

United States General Accounting Office

GAO

Briefing Report to the Chairman,
Subcommittee on Social Security,
Committee on Ways and Means,
House of Representatives

June 1989

SOCIAL SECURITY

Results of Required Reviews of Administrative Law Judge Decisions





United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-224648

June 13, 1989

The Honorable Andy Jacobs, Jr.
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

This report responds to your October 13, 1987, letter, in which you asked for suggestions on ways to make the Social Security appeals process less burdensome.

Social Security disability claimants whose initial benefit applications are denied may appeal through several layers of administrative and judicial processes. However, the appeal process is very time-consuming. For some claimants, even favorable decisions by administrative law judges (ALJs) are delayed because they are chosen at random for further review by the Social Security Administration's (SSA's) Appeals Council. In many cases the delay is only a month or so, but some cases are delayed several months while subsequent appeals are considered.

This random review process is carried out under the Bellmon Amendment (96-265, sec. 304(g)) passed in 1980. Early reviews under the amendment were directed at ALJs who issued favorable decisions in 70 percent or more of their cases and were so controversial they led to a lawsuit by the Association of ALJs. The controversy and lawsuit resulted in restrictions on the use of Bellmon review data that limited the program's value for quality assurance purposes.

We studied the 5,860 cases reviewed by the Appeals Council in fiscal year 1985. We selected 1985 cases because we wanted sufficient time to pass so that most of these cases would have gone through all phases of the appeals process. About 91 percent of the decisions reviewed in fiscal year 1985 were approved without objection. Over 80 percent of the cases not approved initially by the Appeals Council eventually became benefit awards anyway. Altogether, only 1.6 percent of the cases reviewed initially were kept off the benefit rolls. Nonetheless, benefit savings resulting from Bellmon reviews appear to be significantly greater than the estimated costs.

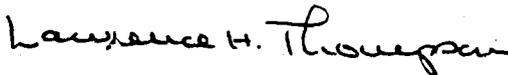
The claimants whose cases are selected for the Bellmon review all experienced a certain degree of inconvenience, some of which cannot be measured in dollars. All claimants experienced delays in waiting for the

results of this additional review of their disability claim. For the vast majority of claimants these delays were only 1 month. However, for those claimants who eventually received benefits, the reviews usually resulted in increased attorney fees.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this briefing report until 30 days from its publication date. At that time, we will send copies to interested congressional committees; the Secretary of Health and Human Services; the Director, Office of Management and Budget; the Commissioner of Social Security; and other interested parties, and we will make copies available to others upon request.

This briefing report was prepared under the direction of Franklin Frazier, Director of Income Security Issues (Disability and Welfare). Other major contributors to this briefing report are listed in appendix III.

Sincerely yours,



Lawrence H. Thompson
Assistant Comptroller General

Contents

Letter		1
Results of Required Reviews of Administrative Law Judge Decisions	Introduction Objectives, Scope, and Methodology Targeted Review of ALJs Leads to Lawsuit The Current Bellmon Review Procedure Bellmon Reviews' Value as a Quality Assurance Process Questionable Administrative Costs vs. Benefit Savings of Bellmon Reviews Conclusions Agency Comments	6 6 7 8 9 10 12 13 14
Appendix I GAO Study of Favorable ALJ Decisions Remanded or Reversed by the Appeals Council (Fiscal Year 1985)		16
Appendix II Comments From the Department of Health and Human Services		17
Appendix III Major Contributors to This Report		27 27 27
Tables	Table 1: ALJ Allowance Rates on Initial Claims (Fiscal Years 1981-87) Table 2: Initial Disposition of ALJ Allowances Included in Bellmon Review Samples (Fiscal Years 1985 and 1986)	9 10

Table 3: Final Outcome of Adverse Appeals Council
Actions From 1985 Bellmon Reviews

11

Abbreviations

ALJ	administrative law judge
DDS	Disability Determination Service
OHA	Office of Hearings and Appeals
SSA	Social Security Administration
SSI	Supplemental Security Income

Results of Required Reviews of Administrative Law Judge Decisions

Introduction

The Social Security Administration (SSA) administers two disability programs under the Social Security Act: the Disability Insurance Program under title II of the act and Supplemental Security Income (SSI) for disabled and blind persons under title XVI. For both programs, SSA relies on state agencies called Disability Determination Services (DDSS) to make initial disability determinations on individual claims. SSA funds these agencies, provides guidance to them, and supervises them through quality assurance reviews.

A claimant denied benefits by a DDS may appeal to an administrative law judge (ALJ) at one of 132 hearing offices around the country. The ALJs are employed by SSA's Office of Hearings and Appeals (OHA). ALJs hold hearings at which claimants have their first personal audience with a decision maker, and at which they are usually represented by a lawyer or other representative. ALJs may assemble additional medical evidence as well as use expert medical and vocational witnesses at a hearing. They issue written decisions summarizing all the evidence and giving their reasons for either granting or denying benefits.

Claimants who are denied benefits by an ALJ may appeal to SSA's Appeals Council. The Appeals Council, acting on behalf of the Secretary of Health and Human Services, is the final level of administrative appeal in disability cases. The Council decides whether the ALJ properly applied the law and regulations and whether the judge had substantial evidence for the decision. It may affirm the ALJ's decision, reverse, modify, or remand it for further consideration. A remand may require an ALJ to develop more evidence in a case or it may require better documentation of the reasons for a decision.

A disability claimant who has exhausted administrative remedies may file a complaint in a federal district court. Courts may reverse, modify, or affirm SSA's decision, or they may remand cases for further consideration.

In the late 1970s, DDSS were denying an increasing proportion of disability claims, resulting in a growing number of appeals to ALJs. The higher denial rate by the DDSS seems to have led to a higher allowance rate by ALJs, and the number of claims approved at the ALJ level rose. Concerns were expressed in congressional hearings in early 1979 about the high ALJ allowance rates, and agency officials testified that SSA would reinstate a previously abandoned program of reviewing ALJ decisions. (Until the mid-1970s, the Appeals Council reviewed all ALJ decisions.) In 1980, partly because SSA had not yet begun such a program, Senator Henry

Bellmon proposed an amendment to the pending set of disability program amendments that would require the Secretary of Health and Human Services to review ALJ decisions.

On June 9, 1980, the Congress passed the Social Security Disability Amendments of 1980, including what is commonly referred to as the Bellmon Amendment. It required the Secretary to "implement a program of reviewing, on his own motion, decisions rendered by administrative law judges . . ." in disability cases.

Objectives, Scope, and Methodology

In a letter dated October 13, 1987, the Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, asked us to provide information on several aspects of the SSA appeals process, including suggestions for making the appeals process less burdensome.¹ In this briefing report, we discuss OHA's experience in reviewing ALJ decisions under the Bellmon Amendment. Such reviews by OHA and its Appeals Council are referred to as Bellmon reviews. We rely partly on OHA statistics, supplemented by our study of fiscal year 1985 Bellmon review cases using computer matching among different SSA data files. We used 1985 cases because we wanted sufficient time to pass so most cases could go through all phases of the appeals process. We studied cases where the Council reversed or remanded an ALJ benefit award to determine whether claimants subsequently received benefits. We also estimated delays caused for these claimants as well as costs incurred by OHA, and the savings to the government from keeping ineligible applicants off the benefit rolls.

We recognized at the start of our analysis that Bellmon reviews probably saved program dollars by keeping some ineligible claimants from otherwise receiving benefits. However, the amount of savings and the administrative costs associated with SSA's current level of reviews were not known or readily available. The primary focus of our analysis was on determining the impact on claimants whose cases were selected for review. We sought to determine how many ultimately remained off the rolls or eventually received their disability benefits and, for this later group, what sort of delays and additional costs they experienced before receiving benefits.

¹In response to the Chairman's October 13, 1987, letter, we also reviewed differences between DDS and ALJ decisions and issued the report Social Security: Selected Face-to-Face Interviews with Disability Applicants Could Reduce Appeals (GAO/HRD-89-22, Apr. 20, 1989.)

During our review, we interviewed the current and former Associate Commissioners of SSA for Hearings and Appeals, the Chief Administrative Law Judge and former Deputy Chief Judge, officials of OHA's Office of Appeals Operations, Office of Appraisal, and Division of Civil Actions, the Deputy Chairman and a Member of the Appeals Council, and ALJs at hearing offices in Cincinnati and Columbus, Ohio, and Indianapolis, Indiana:

Our audit work began in February 1987, and ended in December 1988. We conducted this review in accordance with generally accepted government auditing standards. We did extensive testing and editing to assure the necessary level of data reliability in the computerized data files used.

Targeted Review of ALJs Leads to Lawsuit

Based partly on the results of a 1981 study of 3,600 ALJ decisions, which concluded among other things that there was a higher probability of error in favorable decisions of those ALJs with high overall allowance rates, SSA decided to implement the amendment by directing its Bellmon reviews at those ALJs with allowance rates of 70 percent or higher.² Entire hearing offices were targeted if their collective allowance rate was 74 percent or higher. Targeted ALJs were required to forward all favorable decisions (allowances) to the Appeals Council for review before their effectuation or finalization. OHA planned to reduce the percentage of cases reviewed if OHA staff analysts found relatively few problems with an individual ALJ's decisions. On the other hand, ALJs whose decisions were often objected to were to be given counseling, retraining, and eventually subjected to "disciplinary or remedial" measures. By 1983, OHA was using the own-motion rates (analyst referrals to the Appeals Council) to decide which ALJs would be targeted for review.

The Association of ALJs filed suit in 1983 in federal district court seeking an injunction against targeted Bellmon reviews on the grounds that they threatened the decisional independence of ALJs under the Administrative Procedure Act. During this period, it was pointed out that the Associate Commissioner for Hearings and Appeals had a performance goal in his Senior Executive Service contract to reduce ALJ allowance rates. Before the court ruled on the suit, a new Associate Commissioner took office and rescinded the policy of targeting ALJs with high allowance rates for review. Because of the actions taken by the new Associate

²In SSA, decisions that award disability benefits are commonly referred to as allowances and negative decisions are referred to as denials.

**Results of Required Reviews of
Administrative Law Judge Decisions**

Commissioner, the court ruled that there was no longer a need for an injunction.

ALJ allowance rates did decline temporarily in 1982 and 1983, as shown in table 1. When targeted reviews were ended in 1984, ALJ allowance rates started to return to previous levels. We do not know whether the changes in allowance rates can be attributed to the Bellmon reviews. A number of factors can influence ALJ allowance rates, including economic conditions that affect filing rates; program changes, such as revised medical criteria; and DDS denial rates. Also, there were significant legislative changes in the disability program during the 1981-85 period.

Table 1: ALJ Allowance Rates on Initial Claims (Fiscal Years 1981-87)

Fiscal year	ALJ decisions	Allowed benefits	Percent allowed
1981	222,126	137,372	61.8
1982	214,827	123,787	57.6
1983	192,034	104,612	54.5
1984	192,273	109,435	56.9
1985	188,810	110,159	58.3
1986	145,611	89,501	61.5
1987	195,795	118,273	60.4
1988	233,896	148,569	63.5

Source: OHA statistics.

The Current Bellmon Review Procedure

Since 1984, OHA has conducted Bellmon reviews on a national random sample of ALJ allowances (and a small sample of ALJ denials not appealed by the claimants). OHA has limited the sample to workers under age 59 who are applying only for Disability Insurance (title II) benefits, with no Supplemental Security Income (title XVI) involvement. The sampling procedure usually results in about 5 to 6 percent of all ALJ allowances being selected. But in 1987 and 1988, the sample size was reduced to less than 4 percent because of a heavy workload at OHA headquarters.

The case files are forwarded to analysts in OHA's Office of Appeals Operations who study the files and select those they believe should be reviewed by the Appeals Council. According to OHA data, about 90 percent of the sample cases are not recommended for Appeals Council review because the analysts do not object to the ALJ decisions. These are returned to the Office of Disability Operations for payment. According to OHA, these cases are out of the processing stream for about 25 days

while they are being screened. If the Appeals Council takes a case, it may reverse the ALJ's decision, remand it to the hearing office for further development, or uphold (affirm) the ALJ's decision. Table 2 shows the disposition of cases included in the Bellmon review sample in fiscal years 1985 and 1986.³

Table 2: Initial Disposition of ALJ Allowances Included in Bellmon Review Samples (Fiscal Years 1985 and 1986)

	Fiscal Year			
	1985		1986	
	Number	Percent	Number	Percent
Cases sampled	5,860	100.0	5,673	100.0
Reversed by Appeals Council	267 ^a	4.6	199	3.5
Remanded by Appeals Council	275 ^a	4.7	336	5.9
ALJ's decision left unchanged	5,318	90.7	5,138	90.6

^aIn our study of 1985 cases, we found that OHA clerks had not always coded the cases correctly. We found 231 reversed by the Appeals Council and 298 remanded to ALJs.

Source: OHA Office of Appraisal.

Bellmon Reviews' Value as a Quality Assurance Process Questionable

The current Bellmon reviews do not appear to provide much value in assessing and monitoring the overall accuracy of ALJ decisions or in providing feedback to the ALJs on where improvements are warranted. In those limited instances where ALJs had a case(s) reversed or remanded by the Appeals Council, they received direct performance feedback. We believe however, that OHA should have a quality assurance mechanism for reviewing ALJ decisions and collecting results as a basis for advising the entire ALJ corps of areas in which improvement in decision-making or documentation or both is necessary.

Several top OHA management officials, including the current and former associate commissioners, expressed skepticism to us about the usefulness of Bellmon reviews for quality assurance purposes. They noted the controversy that surrounded the targeted Bellmon reviews and the limitations on using data from them. OHA gave up plans to use individual Bellmon review results for "counseling" ALJs as a result of the lawsuit. Dissemination of results was limited to OHA top management and regional chief ALJs. Continuing sensitivity led OHA to suspend reporting and dissemination of individual results in 1986.

Currently, analysts continue to submit their review results to OHA; however, the data are neither reviewed, evaluated, nor summarized. As a

³OHA stopped producing detailed reports on the Bellmon reviews after fiscal year 1986.

**Results of Required Reviews of
Administrative Law Judge Decisions**

result, OHA does not use the Bellmon results as a basis for advising the entire ALJ corps of areas in which improvement in decision-making or documentation or both is necessary.

**GAO Study: Bellmon
Reviews in 1985 Delayed
Benefits for Some
Claimants but Kept Few
Off the Rolls**

To gain more insight into the impact of Bellmon reviews, we used computer-matching techniques to track the outcome of cases reviewed in fiscal year 1985. In that year, OHA analysts reviewed 5,860 ALJ allowances, of which about 91 percent were forwarded for payment. The Appeals Council reversed 231 (3.9 percent) and remanded 298 (5.1 percent) to hearing offices for reconsideration by an ALJ. When the Council reverses a case, the claimant has the right to file an appeal in federal court. Our computerized study of 1985 Bellmon review cases showed that courts upheld the Appeals Council on only 12 of 136 reversals appealed to them. The courts reversed 59, remanded 64, and 1 was still pending in court as of January 1989. The remaining 96 Appeals Council reversals were not appealed to a court. Some of these 96 claimants filed new applications for benefits and 41 had been approved either by DDSS or ALJs at the time of our study.

Of the 298 cases remanded to hearing offices, 231 were approved for benefits after new ALJ opinions. Another 47 claims were approved after further appeals or new applications. Table 3 summarizes these results and appendix I gives more details on the disposition of the Bellmon review cases.

Table 3: Final Outcome of Adverse Appeals Council Actions From 1985 Bellmon Reviews

	Appeals Council remands		Appeals Council reversals	
	Number	Percent	Number	Percent
Benefits later granted	278	93	156	68
Benefits denied	20	7	72	31
Appeals pending as of January 1989	0	0	3	1
Total	298		231	

The Bellmon reviews appear to have kept 92 claimants off the benefit rolls, although some of these claimants may yet receive benefits based on new applications. These 92 claimants represented 1.6 percent of the 5,860 case sample and less than 0.1 percent of the 110,159 ALJ allowances in fiscal year 1985.

For most of the claimants whose cases were selected as part of the Bellmon review sample, the process meant delays in the receipt of benefits and increased attorney fees for those who had counsel. Attorneys generally take disability cases on a contingency basis for 25 percent of whatever retroactive benefits are paid. For the approximately 91 percent whose cases were not reversed or remanded, the delay may have been only 1 month, according to OHA. This would have cost about \$120 each in additional attorney fees for the vast majority (91 percent) of the claimants with counsel who were selected for the 1985 Bellmon review sample.⁴ The other claimants had delays longer than 1 month, ranging from about 10 to 43 months, and may have incurred additional attorney fees accordingly.

On November 10, 1988, the Congress passed the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), which amended the Social Security Act to provide for the payment of interim disability benefits where an Appeals Council decision on an ALJ decision favorable to a claimant is delayed more than 110 days. Interim benefits would not be considered overpayments if a favorable ALJ decision was reversed.

Administrative Costs vs. Benefit Savings of Bellmon Reviews

We estimate that OHA's costs to process the 1985 Bellmon sample were about \$2.4 million. The reviews, however, appeared to save about \$6.2 million in benefit payments.

The initial reviews of fiscal year 1985 Bellmon cases cost an estimated \$1.8 million, based on OHA average costs. OHA incurred additional costs when subsequent actions were required to dispose of cases. ALJs had to reconsider cases remanded by the Appeals Council, and the Council then had to review the new ALJ decisions. Denial of benefits can set in motion further appeals and procedures that generate costs not only for OHA but for the courts and U.S. attorneys. The 1985 cases generated at least 172 court appeals, for which OHA had to prepare transcripts and answer the complaints. At least 77 of the court appeals came back to OHA as remands. These generally were sent to hearing offices where ALJs had to reconsider them and write recommended decisions to the Appeals Council.

⁴The average monthly benefit award to disabled workers in September 1986 was \$474, and the average paid to those on the rolls was \$482. For the sake of simplicity, we have assumed an average monthly attorney's fee of \$120, or 25 percent of \$480.

We estimate these subsequent actions cost OHA an additional \$580,000, bringing OHA's estimated costs to dispose of the 1985 Bellmon sample to nearly \$2.4 million. We did not have data to estimate the costs incurred by the courts or the U.S. attorneys.

Some of the denied claimants filed new applications, and at least 34 of these reached hearing offices again. We did not include an estimate of costs to the DDSS or to OHA for these new applications.

The 1985 Bellmon reviews did, however, keep 92 claimants off the disability rolls. SSA has estimated that the average disabled worker receives total benefits (including Medicare) of about \$67,000 over his or her lifetime.⁵ If this estimate is used for the 92 claimants kept off the rolls in fiscal year 1986, the total benefit savings would be about \$6.2 million. Some additional benefit savings may have occurred in cases where claimants received benefits through appeals or new applications, but with an initial entitlement date later than that date originally decided by the ALJ.

Conclusions

Bellmon reviews to assure the accuracy of ALJ eligibility decisions have a mixed value. While Bellmon reviews appear to be cost effective in keeping a relatively small number of applicants who do not meet eligibility requirements off the rolls, they delay the payment of benefits to the vast majority of applicants whose eligibility is subsequently substantiated by the review process.

Claimants whose cases are selected for the Bellmon review all experienced a certain degree of inconvenience, some of which cannot be measured in dollars. All claimants experienced delays in waiting for the results of this additional review of their disability claim. For the vast majority of claimants these delays were only 1 month. However, for those claimants who eventually received benefits, the reviews usually resulted in increased attorney fees.

Also, the controversial history of SSA's implementation of the Bellmon Amendment resulted in restrictions on the dissemination of Bellmon review data until OHA stopped compiling them. Currently the reviews do

⁵"Present Value of OASDI and Medicare Benefits for Newly Entitled Disabled Workers," Actuarial Note Number 128, Sept. 1986, U.S. Department of Health and Human Services, Social Security Administration. OASDI refers to the Old-Age, Survivors, and Disability Insurance programs.

not appear to provide much value in assessing and monitoring the overall accuracy of ALJ decisions. Also, the reviews are not being used as a quality control mechanism to provide feedback to ALJs on areas where improvements may be warranted.

Agency Comments

On March 31, 1989, the Department of Health and Human Services provided us with comments on a draft of this report. (See app. II.) Many of these comments were suggestions to clarify certain matters and have been incorporated where appropriate in this report.

The draft of this report that we submitted to the Department for comment contained a suggestion that the Congress consider revising the Bellmon Amendment to specify that required reviews of ALJ decisions be done on a post-effectuation basis. While the draft was being reviewed by the Department of Health and Human Services, we rechecked and recalculated the benefit savings attributable to the Bellmon reviews. Based on this recalculation we concluded that the savings attributable to these reviews were greater than we initially estimated. As a result, we have dropped the matter for congressional consideration from the report.

As pointed out in our conclusion, however, while Bellmon reviews have been cost effective in keeping a small number of applicants who did not meet eligibility requirements off the rolls, they have also delayed payment of benefits to the vast majority of applicants and caused some to incur additional attorney fees. We discussed the revised draft with agency officials and they had no significant additional comments.

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Page 15

GAO/HRD-89-48BR Social Security's Bellmon Reviews

GAO Study of Favorable ALJ Decisions Remanded or Reversed by the Appeals Council (Fiscal Year 1985)

	Appeals Council remands	Appeals Council reversals
Benefits later granted		
By OHA after Appeal Council remand	231	0
By OHA after court remand	7	53
By OHA on new appeal	11	22
By courts (no remand)	21	59
By courts after remand	1	3
By DDSs on new claim	7	19
Subtotal	278	156
Benefits denied		
By courts	1	12
By OHA after court remand	3	7
By OHA on new appeal	0	3
By OHA, claimant gave up	16	50
Subtotal	20	72
Appeals pending in January 1989		
In OHA after court remand(s)	0	1
In OHA on new appeals	0	1
In court (no remand)	0	1
In court after remand	0	0
Subtotal	0	3
Total	298	231

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 31 1989

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Bellmon Reviews Serve Little Purpose, Delay Some Benefits." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,


Richard P. Kusserow
Inspector General

Enclosure

Appendix II
Comments From the Department of Health
and Human Services

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICE DRAFT BRIEFING REPORT, "BELLMON REVIEWS
SERVE LITTLE PURPOSE, DELAY SOME BENEFITS"

Matter for Consideration of the Congress

The Congress may want to consider amending Section 304(g)[Public Law 96-265] to specify that the required reviews of administrative law judge (ALJ) decisions may be done on a post-effectuation basis. The Office of Hearings and Appeals (OHA) could then conduct a quality assurance program that did not interfere with the payment of benefits. The Appeals Council would no longer be required to review unappealed ALJ decisions on its own motion, but would retain its authority to do so.

Comments on Recommendation

The General Accounting Office's (GAO) suggestion that Congress "consider amending Section 304 (g) to specify that the required reviews of ALJ decisions may be done on a post-effectuation basis" would enable OHA to restructure its quality assurance activities to accommodate changing circumstances and priorities. Currently, the reviews required by Section 304(g) are conducted on a pre-effectuation basis in order to ensure program integrity, and OHA plans to continue to review ALJ decisions on a pre-effectuation basis. OHA also conducts special studies of Appeals Council reviews of ALJ decisions on a post-effectuation basis to provide feedback to policymakers and adjudicators, and these reviews would also continue. If the Congress were to adopt GAO's suggestion, OHA would have greater flexibility in modifying its review procedures.

GAO's study of the results of Bellmon reviews provides extremely valuable information never before available. Although we have a number of suggestions for how the report might be changed to improve reader understanding and to clarify certain technical matters, GAO's study will clearly shed light on a very difficult and sensitive public policy issue.

The final report should note that on November 10, 1988, the President signed into law an amendment to sections 223 and 1631 of the Social Security Act as amended that provides that if an ALJ issues a decision on or after May 9, 1989, that an individual is entitled to Social Security or Supplemental Security Income (SSI) benefits based on disability and the Secretary has not issued a final decision within 110 days after the date of the ALJ's decision, the individual will be entitled to receive benefit payments during the pendency of the Appeals Council action.*

* See section 8001 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647.

The new law also provides that these benefit payments will not be considered overpayments or treated as past-due benefits for purposes of attorney fee awards under section 206(b) of the Social Security Act as amended.

To improve reader understanding, we suggest that the report include a discussion of what prompted the Congress to enact the Bellmon amendment in 1980. SSA's appeals process differs from that of other Federal agencies. In other agency adjudicatory processes, the agency's final decisionmaking body does not need to take any action to review potentially erroneous ALJ decisions. Because proceedings before an ALJ are adversarial, the agency is represented at the hearing and has the right to appeal if the agency representative believes that the ALJ's decision is incorrect. Because SSA's process is nonadversarial, SSA's review body (the Appeals Council) must itself devise a process for identifying unappealed cases for review. Until the mid-1970s, the Appeals Council reviewed all ALJ decisions, but review of unappealed ALJ decisions was discontinued as workloads grew rapidly after the enactment of the SSI program.

As the report notes, SSA implemented the Bellmon review program after conducting a study which indicated that the decisions issued by ALJs with high allowance rates were most likely to contain errors. (Because the criteria for selecting cases to be reviewed changed significantly between 1981 and 1983, we are attaching a description of those changes and we recommend that it be included in the report.) However, selecting cases based on the characteristics of the decisionmaker, rather than the characteristics of the case itself, proved to be highly controversial.

SSA believes that pre-effectuation review should be based on the characteristics of the case (i.e., the likelihood that the case may be error-prone), rather than the characteristics of the decision maker. As SSA reviews its quality assurance procedures and develops the program data necessary to identify error-prone cases, the current random sample review procedure will be modified to improve the effectiveness of the review process.

As the report notes, identifying specific causes and effects of Appeals Council reviews and measuring the relative cost-effectiveness of those reviews is extremely difficult. The following technical comments highlight this fact and suggest areas which we believe should be addressed in the report itself.

In the discussion of Table 1 (page 6), the report implies that targeted review was the sole or primary cause of the decline in ALJ allowance rates in 1982/1983 and that discontinuing targeted review in 1984 led to the subsequent rise in allowance rates.

Appendix II
Comments From the Department of Health
and Human Services

3

Given the significant legislative changes in the disability program during the 1981-1985 period, we do not believe that it is possible to attribute changes in ALJ allowance rates to a single factor.

The study itself did not address this question, and the report appears to rely on the fact that "eight ALJs told us they believe Bellmon Reviews caused some judges to lower their allowance rates in those years in order to stay off the targeted list." Apparently, the eight ALJs were not suggesting that they changed their allowance rates; rather, they were hypothesizing about what some other ALJs may have done. We do not believe that these suppositions adequately support the conclusion.

Table 4 summarizes the results of the 1985 reviews and Appendix I provides greater detail on the various actions and events which transpired after the Council reversed or remanded review cases that year. The report summarizes the results of those 1985 reviews by stating that they "appear to have kept 91 claimants off the benefit rolls, although some of these claimants may yet receive benefits based on new applications." Thus, GAO appears to be measuring the utility of the reviews by determining whether or not the claimant is ever awarded benefits--on the basis of the application pending before the Appeals Council or some subsequent application. We believe that this "yardstick" is inappropriate for the following reasons:

1. The purpose of Appeals Council review (whether on the claimant's appeal or the Council's own motion) is to determine whether the ALJ's decision is in accord with the law and regulations and supported by substantial evidence. If it is not, and the Council has sufficient evidence to reach its own decision, it may reverse and issue a denial decision. The fact that the claimant may file another application and subsequently be granted benefits based on that later application does not disconfirm the validity or utility of the Appeals Council decision. Assuming both decisions are accurate, the Council has found a person not disabled and kept that person "off the rolls" until, at some later point in time and based on an entirely different evidentiary record, the agency finds that the individual has become disabled.
2. Both court and Appeals Council remands usually "vacate" the prior decision and "refloat" the claimant's application. When the Appeals Council remands an ALJ decision, the Council merely indicates that the record is insufficient to reach a final conclusion; it expresses no opinion about what that ultimate conclusion should be. In this circumstance,

the ALJ must "complete" the record, offering the claimant the opportunity to submit further evidence and, if necessary, appear at another hearing. Similarly, when a court remands a case to the agency, the agency's prior decision is usually vacated and the claimant's original application refloated. When a claimant is found disabled on remand, that decision is often based on new evidence, including a worsening of the claimant's condition since the agency's prior decision. Thus, a favorable decision on remand does not necessarily mean that the agency's prior action was incorrect, and we do not believe it is accurate to categorize that prior action as either a "delay" for the claimant or a waste of agency resources.

Because these factors have not been considered in GAO's rough calculation of costs and benefits, we are concerned that readers might be misled regarding the impact of Appeals Council reviews on costs to both the agency and claimants. We do not believe that the administrative costs of processing "subsequent applications" should be included in the cost estimate, nor should the benefit savings of keeping claimants off the rolls until they are in fact disabled be ignored in estimating savings.

Similarly, there would be no "delays" or increased attorney fees for persons awarded benefits based on a subsequent application. We understand that estimating costs more precisely would require case folder reviews which the auditors were not able to do, but we recommend that the report itself discuss these factors in detail.

Finally, we note that the report continues to characterize ALJ allowance decisions as "reversing the DDS" and ALJ denial decisions as "affirming the DDS." For the reasons we discussed in commenting on the recent GAO draft report on face-to-face interviews (HRD-89-22), ALJ decisions very rarely reverse or affirm prior DDS decisions; they are denovo decisions reached through a very different adjudicatory process and based on different evidentiary records.

Attachment

Appendix II
Comments From the Department of Health
and Human Services



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON DC 20201

JAN 4 1985

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

As required by section 312 of P.L. 96-265, The Social Security Disability Amendments of 1980, I am submitting the report of the effects produced by the first three titles of those amendments.

This report is also being furnished to the President of the Senate.

Sincerely,

Margaret M. Heckler
Margaret M. Heckler
Secretary

Enclosure

Appendix II
 Comments From the Department of Health
 and Human Services

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	2
II. Discussion of the Effects of the Social Security and Supplemental Security Income Disability Provisions in P.L. 96-265, by Section	3
Title I--PROVISIONS RELATING TO DISABILITY BENEFITS UNDER OASDI PROGRAM	
Sec. 101. Limitation on total family benefits in disability cases	4
Sec. 102. Reduction in dropout years for younger disabled workers	10
Sec. 103. Provisions relating to Medicare waiting period for recipients of disability benefits	13
Sec. 104. Continuation of Medicare eligibility	15
Title II--PROVISIONS RELATING TO DISABILITY BENEFITS UNDER SSI PROGRAM	
Sec. 201. Benefits for individuals who perform substantial gainful activity despite severe medical impairment	17
Sec. 202. Earned income in sheltered workshops	28
Sec. 203. Termination of attribution of parents' income and resources when child attains age 18	34
Title III--PROVISIONS AFFECTING DISABILITY RECIPIENTS UNDER OASDI AND SSI PROGRAMS; ADMINISTRATIVE PROVISIONS	
Sec. 301. Continued payment of benefits to individuals under vocational rehabilitation plans	41
Sec. 302. Extraordinary work expenses due to severe disability	43
Sec. 303. Reentitlement to disability benefits	45
Sec. 304. Disability determinations	46
Sec. 304. Federal review of State agency determinations	49
Sec. 304. Own-motion review of ALJ decisions	52
Sec. 305. Information to accompany Secretary's decisions	55
Sec. 306. Limitation on prospective effect of application	57
Sec. 307. Limitation on court remands	59
Sec. 308. Time limitations for decisions on benefit claims	61
Sec. 309. Payment for existing medical evidence	62
Sec. 310. Payment of certain travel expenses	65
Sec. 311. Periodic review of disability determinations	67
III. Selected Bibliography	73
IV. Appendices	
Tables and Graphs	
Associated Materials	

Title of Provision

Section 304(g). Own-motion review of ALJ decisions

Background and Purpose

The Senate added a provision, by agreeing to a Senate floor amendment by Senator Bellmon, requiring the Secretary to do an ongoing review of ALJ hearing decisions relating to disability determinations under title II. In submitting his amendment, Senator Bellmon noted that, "The decisions to be reviewed under this mandate are ones in which administrative law judges have reversed State agency denials." He pointed out that the ALJ reversal rate had increased from 39 percent in 1969 to 52 percent in 1978 and observed that, "We need a method to review the decisions made by the judges so that there is greater consistency among different judges and greater assurance that disability awards are not being granted inappropriately in a large number of cases." The conference committee report stated, "The conferees are concerned that there is no formal ongoing review of social security hearing decisions. The variance in reversal rates among ALJ's and the high overall ALJ reversals of determinations made at the prehearing level indicate that there is a need for such a review."

Summary of Provision

Mandates that the Secretary implement a program of reviewing, on the Secretary's own motion, disability hearing decisions rendered by ALJ's and to report to Congress by January 1, 1982, on the progress of the program. The report, which was submitted to Congress in January 1982, is attached at Appendix D of the associated materials.

Effective date: June 9, 1980.

Effects of the Provision

To fulfill the study requirement, SSA undertook a one-time random sample review of 3,600 ALJ decisions, both allowances and denials. The major findings of that review, which were included in the report sent to the Congress, included: (1) significant differences in disability decisions resulted when decisionmakers used the standards and procedures governing ALJ's than when they used the standards and procedures governing the State agencies; and (2) there was a higher probability of error in favorable decisions of those ALJ's with high overall allowance rates.

Following this one-time study, SSA implemented an ongoing review beginning in October 1981. The Office of Hearings and

Appendix II
Comments From the Department of Health
and Human Services

Appeals (OEA) began reviewing, on a preeffectuation basis, about 7.5 percent of all ALJ disability allowance decisions selected from those ALJ's with the very highest allowance rates. Cases are referred to the Appeals Council where: there appears to be an abuse of discretion by the ALJ; there is an error of law; the ALJ decision is not supported by substantial evidence; or there is a broad policy or procedural issue that might affect the general public interest. Once the Appeals Council decides to review an ALJ decision, the Appeals Council may affirm, reverse or modify the decision or remand the case to an ALJ for further proceedings.

SSA's decision at that time to use allowance rates as the basis for selecting ALJ's for review was based on congressional intent and the Bellmon report finding that decisions of ALJ's who have high allowance rates would be the most likely to contain errors. However, once under review, an ALJ's allowance rate became irrelevant. The sole criterion for keeping or removing an ALJ from Bellmon review was the accuracy and quality of his decisions determined by the "own-motion rate"--the frequency with which the Appeals Council takes action to correct an ALJ's decisions.

In April 1982, the Bellmon own-motion review program was enlarged to include 15 percent of all ALJ allowance decisions, and the case selection criteria were redesigned and expanded. SSA added a national random sample of all ALJ allowance decisions, referrals from the SSA component responsible for implementing ALJ decisions, and the decisions of all newly hired ALJ's.

Beginning in December 1982, SSA stopped using individual ALJ allowance rates in selecting ALJ cases for review, and ALJ's were placed on or taken off Bellmon review solely on the basis of the quality and accuracy of their decisions and totally without regard to their allowance rates. In mid-1983 SSA included in the Bellmon review unappealed decisions denying benefits by ALJ's with high "grant-review rates"--the rates at which the Appeals Council grants claimants' requests for review of denial decisions.

In June 1984 SSA further modified the Bellmon review by discontinuing selection of cases for review based on the ALJ own-motion rates. This was done because there was a progressive narrowing of the difference in own-motion rates between that portion of the review and the national random sample which suggested that, overall, decisional quality and consistency had improved. SSA also replaced the selection of cases based on high grant-review rates with a national random sample of denial decisions. This was done because the ALJ's with high grant-review rates had low own-motion rates.

Appendix II
 Comments From the Department of Health
 and Human Services

Beginning in 1982, SSA also published a series of Social Security Rulings to provide for a single set of standards for adjudicating disability cases binding on all decisionmakers--State agencies, ALJ's, and the Appeals Council. The rulings provide a fuller explanation of the standards in the regulations and are intended to achieve consistency in decisionmaking among ALJ's and at all adjudicative levels of the decisionmaking process.

The Bellmon review has been of substantial help in ensuring the quality and correctness of ALJ decisions. The Bellmon review has also been helpful in identifying those areas where Social Security policy must be more clearly articulated and in identifying additional training needs. The national own-motion rates (the percentage of Bellmon cases in which the Appeals Council reviewed and reversed an ALJ allowance to an unfavorable decision) are: FY 1982--18.1 percent, FY 1983--17.7 percent, FY 1984--10.4 percent (based on partial data). National own-motion rates were not tracked prior to FY 1982.

The following table shows ALJ reversal rates of State agency title II and concurrent title II/title XVI disability decisions. It is not possible to isolate the impact of the Bellmon review on reversal rates because: (1) the overall variation in rates is slight, and (2) other factors affect the rates--such as State agency accuracy rates (see section 304) and administrative initiatives to improve uniformity in decisionmaking, including the issuance of Social Security rulings.

Table 21. ALJ Reversal Rates

<u>FY 1979</u>	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>	<u>FY 1983</u>	<u>Estimated FY 1984</u>
55%	58%	58%	55%	55%	53%

Several issues concerning the manner in which SSA implemented the Bellmon review were raised in Association of Administrative Law Judges, Inc. v. Heckler, et al. On September 10, 1984, the District Court denied the request for injunctive relief. Although the court expressed concern that SSA had focused on allowance rates in implementing the individual ALJ portion of the Bellmon review, the court concluded that SSA had shifted its focus, obviating the need for any injunctive relief, and that the present system of selecting cases for review from a national sample was a more equitable and conciliatory means of accomplishing the same purpose and did not compromise ALJ independence by focusing excessively on allowance rates.

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