

OIG

Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

The Medical Improvement Review
Standard During Continuing
Disability Reviews

A-01-13-23065 | May 2014

MEMORANDUM

Date: May 19, 2014

Refer To:

To: The Commissioner

From: Inspector General

Subject: The Medical Improvement Review Standard During Continuing Disability Reviews
(A-01-13-23065)

The attached final report presents the results of our audit. Our objectives were to (a) determine whether the Social Security Administration would consider beneficiaries disabled using the Initial Disability Standard rather than the Medical Improvement Review Standard (MIRS) during continuing disability reviews and (b) evaluate data on the MIRS exceptions.

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.



Patrick P. O'Carroll, Jr.

Attachment

The Medical Improvement Review Standard During Continuing Disability Reviews

A-01-13-23065



May 2014

Office of Audit Report Summary

Objective

To (a) determine whether the Social Security Administration (SSA) would consider beneficiaries disabled using the Initial Disability Standard, rather than the Medical Improvement Review Standard (MIRS), during continuing disability reviews (CDR) and (b) evaluate data on the MIRS exceptions.

Background

Under MIRS, an individual's disability continues unless the (1) disabling condition has improved since the last favorable disability determination and (2) individual can engage in substantial gainful activity.

SSA may apply an exception to MIRS. The exceptions allow a finding that disability ceased in limited situations without showing medical improvement occurred, but evidence clearly showed the person should no longer be, or should never have been, considered disabled.

Our Findings

We estimated, after all appeals, SSA will pay about \$269 million in benefits until the next CDR due date to about 4,000 adult beneficiaries who would not be disabled if SSA used the Initial Disability Standard, rather than MIRS, during a CDR.

Additionally, although the cessation determinations were correct, we found issues with the reason coded for cessation for some types of MIRS exceptions.

Our Recommendation

SSA should identify and correct the cause of the MIRS exception coding issues so the Agency will have accurate information on how often the exceptions are used.

SSA agreed with the recommendation.

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ABBREVIATIONS

ALJ	Administrative Law Judge
CDI	Cooperative Disability Investigations
CDR	Continuing Disability Review
C.F.R.	Code of Federal Regulations
CPD	Comparison Point Decision
CY	Calendar Year
DDS	Disability Determination Services
MIRS	Medical Improvement Review Standard
OI	Office of Investigations
OQR	Office of Quality Review
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SGA	Substantial Gainful Activity
SSA	Social Security Administration
U.S.C.	United States Code

OBJECTIVE

Our objectives were to (a) determine whether the Social Security Administration (SSA) would consider beneficiaries disabled using the Initial Disability Standard, rather than the Medical Improvement Review Standard (MIRS), during continuing disability reviews (CDR) and (b) evaluate data on the MIRS exceptions.

BACKGROUND

SSA is required to perform CDRs for individuals receiving disability benefits under Titles II and XVI of the *Social Security Act*.¹ In addition, SSA is required to use MIRS in determining whether disability benefits should continue.² Under MIRS, an individual's disability continues unless the (1) disabling condition has improved since the last favorable disability determination or comparison point decision (CPD) and (2) individual can engage in substantial gainful activity (SGA).³

Medical improvement is shown as a decrease in the medical severity of the disabling condition that was present when the CPD was made. The determination of a decrease in medical severity must be based on changes—or improvement—in the symptoms, signs, and/or laboratory findings associated with the disabling condition(s).⁴ If SSA determines the individual has medically improved, it must also determine whether the medical improvement is related to his/her ability to work.

The *Social Security Act* provides exceptions to MIRS.⁵ These exceptions allow SSA to find disability ceased in limited situations without showing medical improvement occurred, but evidence clearly shows the person should no longer be, or never should have been, considered disabled.⁶ There are two groups of exceptions to MIRS for adults. Group I exceptions require a finding that the individual is not currently disabled (that is, a finding of ability to engage in SGA) before any finding under the CDR evaluation process that disability has ended. The Group I exceptions are

¹ Generally, the frequency of CDRs is dependent upon SSA's assessment of the likelihood of medical improvement. 20 C.F.R. §§ 404.1590(d) and 416.990(d).

² MIRS was established with Pub. L. No. 98-460, 98 Stat. 1794 (1984). *See also*, *Social Security Act* §§ 223(f) and 1614(a)(4), 42 U.S.C. §§ 423(f) and 1382c(a)(4). However, MIRS does not apply to Title XVI Age-18 Redetermination cases. *See* Appendix A for additional information.

³ SSA determines SGA for Title II and XVI adult cases. 20 C.F.R. §§ 404.1594(f) and 416.994(b)(5). *See also* SSA, POMS, DI 28005.001 (April 11, 2008), DI 28010.105 (June 12, 2001) and DI 28020.050 (October 1, 1997).

⁴ 20 C.F.R. §§ 404.1579, 404.1594, and 416.994; SSA, POMS, DI 28010.015 (April 12, 2010).

⁵ *Social Security Act* §§ 223(f) and 1614(a)(4), 42 U.S.C. §§ 423(f) and 1382c(a)(4).

⁶ *Social Security Act* §§ 223(f) and 1614(a)(4); 42 U.S.C. §§ 423(f) and 1382c(a)(4); 20 C.F.R. §§ 404.1579, 404.1594, and 416.994; SSA, POMS, DI 28020.001 (October 6, 1997).

- advances in medical or vocational therapy or technology,
- vocational therapy (any additional education or training that improves the individual's ability to meet the vocational requirements of more jobs),
- new or improved diagnostic or evaluative techniques, and
- substantial evidence demonstrates that any prior disability decision was made in error.

Group II exceptions do not require a medical determination of disability and are

- fraud or similar fault,⁷
- failure to cooperate or whereabouts unknown,⁸ and
- failure to follow prescribed treatment.⁹

See Appendix A for additional information on MIRS and the exceptions.

Generally, State disability determination services (DDS) make the initial CDR determination using SSA's regulations.¹⁰ If an individual disagrees with the initial determination, SSA's regulations give him/her the right to file an appeal within 60 days from the date of notification of the determination. In most cases, an individual may request up to four levels of appeal: (1) reconsideration by a DDS, (2) hearing by an administrative law judge (ALJ), (3) review by the Appeals Council, and (4) review by a Federal court.¹¹

In September 2012, then-SSA Commissioner Astrue requested that we review the MIRS process to determine how many beneficiaries could be removed from the disability rolls if MIRS were not in place.

⁷ Fraud exists when a claimant (or any other person acting on the claimant's behalf) with intent to defraud either makes or causes to be made a false statement or a misrepresentation of a material fact for use in determining rights to Title II or XVI benefits; or conceals or fails to disclose a material fact for use in determining rights to Title II or XVI benefits. Similar fault does not require fraudulent intent. It exists when a claimant or any other person either knowingly makes an incorrect or incomplete statement that is material to the determination or knowingly conceals information that is material to the determination. 20 C.F.R. §§ 404.1594(e)(1) and 416.994(b)(4)(i). *See also* SSA, POMS, DI 27505.015 (June 5, 2008).

⁸ A failure to cooperate or whereabouts unknown issue may arise at any point during a CDR when a disabled individual does not furnish medical or other evidence, fails to attend a consultative examination by a certain date, or cannot be located. 20 C.F.R. §§ 404.1594(e)(2), 404.1594(e)(3), 416.994(b)(4)(ii) and 416.994(b)(4)(iii). *See also* SSA, POMS, DI 28075.005 (December 28, 2012).

⁹ If treatment can restore the ability to work, an individual must follow prescribed treatment to receive benefits. If prescribed treatment is not followed without good cause, SSA should cease benefits when performing a CDR. 20 C.F.R. §§ 404.1594(e)(4) and 416.994(b)(4)(iv). *See also* SSA, POMS, DI 23010.005 (March 30, 2007).

¹⁰ CDRs are performed by DDSs in each of the 50 States, plus the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and SSA Federal units including the Offices of Central Operation and International Operations.

¹¹ 20 C.F.R. §§ 404.900 through 404.985 and 416.1400 through 416.1485.

In April 2013, we obtained a file of all CDRs processed in Calendar Year (CY) 2012. From this file, we identified a population of 196,183 adults with a CDR continuance because of no medical improvement in CY 2012. We selected a random sample of 275 for review and forwarded 62 of these cases in which we needed assistance to SSA for expert case analysis. We asked SSA to review the cases using the Initial Disability Standard, rather than MIRS.¹² Then, SSA determined whether an initial allowance would be granted for disability benefits based on the available evidence.

We also identified a separate population of 9,517 adults in SSA's systems as having a CDR cessation because of a MIRS exception in CY 2012. We selected a random sample from each type of exception—for a total of 196 cases—for review.¹³

For our scope, methodology, and sample results, see Appendix B.

RESULTS OF REVIEW

We estimated, after all appeals, SSA will pay about \$269 million in benefits until the next CDR due date to about 4,000 adult beneficiaries who would not be disabled if SSA used the Initial Disability Standard, rather than MIRS, during a CDR.¹⁴ Additionally, although the cessation determinations were correct, we found issues with the reason coded for cessation for some types of MIRS exceptions.

¹² SSA uses different adjudicative standards for initial disability claims and CDRs. The Agency has a 5-step sequential evaluation process to adjudicate initial disability claims and an 8-step evaluation process for CDRs. 20 C.F.R. §§ 404.1520(a)(4), 404.1594(f), 416.920(a)(4) and 416.994(b)(5). *See also* SSA, POMS, DI 22001.035 (March 3, 2003) and DI 28005.010 (October 1, 1997).

¹³ We only reviewed cases with a CDR completed in CY 2012. SSA expressed concerns that our results may be understated because our population of individuals with full medical CDRs conducted in CY 2012 did not include some individuals who did not have a CDR but may not be disabled if MIRS were not in place. The Agency uses a profiling methodology to identify individuals for CDRs who are most likely to be ceased under current rules and regulations.

¹⁴ We initially estimated SSA would pay about \$573 million in benefits until the next CDR due date to about 8,500 beneficiaries who would no longer be disabled if SSA used the Initial Disability Standard, rather than MIRS, during the initial CDR. We reduced this estimate to reflect the estimated rate of cessations reversed for adults, after all appeals, reported by the Agency. SSA, *Annual Report on Continuing Disability Reviews Fiscal Year 2011*, September 2013. Furthermore, we did not adjust our estimates to reflect beneficiaries who might leave the disability rolls before the next CDR due date or for future cost of living adjustments in benefits.

Sample Results of MIRS Continuance Cases

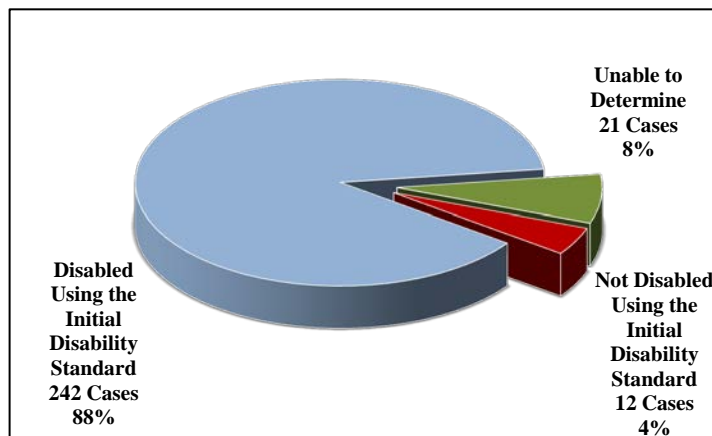
Our review of 275 sample cases (with a CDR continuance because of no medical improvement) found that if SSA used the Initial Disability Standard instead of MIRS,

- 12 individuals would not be considered disabled;¹⁵
- 242 individuals would be disabled; and
- 21 individuals had insufficient evidence available to determine whether the individual would be disabled.

Individuals Not Disabled

We found 12 individuals would not have been considered disabled had SSA used the Initial Disability Standard, rather than MIRS, during a CDR.¹⁶ Had these 12 beneficiaries applied for disability benefits in 2013—at the time of our review—SSA would have denied the claims because the individuals were not disabled based on the available evidence. However, because of MIRS, SSA did not evaluate the claims as if the individuals were filing for benefits for the first time. Instead, under MIRS, SSA had to determine whether the beneficiaries had medically improved since the initial claim or last CDR (whichever is later).

Figure 1: Sample Results



¹⁵ We forwarded these 12 cases to SSA for expert case review, and it concluded the evidence in these cases did not support awarding disability benefits. Therefore, these individuals would not be disabled if currently evaluated as an initial claim. Additionally, these 12 cases were based on initial CDR determinations, and this number would likely decrease after all appeals were completed.

¹⁶ In these 12 CDRs in CY 2012, the DDSs did not find any MIRS exceptions applied. In each case, the DDS made a reasonable and programmatically correct decision to continue benefits under the current laws and regulations. However, the determination of whether there has been significant medical improvement related to the ability to work requires judgment. There are cases where two independent adjudicators can reasonably come to different conclusions when considering all the evidence. So, it is possible that another adjudicator would have made a different judgment to cease benefits—either demonstrating medical improvement or using one of the MIRS exceptions—and it would still be a reasonable and programmatically correct decision.

Of these 12 cases, 2 were originally allowed benefits at the initial level, 2 were originally allowed benefits at the reconsideration level,¹⁷ and 8 were originally allowed benefits at the hearing level (see Table 1). For 11 of these 12 beneficiaries, the 2012 CDR was their first review since the original allowance. SSA had previously continued the remaining beneficiary's benefits during a CDR in 2009.

All 12 cases were originally allowed benefits before December 2010. In recent years, SSA has improved the disability decision process. These areas of improvement include the following.

1. A 3-phase training program for ALJ and hearing office supervisors.¹⁸
2. The Findings Integrated Templates initiative to improve the quality and consistency of ALJ decisions by providing thousands of standard decisional outcomes for various claim types.¹⁹
3. A quality review process for cases at the hearing level.²⁰

Table 1: Individuals Not Disabled Under Initial Disability Standard

Case	State	Age at CDR	Allowance Level	Comparison Point Decision	Primary Impairment	Title	Monthly Benefit	Next CDR Due Date
1	Mississippi	38	Reconsideration	Jan. 2005	Affective Disorders	II	\$1,366	Dec. 2018
2	Illinois	46	Reconsideration	Dec. 2002	Affective Disorders	II	\$1,049	Mar. 2019
3	New York	28	Hearing	May 2007	Affective Disorders	II & XVI	\$508	Mar. 2015
4	Washington	46	Initial	June 2007	Affective Disorders	II	\$1,872	Dec. 2018
5	Tennessee	48	Hearing	Nov. 2010	Disorders of Back	II	\$930	Feb. 2019

¹⁷ If the claimant is dissatisfied with the DDS initial determination, the claimant may request that the DDS reconsider it. Also, a claimant may request a hearing before an ALJ if he/she is dissatisfied with the reconsideration determination. SSA eliminated the reconsideration step for DDSs participating in the Disability Redesign Prototype (Alabama, Alaska, California—Los Angeles North and Los Angeles West Branches, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania). Prototype provisions apply only for initial claims but not CDRs.

¹⁸ SSA OIG, *Training of New Administrative Law Judges at the Office of Disability Adjudication and Review* (A-12-11-11126), October 2011, and *Training and Development of Hearing Office Group Supervisors* (A-12-12-11240), December, 2012.

¹⁹ SSA OIG, *Office of Disability Adjudication and Review Decision-Writing Process* (A-02-09-19068), November 2010.

²⁰ SSA OIG, *Identifying and Monitoring Risk Factors at Hearing Offices* (A-12-12-11289), January 2013.

Case	State	Age at CDR	Allowance Level	Comparison Point Decision	Primary Impairment	Title	Monthly Benefit	Next CDR Due Date
6	Ohio	43	Hearing	Oct. 2004	Disorders of Back	II	\$755	Apr. 2019
7	Michigan	38	Hearing	May 2009	Disorders of Back	II	\$821	Oct. 2015
8	Florida	53	Hearing	June 2006	Disorders of Back	II	\$947	Nov. 2019
9	Alabama	27	Initial	July 2008	Borderline Intellectual Functioning	II & XVI	\$718	Apr. 2015
10	Mississippi	31	Hearing	June 2010	Fracture of Lower Limb	II	\$1,411	Sept. 2015
11	Indiana	38	Hearing	Apr. 2009	Open Wound of Upper Limb	II	\$880	June 2015
12	Texas	46	Hearing	Aug. 2010	Osteoarthritis	II	\$778	May 2019
Averages		40					\$1,003	

For example, in June 2010, an ALJ allowed Title II disability benefits to a Mississippi man who sustained severe injuries to his right leg and one finger on his left hand in a motorcycle accident. In his decision, the ALJ indicated that medical improvement was expected with appropriate treatment and recommended a CDR in 24 months. In October 2012, when the beneficiary was 31 years old, SSA conducted a CDR, determined his condition had not significantly improved, and continued his benefits. We referred this case to SSA for expert review, and it found the beneficiary's injuries had healed, but he still had some functional limitations. SSA determined the claimant could perform a full range of sedentary work and would not be disabled under the criteria for initial disability claims. At the time of the CDR, this claimant was receiving \$1,411 in monthly disability benefits and could receive over \$50,000 between the last CDR in October 2012 and the next CDR in September 2015.

In another example, a 46-year-old man from Washington was allowed Title II disability benefits in June 2007 because of a depressive disorder. In January 2012, SSA completed a CDR and continued benefits. The Agency found the beneficiary's condition had not significantly improved, and he still had a bipolar affective disorder with mild depressive symptoms and a generalized anxiety disorder. We referred this case to SSA for expert review. SSA found he had some short-term memory issues with significant stress or depressive symptoms, but he had a fairly broad range of daily activities. The evidence suggested that the claimant would have some moderate limitations in understanding and memory, sustaining concentration and persistence, and engaging in social interactions. SSA found the beneficiary would not be disabled under the criteria for initial disability claims. At the time of the CDR, this claimant was receiving \$1,872 in monthly disability benefits and could receive over \$157,000 between the last CDR in January 2012 and the next CDR due in December 2018.

Individuals Still Disabled

We found 242 of our sampled 275 individuals would still be disabled if SSA used the Initial Disability Standard, rather than MIRS, during the CDR. For example, a 38-year-old New York woman was allowed Title XVI benefits in July 2003 because of bipolar disorder, dissociative identity disorder, epilepsy, fibromyalgia, and scoliosis. A CDR completed in April 2012 found continued mental illness with schizoaffective disorder, suicide attempts, and multiple inpatient psychiatric hospitalizations. Therefore, benefits were continued. We forwarded this case to SSA for expert review. It determined the medical evidence showed a favorable determination was appropriate using the Initial Disability Standard.

Insufficient Evidence to Evaluate Claim

The claims folders for 21 individuals did not have sufficient evidence to determine whether the individual would be disabled if SSA used the Initial Disability Standard, rather than MIRS, during the CDR. Although the evidence in these cases was sufficient for SSA to adjudicate these claims under MIRS at the time of the CDRs, we could not determine whether the person was disabled under the Initial Disability Standard. During our review, we did not develop new evidence (such as purchasing a consultative examination) or obtain evidence from prior filings that DDS did not scan into the electronic folder.

Each year, SSA's Office of Quality Review (OQR) examines a number of CDR determinations to assess their accuracy. OQR determines whether the cases conformed to SSA's regulations, rulings, policies, and procedures. In FY 2012, OQR reviewed 24,022 initial CDR determinations (12,900 continuances and 11,122 cessations) and reported a 97.9-percent accuracy rate. Although OQR did not review any of the 21 CDR continuances in our sample, we did not question the accuracy of the determinations.

Exceptions to MIRS

The *Social Security Act* provides exceptions to MIRS.²¹ These exceptions allow SSA to find disability ceased in limited situations where no medical improvement occurred, but evidence clearly shows the person should no longer be considered disabled or never should have been considered disabled.²²

In CY 2012, SSA conducted initial medical CDRs for 272,244 adults and ceased benefits to 39,660, for a 15-percent initial cessation rate. Of these cessations, the DDSs²³ indicated they

²¹ *Social Security Act* §§ 223(f) and 1614(a)(4), 42 U.S.C. §§ 423(f) and 1382c(a)(4).

²² *Social Security Act* §§ 223(f) and 1614(a)(4); 42 U.S.C. §§ 423(f) and 1382c(a)(4); 20 C.F.R. §§ 404.1579, 404.1594, and 416.994; SSA, POMS, DI 28020.001 (October 6, 1997).

²³ CDRs are performed by DDSs in each of the 50 States, plus the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and SSA Federal units including the Offices of Central Operation and International Operations.

used MIRS exceptions for 9,517 individuals—1,570 Group I exceptions and 7,947 Group II exceptions, based on data on these CDRs in SSA’s systems, as shown in Table 2.

We reviewed a sample of cases from each type of MIRS exception. Although the cessation determinations were correct, we found issues with the reason coded for cessation for some types of exceptions. For example, none of the cases identified with the “Advances in Medical or Vocational Therapy or Technology” exception codes were correct because the DDS actually ceased these cases as “Medical Improvement Related to the Ability to Work.” Conversely, DDS staff identified other MIRS exception cases correctly, such as “Whereabouts Unknown” cases. SSA informed us it previously reviewed CY 2012 CDR data and found similar results regarding how often staff used the MIRS exceptions and coded them in its systems. The Agency could not determine why the data for these cases were incorrect but planned to evaluate the use of the MIRS exceptions nationwide.

Table 2: MIRS Exceptions – Sample Case Results – by Exception Type²⁴

Exception	Number in SSA’s Systems	Sample Size	Exception Used		Exception Not Used (miscoded as an exception)	
Group I Exceptions						
Advances in Medical or Vocational Therapy or Technology	949	25	0	0%	25	100%
Vocational Profile Enhanced By Vocational Therapy	350	25	3	12%	22	88%
New or Improved Diagnostic Techniques or Evaluation Show Impairment(s) Not as Disabling as Considered to be Previously	135	25	9	36%	16	64%
Prior Favorable Medical Determination of Entitlement to Benefits Was Based on Error	136	25	20	80%	5	20%
Subtotal	1,570	100	32	32%	68	68%
Group II Exceptions						
Failure to Cooperate	7,788	50	50	100%	0	0%
Whereabouts Unknown	137	25	25	100%	0	0%
Failure to Follow Prescribed Treatment	22	21	20	95%	1	5%
Subtotal	7,947	96	95	99%	1	1%
Total	9,517	196	127	65%	69	35%

²⁴ We replaced 15 sample cases in which the CDR documents were not in the electronic disability folder, one case that changed to a continuance after quality review, one case in which the cessation determination was vacated, and one case that became an Age 18 Redetermination after the CDR was initiated. Additionally, one of the 22 “Failure to Follow Prescribed Treatment” cases was not in the electronic disability folder.

Table 3: MIRS Exceptions – Sample Case Results – by DDS

DDS	Number in Sample	Exception Used	Exception Not Used (miscoded as an exception)
Alabama	5	2	3
Arkansas	1	1	0
California	14	9	5
Colorado	1	1	0
Connecticut	5	5	0
District of Columbia	2	2	0
Florida	13	13	0
Georgia	4	3	1
Idaho	1	1	0
Illinois	14	4	10
Indiana	4	4	0
Iowa	3	1	2
Kansas	2	2	0
Kentucky	2	2	0
Maine	2	2	0
Maryland	2	1	1
Massachusetts	1	1	0
Michigan	4	4	0
Minnesota	1	0	1
Mississippi	17	4	13
Missouri	4	4	0
Montana	1	0	1
Nevada	4	2	2
New Jersey	6	6	0
New Mexico	1	0	1
New York	11	8	3
Office of International Operations	1	1	0
Ohio	5	5	0
Oklahoma	2	2	0
Oregon	2	0	2
Pennsylvania	18	11	7
Rhode Island	1	1	0
South Carolina	9	8	1
Tennessee	18	7	11
Texas	10	5	5
Washington	4	4	0
Wisconsin	1	1	0
Total	196	127	69

For example, the Tennessee DDS ceased benefits for a 42-year-old woman during an initial CDR in May 2012. The DDS had allowed benefits in 2008 because of affective disorders and anxiety. The initial CDR examiner found significant medical improvement and ceased her benefits. However, in processing the case, the examiner used the code for the MIRS exception, “Advances in Medical or Vocational Therapy or Technology.” On reconsideration, another examiner reversed the cessation because the beneficiary’s condition had improved but not significantly enough to allow her to return to work.

The Illinois DDS ceased benefits for a 51-year-old man during an initial CDR in May 2012. The DDS had allowed his claim in 2008 because of end-stage renal disease that required dialysis. During the CDR, the examiner determined the medical evidence used to document the dialysis belonged to another individual. Therefore, the original DDS allowed the claim in error because the examiner had put the wrong evidence in this beneficiary’s claims folder. The cessation was upheld on appeal.

In another case, the South Carolina DDS ceased benefits for a 45-year-old man during the initial CDR in April 2012. An ALJ had allowed benefits in 2008 because of a seizure disorder and Sarcoidosis, which prevented all work. At the time of the allowance, he was having two or three seizures a week. The initial CDR examiner found he was not taking his medication as prescribed because tests showed his medication levels significantly below therapeutic levels and ceased his benefits because of “Failure to Follow Prescribed Treatment.” On reconsideration, another examiner reversed the cessation because the initial examiner did not consider all the beneficiary’s impairments. The combination of his seizure impairment, along with Sarcoidosis, asthma, high blood pressure, neuropathy, and a history of neck fractures with cervical discectomies in November 2012, prevented him from returning to work.

CONCLUSIONS

We estimated, after all appeals, SSA will pay about \$269 million in benefits until the next CDR due date to about 4,000 adult beneficiaries who would not be disabled if SSA used the Initial Disability Standard, rather than MIRS, during a CDR.

Additionally, although the cessation determinations were correct, we found issues with the reason coded for cessation for some types of MIRS exceptions.

RECOMMENDATION

We recommend SSA identify and correct the cause of the MIRS exception coding issues so the Agency will have accurate information on how often the exceptions are used.

AGENCY COMMENT

SSA agreed with the recommendation. See Appendix C.

APPENDICES

Appendix A – THE MEDICAL IMPROVEMENT REVIEW STANDARD

The Medical Improvement Review Standard (MIRS) was established under the *Social Security Disability Benefits Reform Act of 1984*.¹

One of the basic purposes of this legislation was to reemphasize congressional intent that there be national uniformity in the disability programs under standards established by Congress. In general, this legislation allowed the Social Security Administration (SSA) to terminate disability benefits only if there was substantial evidence that showed the individual's disability had medically improved, and the individual could perform substantial gainful activity.

Specifically, information concerning the individual's impairment(s) during the prior determination is reviewed in deciding whether the individual is still disabled under MIRS. For a Title II or adult Title XVI beneficiary, disability will cease only when (1) there has been any medical improvement (related to the ability to work) in the individual's impairment(s) or certain exceptions to medical improvement apply and (2) the physical and/or mental impairment(s), together with the vocational profile (that is, age, education and work experience), where appropriate, does not prevent the individual from engaging in substantial gainful activity, unless an exception applies (that is, fraud, error on the face of the original determination, etc.).

Continuing Disability Reviews and Profiling Process

SSA conducts continuing disability reviews (CDR) using one of two methods—some cases are sent to the disability determination services (DDS) for a full medical review while others are completed by using the mailer process.

The mailer process consists of two tools: (1) a profiling system that uses data from SSA's records to determine the likelihood of medical improvement for disabled beneficiaries and (2) the individuals' responses to a brief mailer questionnaire.²

¹ Pub. L. No. 98-460, 98 Stat. 1794 (1984). Before 1980, SSA reviewed a small percentage of disability cases in which: 1) at the time of the initial determination, it was expected that the beneficiary's medical condition would improve; 2) the beneficiary's earnings record indicated work activity; or 3) a beneficiary voluntarily reported work activity or medical improvement. The *Social Security Disability Amendments of 1980*, Pub. L. No. 96-265, 94 Stat. 460 (1980) required the Secretary of Health and Human Services to review the status of all non-permanently disabled Title II beneficiaries every 3 years. This process resulted in SSA's ceasing benefits to large numbers of beneficiaries whose benefits were later found to be erroneously terminated and reinstated after appeal. Most of the courts of appeal ruled that SSA must apply some form of a medical improvement standard or apply a presumption of continuing disability before benefits could be terminated. The *Social Security Disability Benefits Reform Act of 1984* included establishment of MIRS to address unforeseen hardships to beneficiaries whose benefits were terminated even though their conditions may have been unchanged from the time they were awarded benefits.

² The mailer process is not used for Title XVI disabled children.

Most cases profiled as having a high likelihood of medical improvement are sent to the DDSs for a full medical review. Generally, other cases profiled as having a medium or low likelihood of medical improvement are sent a mailer. If, based on a review of the completed mailer, there is an indication of medical improvement, SSA sends the case for a full medical review. Otherwise, SSA decides based on the mailer response not to initiate a full medical review and the case is scheduled for a future CDR.

Exceptions to MIRS

The *Social Security Act* provides exceptions to MIRS for adults.³ These exceptions allow SSA to find disability ceased in limited situations without showing medical improvement occurred, but evidence clearly shows the person should no longer be considered disabled or never should have been considered disabled.⁴ There are two groups of exceptions to MIRS.

Group I Exceptions to MIRS

Group I exceptions require a finding that the individual is not currently disabled (that is, a finding of ability to engage in substantial gainful activity) before any finding under the CDR evaluation process that disability has ended. The Group I exceptions are as follows.

- **Advances in Medical or Vocational Therapy or Technology.** This exception may apply when evidence shows the individual is receiving services that reflect advances in medical or vocational therapy or technology (related to the ability to work).
- **Vocational Therapy.** Vocational therapy (related to the individual's ability to work) includes any additional education or training that improves the individual's ability to meet the vocational requirements of more jobs.
- **New or Improved Diagnostic or Evaluative Techniques.** Changing methodologies and advances in medical and other diagnostic techniques or evaluations have improved methods for diagnosing, measuring, and documenting the effects of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows an impairment(s) is not as severe as was determined at the time of the most recent favorable decision, such evidence may serve as a basis for a finding of no longer disabled, if the individual can currently engage in substantial gainful activity. Under this exception, however, the new or improved techniques must have become generally available after the date of the most recent favorable decision.
- **Substantial Evidence Demonstrates That Any Prior Disability Decision Was In Error.** There are three types of errors considered under this exception.

³ *Social Security Act* §§ 223(f) and 1614(a)(4), 42 U.S.C. §§ 423(f) and 1382c(a)(4).

⁴ *Social Security Act* §§ 223(f) and 1614(a)(4); 42 U.S.C. §§ 423(f) and 1382c(a)(4); 20 C.F.R. §§ 404.1579, 404.1594, and 416.994; SSA, POMS, DI 28020.001 (October 6, 1997).

- Error on the Face of the Record. The evidence shows on its face that the decision in question should not have been made, including cases where evidence was misread or an adjudicative standard was misapplied.
- Required and Material Evidence was Missing. If, at the time of the prior decision, required and material evidence of the severity of the impairment(s) was missing and the evidence in question becomes available upon review and shows that if it had been present before, the beneficiary would not have been found to be disabled.
- New Evidence Related to the Prior Determination. If new evidence related to the prior determination refutes the conclusions that were based on the prior evidence and substantial evidence shows that had the new evidence been considered at the time of the prior decision, the claim would not have been allowed or continued.

Group II Exceptions to MIRS

Group II exceptions do not require a finding of current disability. The Group II exceptions are

- Fraud or Similar Fault. Fraud exists when a claimant (or any other person acting on the claimant's behalf) with intent to defraud either makes or causes to be made a false statement or a misrepresentation of a material fact for use in determining rights to Title II or XVI benefits; or conceals or fails to disclose a material fact for use in determining rights to Title II or XVI benefits. Similar fault does not require fraudulent intent. It exists when a claimant or any other person either knowingly makes an incorrect or incomplete statement that is material to the determination; or knowingly conceals information that is material to the determination.⁵
- Failure to Cooperate or Whereabouts Unknown. This may arise at any point during a CDR when a disabled individual does not furnish medical or other evidence, fails to attend a consultative examination by a certain date, or cannot be located.⁶
- Failure to Follow Prescribed Treatment. If treatment can restore the ability to work, an individual must follow prescribed treatment to receive benefits. If prescribed treatment is not followed without good cause, an individual cannot be found disabled or under a continuing disability, or blind, if currently receiving benefits.⁷

⁵ SSA, POMS, DI 27505.015 (June 5, 2008).

⁶ SSA, POMS, DI 28075.005 (December 28, 2012).

⁷ SSA, POMS, DI 23010.005 (March 20, 2007).

Appendix B – SCOPE, METHODOLOGY, SAMPLE RESULTS, AND PROJECTIONS

To achieve our objective, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration’s (SSA) regulations, rules, policies, and procedures.
- Reviewed prior Office of the Inspector General reports related to continuing disability reviews (CDR) and the hearings process.
- Reviewed SSA’s *Annual Report of Continuing Disability Reviews for Fiscal Years 2006 through 2010* and *Report on Continuing Disability Reviews Resulting from Work Activity* (January 26, 2011).
- Obtained data on all medical CDRs processed in Calendar Year (CY) 2012 from SSA’s records of CDR determinations, known as the SSA-832/833 file. From this file, we identified a population of 196,183 adults with a CDR continuance due to no medical improvement in CY 2012.
- Selected a valid random sample of 275 for detailed analysis. For each case, we reviewed the electronic disability folder and determined whether the beneficiary or recipient would have been disabled if SSA used the Initial Disability Standard, rather than the Medical Improvement Review Standard (MIRS), during the CDR, based on the available evidence from the CDR and prior determinations. We assessed these claims using the Initial Disability Standard, rather than MIRS.
- Reviewed the 275 sample cases and found
 - 213 cases – the beneficiary would be disabled if SSA used the Initial Disability Standard, rather than MIRS, during the CDR and
 - 62 cases – we needed expert assistance to determine whether the beneficiary would be disabled if SSA used the Initial Disability Standard. For some of these, we did not have the knowledge or expertise to make a conclusion, especially for claims with mental impairments, which may have needed medical or psychological consultant reviews or vocational assessments. For others, we thought an adjudicator might need more evidence to make an initial determination.
- Provided 62 cases to SSA to determine whether, if the claim were an initial disability claim instead of a CDR, would an initial level adjudicator allow the claim, based on the available evidence from the CDR folder and prior files. For each of these 62 cases, SSA provided a short summary of its review and concluded: “Evidence supports an initial allowance,” “Evidence does not support an initial allowance,” or “Evidence is insufficient to make an initial determination.”

- Projected the number of beneficiaries who would not be disabled if SSA used the Initial Disability Standard, rather than MIRS, during the CDR, based on the sample of 275 cases. In addition, we projected the amount of benefits paid to these beneficiaries until the next CDR due date.
- Obtained SSA's *Annual Report on Continuing Disability Reviews Fiscal Year 2011*. There were 20,281 initial cessations from full medical CDRs for adult beneficiaries. The Agency estimated 9,586 (47 percent) of these would remain ceased after all appeals.
- Reduced our estimates to reflect the estimated rate of cessations reversed for adult beneficiaries, after all appeals, reported by the Agency in Fiscal Year 2011.
- Identified a population of 9,517 adults in SSA's 832/833 file as having benefits ceased in CY 2012 based on an exception to MIRS. The population by type of exception is below.
 - 949 individuals - Benefited from Advances in Medical or Vocational Therapy or Technology.
 - 350 individuals - Vocational Profile Enhanced by Vocational Therapy.
 - 135 individuals - New or Improved Diagnostic Techniques or Evaluation Show Impairment(s) Not as Disabling as Considered to be at the Time of Most Recent Prior Favorable Medical Determination.
 - 136 individuals - Substantial Evidence that Any Prior Favorable Medical Determination of Entitlement to Benefits Was Based on Error.
 - 7,788 individuals - Failure to Cooperate.
 - 137 individuals - Whereabouts Unknown.
 - 22 individuals - Failure to Follow Prescribed Treatment.
- Selected 21 failure to follow prescribed treatment cessations,¹ a valid random sample of 50 cases from the failure to cooperate cessations, and valid random samples of 25 from each of the other exception cessation groups, for a total of 196 sample cases. For each sample case, we reviewed the electronic disability folder and SSA's systems to determine whether the DDS used a MIRS exception.

¹ One of the 22 "Failure to Follow Prescribed Treatment" cases was not in the electronic disability folder. Therefore, we did not review it as part of the sample. Additionally, we replaced 15 sample cases in which the CDR documents were not in the electronic disability folder, one case that changed to a continuance after quality review, one case in which the cessation determination was vacated, and one case that became an Age 18 Redetermination after the CDR was initiated.

We only reviewed cases with a CDR completed in CY 2012. SSA expressed concerns that our results may be understated because our population of individuals with full medical CDRs conducted in CY 2012 did not include some individuals who did not have a CDR but may not be disabled if MIRS were not in place. The Agency uses a profiling methodology to identify individuals for CDRs who are most likely to be ceased under current rules and regulations.

We determined the computer-processed data from the file of all CDR determinations in CY 2012 (SSA's 832/833 file) were sufficiently reliable for our intended use. We conducted tests to determine the completeness and accuracy of the data. These tests allowed us to assess the reliability of the data and achieve our audit objective. We also determined the MIRS exception data was sufficiently reliable to determine some of the records were miscoded.

We conducted our review between July 2013 and March 2014. The entities audited were the Office of Disability Determinations under the Office of the Deputy Commissioner for Operations and the Office of Disability Policy² under the Office of the Deputy Commissioner for Retirement and Disability Policy.

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

Sample Results

Table B-1, Table B-2, and Table B-3 show the projections from our sample of 275 CDR continuances due to no medical improvement in CY 2012.

Table B-1: Population and Sample Size

Population Size	196,183
Sample Size	275

² During our audit, SSA's Offices of Disability Programs and Medical and Vocational Expertise merged to become the Office of Disability Policy; *see* SSA Memorandum, Executive Personnel Assignments, December 11, 2013.

Table B–2: Beneficiaries Who Would Not Be Disabled Using the Initial Disability Standard

Attribute Projections	
Sample beneficiaries that would not be disabled using the Initial Disability Standard	12
Initial Point estimate	8,561
Reduced estimate to reflect cessation rate after all appeals SSA reported in Fiscal Year 2011 ³	4,024
Projection lower limit	4,979
Projection upper limit	13,678

Note: All projections were calculated at the 90-percent confidence level.

Table B–3: Amount Paid Until Next CDR Due Date to Beneficiaries Who Would Not Be Disabled Using the Initial Disability Standard

Dollar Projections	
Sample beneficiaries that would not be disabled using the Initial Disability Standard	12
Point estimate	\$572,651,756
Reduced estimate to reflect cessation rate after all appeals SSA reported in Fiscal Year 2011	\$269,146,325
Projection lower limit	\$261,910,087
Projection upper limit	\$883,393,426

Note: All projections were calculated at the 90-percent confidence level.

³ SSA, *Annual Report on Continuing Disability Reviews Fiscal Year 2011*, September 2013. There were 20,281 initial cessations from full medical CDRs for adult beneficiaries. The Agency estimated 9,586 (47 percent) of these would remain ceased after all appeals.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: May 12, 2014

Refer To: S1J-3

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

From: Katherine Thornton /s/
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "The Medical Improvement Review Standards During Continuing Disability Reviews" (A-01-13-23065) - 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 Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“THE MEDICAL IMPROVEMENT REVIEW STANDARD DURING CONTINUING
DISABILITY REVIEWS” (A-01-13-23065)**

Recommendation

Identify and correct the cause of the Medical Improvement Review Standard (MIRS) exception coding issues so the Agency will have accurate information on how often the exceptions are used.

Response

We agree. We are currently studying several approaches in the coding for MIRS to resolve the issues involved and prevent them in the future. We will take action to correct the miscoding of the cases by the end of this calendar year.

Appendix D – MAJOR CONTRIBUTORS

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