

Office of the Inspector General

March 8, 2000

William A. Halter  
Deputy Commissioner  
of Social Security

Inspector General

The Social Security Administration Incorrectly Paid Attorney Fees on Disability Income Cases When Workers' Compensation Payments Were Involved (A-04-98-62001)

Attached is a copy of the final report. The objective of the audit was to determine whether payments made to attorneys who represented claimants applying for title II Social Security disability insurance involving workers' compensation (WC) payments were accurate. This is the final report in a series of three reports on WC payments and their effect on benefits.

Please comment on corrective action taken or planned on each recommendation within 60 days from the date of this memorandum. If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.

James G. Huse, Jr.

Attachment

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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**THE  
SOCIAL SECURITY ADMINISTRATION  
INCORRECTLY PAID ATTORNEY FEES  
ON DISABILITY INCOME CASES WHEN  
WORKERS' COMPENSATION  
PAYMENTS WERE INVOLVED**

**March 2000**

**A-04-98-62001**

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**AUDIT REPORT**

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# EXECUTIVE SUMMARY

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## OBJECTIVE

The objective of this audit was to determine whether payments made to attorneys who represented claimants applying for title II Social Security disability insurance (DI) involving workers' compensation (WC) payments were accurate.

## BACKGROUND

The Social Security Administration (SSA) administers the Old-Age, Survivors and Disability Insurance program under title II of the Social Security Act (Act). Section 223(a) of the Act requires that SSA provide monthly DI benefits to individuals who are eligible and meet specific disability requirements. Section 206 of the Act requires that SSA withhold and pay fees to attorneys who assist a claimant during any or every step in the DI proceedings, that is, initial determination, reconsideration, hearing, and/or Appeals Council Review. Under a fee agreement, the attorney fee is usually limited to 25 percent of the past due benefits<sup>1</sup> or \$4,000, whichever is less. In special cases, a fee greater than \$4,000 can be authorized if the attorney appeals the fee award, files a fee petition, and persuades SSA to increase the fee. A fee petition can also be filed after the attorney's services in the case have ended. Based on the petition, SSA approves a "reasonable" fee for the specific services provided. In determining a reasonable fee, SSA considers criteria the regulations prescribe.<sup>2</sup> Nevertheless, in all instances, SSA may not withhold and pay more than 25 percent of past due benefits directly to the claimant's attorney. The attorney must collect any amounts awarded in excess of 25 percent directly from the claimant or the claimant's auxiliaries.<sup>3</sup>

To review attorney fee payments, we obtained a data extract from SSA that contained all master beneficiary records coded as having a State WC offset for the period January 1, 1993, through June 30, 1996. The data extract contained 183,881 WC cases having estimated attorney fees totaling \$195.8 million. We used the population of WC offset cases to sample records and identify errors in the calculation and payment of attorney fees. Our audit included an assessment of internal controls applicable to attorney fees. We performed our audit work from August 1998 through May 1999 at SSA Headquarters in Baltimore, Maryland.

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<sup>1</sup> Past due benefits accrue to the wage earners and all related auxiliaries under title II of the Act from the month of entitlement up to, but not including, the month SSA effectuates the favorable disability decision.

<sup>2</sup> The fee petition process has an administrative review process whereby the fee petition approved can be increased or decreased if the attorney or beneficiary appeals the approved fee.

<sup>3</sup> Claimants may include the wage earner and/or the auxiliaries, that is, spouse or dependent children.

## **RESULTS OF REVIEW**

We identified two types of errors associated with attorney fee payments. These errors resulted from WC benefits either not being verified or not being processed properly. Of the 50 WC cases reviewed, attorneys were paid fees in 33 cases. Of these 33 cases, the attorney fees were paid incorrectly in 15 cases. Some payments were incorrect because SSA did not verify that the WC benefit amounts provided at application were accurate. Others occurred because of internal processing mistakes by SSA employees. The payment errors went undetected because internal controls were not sufficient to prevent or detect the errors. When projected to the total population of 183,881 DI cases with WC offset, we estimate that 27,582 WC cases may have incorrect attorney fees with a potential total dollar error of \$33.8 million.

### **VERIFICATION OF WC BENEFITS**

We found six WC cases where attorneys were erroneously paid \$7,896 because SSA based the fees on incorrectly calculated past due benefits. The past due benefits were inaccurate because SSA did not verify WC. In five of these six cases, SSA assumed the liability for collecting the overpaid attorney fees.

In the Program Operations Manual System, SSA requires WC to be verified before paying the attorney fee under a fee agreement but not under a fee petition. This inconsistency in SSA's policy is contributing to the overpayments identified. Verifying WC before paying attorney fees will reduce overpayments. Therefore, SSA should not pay past due benefits under each arrangement until current WC information is available. This will simplify the attorney fee process by paying attorneys consistently under both the fee agreement and petition processes. It will also significantly reduce payment errors.

### **PROCESSING ERRORS IMPACT PAYMENT ACCURACY**

Of the 33 cases with attorney fees, 9 had errors because of processing errors made by SSA's technicians. These errors totaled \$10,514. The types of errors we identified included calculation errors, a lack of documentation to support fee payments, and the use of inaccurate attorney fee rates.

### **WEAKNESSES IN INTERNAL CONTROLS**

SSA's preventive and detective controls did not address the attorney fee process. The attorney fee calculation associated with DI cases involving WC was not included in SSA's front-end control tests or in its quality assessment annual payment review tests. As a result, the errors identified in our review went undetected and will continue to occur until SSA implements effective controls over the attorney fee process.

## **CONCLUSIONS AND RECOMMENDATIONS**

The verification of WC is critical for establishing the correct amount of past due benefits and for calculating the attorney fee. We are therefore recommending that SSA's payments to attorneys occur only after the claimant's past due benefits are paid based on current WC verification.

To correct the errors identified in this report and improve its policies and procedures, we recommend that SSA:

- Review the cases in our sample to determine the proper attorney fee payment and take the required actions on the \$18,410 in errors of which \$17,238 were overpayments and \$1,172 were underpayments.
- Verify that State WC payment information is current and accurate when past due benefits are paid to claimants and attorney fees are calculated.
- Provide instructions on procedures that will eliminate the types of errors identified.
- Develop internal controls to prevent and detect the processing errors identified in this report by requiring that:
  - State WC offset cases be included in the front-end review process, and
  - attorney fee reviews be included in the Office of Quality Assurance and Performance Assessment annual payment accuracy review.

## **AGENCY COMMENTS**

SSA acknowledged that payment accuracy problems exist in the DI workload involving WC and recognized the merit of our reported findings and proposed recommendations. SSA has established a WC work group that will devise a comprehensive plan to improve payment accuracy.

While SSA agreed with three of our four recommendations, SSA postponed taking action to verify the accuracy of State WC payments before calculating past due benefits and paying the associated attorney fee. Because of the serious questions raised in our report concerning the payment of attorney fees, SSA will perform a separate study of the procedures that provide for paying past due benefits without current and accurate WC verification. SSA expects to have enough information from the study to provide us with its response within 18 months. SSA will then determine whether it will implement our second recommendation or propose an alternative measure to improve the accuracy of attorney payments. The actions taken and

proposed are detailed in SSA's response along with its technical comments (see Appendix D).

## **OFFICE OF THE INSPECTOR GENERAL RESPONSE**

We are pleased that SSA has taken steps and agreed to take additional steps to improve the accuracy of DI payments involving WC. We are assisting SSA by participating in the WC work group.

Overall, we believe the actions SSA has taken and those proposed are positive and will reduce payment errors. However, the deficiencies that result in attorney fee payment errors when a WC offset is involved will require additional action. As such, SSA has committed to study the issue of obtaining current and accurate WC data before paying past due benefits to beneficiaries and fees to attorneys. This study should provide SSA with the management information it needs to establish appropriate procedures to prevent inaccurate payments to beneficiaries and their attorneys when WC is involved. As a participant in the WC work group, we will follow SSA's progress in evaluating attorney fee payment procedures and developing a recommended solution.

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# INTRODUCTION

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## OBJECTIVE

The objective of this audit was to determine whether payments made to attorneys who represented claimants applying for title II Social Security disability insurance (DI) involving workers' compensation (WC) payments were accurate.

## BACKGROUND

The Social Security Administration (SSA) administers the Old-Age, Survivors and Disability Insurance program under title II of the Social Security Act (Act). Section 223(a) of the Act requires that SSA provide monthly DI benefits to entitled individuals<sup>1</sup> under the statutory rules in that provision.

### Attorney Fees

Under section 206(a) of the Act, Congress made SSA responsible under certain circumstances to withhold from a claimants' past due benefits to pay fees to those attorneys who obtain favorable decisions in representing claimants before SSA in administrative proceedings under title II of the Act. The attorney may assist a claimant during any or every step in the DI proceedings, that is, initial determination, reconsideration, hearing, and/or Appeals Council Review. The attorney's fee agreement is usually limited to 25 percent of the past due benefits or \$4,000, whichever is less. However, a fee greater than \$4,000 can be authorized in cases where the attorney appeals the fee award, files a petition, and persuades SSA to increase the fee. A fee petition can also be filed after the attorney's services in the case have ended. Based on the petition, SSA approves a "reasonable" fee for the specific services provided. In determining a reasonable fee, SSA considers criteria the regulations prescribe.<sup>2</sup> Nevertheless, SSA is restricted by the Act to withhold and pay no more than 25 percent of past due benefits directly to the attorney. The attorney must collect any amounts awarded in excess of 25 percent directly from the claimant or the claimant's auxiliaries.

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<sup>1</sup> Entitled individuals meet specific disability requirements and are insured for DI.

<sup>2</sup> The fee petition process has an administrative review process whereby the fee petition approved can be increased or decreased if the attorney or beneficiary appeal the approved fee.



## **Past Due Benefits With WC Offset**

For those claimants receiving State WC benefits, section 224 of the Act requires that SSA ensure that the combined benefits from DI and WC be reduced (offset). The combined benefits from DI and WC should not exceed the larger of 80 percent of the worker's predisability earnings or the total family benefits allowable under Social Security before offset. This limitation applies to current and past due benefits. Past due benefits accrue to the wage earners and related auxiliaries under title II of the Act because of a favorable administrative determination or decision, up to, but not including, the month SSA effectuates the determination or decision. Because of limitations in payments, WC benefits must be verified. To calculate past due DI benefits involving a WC offset, SSA must have complete and accurate information on the WC benefits provided to the claimant.

## **Processing Attorney Fees**

SSA has two methods for authorizing and approving attorney fees. The attorney can either enter into a fee agreement with the claimant or file a fee petition with SSA. The attorney usually selects the method used. However, SSA developed two distinct processes for paying attorney fees when WC is involved.

### *Fee Agreements*

When a fee agreement exists, SSA calculates the attorney fee based on the terms of the agreement as long as the fee is within the parameters of section 206 (a)(2)(A) of the Act. To accurately calculate the attorney fee and meet the requirements of the Act, SSA implemented a policy for fee agreements in March 1995 that required SSA to withhold the attorney's fee from the claimants' past due benefits but to authorize payment of the fee only after WC is verified. By withholding payment, SSA has an opportunity to adjust the attorney's fee once WC is verified, since the amount of WC payments can have a significant impact on the past due benefits payable and the resulting legal fee. By waiting for WC verification, SSA can ensure that the attorney will not receive more than 25 percent of past due benefits or \$4,000, whichever is less.

Before March 1995, SSA did not require WC benefit verification to determine attorney fee payments. Using unverified WC payments to calculate fees, attorneys were sometimes paid more than 25 percent of past due DI benefits. In these instances, the claimant, not the attorney, was liable for the overpayment.

### *Fee Petitions*

When an attorney disagrees with the fee authorized by SSA under a fee agreement or after the attorney's services in a case have ended, attorneys may petition SSA to either protest the payment or request payment for services rendered. Through the fee petition, an attorney is given the opportunity to persuade SSA to award a fee that can

exceed \$4,000 and the 25-percent limit governing the fee agreement process. Under the Act, SSA approves a “reasonable” fee under the fee petition process for the specific services rendered. In determining a “reasonable” fee, SSA considers criteria the regulations prescribe. However, even under a fee petition, SSA can withhold and pay no more than 25 percent of the past due DI benefits directly to the attorney. For fees that are authorized over the 25-percent limit, the attorney must collect directly from the claimant or the claimant's auxiliaries.

Under the fee petition process, SSA’s policy does not delay the attorney fee payment even though WC is not verified. If overpayments occur because WC was not verified, the claimant is liable for repayment.

### **Prior Audit Reports**

The U.S. Department of Health and Human Services’ Office of Inspector General (HHS/OIG) performed two prior audits of the attorney fee process. In the first audit,<sup>3</sup> HHS/OIG evaluated the rates attorneys were charging for their services when representing a claimant before SSA and reported problems with excessive rates paid on attorney fees. As a result of this audit, Congress requested SSA to conduct a study on the attorney fee process. Congress elected to implement the fee agreement process even though SSA recommended that its involvement in the fee process be rescinded. In the second audit,<sup>4</sup> HHS/OIG identified a lack of controls to detect and prevent duplicate attorney fee payments. As a result, SSA implemented a control at the Office of Central Operations (OCO)<sup>5</sup> to identify and resolve duplicate attorney fee payments.

### **SCOPE AND METHODOLOGY**

To accomplish our objective, we reviewed the laws and regulations governing the process for paying attorney fees when DI benefits require WC offset. We reviewed related policies and procedures in the Program Operations Manual System (POMS); discussed SSA's process for computing and paying attorney fees with SSA Headquarters officials; observed OCO processing attorney fee payments; and reviewed case files located at the records storage Megasite Facility. We also reviewed prior audit reports to determine prior reportable conditions involving attorney fees.

This audit is a companion of a prior audit, *Effects of State Awarded Workers’ Compensation Payments on Social Security Benefits*, September 30, 1998,

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<sup>3</sup> *Improvements Needed In Attorney Fee Process Could Save Beneficiaries Millions*, January 14, 1987, A-13-86-62607.

<sup>4</sup> *Better Controls Are Needed to Help Prevent or Detect Duplicate Payments to Attorneys*, September 15, 1992, A-13-92-00219 .

<sup>5</sup> When this report was issued, OCO was named the Office of Disability and International Operations.

(A-04-96-61013). That audit found that claimants were not reporting changes in WC payments, and excess delays in obtaining WC verification were resulting in significant overpayments. Issues involving the calculation and payment of attorney fees detected during that review are included in this report. From the data extract, we selected a simple random sample of 100 cases. We limited our review to 50 cases based on the number and extent of dollar errors detected. Of the 50 cases selected, 33 involved attorney fee payments. When projecting our sample results to the universe of 183,881 WC cases, we based our projections on the total sample of 100 cases. We assumed the remaining 50 cases, which we did not review, were correct. Therefore, we consider the projected dollar errors presented to be conservative. If we were to review the remaining 50 cases in the sample, we would expect the projected dollar errors to increase.

To test whether SSA reduced title II benefits for individuals receiving WC payments, we used a data extract from SSA's Master Beneficiary Record. The extract identified only those cases involving the offset of State-managed WC benefits. We did not review other public disability benefits requiring offset under section 224 of the Act, including both State and Federal public disability benefits or any combination of State-managed WC benefits and public disability benefits. The extract contained 183,881 cases with State WC offsets covering the period January 1993 through June 1996. We did not audit the data extract to determine whether it contained all the WC cases. The attorney fees identified in our sample cases were paid from April 1989 through February 1998.

Based on the number and extent of the attorney fee errors identified, we requested SSA to review the cases we identified with attorney fee payment errors. SSA generally agreed with our case analysis except for two cases involving fee petitions where subsequent changes in WC were not reported before the attorney fee was paid. SSA did not consider these dollar errors since it followed its policy, which did not require that WC be current or accurate before paying the attorney fee.

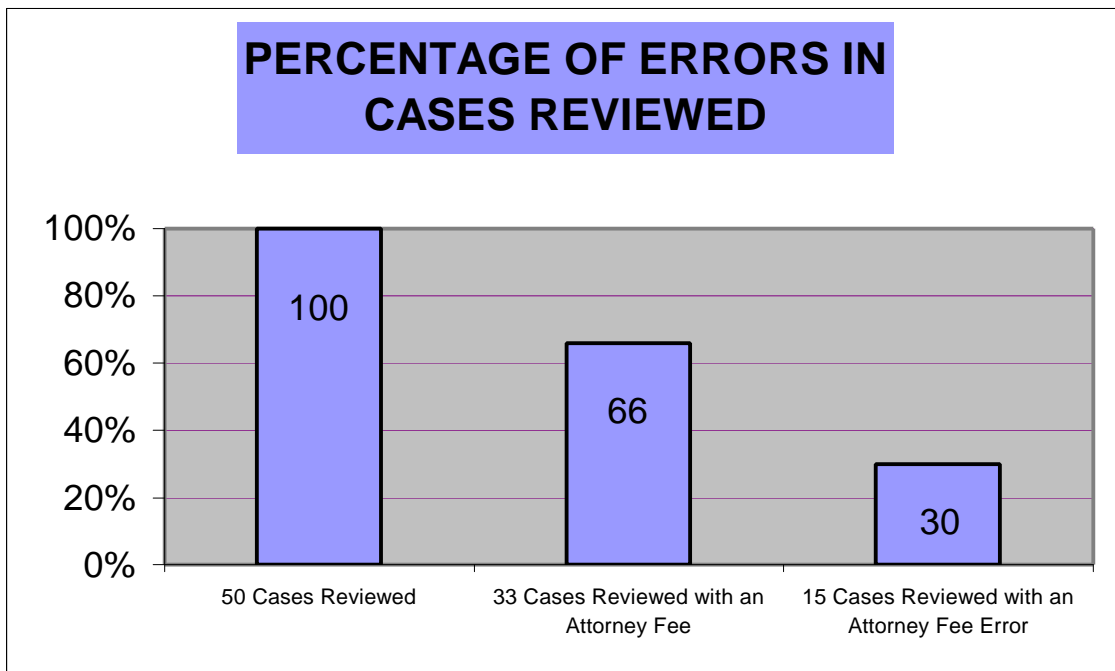
Our audit included an evaluation of existing controls, policies, and procedures specifically related to DI calculations with attorney fee payments involving State WC offset. The findings in our report include any control weaknesses identified during the audit and our recommendations to correct the deficiencies, where appropriate. We conducted our site visits in Baltimore, Maryland. We conducted our audit fieldwork from August 1998 through May 1999. We conducted this audit in accordance with generally accepted government auditing standards.

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# RESULTS OF REVIEW

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Under the Act, SSA established procedures for processing attorney fees. SSA further implemented a policy<sup>6</sup> that allowed payments based on WC information that was not verified when a claimant received title II disability benefits. Errors also occurred because WC cases were complex and prone to processing errors. These errors were not detected because of policy and procedural deficiencies. Of the 50 WC offset cases reviewed, 33 involved an attorney fee. In 15 of these 33 cases, 20 errors (some cases had multiple errors) resulted in overpayments totaling \$17,238 and underpayments totaling \$1,172. Projecting our sample to the population of 183,881 State WC offset cases, we estimate errors totaling \$29.5 million (\$31.6 million in overpayments and \$2.1 million in underpayments) in 27,582 cases.<sup>7</sup> We estimate the percent of dollar error was 20.35 percent of the \$166.3 million in attorney fee payments that should have been paid.<sup>8</sup>



<sup>6</sup> POMS GN 03920.040(A) and (B).

<sup>7</sup> See Appendices and B.

<sup>8</sup> See Appendix C.

The 30-percent error rate identified in the WC cases with attorney fees reviewed indicates that SSA was not effectively implementing the Act's attorney fee provisions. Specifically, SSA did not ensure the attorney fee paid was limited to 25 percent of past due benefits when WC offset was considered. SSA needs to recognize its fiduciary responsibility and change the way it processes attorney fees involving WC to ensure that the Act is met, and the trust fund is not adversely affected.

## **VERIFICATION OF WORKERS' COMPENSATION BENEFITS**

SSA's policy for verifying WC benefits depends on whether the attorney submits a fee agreement or files a fee petition with SSA. This inconsistency in SSA's policy is contributing to the overpayments identified. In total, we estimate that about \$14.5 million<sup>9</sup> in attorney fees were incorrectly paid under both the fee agreement and the fee petition authorization processes.

For example, in 4 of the 20 fee agreement cases reviewed, attorney fees were paid in error because WC verification was not obtained according to policy. This resulted in attorney fee payment errors totaling \$4,836. Overpayments totaling \$4,750 in two of these cases fell under the pre-1995 policy change when the wage earner's attorney fees were paid when calculated. However, SSA neglected to pay the attorney fees related to the auxiliaries' past due benefits. SSA later adjusted the past due benefits based on the WC verification obtained. However, the auxiliaries' attorney fees were still not adjusted or paid. We obtained WC verification for one of the other two cases that showed the past due benefit calculation was incorrect because of a subsequent unreported change in the WC benefits. As a result, the attorney has remained underpaid by \$86 since 1997. In the fourth case, WC verification was outstanding.

In contrast, SSA's fee petition process<sup>10</sup> does not require WC verification when the attorney is paid because the "reasonable" fee is not based on a percentage of past due benefits. We analyzed 13 cases where attorneys were covered under the fee petition process. In five of these cases, SSA did not receive verification of WC benefits. We were able to determine the accuracy of attorney fee payments in only two of the five cases. The overpayments for these two cases totaled \$3,060. For these two cases, we determined that the beneficiary reported a change in WC status after SSA remitted past due benefits. If SSA had telephoned the claimant before it calculated the past due benefits, the subsequent change in WC status could have been detected. Instead, SSA used outdated WC information provided at the time of application. Since the WC status of each claimant was not updated, attorney fees were overpaid \$1,148 and \$1,992, respectively. SSA recovered the \$1,148 overpayment, but waived the \$1,992 overpayment because the claimant was not at fault and repayment would have caused an undue hardship.

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<sup>9</sup> (\$7,896.10/100 sampled cases) x 183,881 WC cases = \$14,519,428 or \$14.5 million.

<sup>10</sup> POMS GN 03920.040(A)(2).



Having two distinct and conflicting policies for paying attorney fees when DI claimants receive WC payments is contributing to the overpayments. If SSA is to ensure that attorney fees are calculated correctly and payments do not exceed the authorized 25-percent direct payment limit, SSA must verify WC benefit information before it calculates past due benefits. With past due benefits and the attorney fee pending, the claimant and the attorney have an interest in providing the WC documentation SSA needs. Once WC is verified, SSA can correctly calculate and pay past due benefits and the attorney fee. Taking this approach will simplify the attorney fee process by paying attorneys consistently under both the fee agreement and the fee petition processes.

## **PROCESSING ERRORS IMPACT PAYMENT ACCURACY**

In 9 of the 33 cases reviewed, 14 errors occurred during the processing of attorney fee payments (1 case had more than 1 type of error). These errors occurred because technicians calculated payments incorrectly, the files lacked documentation to support fee payments, or attorney fee rates were inaccurate. These errors resulted in \$9,428 in overpayments and \$1,086 in underpayments. We estimate that for the 183,881 WC cases in our population, the total dollar error was about \$19.3 million.<sup>11</sup> The following table describes the three types of processing errors we found.

### ***TYPES OF PROCESSING ERRORS***

<b><i>ERROR DESCRIPTION</i></b>	<b><i>NUMBER OF PROCESSING ERRORS</i></b>	<b><i>PERCENT OF PROCESSING ERRORS</i></b>
Calculation Errors	8	57.1
Missing Documentation	4	28.6
Incorrect Attorney Fee Rates	2	14.3
<b>TOTAL PROCESSING ERRORS</b>	<b>14</b>	<b>100.0</b>

### ***Calculation Errors***

We found eight attorney fee calculation errors in six cases. These errors occurred because technicians calculated WC offsets, past due benefits, and a fee adjustment inaccurately (some cases had multiple errors). In five cases, calculation errors caused attorney fees to exceed the 25-percent limit in past due benefits by \$4,631. (For example, in one of these cases, the technician failed to offset for WC benefits. Therefore, instead of receiving a \$121 fee, the attorney was paid \$3,794 resulting in a \$3,673 overpayment error.) In the sixth case, the attorney was denied his full payment by \$1,086. The total dollar error in these six cases was \$5,717.

<sup>11</sup> (\$10,513.92/100 sampled cases) x 183,881 WC cases = \$19,333,101 or \$19.3 million.





### ***Missing Documentation***

We found four processing errors in two cases where SSA paid an attorney fee, but the file did not have any documentation to support SSA's payment action. For SSA to pay an attorney fee where a fee agreement was not filed before the favorable disability decision, a fee petition must be filed and approved. In each of these two cases, neither a fee agreement nor a fee petition could be located to support attorney fee payments totaling \$3,601.

### ***Incorrect Attorney Fee Rates***

We found two processing errors in two cases when SSA used inaccurate attorney fee rates resulting in errors totaling \$1,196. In one of the two cases, the contractual rate stated in the approved fee agreement was 20 percent of past due benefits. Instead, SSA withheld and paid 25 percent to the attorney resulting in a \$696 overpayment. In the remaining case, SSA paid the attorney \$575 instead of \$75, which was the correct amount.

## **WEAKNESSES IN INTERNAL CONTROLS**

The errors discussed in this report occurred because controls were not established to prevent or detect errors in these extremely complex WC cases. SSA needs to do more to ensure the payment accuracy of past due benefits and attorney fees.

Claims authorizers (CA) are responsible for determining offset and instructing benefit authorizers (BA) whether an attorney fee should be withheld or paid. These instructions will depend on: (1) the type of fee process involved, (2) whether the fee was approved, and/or (3) whether WC verification is pending. Based on this process, SSA strictly relied on CAs and BAs to perform their duties based on the procedures in place; however, there was no oversight mechanism in place to ensure that CAs and BAs were following the established procedures.

In our discussions with SSA officials, the only quality review performed on CA's and BA's work was one case per technician monthly. Even with this, SSA did not review for payment accuracy but only to ensure that all actions taken were appropriate. We also contacted the Office of Quality Assurance and Performance Assessment (OQA) to inquire whether it performed studies on attorney fees paid when the DI case involved a State WC offset. We were told that OQA had not analyzed this process, and there were no plans to review this process in the future. As a result, SSA has no established controls either on the front-end or the back-end of the attorney fee process to prevent or detect errors in attorney fee payments. Attorney fees will continue to be paid in error until SSA implements effective controls over case processing.

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# CONCLUSIONS AND RECOMMENDATIONS

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The recommended policy changes are predicated on the fact that the beneficiary has been paid correctly for past due benefits. To be paid correctly, State WC payments must be verified and accurate as of the date payment is made to the DI claimant. If SSA enacts our recommended policy change, it will be in compliance with the direct payment limits established for attorneys under the Act while also ensuring that attorneys are paid at the time past due benefits are awarded.

SSA must execute a consistent policy that requires verification of State WC data before past due benefits and attorney fees are calculated and paid. SSA should have sufficient internal controls over its procedures to prevent or detect the processing errors identified in this report. Therefore, to correct the errors identified in this report and improve its policies and procedures, we recommend that SSA:

1. Review the cases in our sample to determine the proper attorney fee payment and take the required actions on the \$18,410 in errors of which \$17,238 were overpayments and \$1,172 were underpayments.
2. Verify that State WC payment information is current and accurate when past due benefits are paid to claimants and the attorney fees are calculated.
3. Instruct technicians on the procedures that will eliminate the types of errors identified.
4. Develop internal controls to prevent and detect the processing errors identified in this report by requiring that
  - a. State WC offset cases are included in the front-end review process and
  - b. attorney fee reviews be included in the OQA annual payment accuracy review.

## AGENCY COMMENTS

SSA acknowledged that payment accuracy problems exist in the DI workload involving WC and recognized the merit of our reported findings and proposed recommendations. In response, SSA will take immediate action on three of our four recommendations. SSA will delay addressing our second recommendation until it has conducted its own study on the process for paying attorney fees. Once this study is complete, SSA will respond to the substance of our recommendation.

SSA has established a WC work group to devise a comprehensive plan to improve overall payment accuracy. The actions already taken and proposed by the work group and technical comments on the attorney fee payment process are detailed in SSA's comments to the draft report (see Appendix D).

## **OIG RESPONSE**

We are pleased that SSA has taken steps and agreed to take additional steps to improve the accuracy of DI payments involving WC. We are also pleased to be participating in the WC work group effort.

Overall, the actions SSA has agreed to take will go far in helping to correct the WC offset deficiencies resulting in DI benefit and attorney fee payment errors. SSA's proposed plan to evaluate the current procedures followed when calculating past due benefits and paying attorney fees should provide SSA with the management information needed to improve payments when WC is involved. We look forward to working with SSA to improve this process. We responded to SSA's technical comments by making changes in the executive summary and the background sections of the report.

# **APPENDICES**

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## ATTRIBUTES APPRAISAL

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### Total Disability Insurance Cases Involving Workers' Compensation With Attorney Fee Payment Errors

Total Population	183,881
Total Sample Size	100 <sup>1</sup>
Number of Cases with the Attorney Fee Payments Errors	15
Projection of Workers' Compensation (WC) Cases in Total Population With Attorney Fee Payments Errors	27,582

CONFIDENCE LEVEL      90-percent confident that the actual number of cases in the total population with attorney fee computation errors is between 17,433 and 40,733.

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<sup>1</sup> We selected a random sample of 100 cases. We have based our projections on the errors identified from our review of 50 cases. When we project the results, we are using the entire sample of 100 cases. This assumes that the remaining 50 cases, which we did not review, contain no errors. However, if we reviewed the remaining 50 cases, we would expect errors and the projections of those errors to increase.

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## VARIABLES APPRAISAL

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### Total Dollar Error in Workers' Compensation Cases In the Payment History Update System

Total Dollar Error in Sample of 100 Cases	\$ 18,410.02
Total Sample Size	100
Average Total Dollar in Error	184.1002
Total Population	183,881
Value of Projected Dollar Error to the Total Population of WC Cases in the Payment History Update System	\$33,852,529

CONFIDENCE LEVEL                      90-percent confident that the actual value of all dollars in error in the total population of title II benefits paid is between \$16,431,144 and \$51,273,913.

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## NONSTATISTICAL APPRAISAL

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### Nonstatistical Estimate<sup>1</sup> of Dollars Overpaid to Attorneys

Total Dollars Overpaid in the Sample	\$ 17,238.27
Number of Cases in Sample	100
Average Dollars Overpaid for Each Case in Sample	\$ 172.3827
Number of Cases in Total Population	183,881
Total Dollars Overpaid (\$172.3827 x 183,881)	<b>\$31,697,903</b>

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### Nonstatistical Estimate of Dollars Underpaid to Attorneys

Total Dollars Underpaid in the Sample	\$1,171.75
Number of Cases in Sample	100
Average Dollars Underpaid for Each Case in Sample	\$11.7175
Number of Cases in Total Population	183,881
Total Dollars Underpaid (\$11.7175 x 183,881)	<b>\$2,154,626</b>

Note: The net effect of the overpaid and underpaid amounts on the Social Security trust fund would be an estimated loss of \$29.5 million (\$31.6 million – \$2.1 million).

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<sup>1</sup>This is a nonstatistical estimate. We define a nonstatistical estimate as an estimate that does not meet one or more basic theoretical assumptions necessary for statistical estimation, such as a sufficient number of dollar value errors with an approximately normal distribution. A nonstatistical estimate is likely to be more unreliable than an estimate that meets all of these theoretical assumptions.

### Nonstatistical Estimate of Title II Attorney Fees Paid

Total Benefits Paid to Attorneys from the Wage Earner Holder and Auxiliaries in 50 Sample Cases	\$53,246.29
Number of Cases in Sample	50
Average Benefits Paid Per Sample Item	\$1,064.9258
Number of Cases in Total Population	183,881
Total Title II Attorney Fees Paid for Total Population (\$1,064.9258 x 183,881)	<b>\$195,819,621<sup>2</sup></b>

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### Percent of Dollars in Error, When Compared to What Should Have Been Paid

Using Social Security Administration's Index Dollar Accuracy Formula:

(Overpayments + Underpayments)  
(Projected Title II Attorney Fees Paid - Overpayments + Underpayments)

$$\begin{array}{rcl} \$ (31,697,903 + 2,156,464) & = & \$33,852,529 \\ \$ (195,819,621 - 31,697,903 + 2,154,626) & & \$166,276,344 \end{array}$$

= .203597973 or 20.35 percent

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<sup>2</sup> This is a nonstatistical estimate. Due to time considerations, we did not determine the benefits paid on the 50 sample cases not reviewed.



# SSA COMMENTS

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COMMENTS ON OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, "THE SOCIAL SECURITY ADMINISTRATION INCORRECTLY PAID ATTORNEY FEES ON DISABILITY INCOME CASES WHEN WORKERS' COMPENSATION PAYMENTS WERE INVOLVED" (A-04-98-62001)

We appreciate OIG's efforts to determine whether payments to attorneys who represented claimants applying for title II Social Security disability insurance involving workers' compensation (WC) payments were accurate. SSA continually strives to improve the processing of this workload. As we stated in our responses to Other recent OIG reports on WC, the Agency recently established a WC workgroup with the goal of significantly improving the accuracy of payments when WC offset applies. We are pleased that OIG is collaborating with SSA in this effort, and we expect to develop an action plan for significant improvement. The workgroup is currently pursuing a number of cleanup and prevention efforts as follows:

- o Reviewing more than 61,000 WC cases to ensure the payment is correct;
- o issuing reminder items to program service center staff regarding policy and procedures related to WC actions;
- o testing a mailer to beneficiaries that would be sent annually to update WC information; and
- o developing recommendations for improving WC systems and controls.

We believe that these activities will help to correct the WC offset deficiencies identified in this and earlier OIG reports.

Recommendation

Review the cases in our sample to determine the proper attorney fee payment and take the required actions on the \$18,410 in errors of which \$17,238 were overpayments and \$1,172 were underpayments.

Comment

We agree. The sample cases will be reviewed and appropriate action taken.

### Recommendation

Verify that State WC payment information is current and accurate when past due benefits are paid to claimants and the attorney fees are calculated.

### Comment

Your findings raise serious questions about the administration of this aspect of our programs. Additional management information is needed to make an informed decision about how to respond to this recommendation. SSA will, therefore, undertake a study to determine if or how our current procedures should be changed. We expect to have enough information from the study to provide you with our response within 18 months.

### Recommendation

Improve SSA's operations and the accuracy of future payments by instructing technicians on the procedures that will eliminate the types of errors identified.

### Comment

We agree. To improve processing accuracy, refresher training on WC verification and computations was provided to claims authorizers, benefit authorizers, and claims representatives. The training took place from June 1999 through August 1999.

### Recommendation

Develop internal controls to prevent and detect the processing errors identified in this report by requiring that:

- a. State WC offset cases are included in the front-end review process; and
- b. attorney fee reviews be included in the Office of Quality Assurance and Performance Assessment (OQA) annual payment accuracy review.

### Comment

We agree. The Office of Operations is currently developing an enhanced front-end review process that will include WC actions in the category of workloads that will be reviewed.

OQA has instituted a review of the accuracy of attorney fee payments in those disability insurance cases that are included in its ongoing index of dollar accuracy and payment accuracy reviews. OQA will provide feedback to appropriate staff and track individual cases where attorney fee errors are found to ensure that corrective action is taken.

#### Other Comments

##### Executive Summary, Background, page i

The report does not adequately explain the two distinct fee payment processes. On this page (and also on page 1, Background) the report states "The attorney fee is usually limited to 25 percent of the past due benefits or \$4,000, whichever is less." That is true under the fee agreement process, but not under the fee petition process.

Also in this section, the report confuses the administrative review under the fee agreement process with the fee petition process. For example, it states that "In special cases, a fee greater than \$4,000 can be authorized if the attorney appeals the fee award, files a fee petition and persuades SSA to increase the fee." It is correct that a request for administrative review under an approved agreement and an initial request for SSA to authorize a fee under the fee petition process require that the attorney itemize the specific services provided. But both the fee agreement and the fee petition processes have mechanisms for requesting administrative review of the fee amount authorized.

##### Introduction, Background, page 1

The last sentence in the first paragraph should be revised as follows "Section 3(a) of the Act requires that SSA provide monthly DI benefits to entitled individuals under the statutory rules in that provision."

Under the second paragraph titled "Attorney Fees," the first sentence should be revised as follows: "Under section 206(a) of the Act, Congress made SSA responsible under certain circumstances to withhold from claimants' past due benefits to pay fees to those attorneys who obtain favorable decisions in representing claimants before SS in the administrative proceedings under title II of the Act."

# MAJOR CONTRIBUTORS TO THIS REPORT

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## Office of the Inspector General

Gary A. Kramer, Director, Program Audits (Eastern Division)

James D. O'Hara, Deputy Director

Michele Roshetko, Senior Auditor

Karen Cervant, Auditor

Teaketa Hayden, Auditor

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# SSA ORGANIZATIONAL CHART

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