HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

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STATEMENT
OF
JUDGE PATRICIA JONAS
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OFFICE OF APPELLATE OPERATIONS
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today. My name is Judge Patricia Jonas. I am the Executive Director of the Office of Appellate Operations and the Deputy Chair of the Appeals Council (AC) at the Social Security Administration Office of Disability Adjudication and Review (ODAR). Since 1940, the AC has operated under a direct delegation of authority from the Commissioner of Social Security to help oversee the hearings process. The AC conducts reviews of practices and decisions based on this authority. I oversee approximately 75 administrative appeals judges of the AC who review both the allowances and denials made by our administrative law judges (ALJ).

I understand the Subcommittee is preparing to release a report concerning 300 disability cases—100 each from Buchanan County, VA, Dallas County, AL, and Oklahoma County, OK. We have not yet seen that report, but we look forward to reviewing it and working with the Subcommittee to collect meaningful data about areas of mutual concern. We recognize that the conclusions of this study will be severely limited by the statistically non-representative sample of cases that was studied. That said, we are hopeful that the report will identify data that merit further research. We are also pleased to share with you the agency's preliminary findings from its separate review of the 300 cases.

In addition to addressing the findings from your report, I want to take this opportunity to update you on the improvements we have made to the hearings and appeals process. The Supreme Court has recognized that we are "probably the largest adjudicative agency in the western world," and we take very seriously our responsibility to issue timely and accurate decisions.[1]

When Commissioner Astrue arrived five years ago, there was widespread discontent with backlogs and delays in the disability system. There was also significant concern about the quality of our decision-making. The majority of a prior agency plan to fix those problems—Disability Service Improvement (DSI)—was halted so that resources could be redirected to backlog reduction. The numbers tell the story. At the time, over 63,000 people waited over 1,000 days for a hearing, and some people waited as long as 1,400 days. We were failing the public.

Right from the beginning, Commissioner Astrue's refrain was that we could not take the easy road of short-term fixes on backlogs that would aggravate our quality issues. With that principle in mind, Commissioner Astrue developed an operational plan that focused on the gritty work of truly managing the unprecedented hearings workload. We made dozens of incremental changes, including using video more widely, improving information technology, simplifying regulations, standardizing business processes, and

[1] *Heckler v. Campbell*, 461 U.S. 458, 461 n.2 (1983).

establishing ALJ productivity expectations, to name just a few. Additional resources provided by Congress in the Recovery Act were critical to supporting these initiatives.

Today, the result is clear—the plan has worked. Average processing time, which stood at 532 days in August 2008, steadily declined for more than three years, and currently stands at 359 days.

This improvement in our ability to hold hearings and issue timely decisions is even more impressive when you consider that we have given priority to the oldest cases, which are generally the most complex and time-consuming. Since 2007, we have decided over 600,000 of the oldest cases. Each year, we lower the threshold for aged cases to ensure that we continue to eliminate the oldest cases first. We ended fiscal year (FY) 2011 with virtually no cases over 775 days old. Through the steady efforts of our employees, we now define an aged case as one that is 725 days or older, and we have already completed over 90 percent of them. Next year, our management goal is to raise the bar on ourselves again by focusing on completing all cases over 675 days old.

As we have worked to provide your constituents with quicker decisions, we have not forgotten our duty to ensure that every decision is fair and meets the requirements of the law. In short, we strive to make sure that our decisions are of the highest quality.

Prior to Commissioner Astrue's arrival, due to several years of budget shortfalls, the agency had performed very little quality review at ODAR, in large part due to litigation and congressional reaction to the "Bellmon Review" in the 1980s. And perhaps equally important, as a result of that litigation and congressional reaction, our policy guidance and feedback to our ALJs was limited. For many years, a remand order was the primary method of providing written feedback from the AC to ALJs. While this method of providing feedback and guidance to ALJs is still an appropriate mechanism when addressing individual cases, there are limitations. For example, the number of remands to any ALJ is relatively small, and, until the reintroduction of a favorable review effort at the AC, the feedback was generally limited to cases in which the ALJ made an unfavorable decision.

However, under Commissioner Astrue's leadership, we took aggressive steps to institute a more balanced quality review into the hearings process. The first step was to develop serious data collection and management information for ODAR, and the next step was to revive development of an electronic policy-compliant system for the AC, which had been terminated by the DSI initiative. These new tools permitted the AC to capture a significant amount of structured data concerning the application of agency policy in hearing decisions. In December 2008, Commissioner Astrue provided resources to our Office of Quality Performance to institute an independent national-level review of hearings level decisions to ensure a consistent and comparative review for all three adjudicative levels of the agency's disability process. Also, in 2009, Commissioner Astrue reestablished the quality review function in the AC, known as the Division of Quality (DQ), that reintroduced review of a sampling of favorable hearing decisions. This office took about a year to implement fully since we had to hire, train,

and lease office space for about 50 staff whose function is to identify quality issues in the processing of disability cases at the hearings level. Beginning in September 2010, the DQ began to conduct the reviews of favorable hearings level decisions.

These new quality initiatives have given us a new opportunity to improve our feedback and policy guidance. The data collected from these quality initiatives identify the most error-prone provisions of law and regulation and this information is used to design and implement our ALJ training efforts, including the annual judicial training and mandatory quarterly training for all ALJs. We have also recently implemented a new process that expands the opportunity for ALJs to provide feedback to the AC when a remand is issued.

We also provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We develop and deliver specific training that focuses on the most error-prone issues that our judges must address in their decisions. In addition, we make available specific training to address individualized training needs.

These efforts are testing some longstanding traditions within ODAR. We are moving from training based primarily on anecdotal information as to our most significant problems to a data-based identification of issues. Training materials are developed so that they are not only a policy reminder, but a skill-based training designed to improve both the adjudicator's efficiency and accuracy in case adjudication. We are transparent with the information that we are collecting so that the ALJs can more readily make use of the information. Providing a mechanism for the ALJs to question the AC about a remand is also a new innovation. We believe that our hearings process is improving because of this increased feedback and communication.

As you are aware, there is a public dialogue about our ALJs and our hearing process. Certainly, the fact that better ALJ data are readily available is a factor. Allegations both of "paying down the backlog" and fraud in the disability system have appeared in the media from time to time. These allegations are based mostly on anecdote and innuendo, and unfairly diminish our accomplishments over the past five years. Moreover, these reports often ignore the reality that we are making quicker, higher quality disability decisions. Over the past five years, the allowance and denial rates have become more consistent throughout the ALJ corps. Since FY 2007, there has been more than a two-thirds reduction in the number of judges who allow more than 85 percent of their cases.[2]

Of course, opportunities for continued improvement remain. Due to challenges maintaining our staffing levels and difficulty keeping up with demand, we have begun to lose ground with respect to our average processing time these last two years. At this point, it appears all but certain that we will not meet our average processing time goal of 270 days in FY 2013; however, full funding of the President's budget would allow us to make progress.

[2] See Appendix A.

300 Case Study Preliminary Findings

While my office has not yet reviewed the 300 disability cases provided the Subcommittee, which consisted of a mixture of decisions from all levels of our adjudication process and were weighted toward allowances, the agency's Office of Medical and Vocational Evaluation did a basic review of them. I understand that they found a limited number of policy issues that are consistent with what we saw when the DQ in the AC conducted a national random sample review of favorable hearings level decisions in FY 2011.

Two areas that concerned us in our AC sample results were the evaluation of medical opinion and the assessment of residual functional capacity (RFC). Using the data we collected at the AC, we provided mandatory training to all ALJs on RFC and evaluation of medical source opinion earlier this year. Just as with the cases we see at the AC, the majority of the ALJs in the cases that the Subcommittee requested appear to have complied with our policies. However, there also are examples in which ALJs were not policy compliant in evaluating the appropriate weight given to a medical source's opinion and in assessing the claimant's RFC. There were also several case examples from one ALJ in which the written decision appeared inaccurate and contained boilerplate information that was not relevant to the individual claimant. That same issue had been seen by the DQ in the random sample review and, as a result, the Chief ALJ had instructed the ALJ to discontinue this practice. This example shows that our improvements are producing positive results.

Building Speed and Quality into the Hearings and Appeals Process

When the agency established the hearings process in 1940, it designed the process to handle a substantial number of cases—that is, a larger number than was handled in other hearing processes.[3] However, over the years, that number has grown. In FY 2007, we received nearly 580,000 hearing requests; last fiscal year, we received over 859,000 hearing requests, which was a record number. The main reason behind this workload growth in recent years has been the flood of new appeals caused by the aging of the baby boomers and the economic downturn. Rapid expansion of large firms representing claimants may also be a factor in the higher rate of appeal.

To address these growing workloads, we decided to return to the gritty work of truly managing our hearings and appeals workloads.

We hired additional ALJs for the offices with the heaviest workloads and informed our entire corps of our expectation that they should issue between 500 and 700 legally sound decisions annually.[4] When we established that productivity expectation in late

[3] Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims, at 4 (January 1940).

[4] In addition, we limit the limit the number of cases assigned per year to an ALJ.

2007, only 47 percent of the ALJs were achieving it. In FY 2011, 77 percent met the expectation, and we expect that percentage to rise this fiscal year.

We opened five National Hearing Centers (NHC) to further reduce hearings backlogs by increasing adjudicatory capacity and efficiency with a focus on a streamlined electronic business process. Transfer of workload from heavily backlogged hearing offices is possible with electronic files, thus allowing the NHC to easily provide assistance to these areas of the country.

In 2010 and 2011, we opened 24 new hearing offices and satellite offices. While a lack of funding forced us to cancel plans for additional offices, those we did open are making a substantial difference in communities that were experiencing the longest waits for hearings.

We increased usage of the Findings Integrated Templates that improve the legal sufficiency of hearing decisions, conserve resources, and reduce average processing time. We introduced a standard Electronic Hearing Office Process, also known as the Electronic Business Process, to promote consistency in case processing across all hearing offices. We also built the "How MI Doing" tool that gives adjudicators extensive information about the reasons their cases were subsequently remanded and allows them to view their performance in relation to the average of other ALJs in the office, region, and Nation. Currently, we are developing training modules for each of the 170 bases for remands that eventually will be linked to this tool so that ALJs can obtain training on targeted issues.

We expanded automation tools to improve speed, efficiency, quality, and accountability. We initiated the Electronic Records Express project, which provides electronic options for submitting health and school records related to disability claims. This initiative saves critical administrative resources because our employees burn fewer CDs freeing them to do other work. In addition, appointed representatives with e-Folder access have self-service access to hearing scheduling information and the current Case Processing and Management System (CPMS) claim status for their clients, reducing the need for them to contact our offices. We have registered over 9,000 representatives for direct access to the electronic folder. We also implemented Automated Noticing that allows CPMS to automatically produce appropriate notices based on stored data. We implemented centralized printing and mailing that provides high-speed, high-volume printing for all hearings and appeals offices. We implemented Electronic Signature that allows ALJs and Attorney Adjudicators to sign decisions electronically.

Additionally, we are developing another automated tool, the electronic bench book (eBB), which we believe will help ALJs review, decide, and provide instructions for decision writers in a fully electronic environment. Last month, we initiated a pilot of the eBB in three hearing offices. The eBB is a web-based tool that aids in documenting, analyzing, and adjudicating a disability case according to our regulations. Wherever possible, we reuse data to limit the need to re-enter information. eBB is designed to pull in and display information entered from various sources. eBB should make review of

the electronic file and instructions to decision writers more complete and efficient, which would reduce the number of cases remanded because of incomplete documentation.

We have Federal disability units that provide extra processing capacity throughout the country. In recent years, these units have been assisting stressed State disability determination agencies. After evaluating our limited resources, our success in holding down the initial disability claims pending level, and a further spike in hearings requests, we redirected these units in February 2012 to assist in screening hearings requests. Our Federal disability units can make fully favorable allowances, if appropriate, without the need for a hearing before an ALJ.

We also listened to criticism from Congress and others. We have tried to make the right decision upfront as quickly as possible. For instance, we are successfully using our Compassionate Allowances (CAL) and Quick Disability Determination initiatives to fast-track disability determinations at the initial claims level for over 150,000 disability claimants each year, while maintaining a very high accuracy rate. Currently, about 6 percent of initial disability claims qualify for our fast-track processes, and we expect to increase that number as we add new conditions to our CAL program. This helps keep these cases out of our appeals process altogether.

At the AC, we also made improvements that helped us to handle the influx of cases from the hearing offices and improve the quality of decisions throughout our entire hearings and appeals process. For example, we developed and are now using the Appeals Review Processing System (ARPS), an Intranet case processing system that helps staff identify errors, prepare recommendations for review, identify trends, and provide feedback to adjudicators and staff.

Over the last few years, the AC has developed an interactive training model that received the prestigious W. Edwards Deming Training Award from the Graduate School USA in 2011.

In the future, we plan to implement a new case assignment model for the AC that will group cases with similar issues and assign those cases concurrently. This change will improve consistency and help identify areas for future training, while also decreasing processing times for all claimants.

However, of all the important improvements we have made or plan to make at the AC, none is more important than the recent creation of the DQ. In 2008, we presented Commissioner Astrue with a plan that would allow us to gather comprehensive data on the quality of our hearing decisions. Recognizing an obvious need, Commissioner Astrue established a workgroup in 2009, which led to the establishment of DQ in September 2010.

Even in the beginning, when the data were just trickling in, we began to identify decision-making issues that we knew needed to be addressed through rulemaking or sub-regulatory action.

Currently, DQ reviews a statistically valid sample of un-appealed favorable ALJ hearing decisions before those decisions are effectuated (i.e., finalized), as authorized by 20 CFR 404.969 and 416.1469. In FY 2011, DQ reviewed 3,692 partially and fully favorable decisions issued by ALJs and attorney adjudicators, and took action on about 22 percent, or 812, of those cases.[5]

While longstanding regulations do not permit our DQ to do pre-effectuation reviews that are based on a specific ALJ or hearing office, the DQ is able to conduct post-effectuation focused reviews on specific hearing offices, ALJs, representatives, doctors, and disability program issues, etc.[6] These reviews allow us to better understand how our complex disability policies are being implemented by various parties throughout the hearings level. We identify potential subjects for focused reviews from a variety of sources, including data collected through our systems, findings from pre-effectuation reviews, and internal and external referrals received from various sources regarding potential non-compliance with our regulations and policies. One way we use these reviews is to identify common errors in ALJ decisions. The results of these reviews show common errors to be failure to adequately develop the record, lack of supporting rationale, and improper evaluation of opinion evidence. We have used this information to develop and implement mandatory training for our ALJs. Furthermore, we use the comprehensive data and analysis provided by DQ to provide feedback to other components on policy guidance and litigation issues.

Moreover, since we are handling more cases in both our hearing offices and at the AC, the number of new Federal court cases filed challenging our final decisions has gone up. In FY 2007, dissatisfied claimants filed 11,920 new cases. That number rose to 15,644 in FY 2011, and we project that there will be about 19,100 new cases filed in FY 2013. Our success in the courts has also improved. In FY 2011, courts affirmed our decisions in 51 percent of the cases decided, up from 49 percent in FY 2007, and court reversals have decreased from 5 percent to fewer than 3 percent of cases over this time.

Finally, notwithstanding our impressive work to-date, we have sought outside advice from the Administrative Conference of the United States (ACUS) to guide our future quality improvement efforts in our hearing offices and at the AC. Currently, ACUS is studying:

- The effect of the treating physician rule on the role of the courts in reviewing our disability decisions and the measures that we could take to reduce the number of remanded cases;

[5] In those instances, the AC either remanded the case to the hearing office for further development or issued a decision that modified the hearing decision.

[6] Since these focused reviews are post-effectuation reviews, they do not change case outcomes.

- The AC's role in reviewing cases to reduce any observed variances and the efficacy of expanding the AC's existing authority to conduct more focused reviews of judge decisions; and

- How the AC can select cases for review—as well as when the AC should select cases for review (i.e., pre- or post-effectuation)—and what should be the scope and manner of review.

We expect ACUS to deliver its preliminary findings by the end of this calendar year and a draft final report with recommendations early next year.

Additionally, we have also asked ACUS to review and analyze the *Social Security Act* and our regulations regarding the duty of candor and the submission of all evidence in disability claims. ACUS will also survey the requirements of other administrative tribunals, as well as the Federal Rules of Evidence, Federal Rules of Civil Procedure, and other applicable authority, regarding the duty of candor and submission of all evidence and then make recommendations for improvements in the Social Security adjudication process.

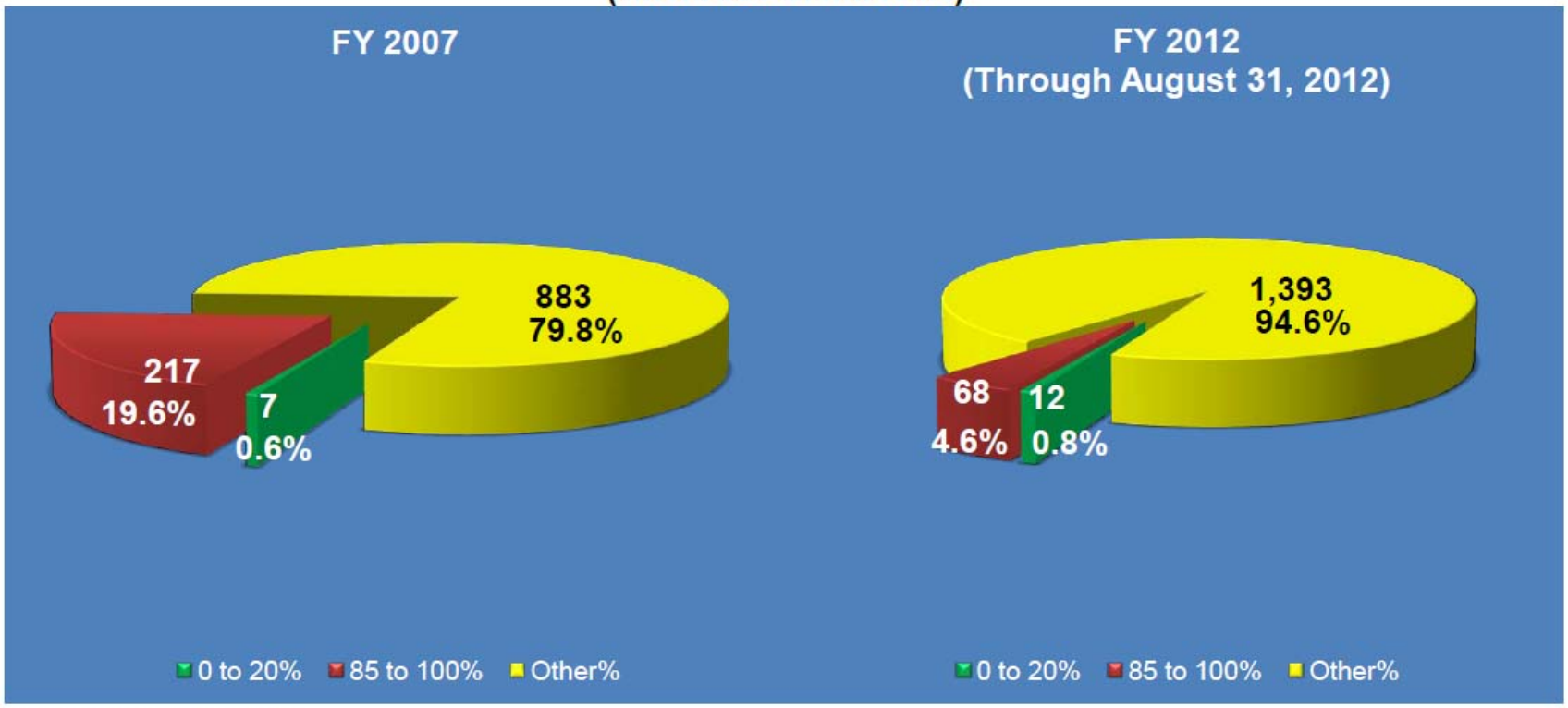
Conclusion

Contrary to popular anecdote and innuendo, we have made extraordinary gains improving the speed and quality of our hearings and appeals process over the past five years. We have done so against extraordinary obstacles, including demographic challenges, the economic downturn, and fiscal belt tightening. Resources permitting, we believe that we can continue to improve by building upon our productivity gains and the body of quality review data that we have accumulated.

Finally, I look forward to reviewing the Subcommittee's report concerning 300 disability cases. Without having seen the report, I will do my best to answer any questions you may have today. Although the report will be severely limited by the statistically non-representative sample of cases that was studied, we are nonetheless hopeful that the report will identify possible trends that merit further research.

Appendix A

Number and Percentage of ALJs with 100+ Dispositions in Allowance Rate Groups (Excludes Dismissals)



Source: CPMS MI and DART Tables (DITI)
Prepared by ODAR OESSI/DMIA, September 4, 2012