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Statement for the Record

Challenges of Achieving Fair and Consistent Disability Decisions

The Honorable Patrick P. O'Carroll, Jr.
Inspector General, Social Security Administration

Heather Hermann, Assistant Special Agent-in-Charge
and Cooperative Disability Investigations National Coordinator

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Good morning, Chairman Johnson, Ranking Member Becerra, and members of the Subcommittee. It is a pleasure to appear before you, and we thank you for the invitation to testify today. I am joined by Heather Hermann, the Office of the Inspector General's (OIG) National Coordinator for the Cooperative Disability Investigations (CDI) program. Today, we are discussing the Social Security Administration's (SSA) Disability Insurance (DI) program and the policies and initiatives the Agency relies on to ensure program integrity and payment accuracy.

SSA's Disability Insurance

SSA DI is the nation's primary Federal disability program. According to the most recent data from SSA, the Agency provided about $10.7 billion in DI payments in January 2013, to about 10.9 million citizens across the country. That total represents more than 8.8 million disabled workers, and about 2.1 million spouses and children. In all, SSA paid more than $135 billion in DI benefits in Fiscal Year (FY) 2012, a record amount. Also in FY2012, SSA received about 3.2 million initial disability claims, and at the end of December 2012, the Agency's level of pending initial claims stood at more than 700,000. Thus, it is a critical time for the Agency to focus on the future of the DI program.

Disability overpayments, which we are focused on today, cover a number of scenarios, but they are largely benefit payments made to ineligible program participants. They can be the result of program complexities, administrative errors or fraudulent activity. The OIG's efforts to reduce DI overpayments focus on investigating suspected Social Security fraud; and reviewing SSA's programs and operations to make recommendations to improve program integrity and efficiency.

Disability Reviews and Recommendations

We know some individuals will purposely withhold, exaggerate, or fabricate work or medical information to collect benefits that they are not eligible to receive. For many years, we have identified our Cooperative Disability Investigations program (CDI) and SSA's continuing disability reviews (CDRs) as two highly effective guards against disability overpayments. CDI has been extremely successful in detecting fraud in SSA's disability programs and preventing improper payments, specifically on the front end of the claims process. The work of CDI Units across the country is critical to the OIG and SSA's cooperative efforts to limit improper payments in SSA's disability programs. Special Agent Hermann and I will discuss CDI in more detail shortly.

Increasing levels of disability claims and beneficiaries also challenge SSA's ability to deliver world-class service, creating workloads that strain resources, causing delays and backlogs, and leaving the Agency vulnerable to fraud and abuse. SSA must balance service initiatives, such as processing new claims, with stewardship responsibilities, such as conducting timely work and medical CDRs, to determine if a beneficiary remains disabled and eligible. In a March 2010 report, we determined SSA's number of completed medical CDRs declined by 65 percent from FY2004 to FY2008, resulting in a significant backlog. We estimated SSA would have avoided paying at least $556 million during Calendar Year (CY) 2011 if SSA had conducted the medical CDRs in the backlog when they were due.

Medical CDRs are effective in reducing overpayments in the DI program. SSA estimates that every $1 spent on medical CDRs yields about $9 in SSA program savings and Medicare and Medicaid over 10 years. According to SSA, the Agency conducted 443,233 medical CDRs in FY2012, up from 345,000 in

FY2011, though the Agency still has a backlog of 1.2 million CDRs. SSA's FY2013 goal for medical CDRs is 435,000 based on the level of funding under the current Continuing Resolution.

SSA employs a CDR profiling system that determines which CDRs are due annually and uses data from SSA's records to determine the likelihood of medical improvement for disabled beneficiaries. Those with a predicted high likelihood of medical improvement, undergo a full medical review at the State Disability Determination Services (DDS). Beneficiaries with a predicted medium or low likelihood of medical improvement are sent a mailer questionnaire. If the completed questionnaire indicates medical improvement, SSA will send the case to the DDS for a full medical review. The profiling system prioritizes cases for CDRs, but the Agency then decides how many to conduct each year, based on a variety of factors.

I should note here that SSA and OMB do not consider *unavoidable* overpayments to be improper payments. Thus, payments that would not have been made if a medical CDR was conducted when due are *not counted* as improper payments by SSA. We, however, believe these payments do constitute improper payments and should be part of the discussion about SSA's payment accuracy, as funds could have been preserved by performing all identified medical CDRs.

Even when a CDR *is* conducted and the DDS determines medical improvement, it does not always mean that SSA terminates benefits timely, or at all. In a November 2012 report, we identified DI beneficiaries and their auxiliaries who improperly received payments after their medical cessation determinations, for a projected total of about $48.9 million. Also, some beneficiaries cannot be terminated because of the medical improvement review standard (MIRS), which we will review later this year. During a CDR, SSA follows MIRS to determine if a beneficiary's impairment has *improved* since his/her most recent favorable determination and can perform work activities. However, if SSA mistakenly placed the individual on disability in the first place—if they were not disabled when the favorable determination was made—MIRS makes it difficult for SSA to take the person *off* disability, because under current legislation, there is *no medical improvement*. Our auditors will attempt to estimate the amount of benefit payments SSA could save if MIRS were not in place in its current form.

Also problematic is SSA's policy on administrative finality, which we have long urged SSA to consider revising so that more improper payments can be stopped and recovered. Administrative finality dictates that determinations for payments and payment amounts become binding and final, unless they are timely appealed or later reopened and revised within certain periods. Consequently, if conditions to reopen a determination do not exist, or time limits expire, SSA generally will *not* revise the determination, and will continue to pay the erroneous benefits throughout a beneficiary's lifetime. SSA does not assess an overpayment or pursue recovery.

For example, during prior reviews, we identified a beneficiary receiving a full retirement benefit under her own Social Security number (SSN) and another full benefit under her deceased spouse's SSN, which resulted in an $870 monthly overpayment, beginning in July 1982. Because administrative finality applied, the second monthly benefit continued to be paid; when we completed a July 2012 report on this issue, the overpayment totaled $215,000 and would continue to increase throughout the beneficiary's lifetime without any sanctions. SSA has agreed to review and evaluate administrative finality policies.

Notwithstanding the issue of medical improvement, SSA must also determine which beneficiaries are no longer eligible due to work and earnings. SSA conducts work CDRs to determine whether beneficiaries have returned to work; however, reviewing work activity and earnings is a complex and time-consuming process that requires staff to consider all of the return-to-work provisions of the *Social Security Act*. In a September 2010 Congressional Response Report, we said the Agency should devote additional resources to making improvements to identify and prevent DI overpayments to those beneficiaries who return to work.

Because SSA has to evaluate earnings and work incentives before stopping benefits—it cannot simply terminate benefits when wages are reported—simplifying these provisions could have a positive effect. We believe reducing the complexity of SSA's disability programs and work provisions would reduce millions of dollars in overpayments each year. A proposal also exists to change the Federal wage-reporting process from annual to quarterly reporting. A change of this nature would increase the frequency that employers report wages to SSA, improving the timeliness of the work CDR process. In addition, SSA has developed a legislative proposal—the Work Incentive Simplification Pilot—to simplify DI work provisions, which would reduce administrative complexity, enhance correlation of program rules among SSA's disability programs, and encourage DI beneficiaries to return to work because they would not face a permanent loss of benefits and Medicare. Our auditors are planning to evaluate the pilot in FY2014.

Cooperative Disability Investigations

One of the most effective ways that SSA can prevent overpayments in the DI program is dedicating resources to and expanding CDI. To improve program integrity, SSA should continue to make available the investigative efforts of CDI Units to DDSs across the country. For many years, we have highlighted for this Subcommittee how CDI Units assist DDS employees who suspect fraud in an initial disability claim.

DDSs that have local CDI Units have the advantage of referring any suspected fraud to the CDI Unit for investigation. CDI investigation reports include information the DDS cannot normally obtain during the application or CDR process to make a disability determination, including independent observations and surveillance video of the claimant/beneficiary, interviews with the claimant/beneficiary or third parties, and corroborated results from other available resources or databases.

In FY2012:

- CDI opened 4,707 cases; about 81 percent of the cases were on initial claims, and about 19 percent were related to beneficiaries already receiving benefits.
- DDSs denied or ceased benefits on 4,099 cases after CDI investigations. Thirteen individuals were criminally prosecuted and Civil Monetary Penalties were imposed on 19 individuals, because of CDI investigations.

CDI Units generally focus on preventing improper disability payments from ever occurring, but DDS employees can also enlist CDI Units to investigate in-pay beneficiaries who might not be eligible to continue receiving payments. For example, the Missouri DDS received an anonymous complaint alleging that a man who was receiving disability benefits due to brain and pelvis injuries was not disabled, because he played basketball and football, ran, lifted boxes, and repaired and drove

automobiles without difficulty. The man had begun receiving benefits because he claimed he was unable to write, drive, or stand without a supportive device.

The DDS referred the case to the Kansas City CDI unit, which conducted surveillance revealing the man could walk without using a supportive device. Video surveillance then recorded the man purchasing a walking cane at a pharmacy *on the way to his consultative exam* (CE). He used the cane to attend the CE, but after he left the exam, he *returned the cane to the pharmacy for a cash refund.* During the transaction, the man signed the receipts for his refund; CDI investigators later obtained a copy of the signed receipts. The CDI Unit forwarded this and other information to the Missouri disability examiners, who then terminated the man's disability benefits. SSA also assessed an overpayment of nearly $11,000.

SSA and OIG jointly established CDI in FY1998, in conjunction with State DDS and State or local law enforcement agencies. In 1998, CDI launched with Units in five states. The program currently consists of 24 Units covering 21 states, and is in the process of establishing a Unit in the Commonwealth of Puerto Rico. In FY2012 alone, CDI efforts resulted in almost $340 million in projected savings to SSA's disability programs—the program's greatest single-year savings total—for a return on investment of $17 to $1. Since the program was established, through FY2012, CDI efforts have resulted in $2.2 billion in projected savings to SSA's disability programs.

Each CDI Unit comprises an OIG Special Agent who serves as the Team Leader; employees from that State's DDS and SSA, who act as programmatic experts; and State or local law enforcement officers. The process typically begins with a fraud referral from the DDS or SSA to the CDI Unit. The Team Leader screens the referral, and the SSA and DDS employees provide programmatic insight. When the Unit accepts a referral for investigation, CDI investigators use traditional law enforcement techniques to gather evidence. For example, they may conduct interviews, or conduct surveillance of the applicant or beneficiary. The completed CDI Report of Investigation is sent to the DDS, which considers that information in determining whether a person is eligible to receive (or continue receiving) benefits. There are also, in some cases, opportunities for criminal prosecution or the imposition of civil monetary penalties or administrative sanctions.

While CDI's primary mission is to obtain evidence that can resolve questions of fraud before benefits are ever paid, the previous case example showed the Units also investigate in-pay beneficiaries; for example, DDS examiners may refer beneficiaries to CDI during CDRs, combining these two important integrity tools. In one recent example, the Salt Lake City CDI Unit investigated a 40-year-old beneficiary who had received DI benefits for almost 18 years. He alleged impairments including depression, anxiety, asthma, obesity and sore muscles. He also indicated that his depression prevented him from leaving his house or visiting public places.

However, when CDI investigators interviewed the man outside of his residence, he showed no signs of discomfort or signs that he had a bad back, which was his primary diagnosis in his benefit claim. He stood and talked with the investigators for more than 25 minutes. When he left and entered his residence, he walked upright and with fluid motions.

The CDI Unit then discovered evidence on various social media sites, including Facebook, MySpace and YouTube. In videos the subject posted to YouTube, he is seen dancing to heavy metal music, swinging on a swing set, and riding a scooter around his property. The videos showed him dancing to

the music, with rhythmic gestures, playing an air guitar, thrashing around his living room, jumping out of a swing, and writhing on the ground. He can be seen kicking and pushing himself around on a scooter, with little effort.

Additional surveillance showed the subject get into his car and drive for several miles. He was a cautious driver, obeying local traffic laws and managing current traffic conditions. The CDI Unit submitted its findings to the Utah DDS, which ceased his benefits.

Though they can refer cases of potential fraud to OIG field offices, DDS in states without CDI do not have this additional avenue to investigate suspicious initial claims and have to make the best decision with the information available. Several years ago, the National Association of Disability Examiners recommended expansion of the CDI program to all 50 states. The Government Accountability Office has commended CDI's efforts to reduce fraud and waste in SSA's disability programs, and the initiative has received tremendous support from this Subcommittee. The OIG and SSA share that enthusiasm and are committed to expanding the CDI program and ensuring disability program savings for the Agency.

Conclusion

The OIG has conducted, and continues to conduct, significant audit and investigative work to identify areas where SSA's DI program is vulnerable to improper payments, and we continue to recommend actions to reduce and eliminate those vulnerabilities. SSA can limit improper disability payments at the front end of the application process with anti-fraud initiatives like the CDI program, and it can ensure program integrity going forward with regular stewardship reviews, such as CDRs, and reviews and evaluations of existing policies and procedures. As several examples have shown, CDI helps maintain the level of accuracy and integrity in SSA's disability programs that the American public deserves, reducing improper payments, deterring fraud, and saving taxpayer dollars.

We will continue to provide information to SSA's decision-makers and to this Subcommittee, and we look forward to assisting in these and future efforts to improve these critical programs. We thank you again for the invitation to be here today. We would be happy to answer any questions.