



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Oversight of Administrative Law
Judge Decisional Quality

A-12-16-50106 / March 2017

OIG Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: March 14, 2017

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Oversight of Administrative Law Judge Decisional Quality (A-12-16-50106)

The attached final report presents the results of the Office of Audit's review. The objective was to review the actions the Social Security Administration took to monitor and improve the quality of administrative law judge decisions using information from Appeals Council request for review actions.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.


Gale Stallworth Stone

Attachment

March 2017

Office of Audit Report Summary

Objective

To review the actions the Social Security Administration (SSA) took to monitor and improve the quality of administrative law judge (ALJ) decisions using information from Appeals Council (AC) request for review actions.

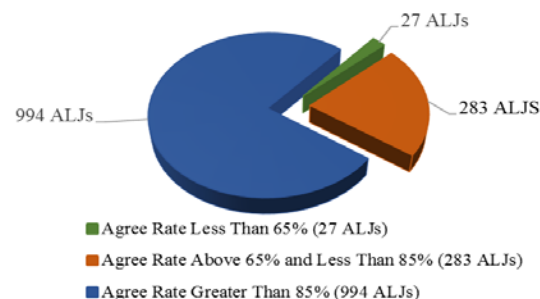
Background

A claimant can appeal an ALJ's decision to deny or dismiss a disability case. Claimants file these appeals through a request for review to SSA's AC in the Office of Disability Adjudication and Review (ODAR). If the AC grants a review of the case, it will issue a fully favorable, partially favorable, or unfavorable decision; or it may remand the case to an ALJ. If the AC does not grant a case review, the earlier decision remains unchanged.

ODAR tracks the AC's decision on every appealed case and calculates a quality performance measure for each ALJ. The decision agree rate represents the extent to which the AC concludes the ALJ decisions were supported by substantial evidence and contained no error of law or abuse of discretion justifying a remand or reversal. At the time of our review, the national agree rate goal for ALJ decisions was 85 percent. The national dismissal agree rate goal for ALJ dismissals was 72 percent, but less than 6 percent of the AC workload related to dismissals.

Findings

Since 2014, ODAR's national agree rate average had been equal to or higher than the 85-percent goal. As of June 2016, all ODAR regions and all but 23 hearing offices had exceeded the national goal. However, ODAR had not maintained historical agree-rate data at the regional or hearing office level thereby limiting its ability to analyze agree rate trends. While most ALJs exceeded the agree rate goal, 310 were not meeting the national goal, 27 of whom had agree rates below 65 percent.



ODAR's agree rate had some limitations. Most notably, it provided information on less than one-quarter of the total ALJ dispositions. So, while the agree rate is one of the few quality measures providing specific feedback on an ALJ's workload, it cannot speak to the entirety of an ALJ's workload.

ODAR managers use agree rate results as well as other quality reviews to ensure ALJ decisionmaking is consistent and accurate. Using the quality results, ODAR provides training to ALJs and hearing office staff. ALJs with below-average agree rates may receive additional training, mentoring, and counseling and, in some cases, may be subject to further review.

Recommendations

1. Re-assess the national agree rate goal for denials to determine whether it should be increased.
2. Maintain and analyze historic data on agree rates to more effectively monitor regional and hearing office agree rates.

SSA agreed with the recommendations.

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ABBREVIATIONS

AC	Appeals Council
ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
DQ	Division of Quality
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law manual
HMID	How MI Doing?
NHC	National Hearing Center
OCALJ	Office of the Chief Administrative Law Judge
OCEP	ODAR Continuing Education Program
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
POMS	Program Operations Manual System
SSA	Social Security Administration

OBJECTIVE

Our objective was to review the actions the Social Security Administration (SSA) took to monitor and improve the quality of administrative law judge (ALJ) decisions using information from Appeals Council (AC) request for review actions.

BACKGROUND

Claimants whose disability claims are partially favorable, denied, or dismissed at the ALJ level may appeal their cases to the AC, which is the final step in the administrative appeals process.¹ The AC reviews the claim to determine whether any legal or procedural errors were committed and all evidence was properly considered.²

If the AC grants a review of the decision,³ it may decide the outcome of the case and issue a fully favorable, partially favorable, or unfavorable decision; or it may remand the case to an ALJ.⁴ In most remand cases, the AC vacates the ALJ's decision in its entirety. This action requires that the ALJ issue a new decision in the case. The remand order includes specific instructions from the AC to the ALJ of what action(s) to take and why the action(s) is necessary.⁵ When an ALJ dismisses a hearing request, the ALJ does not decide the merits of the case. Nevertheless, an AC review of a dismissal can address the question of whether the dismissal was proper.⁶

ODAR management has established separate goals for decision and dismissal accuracy. ODAR uses the terms “decision agree rate” for allowances and denials and “dismissal agree rate” for dismissals. At the time of our review, the national goals were 85 and 72 percent for the decision and dismissal agree rates, respectively. The decision agree rate represents the extent to which the AC concludes the ALJ decisions were supported by substantial evidence and contained no error of law or abuse of discretion justifying a remand or reversal. The dismissal agree rate represents the extent to which the AC concludes the ALJ dismissals were consistent with the law. To calculate the agree rate, ODAR tracks the AC's decision on every claim and calculates an agree rate for each ALJ defined as the percentage of cases that were not granted review

¹ SSA, HALLEX I-2-0-2—*Hearing Operation-In General* (October 5, 2015).

² 20 C.F.R. § 404.970.

³ 20 C.F.R. § 404.967.

⁴ SSA, HALLEX I-3-3-1—*Bases for Appeals Council Grant Review Action* (November 21, 2014).

⁵ Our September 2016 report on *Characteristics of Claimants in the Social Security Administration's Pending Hearings Backlog* (A-12-15-15005), p 9, stated the Agency used the remand date as a new starting point to determine the age of a case. As a result, the average wait time for remands was 220 days—lower than the overall average waiting time. However, the audit found that individuals had already waited an average 1,197 days from the time the original hearing request filed date.

⁶ 20 C.F.R. §§ 404.957 and 416.1457 and HALLEX § I-2-4-5.

compared to the total number of disposed cases. Cases remanded⁷ to an ALJ or selected for further review by the AC are potential disagreements per the agree rate calculation, though certain remands are excluded from the calculation if they are outside the ALJ's control.⁸

In August 2016, ODAR informed us that it was not maintaining and analyzing historical regional or hearing office agree rate data. However, we had obtained this data in June 2013, June 2014, June 2015, and June 2016 so we could track quality trends over a 4-year period. For this review—using the historical agree rate data we had accumulated—we selected for analysis ALJs who had at least 10 decisions reviewed by the Appeals Council during a year.

Finally, we identified ALJs who had consistently low agree rates and reviewed actions ODAR management had taken to help these ALJs improve the quality of their decisions.

RESULTS OF REVIEW

Since 2014, ODAR's national agree rate average has been equal to or higher than the 85-percent goal. As of June 2016, all ODAR regions and all but 23 hearing offices exceeded the national goal. However, ODAR had not maintained historical agree rate data at the regional or hearing office level thereby limiting its ability to analyze agree rate trends. While most ALJs exceeded the agree rate goal, 310 ALJs had not met the national goal, 27 of whom had agree rates below 65 percent.

ODAR's agree rate has some limitations. Most notably, it provides information on less than one-quarter of the total ALJ dispositions. So, while the agree rate is one of the few quality measures providing specific feedback on an ALJ's workload, it cannot speak to the entirety of an ALJ's workload.

ODAR managers use agree rate results as well as other quality reviews to ensure ALJ decisionmaking is consistent and accurate. Using the quality results, ODAR provides training to ALJs and hearing office staff. ALJs who have below average agree rates may receive additional training, mentoring, counseling, and, in some cases, further review.

⁷ 20 C.F.R. § 404.977 *Case Remanded by Appeals Council*. The AC may remand a case to an ALJ so they may hold a hearing and issue or recommend a decision. The AC may also remand a case in which additional evidence is needed or additional action by the ALJ is required. The ALJ shall take any action that is ordered by the AC and may not take any additional action that is inconsistent with the AC remand order.

⁸ Some cases are remanded for reasons that fall outside the ALJ's control and therefore are excluded from the agree rate. Remands were excluded because (1) evidence was presented upon administrative appeal/review; (2) new evidence was presented in Federal court; (3) of a subsequent allowance; (4) of lost or inaudible recordings; (5) of lost records/evidence or evidence belongs to another claimant (is in the wrong file), or (6) the case was dismissed when the claimant failed to appear. Since a case may be remanded for multiple reasons, a remanded case is excluded from the agree rate calculation when the reasons for a remand are beyond the ALJ's control.

Agree Rate Goals

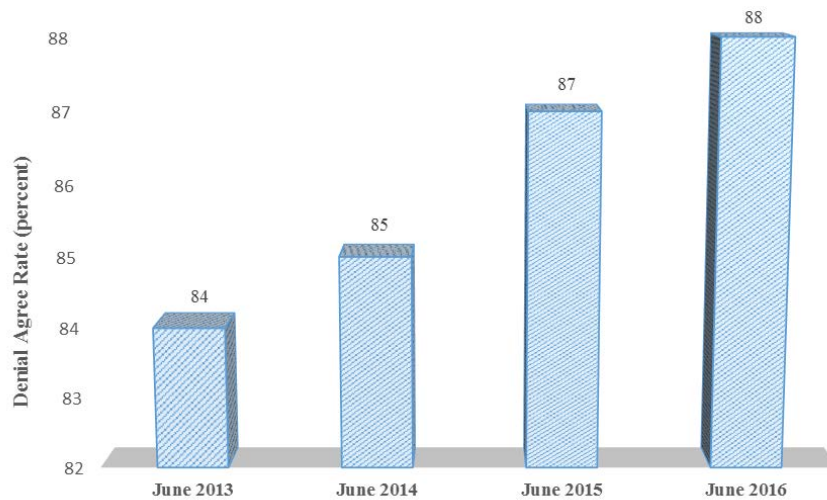
ODAR management began monitoring the national and ALJ agree rates in Fiscal Year (FY) 2011 to assess the level of policy-compliant and legally substantiated decisions.⁹ However, they were not maintaining and monitoring hearing office and regional trends, because according to ODAR, the system was not designed to keep historical data on hearing office agree rates:

Although ODAR was monitoring the national and ALJ agree rates since 2011, it had not set a goal until FY 2013. At that time, ODAR management established an 85-percent quality expectation goal for decisions and a 72-percent goal for dismissals.¹⁰

National Decision Agree Rate Trends

ODAR's national decision agree rate had increased every year since it was first established. As of June 2016, it was 88 percent—3 percent above the national goal (see Figure 1). Since ODAR had equaled or exceeded this goal since June 2014, we believe ODAR managers should consider increasing the goal in 2017.

Figure 1: 4-year Trend in National Decision Agree Rates



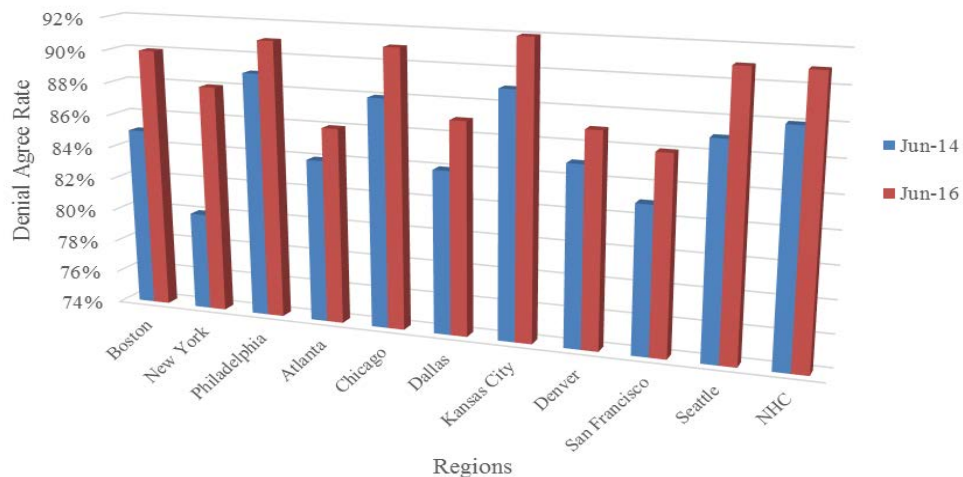
⁹ ODAR computes daily agree rates using a rolling 13-month time period.

¹⁰ The decision agree rate calculation has stayed the same since it was first established. In this report, we focused on the decision agree rate because it represented 94 percent of all reviewed cases. See Appendix B for more information on the dismissal agree rate.

Regional Decision Agree Rate Trends

As of June 2016, every ODAR region and the National Hearing Centers (NHC)¹¹ exceeded the 85-percent national decision agree rate goal (see Figure 2). The Boston, Philadelphia, Chicago, Kansas City, and Seattle regional offices, as well as the NHCs, had agree rates equal to or greater than 90 percent.

**Figure 2: Trend in Regional Decision Agree Rates
(June 2014 to June 2016)**



At the time of our review, ODAR was not maintaining and analyzing historical regional or hearing office agree rate data. However, the Agency provided copies of agree rate reports that enabled us to analyze trends in regional agree rates. We believe ODAR should maintain and analyze historical data on agree rates so it can more effectively monitor trends in regional and hearing office agree rates.

Hearing Office Decision Agree Rate Trends

We found, as of June 2016, the majority of ODAR’s hearing offices met or exceeded the 85-percent decision agree rate goal. However, 23 hearing offices had agree rates below 85 percent, ranging from 72 to 84 percent. Ten of these offices had agree rates equal to or less than 80 percent (see Table 1). These 10 offices were in 5 regions. Three of the hearing offices were in the Atlanta Region—Ft. Lauderdale, Atlanta Downtown, and Charlotte—and three offices were in the San Francisco Region—Los Angeles (downtown), Tucson and Phoenix.

¹¹ The NHCs are part of SSA’s strategy to address the pending hearings backlog and reduce case processing time by increasing adjudicatory capacity and efficiency with a focus on an electronic hearings process. For more information, see our report on *The Role of the National Hearing Centers in Reducing the Hearings Backlog*, (A-12-11-11147), April 2012.

The Dallas Region had two hearing offices, while the Philadelphia and Denver Regions had one each.

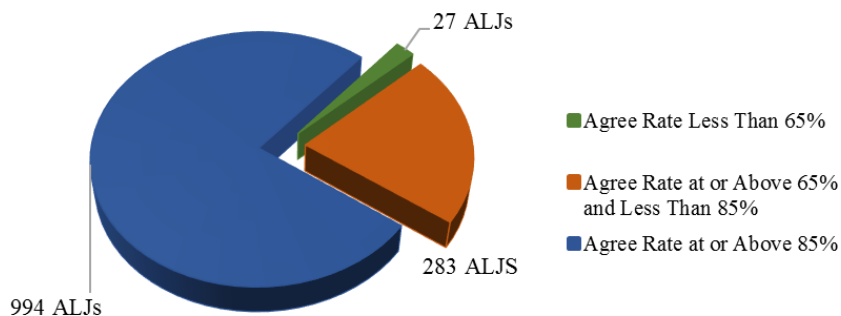
Table 1: Hearing Offices with Decision Agree Rates at or Below 80 Percent in June 2016

Hearing Office	Region	June 2014	June 2015	June 2016
Baltimore	Philadelphia	78%	79%	80%
Ft. Lauderdale	Atlanta	73%	75%	73%
Atlanta Downtown	Atlanta	77%	78%	75%
Charlotte	Atlanta	79%	76%	79%
Dallas North	Dallas	73%	77%	78%
New Orleans	Dallas	81%	81%	80%
Salt Lake City	Denver	82%	77%	80%
Los Angeles Downtown	San Francisco	79%	80%	80%
Tucson	San Francisco	74%	76%	72%
Phoenix	San Francisco	78%	82%	80%

ALJ Decision Agree Rates

Of the 1,304 ALJs we reviewed in the June 2016 decision agree rate data, 994 (76 percent) met or exceeded the 85-percent agree rate goal (see Figure 3). However, 283 ALJs (22 percent) had agree rates that were at or above 65 percent but under 85 percent, and 27 ALJs (2 percent) were below 65 percent.

**Figure 3: ALJs by Decision Agree Rates
(As of June 2016)**



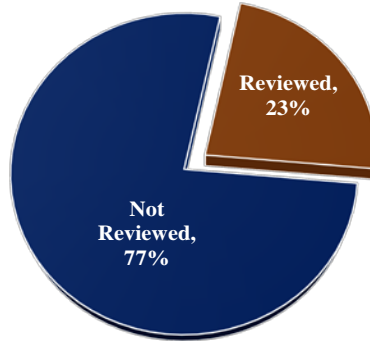
We identified 11 ALJs who had decision agree rates that were 65 percent or lower for 4 consecutive years—June 2013 to June 2016. Four of the ALJs were in the Atlanta Region: two in the Ft. Lauderdale Hearing Office and two in the Atlanta Downtown Hearing Office.¹²

¹² We discuss Agency monitoring of these ALJs later in this report.

Limitations in the Agree Rate Quality Measure

The agree rate provided information on less than one-quarter of the total ALJ dispositions. So, while the agree rate is the only quality measure that provides specific information on ALJs nationwide, it cannot speak to the entirety of an ALJ’s workload, see Figure 4.

Figure 4: Total ALJ Dispositions Reviewed in Agree Rate Calculation



ODAR calculates ALJ agree rates based on AC reviews of appealed hearing denials and dismissals, so favorable decisions and un-appealed denials are not included in the calculation.¹³ We used workload data for FYs 2015 and 2016 from SSA’s Key Workload Indicator reports and found that 23 percent of the FY 2015 hearing dispositions was used in the agree rate calculation (see Table 2).¹⁴

Table 2: Percent of Cases Used for Calculating Agree Rate Measure (FY 2015 ALJ Allowances and FY 2016 Appeals)

Category	FY 2015 ALJ Decisional Allowance Rate	FY 2015 Dispositions	FY 2016 Appealed Cases Reviewed by AC	Approximate Percent of ALJ Dispositions used in Agree Rate Calculation
Total Dispositions	44	663,129	154,402	23

¹³ The agree rate is a by-product of the existing AC process and did not entail establishing an entirely new quality reporting system, unlike some of the other quality measures discussed later in this report.

¹⁴ See Appendix C for a flowchart of the cases used in calculating the agree rate.

The number of cases used in the agree rate calculation for each ALJ varied widely depending on the ALJ’s allowance rate (see Table 3). For example, we examined agree rates for 2 ALJs who issued over 500 dispositions each and found that each ALJ’s workload subject to an AC review ranged from 5 percent for the high allowance ALJ to 30 percent for the low allowance ALJ.

Table 3: Percent of Cases Used for Calculating Agree Rate Measure (FY 2014 ALJ Allowances and FY 2015 Appeals)

Category	FY 2014 ALJ Allowance Rates	FY 2014 Dispositions	FY 2015 Appealed Cases Reviewed by AC	Approximate Percent of ALJ Dispositions Used in Agree Rate Calculation
High Allowance ALJ	87	505	25	5
Low Allowance ALJ	40	546	167	30

ODAR had other quality review procedures that covered other parts of the workload, such as pre-effectuation reviews of ALJ allowances.¹⁵ However, these reviews, which are discussed later in this report, cannot be applied to an individual ALJ’s case quality because too few reviews were performed to be used as a measure.

We also found that about half the remanded cases were assigned to an ALJ other than the ALJ who initially decided the case, thereby lessening the feedback and training for the original ALJ. Hearing office management should assign a remand order to the same ALJ for processing,¹⁶ unless otherwise directed, or in the alternative, require the ALJ to review the remand order.¹⁷ Our review of a sample probe of 50 FY 2015 remanded cases determined 26 cases (52 percent) were not returned to the original ALJ who issued the decision. This reassignment shifts the feedback process away from the ALJ who conducted the hearing and could leave ALJs uninformed of errors they made deciding cases.

Finally, the agree rate derived from the AC process did not mean the ALJ’s decisions were incorrect. As noted earlier, a remand order requires that the ALJ issue a new decision in the case and includes specific instructions from the AC to the ALJ of what action to take and why the

¹⁵ See Appendix A for more information on these additional quality reviews.

¹⁶ SSA, HALLEX I-3-7-40—*Preparation, Content, and General Routing of Remand Order*. When cases are remanded for a second time, if the same ALJ issued both previous decisions, the AC will, as a standard practice, direct that the case be assigned to a different ALJ. However, even if the AC does not include this directive, it is also standard practice for hearing office management to assign the case to a different ALJ if the AC previously remanded the case.

¹⁷ SSA HALLEX I-2-1-55. D 6—*Assignment of Service Area Case to Administrative Law Judges* AC remands are assigned to the same ALJ who issued the decision or dismissal unless the case was previously assigned to the 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 the AC directs that the case be assigned to a different ALJ. AC remands for decisions or dismissals issued by the NHC are sent to the hearing office that services the claimant’s current address. If the NHC is still assisting the hearing office and the NHC ALJ is on duty in the same NHC, the case may be assigned to the NHC ALJ unless the claimant has filed a timely objection to appearing at the video hearing.

actions are necessary. Hence, the final decision on the case could remain the same after the ALJ addresses the remand order. Our review of a sample of 50 FY 2015 remanded cases determined the ALJ reversed 21 (46 percent) after addressing the remand order. Of the remaining 29 cases, the ALJ denied 22 again and dismissed the other 7.¹⁸

Regional and Hearing Office Management Oversight

We interviewed five regional and five hearing office management teams¹⁹ to learn how they used the agree rate to monitor ALJ, hearing office, regional, and national agree rates. One regional team met weekly with each Hearing Office Chief ALJ to review agree rate information, while another team encouraged Hearing Office Chief ALJ to have “non-punitive” conversations with ALJs below the national average focused on quality expectations. In addition to regular communication and feedback, three regional teams said they targeted specific training material related to their AC remand issues; one said they issued directives to low-agree rate ALJs to become policy-compliant; and one referred low-agree rate ALJs’ cases for an in-depth review.

Hearing office management teams also explained the different methods they used to monitor the agree rate. One Hearing Office Chief ALJ monitored all ALJs who fell below a 70-percent agree rate, while another focused on reviewing remands. Another office with a high agree rate among its ALJs reviewed their agree rates regularly to monitor performance. All three of these management teams promote the agree rate to ensure there is “buy-in” to the expectation of quality and legally sufficient decisions and to maintain high productivity.

Two hearing office management teams said they did not find the individual ALJ agree rates useful because the statistical sample was too small and was not a valid representation of the ALJ’s overall decisions. Another team stated that, although the agree rate helped identify low performance, there was no quick resolution if an ALJ did not follow Agency policy because of personal preference. For example, some ALJs we interviewed did not use vocational expert testimony at the hearing even when it was required. As a result, these cases were remanded so the vocational expert could be present for questioning.

ALJs with Low Decision Agree Rates

Regarding the 11 ALJs whose decision agree rates were 65 percent or lower for 3 consecutive years, we found ODAR managers had taken action to improve the quality of their decisions. Five ALJs had undergone a focused quality review, three were scheduled for this type of review, and one had been nominated to undergo a review. Of the remaining two ALJs, one had undergone a regional quality review, and the other was scheduled for a one-on-one counseling

¹⁸ Six of the 22 claimants appealed the remand denial: 1 was reversed at the Federal Court level, and 5 were pending. Among the remaining denied or dismissed cases, four reapplied at the DDS level and were later allowed.

¹⁹ We interviewed management teams in New York, Atlanta, Philadelphia, Chicago, and San Francisco Regions who had both low and high agree rate-hearing offices in their region. In addition, we interviewed five hearing office management teams in each of the five regions cited— South Jersey, San Juan, Atlanta Downtown, Baltimore, and Pittsburgh. These hearing offices were ranked in the 15 lowest or 15 highest agree rate hearing offices, or had both high and low hearing offices in their region.

session with the Regional Chief ALJ. A focused quality review involves an in-depth review of a sample of an ALJ's decisions to ensure the decisions are policy-compliant and legally sufficient. If managers find a pattern of error-prone cases, they offer advice on how to correct errors and determine whether the ALJ should take additional targeted training. Three of the five ALJs who underwent focused quality reviews had completed targeted training.

ALJ Feedback and Training

ODAR uses How MI Doing? (HMID), a management information system, to provide ALJs feedback on a number of performance indicators, including the status of their appealed cases. ODAR also compiles information on the types of remands and creates quarterly mandatory training for all ALJs.

HMID

ODAR uses agree rate information in HMID to provide timely and direct feedback on remanded cases. Once in HMID, ALJs are provided policy guidance and in-depth training material related to the reasons their cases were remanded. HMID allows ALJs to monitor their personal workloads and compare their performance to other ALJs in their hearing office, their region, and nationally. HMID also provides hearing office managers with access to a *Management Information Dashboard*, which provides detailed information on each employee's workload. *Management Information Dashboard* also expands beyond individual workloads and allows office managers to compare their aggregate office statistics, such as agree rates, to their region and the nation. The regional and hearing office managers we spoke with said some of their ALJs used HMID, but they could not determine the frequency of such use.²⁰

Other Training Initiatives

ODAR offers all hearing offices a national quarterly *ODAR Continuing Education Program* (OCEP) training program broadcast on prevalent adjudication topics identified through its quality reviews.²¹ OCEP training includes mandatory training and in-office discussion for all ALJs, decision writers, and other designated staff. Professional development for ALJs and others who attend OCEP training includes such topics as continuing disability reviews, advanced topics in vocational expert evidence, and submission of evidence. Additionally, regions provided training as needed. For example, the San Francisco Region collaborated with the Office of Appellate Operations to develop skill-based *Advanced ALJ Training* to address ALJ productivity and accuracy. A key to the success of this training was ALJ peer-level feedback

²⁰ ODAR managers told us HMID does not track individual ALJ use.

²¹ Other ODAR training programs include a mandatory year-long, three-phase training for all newly hired ALJs. This training involves on-the-job training, completion of video-on-demand sessions, classroom training and mentoring from experienced ALJs, and week-long judicial training for 300 ALJs each year on advance disability judicial topics.

based on their adjudicative experiences, refresher training on policy topics, round table discussions on workload management, technology tools, and mock hearings.

CONCLUSIONS

The majority of ALJs met national agreement rate goals, though ODAR did not maintain and analyze historic data on hearing office and regional agree rates to review for trends over time or to assess whether training was having an impact. While the agree rate only relates to about 23 percent of all hearings, it is the only quality measure that addresses individual ALJ workloads. Finally, we found that ODAR managers monitored ALJ agree rates and provided both feedback and necessary training courses.

RECOMMENDATIONS

To ensure the agree rate provides an effective quality control measure over decisional accuracy, we recommend the Agency:

1. Re-assess the national agree rate goal for denials to determine whether it should be increased.
2. Maintain and analyze historic data on agree rates to more effectively monitor regional and hearing office agree rates.

AGENCY COMMENTS

SSA agreed with the recommendations; see Appendix E.



Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

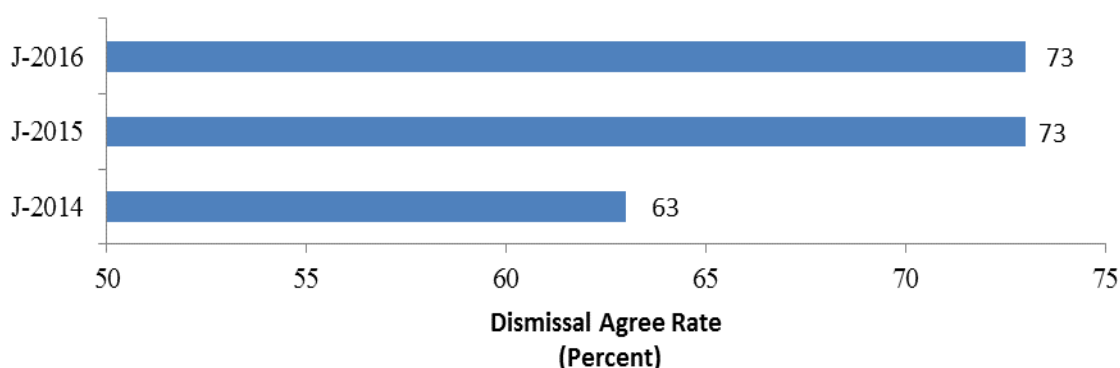
- Reviewed applicable laws and Social Security Administration (SSA) policies and procedures, including the Office of Disability Adjudication and Review's (ODAR) Hearings, Appeals, and Litigation Law Manual.
- Reviewed previous Office of the Inspector General reports related to administrative law judge (ALJ) and hearing office workloads.
- Interviewed ODAR's Chief Administrative Law Judge and management in ODAR's Offices of Appellate Operations and Electronic Services and Strategic Service to discuss how the agree rate is applied as a quality measure to monitor decisional accuracy.
- Interviewed five regional and five hearing office management teams to discuss the causes of high and low agree rates, and related variances, in hearing offices and amongst ALJs. We also discussed how managers used the agree rate information and other management information in How MI Doing? and the Management Information Dashboard.
- Obtained agree rate data from ODAR for June 2013 to June 2016 and analyzed agree rates related to individual ALJs, hearing offices, regions, and the nation. We selected for review only those ALJs who had at least 10 decisions reviewed during the year by the Appeals Council.
- Obtained SSA's Key Workload Indicator Reports and Case Processing Management System Reports to determine the percent of the ALJ workload that is part of the agree rate calculation.

We found that the Case Processing and Management System data were sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted our review between March and September 2016. 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 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.

Appendix B – DISMISSAL AGREE RATE

The Office of Disability Adjudication and Review (ODAR) exceeded its 72-percent national agree rate goal for dismissals in June 2015 and June 2016 (see Figure B–1).¹ The rate increased by approximately 10 percentage points between June 2014 and June 2015.² In its December 2015 newsletter, ODAR’s Chief Administrative Law Judge (ALJ) explained the increase in the national dismissal rate could be attributed to a change in the definition of ALJ error in dismissal cases as well as additional training and increased emphasis on quality.³

Figure B–1: 3-year Trend in National Dismissal Agree Rates
(Percent Changes June 2014 to June 2016)



In June 2016, seven regions exceeded ODAR’s dismissal agree rate goal of 72 percent (see Table B–1). However, the Dallas, Denver, San Francisco, and Seattle Regions did not achieve this goal. The San Francisco Region had the lowest dismissal agree rate at 63 percent and had only a 3-percentage point improvement over 3 years.

¹ Only 6 percent of the cases in the June 2016 agree rate report related to dismissals. On average, an ALJ received only seven remanded cases related to dismissals over a 13-month period.

² A December 2015 newsletter to ODAR staff explained the increase in the national dismissal rate: “The dismissal affirmation rate has risen from 60.7 percent to 73.4. While 5.1 percentage points of this increase can be attributed to a change in the definition of ALJ error in dismissal cases, the remaining 7.6 percentage points can be attributed to additional training and increased emphasis on quality.”

³ Between the reporting of the 2014 and 2015 data, a “claimant’s failure to appear” was added to the list of exclusions “outside” the ALJ’s immediate control and therefore it was no longer included in an ALJ’s dismissal agree rate.

**Table B-1: 3-year Trend in Regional Dismissal Rates
(Percentage Change June 2014 to June 2016)**

Region	June 2014	June 2015	June 2016	Percentage Point Change
Boston	62%	71%	74%	12
New York	65%	76%	77%	12
Philadelphia	62%	79%	80%	18
Atlanta	62%	71%	73%	11
Chicago	65%	76%	82%	17
Dallas	65%	73%	69%	4
Kansas City	67%	76%	76%	9
Denver	65%	72%	71%	6
San Francisco	60%	66%	63%	3
Seattle	59%	72%	67%	8
NHC	63%	71%	74%	11

Two regional and four hearing office management teams we interviewed said that, even though there were far fewer remands in the dismissal agree rate, these remands still communicated useful information to hearing office staff. For example, the San Francisco Region’s management team advised a hearing office in their region with a low dismissal rate to review the reasons dismissals were remanded. Some of the primary issues the hearing office found were

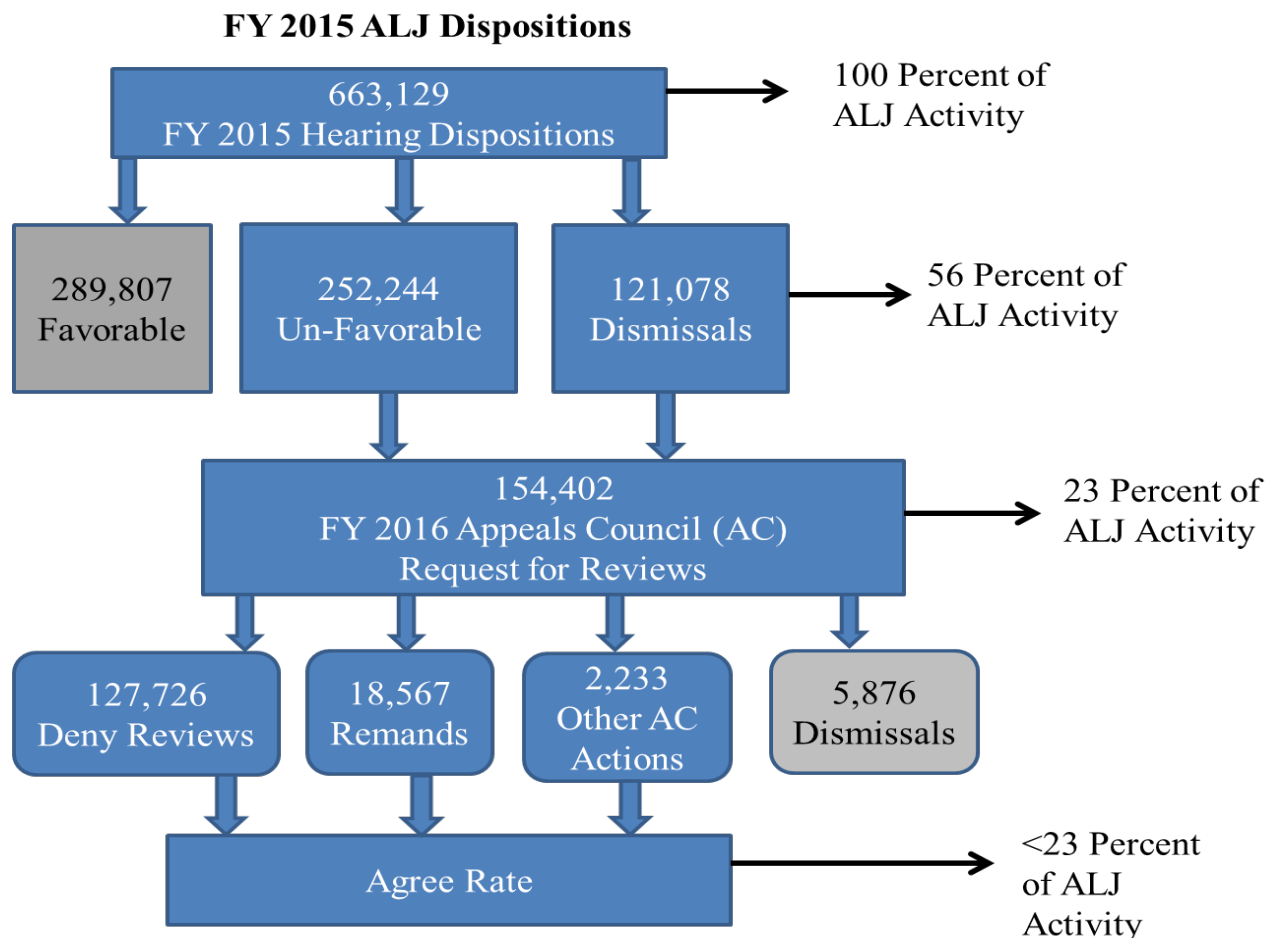
- reports of contact were not exhibited,
- notices were sent to the wrong address or person,
- ALJs dismissed the request even if a hearing reminder had not been sent, and
- addresses were not updated in the Case Processing and Management System even though they were reported as changed.

Since then, the hearing office in the San Francisco Region has received *ODAR Continuing Education Program* training on dismissals and Legal Assistant training. In addition, they have opened a dialogue with the ALJs on this topic, used checklists for handling dismissals, reviewed dismissal orders for compliance, and tracked dismissal remands to determine whether they had specific issues that need further training.

Appendix C – FLOWCHART OF CASES USED IN AGREE RATE CALCULATION

Less than 23 percent¹ of the approximately 663,000 administrative law judge (ALJ) dispositions in Fiscal Year (FY) 2015 were part of the FY 2016 agree rate quality measure (see Figure C-1). Since the Office of Disability Adjudication and Review’s agree rate calculations were limited to Appeals Council reviews of appealed ALJ denials, favorable decisions and un-appealed denials were not included in the calculation.

Figure C-1: Flowchart of Cases Used in Calculating Agree Rate



¹ Our calculation of less than 23 percent of FY 2015 ALJ activity is an approximation since some Appeals Council reviews were processed from ALJ decisions issued earlier than FY 2015.

Appendix D– OTHER QUALITY REVIEWS AT THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW

The Office of Disability Adjudication and Review (ODAR) conducts three types of quality reviews in addition to the regular Appeals Council (AC) appellate process to ensure administrative law judge (ALJ) decisionmaking is consistent and accurate: (1) in-line quality reviews, (2) pre-effectuation reviews, and (3) focused quality reviews. The quality reviews examine cases in the decision-writing phase, before effectuation, and post-effectuation, respectively.

In-line Quality Reviews

The Office of the Chief Administrative Law Judge (OCALJ) conducts in-line quality reviews on a sample of cases processed by hearing offices. These reviews, performed by regional staff, ensure hearing case processing is policy-compliant and, in the case of draft decisions, ensures these decisions are both policy-compliant and legally sufficient before they are submitted to an ALJ for signature.¹ In-line quality review findings, while advisory, also allow managers to provide feedback to ALJs when their decision writing instructions are affected by, contributed to, or caused legal sufficiency, quality, or policy compliance errors. If hearing office managers begin to see recurring errors, they may determine that training for some or all of the hearing office staff and ALJs on those issues is needed.²

In February 2017, the OCALJ informed us that that regional in-line quality reviews were temporarily suspended due to other critical work.

¹ The in-line quality review program was first developed in 2009. Initially, the program was implemented in a limited number of regions due to hiring restrictions. However, in Fiscal Year 2014, the program was officially launched nationwide.

² ALJs are required to follow SSA's regulations, policies, and procedures, and issue legally sufficient decisions.

Pre-effectuation Reviews

ODAR's Division of Quality (DQ) reviews a randomly³ selected sample of favorable hearing decisions before those decisions are finalized and issued by the agency.⁴ DQ analysts determine whether the ALJ decisions were consistent with SSA regulations, policies, and procedures. If no errors are found, DQ will effectuate the case, and the claimant will begin receiving disability benefits. If DQ finds errors in the ALJ's decision, it will either issue its own decision on the case, or remand the case to the ALJ with instructions to remedy the issue(s) in the case.⁵

Post-effectuation Focused Quality Reviews

DQ also conducts focused quality reviews on issued decisions associated with specific adjudicators. An adjudicator's workload can be selected for review if managers identify potentially problematic patterns,⁶ including a low agree rate. Teams of DQ managers and attorney-advisor analysts screen a sample of 60 to 80 cases against several criteria to ensure the decisions were policy compliant and legally sufficient.⁷ If they find an ALJ has recurrent decisional errors, ODAR managers use this information to develop a training program geared to the issues found in these cases. ODAR will then direct the ALJ to undergo targeted training to assist him/her to improve error-prone decisions, or take other actions, as appropriate.⁸

³ 20 C.F.R. §§ 404.969(b) (1), 416.1469(b) (1) *Appeals Council Initiates Review*. Federal regulations require that neither SSA's random sampling procedures nor its selective sampling procedures will identify ALJ decisions for the AC's pre-effectuation review based on the identity of the decision maker or the identity of the office issuing the decision. Under the regulations, the AC has 60 days in which to decide whether to take an own motion review of a claimant's case, and the decision is subject to change based on the review results.

⁴ Between FYs 2011 and 2015, ODAR completed approximately 26,177 pre-effectuation reviews.

⁵ For more information on ODAR's pre-effectuation process, see our report, *Pre-Effectuation Quality Reviews on Favorable Hearings* (A-12-15-50015).

⁶ ODAR has also created an early monitoring system to measure ALJ workload performance to identify outlier behavior, which allows ODAR senior executives to evaluate ALJ performance using a combination of factors such as the number of dispositions, number of on-the-record decisions, and frequency of hearings with the same representative.

⁷ Each review can take about 4 to 5 days to complete.

⁸ The Office of Appellate Operations stated that it conducted about 72 focused quality reviews from FY 2013 through 2016 on individual ALJs, and some of those were second reviews of the same ALJ.

Appendix E – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: March 6, 2017

Refer To: SIJ-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall/s/
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Oversight of Administrative Law Judge Decisional Quality" (A-12-16-50106)--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,
“OVERSIGHT OF ADMINISTRATIVE LAW JUDGE DECISIONAL QUALITY”
(A-12-16-50106)**

General Comment

We are committed to improving the quality of our hearing decisions even as we attempt to reduce the hearings backlog. It is important that we award benefits to claimants who are disabled under the Social Security law, but as stewards of the disability trust fund and other public resources, it is equally important that we do not award benefits to those who are not entitled. To that end, we continue to prioritize quality initiatives, including inline quality reviews, Appeals Council review capabilities, and enhanced administrative law judge training.

Recommendation 1

Re-assess the national agree goal for denials to determine whether it should be increased.

Response

We agree.

Recommendation 2

Maintain and analyze historic data on agree rates to more effectively monitor regional and hearing office agree rates.

Response

We agree.

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