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REPORT TO THE CONGRESS

Achievements, Administrative Problems, And Costs In Paying Black Lung Benefits To Coal Miners And Their Widows

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Social Security Administration

Department of Health, Education,
and Welfare

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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SEPT 5, 1972



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This is our report on achievements, administrative problems, and costs in paying black lung benefits to coal miners and their widows under the Federal Coal Mine Health and Safety Act of 1969 (30 U S C 801) This program is administered by the Social Security Administration, Department of Health, Education, and Welfare

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U S C 53), and the Accounting and Auditing Act of 1950 (31 U S C 67)

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Secretary of Health, Education, and Welfare

A handwritten signature in black ink, appearing to read "A. J. Kellum".

Acting Comptroller General
of the United States

C o n t e n t s

	<u>Page</u>
DIGEST -	1
CHAPTER -	
1 INTRODUCTION	7
Black lung--the disease	8
Cash benefits--eligibility requirements	11
Monthly benefit amounts	12
Administrative responsibility	13
2 SOME EARLY PROBLEMS IN PROGRAM IMPLEMENTATION	15
Volume of claims	16
Benefits paid	17
Reasons for varying allowance rates	19
Reasons why SSA denied claims	20
3 PROBLEMS AND ISSUES CONCERNING THE MEDICAL ASPECTS OF COAL WORKERS' PNEUMOCONIOSIS	22
Disagreement as to how pneumoconiosis should be diagnosed	22
Methods used by SSA for determining the extent of miners' disabilities	26
Difficulties in determining that miners' disabilities or deaths were due to CWP	31
Conclusions	40
Recent action of the Congress	41
4 ACTIONS TAKEN TO OVERCOME LIMITATIONS IN THE USE OF X-RAYS	42
Physicians' reports frequently made from poor-quality X-rays	44
SSA frequently relied on a single report of X-ray findings to award and deny benefits	45
Recent SSA actions	46
Conclusions	47

CHAPTER	<u>Page</u>	
5	IMPROVEMENTS NEEDED IN CLAIMS ADJUDICATION PROCESS	49
	Insufficient evidence to support an award or denial of black lung benefits	52
	Eligibility decisions were inconsistent with the evidence in the claim files	60
	Conclusions and recommendations	62
6	MAJOR PROVISIONS OF THE BLACK LUNG BENEFITS ACT OF 1972	64
7	AGENCY COMMENTS	68
8	SCOPE OF REVIEW	69

APPENDIX

I	Letter dated August 23, 1972, from the Assis- tant Secretary, Comptroller, Department of Health, Education, and Welfare, to the General Accounting Office	71
II	Principal officials of the Department of Health, Education, and Welfare respon- sible for administration of the activi- ties discussed in this report	72

ABBREVIATIONS

CWP	coal workers' pneumoconiosis
FEV ₁	Forced Expiratory Volume
GAO	General Accounting Office
HEW	Department of Health, Education, and Wel- fare
MVV	Maximal Voluntary Ventilation
SSA	Social Security Administration

CHAPTER 1

INTRODUCTION

The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) became law on December 30, 1969, and was amended by the Black Lung Benefits Act of 1972 (30 U.S.C. 901), approved on May 19, 1972. The stated purpose of the 1969 act is to protect the health and safety of the Nation's coal miners. The law

- sets interim standards on the fire protection, roof supports, escape ways, and communications systems required in coal mines;
- requires that chest X-rays be taken of miners employed in underground coal mines and that miners found to be developing coal workers' pneumoconiosis (CWP) be given the option of transferring to less dusty parts of the mining operations with no reduction in pay; and
- provided for the payment of monthly cash benefits from general tax funds to (1) coal miners who are totally disabled due to CWP--commonly called "black lung"--arising out of employment in underground coal mines and (2) widows of coal miners who were entitled to such benefits or who died due to the disease

We reported to the Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare (B-170686, May 13, 1971), on problems being encountered by the Bureau of Mines, Department of the Interior, in its implementation of those provisions of the act relating to inspecting coal mines and correcting unsafe and unhealthy conditions.

We reported to the Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce (B-170686, Aug. 3, 1971), on our examination into certain questions regarding the processing of claims for black lung benefits. The report explained why more claims for benefits had been filed by, and awarded to, claimants from Pennsylvania than from West Virginia.

-22-

This report deals with the achievements, administrative problems, and costs in administering title IV, part B, of the 1969 act, which provided for the payment of monthly cash benefits to underground coal miners who are totally disabled due to CWP and to widows of underground coal miners who were entitled to such benefits or who died due to the disease. Part B is administered by the Social Security Administration (SSA), Department of Health, Education, and Welfare (HEW).

Our fieldwork was completed prior to enactment of the 1972 amendments; therefore, this report does not cover SSA's administration of the new legislation. However, references to changes brought about by the new law are included in the report as appropriate. The major provisions of the 1972 amendments are discussed in chapter 6.

BLACK LUNG--THE DISEASE

"Pneumoconiosis" was defined in the 1969 law and in HEW's implementing regulations as a chronic dust disease of the lung arising out of employment in an underground coal mine.

SSA medical officers informed us that

--"pneumoconiosis" is a generic term referring to a class of diseases caused by the inhalation of many different types of dust, including coal mine, quarry, textile fiber, and others;

--coal workers' pneumoconiosis is caused by the inhalation of coal dust; and

--CWP is characterized by a chronic fibrous tissue reaction in the lungs which may cause disability or death.

According to the Chief of the Appalachian Laboratory for Occupational Respiratory Diseases, Public Health Service, HEW, pneumoconiosis occurs in two forms--simple and complicated--and

--categories 1, 2, and 3 of simple pneumoconiosis are

recognized by the extent and profusion of small opacities present in the lung or lungs and

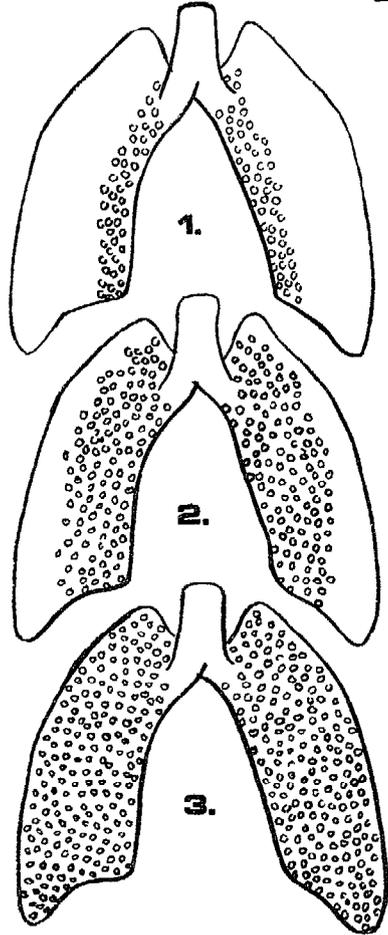
--complicated pneumoconiosis, which usually occurs on a background of simple pneumoconiosis, is recognized by conglomerate or massive lesions larger than 1 centimeter in diameter.

Page 10 shows the Chief of the Laboratory's representations of how simple and complicated pneumoconiosis may appear.

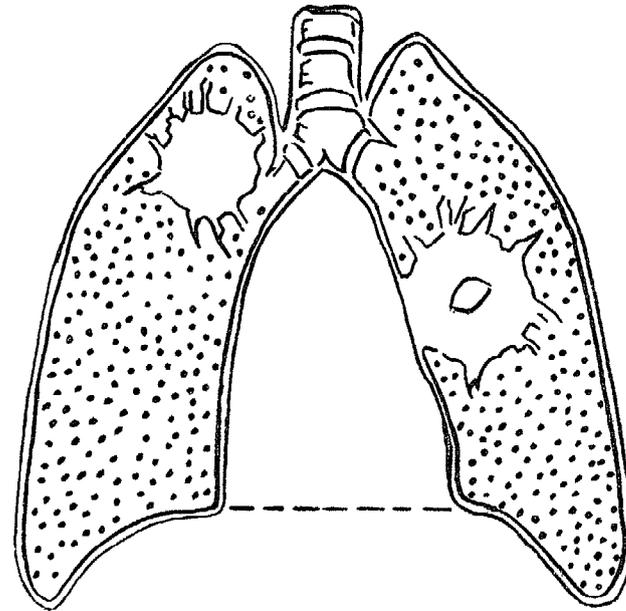
SSA officials informed us that SSA recognizes a number of chronic dust diseases as constituting CWP for purposes of administering the benefit provisions of the act. These include anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis, and silicotuberculosis

Diagrammatic Representation of Categories 1, 2, and 3
of Simple Pneumoconiosis and of Complicated
Pneumoconiosis

Simple



Complicated



CASH BENEFITS--ELIGIBILITY REQUIREMENTS

For a miner or his widow to be eligible for black lung benefits, title IV, part B, of the 1969 act required that

--the miner must have been totally disabled due to pneumoconiosis or his death must have been due to the disease and

--the pneumoconiosis must have arisen out of employment in the Nation's underground¹ coal mines.

Eligibility under part B is not affected by the age of the miner or his widow, when the disability began, when the miner died, or how long the miner worked in a coal mine.

The act provides that, if a chest X-ray, a biopsy, an autopsy, or another diagnostic procedure² shows the existence of complicated CWP, a miner is presumed to be totally disabled or to have died due to CWP. Therefore, no further medical evidence is needed to establish eligibility for benefits.

For cases in which the medical evidence does not show the existence of complicated CWP, a determination that the miner is totally disabled or died due to CWP is based on criteria established by regulations of the Secretary of HEW. The act provides that such criteria not be more restrictive than those applicable to the regular social security disability benefits program. However, the act provides also that, if the miner has been employed at least 10 years in the Nation's underground coal mines, a presumption be made that

¹The 1972 amendments extended benefits to surface miners (e.g., strip and auger miners) and their dependents and to eligible survivors, as described in chapter 6.

²No other procedures are recognized by SSA because, according to SSA officials, no other medical procedures for diagnosing CWP have received general acceptance by the medical profession. (See pp. 22 to 25.)

--the miner's death was due to CWP if he died from a respirable disease and

--pneumoconiosis, if present, arose from his underground mining employment.

Under the act, these two presumptions are rebuttable and additional evidence may be used to either support or rebut the claim that the miner's CWP arose out of his mining employment or that his death was due to CWP.

The 1972 amendments liberalize the rules for determining total disability or death due to CWP. (See ch. 6.)

MONTHLY BENEFIT AMOUNTS

The amount of the black lung benefits is defined by the act as 50 percent of the minimum monthly payment to a totally disabled Federal employee in grade GS-2 under the Federal Employees' Compensation Act. If the miner or widow has qualified dependents, the benefit amount is increased as shown in the following table.

<u>Dependency status</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
No dependents	\$144.50	\$153.10	\$161.50
One dependent	216.70	229.60	242.20
Two dependents	252.80	267.90	282.60
Three or more dependents	288.90	306.10	322.90

The act provides that no benefits be paid for any period prior to the month in which a claim is filed. Benefits due a miner beneficiary who is employed or self-employed are subject to reduction on account of excess earnings under the social security annual earnings test.¹ Earnings of widows,

¹ Social Security benefits are generally paid in full to beneficiaries under 72 years of age who have wages or self-employment incomes of \$1,680 or less. Benefits are reduced \$1 for every \$2 earned between \$1,680 and \$2,880 and are further reduced by \$1 for every \$1 earned over \$2,880. Regardless of total annual earnings, however, benefits are not withheld for any month in which the beneficiary does not earn wages of more than \$140 or perform substantial services in self-employment. Benefits for persons 72 years of age or older are paid in full, regardless of the amount of their earnings.

wives, and children, however, do not require such a reduction. Also, black lung benefit payments made by SSA are reduced by an amount equal to any payment received by a miner or widow under the workmen's compensation, unemployment compensation, or disability insurance laws of the miner's State, if these benefits are based on the miner's disability.

ADMINISTRATIVE RESPONSIBILITY

The law, as amended, placed the responsibility for administration of title IV, part B, with the Secretary of HEW, who delegated administrative responsibility to SSA. SSA is responsible for (1) miners' claims filed before July 1973, (2) widows' claims filed before 1974, and (3) widows' claims filed after 1973 if the deceased miners either died due to CWP before January 1974 or were entitled to benefits under part B at the time of their deaths and the widows file within 6 months after the miners' deaths. SSA is responsible also for the following claims if deceased miners either died due to CWP before January 1974 or were entitled to part B benefits at the time of their deaths.

--Claims of orphans of miners which are filed within 6 months after the deaths of the miners or their widows or by December 31, 1973, whichever is later.

--Claims of totally dependent surviving parents, brothers, and sisters of miners which are filed within 6 months after the deaths of the miners or by December 31, 1973, whichever is later.

Benefits were extended to these persons under the Black Lung Benefits Act of 1972. (See pp. 64 and 65.) Under the 1972 act, however, surviving widows or children preclude parents from succeeding to benefits and surviving widows, children, or parents preclude brothers and sisters from succeeding to benefits.

SSA will pay benefits on all claims for which it is responsible as long as the beneficiaries remain eligible, which is generally until they die or, in the case of orphans, until they reach the age of 18 (22 if a full-time student).

The Department of Labor, under part C of title IV, will be responsible for all other claims. Beginning in 1974 these claims will be processed through workmen's compensation agencies in States which have enacted appropriate legislation to provide comparable benefit payments. Miners' claims may be filed in SSA offices from July through December 1973, and the Department of Labor will pay benefits for those months to eligible miners who file in that period.

If the applicable State law fails to meet the standards of the Secretary of Labor--for example, if the State law has no provision for compensation for CWP--the operator of a coal mine must pay benefits to those miners he employed who become disabled or to surviving widows, orphans, totally dependent parents, and totally dependent brothers and sisters of miners who died because of CWP arising out of employment in his mine. However, operators are not required to pay such benefits for any period prior to January 1, 1974, or after December 30, 1981.

If a coal mine operator fails to pay the benefits required by part C or if no operator is required to pay such benefits, the Secretary of Labor shall pay them to the eligible claimants and the operator, if any, shall be liable to the United States in a civil suit for an equal amount.

The Department of Labor and mine operators will stop paying benefits on December 30, 1981, but State workmen's compensation benefits may continue to be paid if the beneficiaries are entitled under the State program.

Although responsibility for most new claims will shift to the Department of Labor after June 1973, the law provides that HEW retain responsibility for prescribing standards for determining whether miners are totally disabled due to CWP and whether the deaths of miners were due to CWP.

CHAPTER 2

SOME EARLY PROBLEMS IN PROGRAM IMPLEMENTATION

Prior to enactment of the 1969 act, SSA received only a few weeks' notice that it might be given responsibility for administering the new benefits program.

Under the act claimants become eligible for benefits in the months their applications are filed. Because the law was effective upon enactment and included no provision for retroactive payments, SSA found itself in a position in which it had to quickly

- inform potentially eligible miners and widows about the new program and advise them to file applications immediately to avoid possible loss of benefits,
- establish criteria for determining when miners would be considered totally disabled due to CWP and when miners' deaths would be considered to be caused by CWP, and
- develop policies and procedures for administering the program.

In attempting to fulfill its newly assigned responsibilities, SSA

- immediately informed the public about the program through press releases and close cooperation with the United Mine Workers of America;
- provided service to claimants through its existing district and branch offices;
- established criteria for determining claimant eligibility; and
- developed administrative machinery to help insure that benefits were paid to all eligible persons, including (1) arrangements whereby claimants could

- 4 -

obtain medical examinations at program expense,¹
(2) explanations to persons whose claims had been
denied, and (3) advice on the right of appeal in de-
nied cases.

VOLUME OF CLAIMS

Within 1 week of enactment, 18,000 claims for black lung benefits had been filed, and this increased to nearly 100,000 claims by the end of the first month. By the end of the first and second years--December 31, 1970 and 1971, respectively--about 247,000 and 348,000 claims had been received by SSA.

By the end of September 1970, SSA had processed about one-half of the approximately 100,000 claims filed in the first month of the program. According to SSA officials, delays were caused primarily by the (1) sheer volume of claims and (2) lack of medical criteria for determining when miners are totally disabled due to CWP or when their deaths could be attributed to the disease. The officials informed us that, before operations could begin, they had to develop and publish program criteria, devise a process for obtaining applications, decide upon the types of evidence needed to establish eligibility, and select and train employees to carry out the program. The officials informed us also that the limited medical resources available, particularly in the Appalachian area, had caused more than normal time to be spent in completing medical examinations of claimants. The delays in establishing medical criteria and the time required to make the program operational caused lengthy processing times for many of the claims.

SSA's policy of first come, first served was not always feasible under the black lung benefits program because sufficient medical evidence was sometimes readily available for certain claimants whereas weeks or even months were needed

¹Section 413(b) of the law provides that claimants "*** shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims."

to secure evidence for others. For example, thousands of Pennsylvania applicants--who had been receiving benefits under the State's workmen's compensation program--had medical evidence available to them before the Federal law was enacted. According to SSA officials, claimants from other States--where large numbers of claims had been filed for which medical examinations had to be scheduled--frequently experienced delays while sufficient medical evidence was obtained to support their claims of eligibility. In June 1971 SSA reported to the House Committee on Education and Labor that most of the claims received in 1970 had been processed and that the normal processing time for new claims was 10 to 12 weeks, which was about the same time needed for claims filed under the regular social security disability program.¹ As of December 31, 1971, of the 347,716 claims, 322,582 had been processed.²

BENEFITS PAID

SSA statistics showed that, as of December 31, 1971, about \$533 million in black lung benefits had been paid to 159,534 miners and widows of miners since the inception of the program. About \$374 million, or 70 percent, of the \$533 million was paid to claimants in the three leading coal-producing States--West Virginia, Kentucky, and Pennsylvania--and an additional \$108 million was paid to claimants in Illinois, Alabama, Virginia, Ohio, and Tennessee. As of December 31, 1971, benefits were being paid at the rate of about \$336 million a year and SSA officials estimated that payments under the 1969 act would total about \$566 million in fiscal year 1973. Additional benefits estimated at about \$954 million will be paid in fiscal year 1973 because of enactment of the 1972 amendments.

¹Black Lung Benefits Program, First Annual Report to the House Committee on Education and Labor on Part B of Title IV of the Federal Coal Mine Health and Safety Act of 1969, p. 15.

²Figures are for initial claims only and do not include cases in which claimants filed for reconsideration of their denied claims.

The following table of SSA statistics shows pertinent data concerning the claims filed in each of the above States and in the Nation as of December 31, 1971.

	<u>Claims filed</u>	<u>Claims processed</u>	<u>Claims awarded</u>	<u>Allowance rate (%)</u>	<u>Cumulative payments</u>	<u>Recurring monthly payments</u>
	(000 omitted)					
National	347,716	322,582	159,534	49 5	\$532,610	\$27,995
Pennsylvania	112,579	103,596	69,851	67 4	228,401	11,613
West Virginia	65,705	61,809	27,834	45 0	103,895	5,251
Kentucky	38,058	35,445	11,425	32 2	41,370	2,095
Illinois	22,275	19,626	8,986	45 8	25,437	1,591
Alabama	20,994	17,589	6,702	38 1	24,503	1,238
Virginia	19,724	18,763	7,064	37 6	27,056	1,359
Ohio	16,637	15,396	5,627	36 5	15,714	993
Tennessee	11,662	10,687	4,438	41 5	15,660	835
Others	40,082	39,671	17,607	44 4	50,574	3,020

It can be seen from the above table that the allowance rates vary among the States and that the rate for Pennsylvania is considerably higher than that for any of the other States.

REASONS FOR VARYING ALLOWANCE RATES

In our report to the Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce,¹ we noted that literature concerning CWP showed that members of the medical profession and others who had studied the disease believe that differences in the incidence of disabling CWP are related to

--the type of coal being mined and

--the length of time that the miner has worked in underground coal mines

Our report showed that factors affecting SSA's adjudication of a claim include

--the age of the miner and

--the extent to which the claim can be documented with medical and other evidence that the miner is disabled due to CWP or that he died due to the disease

We believe the following factors contributed most to awarding benefits to a higher percentage of Pennsylvania claimants than to claimants of other States

--Miners of anthracite coal are more likely to become afflicted with CWP than are miners of bituminous coal, according to studies conducted by the Public Health Service and the Pennsylvania Department of Environmental Resources.² Of the miners employed in Pennsylvania during the 50-year period 1920-69, approximately

¹"Examination Into Questions on the Processing of Claims for Black Lung Benefits Under the Federal Coal Mine Health and Safety Act of 1969" (B-170686, Aug. 3, 1971).

²The percentages of claims allowed for the anthracite and bituminous regions of Pennsylvania as of April 3, 1971, were approximately 77 percent and 61 percent, respectively

one-half were employed in anthracite coal mines and one-half in bituminous coal mines. Virtually all coal miners in the other States mined bituminous coal during this period, relatively few mined anthracite coal

--Data compiled by SSA indicated that, as a group, Pennsylvania miners who filed claims for benefits had more coal-mining experience than did their counterparts in the rest of the Nation and therefore presumably had more exposure to coal dust

--Data compiled by SSA indicated that the average age of Pennsylvania miners, as a group, who filed claims for benefits was higher than the average age of their counterparts in the rest of the Nation. Certain criteria used by SSA for determining whether miners are eligible for benefits allowed nearer normal lung ventilatory function as miners advanced in age. (See pp. 26 to 28.)

--Pennsylvania has had a compensation program since 1965 for coal workers disabled by CWP. Because medical and other evidence needed to support a claim for compensation under the Pennsylvania program is much the same as that required by SSA, thousands of Pennsylvania claimants, especially widows of miners, have had the advantage of having evidence to support their claims for Federal benefits. Claimants from other States have not had as great an advantage because no other State had a compensation program for CWP which produced nearly as much evidence as did the Pennsylvania program

REASONS WHY SSA DENIED CLAIMS

The following data indicates the principal reasons why SSA has denied black lung claims. The data, compiled by SSA, is based on a 5-percent random sample of the claims filed from inception of the program through September 1971.

Reasons Why SSA Denied Claims
January 1970 to September 1971

	<u>Percent</u>
Miners' claims:	
X-rays or biopsy did not show that the miners had CWP	65.1
Miners had simple CWP, but tests showed that they were not totally disabled	24.7
Miners had simple CWP but were working	7.0
Other (miners withdrew claims, did not cooperate during medical examinations, etc.)	<u>3.2</u>
Total	<u>100.0</u>
 Widows' claims:	
X-rays, autopsy, biopsy, or other evidence did not show that the miners had CWP or a respirable disease	65.9
Claimants failed to submit any medical evidence	17.2
Miners had CWP or a respirable disease, but it was not a significant contributing cause of their deaths	4.0
Widows' husbands were not underground coal miners, or their pneumoconiosis did not arise from employment in underground coal mines	3.6
Other (widows withdrew claims, unknown, etc.)	<u>9.3</u>
Total	<u>100.0</u>

CHAPTER 3

PROBLEMS AND ISSUES CONCERNING THE

MEDICAL ASPECTS OF COAL WORKERS' PNEUMOCONIOSIS

There has been controversy over SSA's administration of the medical aspects of the black lung benefits program. The controversy has been related primarily to methods for

- diagnosing CWP,
- determining the extent of miners' disabilities, and
- determining that miners' disabilities or deaths were due to CWP.

These issues relate to whether or not claimants will receive benefits and therefore significantly affect the manner in which the program is administered. Following is a discussion of these issues.

DISAGREEMENT AS TO HOW PNEUMOCONIOSIS SHOULD BE DIAGNOSED

The 1969 law specified that benefits be paid to miners totally disabled due to pneumoconiosis arising out of employment in the Nation's underground coal mines. Congressional intent is clear that HEW is expected to use the best medical techniques for diagnosing CWP.

Medical literature which we reviewed on the subject of CWP and our discussions with physicians who have been associated with CWP indicated that

- aside from autopsy,¹ biopsy, and X-ray, no diagnostic technique is generally accepted by the medical profession;

¹Section 203(d) of the act provides that, upon the death of any coal miner, the Secretary of HEW is authorized to pay for an autopsy of such miner. This is a preburial autopsy program which is administered by the Public Health Service, HEW.

--autopsy is the most accurate method available to diagnose CWP,

--biopsy may be appropriate only in unusual cases because it often produces a nonrepresentative lung specimen and because it may endanger the miners' lives; and

--X-ray is the only medically accepted method for diagnosing CWP in a large group of living miners

HEW regulations under the 1969 act provided that a diagnosis of CWP not be made in the absence of autopsy, biopsy, or X-ray evidence showing the disease.¹ The regulations require that the X-rays be taken in conformance with acceptable medical standards and that they be classified in accordance with either of the two standardized and generally accepted classification systems for CWP--the International Labor Organization system or the Union International Contra Cancer system. SSA officials advised us that virtually all living miners' claims had been supported by physicians' reports of X-ray findings and not by biopsy and that more widows' claims had been supported by X-ray reports than by autopsy and biopsy combined. The officials stated, however, that most widows had been awarded benefits on the basis that their husbands died of respirable diseases, which permitted SSA to presume--under the respirable disease presumption of the law--that the miners died due to CWP; X-ray evidence of CWP was not needed in these cases.²

¹Under the 1972 amendments SSA may not deny a claim solely on the basis of X-ray evidence which fails to establish the existence of CWP

²An SSA official advised us that since inception of the program (1) SSA had accepted death certificates and reports of autopsy, biopsy, and X-ray findings as evidence that miners had CWP or respirable diseases and (2) when those types of evidence were unavailable or did not show CWP or respirable diseases, SSA had accepted hospital reports and reports of physicians who treated the miners. The official said that, due to frequent difficulties in obtaining such evidence, SSA had also accepted statements from miners' widows, relatives, and close friends regarding the nature, frequency, duration, and effects of any symptoms experienced by the miners and any other pertinent information concerning their work histories, medical histories, and deaths, as evidence of deaths due to respirable diseases.

In its adjudication process, SSA used X-ray reports extensively in determining the presence or absence of CWP. SSA reported to the House Committee on Education and Labor that:

"*** the prevailing medical judgment [is] that in the absence of positive X-ray evidence, the disease does not exist or exists to a degree that would have no significant effect on the claimant's functional capacity "¹

Some physicians have advocated that miners should also be eligible for black lung benefits on the basis of lung function tests. These tests measure a person's ability to (1) breathe air into and out of the lungs and (2) transfer oxygen from the lungs into the blood system where it is needed to provide energy for working. SSA believes that lung function tests are valuable in determining respiratory disabilities but are not diagnostic of the presence or absence of CWP and fail to show whether CWP contributes to disabilities.

SSA officials informed us that, because symptoms of many respiratory diseases--such as asthma, emphysema, and chronic bronchitis--are virtually identical to those of CWP, eligibility based solely on lung function tests would result in the payment of benefits to miners who were disabled due to diseases other than CWP.

In administering title II of the 1969 act, the Public Health Service uses X-rays to determine whether working miners are developing CWP and should be given the option under the law of working in less dusty parts of the mines. The World Health Organization, the International Labor Organization, and studies by other countries all indicate that X-ray is the only practicable technique presently available to diagnose CWP in living miners.

¹Black Lung Benefits Program, First Annual Report to the House Committee on Education and Labor on Part B of Title IV of the Federal Coal Mine Health and Safety Act of 1969, p. 18.

We believe that SSA's reliance on autopsy, biopsy, or X-ray evidence to diagnose the presence or absence of CWP was proper and consistent with available medical evidence and with the 1969 act. However, certain deficiencies existed in SSA's initial procedures for developing X-ray evidence. These deficiencies, SSA's corrective actions, and our related conclusions are discussed on pages 42 to 48.

METHODS USED BY SSA FOR DETERMINING
THE EXTENT OF MINERS' DISABILITIES

The law requires that, to be eligible for benefits, miners be totally disabled. The law provides that miners who have complicated CWP--as evidenced by X-ray or biopsy--are presumed to be totally disabled and therefore are eligible for benefits. (See p. 11.) Findings of total disability for miners who have simple CWP are based on criteria established by the Secretary of HEW.

Simple CWP

HEW regulations relating to a finding of simple CWP state that the miner:

"*** shall be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. In any such case it must be established that the individual has a respiratory impairment because of pneumoconiosis, demonstrated on the basis of an MVV and FEV₁ *** or by a medically equivalent test."

The MVV (Maximal Voluntary Ventilation) and FEV₁ (Forced Expiratory Volume) are lung ventilatory function tests described as follows:

- MVV measures the maximal volume of air a person can breathe by voluntary effort in 1 minute.
- FEV₁ measures the volume of air a person can force out of his lungs in the first second.

The HEW regulations state also that a miner may be determined totally disabled due to CWP if the disease has caused a serious heart condition.

In cases where simple CWP is diagnosed, disability is determined generally by use of the MVV and FEV₁ ventilatory function tests. Two separate criteria are applied--one for those under 65 years of age and one for those 65 years of age or over.

Under 65 years of age

HEW regulations covering the black lung benefits program contain two tables of MVV and FEV₁ criteria which specify the maximum lung capacity that a miner under 65 years of age can have to be considered totally disabled by SSA. These tables are used by SSA in determining disability under its regular disability program.

If a miner is not engaged in substantial gainful work and if his ventilatory function test results meet the criteria in the first table, SSA presumes, on the basis of medical considerations alone--that is, the severity of his respiratory impairment--that he cannot work and is therefore totally disabled. A miner who has a lesser impairment--measured by the criteria in the second table--may still be considered totally disabled and eligible for benefits if--because of his age, education, and work experience--SSA decides that he is unable to engage in any kind of substantial gainful work which exists in significant amount either in the region where he lives or in several regions of the country. The second table represents significantly less impairment than does the first. According to SSA medical officers, it represents ability to do all but heavy work.

SSA officials advised us that benefits had been awarded to virtually all claimants who met the less restrictive criteria in the second table because they generally were of advanced age and limited education and had work experience limited mostly to coal mining.

65 years of age or over

To determine disabilities of miners with simple CWP who are 65 years of age or over, SSA uses criteria which allow the miners to have considerably more lung ventilatory function than miners under 65 years of age and which allow nearer normal lung ventilatory function as miners advance in age. SSA officials felt that criteria adjustments for the older miners were necessary because the older miners may reasonably be expected to have more of a problem transferring oxygen from their lungs into their blood systems (see pp. 28 to 30); the criteria for younger miners are based on the assumption that no such impairment exists. The

officials said that the adjustments aimed at placing older miners on a par with younger miners with respect to criteria for determining whether they are precluded by reason of pulmonary impairments from engaging in substantial gainful work.

Under these criteria, a 65-year-old miner 66 inches tall would be considered totally disabled by SSA if his FEV₁ and MVV test results equaled or fell below 82 percent and 77 percent, respectively, of his predicted normal ventilatory function, whereas the FEV₁ and MVV test results for a 64-year-old miner 66 inches tall would have to equal or fall below 57 percent and 50 percent, respectively, of his predicted normal ventilatory function before SSA would consider him totally disabled. Under these criteria also, some aged miners may be awarded benefits even though their lung ventilatory function is near normal or above normal for their ages. SSA officials informed us that they believed that the available data on what is normal for persons 65 years of age or over is very limited.

Limitation of FEV₁ and MVV tests to measure disabilities

CWP may reduce coal miners' abilities to engage in physical work because it may interfere with two physiological functions: (1) the ability to breathe air into and out of their lungs and (2) the ability to transfer oxygen from their lungs into their blood systems where it is circulated throughout their bodies. There are several tests for evaluating each of these physiological functions.

The FEV₁ and MVV tests measure only breathing ability and are not concerned with the ability to transfer oxygen. Some critics of SSA's administration of the black lung program, as well as certain SSA officials, believe that a significant number of miners may have been denied benefits on the basis of the results of FEV₁ and MVV tests even though they were totally disabled and eligible for benefits on the basis of the inability of their lungs to transfer oxygen. SSA officials informed us that no precise estimate of the number of such miners had been made but that the number could be sizable; the officials said that, until additional experience is gained, a more precise estimate could not be made.

Several oxygen-transfer tests conducted while miners are in resting positions are listed in HEW regulations. According to SSA officials, however, these tests have not been encouraged or promoted by SSA because experience indicates that they rarely identify a disability which the FEV₁ and MVV tests would not identify. The officials said that only a few miners had been granted benefits on the basis of oxygen-transfer tests conducted while miners were in resting positions.

Shortly after enactment of the law, the chief SSA medical officer responsible for the administration of the medical aspects of the black lung benefits program recommended that SSA administer oxygen-transfer tests--conducted while miners exercise--to miners who had been denied benefits on the basis of FEV₁ and MVV test results which were marginal to the SSA criteria for total disability. The medical officer advised us that oxygen-transfer tests conducted while miners are exercising should detect miners' inabilities to transfer oxygen from their lungs into their blood systems. According to SSA administrative officials, these tests were given only to a small number of miners because.

- There were few facilities in or near the principal coal-mining areas where the tests could be given.
- There were not enough qualified technicians in or near the principal coal-mining areas to administer the tests on a large scale.
- The tests were time consuming; required considerable physical effort; and could result in personal inconvenience, discomfort, and possibly physical harm to the miners.

In late 1971 SSA began a pilot study--in cooperation with the Public Health Service--to assess the effectiveness and feasibility of using oxygen-transfer tests for claimants of black lung benefits. SSA officials hope that this study will lead the way to establishing additional methods and criteria for evaluating total disability due to CWP and other lung diseases and possibly to constructing additional medical facilities to perform these tests in coal-mining areas.

The results of the SSA pilot study should assist SSA in making decisions concerning the future administration of the black lung benefits program.

DIFFICULTIES IN DETERMINING THAT MINERS'
DISABILITIES OR DEATHS WERE DUE TO CWP

The need to prescribe criteria and procedures for determining if disabilities or deaths of miners were due to CWP presented SSA with significant problems. According to SSA officials, these problems arose because

- other disabling conditions have symptoms which affect miners in much the same way as CWP does;
- when CWP exists in combination with one or more other conditions, it is virtually impossible to medically determine to what extent, if any, CWP contributed to disability or death; and
- adequate medical records are frequently not available for miners who died years ago.

In addition to causing adjudicative problems for SSA, the requirement that miners' disabilities or deaths be due to CWP arising out of employment in underground coal mines has resulted in substantial misunderstanding of program requirements and of bases for SSA decisions made pursuant to this requirement. According to SSA officials, miners who do not have CWP but who are severely disabled by other respiratory conditions (e.g., emphysema or chronic bronchitis) find it particularly difficult to understand the reasons why SSA must deny their claims, especially if they know miners with lesser impairments who are receiving benefits.

Disability benefit claims

Coal miners, like anyone else, may contract any number of respiratory conditions, and some of these conditions compromise persons' ventilatory capacities in ways similar to CWP. An article¹ published by the American Association for the Advancement of Science states.

¹"Black Lung: Dispute about Diagnosis of Miners' Ailment," Science Magazine, Oct. 8, 1971, pp. 132 to 134.

"*** Shortness of breath, coughing, and wheezing--
common symptoms among miners--do not necessarily
denote CWP. These symptoms are nonspecific and
can be caused by several other respiratory dis-
eases."

SSA medical officers include the following conditions in
this group.

- Asthma
- Emphysema
- Chronic bronchitis
- Neurological conditions, such as nerve injuries,
meningitis, and muscular dystrophy
- Muscular conditions, such as polio and loss of mus-
cular strength
- Infectious diseases, such as pneumonia and bronchitis.
- Degenerative diseases, such as multiple sclerosis,
arthritis, and arteriosclerotic heart disease

SSA medical officers and other physicians who have
studied CWP believe that simple CWP alone rarely causes to-
tal disability. According to the medical officers and lit-
erature on CWP, however, it is virtually impossible to deter-
mine to what extent, if any, miners' disabilities can be
attributed to CWP and to what extent the disabilities can be
attributed to one or more of the miners' other conditions.
As noted earlier, benefits are paid to miners with simple
CWP when breath tests indicate an impairment of ventilatory
function (or when CWP has caused a serious heart condition).
SSA has awarded benefits irrespective of the extent of CWP
or the number and disabling effects of the miners' other
conditions

We reviewed a sample of 39 cases in which miners had
been awarded black lung benefits on the basis of simple
CWP. In 20 of the 39 cases, information in the case files
showed that the miners were also suffering from one or more

other conditions, principally emphysema, which could have been the cause of their disabilities. The other conditions shown for the 20 cases are summarized in the following table.

Conditions Other Than CWP Afflicting 20 Miners
Who Were Awarded Black Lung Benefits

<u>Condition</u>	<u>Number of cases</u>
Emphysema	10
Emphysema, pulmonary fibrosis, ¹ and arthritis	2
Emphysema and pulmonary fibrosis ¹	2
Coronary thrombosis	1
Emphysema, arteriosclerotic heart disease, and osteo-arthritis	1
Emphysema and a chronic asthmatic type of bronchitis	1
Emphysema and bronchial asthma	1
Emphysema, chronic bronchitis, and pulmonary fibrosis ¹	1
Cancer of the lung	<u>1</u>
Total	<u>20</u>

¹Pulmonary fibrosis, according to SSA medical officers, is a scarring of the lungs caused by any of a number of abnormal conditions, such as pneumonia, tuberculosis, pulmonary emboli, and CWP.

The above table may not contain all the conditions which afflicted the 20 miners and which could have been the cause of their disabilities because--as a result of SSA's policy to award benefits to miners who had CWP and a ventilatory impairment--such evidence was not required.

In establishing eligibility criteria for black lung disability claims, SSA was faced with a dilemma, that is, whether it should award or deny benefits to disabled miners who are afflicted with simple CWP as well as with one or more other conditions which may be the cause of their disabilities. SSA officials advised us that their policy to award benefits in all such cases was based on an inability to medically determine if miners' disabilities were due to

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simple CWP or to one or more other conditions. The officials believed that--under the circumstances--resolving the problem in favor of the claimants was the only reasonable decision that could have been made.

We believe that SSA's policy was equitable to all miners who, in fact, were disabled due to CWP. However, we believe that SSA's decision has probably resulted in awarding benefits to claimants who were not totally disabled due to CWP but due to one or more other conditions.

Death benefit claims

Under the law widows of miners are eligible for black lung benefits if their husbands died due to CWP. The 1969 law provides two presumptions of eligibility in death benefit cases: (1) if the miners had complicated CWP and (2) if the miners had at least 10 years of employment in underground coal mines and died due to respirable diseases. The 1969 law provides that, when these two presumptions are not applicable, decisions concerning deaths due to CWP be made using standards prescribed by the Secretary of HEW.

According to an SSA chief medical officer, the administration of this aspect of the black lung benefits program has posed "almost unsolvable problems." These problems arose, according to SSA officials, because

- adequate medical records are frequently not available for miners who died years ago,
- death certificates may indicate erroneously the causes of deaths because, in past years, many physicians did not recognize CWP as a disease; and
- similar to the problems in determining the causes of disabilities of live miners, it is virtually impossible to determine how significant CWP was in causing deaths when the miners were suffering also from other serious conditions.

HEW regulations provide that, in considering whether widows are entitled to black lung benefits, deaths of miners be considered to be due to CWP only when the deaths (1) are due to the disease or (2) can be attributed to chronic dust diseases or other chronic diseases of the lungs and the miners were employed at least 10 years in underground coal mines.

The regulations state, however, that

"*** death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was, in fact, due to pneumoconiosis

(e g., cancer of the lung, disease due to trauma, pulmonary emboli) ***.¹

SSA officials advised us that their policy, in effect, had been

- to award benefits when there was even the remotest possibility that CWP contributed to the deaths in any way and
- to deny benefits only when the evidence showed unequivocally that CWP did not contribute to the miners' deaths.

Our review of a sample of claims substantiated that adjudicators were following this policy. Benefits were awarded to nearly all widows when there was evidence that the deceased miners had CWP or respirable diseases, irrespective of the extent of the diseases or the fact that the death certificates, autopsy reports, or other records showed the direct and contributing causes of the deaths to be something other than CWP. SSA officials told us that benefits were almost always denied in cases of deaths which occurred less than 24 hours after onset of acute diseases or traumas, such as coronary occlusions or injuries received in accidents, because they believed that attributing deaths to CWP in such cases would generally be unreasonable.

An SSA official advised us that, of the 65,075 awards of benefits to widows made through October 15, 1971, over 90 percent had been supported by evidence that indicated that the deceased miners had (1) simple CWP or (2) a respirable disease which, in the absence of evidence to the contrary, was presumed to be CWP. According to SSA medical officers and other physicians who have studied CWP, simple CWP is rarely the cause of death. The SSA medical officers believed that only 1 or 2 percent of miners with simple CWP die as a result of the disease. SSA officials advised us

¹Under the 1972 amendments claims will be allowed irrespective of the causes of the deaths if the miners were totally disabled due to CWP at the time of their deaths.

that their policy to award benefits to virtually all widows whose husbands had simple CWP was based on an inability to medically determine--in any given case--that simple CWP was not a significant contributing factor in the death.

Case examples demonstrating the effect
of SSA's policy in adjudicating
claims for death benefits

We reviewed 41 claim files of widows who had been awarded black lung benefits. In 13 of these cases, determinations were made that the miners' deaths were due to CWP even though evidence in the claim files pointed toward deaths due to other causes. Following are abstracts of four of these cases.

1. Evidence in this file indicated that the miner had an early stage of silicosis; however, there was no evidence that silicosis caused or contributed to the miner's death. Medical evidence in the file indicated that the miner died due to uremia and terminal cancer of the pancreas and liver. SSA did not obtain a death certificate or determine if an autopsy had been performed.

Benefits were awarded to the widow because there was no unequivocal evidence that the early stage of silicosis did not contribute to the miner's death.

2. This file contained a statement from a physician that the deceased had been treated in the past for pneumoconiosis. The death certificate listed gangrene of the leg as the cause of death and hardening of the arteries as a contributing cause.

The miner's foot had been amputated in 1928, at which time his employment as a coal miner ended. He died in 1967. The file contained no X-ray, autopsy, or biopsy evidence of CWP or any statement that CWP or another respiratory condition had caused or contributed to the miner's death.

SSA accepted the physician's statement as evidence that the miner had CWP and awarded benefits to the widow on the basis that CWP may have contributed to the hardening of the arteries, which was a contributing cause of the gangrene which reportedly caused the miner's death.

3. According to the death certificate in this file, a coronary artery thrombosis was the cause of the miner's death and arteriosclerotic heart disease was a contributing cause. The file also contained evidence indicating that the miner had emphysema but did not contain evidence that the emphysema had caused or contributed to the death.

SSA ruled that death was due to CWP on the basis that (a) there was no proof that the emphysema was not CWP and therefore--in accordance with the respirable disease presumption--it was presumed that it was CWP and (b) CWP may have contributed to the arteriosclerotic heart disease which, according to the death certificate, had contributed to the coronary artery thrombosis which had caused the miner's death.

4. The death certificate in this file showed that the miner died of a breakdown of his central nervous system due to cancer of the lung and the spreading of cancer. There was no autopsy or biopsy evidence which showed that the miner had CWP. An X-ray report in the file indicated that the miner had a condition which could possibly have been CWP. The file had an SSA form letter completed by a physician indicating that the miner had CWP but that the physician did not know to what extent. There was no evidence that CWP had caused or contributed to the miner's death.

SSA awarded benefits to the widow on the basis that the miner had CWP and that CWP may have been a significant contributing cause of death.

As in the case of disability benefit claims, SSA was faced with a dilemma in establishing eligibility criteria for death benefit claims, that is, whether it should award or deny benefits to widows whose miner husbands had been afflicted with simple CWP but reportedly had died due to one or more other conditions. SSA officials said that their policy to award benefits in virtually all such cases was based on an inability to medically determine (1) if miners' deaths were, in fact, due to the reported conditions and (2) that simple CWP was not either the direct or a contributing cause of the deaths.

We believe that SSA's policy was equitable to all claimants whose husbands actually died due to CWP. However, we believe that SSA's decision has probably resulted in awarding benefits to claimants whose husbands did not die due to CWP but due to one or more other conditions.

CONCLUSIONS

SSA's administration of the black lung benefit provisions has been difficult for a number of reasons, the most significant of which may be that it is virtually impossible to determine to what extent, if any, miners' disabilities or deaths can be attributed to CWP and to what extent the disabilities or deaths can be attributed to one or more other conditions.

Following are our findings and conclusions concerning the manner in which SSA officials have dealt with the major medical problems which they have encountered.

- SSA's reliance on autopsy, biopsy, or X-ray evidence to diagnose the presence or absence of CWP was proper and consistent with available medical evidence and with the 1969 act.
- SSA's disability criteria for determining miners' eligibility allow miners 65 years of age or over to have considerably more lung ventilatory function than miners under 65 years of age and allow nearer normal ventilatory function as miners advance in age. In fact, some aged miners may be awarded benefits even though their ventilatory function is near normal or above normal for their ages. SSA officials felt that criteria adjustments for the older miners were necessary because the older miners may reasonably be expected to have more of a problem transferring oxygen from their lungs into their blood systems; the criteria for miners under 65 years of age are based on the assumption that no such impairment exists.
- Tests generally used by SSA to measure the extent of miners' disabilities do not identify miners whose CWP interferes with their ability to transfer oxygen from their lungs into their blood systems. According to SSA officials, a significant number of miners may have been denied benefits solely because of the limitations of the tests used by SSA to measure their disabilities. The officials said that a lack of adequate testing facilities and the complexity of present testing methods had made large-scale use of additional tests impracticable.

The results of the current SSA pilot study to assess the effectiveness and feasibility of using oxygen-transfer tests for claimants of black lung benefits should assist SSA in making decisions concerning the future administration of the black lung benefits program.

--SSA's policy to attribute miners' disabilities or deaths to CWP rather than to one or more other conditions has provided equitable treatment to all eligible claimants but has probably resulted in awarding benefits to claimants who were not totally disabled due to CWP and to claimants whose husbands did not die due to the disease.

RECENT ACTION OF THE CONGRESS

The Black Lung Benefits Act of 1972 authorized (1) \$10 million a year for 3 years to HEW for establishing and operating clinical facilities for analysis, examination, and treatment of miners' lung impairments and (2) additional funds, as appropriate, to HEW for research grants to devise simple and effective tests for measuring, detecting, and treating miners' lung impairments.

We believe that these authorizations, together with the current SSA pilot study on oxygen-transfer tests, should greatly assist SSA in its efforts to obtain the best possible evidence of the extent of miners' disabilities.

CHAPTER 4

ACTIONS TAKEN TO OVERCOME

LIMITATIONS IN THE USE OF X-RAYS

Accurate diagnoses of the presence or absence of CWP are essential for equitable administration of the black lung benefits program. In a significant number of claims, however, accurate diagnoses were not obtained for black lung claimants prior to January 17, 1972, because SSA's procedures for developing X-ray evidence in initial claims did not overcome limitations in the use of X-rays to diagnose the disease. As of that date, about 325,000 initial claims had been adjudicated.

The most limiting factors in the use of X-rays to diagnose CWP are that (1) an X-ray does not always insure an accurate diagnosis even by an expert reader and (2) when the quality of the developed X-ray is poor, expert physicians often find them meaningless. Physicians who have studied CWP have reported that many incorrect diagnoses of the presence or absence of the disease are due to poor-quality X-rays and to errors and variations on the part of physicians who classify the X-rays. Despite these limitations, the use of X-ray is the only available medically accepted method for diagnosing CWP in a large group of living miners. (See pp. 22 to 25)

SSA officials advised us that early in the program, to improve the accuracy of X-ray evidence, SSA:

- Collaborated with the Public Health Service and the American College of Radiology to provide training sessions to improve the skills of physicians in classifying X-rays for pneumoconiosis
- Reread X-rays or had new X-rays taken when existing evidence appeared to be questionable.
- Conducted sample checks of X-rays supporting initial claims and made corrections when necessary

Despite these actions, studies conducted by SSA and cases which we examined indicated that SSA had both awarded and denied many claims on the basis of

--physicians' reports which were based on poor-quality X-rays or

--single reports of X-ray findings by some physicians who were unable to detect and accurately classify CWP on a consistent basis.

SSA officials informed us that, because of the large backlog of claimants awaiting adjudication of their claims, SSA had decided at the beginning of the program that it would not be feasible to verify the accuracy of all physicians' reports of X-ray findings before it awarded or denied benefits in initial claims. Instead, SSA decided to rely on the physicians' reports without verification except when there was reason to question the reported findings. However, we found that, when claimants filed for reconsideration of their denied claims, SSA had controls designed to determine if the claimants had been denied on the basis of inadequate X-ray evidence. SSA's reconsideration of claims resulted in awarding benefits, as of February 1972, to about 2,600 claimants who were initially denied benefits because of inadequate X-ray evidence.

Additional awards to claimants who have been denied benefits will no doubt be made as SSA examines the validity of X-ray reports in the approximately 27,000 reconsideration cases in process as of February 1972. Prior to enactment of the Black Lung Benefits Act of 1972, SSA had no procedures for identifying all the claimants who may have been inappropriately denied benefits if they did not file for reconsideration. We were informed by SSA officials that SSA did arrange--without having received requests--to examine several thousand X-ray reports which stated that the miners did not have CWP; these cases were from several of the States which had the highest percentages of such reports. According to the officials, SSA reversed its denials to allowances when appropriate.

We believe that proper implementation of the 1972 act should enable SSA to identify those remaining claimants who

were inappropriately denied benefits on the basis of inadequate X-ray evidence because the act (1) provides that no claimants be denied benefits solely on the basis of X-ray evidence and (2) requires that the claims of all persons denied benefits prior to enactment be reconsidered under the new provisions of law.

Following are details on each of the two problem areas noted above

PHYSICIANS' REPORTS FREQUENTLY
MADE FROM POOR-QUALITY X-RAYS

As of January 20, 1972, SSA's examination of approximately 63,000 miners' and widows' requests for reconsideration of initially denied claims disclosed that about 14,000 X-rays supporting the claims were not of the acceptable quality to have been used by SSA as the bases for diagnoses of CWP or for denials of benefits in reconsideration. When possible, according to SSA officials, new X-rays of good quality were taken and were used to adjudicate the requests for reconsideration.

SSA did not maintain statistics on the number of awards made to claimants who were found to have been initially denied benefits because the physicians' reports were based on poor-quality X-rays. This number--which is included in the 2,600 claimants who were awarded benefits in the reconsideration process after their claims were initially denied because of inadequate X-ray evidence--may have been significant. Similarly, if reports of X-ray findings supporting SSA's decisions to award benefits were based on poor-quality X-rays, it is possible that a significant number of claimants may have been incorrectly awarded benefits under the 1969 law.

SSA FREQUENTLY RELIED ON A SINGLE REPORT OF
X-RAY FINDINGS TO AWARD AND DENY BENEFITS

Our review indicated that, in the adjudication of initial black lung claims, claims adjudicators accepted virtually every report of X-ray findings which they used as a basis for awarding or denying benefits; they made no attempt to determine the qualifications of the reporting physicians or the accuracy of their reports.

For 75 of 157 claim files reviewed by us which were supported by X-ray evidence, SSA used only one physician's interpretation of an X-ray report to award or deny benefits. We believe that this practice--which was in effect for initial claims from inception of the program through January 16, 1972--was questionable in view of the fact that many incorrect diagnoses of the presence or absence of CWP are made due to poor-quality X-rays and to errors and variations on the part of physicians who classify the X-rays.

Radiologists point out that expertise in the classification of X-rays for CWP is not within the capability of every physician but is a skill which requires extended study. The American College of Radiology reported that physicians performing such duties in mining communities did not always have the necessary skills to do so properly.

An SSA medical officer advised us that many readers of X-rays tend to overstate or understate the existence of CWP depending on their experience and the geographic areas in which they work. He said, for example, if a physician generally reads X-rays indicating significant amounts of CWP and if he works in a coal-mining area, he may tend to overstate the extent of CWP, whereas a physician who does not generally read X-rays indicating CWP and who does not work in a coal-mining area may tend to understate the extent of CWP.

Our review showed that a number of claim files contained conflicting reports of X-ray findings as to whether or not the miners were afflicted with CWP. In seven of 11 files which contained more than one reading of a single X-ray, the reported diagnoses differed to such an extent that use of one report might have resulted in an award of

benefits, whereas use of another report might have resulted in a denial.

Similarly, of 34 claims we examined which were supported by more than one X-ray, 13, or 38 percent, had conflicting reports of X-ray findings. In one case involving two X-rays each read by two physicians, one X-ray was classified as complicated CWP by one physician and as simple CWP by the other physician. The other X-ray was classified as no CWP by one physician and as unreadable by the other.

We found that one miner had been denied benefits because an X-ray report indicated that he did not have CWP. The miner died shortly thereafter, and an autopsy disclosed the presence of CWP, which resulted in an award of benefits to the miner's widow.

We believe that SSA's frequent reliance on a single report of X-ray findings without verification probably resulted in improper awards and denials of black lung benefits.

RECENT SSA ACTIONS

Effective January 17, 1972, as an outgrowth of case experience, SSA revised its procedures for developing X-ray evidence of CWP for initial claims. These procedures were designed

- to improve the reliability of interpretation and classification of X-ray films for pneumoconiosis and
- to improve the quality of X-rays on which physicians' reports of X-ray findings are based.

Under the revised procedures, a minimum of two physicians' reports of X-ray findings is required before a determination can be made concerning the presence, absence, and classification of CWP. The first report is generally made by the physician who performed the X-ray examination. The second report is made by a radiologist who is contracted by SSA and expert in classifying X-rays for CWP. If the two reports agree, they will be the basis for a determination concerning the presence, absence, and classification of CWP. If the two reports differ materially (e.g., if they state

no CWP and complicated CWP, respectively), a third report will be made by another radiologist who is contracted by SSA and expert in classifying X-rays for CWP. The third report--if it agrees with either of the first two reports--will be the basis for the determination of CWP. If the third report differs materially from both of the first two (e.g., if the third report states simple CWP and the first two reports state no CWP and complicated CWP, respectively), a fourth report will be made by another radiologist who is contracted by SSA and expert in classifying X-rays for CWP. The fourth report--which must agree with one of the first three--will be the basis for the determination of CWP. Each report is to be made independently; that is, the physicians will not know what previous classification(s) of CWP was made.

An SSA representative advised us that, by requiring two physicians, at least one of whom is expert in diagnosing CWP, to agree on the acceptable quality of an X-ray and on a classification for the disease, the revised procedures are designed to insure proper determinations of the presence, absence, and classification of CWP.

CONCLUSIONS

We believe that a significant number of claimants were incorrectly awarded or denied black lung benefits because SSA's decisions were often based on

--physicians' reports which were based on poor-quality X-rays or

--single reports of X-ray findings by some physicians who were unable to detect and accurately classify CWP on a consistent basis.

SSA's revised procedures for developing X-ray evidence of CWP, if effectively implemented, should provide reasonable solutions to the problems which we found in SSA's use of X-ray evidence.

SSA's examination into cases of claimants' requests for reconsideration of their denied claims has resulted--and no doubt will continue to result--in awarding benefits

to claimants who were initially denied benefits because of inadequate X-ray evidence. We believe that such reconsideration, together with effective implementation by SSA of the Black Lung Benefits Act of 1972--which (1) provides that no claimants be denied benefits solely on the basis of X-ray evidence and (2) requires that the claims of all persons who were denied benefits prior to enactment be reconsidered under the new provisions of law--should enable SSA to identify those claimants who were inappropriately denied benefits on the basis of inadequate X-ray evidence.

CHAPTER 5

IMPROVEMENTS NEEDED IN CLAIMS ADJUDICATION PROCESS

In a review of a randomly selected sample of 197 black lung claims which had been adjudicated by April 3, 1971 (selection date cutoff), we noted certain problems in the claims adjudication process which we believe require corrective action. These problems relate to

- evidence used to support SSA's decisions to award or deny black lung benefits and
- assurance that claims are adjudicated in accordance with applicable law and HEW regulations.

Claimants are awarded or denied black lung benefits on the basis of claims adjudicators' decisions that they are or are not eligible. Until October 1971, SSA had no systematic review of the propriety of the adjudicators' decisions to (1) insure that the decisions were equitable and in accordance with applicable law and HEW regulations and (2) determine types of common adjudication errors and methods of preventing them.

We felt that SSA's decisions on 48 of the 197 claims reviewed (90 approved, 107 denied) were questionable because

- the claim files lacked sufficient evidence to support decisions that the claimants were or were not eligible or
- the decisions were inconsistent with the evidence in the files.

The following table shows for the 197 claims (1) the types of claims, (2) the number and percent of SSA's decisions we questioned, and (3) our reasons for questioning the decisions.

Type of claim examined	Total claims examined	Decisions questioned by GAO			
		Number	Percent	Reason for questioning	
				Insufficient evidence to support decision	Decision was inconsistent with available evidence
Disability claims, allowed	49	30	61	25	8
Death claims allowed	<u>41</u>	<u>14</u>	34	<u>14</u>	<u>-</u>
Total claims allowed	<u>90</u>	<u>44</u>	49	<u>39</u>	<u>8</u>
Disability claims denied	75	4	5	3	1
Death claims denied	<u>32</u>	<u>-</u>	-	<u>-</u>	<u>-</u>
Total claims denied	<u>107</u>	<u>4</u>	4	<u>3</u>	<u>1</u>
Total	<u>197</u>	<u>48</u>	24	<u>42</u> ^a	<u>9</u> ^a

^aCombined totals in these columns exceed total cases because we questioned three claims on both bases

On the following pages we present some of the questioned cases to illustrate the problems which we found. SSA representatives--who reviewed in detail almost all the cases we questioned--told us that most of the cases were handled properly in accordance with SSA-established "tolerance rules" concerning evidence required to support claims. These "rules," according to SSA officials, were adopted to expedite processing of allowances during the initial large backlog of claims and were, in their opinion, reasonable and necessary in the circumstances. However, the officials said that some of the "tolerance rules" had been subsequently amended to require better evidence and that the handling of some early claims might have been different under present operating instructions.

Certain problems could have been avoided if the claims adjudicators had (1) exercised greater care in examining, evaluating, and acting on information available to them and (2) followed SSA instructions to obtain, and document in the claim files, certain types of evidence to clearly establish whether or not the claimants were eligible for benefits. We

believe that these problems were present, particularly early in the program, because until October 1971 SSA had no systematic review of the propriety of the adjudicators' decisions which was designed to (1) insure that the decisions were equitable and in accordance with applicable law and HEW regulations and (2) determine types of common adjudication errors and methods of preventing them. SSA officials believed that errors in examining and evaluating claims had been substantially reduced through additional training and experience of claims adjudicators.

INSUFFICIENT EVIDENCE TO SUPPORT AN AWARD
OR DENIAL OF BLACK LUNG BENEFITS

We questioned decisions made in 42 of the 197 cases examined because evidence in the claim files was insufficient to show whether (1) the miners had CWP, (2) the miners, if they had CWP, were totally disabled, or (3) the miners met the underground coal mine employment requirements specified in the law. Of the 42 decisions, 37 were questionable on the basis of one of these three factors and five were questionable on the basis of two factors.

Our review of the sample cases disclosed that benefits had been awarded for 45 claims for which the claim files contained no documentation that the claimants had filed for State workmen's compensation or that SSA had determined that such filing would have been clearly futile, the law requires claimants to file for State workmen's compensation unless such filing would be clearly futile. However, we did not question any of SSA's decisions on these claims because we were able to verify that information available to the claims adjudicators showed that such filing would have been futile in each of the 45 cases.

A discussion of cases under each of the factors cited above follows. Although we questioned SSA's decisions to award or deny benefits in 42 cases, the decisions made in some of the cases may have been correct. In other words, if SSA had obtained the best available evidence in these cases, the final decisions may have been the same as those made on the basis of insufficient evidence.

Insufficient evidence that miners had CWP

We believe the evidence for six claims was insufficient to support SSA's decisions that the miners did (three cases) or did not (three cases) have CWP. Following are three examples of SSA's decisions which we believe were based on insufficient evidence.

Case A

The claims adjudicator denied benefits to the miner on the basis of an X-ray report which did not indicate that the miner had CWP.

Our examination of the case file showed that the X-ray report did not address itself to the question of whether the miner had CWP. A classification for CWP, which is required by HEW regulations, had not been made, and it is possible that the X-ray was taken and read for a condition other than CWP. The X-ray report stated that there were "fibrotic changes in both lower lung fields"--a condition considered by SSA to be CWP unless there is evidence to the contrary, there was none.

We believe that the evidence was insufficient to support a denial of benefits and that SSA should have had the X-ray reread and classified for CWP. We discussed this case with SSA officials who agreed that a rereading and classification would have been justified.

Case B

SSA denied benefits to the miner on the basis of an X-ray report which indicated that he did not have CWP. The physician who prepared the report, however, pointed out that the X-ray was of poor quality.

We believe that the quality of X-rays must be good enough to provide a sound basis for determining the presence, absence, and classification of CWP. Although a poor-quality X-ray may show the existence of CWP and thus would not require a retake, the absence of evidence of CWP on a poor-quality X-ray should automatically require a retake before a decision of denial is made. SSA officials agreed that a new X-ray should have been taken in this case.

Case C

The adjudicator awarded benefits to the miner. His decision was based on an X-ray report prepared in September 1960 which stated that the miner had "silicosis (pneumoconiosis)". Our examination of the case file showed that other X-ray reports prepared in April 1959, October 1960, and November 1960 indicated "nothing abnormal," "very slight emphysema," and "lungs clear," respectively.

We believe that the miner should have been given a new X-ray and that the new X-ray should have been read and classified for CWP. SSA officials informed us that, early in the program when this claim was adjudicated, claims adjudicators had been permitted to accept as evidence of CWP any X-ray report which indicated that the disease existed. The officials noted, however, that the adjudicators had been subsequently instructed to require that a new X-ray be taken and classified for CWP if conflicting evidence was more than 1 year old.

Insufficient evidence that miners were totally disabled

For 17 claims examined, we believe the evidence was insufficient to support SSA's decisions on the miners' disabilities. Benefits were awarded in the 17 cases on the basis of SSA's decisions that the miners were totally disabled.

Following is a summary of the reasons why we questioned these decisions. For some of the claims, we had more than one reason for questioning the awards.

<u>Requirement</u>	<u>Reason for questioning SSA's decision</u>	<u>Number of decisions questioned</u>
A determination of a miner's ventilatory function is to be based on the highest of several results for at least two types of tests. SSA instructions direct adjudicators to determine disability on the basis of the highest of <u>at least three results</u> for each type of test taken (usually FEV ₁ and MVV)	Claim file did not contain evidence that the required number of tests were administered or that the miner's disability was based on the highest test result	9
An irrefutable presumption of disability will be made when the miner has complicated CWP (See p 11)	Conflicting evidence was in the claim file concerning the presence or absence of complicated CWP	2
Full cooperation and maximum breathing effort of a miner are essential during ventilatory function tests for the test results to be accurate. Testing facilities are requested to report the miner's cooperation in taking such tests	Claim file did not contain a report by the testing facility that the miner cooperated or did not cooperate in taking the ventilatory function tests	10
Results of ventilatory function tests are to be compared to established norms to determine eligibility	Comparison of ventilatory function test results with established norms was improper because the test results <ul style="list-style-type: none"> --Were miscalculated by the testing facility 1 --May have been miscalculated by the testing facility, but the claim file contained insufficient evidence to confirm a miscalculation 2 --Were not adjusted, as required, for such factors as room temperature, barometric pressure, and body temperature^a 3 	

^aSSA officials informed us that claims adjudicators are permitted to assume that test results have been adjusted for factors which might influence the results. SSA medical officers advised us, however, that probably most test results had not been adjusted

We discussed the above cases with SSA program officials, including medical officers as appropriate, who believed that the decisions to award benefits in most of the cases were consistent with SSA's "tolerance rules" for evidence, which were in effect at the time the decisions to award benefits were made. Concerning the cases we questioned because the claim files did not contain evidence that the required number of ventilatory tests had been administered or that determinations of disabilities had been based on the highest test results, the officials told us that SSA requests such evidence but makes no further attempt to obtain it if it is not submitted. The officials said (1) they believe that testing facilities generally administer the required number of tests but frequently report only the highest test result and (2) claims adjudicators are therefore permitted to assume that reported findings are the highest of at least three test results.

The officials said also that (1) testing facilities frequently do not report--as requested by SSA--the extent of miners' cooperation in taking the tests when the facilities believe that the miners' cooperation was satisfactory and (2) claims adjudicators are therefore permitted to assume that the miners did cooperate in taking the tests unless there is reason to question their cooperation (e.g., the physicians report that the claimants did not cooperate).

An SSA medical officer advised us that the ventilatory function test results used by SSA were also sometimes inaccurate because the tests were administered improperly. The medical officer told us that no statistics had been compiled on the number of miners who may have been incorrectly awarded or denied benefits for this reason.

SSA officials informed us that no procedures exist to insure--prior to the adjudication of initial claims--that a sufficient number of ventilatory function tests are properly administered to miners and that the test results are properly calculated, adjusted, and reported to SSA.

Insufficient evidence that miners met
employment requirements of the law

For 24 claims examined, we believe that the evidence was insufficient to support SSA's decisions regarding the miners' past employment. Benefits were awarded to the 24 claimants on the basis of SSA's decisions that the miners had been employed in underground coal mines for at least 10 years and therefore were eligible for benefits under one of the rebuttable presumptions of the law which apply only if the miners had such mining experience. (See pp. 11 and 12.)

We believe that these decisions were questionable because the evidence in the claim files was insufficient to show that the miners had been employed as miners for 10 years (nine cases) or, if employed as miners for 10 years, that such employment had been in underground coal mines (15 cases). For example, one claim was supported by evidence that the claimant had worked as a miner for the required 10 years but the claim file contained no evidence that such employment had been in an underground coal mine. Another claim file contained no evidence to support a claimant's statement that he had worked as a coal miner. For 17 of the 24 cases we questioned, SSA officials said that, under SSA's "tolerance rules," the evidence was sufficient to support the decisions.

We noted that SSA was aware of the need to strengthen its procedures for obtaining and documenting evidence of underground coal mine employment. We have been informed by SSA officials that--now that the "crush" of the initial backlog of claims is over--measures have been taken to expand and clarify the instructions for establishing the employment of persons as underground coal miners and the duration of such employment. The same instructions, according to the officials, will generally apply to surface miners under the Black Lung Benefits Act of 1972.

The SSA officials informed us that the new measures serve to implement a policy that conclusive evidence of qualifying mining employment must be obtained and documented in the claim files to establish claimants' eligibility. Such evidence as employer and union records, social security earnings records, W-2 forms, pay stubs, and certificates issued by unions or underground coal mine employers will be

considered as "primary evidence" of past employment. If primary evidence is not available or does not cover at least 10 years (1) the claim files will be documented as to why primary evidence is unavailable and (2) "secondary evidence," such as affidavits by fellow workers and occupation entries on census records and marriage licenses, will be used to evidence mining employment.

These procedures, if effectively implemented, should provide reasonable solutions to the problems we found in the development of evidence of underground coal mine employment.

Insufficient evidence that claimants
filed for State workmen's compensation

Under the act, black lung benefit payments made by SSA are reduced by amounts equal to any payments received by miners or their widows under the workmen's compensation, unemployment compensation, or disability insurance laws of the miners' States, if these benefits were based on the miners' disabilities. The act provides that no claims for black lung benefits be considered unless the claimants have also filed claims under the applicable State workmen's compensation law, except when such filing would clearly be futile. SSA has considered this requirement to be fulfilled if the claimants file for workmen's compensation before they receive their first black lung benefits checks.

SSA's Black Lung Benefits Manual requires that all claim files contain the claimants' written statements that they have filed for workmen's compensation, except if such filing is determined to be futile, in which case the justifications for the determinations must be fully documented.

Our review of sample black lung cases disclosed that benefits had been awarded to 45 claimants for whom the claim files contained no documentation that the claimants had filed for State workmen's compensation or that SSA had determined that such filing would have been clearly futile. However, we did not question any of SSA's decisions on these claims for this reason because we were able to verify that information available to the claims adjudicators showed that such filing would have been futile in each of the 45 cases.

> 4-11-82

We discussed this matter with SSA officials who believed that the claims adjudicators probably had determined that it would have been futile for the 45 claimants to have filed but that the adjudicators simply had not documented the bases for their determinations, possibly because of the pressures of the heavy work load of black lung claims.

ELIGIBILITY DECISIONS WERE INCONSISTENT
WITH THE EVIDENCE IN THE CLAIM FILES

SSA's decisions to award or deny benefits for nine (eight awards and one denial) of the 197 claims we reviewed were questionable because the claims adjudicators did not follow established procedures or made errors in interpreting the evidence.

The following cases illustrate questionable situations which could have been avoided if the claims adjudicators had exercised greater care in examining, evaluating, and acting on information available to them.

Case A

SSA instructions state that, when evidence concerning a miner's ventilatory function is more than 1 year old and indicates that the miner is not totally disabled, the claims adjudicator should arrange for the miner to take new tests to determine disability.

The claims adjudicator awarded benefits to the miner without determining whether he was totally disabled due to CWP. The ventilatory function evidence in the claim file indicated that the miner was not totally disabled due to CWP; however, the evidence was more than 1 year old. New tests should have been arranged.

Case B

SSA instructions require claims adjudicators to determine a miner's ventilatory function on the basis of the test showing the greatest capacity if more than one test was performed within 1 year.

The miner was awarded benefits because the claims adjudicator calculated his ventilatory function to be totally disabling on the basis of a test taken in April 1962. Another test taken in that month, however, indicated that the miner was not totally disabled.

If the adjudicator had followed instructions, the miner would not have been awarded benefits but would have been

required to take new tests to determine if he was totally disabled.

Case C

The miner was awarded benefits on the basis that he had simple CWP and that ventilatory function tests indicated that he was totally disabled.

SSA paid for the miner to take ventilatory function tests on three occasions over a 5-month period. On two occasions the testing facilities reported that the miner did not cooperate and that he held back his breathing. On the other occasion, according to SSA officials, the reported test results showed that the miner did not put forth maximum effort. The officials informed us that the adjudicator should have denied the claim.

Case D

The miner was denied benefits because the claims adjudicator failed to recognize that an X-ray report in the file clearly showed that the miner had CWP. The miner filed for reconsideration of his denied claim and was properly awarded benefits on the basis of the same evidence of CWP which had been available to the initial claims adjudicator.

Case E

The claims adjudicator awarded benefits to a widow of a miner on the basis that an X-ray report showed that the miner had pneumoconiosis. The report actually showed that the miner had "pneumonitis." According to SSA officials, the award should not have been made because (1) pneumonitis is not the same as or related to pneumoconiosis and (2) there was no evidence that the miner had CWP.

For each of the four other cases in which we questioned the adjudicator's decisions to award benefits, SSA program officials agreed that the decision was questionable in the light of evidence in the claim file.

CONCLUSIONS AND RECOMMENDATIONS

To enable SSA to make reliable determinations of miners' disabilities (1) a sufficient number of ventilatory function tests must be properly administered to miners and (2) the test results must be properly calculated, adjusted (for barometric pressure, etc.), and reported to SSA. We therefore believe that to equitably administer the black lung benefits program, SSA should establish procedures to insure that these requirements are met.

SSA representatives--who reviewed in detail almost all the cases we questioned--told us that most of the cases were handled properly in accordance with SSA "tolerance rules" concerning evidence required to support awarded claims. These "rules," according to SSA officials, were adopted to expedite processing of allowances during the initial large backlog of claims. However, the officials said that some of the "tolerance rules" had been subsequently amended to require better evidence and that the handling of some early claims might have been different under present operating instructions.

Certain problems could have been avoided if the claims adjudicators had (1) exercised greater care in examining, evaluating, and acting on information available to them and (2) followed SSA instructions to obtain, and document in the claim files, certain types of evidence to clearly establish whether or not the claimants were eligible for benefits. We believe that these problems were present, particularly early in the program, because until October 1971 SSA had no systematic review of the propriety of the adjudicators' decisions which was designed to (1) insure that the decisions were equitable and in accordance with applicable law and HEW regulations and (2) determine types of common adjudication errors and methods of preventing them. SSA officials believed that errors in examining and evaluating claims had been substantially reduced through additional training and experience of claims adjudicators.

In carrying out the black lung benefit provisions of the act, SSA's responsibilities are most crucial in the adjudication process because each award can involve tens of thousands of dollars during the remaining eligibility of the

beneficiary and his or her dependents. Furthermore, no claimant should be denied any benefits to which he is properly entitled. Accordingly, it seems to us that SSA must exercise extreme care in reviewing every case submitted and therefore should--to the fullest extent possible--base its decisions on conclusive evidence.

SSA officials believed that we should not have questioned cases which were handled in accordance with SSA's "tolerance rules." As previously noted, we questioned these cases because the evidence in the claim files was not sufficient to support the decisions that the claimants were or were not eligible for benefits. We recognize that, in the administration of a program of the size and complexity of the black lung benefits program, problems and errors in adjudication are bound to occur. However, because SSA's decisions to award or deny benefits were questionable for one or more reasons in 48, or 24 percent, of the 197 claims we reviewed, we believe that SSA needs to initiate action to improve the accuracy and overall quality of the claims adjudication process.

We recommend that the Secretary of HEW arrange for SSA to:

- Strengthen the claims adjudicators' knowledge of eligibility requirements, case documentation requirements, and methods for determining whether (1) CWP is present or absent and (2) miners are totally disabled due to CWP.
- Insure that a sufficient number of lung ventilatory function tests are properly administered to miners and that the test results are properly calculated, adjusted, and reported to SSA.

CHAPTER 6

MAJOR PROVISIONS OF THE

BLACK LUNG BENEFITS ACT OF 1972

On May 19, 1972, the Black Lung Benefits Act of 1972 (30 U.S.C. 901) was enacted. The 1972 act extends for 18 additional months the Federal Government's responsibility for the black lung benefit provisions of the Federal Coal Mine Health and Safety Act of 1969 and provides various liberalizations in the black lung benefits program.

Under the new legislation, SSA is responsible for (1) miners' claims filed before July 1973, (2) widows' claims filed before 1974, and (3) widows' claims filed after 1973 if the deceased miners either died due to CWP before January 1974 or were entitled to benefits from SSA at the time of their deaths and the widows file within 6 months after the miners' deaths. SSA is responsible also for the following claims if deceased miners either died due to CWP before January 1974 or were entitled to benefits from SSA at the time of their deaths.

--Claims of orphans¹ of miners which are filed within 6 months after the deaths of the miners or their widows or by December 31, 1973, whichever is later.

--Claims of totally dependent surviving parents, brothers, and sisters² of miners which are filed within 6 months after the deaths of the miners or by December 31, 1973, whichever is later.

¹An HEW official advised us that benefits for orphans would be paid in the same manner as benefits under the regular social security benefits program--that is, benefits would be paid to relatives or other persons (representative payees) when (1) the beneficiaries are incapable of receiving payments themselves and (2) it would be in the beneficiaries' best interest. Applications for orphans' benefits are retroactive to December 30, 1969, if claims are filed within 6 months of the month of enactment of the new legislation. Applications filed more than 6 months after the month of enactment are retroactive up to 12 months before the dates of applications.

²Benefits to dependent surviving parents, brothers, and sisters of miners may not be paid for months prior to enactment of the new legislation.

Benefits were extended to these persons under the Black Lung Benefits Act of 1972. Under the 1972 act, however, surviving widows or children preclude parents from succeeding to benefits and surviving widows, children, or parents preclude brothers and sisters from succeeding to benefits.

The Department of Labor will be responsible for all other claims. The new legislation also extends--from 1976 to 1981--the end of the period during which the Department of Labor or coal mine operators are required to pay benefits in States where State workmen's compensation does not provide appropriate coverage. (See pp. 13 and 14.)

The new legislation also:

- Extends coverage to surface coal miners (e.g. strip and auger miners) and their dependents and to eligible survivors, as described above.¹ The 1969 act limited the payment of benefits to underground coal miners and their widows.
- Provides a rebuttable presumption that miners are totally disabled due to CWP, that their deaths were due to CWP, or that they were totally disabled by CWP at the time of their deaths if they were employed for at least 15 years in underground coal mines or in comparable dusty conditions in surface mines and if other than X-ray evidence demonstrates the existence of totally disabling respiratory or pulmonary impairments.¹ This provision may be rebutted only by establishing that the miners do not, or did not, have pneumoconiosis, or that their respiratory or pulmonary impairments did not arise out of their coal mine employment.
- Provides that death benefit claims be allowed irrespective of the causes of the deaths if the miners were totally disabled due to pneumoconiosis at the time of their deaths.¹ The 1969 law allowed payment of death benefits only when the deaths were due to CWP or when the miners were entitled to benefits at the time of their deaths.

¹Effective December 30, 1969.

- Provides that miners be considered totally disabled when pneumoconiosis prevents them from engaging in gainful employment requiring skills and abilities comparable to those of any coal mine employment in which they previously engaged with some regularity over substantial periods of time.¹ Under the 1969 act SSA determined total disability in the manner discussed on pages 26 to 28.

- Provides that no claims for benefits be denied solely on the basis of X-ray evidence.¹ Under the 1969 act SSA frequently denied claims solely on the basis of X-ray evidence.

- Specifies that black lung benefits paid by SSA not be considered as benefits under a workmen's compensation law or plan for purposes of section 224 of the Social Security Act.¹ Section 224 limits the amount of combined income from social security disability benefits and workmen's compensation benefits. Under the 1969 act SSA regarded black lung benefits as benefits under a workmen's compensation law or plan and therefore reduced social security disability benefits for about 5 percent of those who had been awarded black lung benefits.

- Requires HEW to (1) generally disseminate information on the new legislation to persons who filed claims prior to enactment of the 1972 act and (2) advise all persons whose claims were denied under the 1969 act or whose claims were pending at the time of enactment of the 1972 act that their claims will be reviewed under the provisions of the new legislation.

- Authorizes (1) \$10 million a year for 3 years to HEW for establishing and operating clinical facilities for analysis, examination, and treatment of miners' lung impairments and (2) additional funds, as appropriate, to HEW for research grants to devise simple and effective tests for measuring, detecting, and treating miners' lung impairments.

¹Effective December 30, 1969.

SSA estimates that black lung benefit payments under the 1969 act, as amended, will total about \$10.6 billion through 1981. Of this amount, approximately \$2.5 billion is expected to be the responsibility of State workmen's compensation programs or coal mine operators; however, the Federal Government may have to pay some or a substantial portion of this amount. (See pp. 13 and 14.)

CHAPTER 7

AGENCY COMMENTS

After reviewing a draft of this report, HEW advised us that, in line with our recommendations, SSA had taken or would take the corrective action needed.

HEW believed, however, that the overall processing of claims had been effective considering the short preparation time, quick buildup of claims, and complex evidentiary and evaluation problems inherent in the program. (See app. I)

CHAPTER 8

SCOPE OF REVIEW

We examined the policies, practices, and procedures established by HEW and SSA to administer the black lung benefit provisions of the Federal Coal Mine Health and Safety Act of 1969. We made our review, for the most part, at SSA headquarters in Baltimore, Md

Our review included.

- An examination of the basic legislation and related legislative history of the act and of the Black Lung Benefits Act of 1972.
- A review of medical literature and periodicals on CWP and its causes and effects
- Interviews with representatives of SSA, the Pennsylvania Department of Environmental Resources, the United Mine Workers of America, and the Public Health Service.
- An examination of pertinent HEW regulations and SSA instructions and guidelines implementing the program.
- A random selection of 197 claims of miners and widows of miners which had been adjudicated by April 3, 1971 (selection date cutoff), and an examination of the bases used by SSA for awarding or denying benefits.
- An examination of SSA's internal controls over the claims adjudication process to insure that claims had been adjudicated in accordance with the law and applicable regulations.



DEPARTMENT OF HEALTH EDUCATION AND WELFARE
WASHINGTON D C 20201

OFFICE OF THE SECRETARY

AUG 23 1972

Mr. John D. Heller
Associate Director
Manpower and Welfare Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Heller

This will confirm for your records that Department representatives have been afforded an opportunity to review the GAO draft report titled "Achievements, Administrative Problems, and Costs In Paying Black Lung Benefits to Coal Miners and Their Widows."

The Department is aware that there has been some controversy over the disability aspects of the black lung benefits program. It stems not only from the criteria for determining whether a miner is totally disabled due to pneumoconiosis or whether he died from this disease, but also from some public misunderstanding of the requirements of the law. Despite the Department's continuing efforts to publicize and clarify the intent of the law and regulations, many claimants fail to recognize that the program is not designed to provide benefits solely on the basis of long-time work in the mines.

As explained in the report, we believe that the processing of claims has been carried out in an effective manner particularly in view of the virtual absence of any get-ready time, the immediate heavy influx of claims, and the complex evidentiary and evaluation problems inherent in the program. However, in line with GAO's recommendations, SSA has taken or will take the corrective action needed.

Also, as indicated in the report, enactment of the Black Lung Benefits Act of 1972 has meant significant changes in the program and will, of course, require equally significant changes in program administration.

Sincerely yours,

Charles Miller
~~James B. Gardwell~~
Assistant Secretary, Comptroller

APPENDIX II

PRINCIPAL OFFICIALS OF THE
 DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 RESPONSIBLE FOR ADMINISTRATION OF THE ACTIVITIES
 DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
SECRETARY OF HEALTH, EDUCATION, AND WELFARE:		
Elliot L. Richardson	June 1970	Present
Robert H. Finch	Jan. 1969	June 1970
COMMISSIONER OF SOCIAL SECURITY:		
Robert M. Ball	Apr. 1962	Present
DIRECTOR, BUREAU OF DISABILITY INSURANCE:		
Bernard Popick	Sept. 1965	Present

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