

Audit Report

Full Medical Continuing Disability
Review Cessations Reversed at the
Reconsideration Level of Appeal

MEMORANDUM

Date: April 25, 2014

Refer To:

To: The Commissioner

From: Inspector General

Subject: Full Medical Continuing Disability Review Cessations Reversed at the Reconsideration Level of Appeal (A-07-13-23019)

The attached final report presents the results of our audit. Our objective was to determine why full medical continuing disability review cessation determinations were reversed at the reconsideration level of appeal.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

Full Medical Continuing Disability Review Cessations Reversed at the Reconsideration Level of Appeal

A-07-13-23019



April 2014

Office of Audit Report Summary

Objective

To determine why full medical continuing disability review (CDR) cessation determinations were reversed at the reconsideration level of appeal.

Background

The Social Security Administration (SSA) conducts CDRs on Disability Insurance (DI) beneficiaries and Supplemental Security Income (SSI) disability recipients to determine whether they remain medically eligible for disability payments. Individuals profiled as having a high likelihood of medical improvement undergo a full medical CDR by a disability determination services (DDS). A cessation determination is made when a CDR reveals medical improvement had occurred and an individual no longer meets the requirements for disability benefits.

When a full medical CDR results in a cessation determination, the individual can request a reconsideration. CDR reconsiderations consist of the pre-hearing and disability hearing levels, where a determination is made by a disability hearing officer.

Our Findings

We identified 29,290 DI beneficiaries and 11,777 adult SSI recipients who received initial CDR cessation determinations during Calendar Years 2010 and 2011. We selected 50 DI beneficiaries and 50 adult SSI recipients whose cessation determinations were reversed at the reconsideration level of appeal in Fiscal Year 2012 to determine why the CDR cessations were reversed.

For 80 of the 100 cases, there was new documentary evidence or testimony at the reconsideration level that was not available during the initial CDR that resulted in the appropriate reversal of the initial CDR cessation. For 18 of the 100 cases, differing opinions, lost case folders, and the aging of the beneficiary resulted in the appropriate reversal of initial cessations at the reconsideration level. The two remaining cases had inaccurate determinations. In the first case, the DDS inaccurately determined disability ended at the initial CDR, but the cessation was appropriately reversed at the reconsideration level of appeal. The second case was an inaccurate reconsideration reversal of the initial CDR cessation. Therefore, the beneficiary continued receiving DI benefits for which he may not have been eligible.

Recommendation

We recommend SSA apply the appropriate policy to determine whether to reopen the case of the beneficiary whose cessation determination was inaccurately reversed at the reconsideration level.

SSA agreed with our recommendation.

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ABBREVIATIONS

Act	<i>Social Security Act</i>
CDR	Continuing Disability Review
C.F.R.	Code of Federal Regulations
DDS	Disability Determination Services
DHO	Disability Hearings Officer
DI	Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSI	Supplemental Security Income
Stat.	U.S. Statutes at Large
U.S.C.	United States Code

OBJECTIVE

Our objective was to determine why full medical continuing disability review (CDR) cessation determinations were reversed at the reconsideration level of appeal.

BACKGROUND

Title II of the *Social Security Act* (Act) allows individuals to receive Disability Insurance (DI) benefits if they are fully insured, have not reached retirement age, and are determined to be disabled according to Social Security Administration (SSA) regulations.¹ DI benefits are financed from the DI trust fund.²

Title XVI of the Act established the Supplemental Security Income (SSI) program.³ SSI is a Federal cash assistance program that guarantees a minimum level of income to financially needy individuals who are aged, blind, or disabled. SSI payments are financed from the general fund.⁴

Once an individual begins receiving disability benefits under the DI or SSI programs, SSA ensures only those individuals who remain disabled and are not working continue receiving benefits. SSA conducts CDRs on DI beneficiaries and SSI disability recipients to determine whether they remain medically eligible for disability payments.⁵ Once a year, SSA employs a profiling system that uses data from SSA's records to determine the likelihood a disabled individual will medically improve. SSA selects the records of individuals profiled as having a high likelihood of medical improvement for a full medical CDR by a disability determination services (DDS). In general, the DDS should evaluate an individual's current condition(s) compared to their most recent favorable decision, known as the comparison point decision.⁶ SSA discontinues benefits when a CDR reveals an individual has medically improved and no longer meets the requirements for disability benefits, referred to as a cessation determination.⁷

When a CDR results in a cessation determination, the individual can request a reconsideration. CDR reconsiderations have two levels: pre-hearing and disability hearing. When an individual requests reconsideration of a CDR, the case is sent to the DDS for a pre-hearing review. The pre-hearing review is a new, independent evaluation of all evidence, including any additional or

¹ The *Social Security Act* § 223, *et seq.*, 42 U.S.C. § 423 *et seq.* See also 20 C.F.R. §§ 404.130 - 404.133.

² The *Social Security Act* § 201(b), 42 U.S.C. § 401(b).

³ The *Social Security Act* § 1601, *et seq.*, 42 U.S.C. § 1381 *et seq.* See also 20 C.F.R. § 416.101 *et seq.*

⁴ Id.

⁵ Generally, the frequency of medical CDRs depends on SSA's assessment of the likelihood of medical improvement. See 20 C.F.R. § 404.1590(d) and 20 C.F.R. § 416.990(d).

⁶ 20 C.F.R. § 404.1594 (b)(7) and 20 C.F.R. § 416.994 (b)(1)(vii).

⁷ SSA, POMS, DI 28001.001 B (November 7, 2002).

updated information.⁸ Based on the evidence, the DDS determines whether to continue benefits.⁹ If the DDS determines not to continue benefits, the case goes to the disability hearing unit of the DDS where a disability hearing is held.¹⁰ Based on the documentary evidence, including new or updated information, and the testimony of the individual or any other witnesses, a disability hearing officer (DHO) affirms or reverses the initial CDR cessation.¹¹

RESULTS OF REVIEW

We identified 29,290 DI beneficiaries and 11,777 adult SSI recipients who received initial CDR cessation determinations during Calendar Years 2010 and 2011.¹² We selected 50 DI beneficiaries and 50 adult SSI recipients whose cessation determinations were reversed at the reconsideration level of appeal in Fiscal Year 2012 to determine why the CDR cessations were reversed.¹³

For 80 of the 100 cases, there was new documentary evidence or testimony at the reconsideration level that was not available during the initial CDR, resulting in the appropriate reversal of the initial CDR cessation (see Table 1). For 18 of the 100 cases, differing opinions, lost case folders, and the aging of the beneficiary resulted in the appropriate reversal of initial cessations at the reconsideration level. The two remaining cases had inaccurate determinations. In the first case, the DDS inaccurately determined disability ended at the initial CDR, but the cessation was appropriately reversed at the reconsideration level of appeal. The second case was an inaccurate reconsideration reversal of the initial CDR cessation. Therefore, the beneficiary continued receiving DI benefits for which he may not have been eligible.

⁸ SSA, POMS, DI 29005.001 (January 23, 1990).

⁹ SSA, POMS, DI 29005.005 (July 21, 2010).

¹⁰ SSA, POMS, DI 29001.001 B.1 (August 3, 1994).

¹¹ SSA, POMS, DI 33015.020 C.2.c and C.3 (March 2, 2012). If the DHO affirms the cessation, the individual can request an appeal with the Office of Disability Adjudication and Review and ultimately Federal courts. Appeals beyond the reconsideration level were beyond the scope of this review.

¹² The populations do not include CDR cessations resulting from the individual's failure to cooperate during the CDR.

¹³ To make this determination, we consulted with medical experts at Grant Thornton, LLP, and SSA. See Appendix A for the scope and methodology of our review.

Table 1: Reasons CDR Cessations Were Reversed at the Reconsideration Level

Reasons for Reversal	Number of DI Cases	Percent of DI Cases	Number of SSI Cases	Percent of SSI Cases
New Documentary Evidence or Testimony	40	80	40	80
Differing Opinions	7	14	3	6
Case Folder Was Not Available for Reconsideration	0	0	7	14
Beneficiary Age and Time on Rolls	1	2	0	0
Inaccurate CDR Determinations	2	4	0	0
Total	50	100	50	100

New Evidence or Testimony

In 40 DI and 40 SSI cases, there was new documentary evidence or testimony at the reconsideration level that was not available at the initial CDR. New documentary evidence or testimony from a disability hearing can show a different, disabling impairment or worsening of the existing condition.

For example, in December 2011, the DDS determined at the initial CDR that an SSI recipient was no longer eligible for SSI payments based on malignant neoplasm of connective and other soft tissue. Specifically, the recipient suffered from skin cancer on the face and nose. At the initial CDR, there was no evidence of cancer, and the recipient was no longer receiving treatment. The recipient appealed the cessation to the reconsideration level and provided new evidence showing invasive skin cancer that required reconstructive surgery. Based on this new evidence, the DDS reversed the cessation determination.

Differing Opinions

There were seven DI and three SSI cases where examiners or doctors at the initial and reconsideration levels had differing opinions.¹⁴ Specifically, either (1) DDS examiners had differing opinions about an individual’s disability and ability to work or (2) doctors provided differing medical opinions on either residual functional capacity assessments¹⁵ or the severity of impairments, which led the DDS examiners to different determinations. According to SSA

¹⁴ Unless otherwise specified, we used the term “examiner” to refer to both disability examiners at the initial CDR and pre-hearing levels and DHOs at the disability hearing level.

¹⁵ A residual functional capacity assessment is completed by a State agency medical consultant that describes work-related functions a person can do on a sustained basis and resolves all issues of functional capacity pertinent to a determination of ability to do past relevant or other work. *See* SSA, POMS, DI 24510.001 A.3 (May 13, 1999).

policy, the disability determination process is inherently judgmental.¹⁶ Therefore, situations occur where the file is fully documented at both levels, and, when considering all the facts, DDS examiners can make different disability determinations.¹⁷

For example, in August 2011, the DDS determined at the initial CDR that a beneficiary was no longer qualified for DI benefits based on affective mood and anxiety-related disorders. Based on the evidence at the initial CDR, the DDS examiner determined the beneficiary had medically improved. The beneficiary appealed to the reconsideration level. Based on a review of the same evidence that was available during the initial CDR, a different examiner at the reconsideration level reversed the initial CDR cessation and allowed benefits to continue. The examiner at the reconsideration level acknowledged some medical improvement but did not find the improvement significant enough to terminate benefits as did the examiner at the initial CDR.

Case Folder Was Not Available for Reconsideration

In seven SSI cases, the recipient's paper case folder, which contained evidence from the most recent favorable decision, was unavailable for review at the reconsideration level. The case folder was reviewed during the initial CDR but was subsequently lost and could not be reconstructed. According to SSA policy, when the recipient's folder is lost and cannot be reconstructed to consider the most recent favorable decision, the DDS must continue disability benefits.¹⁸ Therefore, in these seven cases, the cessation determination was reversed, and the SSI payments continued.

Beneficiary Age and Time on Rolls

In one DI case, SSA's policy for age and time on the rolls led to the reconsideration reversal. Specifically, when an individual is age 50 or older and has received disability benefits for a considerable period of time (generally at least 7 years), the beneficiary's age and time on the rolls should be considered during the CDR process.¹⁹ In this case, the beneficiary turned age 50 after the initial CDR. The beneficiary's age, combined with her time on the rolls and medical evidence, resulted in the reversal at the reconsideration level.

¹⁶ In being inherently judgmental, when reviewing the same evidence, reviewers must not substitute their judgment for that of the original adjudicating component. *See* SSA, POMS, GN 04440.118 A (April 21, 2011) and GN 04440.003 K (December 23, 2010).

¹⁷ *Id.*

¹⁸ SSA, POMS, DI 28035.025 A (October 2, 2012).

¹⁹ SSA, POMS, DI 28015.310 (May 17, 1999).

Inaccurate CDR Determinations

Two DI cases had inaccurate determinations. In one case, the DDS inaccurately determined the beneficiary's disability ended at the initial CDR. Therefore, the reconsideration accurately reversed the cessation. The other case was an inaccurate reversal at the reconsideration level. Therefore, the beneficiary continued receiving benefits for which he may not have been eligible. SSA agreed the determinations on both cases were inaccurate.

Inaccurate Initial CDR

The initial CDR cessation was inaccurate because the DDS had evidence that would have led to a continuance of benefits, but the DDS examiner did not consider that evidence and instead found the beneficiary's disability had ceased. In this case, evidence was available during the initial CDR that showed the individual still suffered from a back disorder and migraines; however, the DDS still determined her disability had ended. Later, at the reconsideration level, the beneficiary accurately had her cessation reversed based on the same conditions. However, the reconsideration determination would not have been necessary had the case been accurately continued at the initial CDR.

Inaccurate CDR Reconsideration

The CDR reconsideration reversal was inaccurate because the DHO gave more weight to the individual's testimony or appearance at the hearing than to the documentary medical evidence without providing a rationale for the reversal. In this case, during the initial CDR, the DDS determined the individual was no longer disabled based on chronic renal failure and visual disturbances. At the reconsideration level, the beneficiary testified to having tingling and pain in his feet at all times. However, the documentary medical evidence showed the beneficiary exercised and traveled often, internationally at times. Therefore, the claimant's medical records did not adequately support his alleged conditions. According to SSA, there is no guidance to specify exactly how much weight should be given to non-medical evidence, including testimony or appearance during a disability hearing. Specifically, the weight depends on the consistency of the evidence. Since the documentary medical evidence was not consistent with the individual's testimony and did not support that the claimant was still disabled, the CDR cessation should not have been reversed.

This individual continued receiving DI benefits, with the next CDR scheduled for January 2019. We estimate this beneficiary will receive \$85,134 in DI benefits over the next 5 years.²⁰ To avoid paying these benefits to an individual who may not be eligible, we recommend SSA apply the appropriate policy to determine whether to reopen the case.

²⁰ To calculate this amount, we multiplied the beneficiary's payment amount due in December 2013 by 60 months. Therefore, the amount does not take cost-of-living adjustments or any other factors into consideration.

CONCLUSIONS

In general, we found that the reconsideration level of appeal served its purpose in reversing cessation determinations when needed. In 80 cases, there was new documentary evidence or testimony at the reconsideration level that was not available during the initial CDR, resulting in an appropriate reversal of the initial CDR cessation. For 18 cases, differing opinions, lost case folders, and the aging of a beneficiary resulted in the appropriate reversal of initial cessations at the reconsideration level.

However, two cases had inaccurate determinations. In one case, the DDS inaccurately determined disability ended at the initial CDR, but the cessation was appropriately reversed at the reconsideration level of appeal. The second case was an inaccurate reversal of the initial CDR cessation. Therefore, the beneficiary continued receiving DI benefits for which he may not have been eligible.

RECOMMENDATION

We recommend SSA apply the appropriate policy to determine whether to reopen the case of the beneficiary whose cessation determination was inaccurately reversed at the reconsideration level.

AGENCY COMMENTS

SSA agreed with our recommendation. The Agency's comments are included in Appendix B.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable Federal laws and regulations and pertinent sections of the Program Operations Manual System related to continuing disability reviews (CDR), the cessation of disability, and the reconsideration level of appeal for CDRs.
- Obtained data files of 29,290 Disability Insurance (DI) beneficiaries and 11,777 adult Supplemental Security Income (SSI) recipients who received initial CDR cessation determinations during Calendar Years 2010 and 2011. These files excluded the following.
 - CDRs for children receiving SSI. The Social Security Administration (SSA) treats CDRs for children receiving SSI differently than other CDRs. Specifically, these CDRs are required by law to be completed within certain timeframes.¹
 - DI beneficiaries and adult SSI recipients who received cessation determinations due to failure to cooperate. An individual's failure to cooperate without good cause during a CDR is a basis for the DDS to cease disability when there is not enough evidence to justify a continuance.²
- Selected a random sample of 250 DI beneficiaries and 375 adult SSI recipients who received initial CDR cessation determinations during Calendar Years 2010 and 2011. From each sample, we selected the first 60 cases that had their cessations reversed at the reconsideration level of appeal in Fiscal Year 2012 and had certified electronic folders during the time of their CDR. We selected 50 cases for review and an additional 10 replacement cases.³
- Contracted with Grant Thornton, LLP, to review our sample of 100 cases and provide medical expertise. Specifically, Grant Thornton reviewed the evidence to determine why CDR cessations were reversed at the reconsideration level. Grant Thornton's staff, assigned to provide medical expertise for this audit, held appropriate security clearances. The benefit specialists who performed the case reviews had medical licenses.
- Submitted 45 of the 100 cases to SSA for review to determine why CDR cessations were reversed at the reconsideration level.

¹ *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, Title II, Subtitle C, § 212 110 Stat. 2105, 2192 – 2194, codified at section 1614 of the Act, 42 U.S.C. § 1382c.

² SSA, POMS, DI 28075.005 C.1 (December 28, 2012).

³ We replaced two DI cases and one adult SSI case because, upon further review, the CDR folders were not electronic despite having been coded as such. We replaced another DI case because the DDS initially made a cessation determination citing the beneficiary's whereabouts were unknown. We replaced this case because the cessation reasoning is similar to failure to cooperate, which were excluded from our populations.

We conducted our audit in Kansas City, Missouri, from November 2012 through December 2013. We determined the data used for this audit were sufficiently reliable to meet our objective. The entity audited was the Office of Disability Determinations. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: April 9, 2014

Refer To: SIJ-3

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

From: Katherine Thornton /s/
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, “Full Medical Continuing Disability Review Cessations Reversed at the Reconsideration Level of Appeal” (A-07-13-23019) –
INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“FULL MEDICAL CONTINUING DISABILITY REVIEW CESSATIONS REVERSED
AT THE RECONSIDERATION LEVEL OF APPEAL” (A-07-13-23019)**

Recommendation

We recommend SSA apply the appropriate policy to determine whether to reopen the case of the beneficiary whose cessation determination was inaccurately reversed at the reconsideration level.

Response

We agree. We will review that case immediately and apply our existing policies to determine whether to reopen the case.

Appendix C – MAJOR CONTRIBUTORS

Mark Bailey, Director, Kansas City Audit Division

Tonya Eickman, Audit Manager

Nick Moore, Auditor

MISSION

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