
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**CONSULTATIVE EXAMINATIONS
AT THE INDIANA DISABILITY
DETERMINATION BUREAU**

March 2011

A-05-10-21061

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: March 1, 2011

Refer To:

To: James F. Martin
Regional Commissioner
Chicago

From: Inspector General

Subject: Consultative Examinations at the Indiana Disability Determination Bureau
(A-05-10-21061)

OBJECTIVE

Our objectives were to determine whether (1) the Social Security Administration (SSA) had issued clear guidelines on suitable language for consultative examination (CE) medical opinions and (2) the Indiana Disability Determination Bureau (IN-DDB) had effective internal controls to ensure CE reports contained suitable language.

BACKGROUND

Disability determinations under SSA's Disability Insurance and Supplemental Security Income programs are performed by the disability determination services (DDS) in each State according to Federal regulations.¹ In carrying out its obligation, each DDS is responsible for determining claimants' disabilities and ensuring adequate evidence is available to support its determinations. DDS employees do not see claimants face-to-face; therefore, visual observations are not part of the decision-making process. DDSs must rely on relevant medical evidence and related opinions from physicians and psychologists to support the disability determination.² To assist in making proper disability determinations, each DDS is authorized to purchase CEs to supplement

¹ 20 C.F.R. §§ 404.1601 *et seq.* and 416.1001 *et seq.*

² SSA, Program Operations Manual System (POMS), DI 24515.002B.2—*Evaluating Opinion Evidence – Basic Policy* states, “Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of a claimant's impairment(s), including symptoms, diagnosis and prognosis, what the claimant can still do despite impairment(s), and physical and mental restrictions.”

evidence obtained from the claimant's physicians or other treating sources.³ While the claimant's treating source is the preferred source for medical evidence, the DDS may obtain the CE from independent medical sources.⁴

Complaint from a Former CE Provider

We received a letter, dated August 1, 2009, from a former CE provider who served as an independent medical source while performing psychological evaluations for the IN-DDB.⁵ The CE provider raised questions about SSA's CE process and claimed the Chicago Regional Office (RO) and IN-DDB discouraged the use of certain language as well as the term "malingering" when stating a medical opinion in a CE report.⁶ Malingering is a term used to describe individuals who intentionally pretend to have, or grossly exaggerate, physical or psychological symptoms for their own gain.⁷

To accomplish our objectives, we reviewed formal and informal guidance related to the CE process and suitable language in CE medical opinions.⁸ In addition, we interviewed the former CE provider as well as officials at SSA Headquarters; the Chicago RO in Chicago, Illinois; the Director of the Chicago RO's Office of Quality Appraisal and her staff; and the IN-DDB in Indianapolis, Indiana. We also interviewed an official at the Office of Disability Adjudication and Review (ODAR) in Indianapolis, Indiana. See Appendix C for our full scope and methodology.

RESULTS OF REVIEW

SSA Headquarters and the Chicago RO have not issued guidelines on suitable language for CE medical opinions and use of certain terms, such as malingering, in CE reports. Although the Chicago RO has preferences regarding suitable language in CE medical opinions, its expectations have not been formalized. Further, while SSA

³ SSA, POMS, DI 22505.001B.1—*Medical Evidence of Record (MER) Policies*. See Appendix B for guidelines, including detailed information about selecting a treating or independent medical source. In Fiscal Year (FY) 2009, the IN-DDB purchased 50,273 CEs and paid approximately \$10.9 million for these services.

⁴ SSA, *Consultative Examinations: A Guide for Health Professionals*, Part III, SSA Publication No.64-025, November 1999, ICN 954095 (also known as the "Green Book").

⁵ SSA, POMS, DI 39545.075C.3—*Management of the Consultative Examination (CE) Process* states a CE provider is a qualified medical source that performs examinations, tests, and other procedures at the request of the DDS and agrees to be compensated for these services based on the DDS' fee schedule.

⁶ The focus of this review was the guidance and controls pertaining to suitable language in CE reports. We met with regional officials separately to discuss specific matters related to the CE provider's concerns.

⁷ *The Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision 2000.

⁸ In this report, we define "suitable language" as terminology deemed appropriate by the Agency to assist with disability determinations, while also consistent with the elements of a standard examination in the applicable medical specialty.

Headquarters does not encourage DDSs to purchase tests for malingering and the Chicago RO would like to cease procurement of these tests, the IN-DDB is still obtaining such tests at the request of administrative law judges (ALJ). As a result, the Agency is sending CE providers a mixed message. Moreover, because of the lack of specific guidance on suitable language and specific terms, the IN-DDB had not established controls to review the appropriateness of language in CE reports. Given the Chicago RO's expectations that CE providers adhere to specific guidelines, compliance would be enhanced through formalized language guidelines, communication of this new guidance, and periodic monitoring. This additional step would be consistent with prior studies and recommendations regarding the CE process as well as Headquarters' current guidance to regions requiring that they evaluate the DDS' management of the CE process.

GUIDANCE ON SUITABLE LANGUAGE

Agency guidance encourages CE providers to identify malingering and report suspicions of malingering to the DDS.⁹ However, this guidance does not specifically address suitable language and the use of certain terms in CE reports. During our discussions with Headquarters policy officials, we learned that CE providers were expected to inform the DDS or the Region of malingering by documenting it in their CE reports.¹⁰ SSA policy also states the DDS is required to review all medical evidence, including CE medical opinions and diagnoses of malingering, to make disability determinations.¹¹

Chicago RO officials have a more specific set of expectations. During our interviews, the Chicago RO officials indicated that CE providers are discouraged from saying an individual is malingering or diagnosing malingering because a claimant may still have a valid medical impairment, and the finding of malingering is best based on a review of the claimant's entire record, which is not usually available to a CE provider. For example, the Director of the Center for Disability stated the RO preferred terminology for

⁹ SSA, POMS, DI 24515.008F—*Title II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not "Acceptable Medical Sources" in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies (SSR 06-03p)* and DDS Administrators' Letter Number 496, December 22, 1998 (Headquarters policy officials indicated that this guidance is still relevant). Headquarters is responsible for maintaining the integrity of the CE process by developing regulations, disability program policies, and guidelines for use by Federal, State, and private contract providers.

¹⁰ A complete CE report should include a description and disposition of pertinent "positive" and "negative" detailed findings based on the history, examination, and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing. The consultative medical source will consider, and provide some explanation or comment on, the claimant's major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests (see Appendix B).

¹¹ SSA, POMS, DI 24515.066—*Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements (SSR 96-7p)*. DDSs periodically refer claimant cases to the Office of the Inspector General for further review when malingering is suspected.

CE reports raising issues of credibility,¹² including such terms as “inconsistent,” “conflicting,” “lacking credibility,” and “discrepant” in situations where claimant allegations during an examination appeared unsupported. Moreover, the Chicago RO told us they instructed the IN-DDB not to annotate malingering or suspected malingering on referrals sent to CE providers. However, the Chicago RO did not provide any evidence that this preferred terminology had been formalized in guidance.

The IN-DDB had an understanding that was more consistent with Headquarters’ expectations. In our telephone interviews with eight medical consultants¹³ at the IN-DDB, the majority stated CE providers were expected to opine on credibility, and it can be appropriate to use the term malingering in CE reports because it is a valid diagnosis.¹⁴ When asked about this position, the Chicago Regional Medical Advisor informed us that malingering is more of a condition and not a diagnosis. SSA and IN-DDB’s conflicting viewpoints regarding the use of the term malingering may lead to confusion among CE providers. We believe appropriate terminology can assist both the CE provider and the DDS in assessing the credibility of symptoms and information provided by the claimant, which is critical to disability determinations.

Tests for Malingering

While SSA Headquarters’ guidance encourages the identification of malingering, it does not encourage the purchase of malingering tests for mental and psychological impairments. Under “CE Best Practices,” SSA Headquarters’ guidance¹⁵ states, “Do not purchase CEs that include tests for malingering.”¹⁶ The guidance also states, “. . . there is no test, when passed or failed, which conclusively determines the presence of an inaccurate patient self-report.” Related guidance states it is “. . . the observation and assessment of the claimant when challenged with various tasks, and using multiple

¹² SSA, POMS, DI 24515.066B.2 states the DDS adjudicator must consider the entire case record including the diagnosis, prognosis, medical opinions, and reports provided by the examining physicians or psychologists and other medical sources.

¹³ SSA, POMS, DI 24515.013A—*Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence (SSR 96-6p)* defines medical consultants as highly qualified physicians and psychologists who are experts in the evaluation of the medical issues in disability claims under the *Social Security Act*.

¹⁴ SSA, POMS, DI 22510.021B.7—*Consultative Examination (CE) Report Content Guidelines—Mental Disorders* states that the diagnosis should include the American Psychiatric Association standard nomenclature as set forth in the current *Diagnostic and Statistical Manual of Mental Disorders*.

¹⁵ SSA, Administrative Message (AM)-10109—*Consultative Examination Expedients*, August 6, 2010.

¹⁶ The medical profession uses a variety of tests that may identify malingering for mental and psychological impairments, including *Malingering Probability Scale*, *Structured Interview of Reported Symptoms*, *Test of Memory Malingering*, *Validity Indicator Profile*, *Portland Digit Recognition Test*, *Rey Word Recognition List*, *Rey Fifteen Item Memory Test*, and *Minnesota Multi-phasic Personality Inventory-2*. Not all these tests were named among the tests that were “not encouraged” in AM-10109.

records and observations from multiple sources, that allows the clinician to make meaningful inferences about a claimant, and the likelihood of malingering.”¹⁷

*Tests for Malingering
Purchased for ODAR*

Even with guidance that discourages the purchase of tests for malingering for mental and psychological impairments, the IN-DDB disclosed that it sometimes purchased tests of malingering for mental and psychological impairment for cases adjudicated by ODAR.¹⁸ As noted earlier, the Chicago RO would prefer to end the practice of procuring tests for malingering at the DDSs. An RO official stated that this inconsistency in practice continues because some ALJs still request these tests as part of their review of claimant appeals, asserting these tests still have value in assessing the credibility of symptoms. We confirmed this ODAR practice during our discussion with the Hearing Office Chief ALJ in Indianapolis, Indiana. We believe the IN-DDB’s process of allowing tests for malingering for ODAR, while discouraging the same tests for initial and redetermination cases, sends an inconsistent message to CE providers about SSA’s position on the appropriateness and usefulness of tests for malingering for mental and psychological impairments.

We also found the IN-DDB recruiting materials that solicited medical sources capable of performing psychological tests contained guidance inconsistent with SSA Headquarters policy. At the time of our review, the IN-DDB’s recruitment materials sought CE providers with experience in performing tests for malingering for mental and psychological impairments.¹⁹ We noted to Chicago RO management that these inconsistent guidelines may be confusing for CE providers who are trained to perform tests of malingering for mental and psychological impairments, and who believe their skills are needed by the IN-DDB. In response to our concerns, IN-DDB staff informed us that they updated the recruiting materials given to CE providers and no longer seek CE providers who can perform the *Test of Memory Malingering* for mental and psychological impairments.

INTERNAL CONTROLS

While the RO and IN-DDB conduct quality assurance (QA) reviews, these reviews are not designed to capture or prevent language issues in CE reports. The Chicago RO’s Disability Quality Branch (DQB) is required to conduct QA reviews on at least

¹⁷ SSA, *National Question and Answer 08-003*, January 22, 2008.

¹⁸ The IN-DDB does not purchase these tests for initial and redetermination claims.

¹⁹ As late as December 2009, the IN-DDB recruitment materials given to prospective CE providers to perform psychological exams and tests included tests of malingering. Some of the tests named in the recruitment material included *Test of Memory Malingering*, *Rey Fifteen Item Memory Test*, and *Minnesota Multi-phasic Personality Inventory-2*. For example, some of these tests are forced recognition tests where the individual is shown a string of digits or geometric patterns, or a pair of pictures or word list, and asked to memorize it. After a short interval, 2-digit strings or patterns are displayed and the individual being tested is asked to identify which one of these he or she was just shown.

50 percent of IN-DDB medical allowances.²⁰ The Director of the Chicago RO's Office of Quality Performance indicated that these DQB QA reviews evaluate disability decisions made by the DDS to determine whether the evidence in the case file supports its determination based on the *Sequential Evaluation Process*.²¹ However, the CE reports are viewed as medical evidence in the case file, and the QA guidelines do not include a review of the suitability of language used in these reports. Moreover, in those cases where a language issue may come up based on the review of a case file, the DQB did not maintain information pertaining to the frequency or outcome of these separate reviews.

*IN-DDB Reviews Reports
from CE Providers*

IN-DDB also performs QA reviews of the disability cases. For instance, the Quality Assurance Unit at IN-DDB performs an ongoing program review of decisions, which consist of 20 percent of denied cases and 5 percent of allowed cases.²² As with the DQB, this review ensures sufficient evidence has been provided to support the decision made on the case. However, this review does not require a review of the language used in the CE report. IN-DDB also performs a review of the first five CE reports for all new CE providers, and SSA Headquarters policy suggests DDSs conduct sample QA reviews of CE reports for all CE providers. However, this policy does not address whether QA reviews should include a review of language in CE medical opinions.²³

As with the DQB process, IN-DDB did not maintain any management information on the frequency of language problems in CE reports should it be an issue during the QA review. IN-DDB staff informed us that if there is a question or issue with a CE report, a medical telephone call is prepared.²⁴ Although IN-DDB uses the medical telephone call to document any issues in a CE report, it does not have written procedures for identifying and reviewing language issues to ensure consistency and clarity. In addition, this subjective process relies on the personal judgment of IN-DDB staff.

²⁰ While the review of allowances is mandated by law, the Agency also conducts a nation-wide discretionary review of denials.

²¹ For the determination of disability for adults age 18 or older, a five-step Sequential Evaluation Process is used. Generally, the five steps include a work test, severity test, listings test, previous work test, and other work test. For children under age 18 in the SSI program, a three-step process is used.

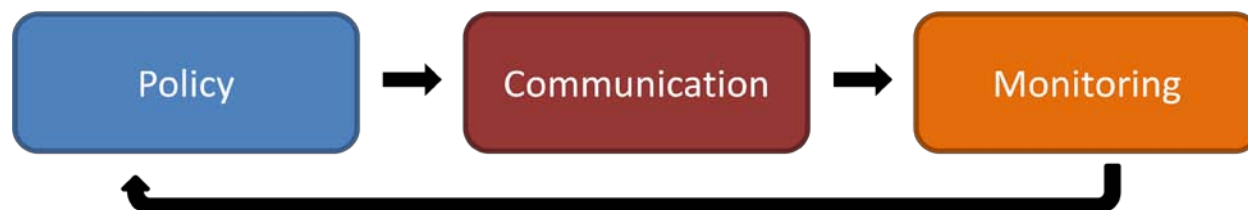
²² SSA, POMS, DI 30001.000—*DDS Quality Assurance*.

²³ SSA, POMS, DI 39545.450A—*Independent Consultative Examination (CE) Report Review System*.

²⁴ A medical telephone call is a process used by IN-DDB unit supervisors and medical consultants to secure clarification on a CE, deficient or missing studies, a final report, or a copy of a CE from a prior filing.

FORMALIZED GUIDANCE, COMMUNICATION, AND MONITORING

Given the Chicago Region's expectations that CE providers adhere to specific—though undocumented—guidelines, the Region's requirements could be met through formalized language guidelines, communication of these guidelines to IN-DDB and CE providers, and periodic monitoring of CE providers by IN-DDB.



Formalized Guidelines

Formal CE language guidelines could assist the Region in monitoring the quality of CE reports purchased by IN-DDB. Since the Chicago RO's preferred terminology has not been formally documented, the Region cannot be assured its expectations are communicated to all CE providers and adequately monitored by IN-DDB. Such clarification has been used to assist components. For example, SSA Headquarters has issued policy with language guidelines for the DDS to use when preparing a letter to request the claimant attend a CE appointment. This guidance instructs the DDS to use terminology the claimant can be expected to understand and provides examples of words to use and not to use.²⁵ Given that each individual has his or her own unique perspective, it would be helpful for CE providers in IN-DDB to know what they can or cannot say when they believe someone is malingering or submitting a potentially fraudulent claim.

Training and Communication

Although IN-DDB is responsible for ensuring the quality of CE reports, formal training for CE providers is not required. Headquarters policy states that DDSs should give all new CE providers a good understanding of SSA's disability programs, program requirements for examinations and CE reports, and the CE provider's role in the CE process.²⁶ Furthermore, Headquarters guidance allows DDSs to determine what training is necessary for the CE providers. Discussions with IN-DDB disclosed that prospective CE providers for IN-DDB receive a recruitment package that includes information about what is expected of a CE provider, including the type of examinations the IN-DDB may ask them to perform. Moreover, CE providers are given a copy of *Consultative Examinations: A Guide for Health Professionals* after they join the panel. However, CE providers for IN-DDB receive no formal training other than receiving these documents. Given the potential for confusion regarding CE report language, we believe formal CE

²⁵ SSA, POMS, DI 22510.018A—*Consultative Examination (CE) Appointment Notice Model Letters*.

²⁶ SSA, POMS, DI 39545.400—*Ensuring Quality and Integrity of Consultative Examination (CE) Reports*. See Appendix D for a full list of topics that should be covered in DDS training.

provider training could help reduce the risk of inappropriate language in CE reports. Such training would also be consistent with earlier concerns about CE training in the area of malingering and potential fraud.

Physicians Reluctant to Put Suspicions of Malingering in Writing

At the September 1998 National Professional Relations Conference, best practices for identifying malingering were discussed with DDS staff.²⁷ The best practices centered on training CE providers to identify malingering and report suspicions of malingering to the DDS. While SSA encourages CE providers to report their suspicions of malingering to the DDS, at the Conference, the Professional Relations Officers²⁸ (PRO) stated that many physicians were reluctant to put their suspicions of malingering in writing because their medical training does not include a segment on malingering.

The RO also has clear responsibilities to ensure the CE providers have a solid understanding of SSA's expectations. SSA Headquarters guidance states that the Regions are responsible for monitoring the DDS' efforts for recruiting, training, and reviewing CE providers. In addition, the Regions are to ensure medical evidence is supplied by CE providers through effective communication and education.²⁹ For example, on January 18, 2002, the San Francisco RO issued a *Regional Disability Insurance Memorandum* to all DDS administrators pertaining to the *Best CE Oversight Findings*, which recommended holding training seminars/workshops for CE providers to (1) explain basics about the program, (2) note the need for their evaluations and timely reports, (3) answer questions, and (4) review good/bad CE report examples.

In addition, a 2008 *CE Baseline Study* conducted by the Comprehensive Occupational Medical Services (COMS)³⁰ for SSA Headquarters recommended SSA develop more intensive CE provider training methods that demonstrate the types of observations SSA is seeking in CE reports. The report also recommended training should recur as necessary to keep CE providers informed of disability program changes. COMS recommends that SSA's Office of Training partner with the regions and States to develop a more formal CE provider training methodology and a defined schedule for regular follow-up training.

²⁷ SSA, Policy Instruction, DDS Administrator's Letter No. 496—*Report of the 1998 National Professional Relations Conference*, December 22, 1998.

²⁸ PROs at the DDSs recruit and train physicians, psychologists, and other health professionals to become CE providers. They can answer questions about performing CEs or reviewing disability claims for the DDS. These questions are located online at <http://www.ba.ssa.gov/disability/professionals/procontacts.htm>.

²⁹ SSA, POMS, PM 00233.001C—*Introduction – Management of the Consultative Examination (CE) Process*.

³⁰ COMS is a clinical and consultative occupational medicine practice that contracted with SSA to provide a current, independent assessment of several CE-related activities. The final report for the CE Baseline Study was issued on April 30, 2008.

Monitoring

According to SSA Headquarters policy, ROs are responsible for conducting comprehensive reviews of DDSs to evaluate the States' management of the CE process.³¹ Headquarters policy also states that ROs will use the *Regional Office Guide for Evaluating DDS Management of the CE Process* (RO Guide) to monitor DDS CE oversight. The RO Guide requires a review of the DDS' *Annual CE Oversight Report* to assist the DDSs in achieving improvements in the CE oversight process.³² We discussed the *Indiana CE Management/Oversight Reports for FYs 2008 and 2009* with the Chicago RO and the IN-DDB and found 4 of the 12 elements in the RO Guide were not addressed in the Indiana report (see Table 1). These missing elements included (1) DDS QA activities, (2) training and review of new CE providers, (3) CE scheduling procedures and controls, and (4) integrity of medical evidence.

Table 1: Elements in the Indiana FYs 2008 and 2009 CE Management Oversight Reports

Elements in the RO Guide	Elements Included in the Indiana FY 2008 and 2009 Reports
DDS QA Activities	
Fee Schedules	✓
Training and Review of New CE Providers	
CE Scheduling Procedures and Controls	
Integrity of Medical Evidence	
Recruiting Activities	✓
Claimant Complaints	✓
Claimant Reactions to Key Providers	✓
List of Key Providers	✓
Onsite Review of CE Providers ¹	✓
Contracting for Medical Services ²	Not Applicable
Records Maintenance	✓

Note 1: Although the credentials of the CE providers were reviewed in the FY 2008 and 2009 reports, they did not indicate whether the support personnel were required to be licensed or credentialed.

Note 2: During our discussions with the IN-DDB, we learned that it does not have contracts with the medical providers.

RO staff noted that IN-DDB prepares the *CE Management Oversight Report*, which does not include these four elements. However, the RO is expected to review and comment on these four elements as part of its oversight duties. We were not provided with an RO document indicating these four areas were reviewed. The RO's oversight of IN-DDB could be improved if the Region used the RO Guide to its full potential. For

³¹ 20 C.F.R. §§ 404.1519t *CE Oversight*; SSA, POMS, PM 00233.005—*Regional Office (RO) Consultative Examination (CE) Oversight Procedures* states management of the CE process includes the RO making periodic DDS visits and accompanying the DDS on selected CE provider oversight visits to key or problem providers, periodic review of CE purchase practices in the DDS, ensuring CE fee schedules are current, monitoring DDS CE oversight, and periodic reporting of each DDS' compliance with the CE policy.

³² SSA, POMS, PM 00233.005A.4; and POMS, DI 39545.575—*Exhibit 2—DDS Annual Consultative Examination (CE) Oversight Report*.

example, the RO Guide suggests that the ROs describe the method used for periodic review of CE reports and establish a system to measure the quality of CE reports. In addition, the RO Guide suggests that the ROs describe the procedures and type of training for new CE providers and how the quality of training is evaluated.

If the RO formalizes its CE language expectations, the RO could use this process to ensure the IN-DDB has established the necessary training and controls related to this new guidance. For instance, the current QA reviews of the first five CE reports submitted by CE providers could be enhanced to review suitable language and expanded to a periodic review of CE performance. Under the current guidelines, a CE provider who meets the CE report criteria today could go decades without a similar review of submitted reports.

CONCLUSION AND RECOMMENDATION

Our review identified a number of areas where we believe improved guidelines, communication, and monitoring could help enhance the CE process. SSA has issued formal and informal CE guidance, but this guidance does not directly address suitable language for CE medical opinions, such as preferred terminology and the use of certain words as well as malingering. Although the Chicago RO has clear preferences regarding suitable language and use of certain terms in CE reports, the Region has not issued formal or written guidance. As a result, the IN-DDB does not have specific controls to ensure CE reports contain suitable language.

To ensure the IN-DDB CE reports, as well as other CE reports throughout the Region, adhere to the RO's language expectations, we recommend that the Chicago Regional Commissioner work with SSA Headquarters to establish written policy pertaining to suitable language in CE reports. Once this written policy has been established, it should be incorporated, as appropriate, into future regional communications, training, and monitoring associated with DDSs in the Chicago Region.

In light of the various policies among components in the Chicago Region regarding the use of tests for malingering for mental and psychological impairments, we will share this report with responsible Headquarters policy components and encourage greater clarification on the appropriate use and ordering of these tests.

AGENCY COMMENTS

The Chicago Regional Commissioner deferred our recommendation to the Office of Disability Programs (ODP) in SSA Headquarters. ODP's response stated SSA has issued sufficient policy guidelines relating to CE report content. The Chicago Regional Commissioner stated the guidance it has issued to the IN-DDB and all DDSs in the Chicago Region is consistent with the policy guidance from ODP, including CE report content. The Agency's comments are included in Appendix F.

OIG RESPONSE

The Chicago Regional Commissioner has essentially implemented our recommendation by conferring with ODP. While the Regional Commissioner and ODP believe that the appropriate policy is in place, we continue to have concerns with implementation of the policy. To that end, we will continue to monitor how this policy is implemented in the Chicago Region.

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

Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Consultative Examination Guidelines

APPENDIX C – Scope and Methodology

APPENDIX D – Ensuring Quality and Integrity of Consultative Examination Reports

APPENDIX E – Regional Office Guide for Evaluating Disability Determination Services’
Management of the Consultative Examination Process

APPENDIX F – Agency Comments

APPENDIX G – OIG Contacts and Staff Acknowledgments

Acronyms

ALJ	Administrative Law Judge
CE	Consultative Examination
C.F.R.	Code of Federal Regulations
COMS	Comprehensive Occupational Medical Services
DDS	Disability Determination Services
DQB	Disability Quality Branch
FY	Fiscal Year
IN-DDB	Indiana Disability Determination Bureau
ODAR	Office of Disability Adjudication and Review
ODP	Office of Disability Programs
OIG	Office of the Inspector General
POMS	Program Operations Manual System
PRO	Professional Relations Officer
QA	Quality Assurance
RO	Regional Office
RO Guide	<i>Regional Office Guide for Evaluation Disability Determination Services' Management of the Consultative Examination Process</i>
SSA	Social Security Administration

Consultative Examination Guidelines

According to the Social Security Administration's (SSA) consultative examination (CE) guidelines,¹ if the evidence provided by the claimant's own medical sources is inadequate to determine whether he or she is disabled, additional medical information may be sought by recontacting the treating source for additional information or clarification or by arranging for a CE.

The CE guide also states that the treating source is the preferred source of purchased examinations when the treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment and generally furnishes complete and timely reports. Even if only a supplemental test is required, the treating source is ordinarily the preferred source for this service.

SSA's rules provide for using an independent medical source (other than the treating source) for a CE or diagnostic study if:

- the treating source prefers not to perform the examination;
- there are conflicts or inconsistencies in the file that cannot be resolved by going back to the treating source;
- the claimant prefers another source and has a good reason for doing so; or
- prior experience indicates that the treating source may not be a productive source.

The type of examination and/or test(s) purchased depends on the specific additional evidence needed for adjudication. If an ancillary test (for example, x-rays) will furnish the additional evidence needed for adjudication, the disability determination services (DDS) will not request or authorize a more comprehensive examination. If the examination indicates that additional testing may be warranted, the medical source must contact the DDS for approval before performing such testing.

¹ SSA, *Consultative Examinations: A Guide for Health Professionals*, Part III, SSA Publication No.64-025, November 1999, ICN 954095 (also known as the "Green Book"). The term "qualified" means the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test requested. In addition, the medical source must not be barred from participation in our programs. The medical source must also have the equipment required to provide an adequate assessment and record of existence and level of severity of the individual's alleged impairment(s).

Adult Consultative Examination Report Content Guidelines

According to SSA Headquarters guidance, a complete CE for adults is one that involves all the elements of a standard examination in the applicable medical specialty.² When the report of a complete CE is involved, the report should include the following elements:

- The claimant's major or chief complaint(s).
- A detailed description, within the area of specialty of the examination, of the history of the major complaint(s).
- A description, and disposition, of pertinent "positive" and "negative" detailed findings based on the history, examination, and laboratory tests related to the major complaint(s), and any other abnormalities or lack thereof reported or found during examination or laboratory testing.
- Results of laboratory and other tests (for example, x-rays) performed in accordance with the requirements provided by the DDS.
- Diagnosis and prognosis for the claimant's impairment(s).
- Statement about what the claimant can still do despite his or her impairment(s), unless the claim is based on statutory blindness. This statement should describe the opinion of the consulting medical source about the claimant's ability, despite his or her impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling and, in cases of mental impairment(s), the opinion of the medical source about the individual's ability to understand, carry out and remember instructions, and respond appropriately to supervision, coworkers, and work pressures in a work setting.
- The consultative medical source will consider, and provide some explanation or comment on, the claimant's major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, and evaluation of laboratory test results and their conclusions will represent the information provided by the medical source who signs the report.

² Ibid, Part IV.

Scope and Methodology

To accomplish our objectives, we:

- Reviewed applicable laws, regulations, and Social Security Administration (SSA) policies and procedures pertaining to consultative examinations (CE).
- Reviewed prior Office of the Inspector General (OIG) and Government Accountability Office reports.
- Interviewed the former CE provider to better understand the concerns with the CE process at the Chicago Regional Office (RO) and the Indiana Disability Determination Bureau (IN-DDB).
- Interviewed the Chicago RO officials and the Director of the Office of Quality Performance and her staff in Chicago, Illinois, to gain an understanding of (1) the Region's role in the CE process, (2) the types of disability reviews conducted by the Disability Quality Branch; (3) the roles and responsibilities of the Regional Medical Advisor; and (4) preferred language in CE medical opinions. We also obtained CE management information reports as well as copies of guidance, regulations, policies, and procedures pertaining to CEs.
- Interviewed pertinent officials and medical consultants at the IN-DDB in Indianapolis, Indiana, to gain an understanding of (1) the CE process at the IN-DDB; (2) quality reviews performed on CE reports; (3) CE provider training; (4) the process for activating and inactivating CE providers; (5) the complaint resolution procedures; and (6) guidelines and other information CE providers are given and expected to follow;
- Interviewed a Hearing Office Chief Administrative Law Judge in the Indianapolis, Indiana, Hearing Office and discussed the hearing office's experiences with the CE process.
- Interviewed officials and staff from the Office of Retirement and Disability Policy in Headquarters to assist in interpreting SSA policy and procedures.
- Discussed issues pertaining to the CE provider's specific concerns with RO officials.

We performed our audit at SSA's RO in Chicago, Illinois; the IN-DDB, in Indianapolis, Indiana; and the OIG Office of Audit in Chicago, Illinois, between November 2009 and June 2010. Although we reviewed CE reports, our review did not attempt to measure the quality of CE reports. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Ensuring Quality and Integrity of Consultative Examination Reports

Social Security Administration (SSA) consultative examination (CE) guidelines state that CE providers should receive training on how to prepare a quality CE report.¹ This guidance also states that a quality CE report contains all the information relevant to the examination and the tests that were authorized and includes accurate information. Moreover, disability determination services (DDS) should establish policy guidelines for CE provider training, review of CE reports, and integrity issues to ensure the quality of CE reports. Specifically, DDS training for CE providers should cover the following topics:

- Certification requirements for becoming a CE provider and retaining CE provider status with the DDS.
- Overview of SSA disability programs and regulations.
- Basic operations of the disability determination function, including DDS management of the CE process.
- Elements of a complete CE.
- CE report content and reporting requirements.
- Sending CEs via fax, the Electronic Records Express Website, or other SSA-approved secure electronic communication methods.
- Security of electronic information and *Health Insurance Portability and Accountability Act of 1996* compliance of the SSA-827 (*Authorization to Disclose Information to Social Security Administration*).
- Periodic DDS on-site visits to volume providers or certain CE providers when complaints or other circumstances indicate the need.
- Fee schedule structure.
- Periodic satisfaction surveys of claimants about their CE.
- Confidentiality and disclosure of medical information.

¹ SSA, Program Operations Manual System, DI 39545.400—*Ensuring Quality and Integrity of Consultative Examination (CE) Reports*.

Regional Office Guide for Evaluating Disability Determination Services' Management of the Consultative Examination Process

Social Security Administration (SSA) Headquarters policy states regional offices (RO) are responsible for monitoring disability determination services' (DDS) consultative examination (CE) oversight. Moreover, Headquarters guidance states that the *Regional Office Guide for Evaluating Disability Determination Service Management of the Consultative Examination Process* (RO Guide) will be used to evaluate the DDS' CE oversight management procedures.¹ Specifically, RO oversight should cover the following 12 elements: (1) DDS Quality Assurance (QA) Activities, (2) Fee Schedules, (3) Training and Review of New CE Providers, (4) CE Scheduling Procedures and Controls, (5) Integrity of Medical Evidence, (6) Recruiting Activities, (7) Claimant Complaints, (8) Claimant Reactions to Key Providers, (9) List of Key Providers, (10) Onsite Review of CE Providers, (11) Contracting for Medical Services,² and (12) Records Maintenance.

The *Indiana CE Management/Oversight Reports for FYs 2008 and 2009* did not address 4 of the 12 elements: (1) DDS QA Activities, (2) Training and Review of New CE Providers, (3) CE Scheduling Procedures and Controls, and (4) Integrity of Medical Evidence. Each of these areas has specific questions, as follows.

DDS QA Activities in the CE Process:

1. Does the DDS QA unit assure that only necessary CEs are ordered when reviewing CE reports for quality?

What other areas does the QA unit cover to monitor the DDS' purchase of medical evidence?

2. Describe the method used for periodic review of CE reports.
 - a. Has the DDS established a system to assure the quality of CE reports? What review criteria are used? How and by whom are review results evaluated?

¹ SSA, Program Operations Manual System (POMS), PM 00233.900 —*Exhibit 1- Regional Office (RO) Guide for Evaluating Disability Determination Service (DDS) Management of the Consultative Examination (CE) Process.*

² SSA, POMS, DI 39542.205C.1—*Contracting for Medical Provider Services-DDS states the DDSs may contract with medical providers for CEs. During our discussions with the IN-DDB, we learned that it does not have contracts with the medical providers.*

- b. If the CE report is inadequate or incomplete, how is this information conveyed to the provider?
Is the provider asked to provide the necessary information previously omitted?
 - c. What is the DDS policy for handling CE providers who continue to submit CE reports of unacceptable quality?
3. Describe the selection process for reviewing CE reports under the Independent CE Report Review System.

Training and Review of New CE Providers:

Describe the procedures for the training and review of new CE providers. (Obtain a copy of the training outline or other materials given to new providers.)

Training:

- What type of training is provided?
- Who conducts it?
- What training materials are furnished?
- How is the quality of training evaluated?
- Are CE providers encouraged to submit reports electronically?

Review of New Providers:

- What type of review is done? (Describe frequency, duration, method of sampling, and how data is collected.)
- Who conducts the review?
- Are the providers given feedback on results of the reviews?

CE Scheduling Procedures and Controls:

1. Are CE scheduling procedures and controls designed to attain a good distribution of examinations and to prevent overscheduling?
2. Does the CE authorization process:
 - a. Establish procedures for medical or supervisory approval of CE requests as required in regulations?
 - b. Include a medical review of CEs that order diagnostic tests or procedures that may involve significant risk to the claimant/beneficiary?

3. How is the determination made as to which CE provider will be used? What consideration is given to the quality of prior CE reports? What measures are taken to ensure that each CE provider on the panel is given an equitable number of referrals?
4. Is the treating source used as the preferred source of the CE as required in regulations?
5. If the treating source is not used for the CE, is the reason properly documented in the claims file on the case development summary?
6. Are medical source statements requested?
7. Are copies of the background material in the claims file sent to the CE source for review prior to the CE?
8. Is the DDS following the guides on CE scheduling intervals? If not, what precautions, if any, are taken to prevent overscheduling?
9. No Shows/Cancellations
 - a. What follow-up procedures are followed to ensure the CE appointment is kept? Does the DDS remind the claimant of the CE several days before the examination?
 - b. Is the DDS notified that the appointment has not been kept?
 - c. What is the rate of no-shows? Of cancellations? Are either paid for? If so, provide a complete description of the payment policy.
 - d. In States that pay for "no-shows," what steps are they taking to move toward a no-pay policy?

Integrity of Medical Evidence:

1. Are claimant identification controls in place and being used?
2. Are the numbers of vouchers for purchased medical evidence being checked against the actual number of pieces of purchased medical evidence in file to ensure that all evidence is in file?

3. Is hand-delivered evidence reviewed to assess its authenticity?
 - a. If the CE report is inadequate or incomplete, how is this information conveyed to the provider?

Is the provider asked to provide the necessary information previously omitted?
 - b. What is the DDS policy for handling CE providers who continue to submit CE reports of unacceptable quality?
4. Describe the selection process for reviewing CE reports under the Independent CE Report Review System.

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: January 24, 2011 Refer To:

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

From: James F. Martin
Regional Commissioner, Chicago

Subject: Chicago Region Comments on the Draft Audit Consultative Examinations at the Indiana Disability Determination Bureau (A-05-10-21061)

We appreciate the opportunity to comment on your draft audit report on Consultative Examinations (CEs) at the Indiana Disability Determination Bureau (DDB). We recognize the work of the Chicago Region auditors on this project. You asked us for our views on the validity of the facts and the reasonableness of the recommendation in the draft report. See the attachment for our technical comments.

Your report recommends that the Chicago Region work with SSA Headquarters to establish written policy pertaining to suitable language in CE reports. We defer to the Office of Disability Policy (ODP), the policy component responsible for CE policy, on this recommendation. See their detailed comments attached to this message.

We believe the guidance we have issued Indiana and all our DDSs is consistent with the policy guidance from ODP on the issues involved in the report, including CE report content and use of tests for malingering in the CE context. We also believe we are fulfilling all our regional oversight responsibilities in monitoring the CE process in the region.

The Indiana DDB has an excellent record in processing disability claims. Their own oversight and management of the CE process is very strong, and is reflected in their quality, processing time and overall productivity, which are among the best in the country. Since the incident which triggered this audit, a complaint from one of their CE providers, they have further strengthened their process.

If your staff have questions about these comments, please have them contact Mark Moskop, Director, Center for Disability at (312) 575-4204.

/s/

James F. Martin

(Note: The Chicago Region also provided technical comments, which we incorporated into the report, as appropriate.)



SOCIAL SECURITY

Office of the Deputy Commissioner for Retirement and Disability Policy

WR#

RESPONSE TO REQUEST FOR COMMENTS:

Office of the Inspector General Final Report (OIG Job Number: A-05-10-21061), "CEs at the Indiana Disability Determination Bureau" Audit #22010012

The audit report contains one recommendation:

To ensure the Indiana DDB CE reports, as well as other CE reports throughout the region adhere to the RO's language expectations, we recommend that the Chicago Regional Commissioner work with SSA Headquarters to establish written policy pertaining to suitable language in CE reports. Once this written policy has been established, it should be incorporated, as appropriate, into future regional communications, training, and monitoring associated with DDSs in the Chicago Region.

ODP Response: We disagree. SSA has issued sufficient policy guidelines relating to CE report content. Our regulations require that, in making determinations of disability, we evaluate "...objective medical evidence, that is, medical signs and laboratory findings and other evidence from medical sources such as medical history, opinions and statements about treatment you have received..." (20 CFR 404.1512 Evidence). In addition, our regulations provide that a claimant may refuse to attend a CE if the provider "lacks objectivity" and the State agency is required to "review the allegations." (20 CFR 404.1519j)

We believe that the Indiana DDB acted appropriately when they counseled this provider concerning his use of unprofessional, non-objective language and failure to provide information missing in his CE reports. Further, we believe that the DDB acted appropriately by removing this provider from their panel after he refused to comply with these instructions.

ODP met with the auditors on two separate occasions, and issued two responses to answer specific policy questions, in an effort to provide clarity concerning our policies. Our technical comments on the audit report language are attached.

Thank you for the opportunity to comment on this report.

Technical Comments for OIG Audit#22010012, CEs at the Indiana Disability Determination Bureau.

General:

SSA's position on requesting testing devices for malingering is that it does not believe that such devices are appropriate for purchase within the CE context. The guidance in Q&A 08-003 makes clear that there is no "gold standard" for establishing symptom validity and that malingering cannot be proven with tests. This Q&A goes on to state that it is the observation and assessment of the claimant when challenged with various tasks, and using multiple records and observations from multiple sources, that allow the clinician to make meaningful inferences about a claimant, and the likelihood of malingering. It also states that it is important to understand that malingering is one aspect of the larger sphere of inaccurate self-report. Dissemblance in symptoms and behavior is not limited to malingering, but can be seen in individuals who over or under-report the nature, range and severity of symptoms because of a psychiatric disease or underlying personality trait. Even in claims where the evidence indicates a high probability of malingering, we are still required by law to proceed through the complete sequential evaluation. The claimant who is likely malingering may still have a genuine impairment, and has now made it much more difficult to distinguish the functionally limiting effects of the impairment from evidence that is fabricated or exaggerated. Yet that is exactly what the adjudicator must do. Even a high likelihood of malingering does not preclude severe limitations resulting from a genuine medically determinable impairment (MDI).

Additionally, the availability and consistency of symptom validity tests from state to state would be problematic. These expensive testing devices would not be worth the expense to the disability program.

(Note: ODP provided comments on the CE provider who wrote to the OIG, even though this was not the focus of this report. We met with regional officials separately to discuss specific matters related to the CE provider's concerns. ODP also provided technical comments, which we incorporated into the report, as appropriate.)

OIG Contacts and Staff Acknowledgments

OIG Contacts

Walter Bayer, Director, Chicago Audit Division

Annette Dunn, Audit Manager, Chicago Office

Acknowledgments

In addition to those named above:

Lorrie Clement, Senior Auditor

Linda Smid, Auditor-in-Charge

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