
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**CONTROLS OVER
MULTIPLE PAYMENTS
TO ATTORNEYS**

September 2006

A-12-06-20016

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: September 27, 2006

Refer To:

To: The Commissioner

From: Inspector General

Subject: Controls Over Multiple Payments to Attorneys (A-12-06-20016)

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) had adequate controls over multiple payments made to attorneys.

BACKGROUND

The Office of Disability Adjudication and Review holds hearings as part of SSA's process for determining whether a person is eligible for benefits. In Fiscal Year (FY) 2005, approximately 1,100 Administrative Law Judges (ALJ) rendered about 500,000 decisions at the hearing level. The first step in the appeals process is called reconsideration.¹ If the claimant disagrees with that decision, the claimant may request a hearing before an ALJ. The claimant may select an attorney or other qualified individual to represent him or her at the hearing. Claimant representatives are permitted to charge and receive a fee for their services.

Attorneys acting as claimant representatives file either a "fee agreement" or a "petition to obtain payment" for their services, either of which must be approved by an ALJ.² Attorneys can also petition for a higher fee. Attorneys may request that SSA withhold their fees and make direct payments from beneficiaries' past due benefits.³ Attorney fees are payable by SSA only if the case is favorably decided for the claimant.

¹ State Disability Determination Services perform this function.

² A fee specified in an agreement is limited to the lesser of \$5,300 or 25 percent of past due benefits.

³ In March 2004, the President signed the *Social Security Protection Act of 2004* into law. See Pub. L. No. 108-203, 118 Stat. 493 (2004). Section 303 of the Act allows non-attorneys who meet specific requirements to request that SSA withhold their fees and make direct payments from beneficiaries' past due benefits. However, non-attorneys did not begin to qualify for such payment procedures until 2005. As a result, the payments reviewed in this report relate only to payments to attorneys.

To cover administrative costs, SSA deducts an assessment (user fee) from attorney fee payments. Prior to September 2004, the user fee was 6.3 percent of the attorney fee payment. Since September 1, 2004, the user fee has been calculated at 6.3 percent of the fee payment, *not to exceed \$75*.⁴

Attorney fee payments are processed by staff at eight Program Service Centers (PSC) using the Single Payment System (SPS). SPS replaced the manual One Check Only (OCA) payment system in May 2002. SPS is a national system used to automate attorney fee payments and other Title II payments that cannot be made through the current Title II system. It was created to ensure timeliness of attorney fee payments, stop duplicate and erroneous payments, reduce the number of inputs, and provide management information.

PRIOR AUDIT WORK

We reviewed fees paid to attorneys and reported on the results in an August 2001 report.⁵ At that time, the OCA system was used to process payments to attorneys. We found SSA made duplicate payments to attorneys, staff did not follow procedures, and attorney fee payments with invalid or incorrect Social Security numbers were not detected.⁶ We made a number of recommendations related to our findings and SSA agreed with most of them.⁷ For those recommendations with which SSA disagreed, SSA stated that SPS should resolve those issues.⁸ A focus of our current audit was to test whether SPS reduced improper payments.

RESULTS OF REVIEW

During Calendar Years (CY) 2003 and 2004, we estimate SSA issued 594 improper payments to attorneys totaling approximately \$2.2 million. While this represented a small portion of the approximately 458,000 attorney payments issued during this period, additional controls could have prevented these improper payments. For example, SSA staff had the ability to bypass system warnings and process payments without indicating the reason for the override or obtaining supervisory approval. We also found the Agency improperly recorded the processing fees collected from each attorney payment. As a result, collected fees associated with the attorney payments may be overstated.

⁴ See Social Security Protection Act of 2004, Pub. L. No. 108-203, 118 Stat. 493 (2004), § 301.

⁵ See SSA Office of the Inspector General, *Approval of Claimant Representatives and Fees Paid to Attorneys* (A-12-00-10027), August 2001.

⁶ *Id.* at ii-iii.

⁷ *Id.* at iv.

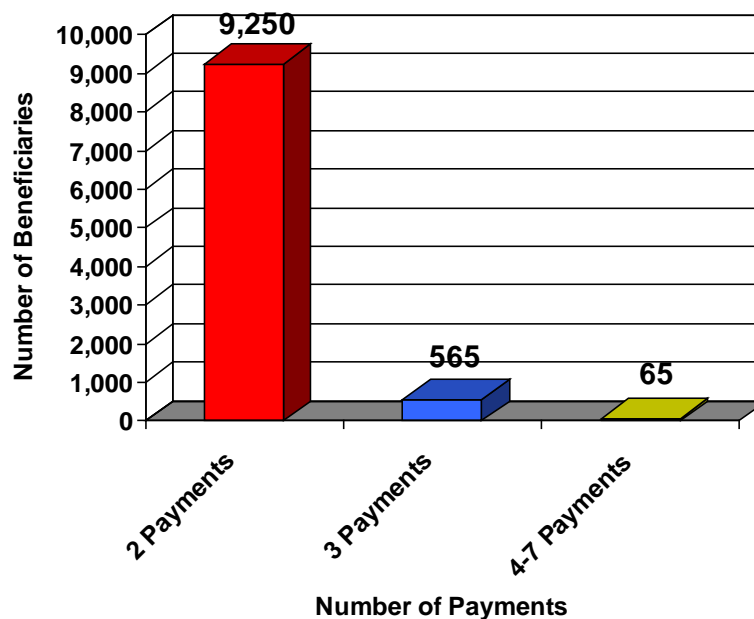
⁸ *Id.*; see also Appendix F, pp. F-2 through F-5.

ATTORNEY FEE PAYMENTS

As noted, we estimate SSA made about 594 improper payments totaling approximately \$2.2 million during CYs 2003 and 2004. We defined an improper payment as (1) a duplicate attorney fee check or (2) the reissuance of a check prior to the return of the previous check or the placing of a stop payment on it.

Our population consisted of 9,880 beneficiary records with attorney payments from CYs 2003 and 2004 containing 2 or more identical attorney fee payments. We divided this population into 3 groups for analysis (see Figure 1).

Figure 1: Breakout of Multiple Payment Population
(9,880 Payments During CYs 2003 and 2004)



We tested 265 sample transactions and determined that 27 attorney fee payments were erroneously paid by SSA, relating to \$122,350 in total payments (see Table 1 for the sample results). We projected these results to the relevant groups and estimated that 594 improper payments relating to approximately \$2.2 million were paid in CYs 2003 and 2004 (see Appendix C for our sampling methodology and results).

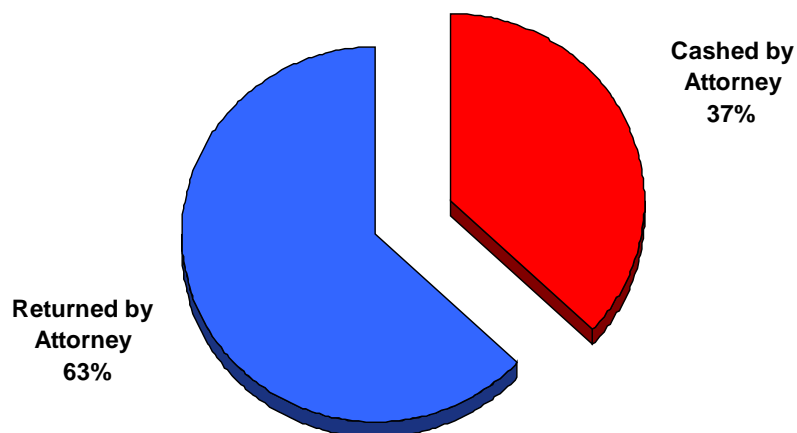
Table 1: Sample Results of Fee Payments Made to Attorneys

<i>Identical Attorney Payments Per Beneficiary Record</i>	<i>Sample Size</i>	<i>Number of Beneficiary Records with Improper Payments</i>	<i>Dollars of Improper Payments</i>	<i>Average Dollar Value of an Improper Payment</i>
2	150	8	\$28,410	\$3,551
3	50	8	\$34,160	\$4,270
4 - 7	65	11	\$59,780	\$5,435
Totals	265	27	\$122,350	

Table 1 also indicates that the more times a payment is reissued to an attorney for a beneficiary, the greater the potential size of any associated improper payment. The average improper payment per beneficiary record increased from \$3,551 in the 2-payment sample to \$5,435 in the 4 or more payment group. Accordingly, the earlier in the process a problem related to a fee payment is corrected, the lower the related average dollar value.

We also found that in over a third of the sample improper payments, the attorneys cashed the improper payment checks and retained the funds (see Figure 2).⁹ We notified SSA's Office of Finance staff of all cashed improper payments identified during our tests so they can start the collection process.

Figure 2: Improper Payments by Type
(27 Payments from CYs 2003 and 2004)



⁹ In 10 of the 27 improper payment checks in our sample, attorneys cashed the payments and retained the funds (see Figure 2).

ATTORNEY PAYMENT MANUAL OVERRIDES

We found that the majority of the improper payments related to benefit authorizers (BA) overriding SPS system alerts.¹⁰ SPS generates two or three warnings to the BA, depending on the triggering factor, when it detects a potential problem.¹¹ If the BA overrides all warnings, the payment can be processed and issued.

For example, in one case a BA processed an attorney fee payment of \$4,534, which related to the second identical attorney payment on a beneficiary's record. Initially, SPS warned that "Total Attorney Payment Exceeds Maximum," but the BA overrode this warning. Then, SPS generated a second warning stating "Attorney Payment Exceeds Amount Withheld." Again, the BA overrode this warning. SPS generated a final warning indicating "Possible Duplicate Payment on SPS." The BA overrode the third warning, and the improper payment of \$4,534 was processed and issued. The recipient cashed both checks and kept the funds.

During these overrides, the BA was never required to explain the reason for overriding the warnings or obtain supervisory approval to continue processing the payment. If SPS required annotated remarks explaining the reason for the override prior to proceeding to the next step, and if these remarks were also verified by a second party, the chances of an erroneous payment could have been reduced. When we discussed this matter with PSC personnel, they agreed that additional language and a second review could enhance the integrity of the payment process.

ATTORNEY USER FEES

Our sample test results indicated that SSA overstated attorney user fees collected within its system. Initially, when SSA processed an attorney fee payment, it recorded two transactions: the payment (net of user fee) and the related user fee. If the same attorney payment had to be reissued (i.e., related check returned because of incorrect address), SSA properly reversed the payment transaction for the returned check, but did not reverse the related user fee transaction. When SSA reissued the check, it again recorded two transactions: 1) a payment; and 2) a second user fee (because the first user fee entry was not reversed). This resulted in the recording of two user fees for the same payment.¹² Moreover, if a check was reissued 4 times, the same process took place and the user fee was recorded 4 times.

¹⁰ In our August 2001 report, *Approval of Claimant Representatives and Fees Paid to Attorneys* (A-12-00-10027), we had a similar finding regarding BAs who did not always follow procedures when addressing the override indicator.

¹¹ Program Operations Manual System SM 008.34.420, *SPS Processing of the Override Action Screen*.

¹² As noted earlier, prior to September 2004, the user fee was 6.3 percent of the attorney payment; whereas, after September 1, 2004, it was 6.3 percent of the attorney payment, not to exceed \$75.

Of the 265 sample records, we found SSA staff had erroneously recorded the user fee more than once for 253 records, or about 95 percent of the time, and overstated the user fee amount by \$86,822. Projecting these results to our population of 9,880 records, we estimate that SPS overstated user fees for CYs 2003 and 2004 in 9,422 cases by approximately \$1.6 million. We discussed this matter with the Office of Finance staff and they agreed that the user fee amounts were being overstated in the Agency's accounting system. SSA's Office of Systems acknowledged that this was caused by a systems error and agreed to correct the problem in FY 2007.

CONCLUSION AND RECOMMENDATIONS

Our review of multiple attorney payments indicated that improper payments occurred due to manual overrides. While the multiple attorney payments represented a small amount of overall payments, we believe enhanced controls over this process could reduce the risk of improper payments. We also found that the systems need to be modified to eliminate the recording of excessive user fees.

To improve payment controls and reduce the issuance of improper payments, we recommend SSA:

1. Collect the outstanding improper payments identified in our sample and determine whether it is cost beneficial to identify and collect other improper payments in our population.
2. Modify SPS to reduce the risk that manual overrides will lead to improper payments. This could include (i) requiring annotated remarks explaining the reason for overriding each SPS warning and/or (ii) supervisory approval of each override.
3. Ensure Agency systems properly record payments to attorneys and associated user fees in accordance with regulations.

AGENCY COMMENTS

SSA agreed with our recommendations and has already initiated corrective action. The full text of the Agency's comments is included in Appendix D.



Patrick P. O'Carroll, Jr.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Sampling Methodology and Results

APPENDIX D – Agency Comments

APPENDIX E – OIG Contacts and Staff Acknowledgments

Acronyms

ALJ	Administrative Law Judge
BA	Benefit Authorizer
CY	Calendar Year
FY	Fiscal Year
OCOA	One Check Only Payment System
ODAR	Office of Disability Adjudication and Review
PSC	Program Service Center
SPS	Single Payment System
SSA	Social Security Administration

Scope and Methodology

To accomplish our objective, we:

- Reviewed criteria pertaining to attorney fees, past due benefits, attorney fee agreements and petitions, and user fees.
- Reviewed prior Office of the Inspector General report on attorney fees.
- Met with Social Security Administration (SSA) staff to gain a better understanding of the Single Payment System (SPS), the Payment History Update System, the Manual Adjustment, Credit and Award Data Entry system, and the Modernized Claims System.
- Reviewed the attorney fee process within the Office of Disability Adjudication and Review (ODAR) and the Program Service Centers (PSC).
- Conducted interviews with ODAR and PSC personnel.
- Initially, our data extract included attorney fee payments contained in 457,974 beneficiary records. We determined that to meet our audit objective, we would only test multiple payments made to attorneys. Accordingly, we extracted from this data a population of 9,880 beneficiary records containing two or more identical payment amounts to attorneys. We selected and tested a stratified sample of 265 records from this population as detailed in Appendix C.
- Reviewed each selected record to determine whether (1) a duplicate attorney fee check was issued, (2) a check was issued prior to the return of the previous check or placing of a stop payment on it, and (3) user fees were properly calculated. In those cases where it appeared an improper payment may have occurred, we reviewed the transaction in the Department of Treasury's Payments, Claims and Enhanced Reconciliation system.

We determined that the data used in our audit was sufficiently reliable to meet our objectives. We conducted our field work from October 2005 through May 2006 in Morgantown, West Virginia; Baltimore, Maryland; and Philadelphia, Pennsylvania. The entities audited were the PSCs in the Office of the Deputy Commissioner for Operations; hearing offices in the Office of the Deputy Commissioner for Disability Adjudication and Review; and the Office of Finance in the Office of the Deputy Commissioner for Budget, Finance and Management. We conducted this audit in accordance with generally accepted government auditing standards.

Sampling Methodology and Results

Our population consisted of 9,880 beneficiary records containing 2 or more attorney fee payments. These attorney fee payments represented all attorney payments made during Calendar Years (CY) 2003 and 2004. We divided our population into three groups for analysis (see Table C-1):

- **Group 1:** This subset represented 9,250 records with 2 attorney payments. We randomly selected 150 items for review.
- **Group 2:** This subset represented 565 records with 3 attorney payments. We randomly selected 50 items for review.
- **Group 3:** This subset represented 65 records with 4 or more attorney payments. We reviewed every item in this subset.

**Table C-1: Sample Population of Attorney Payments
for CYs 2003 and 2004**

<i>Number of Attorney Payments Per Beneficiary Record</i>	<i>Number of Beneficiary Records</i>	<i>Population Tested</i>
1	448,094	
Subtotal		NA
2	9,250	
Subtotal		9,250
3	565	
Subtotal		565
4	51	
5	9	
6	3	
7	2	
Subtotal		65
Total	457,974	9,880

ATTORNEY FEES TEST RESULTS

Our testing of 265 fee payments to attorneys resulted in 27 improper payments totaling \$122,350. Projecting these results to the population, we estimate that the Social Security Administration (SSA) issued 594 improper payments to attorneys totaling approximately \$2,197,772 (see Tables C-2 through C-4). All projections in the following tables were calculated at the 90-percent confidence level.

**Table C-2: Attorney Fee Test, Group 1
Two Attorney Fee Payments Per Beneficiary Record**

Sample Results and Projections	
Segment population size	9,250
Sample size	150
Attribute Projection	
Sample cases – number of improper payments	8 ^a
Projection – number of improper payments in our population	493
Projection lower limit	249
Projection upper limit	869
Variable Projection	
Sample cases – total dollars of improper payments	\$28,410 ^b
Projection – total dollars of improper payments in our population	\$1,751,981
Projection lower limit	\$477,183
Projection upper limit	\$3,026,779

Notes: ^a Includes 3 checks that were cashed.

^b Includes \$3,567 of cashed improper payments.

**Table C-3: Attorney Fee Test, Group 2
Three Attorney Fee Payments Per Beneficiary Record**

Sample Results and Projections	
Segment population size	565
Sample size	50
Attribute Projection	
Sample cases – number of improper payments	8 ^c
Projection – number of improper payments in our population	90
Projection lower limit	47
Projection upper limit	150
Variable Projection	
Sample cases – total dollars of improper payments	\$34,160 ^d
Projection – total dollars of improper payments in our population	\$386,011
Projection lower limit	\$177,421
Projection upper limit	\$594,601

Notes: ^c Includes 3 checks that were cashed.

^d Includes \$12,798 of cashed improper payments.

**Table C-4: Attorney Fee Test, Group 3
Four to Seven Attorney Fee Payments Per Beneficiary Record**

Universe Results	
Total segment population	65
Number reviewed	65
Number of improper payments	11 ^e
Total dollars of improper payments	\$59,780 ^f

Notes: ^e Includes 4 checks that were cashed.
^f Includes \$9,702 of cashed improper payments.

USER FEES TEST RESULTS

We tested the same sample to determine whether user fees were correctly calculated. We found that SSA staff properly reversed the payment entries for returned checks in the Agency’s system, but had not reversed the related user fee entries. When SSA reissued the checks, the payment entries and related user fee entries were made, resulting in the Agency recording user fee income twice for the same payment. Moreover, if a check was reissued 4 times, the same process took place and the user fee was recorded 4 times.

Overall, our testing of 265 user fee cases resulted in 253 overstated user fees totaling \$86,822. Projecting these results to the universe, we estimate that SSA recorded 9,422 cases of overstated user fees totaling \$1,574,250 (see Tables C-5 through C-7).

**Table C-5: User Fee Test, Group 1
Two Attorney Fee Payments Per Beneficiary Record**

Sample Results and Projections	
Segment population size	9,250
Sample size	150
Attribute Projection	
Sample cases – number of overstated user fees	143
Projection – number of overstated user fees in our population	8,818
Projection lower limit	8,458
Projection upper limit	9,045
Variable Projection	
Sample cases – total dollars of overstated user fees	\$20,779
Projection – total dollars of overstated user fees in our population	\$1,281,345
Projection lower limit	\$1,105,601
Projection upper limit	\$1,457,089

**Table C-6: User Fee Test, Group 2
Three Attorney Fee Payments Per Beneficiary Record**

Sample Results and Projections	
Segment population size	565
Sample size	50
Attribute Projection	
Sample cases – number of overstated user fees	48
Projection – number of overstated user fees in our population	542
Projection lower limit	498
Projection upper limit	561
Variable Projection	
Sample cases – total dollars of overstated user fees	\$22,025
Projection – total dollars of overstated user fees in our population	\$248,887
Projection lower limit	\$203,149
Projection upper limit	\$294,625

**Table C-7: User Fee Test, Group 3
Four to Seven Attorney Fee Payments Per Beneficiary Record**

Universe Results	
Total segment population	65
Number reviewed	65
Number of overstated user fees	62
Total dollars of overstated user fees	\$44,018

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: September 22, 2006

Refer To: S1J-3

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

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Controls Over Multiple Payments to Attorneys" (A-12-06-20016)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report's recommendations are attached.

Please let me know if you have any questions. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL'S (OIG) DRAFT REPORT, "CONTROLS OVER MULTIPLE PAYMENTS TO ATTORNEYS" (A-12-06-20016)

Thank you for the opportunity to review and provide comments on this draft report.

Recommendation 1

Collect the outstanding improper payments identified in our sample and determine whether it is cost beneficial to identify and collect other improper payments in our population.

Comment

We agree. We will track our efforts for these cases, and we will determine whether it is cost beneficial to identify and collect other improper payments in the full population. However, any decision to extend the collection efforts to the full population will also be dependent on resource constraints.

Recommendation 2

Modify the Single Payment System (SPS) to reduce the risk that manual overrides will lead to improper payments. This could include: i) requiring annotated remarks explaining the reason for overriding each SPS warning and/or; ii) supervisory approval of each override.

Comment

We agree. We will determine the most effective method to modify SPS in tracking and/or controlling manual override conditions. If systematic changes in SPS are determined necessary, the implementation of those changes will be predicated on available resources.

Recommendation 3

Ensure Agency systems properly record payments to attorneys and associated user fees in accordance with regulations.

Comment

We agree. We have a planned system correction for fiscal year 2007 (November 2006 release) that will significantly reduce the number of duplicate user fees currently posted.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Walter Bayer, Director, Philadelphia Audit Division, (215) 597-4080

Michael Maloney, Audit Manager, (703) 578-8844

Staff Acknowledgments

In addition to those named above:

Ehab Bestawrose, Auditor-in-Charge

Richard Devers, IT Specialist

Ellen Silvela, Auditor

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