



SOCIAL SECURITY
Office of the Inspector General

February 25, 2011

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

Dear Mr. Chairman:

On April 5, 2010, we received a request from the House Committee on Ways and Means, Subcommittee on Social Security, to issue an interim report on the first in/first out process in place at the Office of Disability Adjudication and Review (ODAR), and conduct a preliminary examination of the extent to which ODAR is complying with this policy. We issued a preliminary report in April 2010.

The letter also asked my office to conduct a more extensive review that examined local, regional, and national trends regarding first in/first out scheduling procedures. This report represents our response to this second request.

Thank you for the opportunity to provide the Committee with the requested information. To ensure the Agency is aware of the information provided to your office, we are forwarding a copy of this report to the Agency.

If you have additional questions, please call me, or have your staff contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:
Michael J. Astrue

CONGRESSIONAL RESPONSE REPORT

Office of Disability Adjudication and Review's Scheduling Procedures for Hearings

A-12-10-20169



February 2011

Mission

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

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

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We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

OBJECTIVE

The objectives of our review were to (1) identify trends at the hearing office, regional, and national levels that were inconsistent with a first in/first out (FIFO) hearing scheduling policy; and (2) determine whether the departure from FIFO at these locations is consistent with the Office of Disability Adjudication and Review's (ODAR) policies and procedures.

BACKGROUND

ODAR administers the hearings and appeals program for the Social Security Administration (SSA). ODAR operates over 150 hearing offices and related remote sites, as well as 5 National Hearing Centers (NHC).¹ About 1,400 administrative law judges (ALJ) conduct hearings and issue decisions.

The hearing process begins when an applicant files a hearing request² before an ALJ, after being denied at a State disability determination services office. Upon receiving this request, hearing office staff enter the case into the Case Processing and Management System (CPMS). The master docket system contains key information on all cases the hearing office receives. The case is then assigned to an ALJ for processing and an eventual hearing, if appropriate. Not every request for hearing leads to a hearing. For example, cases are screened at the master docket stage, and an ALJ or senior attorney adjudicator³ may make an on-the-record (OTR) allowance without a hearing. In addition, some cases are dismissed without a hearing.

ODAR's Hearings, Appeals and Litigation Law (HALLEX) Manual states, "The HOCALJ [Hearing Office Chief ALJ] generally assigns cases to ALJs from the master docket on a rotational basis, with the earliest (i.e., oldest) [requests for hearings] receiving priority, unless there is a special situation which requires a change in the order in which a case is assigned."⁴

¹ NHCs conduct only video hearings with other hearing offices around the nation. SSA's five NHCs are in Albuquerque, New Mexico; Baltimore, Maryland; Chicago, Illinois; Falls Church, Virginia; and St. Louis, Missouri.

² *Request for Hearing by Administrative Law Judge* (SSA Form HA-501).

³ ODAR's *Senior Attorney Adjudicator* initiative was implemented in November 2007. The initiative was designed to increase adjudicator capacity by allowing non-ALJs to issue fully favorable OTR decisions, thereby expediting the hearing process and conserving ALJ resources for more complex cases that require a hearing. We plan to issue a report on the *Senior Attorney Adjudicator* initiative in early 2011.

⁴ SSA, HALLEX I-2-1-55 Section A—*Assignment of Service Area Cases to Administrative Law Judges*. Exceptions to FIFO are provided in Appendix B.

PRIOR REVIEW

On April 5, 2010, we received a request from the House Committee on Ways and Means, Subcommittee on Social Security, to review FIFO scheduling procedures. The Subcommittee provided various anecdotal reports of hearing scheduling that may be contrary to the FIFO policy. We issued a preliminary report in April 2010 based on a review of workloads at three hearing offices and discussions with senior management in three regions.⁵

SCOPE AND METHODOLOGY

In this review, we more thoroughly examined hearing office, regional, and national trends that might have an effect on FIFO. We reviewed the status of hearing cases with a request date of October 13, 2009, at hearing offices and related sites.⁶ For those cases where hearings did not appear to be scheduled on a FIFO basis, we reviewed a sample to determine whether there was a valid rationale for scheduling the hearing out of order. In addition, we conducted interviews with managers at ODAR hearing offices and regional offices to learn more about the hearings process.⁷

⁵ SSA, Office of the Inspector General (OIG), *Congressional Response Report: Scheduled Hearings* (A-12-10-20154), April 2010.

⁶ This included 145 hearing offices, 6 screening units, 4 NHCs, and 1 satellite office. While ODAR operated additional hearing offices and related sites at the time of our review, we only included locations that were operating during our audit period.

⁷ See Appendix C for more information on our scope and methodology.

Results of Review

Our review of a nationwide sample of hearing cases found that ODAR was not always processing the cases in FIFO order, but this departure from FIFO was consistent with the Agency's policies and procedures. We reviewed 2,979 hearing cases with a hearing request date of October 13, 2009 and found 1,208 were closed by the end of Fiscal Year (FY) 2010. Of these closed cases, 613 cases (about 51 percent) were processed using approved exceptions to FIFO, including OTRs, critical cases, remands, and dismissals. ODAR's 10 regional management teams told us that hearing offices followed the FIFO process as much as possible. The managers stated that other issues may affect a hearing office's ability to follow the FIFO process in every case, including hearings held at remote hearing sites, scheduling of multiple parties, and misplaced and delayed cases at field offices. ODAR had been working to standardize and automate core operational activities in ways that should improve hearing case processing, such as the planned auto-scheduling initiative.

CASE PROCESSING WITH FIFO EXCEPTIONS

Our review of 2,979 hearing requests from October 13, 2009⁸ found that 1,208 cases (41 percent) were closed by the end of FY 2010. Of these 1,208 closed cases, 613 cases (51 percent) were processed using the exceptions to FIFO order because they met the Agency's criteria. HALLEX⁹ allows a number of exceptions to FIFO processing, including

- OTR decisions;
- critical cases;¹⁰
- Appeals Council (AC) and court remand cases;¹¹ and
- dismissals.¹²

Figure 1 illustrates the various FIFO exceptions associated with the 613 closed cases that had a hearing request date of October 13, 2009. As shown, ALJ and senior

⁸ The hearing request date relates to the date the *Request for Hearing by Administrative Law Judge* (SSA Form HA-501) was filed. We used the hearing request date in CPMS, ODAR's system for controlling and processing hearing cases.

⁹ SSA, HALLEX I-2-1-55 Section D—*Assignment of Service Area Cases to Administrative Law Judges*. In addition, see Appendix B for a further explanation of the exceptions to processing cases using FIFO order.

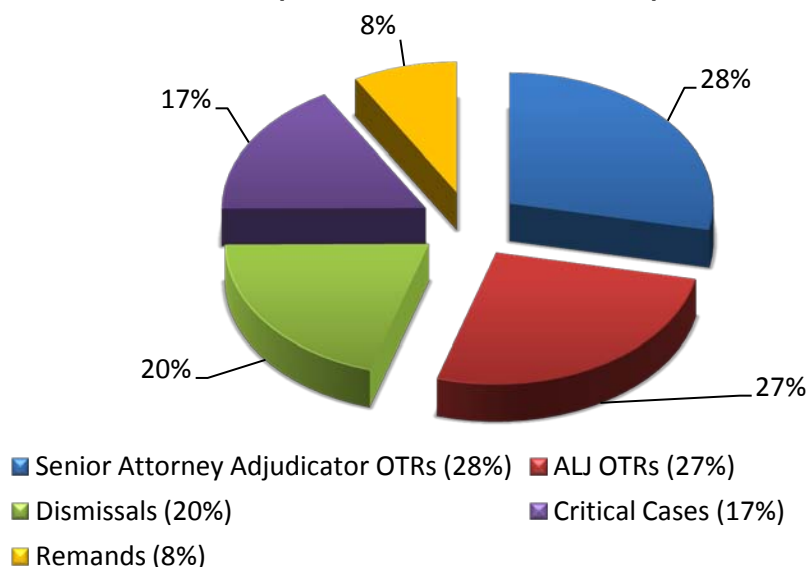
¹⁰ Examples of critical cases are provided in Appendix B.

¹¹ For more information on remands, see our September 2008 report, *Hearing Office Remand Processing* (A-12-08-28036).

¹² For more information on dismissals, see our December 2010 report, *Office of Disability Adjudication and Review Hearing Request Dismissals* (A-07-10-20171).

attorney adjudicator OTR decisions comprised over half of the closed cases, while dismissals were 20 percent and critical cases were 17 percent. The remaining 8 percent was remanded cases.

Figure 1: Types of FIFO Exceptions Among 613 Closed Cases (as of the end of FY 2010)



Note: Some cases were counted in more than one category.

OTR Decisions

A total of 2,979 cases had a hearing request date of October 13, 2009. Of these, 362 cases (12 percent) received OTR decisions. Senior attorney adjudicators issued 187 of these OTR decisions, and ALJs issued 175 OTR decisions.

All 10 regions used ALJs and senior attorney adjudicators to screen incoming cases and adjudicate them as OTR cases. Based on screening criteria developed by ODAR, cases that meet a certain profile¹³ get screened by senior attorney adjudicators for possible OTR decisions. If the ALJ or senior attorney adjudicator decides the case can be issued as a fully favorable OTR decision, it is written as a favorable decision and issued. Under this process, two cases received on the same day can be treated differently if the first is quickly allowed under the OTR process while the second requires a full hearing before a decision can be made.

According to the regional staff we interviewed, cases that were not allowed under the OTR process were returned to the queue to be processed in FIFO order. However, we identified differences in later processing indicating this OTR screening affected how a

¹³ In August 2009, ODAR issued guidance recommending pre-screening for possible OTR decisions for the following types of cases: (1) claimants aged 50 and older, (2) OTR requests from claimant representatives, and (3) specifically targeted impairment codes.

case is treated later in the process. For example, we reviewed 20 cases that the Greensboro, North Carolina, Hearing Office received on October 13, 2009. As of May 7, 2010, the Greensboro Hearing Office had 10 of its cases in the *Unworked* status, 9 were *In-Process*, and 1 had a hearing and was being finalized.¹⁴ Of the nine cases that were *In-Process*, six were screened by senior attorney adjudicators. After the senior attorney adjudicator screened the cases, they were returned to the *Unworked* status but quickly moved to *Pre-Hearing* development status.¹⁵ The cases that were not screened by a senior attorney adjudicator were left in *Unworked* status.

Critical Cases

Hearing offices categorized 111 cases, about 4 percent of the total cases received on October 13, 2009, as critical. In our review, we identified another seven critical cases that were not closed by the end of FY 2010, and all but three were closed as of December 15, 2010.¹⁶ We found that the hearing offices that received critical cases followed the HALLEX guidelines of prioritizing the processing of critical cases.¹⁷ HALLEX guidelines identify the following critical situations to expedite the case.¹⁸

- The claimant's illness is terminal.¹⁹
- The case relates to military personnel injured on active duty.
- The case is identified as a compassionate allowance²⁰ claim.
- The claimant may be suicidal or homicidal/potentially violent.
- The claimant is without, and is unable to obtain, food, medicine, or shelter—often termed dire need.
- The case has been delayed an inordinate amount of time, and there is a public, congressional, or other high priority inquiry on the claim.

¹⁴ See Appendix D for a hearing office case processing flow diagram.

¹⁵ Senior attorney adjudicators may update medical evidence and take other actions to develop the case as part of the screening process.

¹⁶ Of these seven cases, four were initially received as critical cases, and three were coded as critical cases later in the process. Of the three open cases, two were critical from the start, and one was later coded as critical in December 2009. We identified all cases coded as critical through May 2010. Since cases can be coded as critical at any point before being closed, the number of critical cases associated with our population may increase over time.

¹⁷ SSA, HALLEX I-2-1-40—*Critical Cases*.

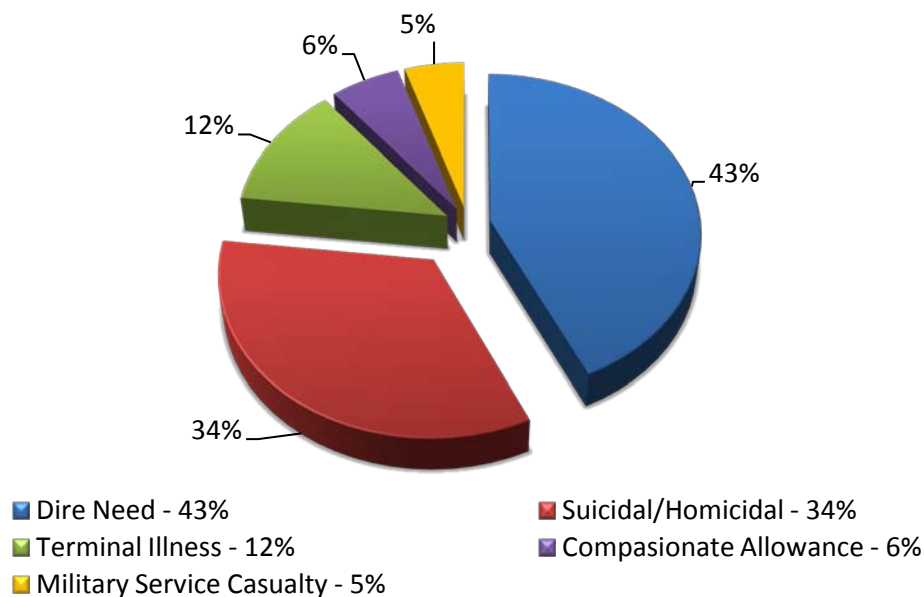
¹⁸ See Appendix B for a full listing of exceptions to the FIFO policy for hearings.

¹⁹ A terminal illness is described as an untreatable impairment that cannot be reversed and is expected to end in death. SSA POMS DI 11005.601—*The Disability Interview—Identifying Terminal Illness (TERI) Cases*.

²⁰ *Compassionate Allowances* are granted for diseases of the most obviously disabled individuals based on readily available, objective medical information. SSA News Release, *Social Security Adds 38 New Compassionate Allowance Conditions*, February 11, 2010.

As shown in Figure 2, the largest critical case categories were dire need (43 percent) and suicidal/homicidal (34 percent). Five percent of the cases were categorized as Military Service Casualty cases.

Figure 2: Types of Critical Cases Among 115 Issued Decisions (as of December 15, 2010)



Note: These 115 critical cases relate to the 111 closed by the end of FY 2010, as well as 4 additional cases from our population we identified as critical. Some cases were counted in more than one category.

While hearing offices categorize cases as critical, the claimants' medical and work histories also need to be reviewed by hearing office employees. ODAR has provided special instructions to guide hearing office employees in establishing a priority plan and procedures for processing critical cases. For instance, hearing office employees use a *Critical Request Evaluation Sheet* to evaluate the critical situation to expedite the case.²¹

One example of a critical case relates to a male claimant in the Buffalo, New York, area whose claim was flagged as a compassionate allowance because he was diagnosed with a malignant tumor. A senior attorney adjudicator in the Buffalo Hearing Office screened the case, and, within 100 days, the case was decided as a fully favorable OTR decision. In another example, a female claimant with human immunodeficiency

²¹ SSA, HALLEX I-2-1-40—*Critical Cases*; Also see HALLEX I-2-1-95—*Critical Request Evaluation Sheet*.

virus filed a claim in the Houston, Texas, Hearing Office. Her case was designated as suicidal, and, within 2 months, the Houston Hearing Office had issued a decision on her case.

Remand Cases

Hearing offices received 61 SSA AC remands with a hearing request date of October 13, 2009. Of those, 55 remands (90 percent) were closed by the end of FY 2010. ODAR's HALLEX manual instructs hearing offices to flag remands and assign them immediately.²² Remands are generated by SSA's AC and generally relate to appeals filed by claimants dissatisfied with the ALJ decision on their claims. The AC, which grants a request for review or reviews a case on its own, may issue a decision, dismiss the request for hearing, or remand the case to an ALJ for further development and proceedings.²³ Since remands represent the reworking of an initial hearing,²⁴ the remanded case usually goes back to the ALJ who issued the initial decision. The ALJ will address the AC and/or court's comments, hold a new hearing, and/or issue a new decision.

Dismissals

Of the 2,979 cases with a request date of October 13, 2009, ALJs had dismissed 134 cases (4 percent) by the end of FY 2010.²⁵ ALJs can dismiss a case for a variety of reasons. The most common reasons follow.

- **Abandonment:** When the claimant does not appear for the hearing, and the ALJ did not find a good cause for failure to appear.
- **Withdrawal:** When the claimant withdraws a hearing request.

²² SSA, HALLEX I-2-1-55 Section D—*Assignment of Service Area Cases to Administrative Law Judge*. In addition, see our September 2008 report, *Hearing Office Remand Processing* (A-12-08-28036).

²³ The initial remand is an AC remand. If the claimant is dissatisfied with the AC action, the claimant may seek a review of the case by a Federal district court. When the court remands a case to the Commissioner of Social Security, the remand is sent to the AC. The AC subsequently remands the case to an ALJ as a "court remand." SSA, HALLEX I-2-8-18—*Administrative Law Judge Decision in Court Remand Cases*.

²⁴ Remands often relate to the ALJ applying the wrong law, the need for additional claimant or other witness testimony, and/or an issue not being properly developed. Other reasons cases are remanded include (1) the claimant did not receive a fair hearing, (2) the ALJ issued a decision on the record but testimony is needed, (3) evidence from an expert is needed, or (4) the ALJ's decisional rationale is insufficient. SSA, HALLEX I-3-7-1—*General*.

²⁵ Dismissals can happen at various stages in the hearings process, so this number may increase as the remaining cases in our population are processed.

- **Favorable:** When a lower level SSA component issues a revised favorable decision, rendering the need for a hearing moot.²⁶

HEARING OFFICE PROCESSING ISSUES AFFECTING FIFO

ODAR's 10 regional management teams told us that hearing offices follow the FIFO process as much as possible. However, they mentioned other issues that affect the FIFO process, including hearings held at remote hearing sites, scheduling of the necessary parties, and misplaced and delayed cases at SSA field offices.²⁷

Remote Hearing Site Dockets

Regional managers stated hearing offices may need to bypass the FIFO process to fill an ALJ's remote hearing site docket.²⁸ Hearing offices attempt to gather enough cases to fill an ALJ's docket for in-person hearings at remote sites, which may lead to cases being heard out of order. For instance, newer cases may move ahead of older cases to fill a remote hearing site docket. SSA attempts to use video hearings with claimants at remote hearing sites, but ALJs will travel to remote hearing sites for an in-person hearing if video teleconferencing is not available or if the claimant refuses a video hearing.²⁹

To determine the variety of cases heard at remote sites, we examined the cases heard at the Missoula, Montana, remote hearing site on April 6, 2010. The cases scheduled that day had hearing request dates ranging from October 6 to November 13, 2009. While the range between hearing request dates was 5 weeks, the hearings were heard on the same day because the hearing office needed to gather enough cases to make it cost-effective to send the ALJ to the remote site.

We also learned of another example of remote site issues in our conversations with the Denver Region. The Denver, Colorado, Hearing Office operates a number of remote sites that do not contain video hearing equipment. As a result, the ALJs in that office

²⁶ For more information on dismissals, see our December 2010 report, *Office of Disability Adjudication and Review Hearing Request Dismissals (A-07-10-20171)*.

²⁷ We referenced most of these same issues in our initial report in April 2010. Our additional work expanded our contacts from 3 regions to all 10 regions and allowed us to review data and instances nationwide related to these issues. Our earlier report mentioned transferred cases and prisoner cases as other potential factors impacting FIFO processing. While we did not come across any additional information that caused us concern as part of this review, we continue to believe these two factors can impact case processing.

²⁸ To be cost-effective, the hearing office must assemble a docket of cases when sending an ALJ to a remote site.

²⁹ We are completing a separate report on video hearings, *Use of Video Hearings to Reduce the Hearing Case Backlog (A-05-08-18070)*.

spend as much as 50 percent of their time visiting remote sites for hearings. In addition, not all these sites are accessible in the winter months. For example, a hearing office manager noted that one site cannot be accessed from November through April because of inclement weather.

Scheduling Multiple Parties

Regional managers stated that cases ready for a hearing may be delayed because of difficulties in scheduling all appropriate individuals for the hearing. For example, hearing offices need to ensure the availability of the ALJ, the claimant and the claimant's representative, the hearing reporter, and, if needed, a translator, medical expert (ME), and/or vocational expert. Any individual may cancel his or her attendance at the hearing, thereby creating a need to reschedule. ALJs' schedules are usually planned 3 months in advance, so when an individual cancels, the hearing must be rescheduled. Rescheduling can add months to the hearing process.³⁰

All the regional managers stated that scheduling MEs was especially difficult. We examined the FY 2010 closed cases and found that about 100,000 hearings, or about 1 of every 7 dispositions, had an ME in attendance. In one region, we were told that three hearing offices in the same part of the State experienced scheduling conflicts when they attempted to schedule the same MEs for hearings on the same day. We also heard from hearing offices that MEs will request a delay in the hearing until they can be assigned more than one case, since it is not cost-effective for them to attend a single hearing. In these cases, hearing offices bypass FIFO and identify additional cases that require a particular ME's expertise.

Misplaced and Delayed Cases

Our review of the 2,979 cases revealed 149 cases (5 percent) were received in the hearing offices between 50 and 275 days after the hearing request was received from the claimant.³¹ All the regions mentioned that claim folders arriving late in the hearing offices cause problems in FIFO processing,³² though hearing offices make every effort to get these cases into the hearing process and processed in FIFO order.

ODAR's regional managers told us they have been working closely with SSA's Office of Operations³³ on a solution to this problem. Most of the regional managers told us that

³⁰ Not only are the ALJ dockets filled months in advance, hearing offices must also comply with the required 20-day notice sent to the claimant and claimant representative.

³¹ We also discussed misplaced and delayed cases in our September 2009 report, *Aged Claims at the Hearing Level* (A-12-08-18071).

³² The Social Security field office is responsible for sending a claimant's appealed case to the ODAR hearing office that services the claimant's location.

³³ SSA's Office of Operations is responsible for managing field office operations.

the problem of misplaced and delayed folders has diminished since SSA implemented the *Electronic Folder* initiative. Their reasoning was that paper cases were easier to misplace, and cases also were lost when they were mailed to the hearing office. The regional managers believe that electronic cases are easier for field offices to track since they are transmitted to the hearing offices electronically rather than traveling through the mail system. However, we found that the majority of the delayed cases in our population was electronic cases. We examined 47 cases that were at least 100 days past the hearing request date before being received in the hearing offices. We found that 27 of these cases were electronic cases.

ONGOING INITIATIVES

As part of our earlier review, we examined ODAR's initiatives to improve operating efficiency and eliminate the hearings backlog. Since 2007, ODAR has been working to standardize and automate core operational activities through its electronic business process (eBP) initiative.³⁴ The eBP initiative involves all hearing office practices; including the hearing case intake process, pre-hearing development, the hearing itself, post-hearing development, and decision issuance. ODAR instituted eBP after conducting visits to hearing offices to identify processing best practices, developing a new standardized electronic business process, and testing of the new approach at various locations. Beginning in June 2009, the official process was rolled out to hearing offices, with the last set of training scheduled for the NHCs from November 2010 to February 2011.

Regional managers had mixed reactions on the implementation of eBP and the effect on the hearing process. Some regional managers were positive about the new process, stating eBP had standardized the case processing function in every hearing office, thereby facilitating case transfers. However, managers in three regions stated that eBP had no noticeable effect to date on hearing office productivity.

ODAR also has related automation initiatives that may alleviate some scheduling and other processing delays by streamlining activities and potentially freeing up staff for other duties, including the following.

- **Automated Scheduling:** ODAR is working with a contractor to automate hearing scheduling, which is currently a manual process. The new process is expected to electronically determine the best available hearing time based on the availability of ALJs, experts, facilities, and equipment.
- **Centralized Printing and Mailing:** Contractors are producing and mailing key hearing-related notices, including Request for Hearing Acknowledgement letters, Notice of Hearing letters, Notice of Hearing Reminder letters, and Notice of Decision letters.

³⁴ *Standardized Electronic Hearing Office Process*, ODAR Website, updated November 22, 2010.

- **Appointed Representative Service:** Under this service, claimant representatives obtain electronic access to the hearing case folder and receive electronic notices. ODAR reported that approximately 1,400 claimant representatives had access to this system in November 2010.
- **Streamlined Folder Assembly/Shared Access:** In April 2010, ODAR issued new electronic folder assembly instructions to hearing offices to ensure that key functions, including page numbering, splitting of commingled documents, and adding appropriate document descriptions are performed. A separate initiative that allows the sharing of electronic folders between hearing offices, in combination with this streamlined approach for such folders, should enhance the ability of offices to assist one another with backlogs.

The above-listed initiatives related to case processing are just a few of the many ongoing hearing-related initiatives at SSA. Other ongoing Agency initiatives, such as *Aged Cases*,³⁵ *ALJ Hiring*,³⁶ *Co-Location* of remote sites with SSA field offices, *Video Hearings* (including NHCs),³⁷ *Service Area Realignment*,³⁸ and the *Senior Attorney Adjudicator*³⁹ program, are expected to further assist the Agency in processing the backlog of pending hearings, in a more timely way, while continuing to adhere to the FIFO policy.

³⁵ SSA, OIG, *Aged Claims at the Hearing Level* (A-12-08-18071), September 2009.

³⁶ SSA, OIG, *Hearing Office Performance and Staffing* (A-12-08-28088), February 2010.

³⁷ We will be issuing a report on video hearings in FY 2011—*Use of Video Hearings to Reduce the Hearing Case Backlog* (A-05-08-18070).

³⁸ This initiative involves the transfer of cases and, in some instances, specific hearing office service areas to other offices for the purpose of alleviating backlogs. SSA, OIG, *Congressional Response Report: Hearing Office Backlogs in Missouri* (A-12-10-21039), March 2010.

³⁹ We will be issuing a report on the senior attorney program in 2011—*Senior Attorney Adjudicator Program* (A-12-10-11018).

Conclusions

Our review found that the majority of the cases in our population that were closed by the end of FY 2010 were not processed in FIFO order. However, this processing was consistent with SSA's policy since these cases were processed as appropriate exceptions to the FIFO policy, including OTRs, critical cases, remands, and dismissals. These exceptions allow hearing offices to focus on priority cases earlier as well as those that can be quickly decided.

The ODAR managers we spoke with were committed to FIFO, and most non-FIFO issues were consistent with ODAR policy, though misplaced and delayed cases continue to be a problem even in the new electronic environment. Moreover, because of the complexities of scheduling, the Agency is often required to reschedule hearings. Ongoing Agency initiatives to improve the electronic business process, including the planned auto-scheduling process, should help alleviate some of these issues and allow more cases to be processed in FIFO order.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Exceptions to the First in/First out Policy for Hearings

APPENDIX C – Scope and Methodology

APPENDIX D – Hearing Office Process Flow Diagram

APPENDIX E – Hearing Case Processing

Acronyms

AC	Appeals Council
ALJ	Administrative Law Judge
CPMS	Case Processing and Management System
eBP	Electronic Business Process
FIFO	First in/First out
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law Manual
ME	Medical Expert
NHC	National Hearing Center
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
OTR	On-the-Record
POMS	Program Operations Manual System
SSA	Social Security Administration

Exceptions to the First In/First Out Policy for Hearings

The Social Security Administration’s (SSA) Hearings, Appeals and Litigation Law (HALLEX) Manual provides a number of situations where the first in/first out method for processing hearing cases can be bypassed (see Table B-1).¹

Table B-1: Exceptions to FIFO When Processing Hearing Claims

Exception	Explanation
Critical Case Designation	Involves a critical issue, including Terminal Illness, Military Service Casualty, Compassionate Allowance, Dire Need, and Suicidal/Homicidal situations.
Time-Limited Court Remand Claims	The court has ordered the Commissioner to complete a specific action(s) within a set period of time.
Section 8001 Claims	The Appeals Council (AC) has assumed jurisdiction on its own motion of an administrative law judge’s (ALJ) favorable disability decision and remanded the case for further proceedings. If certain timeframes are not (or have not been) met, SSA must pay the claimant interim benefits until the proceedings on remand have been completed.
Delayed Court Remand Claims	This is a court remand case that is over 125 days old (from the date of the court's order) or the AC has remanded to an ALJ a second time.
Other Court Remand Claims	All other court remand cases not already cited above.
Title XVI Non-Disability Claims	The hearing decision must be issued within 90 days from the date of the request for hearing.
Disability Cessation Claims	The case is handled promptly to avoid or minimize overpayments.

¹ SSA, HALLEX I-2-1-55—*Assignment of Service Area Cases to Administrative Law Judges.*

Exception	Explanation
Cases That Appear to Meet the Criteria for Dismissal	Based on hearing office staff review of the Request for Hearing, the case appears to meet the Office of Disability Adjudication and Review's criteria for dismissal.
Cases in Which the Claimant has Waived the Right to an Oral Hearing	The ALJ may determine, based on his or her examination of the record, that a hearing should be held despite the waiver.
Cases in Which a Claimant has Waived His or Her Right to Regular Advance Notice of Hearing	A claimant's waiver of the right to regular advance notice indicates that he or she does not need advance notice to prepare for the hearing and desires a hearing as soon as possible. Therefore, if the hearing office staff can accommodate the claimant because of a cancellation by another claimant or any other reason, it should assign the case to an ALJ and schedule a hearing as soon as possible, without the usual advance notice.
On-the-Record Decisions	Not every request for hearing leads to a hearing. For example, most cases are screened at the master docket stage and an ALJ or senior attorney adjudicator may make an on-the-record allowance without a hearing.
Appeals Council Remand	AC remands, including those generated by the courts, are assigned to the same ALJ who issued the decision or dismissal unless <ul style="list-style-type: none"> a. the case was previously assigned to that ALJ on a prior remand from the AC and the ALJ's decision or dismissal after remand is the subject of the new AC remand, or b. the AC or the court directs that the case be assigned to a different ALJ.

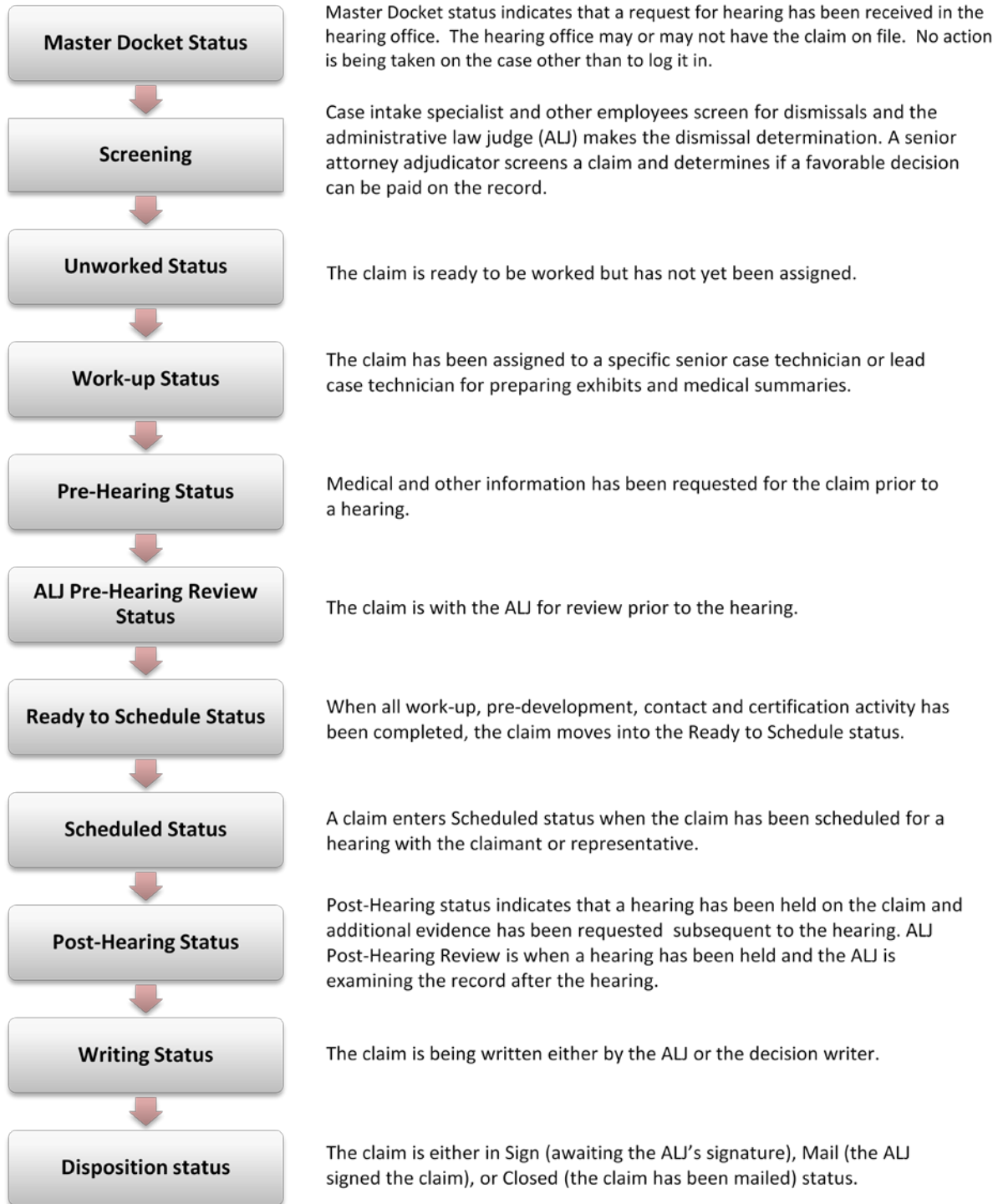
Scope and Methodology

To achieve our objectives, we:

- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals and Litigation Law Manual.
- Reviewed prior SSA Office of the Inspector General reports.
- Using a workload report from ODAR's Disability Adjudication Reporting Tool, identified cases in hearing offices and other locations that had a request for hearing date of October 13, 2009.
- Analyzed the selected hearing cases using information in ODAR's Case Processing and Management System to determine the status of each case as well as other issues pertaining to each case. From this information, we identified hearing office, regional, and national trends.
- Interviewed managers in ODAR Headquarters, regional offices, and hearing offices to discuss first in/first out, the scheduling process, and the status of selected hearing cases.

We assessed the reliability of the workload data cited in this review and found it sufficiently reliable to meet our objectives. We conducted our review from May to December 2010 in Falls Church, Virginia. The principle entity audited was the Office of the Associate Commissioner for Disability Adjudication and Review. We conducted our review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspections*.

Hearing Office Process Flow Diagram



Hearing Case Processing

Consistent with our earlier review of 3 offices,¹ we reviewed the 2,979 cases at 156 offices to identify national and regional trends related to their processing as of May 7, 2010. These trends indicate that two individuals filing a request for hearing on the same day may experience different hearing dates depending on the location of the hearing offices.²

NATIONAL TRENDS

At a national level, we found that hearing request cases received on the same day were in varying statuses throughout the hearings process, though most were still *Not Scheduled* for a hearing. We reviewed the status of 2,979 cases³ at 156 offices with a hearing request date of October 13, 2009.⁴ We found 1,974 cases (66 percent) were waiting to be scheduled for a hearing as of May 7, 2010—approximately 7 months after they were received at a hearing office (see Figure E-1).⁵ Another 358 cases (12 percent) had been scheduled for a hearing, 150 cases (5 percent) had undergone a hearing, and 497 cases (17 percent) had an issued decision.

¹ Social Security Administration, Office of the Inspector General, *Congressional Response Report: Scheduled Hearings (A-12-10-20154)*, April 2010.

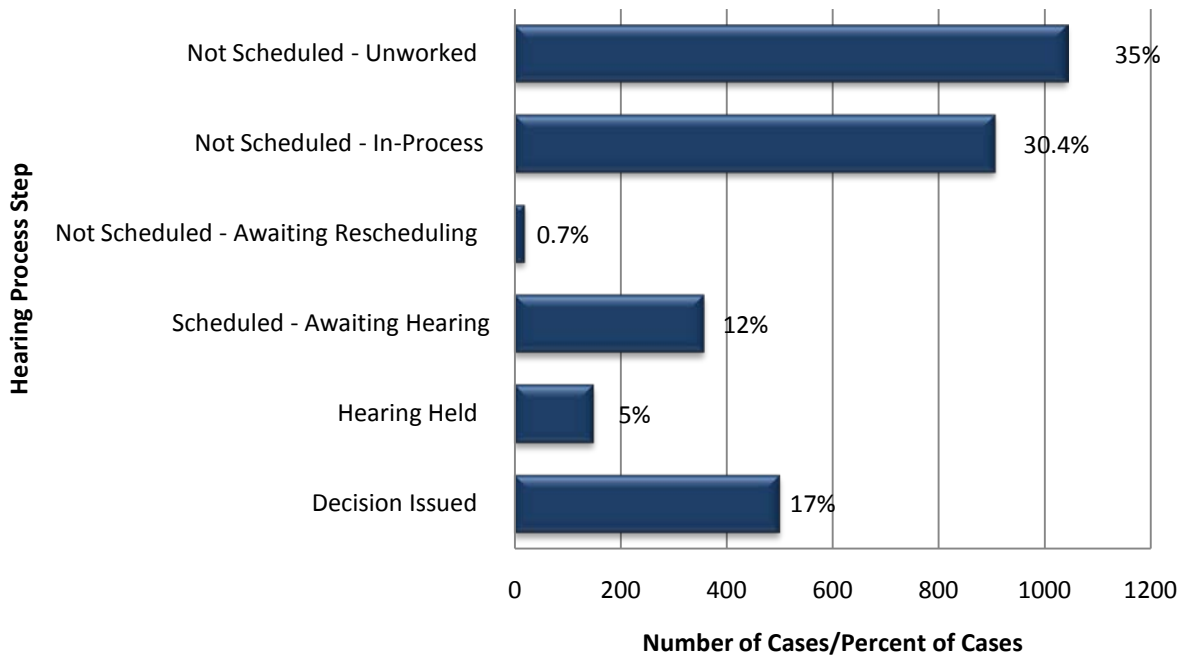
² This difference would also relate to the type of claim, as already noted in the body of this report.

³ These cases include the 55 cases reviewed in our earlier report, which included cases from three hearing offices - McAlester, Oklahoma; Orland Park, Illinois; and Sacramento, California.

⁴ The hearing request date relates to the date the *Request for Hearing by Administrative Law Judge* (SSA Form HA-501) was filed. We used the hearing request date contained in the Case Processing and Management System, ODAR's system for controlling and processing hearing cases.

⁵ See Appendix D for more information on the various stages of a hearing.

**Figure E-1: Status of Request for Hearings Received on October 13, 2009
(as of May 7, 2010)**

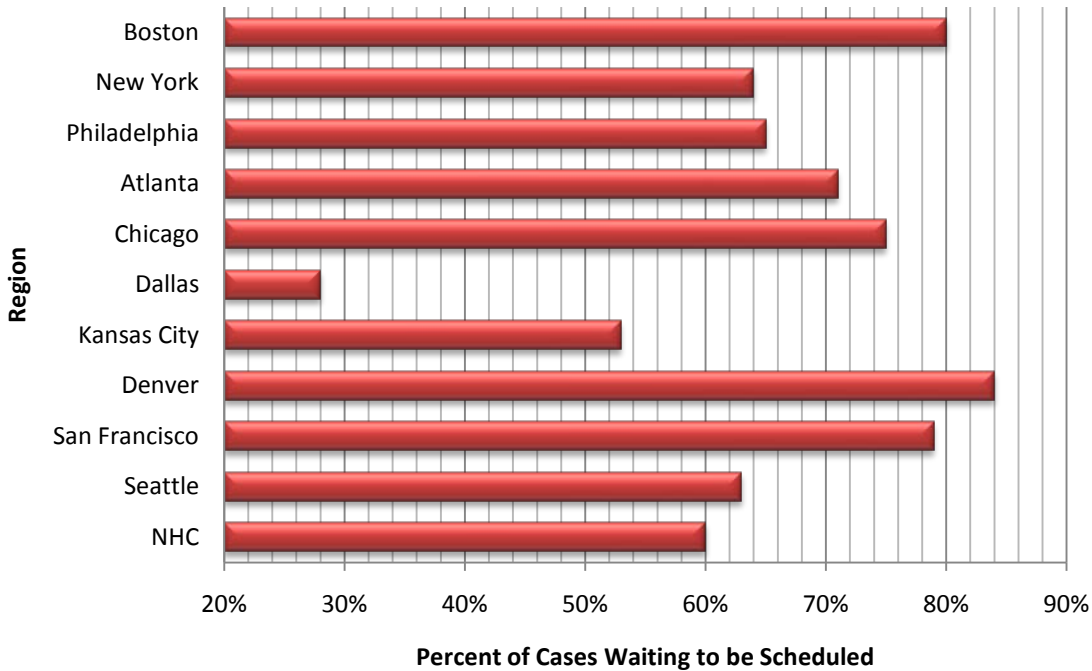


Note: May not add to 100 percent due to rounding.

REGIONAL TRENDS

We found the hearing case processing rates differed among ODAR's 10 regions. For example, the percent of cases waiting to be scheduled for a hearing ranged from a low of 28 percent in the Dallas Region to a high of 84 percent in the Denver Region (see Figure E-2).

Figure E-2: Percentage of Each Region’s Cases Waiting to be Scheduled (as of May 7, 2010)



Note: Axis starts at 20 percent to better illustrate the variance.

We reviewed the status of cases in the Dallas and Denver Regions to understand the difference between these processing rates (see Table E-1). We found the Dallas Region had already held a hearing and/or decided approximately half of its cases. For instance, 49 percent of the Dallas Region cases had undergone a hearing and/or been decided, versus 8 percent in the Denver Region. Moreover, Dallas had another 23 percent of its cases scheduled for a hearing, compared to 7 percent in the Denver Region.

Table E-1: Status of Cases at the Dallas and Denver Region (as of May 7, 2010)

Status	Dallas	Denver
Not Scheduled – Unworked	1%	58%
Not Scheduled – In Process	26%	25%
Not Scheduled – Awaiting Re-Schedule	1%	1%
Scheduled – Awaiting Hearing	23%	7%
Hearing Held	20%	1%
Decision Issued	29%	7%

Note: May not add to 100 percent because of rounding.

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The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

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