



Office *of the* Inspector General
SOCIAL SECURITY ADMINISTRATION

Congressional Response Report

Failure to Follow Prescribed
Treatment

A-01-15-50024 / August 2015

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

August 21, 2015

The Honorable Sam Johnson
Chairman, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, DC 20515

Dear Chairman Johnson:

In a December 12, 2014 letter, you asked that we review issues related to the Social Security Administration's policy when beneficiaries or claimants fail to follow prescribed treatment.

This report highlights various facts pertaining to the issues raised in your letter. To ensure the Social Security Administration is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have any questions concerning this matter, please call me or have your staff contact Kristin Klima, Congressional and Intragovernmental Liaison at (202) 358-6319.

Sincerely,



Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Carolyn W. Colvin

Failure to Follow Prescribed Treatment

A-01-15-50024



August 2015

Office of Audit Report Summary

Objective

To answer specific questions from the Subcommittee on Social Security regarding the Social Security Administration's (SSA) policy when beneficiaries or claimants fail to follow prescribed treatment.

Background

On December 12, 2014, we received a request from the Chairman of the Subcommittee on Social Security, Committee on Ways and Means, to provide information on how SSA ensures beneficiaries follow prescribed treatment.

During an initial claim or continuing disability review (CDR) that would be an allowance or continuation, if evidence shows an individual is not following his/her medical source's prescribed treatment, the Agency must develop the issue to determine whether this treatment would restore his/her ability to work. There are, however, acceptable reasons for failing to follow prescribed treatment.

From SSA's records of disability decisions, we obtained a file of all initial claims and CDRs processed in Calendar Year 2012. We reviewed all initial denials and CDR cessations due to failure to follow prescribed treatment. We also reviewed samples of allowed claims and CDR continuances to determine whether any mentioned failure to follow prescribed treatment.

Findings

We identified 15 instances where SSA denied benefits—or removed a beneficiary from the disability rolls based on a CDR—for failing to follow prescribed treatment. Of the more than 2 million disability denials in 2012, only 5 were denied because the individuals failed to follow prescribed treatment. Of the 122,000 initial CDR cessations in 2012, the Agency ceased 10 because the individuals failed to follow prescribed treatment.

SSA correctly identified initial claims and CDRs that it should have denied or ceased for failure to follow prescribed treatment, but the Agency did not follow policy in processing 14 of these 15 claims because it did not send the claimants predetermination notices. Also, in 2 of the 14 cases, SSA did not follow other failure to follow prescribed treatment policies.

Additionally, we reviewed a sample of 200 initial claims allowed in 2012 and found 23 had a possible failure to follow prescribed treatment issue. In 22 of these 23 claims, the adjudicator processed the claim in accordance with SSA policy. However, in one claim, the adjudicator did not follow Agency policy since he/she did not develop a potential failure to follow prescribed treatment issue.

We also reviewed a sample of 200 CDRs continued in 2012 and found 11 had a possible failure to follow prescribed treatment issue. In all 11 claims, SSA handled the issue in accordance with policy.

TABLE OF CONTENTS

| | |
|---|-----|
| Objective | 1 |
| Background | 1 |
| Results of Review | 3 |
| How Has SSA Implemented this Policy? | 3 |
| How Often Does SSA Review Whether a Disabled Beneficiary Is Following Prescribed Treatment, and How Does SSA Make that Determination? | 7 |
| How Many Disabled Beneficiaries Are Required to Follow Prescribed Treatment? | 10 |
| Conclusions | 12 |
| Appendix A – Congressional Request | A-1 |
| Appendix B – Scope and Methodology | B-1 |
| Appendix C – Sample Results of Initial Claims Allowed and Continued | C-1 |
| Appendix D – Major Contributors | D-1 |

ABBREVIATIONS

| | |
|--------|---|
| Act | <i>Social Security Act</i> |
| ADHD | Attention Deficit Hyperactivity Disorder |
| ALJ | Administrative Law Judge |
| CDR | Continuing Disability Review |
| C.F.R. | Code of Federal Regulations |
| CY | Calendar Year |
| DAA | Drug Addiction and Alcohol |
| DDS | Disability Determination Services |
| DIG | Diagnosis Code |
| OASDI | Old-Age, Survivors and Disability Insurance |
| ODP | Office of Disability Policy |
| OIG | Office of the Inspector General |
| OQR | Office of Quality Review |
| POMS | Program Operations Manual System |
| SGA | Substantial Gainful Activity |
| SSA | Social Security Administration |
| SSI | Supplemental Security Income |
| U.S.C. | United States Code |

OBJECTIVE

Our objective was to answer specific questions from the Subcommittee on Social Security regarding the Social Security Administration's (SSA) policy when beneficiaries or claimants fail to follow prescribed treatment.

BACKGROUND

SSA provides disability benefits to eligible individuals through its Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs under Titles II and XVI of the *Social Security Act* (Act).¹ The Act considers an adult disabled if he/she is unable to engage in any substantial gainful activity (SGA) because of a medically determinable impairment(s) that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.² The Act also considers a child disabled for SSI purposes if he/she has a medically determinable impairment(s) that causes marked and severe functional limitations and can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.³

SSA is required to perform continuing disability reviews (CDR) for individuals receiving disability benefits under Titles II and XVI of the Act.⁴ During a CDR, SSA is required to determine whether medical improvement occurred and disability benefits should continue.

A State disability determination services (DDS) generally makes the initial disability and CDR determinations for SSA using SSA's regulations.⁵ 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) Federal Court review.⁶

¹ The OASDI program covers workers and their dependents or survivors, while the SSI program covers financially needy individuals. *Social Security Act* §§ 202 *et seq.*, 223 *et seq.*, and 1611 *et seq.*, 42 U.S.C. §§ 402 *et seq.*, 423 *et seq.*, and 1382 *et seq.*

² *Social Security Act* §§ 223(d)(1), and 1614(a)(3); 42 U.S.C. §§ 416(i)(1), and 1382c(a)(3); *see also* 20 C.F.R. §§ 404.1505 and 416.905.

³ *Social Security Act* § 1614(a)(3)(C), 42 U.S.C. § 1382c(a)(3)(C); *see also* 20 C.F.R. § 416.906.

⁴ Generally, the frequency of CDRs depends on SSA's assessment of the likelihood of medical improvement. 20 C.F.R. §§ 404.1590(d) and 416.990(d).

⁵ DDSs perform CDRs 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.

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

Under the Act,⁷ if treatment is expected to restore an individual’s ability to work, the individual must follow prescribed treatment to receive benefits. If an individual does not follow prescribed treatment without good cause, he/she cannot be found disabled and cannot continue receiving disability benefits after a CDR.⁸

On December 12, 2014, we received a request from the Chairman of the Subcommittee on Social Security, Committee on Ways and Means, to provide information on how SSA ensures beneficiaries follow prescribed treatment. (For a copy of the congressional request, see Appendix A.) The Chairman asked us to answer the following questions.

- How has SSA implemented this policy?
- How often does SSA review whether a disability beneficiary is following prescribed treatment, and how does SSA make that determination?
- How many disabled beneficiaries are required to follow prescribed treatment?

In December 2014, we obtained a file of all initial claims and CDRs processed in Calendar Year (CY) 2012. As shown in Table 1, we identified six populations.

Table 1: Populations and Number of Cases Reviewed by OIG

| Group | Category | Population | Sample |
|-------|---|------------|--------|
| | Initial claims denied for failure to follow prescribed treatment ⁹ | 5 | 5 |
| A | Initial claims allowed with a primary diagnosis code (DIG) for which SSA’s Listing of Impairments ¹⁰ requires treatment (asthma and seizures) or where treatment might improve the condition—attention deficit hyperactivity disorder (ADHD) and all other mental impairments other than intellectual disabilities | 187,412 | 100 |
| B | Initial claims allowed with a primary DIG for all other impairments | 841,980 | 100 |
| | Initial CDRs ceased for failure to follow prescribed treatment ¹¹ | 10 | 10 |

⁷ *Social Security Act* §§ 223(f) and 1614(a)(4); 42 U.S.C. §§ 423(f) and 1382c(a)(4).

⁸ SSA, POMS, DI 23010.005 A1 (March 30, 2007). 20 C.F.R. §§ 404.1530, 404.1579(e)(4), 404.1586(c), 404.1594(e)(4), 416.930, 416.986(a)(3), and 416.994(b)(4)(iv). Social Security Ruling 82-59 (August 20, 1980).

⁹ We identified 4,762 initial denials coded as failure to follow prescribed treatment. SSA uses the same denial codes for drug addiction and alcohol (DAA) and failure to follow prescribed treatment. After the Agency provided additional information on DAA cases, we removed 4,654 with DAA coding. Of the remaining 108 cases, SSA denied 5 for failure to follow prescribed treatment, 102 for DAA, and 1 for insufficient evidence.

¹⁰ SSA uses the Listing of Impairments to evaluate disability claims under the OASDI and SSI programs. The listing for each body system describes impairments that SSA considers severe enough to prevent an adult from performing any gainful activity or to cause marked and severe functional limitations in a child younger than 18-years-old. SSA, POMS, DI 34001.001 (September 21, 2000).

¹¹ We identified 41 CDR cessations coded as failure to follow prescribed treatment. We determined SSA denied 10 for failure to follow prescribed treatment. One was not a CDR, and SSA ceased 30 for other reasons, including failure to cooperate, medical improvement, and insufficient evidence.

| Group | Category | Population | Sample |
|-------|---|------------|--------|
| A | Initial CDRs continued with a primary DIG for which SSA's Listing of Impairments requires treatment (asthma and seizures) or where treatment might improve the condition (ADHD and all other mental impairments other than intellectual disabilities) | 117,035 | 100 |
| B | Initial CDRs continued with a primary DIG for all other impairments | 196,418 | 100 |

We reviewed the denials/cessations to confirm the cases were actually denied/ceased for failure to follow prescribed treatment. We also tracked whether the claimant appealed the decision and the appeal's outcome. For allowed claims, we examined SSA's electronic disability folder to determine whether documents in the folder mentioned the individual did not follow prescribed treatment. We also determined whether the individual had a treating source and prescribed treatment. For more information on our scope and methodology, see Appendix B.

RESULTS OF REVIEW

The answers to the Subcommittee on Social Security's questions are below.

How Has SSA Implemented this Policy?

SSA takes steps to implement the failure to follow prescribed treatment policy. Before the Agency can consider the failure to follow prescribed treatment policy, it must determine that the claim would otherwise be an allowance or continuation. In cases where a denial or cessation of benefits is appropriate for other reasons, failure to follow prescribed treatment is irrelevant. Next, if the evidence of record discloses a claimant's medical source prescribed the treatment, SSA must determine whether the prescribed treatment is likely to restore the individual's ability to work (or in the case of an SSI child recipient, the ability to function independently, appropriately, and effectively in an age-appropriate manner). Only then is failure to follow prescribed treatment an issue. Finally, in those circumstances where failure to follow prescribed treatment is an issue, SSA must determine whether the individual had good cause for not following the prescribed treatment.

The Agency can only make a failure to follow prescribed treatment determination when a claim meets *all* the following conditions.¹²

- The evidence establishes the individual is disabled according to SSA's criteria absent any consideration of failure to follow prescribed treatment.
- Prescribed treatment is expected to restore capacity to engage in SGA (or gainful activity, as appropriate).
- The evidence of record discloses failure to follow prescribed treatment without good cause.

¹² SSA, POMS, DI 23010.005 (March 30, 2007). 20 C.F.R. §§ 404.1530, 404.1579(e)(4), 404.1586(c), 404.1594(e)(4), 416.930, 416.986(a)(3), and 416.994(b)(4)(iv). Social Security Ruling 82-59 (August 20, 1980).

When SSA develops evidence to make a failure to follow prescribed treatment determination, SSA procedures require that the appropriate personnel contact the individual and prescribing medical source and obtain information on

1. the nature of the treatment,
2. the probable course of the condition with and without prescribed treatment, and
3. why he/she did not follow the prescribed treatment.¹³

The Agency should clearly and accurately document the individual's responses. Agency employees are instructed to document and fully evaluate the specific facts of each case to determine whether the individual's reason for failing to follow prescribed treatment is justified. The Agency should also investigate the possibility of a mental impairment when the individual's responses suggest confusion or the inability to understand.

The Agency should then contact the medical treating source to substantiate or clarify what the source told the individual.

Next, the Agency must determine whether the individual has good cause for failing to follow prescribed treatment. SSA policy states to accept any reasonable explanation appropriately documented for a finding of good cause.¹⁴ Some examples are provided below.

- The individual cannot afford prescribed treatment, which he/she is willing to accept, but for which free community resources are unavailable.
- An individual's fear of surgery is so intense he/she cannot have the surgery.
- An individual with a severe mental impairment is clearly unable to understand the consequence of failing to follow prescribed treatment.

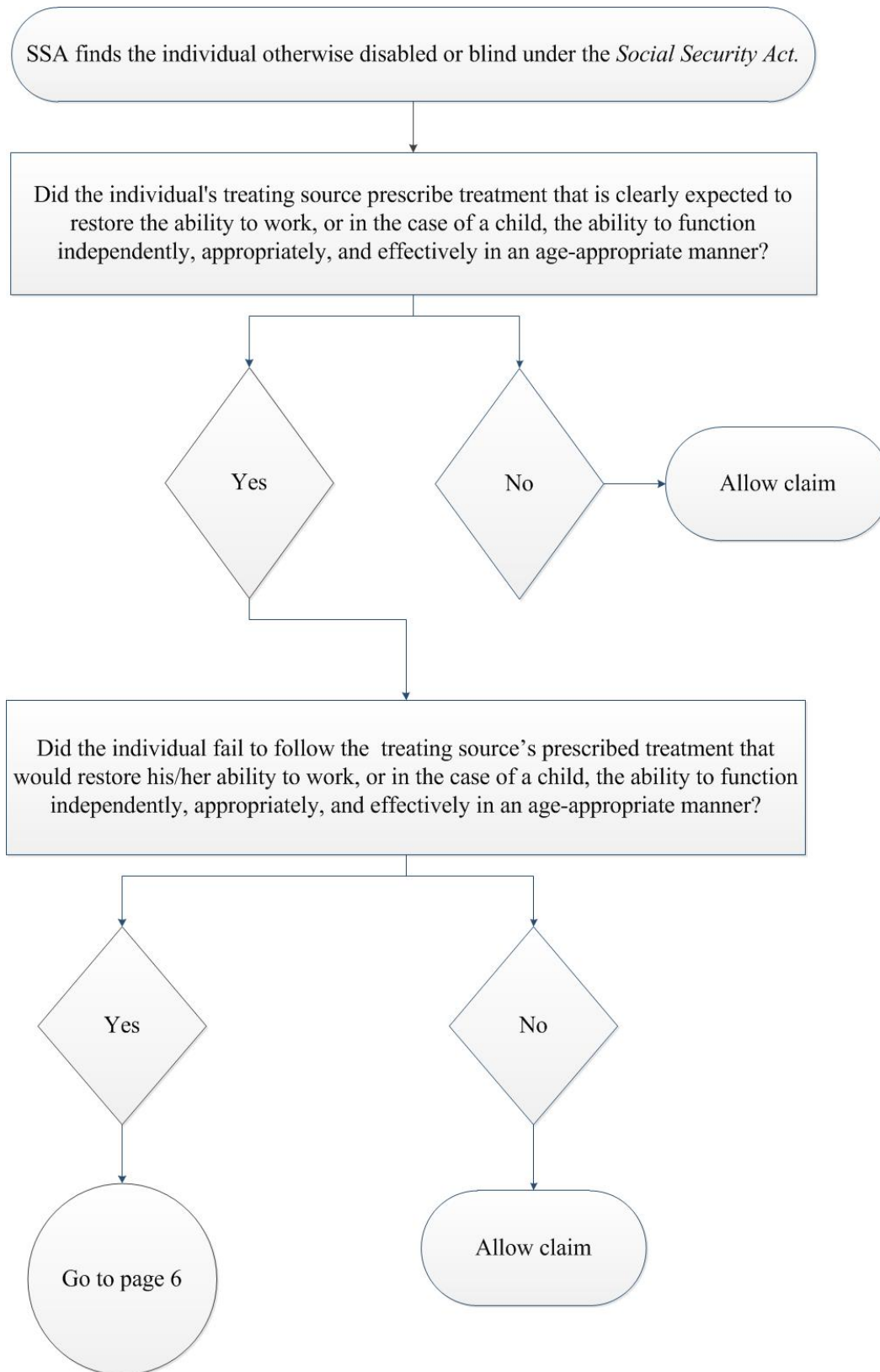
If SSA determines the individual is not following a prescribed treatment that may restore his/her ability to work and there is no good cause for not doing so, the Agency must advise the individual and send a predetermination notice.¹⁵ The Agency then defers adjudication for at least 30 days to allow the individual to respond whether he/she intends to undergo treatment. If the individual does not respond with intent to undergo treatment, the Agency makes the determination of failure to follow prescribed treatment. See Figure 1 for a flowchart of the process SSA uses to determine whether it should deny or cease a claim or CDR for failure to follow prescribed treatment.

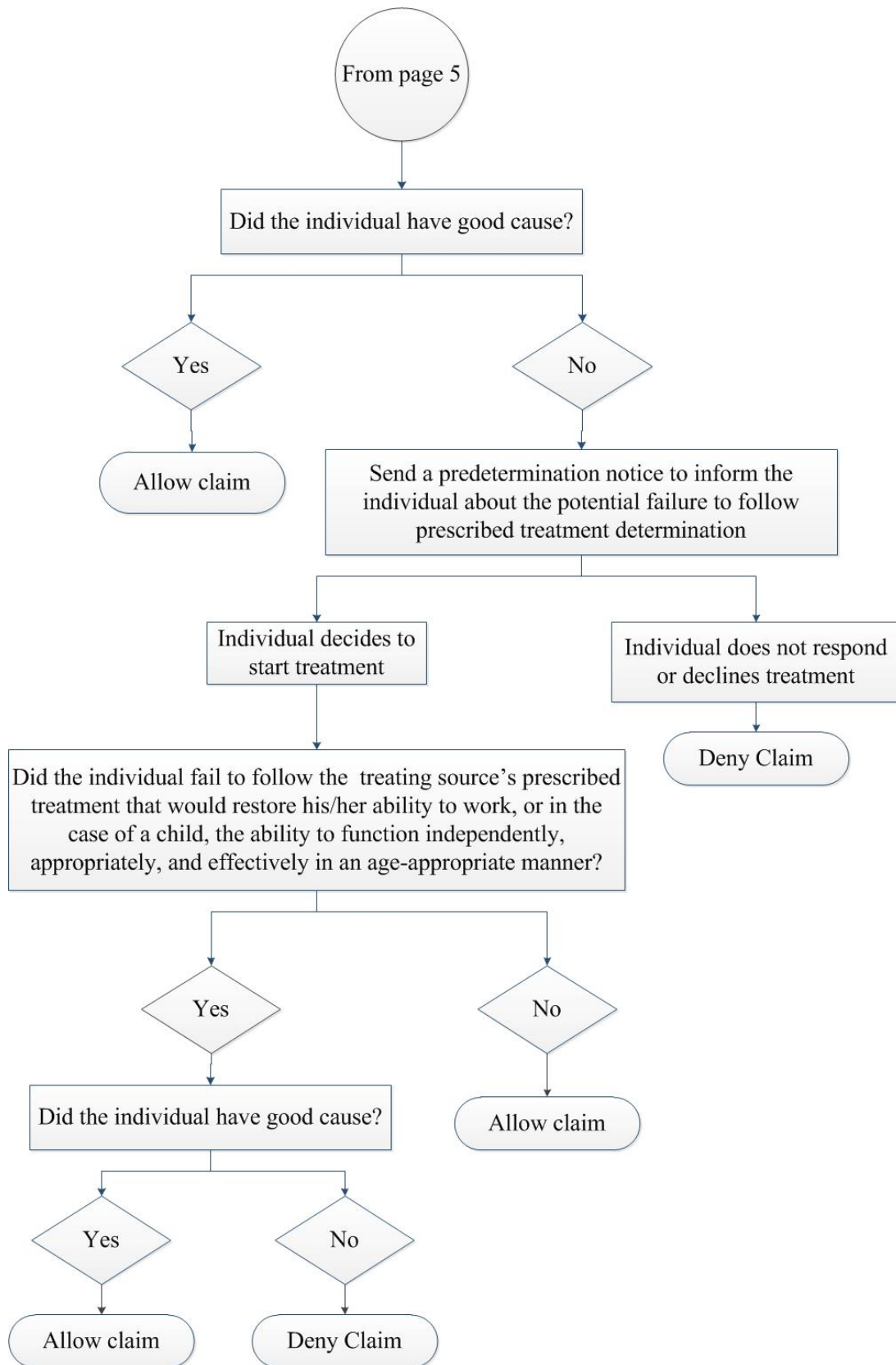
¹³ SSA, POMS, DI 23010.010 (March 16, 2010).

¹⁴ SSA, POMS, DI 23010.010A.8.b (March 16, 2010).

¹⁵ SSA sends a predetermination notice to inform the individual that (1) good cause for failure to follow prescribed treatment is not established, (2) a determination will be made on this basis, (3) he/she should advise the Agency of any change in treatment participation, and (4) an adverse determination on this basis may mean entitlement requirements cannot be met at a later date, even if prescribed treatment is followed.

Figure 1: Failure to Follow Prescribed Treatment Determination Process





How Often Does SSA Review Whether a Disabled Beneficiary Is Following Prescribed Treatment, and How Does SSA Make that Determination?

SSA applies the prescribed treatment policy in all new claims and CDR determinations.

SSA makes determinations based on the evidence it gathers, using the criteria previously described. In CY 2012, of the more than 2 million denials the Agency processed, SSA denied 5 initial claims because the applicant failed to follow prescribed treatment. However, in one case, SSA did not follow its criteria, as described in case 2 in Table 2, but the claimant filed a new claim, which SSA denied because he had the ability to work. In total, three of these five applicants filed appeals. SSA denied two claims and allowed one during the appeals process. However, four individuals filed new disability claims. SSA denied one and allowed one, and two were still pending as of July 2015.

Table 2: Case Details for Initial Claims Denied for Failure to Follow Prescribed Treatment

| # | Details | Status |
|---|---|---|
| 1 | An individual applied for disability benefits for seizures and many other disorders. Her treating source stated that she was virtually never medication-compliant with seizure medication. The disability examiner determined that with medication compliance, she would likely have minimal limitations. | The individual appealed the determination. The ALJ denied her claim because she could work and the Appeals Council denied her request for review. She also filed a new claim, which was pending at the hearing level as of July 2015. |
| 2 | An individual applied for disability benefits for pancreatitis, gastritis, and a right hand injury. He only sought treatment from the emergency room and did not follow the doctor's instructions to see a specialist. However, because an emergency room doctor does not have a history of treating the individual, SSA does not consider this to be a treating source. ¹⁶ The disability examiner incorrectly found the individual was not disabled because he was not following the prescribed treatment. | The individual did not appeal the determination. He filed a new claim, which the Agency denied because he had the ability to work. |

¹⁶ SSA, POMS, DI 22505.001B.1 (January 14, 2015).

| # | Details | Status |
|---|---|--|
| 3 | An individual applied for disability benefits for mental problems, diabetes, and high blood pressure. His treating source stated that he had a history of failing to keep appointments and take his medications. The disability examiner found the individual was not disabled because he was not following the prescribed treatment. | The individual did not appeal the determination. He filed a new claim, which the ALJ allowed—2 years after the failure to follow prescribed treatment denial. When the ALJ allowed the claim, the claimant had end-stage renal disease and treatment was not available to restore his ability to work. |
| 4 | An individual applied for disability benefits for seizures, high blood pressure, and poor eyesight. The medical evidence showed she was prescribed three doses of an anti-seizure medication per day; however, she only took two doses. She claimed she was taking only two doses to stretch the medication. However, because evidence in the file showed she was also using cocaine and marijuana, she had the means to purchase her medication as she had the means to purchase non-prescription drugs. The evidence showed that proper medication management should significantly reduce her seizure issues. Therefore, SSA denied the claim for failure to follow prescribed treatment. | The individual appealed the determination, and SSA denied it at the reconsideration level because of insufficient evidence. She filed a new claim, which was pending at the hearing level as of July 2015. |
| 5 | An individual applied for disability for congestive heart failure and many other disorders. The medical evidence showed he was not taking his medications. The disability examiner found if he complied with medications and treatment, he would improve, and therefore, denied the claim for failure to follow prescribed treatment. | The individual appealed the determination, which the ALJ allowed because his impairment met the severity of the Medical Listings. |

Of the 122,000 initial CDR cessations in CY 2012, the Agency ceased 10 because the individual failed to follow prescribed treatment. However, in one case, SSA did not follow its criteria, as described in case 1 in Table 3. All 10 beneficiaries filed appeals: 6 were continued and 4 were denied.

Table 3: Case Details for CDR Cessations for Failure to Follow Prescribed Treatment

| # | Details | Status |
|---|--|--|
| 1 | An individual's medical evidence showed he was not taking his seizure medication. When SSA asked the individual why, he stated the reason was the cost; however, the DDS opined the prescriptions were available in generic form, which may have a lower cost. SSA determined that he continued having seizures because he was noncompliant with anti-seizure medication, and therefore, ceased his benefits. However, the disability examiner did not follow Agency policy, which required the DDS to document the individual's financial resources and explore all possible local community resources to determine whether the individual can obtain free treatment or funds to cover the treatment. ¹⁷ | The individual appealed the determination. SSA reversed its determination and continued his benefits because it found there was no medical improvement. |
| 2 | An individual reported she stopped taking her seizure medication because she had difficulty swallowing the pills. While on the medication, she had no seizures for longer than 1 year. Once she stopped taking the medication, she began having seizures daily. She did not contact her doctor about this issue. SSA ceased her benefits. | The individual appealed the determination, and the Appeals Council denied the appeal. |
| 3 | A mother chose to stop medicating her child who was receiving disability benefits for ADHD. The child's teacher reported that, while on medication, the child was able to focus and interact appropriately with others, and the child's attention and behavior were much better. The mother stated she needed to get her child back on medication but had not followed through. SSA ceased the child's benefits. | The individual appealed the determination. An ALJ upheld the decision and found medical improvement. |
| 4 | An individual's neurologist reported that he increased the individual's seizure medicine, yet testing showed the levels were very low, indicating the individual was not taking the medication. SSA ceased his benefits. | The individual appealed the determination, and SSA upheld the decision at the reconsideration level because it found medical improvement. He filed a new claim that SSA denied because he failed to attend an examination. |
| 5 | An individual's case folder showed evidence that she refused to take prescribed medication to treat her mental health condition that would restore her ability to function. SSA ceased her benefits. | The individual appealed the determination. SSA reversed its determination and continued her benefits because it found she was still disabled. |

¹⁷ SSA, POMS, DI 23010.010A.5 (March 16, 2010).

| # | Details | Status |
|----|--|--|
| 6 | A parent never sought medical treatment for her child who was receiving disability benefits for behavior problems. SSA ceased his benefits. | The individual appealed the determination and provided documentation that she sought medical treatment. SSA reversed its determination and found the child was still disabled. |
| 7 | An individual's case folder showed evidence that a prosthesis would restore his ability to work. He did not provide a justifiable cause to not undergo this treatment. Therefore, SSA ceased his benefits. | The individual appealed the determination, and SSA found his disability did not end and continued his benefits. |
| 8 | An individual's case folder showed evidence that she did not follow medical treatment that would improve her health and make her able to work. She took medication intermittently, which was not for treatment. SSA ceased her benefits. | The individual appealed the determination, and SSA reversed its determination and continued her benefits because her disability met a medical listing. |
| 9 | An individual's case folder showed that she was not compliant with pain management and treatment for fibromyalgia. SSA ceased her benefits. | The individual appealed the determination. The DDS reviewed the file again, found there was no medical improvement, and reversed the cessation determination. |
| 10 | A parent did not have her child, who received disability benefits for hearing loss, regularly wear hearing aids. The disability examiner found that with regular use of hearing aids, he could hear well enough to perform a number of activities the same as other children and his speech and ability to communicate would improve. SSA ceased his benefits. | The individual appealed the determination and the Appeals Council denied the appeal. |

Our review showed that SSA did not send predetermination notices to 14 of the 15 individuals whom it denied or ceased due to failure to follow prescribed treatment. The Agency reviewed these cases and confirmed that it did not send the notices. Therefore, SSA plans to provide training to remind adjudicators to send predetermination notices.

The Office of Quality Review (OQR) reviews initial claims and CDR determinations. In Fiscal Year 2012, of approximately 500,000 allowance and denial claims OQR reviewed, OQR found 3 instances in which SSA did not follow the failure to follow prescribed treatment policy correctly.

How Many Disabled Beneficiaries Are Required to Follow Prescribed Treatment?

All disabled beneficiaries are required to follow prescribed treatment when their medical source prescribes treatment that is expected to restore the individual's ability to work (or reduce a child's functional limitations so they are no longer marked and severe). To receive benefits under these circumstances, the beneficiary must follow the prescribed treatment unless he/she has good cause not to do so. Table 4 summarizes our analysis.

Table 4: Results of Sample Claims Allowed and CDRs Continued

| Group ¹⁸ | Total Claims Sampled | Number of Claims with Failure to Follow Prescribed Treatment Mentioned | Number of Claims Where Failure to Follow Prescribed Treatment Was Handled Correctly | Number of Claims that had Treating Source | Number of Claims that had Prescribed Treatment |
|-------------------------------|----------------------|--|---|---|--|
| Initial Allowances Group A | 100 | 18 | 17 | 99 | 96 |
| Initial Allowances Group B | 100 | 5 | 5 | 99 | 89 |
| All Initial Allowances | 200 | 23 | 22 | 198 | 185 |
| CDR Continuances Group A | 100 | 9 | 9 | 95 | 93 |
| CDR Continuances Group B | 100 | 2 | 2 | 92 | 63 |
| All CDR Continuances | 200 | 11 | 11 | 187 | 156 |

In our sample of 200 initial claims allowed in CY 2012, we found 198 had a treating source and 185 were prescribed some type of treatment for the disabling impairment(s). If these individuals were not following prescribed treatment for the disabling impairment(s), SSA would need to determine whether the treatment would restore the ability to work (or reduce a child's functional limitations so they are no longer marked and severe) and whether he/she had good cause not to comply with the treatment.

In addition, we found 23 of the 200 claim files mentioned a possible failure to follow prescribed treatment issue. In 22 of these 23 claims, SSA handled the issue in accordance with policy. For example, a Maryland man applied for disability benefits alleging paranoid schizophrenia and psychosis. His medical evidence showed he had a well-established history of schizophrenia that severely limited his ability to function, which was related to his reluctance to take his medication. Because a good-cause justification for failing to follow prescribed treatment includes individuals with severe mental impairments who are clearly unable to understand the consequences of failing to follow prescribed treatment, SSA handled this case in accordance with its policy and allowed the claim.

However, in 1 of the 23 claims, it was not clear whether the claimant—an 8-year-old boy with attention deficit disorder—was taking his prescribed medication. His treating physician's records showed he was prescribed Adderall, but at a consultative examination, his mother reported he had not been prescribed any medication. The DDS allowed the claim by meeting a listing but did not resolve the conflict in the file. The adjudicator was required to develop for potential failure to follow prescribed treatment and include a discussion of the findings in the file. SSA reviewed this claim and confirmed the adjudicator did not follow Agency policy.

¹⁸ Group A includes claims allowed/continued with a primary DIG for which SSA's Listing of Impairments requires treatment (asthma and seizures) or where treatment might improve the condition (ADHD and all other mental impairments other than intellectual disabilities). Group B includes claims allowed/continued with a primary DIG for all other impairments.

In our sample of 200 CDRs continued in CY 2012, we found 187 had a medical treating source, and 156 were prescribed treatment for the disabling impairment. If these individuals were not following prescribed treatment, SSA would need to evaluate whether the treatment would restore the individual's ability to work (or reduce a child's functional limitations so they are no longer marked and severe) and whether he/she had good cause not to comply with the treatment. Additionally, we found 11 of the 200 claim files mentioned a possible failure to follow prescribed treatment issue. In all 11 claims, SSA handled the issue in accordance with policy. See Appendix C for more details about these claims.

CONCLUSIONS

We identified 15 instances where SSA denied benefits—or removed a beneficiary from the disability rolls based on a CDR—for failing to follow prescribed treatment. Of the more than 2 million disability denials in CY 2012, only 5 were denied because the individual failed to follow prescribed treatment. Of the 122,000 initial CDR cessations in CY 2012, the Agency ceased 10 because the individual failed to follow prescribed treatment.

SSA correctly identified initial claims and CDRs that it should have denied or ceased for failure to follow prescribed treatment, but the Agency did not follow policy in processing 14 of these 15 claims because it did not send the claimants predetermination notices. Also, in 2 of the 14 cases, SSA did not follow other failure to follow prescribed treatment policies.

In addition, we reviewed a sample of 200 initial claims allowed in 2012 and found 23 had a possible failure to follow prescribed treatment issue. In 1 of these 23 claims, the adjudicator did not follow Agency policy because he/she did not develop a potential failure to follow prescribed treatment issue.

We also reviewed a sample of 200 CDRs continued in CY 2012 and found 11 had a possible failure to follow prescribed treatment issue. SSA handled the 11 cases in accordance with policy.

APPENDICES

Appendix A – CONGRESSIONAL REQUEST

SAM JOHNSON, TEXAS
SUBCOMMITTEE CHAIRMAN

PAT TIBERI, OHIO
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Congress of the United States
House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515

SUBCOMMITTEE ON SOCIAL SECURITY

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JANICE MAYS, MINORITY CHIEF COUNSEL
KATHRYN OLSON, SUBCOMMITTEE MINORITY STAFF

December 12, 2014

The Honorable Patrick P. O'Carroll, Jr.
Inspector General
Social Security Administration
6401 Security Boulevard
Altmeyer Building, Suite 300
Baltimore, MD 21235

Dear Mr. O'Carroll:

The purpose of this letter is to request a review of an issue raised in a May 2014 Social Security Administration (SSA) Office of the Inspector General (OIG) report entitled, "*The Medical Improvement Review Standard During Continuing Disability Reviews (A-01-13-23065)*."

The OIG report analyzed continuing disability reviews (CDR) in which the SSA continued benefits because no medical improvement was demonstrated and ceased benefits because of an exception to the medical improvement review standard. One of the exceptions to the medical improvement review standard is failure to follow prescribed treatment.

Under *Social Security Act* §223 and §1614, an individual is not entitled to Disability Insurance benefits or Supplemental Security Income disability payments if he or she does not follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity; or in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations.

We are interested in understanding how the SSA ensures beneficiaries follow prescribed treatment. Specifically, we would like to know:

- How the SSA has implemented the prescribed treatment policy,
- How often the Agency reviews whether a disabled beneficiary is following prescribed treatment, and how the SSA makes that determination, and
- The number of disabled beneficiaries who are required to follow prescribed treatment.

Committee on Ways and Means
Subcommittee on Social Security
December 10, 2014
Page 2

Thank you for your assistance. Should you or your staff have any questions concerning this matter, please contact Kim Hildred, Subcommittee Staff Director at (202) 225-9263.

Sincerely,



SAM JOHNSON
Chairman

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable sections of the Social Security Administration’s (SSA) laws, regulations, rules, and procedures.
- Obtained data on all initial claims processed in Calendar Year (CY) 2012 from SSA’s records of disability decisions, known as the SSA-831 file. We also obtained data on medical continuing disability reviews (CDR) processed in CY 2012 from SSA’s records of CDR determinations, known as the SSA-832/833 file. From these files, we identified the following populations:
 - 5 initial claims denied for failure to follow prescribed treatment.¹
 - 187,412 initial claims allowed with a primary diagnosis code (DIG) for which SSA’s Listing of Impairments² requires treatment (asthma and seizures) or where treatment might improve the condition (attention deficit hyperactivity disorder (ADHD), and all other mental impairments other than intellectual disabilities).
 - 841,980 initial claims allowed with a primary DIG for all other impairments.
 - 10 initial CDR cessations for failure to follow prescribed treatment.³
 - 117,035 initial CDRs continued with a primary DIG for which SSA’s Listing of Impairments requires treatment (asthma and seizures) or where treatment might improve the condition (ADHD and all other mental impairments other than intellectual disabilities).
 - 196,418 initial CDRs continued with a primary DIG for all other impairments.

¹ We identified 4,762 initial denials coded as failure to follow prescribed treatment. After SSA provided information on Drug Addiction and Alcohol (DAA) cases, we removed 4,654 with DAA coding because SSA did not deny these claims for failure to follow prescribed treatment. Of the remaining 108 cases, SSA denied 5 for failure to follow prescribed treatment, 102 for DAA, and 1 for insufficient evidence.

² SSA uses the Listing of Impairments to evaluate disability claims under the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs. The listing for each body system describes impairments that SSA considers severe enough to prevent an adult from performing any gainful activity or to cause marked and severe functional limitations in a child younger than 18-years-old. SSA, POMS, DI 34001.001 (September 21, 2000).

³ We identified 41 CDR cessations coded as failure to follow prescribed treatment. We determined SSA denied 10 for failure to follow prescribed treatment. One was not a CDR, and SSA ceased 30 for other reasons, including failure to cooperate, medical improvement, and insufficient evidence.

- Selected random samples of 100 from each group for detailed analysis; however, we reviewed all initial claims and CDRs that SSA denied/ceased for failure to follow prescribed treatment because these 2 populations were less than 100.
- Replaced 38 initial claims allowed and 12 CDRs continued that had expedited processing (such as Quick Disability Determination and Compassionate Allowance claims)⁴ or did not have an electronic claims folder where we could review the disability adjudication details.
- Reviewed the denials/terminations to confirm the cases were actually denied/terminated for failure to follow prescribed treatment. We also tracked whether the claimant appealed the decision and outcome. For allowed claims, we examined SSA's electronic disability folder to determine whether documents in the folder mentioned the individual's not following prescribed treatment. We also determined whether the individual had a treating source and treatment prescribed.
- Contacted SSA's Office of Quality Review to determine the number of reviewed claims that had failure to follow prescribed treatment issues.
- Held discussions with staff from SSA's Office of Disability Programs (ODP) to gain an understanding of the Agency's policy for when beneficiaries or claimants fail to follow prescribed treatment.
- Confirmed the accuracy of our flow chart of the failure to follow prescribed treatment process with ODP.
- Provided certain cases to ODP to confirm our analysis.

We conducted our review from December 2014 through May 2015 in Boston, Massachusetts. We tested the data and concluded they were reliable to meet our objective. The principal entity reviewed was the Office of Disability Policy under the Deputy Commissioner of Retirement and Disability Policy. We conducted our review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

⁴ Quick Disability Determinations use a predictive model to identify claims in which it is highly probable the claimant is disabled and the claimant's allegations can be easily and quickly verified so the claim can be processed quickly by the disability determination services. The Compassionate Allowance process identifies claims electronically involving diseases and other medical conditions that are so severe that they clearly meet SSA's definition of disability. Like Quick Disability Determinations, this process uses a predictive model, but it is simpler—selecting claims based solely on the claimant's allegation of having a disease or other medical condition in the Agency's list of Compassionate Allowance conditions.

Appendix C – SAMPLE RESULTS OF INITIAL CLAIMS ALLOWED AND CONTINUED

To answer the Subcommittee’s questions related to failure to follow prescribed treatment, we reviewed samples of initial disability claims allowed and continuing disability reviews (CDR) that were continued. We analyzed the electronic disability folder to determine whether there was mention that the individual followed prescribed treatment. We also determined whether the individual had a treating source that had prescribed treatment.

We reviewed a sample of 100 cases from each of the following populations.

- Initial Allowances Group A: 187,412 initial claims allowed with a primary diagnosis code (DIG) for which the Social Security Administration’s (SSA) Listing of Impairments¹ requires treatment (asthma and seizures) or where treatment might improve the condition (attention deficit hyperactivity disorder [ADHD], and all other mental impairments other than intellectual disabilities).
- Initial Allowances Group B: 841,980 initial claims allowed with a primary DIG for all other impairments.
- CDR Continuances Group A: 117,035 initial CDRs continued with a primary DIG for which SSA’s Listing of Impairments requires treatment (asthma and seizures) or where treatment might improve the condition (ADHD and all other mental impairments other than intellectual disabilities).
- CDR Continuances Group B: 196,418 initial CDRs continued with a primary DIG for all other impairments.

The following tables show the results of our review.

Table C–1: Summary of Sampled Claims—Adult and Child Claims

| Population | Adult Claim | Child Claim | Total |
|----------------------------|-------------|-------------|-------|
| Initial Allowances Group A | 70 | 30 | 100 |
| Initial Allowances Group B | 88 | 12 | 100 |
| CDR Continuances Group A | 84 | 16 | 100 |
| CDR Continuances Group B | 85 | 15 | 100 |

¹ SSA uses the Listing of Impairments to evaluate disability claims under the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs. The listing for each body system describes impairments that SSA considers severe enough to prevent an adult from performing any gainful activity or to cause marked and severe functional limitations in a child younger than 18-years-old. SSA, POMS, DI 34001.001 (September 21, 2000).

Table C–2: Summary of Sampled Claims by Title

| Population | Title II Claim Only | Title XVI Claim Only | Title II and XVI Claims | Total |
|----------------------------|---------------------|----------------------|-------------------------|-------|
| Initial Allowances Group A | 19 | 55 | 26 | 100 |
| Initial Allowances Group B | 43 | 34 | 23 | 100 |
| CDR Continuances Group A | 50 | 31 | 19 | 100 |
| CDR Continuances Group B | 47 | 38 | 15 | 100 |

Table C–3: Diaries for the Sampled Claims²

| Population | Medical Improvement Possible (3 Years) | Medical Improvement Expected (18 months to 1 year) | Medical Improvement Not Expected (7 years) | Claimant Died Before Determination | Total |
|----------------------------|--|--|--|------------------------------------|-------|
| Initial Allowances Group A | 72 | 9 | 19 | 0 | 100 |
| Initial Allowances Group B | 31 | 5 | 63 | 1 | 100 |
| CDR Continuances Group A | 90 | 0 | 10 | 0 | 100 |
| CDR Continuances Group B | 61 | 0 | 39 | 0 | 100 |

² The *Social Security Act* requires the Agency to review cases to determine whether disability continues. When SSA allows or continues a disability claim, it sets a diary date to indicate when the next CDR should occur: for less than 3 years from date of adjudication (Medical Improvement Expected Diary); for 3 years (Medical Improvement Possible Diary); or for 7 years (Medical Improvement Not Expected Diary). SSA, POMS, DI 26525.001 (August 9, 2013), DI 26525.020 (January 14, 2015), DI 26525.035 (January 16, 2015), and DI 26525.040 (January 16, 2015).

Table C–4: Primary Diagnoses for the Sampled Beneficiaries³

| Disability Code | Initial Allowances Group A | Initial Allowances Group B | CDR Continuances Group A | CDR Continuances Group B |
|--|----------------------------|----------------------------|--------------------------|--------------------------|
| Organic Mental Disorders | 0 | 4 | 0 | 5 |
| Schizophrenia | 20 | 0 | 19 | 0 |
| Affective Disorders | 44 | 0 | 46 | 0 |
| Autistic Disorders | 0 | 4 | 0 | 2 |
| Anxiety-Related Disorders | 10 | 0 | 10 | 0 |
| Personality Disorders | 3 | 0 | 0 | 0 |
| Attention Deficit Disorders | 16 | 0 | 15 | 0 |
| Speech and Language Delays | 0 | 3 | 0 | 3 |
| Intellectual Disabilities | 0 | 8 | 0 | 23 |
| Borderline Intellectual Functioning | 0 | 0 | 0 | 3 |
| Cerebral Palsy | 0 | 0 | 0 | 4 |
| Epilepsy | 3 | 0 | 8 | 0 |
| Diabetic and Other Peripheral Neuropathy | 0 | 3 | 0 | 0 |
| Muscular Dystrophy | 0 | 1 | 0 | 3 |
| Chronic Ischemic Heart Disease | 0 | 3 | 0 | 0 |
| Late Effects of Cerebrovascular Disease (Stroke) | 0 | 5 | 0 | 2 |
| Chronic Pulmonary Insufficiency | 0 | 4 | 0 | 1 |
| Osteoarthritis and Allied Disorders | 0 | 10 | 0 | 4 |
| Other and Unspecified Arthropathies | 0 | 3 | 0 | 1 |
| Disorders of Back | 0 | 21 | 0 | 10 |
| Disorders of Muscle, Ligament and Fascia | 0 | 2 | 0 | 3 |
| Fracture of Lower Limb | 0 | 0 | 0 | 3 |
| Other ⁴ | 4 | 29 | 2 | 33 |
| Total | 100 | 100 | 100 | 100 |

³ Group A includes claims allowed/continued with a primary DIG for which SSA's Listing of Impairments requires treatment (asthma and seizures) or where treatment might improve the condition (ADHD and all other mental impairments other than intellectual disabilities). Group B includes claims allowed/continued with a primary DIG for all other impairments.

⁴ Other impairments—that only one or two beneficiaries in any population had—included over 30 different diagnoses, such as Somatoform Disorders, Eating and Tic Disorders, Conduct Disorders, Oppositional/Defiant Disorders, and Asthma.

Appendix D – MAJOR CONTRIBUTORS

Judith Oliveira, Director, Boston Audit Division

Phillip Hanvy, Audit Manager

David Mazzola, Audit Manager

Katie Greenwood, Senior Auditor

Kevin Joyce, IT Specialist

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