



## SOCIAL SECURITY

### MEMORANDUM

Date: June 13, 2008

Refer To:

To: The Commissioner

From: Inspector General

Subject: Quick Response Evaluation: Timeliness of Medical Evidence at Hearing Offices  
(A-05-08-28106)

The attached final quick response evaluation presents the results of our review. We began this work after you requested that the Office of the Inspector General evaluate and document the extent to which delays in the submission of evidence affects the timeliness of the hearing and appeal process. Our objectives were to assess (1) the Social Security Administration's procedures for monitoring the timeliness of medical evidence provided to hearing offices, (2) the validity of the data used in this monitoring, and (3) based on the data, the extent of problems with untimely medical evidence.

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.

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr." with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.

Attachment

# ***QUICK RESPONSE EVALUATION***

## ***Timeliness of Medical Evidence at Hearing Offices***

**A-05-08-28106**



**June 2008**

## **Mission**

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

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- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

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# Executive Summary

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## OBJECTIVE

Our objectives were to assess (1) the Social Security Administration's (SSA) procedures for monitoring the timeliness of medical evidence provided to hearing offices, (2) the validity of the data used in this monitoring, and (3) based on the data, the extent of problems with untimely medical evidence.

## BACKGROUND

On October 29, 2007, SSA issued a notice of proposed rulemaking (NPRM) that stated "Our program experience has convinced us that the late submission of evidence to the [Administrative Law Judge] significantly impedes our ability to issue hearing decisions in a timely manner."<sup>1</sup> To remedy this situation, the NPRM listed a number of potential changes to the appellate process, including (1) requiring at least 75 days' notice for hearings and (2) requiring the submission of evidence at least 5 days before the hearing to ensure the Administrative Law Judge has time to review the evidence. Subsequent to the NPRM, the Commissioner requested that the Office of the Inspector General evaluate and document the extent to which delays in the submission of evidence affects the timeliness of the hearing and appeal process.

## RESULTS OF REVIEW

We determined that the Case Processing and Management System (CPMS) information<sup>2</sup> being used by the Office of Disability Adjudication and Review (ODAR) to monitor the timeliness of medical evidence did not indicate the late submission of medical evidence before hearings was a significant issue at hearing offices. ODAR managers identified two points in the hearing process affected by the late submission of medical evidence by claimants and their representatives before the hearing: hearing postponements (where the hearing is scheduled for a later date) and post-hearing development (where evidence is reviewed after the hearing). When we reviewed these two points of the hearing process, we found that about 0.2 percent of hearings were postponed annually as a result of late medical evidence and about 1.8 percent of the workload currently in-process<sup>3</sup> was significantly delayed after the hearing due to late medical evidence.

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<sup>1</sup> *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*, 72 Federal Register 61218, October 29, 2007.

<sup>2</sup> Prior audit work determined that the CPMS *No Status Change* report used in this review was reliable.

<sup>3</sup> The CPMS *No Status Change* report used to determine the timeliness of the ODAR workload at various stages is a "snapshot" of the entire workload being processed at the time the report is printed.

When we reviewed all medical evidence delays in the hearing process, in addition to claimant-related issues before the hearing, we found that as much as 7.2 percent of the workload currently in-process was significantly delayed because of late medical evidence. However, since the majority of these medical evidence issues occur before the claimant's hearing is scheduled, they are neither directly associated with the medical evidence problems noted in the October 2007 NPRM nor likely to be remedied by the hearing process changes proposed in the notice.

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## OBJECTIVE

Our objectives were to assess (1) the Social Security Administration's (SSA) procedures for monitoring the timeliness of medical evidence provided to hearing offices, (2) the validity of the data used in this monitoring, and (3) based on the data, the extent of problems with untimely medical evidence.

## BACKGROUND

The hearing process begins after an individual is denied benefits at the initial and reconsideration levels at a State disability determination services (DDS) office.<sup>1</sup> The next step in the appeals process is a hearing before an administrative law judge (ALJ). Individual hearings are held by 1 of the Office of Disability Adjudication and Review's (ODAR) 141 hearing offices located nationwide.

Hearing offices may request two types of medical evidence as part of their review of a disability case:<sup>2</sup> medical evidence of record (MER) and consultative examinations (CE). MERs are copies of existing medical evidence, whereas CEs supplement MER obtained from claimants' treating sources. CEs may include medical and psychological examinations, x-rays, and laboratory tests. Hearing offices may also call in medical and vocational experts in cases where the ALJ can "...gain information which will help him or her evaluate the medical evidence in a case...."<sup>3</sup> According to ODAR's procedures, hearing offices can request medical evidence from (1) the claimant, (2) the State DDS, and/or (3) the treating source or other medical source.<sup>4</sup>

Claimants and their representatives are also requested to provide relevant medical evidence to the ALJ before the hearing. According to SSA's policy, "The claimant is responsible for providing evidence to support his or her claim. If the claimant does not provide medical or other evidence the [ALJ] needs and asks for, the ALJ will generally make a decision based on the evidence in the record, including evidence the ALJ has

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<sup>1</sup> Disability determinations under SSA's Disability Insurance and Supplemental Security Income programs are required to be performed by DDS offices in each State according to Federal law and underlying regulations. In carrying out its obligation, each DDS is responsible for determining claimants' disabilities and ensuring adequate evidence is available to support its determinations. See 20 Code of Federal Regulations §§ 404.1601 *et seq.* and 416.1001 *et seq.*

<sup>2</sup> Medical evidence is necessary to develop the full set of facts associated with the alleged disability before the hearing. Delays in the hearing process may also lead to a change in an individual's medical condition, which could be relevant to the determination of whether an individual qualifies for SSA benefits.

<sup>3</sup> SSA, Hearings, Appeals and Litigation Law (HALLEX) Manual I-2-5-32: *Medical Experts – General.*

<sup>4</sup> SSA, HALLEX Manual I-2-5-1: *Evidence – General.*

obtained directly.”<sup>5</sup> ODAR uses the Case Processing and Management System (CPMS), a web-based tracking system, to electronically control and process hearing cases.<sup>6</sup> Through CPMS, ODAR management can monitor the hearings workload. The CPMS management reports are available at the local (hearing office), regional, and national levels.

## Proposed Changes to the Medical Evidence Process

On October 29, 2007, SSA issued a notice of proposed rulemaking (NPRM) regarding *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*.<sup>7</sup> The NPRM noted the following

Our program experience has convinced us that the late submission of evidence to the ALJ significantly impedes our ability to issue hearing decisions in a timely manner. When new and voluminous medical evidence is presented at the hearing or shortly before the hearing, the ALJ and any other person who will be participating in the hearing, such as a medical or vocational expert, do not have the time needed to review the record and adequately prepare for the hearing. We often must reschedule the hearing, which not only delays the decision on that case, but also delays the hearings of other individuals.

To remedy this situation, the NPRM listed a number of changes SSA proposed to the appellate process, including (1) requiring at least 75 days’ notice for hearings and (2) requiring the submission of evidence at least 5 days before the hearing to ensure the ALJ has time to review the evidence (see Appendix B). ODAR management explained that the additional notice period before the hearing would provide the claimants and their representatives more time to obtain the required medical evidence.

Subsequent to the NPRM, the Commissioner requested that the Office of the Inspector General (OIG) evaluate and document the extent to which delays in the submission of evidence affects the timeliness of the hearing and appeal process. To meet our objectives, we discussed the hearing process and medical evidence issues with ODAR management and staff, examined policies and procedures related to the timeliness of medical evidence, obtained CPMS management reports, and reviewed prior work in this area. We provide additional information on our review approach in Appendix C.

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<sup>5</sup> Ibid.

<sup>6</sup> In our June 2006 audit, *Case Processing and Management System and Workload Management* (A-12-06-26012), we assessed the ability of CPMS to improve workload management at hearing offices in ODAR.

<sup>7</sup> *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*, 72 Federal Register 61218, October 29, 2007.



# Results of Review

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We determined that the CPMS information used by ODAR to monitor the timeliness of medical evidence did not indicate that the late submission of medical evidence before hearings was a significant issue at hearing offices. ODAR managers identified two points in the hearing process affected by the late submission of medical evidence by claimants and their representatives prior to the hearing: hearings postponements (where the hearing is scheduled for a later date) and post-hearing development (where evidence is reviewed after the hearing). When we reviewed these two points of the hearing process, we found that about 0.2 percent of hearings were postponed annually as a result of late medical evidence and about 1.8 percent of the workload currently in-process was significantly delayed after the hearing due to late medical evidence. In addition, ODAR management stated that hearings postponement data for late medical evidence were incomplete since hearing offices may not have been coding cases properly. As a result, ODAR issued new guidance to the hearing offices. Moreover, while the CPMS data on post-hearing development were more accurate, CPMS did not specifically monitor the Chief ALJ's timeliness goals for medical evidence. Finally, when we reviewed all medical evidence delays in the hearing process, in addition to claimant-related issues before the hearing, we found that as much as 7.2 percent of the workload currently in-process was significantly delayed because of late medical evidence.

## DELAYS IN MEDICAL EVIDENCE

In our discussions with ODAR management, we were informed that hearing delays associated with late medical evidence from claimants and their representatives usually resulted in (1) postponements of hearings and/or (2) post-hearing development workloads. For example, an ALJ can postpone a hearing when the claimant or claimant's representative provides new medical evidence on the day of the hearing.<sup>8</sup> In addition, an ALJ can continue with the hearing when medical evidence is provided late in the process and assess the new evidence after the hearing, a process called "post-hearing development." (See Appendix D for an explanation of the various steps in the hearing process.) To better understand these delays, we asked management for any reports or analysis indicating late medical evidence led to significant postponements and/or post-hearing development workloads. We discuss each of these issues below.

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<sup>8</sup> ODAR staff stated that claimant representatives often wait until hearings are scheduled before requesting additional medical evidence. Requests just before the hearing can lead to the untimely submission of medical evidence.

## HEARING POSTPONEMENTS

CPMS information indicates that about 0.2 percent of all hearing cases processed in Fiscal Year (FY) 2007 were postponed because of late evidence. ODAR management has stated the hearing offices were probably not properly coding all postponed cases associated with late evidence, which led to the issuance of new guidance. Even with this new guidance, we have not seen a significant increase in the number of cases postponed because of late evidence.

### Postponement Codes

ODAR uses the CPMS *Auxiliary Monthly Activity Report* (AUX MAR) to monitor the different types of postponements in the hearing offices. Per the AUX MAR,<sup>9</sup> we found that 956 hearings were postponed in FY 2007 under the “new evidence” (NE) code, which is used to indicate a case has been postponed as a result of new evidence brought to the hearing or to obtain additional evidence (see Table 1). These 956 hearings represent about 0.2 percent of the approximately 548,000 cases decided in FY 2007.<sup>10</sup>

**Table 1: New Evidence Postponements by SSA Region (FY 2007)**

Region	Number of Postponements	Percent of Total
Atlanta	117	12.2
Boston	31	3.2
Chicago	145	15.2
Dallas	182	19.0
Denver	39	4.1
Kansas City	36	3.8
New York	133	13.9
Philadelphia	46	4.8
San Francisco	199	20.8
Seattle	28	2.9
<b>Total</b>	<b>956</b>	<b>100.0</b>

**Note:** May not add to 100 percent due to rounding.

<sup>9</sup> The AUX MAR report is a monthly report that contains summarized hearings-related workload data extracted from CPMS. The report details ALJ workload, Appeals Council and court remand summaries, subsequent applications, and receipt and case overview data for a given month.

<sup>10</sup> Overall, about 52,000 hearing cases, 9 percent of the FY 2007 dispositions, were postponed for a variety of reasons, including the “representative request,” “claimant was unavailable,” and “representative was unavailable.” In addition, not all dispositions involve a hearing. For instance, an On-The-Record (OTR) decision does not require a hearing. OTR decisions occur when the claimant has waived the right to a hearing or when the ALJ has reviewed the claim file and determined that a decision can be issued without the need for a hearing. However, we determined that even with the removal of OTRs from the total dispositions, the 956 postponements would remain at about 0.2 percent of the FY 2007 workload.

## New Guidance

ODAR representatives stated that it is possible the NE postponement code is not being properly used at hearing offices and therefore the OIG should be cautious about relying on this low figure. As a result of our review, on January 10, 2008, ODAR management sent a reminder to hearing office managers on the proper use of the NE code. In this guidance, ODAR stated, in part,

We want to ensure that this code is consistently used nationally. Please remind your hearing office management teams, that whenever a case is postponed or continued as a result of new evidence being brought to the hearing or is postponed or continued to obtain additional evidence, the NE code should be used. While this code has been available for some time, we would ask that the hearing office management teams ensure that the contract reporters are reminded that this is the appropriate code for any postponements or continuances that occur as a result of new evidence brought to the hearing or as a result of postponements or continuances to obtain additional evidence.

When we noted CPMS does not actually use the term “NE” when information is being input, ODAR staff agreed that the January 2008 guidance could be clearer and may need to be reissued. While the NE code is a CPMS data element,<sup>11</sup> the hearing office contract reporters inputting the postponement information into CPMS do not see this code but instead use a drop down menu to choose the reason for the postponements.

## Recent Use of the Postponement Code

To date, the issuance of new guidance has not led to an overall increase in the number of cases coded as postponed because of late evidence. The use of the NE postponement code averaged 80 hearing cases per month in FY 2007, and we found that, between February 19 and March 19, 2008, 83 hearings were postponed.<sup>12</sup> As a result, we do not see evidence the number of postponed cases will rise above 1 percent of the FY 2008 goal for ALJ dispositions. ODAR staff concurred that the NE postponement code data did not change significantly after the new guidance was issued.<sup>13</sup>

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<sup>11</sup> CPMS converts the information being input at the hearing office into the NE code observed in the CPMS management reports.

<sup>12</sup> See Appendix E for the daily count of postponements from January through March 2008.

<sup>13</sup> It is also possible that management’s guidance has decreased the number of postponed cases. On October 31, 2007, the Chief ALJ sent a letter to ALJs encouraging them to “...hold scheduled hearings unless a good reason exists to cancel or postpone the hearing.” The letter noted that postponing or canceling a hearing without a good reason “delays decisions to claimants who desperately await them, and uses precious limited support staff resources to re-schedule the hearing.”

## Review of October 2007 Postponements

To determine how a postponement will affect the overall timeliness of a hearing, we reviewed a sample of 15 claimants whose hearings were postponed in October 2007 because new evidence was received at the hearing or to obtain additional evidence. As of the end of March, we found that 14 of the 15 cases had a hearing, were scheduled for a hearing, or were disposed of without a hearing.<sup>14</sup> These 14 cases were delayed an average of 15 weeks from the postponement date to the case disposition.<sup>15</sup> As of the end of April 2008, the remaining case had yet to be scheduled for a hearing.<sup>16</sup>

## POST-HEARING DEVELOPMENT

CPMS information indicates that approximately 1.8 percent of all hearings currently in-process were recorded as “untimely” in the post-hearing development status codes. We also found that other guidelines on medical evidence were not clearly integrated into the CPMS management reports, which may preclude ODAR managers from holding hearing offices accountable for timely dispositions.

## No Status Change Report

ODAR headquarters, regional, and hearing offices use the *No Status Change* report to monitor the hearing process and ensure pending claims are processed timely (see Table 2).<sup>17</sup> According to the CPMS *No Status Change* report, 2,135 hearings in the *No Status Change* report for January 8, 2008 were “untimely,”<sup>18</sup> or exceeded the 90-day benchmark, while in the *Post-Hearing Development* status code.<sup>19</sup> This represents

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<sup>14</sup> In two of the cases, ODAR made an “on-the-record” decision instead of holding a hearing.

<sup>15</sup> Hence, when we stated earlier that the postponements did not lead to significant delays in the hearing process, we were not speaking specifically to those cases that were postponed. The claimants directly involved in these 15 cases might regard any delay in the ALJ’s decision to be significant.

<sup>16</sup> This case related to a 51-year-old male claimant from Indiana who had been diagnosed with diabetes. The claim had been at various stages in the system for 5 years. The claimant initially requested a hearing in February 2003, and the hearing was held in July 2004. After being denied benefits in September 2004, the claimant appealed the decision. The Appeals Council reviewed the case and remanded it back to an ALJ in June 2007. The hearing associated with the remand was scheduled for October 2007 but was postponed because of new medical evidence received at the hearing.

<sup>17</sup> The CPMS *No Status Change* report is a “snapshot” of the entire workload being processed at the time the report is printed.

<sup>18</sup> In this report we are equating this “untimely” workload with a significant delay in the process.

<sup>19</sup> The January 2008 *No Status Change* report indicates the three bottlenecks in the hearing process were (1) *Master Docket*, (2) *ALJ Review Pre-Hearing*, and (3) *Ready to Schedule* (see Appendix F). These are the same three bottlenecks discussed in our March 2007 audit, *Management’s Use of Workload Status Reports at Hearing Offices* (A-12-06-26130).

about 0.7 percent of approximately 326,000 hearings currently in-process.<sup>20,21</sup> We expanded the definition of this post-hearing work to include untimely *ALJ Review Post-Hearing*, a 30-day step where the ALJ reviews the accumulated medical evidence before making a decision. This represented another 3,726 claims as of January 8, 2008. These additional claims represent about 1.1 percent of the approximately 326,000 hearings currently in-process.<sup>22</sup> When the two status codes are combined, we found that about 1.8 percent of the workload currently in-process was in some form of post-hearing development status. It is possible a different definition of “untimely” would increase the number of cases in this category. However, we limited our definitions to those being used by SSA management.

As part of CPMS, hearing office employees assign a status code to each claim as it moves through the process. The status code identifies the claim’s processing stage and location. While CPMS uses about 40 status codes to track and process pending claims in the hearing offices, the *No Status Change* report tracks claims in 12 specific status codes (see Table 2). For example, a case in the *Post-Hearing Development* status code must be moved to the next status code within 90 days or the case will appear on the *No Status Change* report. Our June 2006 audit<sup>23</sup> found the *No Status Change* report to be accurate.

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<sup>20</sup> A total of 5.2 percent of the workload currently in-process was in the *Post-Hearing Development* status, but only 0.7 percent was considered untimely under the 90-day benchmark standard (see Appendix F).

<sup>21</sup> We used CPMS’ January 8, 2008 *Workload Summary by Status Report*, which indicated about 756,000 hearings were in the backlog. We removed claims that were in the *Unworked* status code because the hearing offices were taking no action on these cases (see Appendix G). We calculated the “in-process” workload to be approximately 326,000 cases. While there are several ways to define the “in-process” workload, we attempted to focus on those cases being worked by someone in a hearing office.

<sup>22</sup> A total of 2.8 percent of the workload currently in-process was in the *ALJ Review Post-Hearing* status, but only 1.1 percent was considered untimely under the 30-day benchmark standard (see Appendix F).

<sup>23</sup> SSA OIG, *Case Processing and Management System and Workload Management (A-12-06-26012)*, June 2006.

**Table 2: 12 Benchmarks in *No Status Change Report* (Chronological Order)**

Status Codes Tracked by the <i>No Status Change Report</i>	ODAR Benchmark (Days)	Explanation of Benchmark Step
<b>1. Master Docket</b>	30	Claim information input to CPMS.
<b>2. Work Up</b>	25	Claim assigned and being prepared for review.
<b>3. Pre-Hearing Development</b>	90	Requested additional information prior to hearing.
<b>4. ALJ Review Pre-Hearing</b>	10	ALJ reviewing claim prior to hearing.
<b>5. Ready to Schedule</b>	60	Claim work-up and development completed.
<b>6. Post-Hearing Development</b>	90	ALJ requested more information after hearing.
<b>7. ALJ Review Post-Hearing</b>	30	ALJ examining record before writing decision.
<b>8. Unassigned Writing</b>	30	Claim waiting to be assigned to a writer.
<b>9. Decision Writer Personal Computer</b>	15	Writer using a personal computer to draft decision.
<b>10. Edit</b>	15	ALJ editing final written decision.
<b>11. Sign</b>	7	Decision ready for ALJ's signature.
<b>12. Mail</b>	7	Decision signed and ready for release.

**Note:** See Appendix D for more specific information on the hearing process.

### **Additional Guidance on Post-Hearing Development Timeliness**

ODAR has provided hearing offices with inconsistent guidelines for the timely processing of medical evidence (see Table 3). For instance, in 2007, the Office of the Chief Administrative Law Judge (OCALJ) established *Benchmarks for Quality Case Processing*, which provides guidance on the maximum time a case should remain in a category absent good cause (see Appendix H for the OCALJ codes). For medical evidence, the *Benchmarks for Quality Case Processing* allows 21 days to obtain MER from treating sources and 84 days<sup>24</sup> to obtain a CE from treating sources during both the pre- and post-hearings development process. Together, the MER and CE steps under the *Benchmarks for Quality Case Processing* allows 105 days, compared to 90 days for this step in the *No Status Change* report.<sup>25</sup>

Although it appeared ODAR management was treating the *Benchmarks for Quality Case Processing* as the preferred standard for the hearing offices, we did not see evidence CPMS management reports had been arranged to highlight delays in meeting these two medical evidence goals. ODAR management concurred that the specific benchmarks were not being tracked via a CPMS management report.<sup>26</sup>

ODAR has also established criteria for processing medical evidence in the HALLEX Manual. For instance, the HALLEX Manual performance standard request for MER is

<sup>24</sup> The 84 days consist of 21 days to ensure the CE is scheduled and 63 days to ensure the CE report is received at the hearing office. See Appendix H.

<sup>25</sup> See Appendix F.

<sup>26</sup> The local hearing offices are able to monitor the workload in CPMS more directly, so local management should be able to obtain this detail.



30 days, depending on the availability of the evidence.<sup>27</sup> Another 30 days is allowed to obtain the CE.<sup>28</sup> While the HALLEX guidance notes that diaries should be set up in the system to ensure the evidence gathering process is timely, we did not see evidence CPMS management reports had been arranged to highlight such delays.<sup>29</sup>

**Table 3: ODAR’s Medical Evidence Timeliness Criteria**

Criteria	Obtaining MER	Obtaining a CE	Medical Evidence Goal
<b>Benchmarks for Quality Case Processing</b>	21 days	84 days	105 days
<b>No Status Change Report</b>	90 days		90 days
<b>HALLEX</b>	30 days	30 days	60 days

## PRE-HEARING DEVELOPMENT

While our report has focused on late medical evidence provided by the claimant and/or claimant’s representative before the hearing and the attempts to obtain that evidence after the hearing, medical evidence can be delayed in other parts of the hearing process, such as the periods covered by the *Pre-Hearing Development* and *ALJ Review Pre-Hearing* status codes (see Appendix F). The *No Status Change* report for January 8, 2008 indicates that claims would be considered untimely if they exceeded 90 days under the *Pre-Hearing Development* status code and 10 days under the *ALJ Review Pre-Hearing* status code. We found that approximately 1.2 percent of the workload currently in-process was untimely under the *Pre-Hearing Development* status code and another 4.2 percent of the workload currently in-process was untimely under the *ALJ Review Pre-Hearing* status code (see Appendix F). Together, approximately 5.4 percent of the workload currently in-process was untimely within these two status codes.

Our March 2007 audit<sup>30</sup> stated the ALJs we interviewed indicated delays under the *ALJ Review Pre-Hearing* status code related to some claims containing a significant amount of evidence to examine, which caused them to exceed the 10-day benchmark. ALJs also expressed a concern that they had too many cases on their dockets and therefore they were constantly balancing the quality of the decision with the Agency’s goal for average processing time.

<sup>27</sup> SSA, HALLEX I-2-5-14 – *Obtaining Medical Evidence from a Treating Source or Other Medical Source*. The timeline varies somewhat depending on whether the information comes from the claimant, treating source, or State DDS.

<sup>28</sup> SSA, HALLEX I-2-5-20 – *Consultative Examinations and Tests* and HALLEX I-2-5-14.C: *Obtaining Medical Evidence from a Treating Source or Other Medical Source*.

<sup>29</sup> The local hearing offices are able to monitor the workload in CPMS more directly, so local management should be able to obtain this detail.

<sup>30</sup> SSA OIG, *Management’s Use of Workload Status Reports at Hearing Offices* (A-12-06-26130), March 2007.

Since these medical evidence issues occur before the claimant's hearing is scheduled, they are neither directly associated with the medical evidence problems noted in the October 2007 NPRM nor likely to be remedied by increasing the notification period for a hearing to at least 75 days. However, these additional medical evidence bottlenecks show the importance of timely medical evidence throughout the entire hearing process. These pre-hearing medical evidence issues, combined with the post-hearing medical evidence issues, indicate that as much as 7.2 percent<sup>31</sup> of cases currently in-process were significantly delayed.

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<sup>31</sup> This figure includes the 1.8 percent discussed earlier and the 5.4 percent discussed in this section of the report. We did not add the 0.2 percent associated with postponements since this covered an entire fiscal year and not the workload currently in-process.



## Matters for Consideration

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During our review, we found that ODAR used CPMS reports to monitor the timeliness of medical evidence provided to hearing offices. However, in our review of CPMS management reports, we did not find any evidence that the late submission of medical evidence provided by claimants and their representatives before hearings was a significant issue at hearing offices. When we reviewed the two points in the hearing process identified by ODAR management, we found that about 0.2 percent of hearings were postponed annually and about 1.8 percent of the workload currently in-process was significantly delayed after the hearing due to late medical evidence.

Moreover, our review of the CPMS information found the postponement data may have been incomplete, whereas the *No Status Change* report data were more reliable but inconsistent with some of ODAR's stated goals, such as the OCALJ's timeliness goals regarding medical evidence. As a result, it is possible that a different definition of "untimely" in CPMS would change the number of significantly delayed hearings. However, we limited our analysis to the CPMS "untimely" benchmarks being used by ODAR management.

Finally, when we reviewed medical evidence delays beyond issues related to the role of the claimant before the hearing, we found that as much as 7.2 percent of the hearings workload currently in-process was significantly delayed because of late medical evidence. However, this expanded definition of untimely cases is not directly associated with the medical evidence problems noted in the October 2007 NPRM and therefore most of these delays are not likely to be remedied by increasing the notification period for a hearing to at least 75 days.

# *Appendices*

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## Acronyms

AA	Attorney Advisor
ALJ	Administrative Law Judge
AUX MAR	<i>Auxiliary Monthly Activity Report</i>
CE	Consultative Examination
CPMS	Case Processing and Management System
DDS	Disability Determination Services
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law
MER	Medical Evidence of Record
NE	New Evidence
NPRM	Notice of Proposed Rulemaking
OCALJ	Office of the Chief Administrative Law Judge
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
OTR	On-The-Record
PA	Paralegal
SAA	Senior Attorney Advisor
SSA	Social Security Administration
UNWK	<i>Unassigned Workup</i>

## Notice of Proposed Rulemaking

On October 29, 2007, the Social Security Administration (SSA) issued a notice of proposed rulemaking regarding *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*.<sup>1</sup> The following table summarizes some of the changes SSA proposed to the hearings and appeals provisions regarding the timeliness of medical evidence.

**Table B-1: Comparison of Current and Proposed Policy**

<b>Topic</b>	<b>Current Policy (Outside the Boston Region)</b>	<b>Proposed Policy</b>
<b>Three Levels of Disability Appeals</b>	<ul style="list-style-type: none"> <li>• ALJ Hearing--Notify claimant at least 20 days prior to hearing</li> </ul>	<ul style="list-style-type: none"> <li>• ALJ Hearing--Notify claimant no later than 75 days prior to hearing<sup>1</sup></li> </ul>
<b>Submitting Evidence</b>	<ul style="list-style-type: none"> <li>• ALJ accepts evidence up to and including day of hearing</li> <li>• In proceedings on remand from the Appeals Council or a Federal court, ALJ accepts evidence relating to period following first ALJ decision</li> </ul>	<ul style="list-style-type: none"> <li>• ALJ will accept evidence submitted no later than 5 business days before the hearing<sup>1</sup></li> <li>• In proceedings on remand from the Review Board or a Federal court, ALJ will not accept evidence relating to period following first ALJ decision<sup>2</sup></li> </ul>

**Note 1:** The October 2007 NPRM provisions to provide at least 75 days' notice of the hearing and require the submission of evidence at least 5 days before the hearing (subject to certain exceptions) were based on similar rules included in the Disability Service Improvement regulations published in the Federal Register on March 31, 2006 (71 Fed. Reg. 16424) and implemented in the Boston Region in August 2006.

**Note 2:** This proposal was not a part of the DSI regulations published in the Federal Register on March 31, 2006.

<sup>1</sup> *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*, 72 Federal Register 61218, October 29, 2007.

# Scope and Methodology

To accomplish our objectives, we:

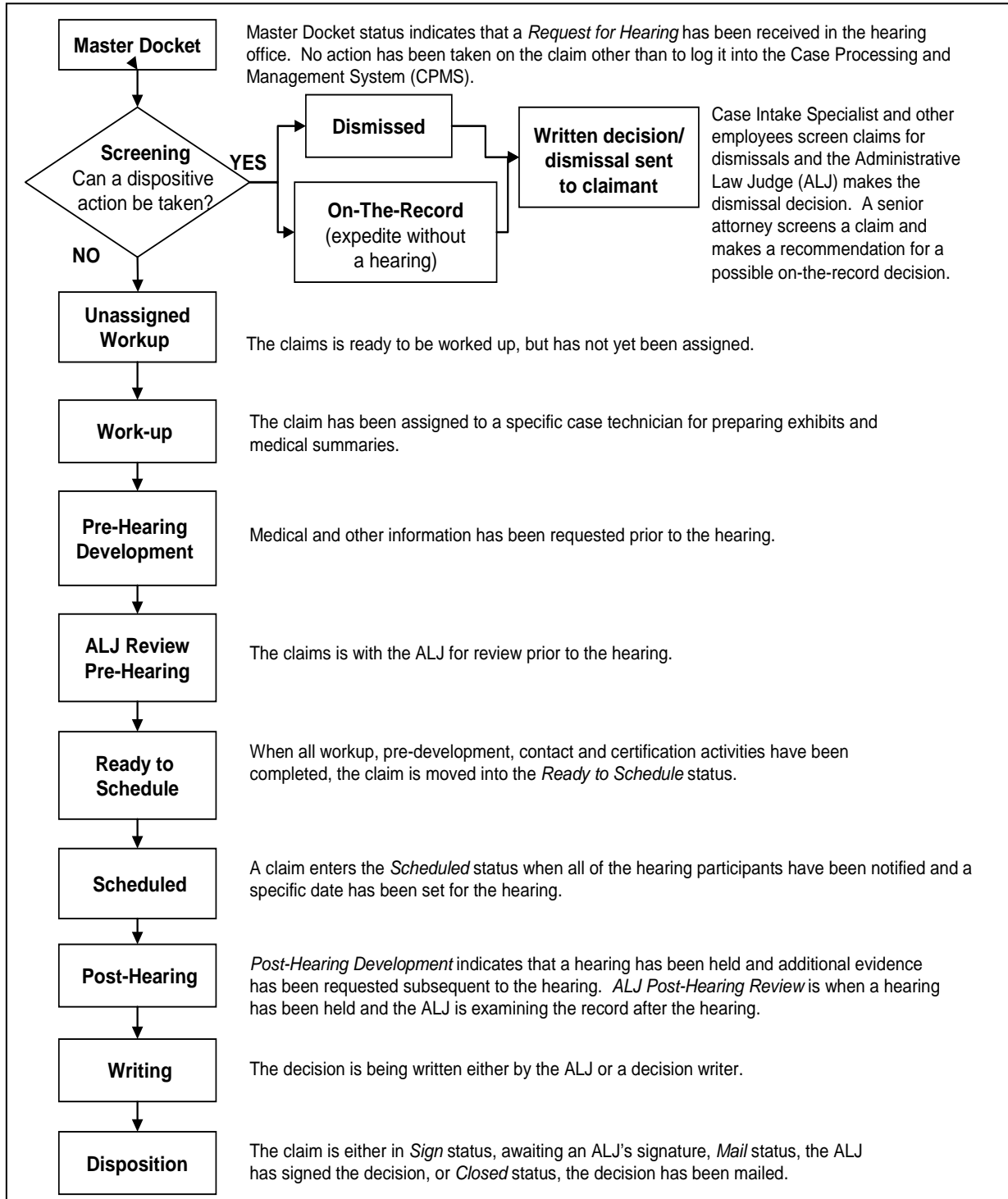
- Reviewed applicable laws, regulations and Social Security Administration (SSA) policies including sections of SSA's Hearings, Appeals, and Litigation Law Manual and other Office of Disability Adjudication and Review's (ODAR) guidance, policies and procedures.
- Reviewed prior Office of the Inspector General (OIG) and Government Accountability Office audit reports.
- Reviewed SSA's Notice of Proposed Rulemaking, *Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels*, 72 Federal Register 61218, October 29, 2007.
- Interviewed SSA's representatives from ODAR's Offices of the Chief Administrative Law Judge and Management to learn more about the role of evidence in the hearing process, identify potential bottlenecks, and obtain the related management information.
- Obtained and evaluated Case Processing and Management System (CPMS) medical evidence data and reports from ODAR and SSA's Office of Information Systems, including the *Auxiliary Monthly Activity Report*, *Workload Summary by Status Report*, and *No Status Change* report.
- Reviewed a sample of 15 new evidence postponement cases for October 2007 in the CPMS to determine the status of postponed cases.

Because of time constraints, we did not review the internal controls related to SSA's management and oversight of medical evidence nor assess data reliability of the medical evidence data in CPMS or other management information systems. However, where possible we relied on prior audit work in this area. For example, the CMPS *No Status Change* report was previously audited by the OIG and found to be reliable.<sup>1</sup> The entity audited was SSA's ODAR under the Deputy Commissioner for ODAR. We performed our review in Chicago, Illinois, between January and March 2008 in accordance with the Quality Standards for Federal Offices of Inspector General dated October 2003.

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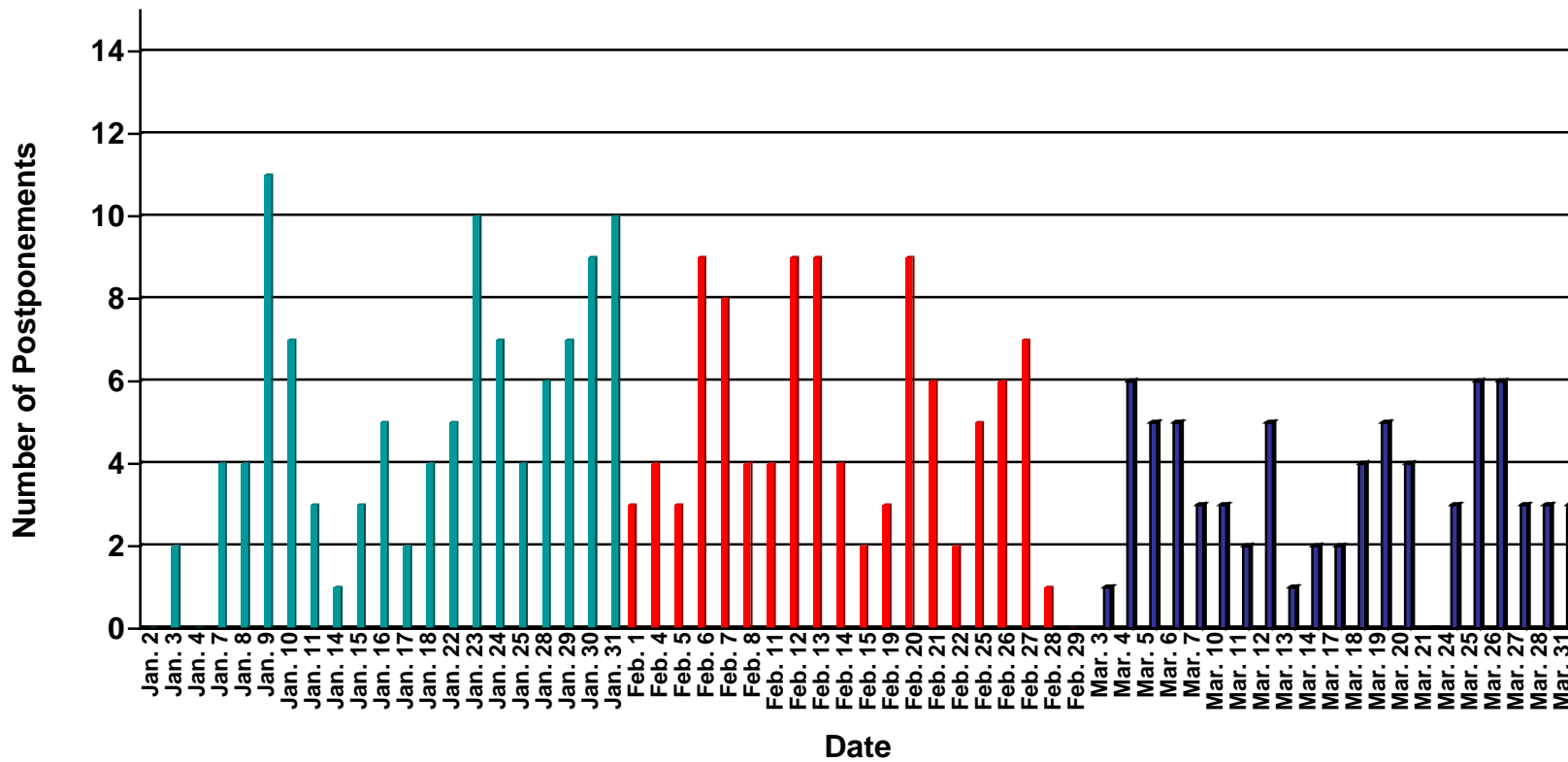
<sup>1</sup> SSA OIG, *Case Processing and Management System and Workload Management* (A-12-06-26012), June 2006.

# Hearing Office Process Flow Diagram



## New Evidence Postponement Code Activity

**New Evidence Postponement Codes  
(January 2 through March 31, 2008)**



## No Status Change Report

Status Codes Tracked By the No Status Change Report	Benchmark	Explanation of Benchmark Step	Number of Cases in Status Code	Percent of In-Process Workload <sup>1</sup> in Status Code	Status Codes Tracked By the No Status Change Report	Percent of In-Process Workload <sup>2</sup> Considered Untimely
<b>1. Master Docket</b>	30 days	Claim information input to the Case Processing and Management System.	32,731	10.0	15,877	4.9
<b>2. Work Up</b>	25 days	Claim assigned and being prepared for review.	18,407	5.6	7,895	2.4
<b>3. Pre-Hearing Development</b>	90 days	Requested additional information before hearing.	28,313	8.7	3,759	1.2
<b>4. Administrative Law Judge (ALJ) Review Pre-Hearing</b>	10 days	ALJ reviewing claim before hearing.	18,707	5.7	13,557	4.2
<b>5. Ready to Schedule</b>	60 days	Claim work-up and development completed.	54,699	16.8	19,110	5.9
<b>6. Post-Hearing Development</b>	90 days	ALJ requested more information after hearing.	17,091	5.2	2,135	0.7



Status Codes Tracked By the <i>No Status Change</i> Report	Benchmark	Explanation of Benchmark Step	Number of Cases in Status Code	Percent of In-Process Workload <sup>1</sup> in Status Code	Status Codes Tracked By the <i>No Status Change</i> Report	Percent of In-Process Workload <sup>1</sup> Considered Untimely
<b>7. ALJ Review Post-Hearing</b>	30 days	ALJ examining record before writing decision.	9,091	2.8	3,726	1.1
<b>8. Unassigned Writing</b>	30 days	Claim waiting to be assigned to a writer.	14,016	4.3	5,779	1.8
<b>9. Decision Writer Personal Computer</b>	15 days	Writer using a personal computer to draft decision.	9,054	2.8	2,521	0.8
<b>10. Edit</b>	15 days	ALJ editing final written decision.	3,240	1.0	871	0.3
<b>11. Sign</b>	7 days	Decision ready for ALJ's signature.	2,581	0.8	581	0.2
<b>12. Mail</b>	7 days	Decision signed and ready for release.	2089	0.6	242	0.1
<b>Total<sup>2</sup></b>			<b>210,019</b>	<b>64.4</b>	<b>76,053</b>	<b>23.3</b>

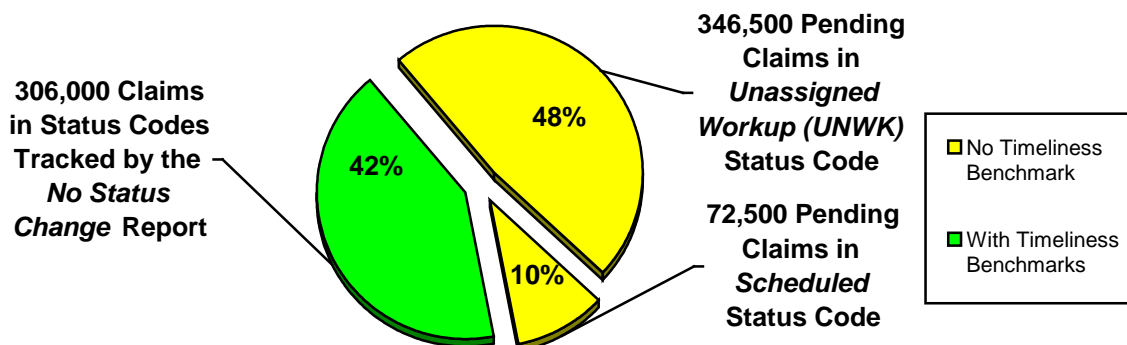
**Note 1:** We used CPMS' January 8, 2008 *Workload Summary by Status Report*, which indicated about 756,000 hearings were in the backlog. We removed claims that were in the *Unworked* status code because the hearing offices were taking no action on these cases (see Appendix G). We calculated the "in-process" workload to be approximately 326,000 cases. While there are several ways to define the "in-process" workload, we attempted to focus on those cases being worked by someone in a hearing office.

**Note 2:** The total number of cases in the *No Status Change* report above do not add to the 326,000 hearing cases, our calculated "in-process" workload, since not all status codes are tracked on the *No Status Change* report. For example, hearings in *Scheduled* status are not tracked on the *No Status Change* report.

## Prior Audit Work on Pending Claims

In our March 2007 audit of *Management’s Use of Workload Status Reports at Hearing Offices*, we assessed the effectiveness of the benchmarks used in the Case Processing and Management System’s (CPMS) *No Status Change* report to identify bottlenecks in the Social Security Administration’s (SSA) hearing process. As part of this review, we noted that, of the 725,000 pending claims, 419,000 were located in 2 status codes that did not have benchmarks (see Figure G-1), while 306,000 claims had benchmarks and were being tracked by the *No Status Change* report. About 48 percent of the pending claims were in the *Unassigned Workup (UNWK)* status code. The UNWK status code indicates a claim was entered into the hearing office’s Master Docket, but the claim is “inactive” and awaiting processing. The remaining 10 percent of the pending claims were located in the *Scheduled* status code. The *Scheduled* status code indicates the claim was scheduled for a hearing and is awaiting a hearing date.

**Figure G-1: Distribution of ODAR’s Pending Workload (as of June 2006)**



We also noted that previous reports<sup>1</sup> indicated that receipts outpaced hearing office dispositions, resulting in an increasing pending workload and worsening processing times. ODAR’s hearing offices have been unable to process all the incoming workload. Consequently, the number of pending claims under the UNWK status code has been increasing. Claims continue to age while being held in the “inactive” UNWK status code. Hearing office managers use the CPMS *Pending Claims*<sup>2</sup> management report to

<sup>1</sup> SSA OIG, *The Effects of Staffing on Hearing Office Performance* (A-12-04-14098), March 2005; and *Best Practices in Highest Producing Hearing Offices* (A-12-04-14020), August 2004.

<sup>2</sup> SSA OIG, *Case Processing and Management System and Workload Management* (A-12-06-26012), June 2006.

track the claims while they are in the UNWK status code. Hearing office staff move the pending claims out of the UNWK status code, and place them into the hearing process, based on the “Request for Hearing” date. Therefore, the oldest claims are processed before the newer claims, unless the claim is labeled as a Critical Case. Critical Cases are a priority and are processed first.<sup>3</sup>

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<sup>3</sup> ODAR designates a claim for expedited processing based on one of three criteria: (1) terminal illness, (2) dire need, and (3) threatening behavior to themselves or others. For more information on Critical Cases, see the Hearings, Appeals and Litigation Law manual Section I-2-1-40 – *Critical Cases*.

## Benchmarks for Quality Case Processing

The benchmarks published at the Office of the Chief Administrative Law Judge web site during 2007 provided guidance on the maximum time cases should remain in each category absent good cause.

<b>Case Processing and Management System Code</b>	<b>Benchmark (Calendar Days)</b>	<b>Comments</b>
<b>Master Docket</b>	21	Receipt of claim file through auto establish in Case Processing and Management System
<b>PRE/POST Prior files</b>	28	Requests for prior files (diary for 28 days)
<b>PRE/POST Medical Evidence of Record</b>	21	Requests for Treating Sources (diary for 10 days for follow up)
<b>PRE/POST Consultative Examinations (CE)</b>	21/63	21 days to be sure the CE is scheduled 63 days to be sure the CE report is received at the hearing office
<b>TEMP</b>	42	Cases transferred to other hearing offices for case preparation or decision drafting should be completed and returned to the original hearing office within 42 days
<b>Decision Writer Review (Unpulled File Review)</b>	7	Pre-hearing Review (Administrative Law Judge [ALJ]/Senior Attorney Advisor [SAA]/Attorney Advisor [AA])/Paralegal [PA])
<b>Workup</b>	7	Case Workup (assembly/development/analysis)
<b>ALJ Review Pre-Hearing<sup>1</sup></b>	7	ALJ Review (Pre-scheduling)
<b>ALJ Review Post-Hearing<sup>1</sup></b>	7	ALJ Review (Post-hearing)
<b>ALJ Dictating Decision ALJ Writing Decision on Personal Computer ALJ Writer Speech Recognition</b>	14	ALJ Drafting Decision
<b>Decision Writer Dictating Decision Decision Writer Writing Decision on personal computer Decision Writer Speech Recognition</b>	7	Pre-hearing Review (ALJ/SAA/AA/PA)
<b>EDIT</b>	7	ALJ/SAA/AA/PA Editing Decision

<b>Case Processing and Management System Code</b>	<b>Benchmark (Calendar Days)</b>	<b>Comments</b>
<b>Typist Corrections (CORR)</b>	7	Typographical corrections to be corrected on ALJ decision
<b>SIGN<sup>1</sup></b>	1	Case in the ALJ's office waiting final review, ALJ Verification Input Database, and signature
<b>MAIL</b>	1	Awaiting mailing of ALJ decision

**Note 1:** ALJ on travel docket/unavailable, timeframe begins upon return to hearing office.

## **OIG Contacts and Staff Acknowledgments**

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Wai Ho Yung, Auditor

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