1). SSA’s CARES plan notes that the plan depends on sufficient funding so the Agency can hire a sufficient number of support staff.³

Figure 1: Trends in Decision Writer and Staff Ratios Compared to ALJ Productivity



³ SSA, *Leading the Hearings and Appeals Process Into the Future: A Plan for Compassionate And Responsive Service*, p. 10 (January 13, 2016).

Decreasing Decision Writer-to-ALJ Ratios

Decision writer-to-ALJ ratios decreased by 22 percent through April 2017 compared to FY 2011. In a 2010 review,⁴ we determined that hearing offices that met or exceeded the 1.5 decision writers-to-ALJ staff ratio, had, on average, an almost 9 percent higher productivity rate than those hearing offices that had a ratio less than the goal. With fewer decision writers, decision-writing backlogs at the end of April 2017 had increased by 182 percent since the end of FY 2015 (see Table 3).

Table 3: Decision Writing Backlogs

Date	Number of Cases Awaiting Decision Writing	Change Since the End of FY 2015
End of FY 2015	19,495	
End of FY 2016	34,833	79%
As of April 2017	55,034	182%

Note: Earlier data not available.

SSA’s target national decision writer ratio is 1.75 to 1.85 decision writers per ALJ. However, through April 2017, none of ODAR’s 10 regions met the target (see Table 4).

Table 4: Regional Decision Writer-to-ALJ Ratios (April 2017)

Region	Decision Writer-to-ALJ-Ratio
Boston	1.68
New York	1.47
Philadelphia	1.28
Atlanta	1.43
Chicago	1.39
Dallas	1.43
Kansas City	1.54
Denver	1.15
San Francisco	1.48
Seattle	1.34

For example, one Hearing Office Chief ALJ we interviewed stated the hearing office had over 300 cases in unassigned writing. In February 2017, this Chief ALJ was receiving the written decisions for hearings held in September 2016—5 months after the hearing.

⁴ SSA, OIG, *Hearing Office Performance and Staffing*, A-12-08-28088 (February 2010).

Decreasing Hearing Office Staff-to-ALJ Ratios

Hearing office staff-to-ALJ ratios decreased 18 percent in FY 2016 compared to FY 2011. In a 2005 review, we found that hearing offices that had low staffing ratios had worse ALJ disposition rates, and worse timeliness compared to hearing offices with adequate staffing ratios.⁵

ODAR's staffing goal is to have adequate staffing in each hearing office to ensure an even workload. If a hearing office does not have the right mix and an adequate number of support staff for each ALJ, all the pre- and post-hearing work may not be accomplished efficiently, and the hearing office's productivity and timeliness could suffer. For instance, when hearing office staff places cases in ready-to-schedule status, all actions before scheduling have been completed, including documenting participants for the hearing. Our analysis of the number of cases in ready-to-schedule status showed that ODAR hearing offices had about 30 percent fewer cases ready for hearings in April 2017 compared to the end of FY 2015 (see Table 5).

Table 5: Trends in Ready-to-Schedule Cases

Date	Ready-to-Schedule Cases	Change Since the End of FY 2015
End of FY 2015	179,231	
End of FY 2016	196,080	9%
As of April 2017	125,617	-30%

Note: Earlier data not available.

ODAR's target for a support staff ratio is 2.65 to 2.75 support staff per ALJ. However, at the end of April 2017, only ODAR's Kansas City and San Francisco Regions were at or above the target (see Table 6).

Table 6: Regional Support Staff-to-ALJ Ratio (April 2017)

Region	Support Staff-to-ALJ Ratio
Boston	2.32
New York	2.40
Philadelphia	2.35
Atlanta	2.52
Chicago	2.39
Dallas	2.48
Kansas City	2.65
Denver	2.01
San Francisco	2.78

⁵ SSA, OIG, *The Effects of Staffing on Hearing Office Performance*, A-12-04-14098 (March 2005).

Region	Support Staff-to-ALJ Ratio
Seattle	2.08

Renewed Focus on Quality Decisions

SSA added quality and workload measures to assess the policy compliance and legal sufficiency of ALJ decisions. In January 2016, ODAR introduced CARES, its plan for processing hearing office workloads. The Agency stated

We have always had to operate in a high production environment, and the hearings process is no exception. Regardless of whether they ultimately receive benefits, the millions of people who apply for our benefits deserve timely decisions that are high quality. Quick decisions without quality or quality decisions without timeliness are not compassionate or responsive service.⁶

In October 2011, a lawsuit was filed against an ALJ in the Huntington, West Virginia, hearing office and an attorney in Kentucky.⁷ The lawsuit alleged they defrauded the Government of millions of dollars by having the ALJ reassign a high number of cases handled by the ALJ to himself, which violated rotational requirement.⁸ ODAR's case assignment policy requires that cases be rotated among all the ALJs in the office.⁹ According to an ODAR manager, the situation in the Huntington, West Virginia, hearing office alarmed many ALJs. This caused the ALJs to look more closely at their cases and spend more time reviewing and articulating the medical evidence, which slowed down ALJ productivity.

In her FY 2014 testimony before Congress, SSA's Acting Commissioner stated that

. . . management directs an ALJ to follow the law, regulations, and agency policies. While ALJs rarely fail to comply with these directives, in those cases where the ALJ did not comply and where appropriate, SSA pursued appropriate corrective action. In the past several years, it has been necessary to seek removal or suspension of a number of ALJs.¹⁰

⁶ SSA, *Leading the Hearings and Appeals Process into the Future: A Plan for Compassionate And Responsive Service*, p. 8, (January 13, 2016).

⁷ The ALJ and Kentucky attorney pled guilty in 2017.

⁸ SSA, HALLEX, vol. 1, ch. 1-2-1, sec. I-2-1-55 (August 29, 2014).

⁹ We conducted a series of reviews that provided the Agency with additional information on oversight of ALJ case assignments and multiple risk factors the Agency could consider when it evaluates ALJ and hearing office performance. See Appendix C for a list of the reports.

¹⁰ *Regarding Oversight of Federal Disability Programs*: Hearing Before the House Oversight and Government Reform Committee, 113th Congress (June 11, 2014) (statement of Carolyn W. Colvin, Acting Commissioner of the Social Security).

Added Controls to Improve the Quality of ALJ Decisions

In FY 2011, ODAR began developing an early monitoring system to measure ALJ performance based on a combination of risk factors, such as the number of dispositions, number of on-the-record decisions, and frequency of hearings with the same claimant representative. This monitoring system assisted the Office of the Chief ALJ in determining whether a particular ALJ's decisionmaking needed further review. If ODAR executives determined further attention was needed, they requested that the Division of Quality in ODAR's Office of Appellate Operations conduct a focused review of the ALJ's decisions.

In-line Quality Reviews

The Office of the Chief Administrative Law Judge conducts in-line quality reviews on a sample of cases processed by hearing offices. These reviews, performed by regional staff, ensure hearing case processing is policy-compliant and, in the case of draft decisions, ensure these decisions are both policy-compliant and legally sufficient before they are submitted to an ALJ for signature.¹¹ In-line quality review findings, while advisory, also allow managers to provide feedback to ALJs when their decision writing instructions are affected by, contributed to, or caused legal sufficiency, quality, or policy compliance errors. If hearing office managers begin seeing recurring errors, they may require training for some or all the hearing office staff and ALJs on those issues.

Quality Reviews of Appealed Cases of ALJ Denials and Dismissals

In FY 2011, ODAR began tracking the Appeals Council's action on every appealed case and calculated a quality performance measure for each ALJ. ODAR uses this quality performance measure to assess the level of policy-compliant and legally sufficient decisions. ODAR management has established separate goals for decision and dismissal accuracy.¹²

Quality Reviews of ALJ Favorable Decisions

Since FY 2011, ODAR's Division of Quality in the Office of Appellate Operations, has conducted pre-effectuation reviews of randomly selected favorable hearing decisions before it makes payments to claimants.¹³ As part of the pre-effectuation review process, the Division of Quality can effectuate (agree with) the favorable decision; remand it for a new decision; or reverse, modify, or dismiss it. Since FY 2011, ODAR's Division of Quality has reviewed over 26,000 favorable decisions through the pre-effectuation review process.

¹¹ The in-line quality review program was developed in 2009. Initially, the program was implemented in a limited number of regions because of hiring restrictions. However, in FY 2014, the program was officially launched nationwide.

¹² See SSA, OIG, *Oversight of Administrative Law Judge Decisional Quality*, A-12-16-50106 (March 2017).

¹³ See SSA, OIG, *Pre-effectuation Reviews of Favorable Hearing Decisions*, A-12-15-50015 (February 2017).

Two Added Tools to Improve the Quality of ALJ Decisions

Using data from the quality reviews, ODAR created the “How MI Doing?” tool, which gives feedback to ALJs on decisional quality. This tool also provides the ALJs information about their Appeals Council remands—including the reasons for remand and information on their performance in relation to other ALJs in their office, their region, and the nation. ODAR has developed training modules related to the most common reasons for remand that are linked to the “How MI Doing?” tool. ALJs can receive immediate training at their desks that is targeted to the specific reasons for the remand.¹⁴

ODAR’s Division of Quality also performs focused post-effectuation reviews that look at specific issues. Subjects of a focused review may be hearing offices, ALJs, representatives, doctors, and other participants in the hearing process. Because these reviews are performed after the 60-day period a claimant has to appeal the ALJ decision or the Appeals Council has to review the decision on its own motion, they do not result in a change to the decision.

Other Factors that Affected Productivity

In our interviews with ODAR executives, we learned that decreased ALJ productivity was also related to (a) a change in regulations that has led to an increase in medical evidence claimants must submit for review during the hearing process and (b) an increase in cases being denied at the hearing level since denial decisions typically took longer to process.

- In March 2015, a new regulation¹⁵ requiring that claimants or their representatives submit all medical evidence, including evidence that may contradict the alleged disability, went into effect. The submission of additional evidence under this new regulation may cause lengthier files for the ALJ to review, which would require more time to make a decision on a case.
- ALJ allowance rates are at a 20-year low. Specifically, ALJ allowance rates have fluctuated from a high of 75.2 percent in FY 1994 to a low of 53.5 percent in FY 2015. The 53.5 percent average allowance rate in FY 2015 was the lowest rate in 23 years. Since ALJs are denying more claims, productivity is affected. Denied claims typically have a longer hearing, longer time writing the case, and longer ALJ instructions to decision writers. Claimants can appeal denials, so the written decision has to be inclusive of all factors raised by the claimant or during the hearing to withstand scrutiny on appeal.

¹⁴ We are planning to conduct a review of the “How MI Doing?” tool in 2018.

¹⁵ Submission of Evidence in Disability Claims, 80 Federal Register 14828, pp. 14,828-14,838 (March 20, 2015).

CONCLUSIONS

Over recent years, SSA has used its scarce resources to continue hiring ALJs to address a growing hearings backlog. However, while the number of new ALJs hired has increased, ALJ productivity has decreased. Two main factors related to decreasing ALJ productivity are decreased staffing ratios and a renewed focus on quality. Although SSA developed the CARES plan in 2016 to address the public service crisis in the hearings backlog, it needs to continue balancing productivity with quality.

RECOMMENDATION

We recommend SSA consider ODAR staffing ratio goals when hiring decision writers and support staff in hearing offices.

AGENCY COMMENTS

SSA agreed with the recommendation; see Appendix D.



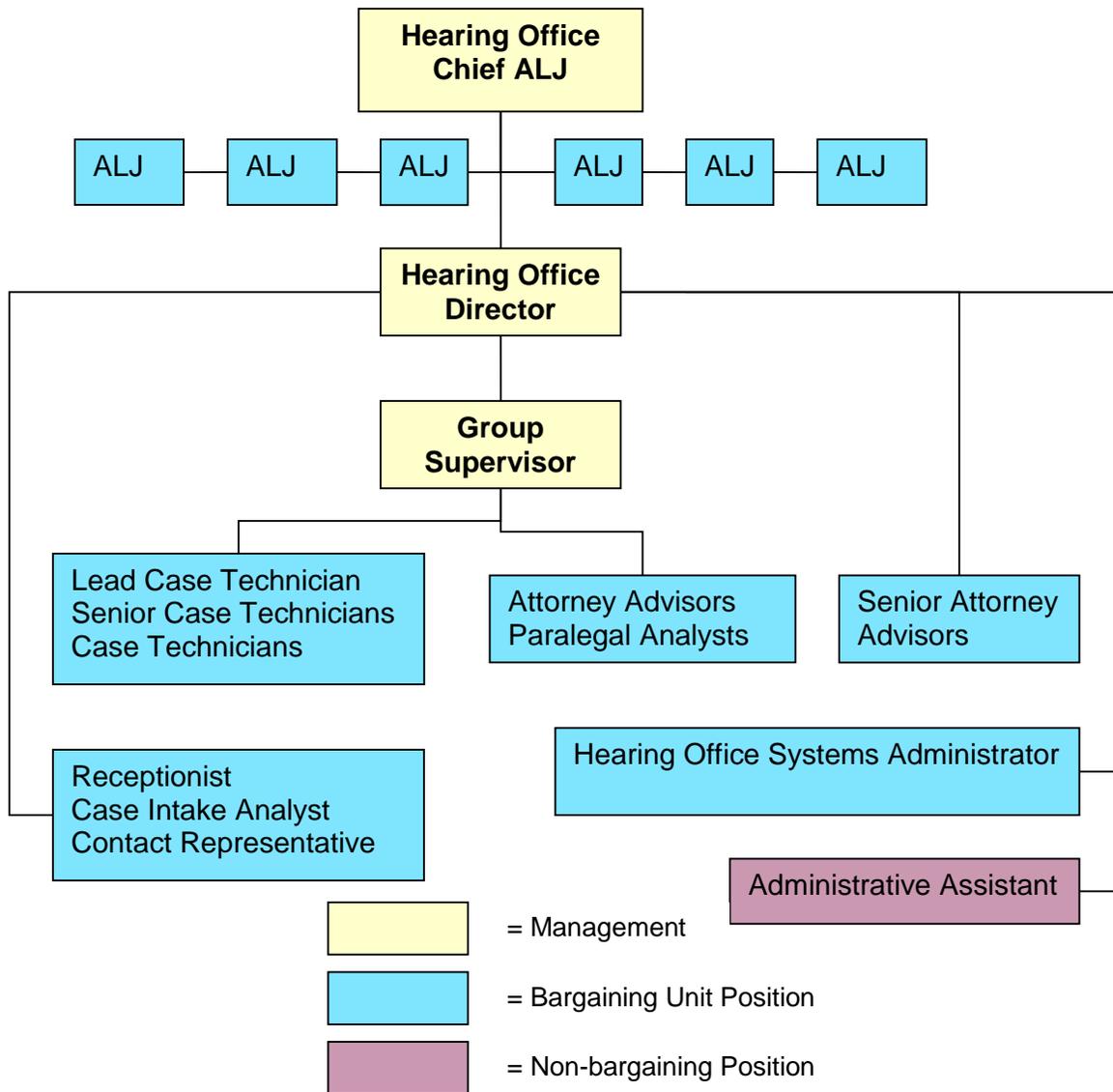
Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – HEARING OFFICE ORGANIZATION CHART

Hearing offices vary in the number of managers, administrative law judges (ALJ), and staff, but they all have the same basic organization structure.¹

Figure A-1: Hearing Office Organization Chart



¹ For hearing office position descriptions, see SSA, OIG, *The Effects of Staffing on Hearing Office Performance*, A-12-04-14098, Appendix C (March 2005).

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed prior Office of the Inspector General reports.
- Reviewed Acting Commissioner testimony to Congress.
- Reviewed Chief Administrative Law Judge memorandums.
- Reviewed the Hearings, Appeals and Litigation Law Manual.
- Accessed and analyzed management information reports from Fiscal Years (FY) 2011 to April 2017 on administrative law judge (ALJ) dispositions, pending case levels, average processing times using the Office of Disability Adjudication and Review's (ODAR) Case Processing and Management System (CPMS).
- Obtained ODAR staffing reports for FYs 2011 through 2016 and calculated trends in decision writer-to-ALJ ratios and support staff-to-ALJ ratios.
- Accessed and analyzed CPMS management information reports from FYs 2015 and 2016 as well as April 2017 on decision-writing backlogs and cases in ready-to-schedule status.
- Obtained interview write-ups with hearing office chief ALJs, ALJs, and hearing office managers from previous audits that we conducted.
- Interviewed ODAR executives.
- Reviewed ODAR's Compassionate And Responsive Service plan.

The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We determined FY 2011 through 2016 CPMS data were sufficiently reliable to meet our objective. We conducted our review from April through June 2017. 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 findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C – PREVIOUS REPORTS

We conducted a series of reviews that provided the Agency with additional information on oversight of administrative law judge case assignments and multiple risk factors the Agency could consider when evaluating administrative law judge and hearing office performance (see Table C-1).

Table C–1: Previous Reports on Administrative Law Judge and Hearing Office Performance

Report Name	Identification Number	Date of Issuance
<i>Senior Attorney Adjudicator Program</i>	A-12-10-11018	July 2011
<i>Oversight of Administrative Law Judge Workload Trends</i>	A-12-11-01138	February 2012
<i>The Social Security Administration’s Review of Administrative Law Judges’ Decisions</i>	A-07-12-21234	March 2012
<i>Identifying and Monitoring Risk Factors at Hearing Offices</i>	A-12-12-11289	January 2013
<i>Effects of the Senior Attorney Adjudicator Program on Hearing Workloads</i>	A-12-13-23002	June 2013
<i>Analysis of Hearing Offices Using Key Risk Factors</i>	A-12-13-13044	December 2013
<i>Hearing Office Case Rotation Among Administrative Law Judges</i>	A-12-12-11274	March 2013
<i>Subsequent Appellate Actions on Denials Issued by Low-Allowance Administrative Law Judges</i>	A-12-13-13084	July 2014
<i>On-the-Record Favorable Decisions Processed at Hearing Offices Within 100 Days of Receipt</i>	A-12-14-14082	January 2016
<i>Pre-effectuation Review of Favorable Hearing Decisions</i>	A-12-15-50015	February 2017
<i>Oversight of Administrative Law Judge Decisional Quality</i>	A-12-16-50106	March 2017

Appendix D – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: September 6, 2017

Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall /s/
Acting Deputy Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, “Factors Related to Decreased Administrative Law Judge Productivity” (A-12-18-50289) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments. We shared our technical comments with OIG at the staff level.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“FACTORS RELATED TO DECREASED ADMINISTRATIVE LAW JUDGE
PRODUCTIVITY” (A-12-18-50289)**

General Comment

We are committed to improving our staffing ratios by regularly monitoring staffing needs and applying a balanced hiring approach to support the workloads in our hearing offices. Using data analysis, we align existing resources to determine the proper staffing ratios and timeframes for hiring and training new staff in order to provide timely and quality decisions to the public. Initiatives in our Compassionate and Responsive Service Plan will help optimize our resources to deliver decisions in the timeliest manner possible.

Recommendation 1

SSA consider ODAR staffing ratio goals when hiring decision writers and support staff in hearing offices.

Response

We agree.

MISSION

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