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## Meetings with SSA Leadership Yield Updates and Practice Tips

NOSSCR continues to communicate with SSA staff in a variety of components in hopes of improving agency policies and procedures—both related to the COVID-19 pandemic and on issues that preceded it. As always, [www.ssa.gov/coronavirus/](http://www.ssa.gov/coronavirus/) is the best starting point for pandemic-related information. However, if the website, *Forum* articles, and emailed action alerts can't answer your questions about how SSA is responding to COVID-19, please email [Stacy.Cloyd@nossocr.org](mailto:Stacy.Cloyd@nossocr.org).

In a July 16 virtual meeting with SSA leadership, Commissioner Andrew Saul credited SSA staff with doing “an exceptional job” of customer service during unprecedented and challenging times; though he acknowledged things were not perfect, he said it was “pretty damn good” under the circumstances. He said that SSA spent a lot of time assisting the Treasury Department on Economic Impact Payments (also known as stimulus payments), but they completed those responsibilities at the end of July. The Commissioner noted that SSA is progressing on its previously-planned IT modernizations.

Commissioner Saul said Deputy Commissioner David Black is “pretty far along” on a plan that will allow SSA to do more of the workloads that cannot be done remotely. This plan will be enacted in August or September, with a limited number of SSA staff volunteering to return to their offices to work on certain tasks and do in-person appointments with customers. Commissioner Saul did not describe which workloads are not currently being done (ALJ hearings on non-disability and paper cases, benefit verification letters and third-party requests, overpayments, terminations of benefits after Continuing Disability Reviews, etc.) because the plan was not finalized, but he committed to publicizing all

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## Policy Change Permits Use of Fee Agreement Process for Representatives in Different Firms

In May 2020, SSA updated policy in [HALLEX I-1-2-12](#) to allow representatives from different firms to utilize the fee agreement process. Specifically, in section B of HALLEX I-1-2-12, SSA removed the former subsection B.2., which stated that the fee agreement was excepted from the fee agreement process when “The claimant appointed representatives who are not members of a single firm, partnership or legal corporation,” unless the representative from a different firm waived fees.

The new HALLEX I-1-2-12B.1. still requires all representatives to sign a single fee agreement, but now defines “single fee agreement” in Note 1 as “one agreement signed by all parties, including all representatives, whether they work for the same or different entities or for themselves. Therefore, if the claimant appoints a different representative after other representatives have already submitted a fee agreement, the parties must resubmit the existing agreement amended with the additional representative’s signature or a new agreement

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## NOSSCR News

This is certainly an unusual summer for all of us, and we hope that you and your families are doing well. NOSSCR staff in New York have started to return to the office with staggered schedules, so we have up to three people in the office at a time. The D.C. office is not yet open, but Michael and Stacy, and all NOSSCR staff, are most easily reachable by email (which is always [firstname.lastname@nossacr.org](mailto:firstname.lastname@nossacr.org)).

### 2020 CONFERENCE WILL BE VIRTUAL

NOSSCR's 2020 conference will be held virtually over the course of two weeks between Monday, October 26th and Friday, November 6th. We will offer CLE sessions, networking and socializing opportunities, a virtual exhibit hall, and several special surprises. While we will miss seeing you in-person, we look forward to connecting with you

#### Listings/Grids Subscribers:

No updates have been sent since the last issue of the *Forum*. To begin a new subscription, please [click here to purchase online](#) or fill out the form on [page 29](#).

#### Contacting NOSSCR

Have questions? The best way to reach us is by email at [nossacr@nossacr.org](mailto:nossacr@nossacr.org). While staff are working remotely, we will be able to respond most quickly to emails. Phone calls, or requests sent by fax, or mail will be delayed. Please use a descriptive subject line so we can best be of service to you.

#### Mission Statement

The mission of NOSSCR is to advocate for improvements in Social Security disability programs and to ensure that individuals with disabilities applying for Social Security Disability and SSI benefits have access to quality representation and receive fair decisions.

from afar and are excited to welcome more who can participate in this new format.

### BOARD OF DIRECTORS ELECTIONS

Voting for NOSSCR's Board of Directors is going on now in all circuits except the 11<sup>th</sup> Circuit. Earlier this year, the Board amended the bylaws, so that based on current NOSSCR membership, the 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> circuits will now have two board members, as do the 4<sup>th</sup>/D.C., 6<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> Circuits. Please remember to vote!

### SUMMER OF LEARNING

Our "Summer of Learning" members-only webinar series has been a big success! We've presented three practical tips webinars with over 150 members in attendance for each one, as well as showcased how some of our amazing exhibitors can help enhance your practice. We also introduced members to a new benefit offered with the National Board of Trial Advocacy (NBTA) to fast-track Board certification with an exclusive discount. We have some of the recordings available on demand; you can reach out to [Faigy.Gilder@nossacr.org](mailto:Faigy.Gilder@nossacr.org) to get links if you missed the emails with them.

### ZOOM MEETINGS FOR MEMBERS

We have received a lot of positive feedback from NOSSCR members who enjoy meeting with other local representatives online. Thank you to all of our Board members who led these informal gatherings. Several circuits are continuing these meetings, so keep your eyes open for emails with additional circuit gatherings.

In addition, the NextGen Committee has held some virtual cocktail hours, inviting all NOSSCR members under age 40 or with less than 10 years' experience to join them for some casual socializing. Thank you to Michael Liner for leading these important meetings. If you would like to join a NextGen event but haven't been receiving the notices, please contact [Faigy.Gilder@nossacr.org](mailto:Faigy.Gilder@nossacr.org).

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## NOSSCR News

### continued from page 2

If any member would like to schedule a meeting with NOSSCR's upgraded Zoom account for any reason, please email [Faigy.Gilder@nosscr.org](mailto:Faigy.Gilder@nosscr.org). Video conferences are a wonderful way to stay connected during this pandemic.

#### AUTO-RENEW YOUR MEMBERSHIP

NOSSCR has recently implemented an automatic membership renewal program. When you log in to your account you can select this option that allows NOSSCR to renew your membership automatically when your current membership expires. You will receive a notification at least a month before your credit card is charged, and the only thing you'll have to do is make sure your referral service participation is up to date, if applicable. We have already had several people sign up to take advantage of this time saving tool. See [page 21](#) for more information.

#### OUR MEETINGS WITH SSA

NOSSCR staff has organized and participated in several phone meetings with all levels of SSA. At these meetings, we are able to share information about problems members are experiencing as well as learn about policy and procedure information that we can share with NOSSCR members. In July, we were able to meet with Commissioner Saul, the Appeals Council, and OHO leadership. We sincerely appreciate the relationships we have with SSA.

#### VIRTUAL CONGRESSIONAL FUNDRAISERS

Although in person fundraising and meetings have been suspended, Michael Linskey, NOSSCR's Director of Political and Legislative Strategy, has arranged several virtual fundraisers for Congressional candidates. These are one-on-one, meaning NOSSCR is the only participant at the events. Meetings have or will be held with Representatives Val Demings (D-FL-10), Darren Soto (D-FL-9), Danny Davis (D-IL-7), Tom Reed (R-NY-23), John Larson (D-CT-1), and Lloyd Doggett (D-TX-35). NOSSCR staff, a member of the PAC Board, and one or two members from the candidates' constituents have been invited to participate. Thank you to the PAC donors who have made these events possible! We are pleased to be able to share information with Congress about NOSSCR, the Social Security disability programs, the impact of proposed regulations and legislation on the claimants and beneficiaries, and the importance of

representation.

#### WALK TO END ALZHEIMER'S WITH US

The [Alzheimer's Association](#) offers reliable information and support to people affected by Alzheimer's Disease. You can call their toll-free 24/7 helpline anytime for expert advice at 800.272.3900.

NOSSCR has created a [National Team](#) to participate in the Alzheimer's Association Walk to End Alzheimer's. Members and their friends can create local teams that will collectively make up our national team. We currently have two local teams (in Rockland County, NY and Bergen County, NJ that local members and their friends can join) and more teams are welcome! Participants will walk in their local walks under the NOSSCR team umbrella. The dates for local walks, which will now be done individually, can be found [here](#). Together we hope to raise \$100,000 to support research for a cure of this disease that affects so many of our clients and family members.

As always, please let us know if there is anything that we can do for you or if you have suggestions for improving NOSSCR.

#### MARK YOUR CALENDARS

August 27: 2020 [EDPNA Exam](#)

September 15: [Washington Webinar](#)

October 26-November 6: NOSSCR's 2020 Virtual Conference

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### New eFax Number for AC Ombudsman

The fax number for the Appeals Council (AC) ombudsman, Monica Graham, has changed to 833-769-0254. This is a desktop fax number so all faxes will be received electronically. You can also still reach Monica by phone at 703-605-8000 or 877-670-2722.

Of note, the AC ombudsman can assist with cases requiring "special attention," such as ensuring that a critical case is designated as such after supporting documentation has been submitted to the AC; inputting a representative's appointment on a claim that he/she has taken over after the ALJ hearing and decision; or any other issues that have not been resolved through the normal channels. Representatives should not submit requests for review, medical evidence, or legal arguments to this fax number.

## Welcome New Members!

Welcome to all the new members who joined  
NOSSCR in June 2020!

### SUSTAINING MEMBER

Stephen G. Slater, Esq.  
Frederick, MD

### REGULAR MEMBERS

Victor Arruda, Esq.  
Norwell, MA

Edward C. Ahlers, Esq.  
Cincinnati, OH

Antoinette M. Blanton  
Lakeland, FL

Jessica E. Braunstein, Esq.  
Westbury, NY

Barbara L. Bush  
Austin, TX

Wendy L. Cantrell, Esq.  
Long Beach, CA

Anna L. Davis, Esq.  
Towson, MD

Kensuke Fukuchi, Esq.  
Peoria, IL

Lauren S. Horner  
Bel Air, MD

Rachel H. Masters, Esq.  
Lexington, KY

Daniel W. McKenna, Esq.  
Derry, NH

Kari E. Panza, Esq.  
Pittsburgh, PA

Thomas W. Sparks  
Maryville, TN

Megan Timbs, Esq.  
Jackson, MS

Frances A. Tomes, Esq.  
Freehold, NJ

Joel H. Wolff, Esq.  
Las Vegas, NV

## Articles of Note

*The following articles will be of interest to NOSSCR members and could provide support in applicable cases:*

“Absenteeism and Presenteeism Among American Workers” by Nicole Maestas, Kathleen J. Mullen, and Stephanie Rennane in the Journal of Disability Policy Studies finds that many people are able to work during health problems with little consequence to attendance or productivity. However, those who are frequently absent are very likely to have a loss of productivity when they are at work. People who are in the top 5 percent for absences also “have an 80 percent higher probability of” ceasing work altogether over the next three years.

“Social Security Disability Benefits: Characteristics of the Approved and Denied Populations” by David Weaver in the Journal of Disability Policy Studies finds that people who apply for SSDI and are denied “have only somewhat more favorable health circumstances than” those awarded benefits, and experience low earnings, high poverty levels, and poor health compared to the general population in the same age group. Of those who are denied SSDI and get a different benefit, those who get SSI have worse financial circumstances than those who get VA, workers comp, or private disability insurance.

“SSA Representative Payee Program: Information Sharing with States” by the Administrative Conference of the United States (ACUS) is a report that the Strengthening Protections for Social Security Beneficiaries Act of 2018 required ACUS to write. It finds that SSA’s Representative Payee Program and the legal guardianship activities of the state courts could work better together and this would help people with limited capacity. However, there are both technological barriers and state and federal laws that would have to be overcome before more data could be shared.

### CSU Contact List

[Click here](#) for the Office of Hearings Operations Centralized Scheduling Unit (CSU) contact list organized by region.



## NOSSCR MEMBERS TAKE ACTION TO PREVENT CUTS TO SOCIAL SECURITY

The Senate's latest proposed COVID-19 relief package includes the Trust Act. The Trust Act would set up a special commission to decide the fate of the nation's various trust funds, including Social Security.

Having seen the damage that these closed-door commissions can do to Social Security, NOSSCR members took immediate action to ensure that this dangerous provision does not become law. NOSSCR members sent **over 500 messages** to Capitol Hill asking Senators to reject the inclusion of the Trust Act in the final COVID-19 legislation. Thank you to all members who have contacted their Senators; if you have not yet contacted your Senators, you can do so by clicking [here](#).



As we enter the home stretch of the 2020 election, NOSSCR PAC would like to thank all those that have contributed this year. Your contributions allow NOSSCR PAC to focus on its mission of educating, supporting, and electing Congressional representatives who advocate for Social Security disability programs. Your support ensures that all Americans have access to highly-qualified Social Security representatives.

### THANK YOU TO OUR 2020 CONTRIBUTORS\*

Peter Antonowicz	Dustin Draper	Theodore Norwood
Ann Atkinson	John Driskill	George Piemonte
Mary Beth Bates	Paul Eaglin	Don Pilzer
Paul Burkhalter	Clifford Farrell	Alan Polonsky
Thomas Bush	Thomas Feldman	Fabio Roman Garcia
Mark Caldwell	Rick Fleming	Debra Shifrin
David Camp	Mary Kay Fowler	David Spunzo
Brian Clymer	Timothy Harlan	Robertson Wendt
Timothy Cuddigan	Marc Kalagian	
Angela Davis Morris	Gilbert Laden	

*\*As of July 28, 2020*

FOR MORE INFORMATION ON NOSSCR PAC PLEASE VISIT [NOSSCR.ORG/PAC](https://NOSSCR.ORG/PAC).

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## Office of Inspector General Reports on Reinstatement of Reconsideration

SSA's Office of the Inspector General (OIG) released a [report](#) entitled "The Social Security Administration's Reconsideration Level of Appeal" in June 2020.

The report notes that after a 19-year pilot program eliminating the reconsideration level in ten 'prototype' states, SSA began reinstating reconsideration in 2018. SSA estimated this would lead to "\$3.9 billion in program savings over a 10-year period (FYs 2019 to 2028)." Some of these savings come from people being granted benefits at the reconsideration level rather than requiring more expensive ALJ hearings, while other savings come from people who would have been awarded benefits dropping out of the process or dying before they could receive a favorable decision.

The OIG report compares 200 cases where reconsideration decisions were made in 2015 (half were favorable and half were unfavorable) with 275 cases where ALJ allowances were made in 2018.

For claimants who receive a favorable decision at the first level of appeal, those who were awarded at the reconsideration level received their awards an average of 545 days faster than those in prototype states without reconsideration who had to wait for ALJ hearings. This study considered a time period with the highest processing times for ALJ hearings in history. However, claimants in states with reconsideration who did not receive their favorable decision until after the ALJ hearing had to wait an average of 79 days longer to get an ALJ decision in states with reconsideration than without it.

Of the cases in the sample that received awards at the reconsideration level, 63 percent provided additional medical evidence, 9 percent moved into higher age categories on the grids, 8 percent were now found to meet the durational requirement, and the remaining 13 percent had a difference of opinion between the first and second claims examiners. Interestingly, a higher percentage of those denied at the reconsideration level (78 percent) submitted additional evidence, but it was not sufficient to change the examiner's mind.

Awardees at reconsideration tended to be slightly older (average age: 48) than those denied at

reconsideration (average age: 43). Children were 8 percent of those denied and 3 percent of those awarded. Awards took 44 days longer on average from filing to reconsideration decision than denials did. Back pain was the most common complaint in both groups, and representation rates in the sample were almost identical: 63 percent for those denied and 64 percent for those awarded.

Only 12 percent of reconsideration decisions in 2015 were awards. Of the claimants in the sample who received a denial at the reconsideration level, 26 percent did not appeal. But when the denied claimants in the sample did appeal and/or file new claims, 55 percent received an award of benefits and 9 percent still had claims pending. The OIG study did not attempt to determine how many of the people denied at the reconsideration level would have taken further action if they lived in a prototype state, and how many of them would have been awarded benefits.

NOSSCR's position is that SSA should eliminate reconsideration nationwide and use the program savings to enhance initial-level decisionmaking

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### In Memoriam: U.S. Representative John Lewis

NOSSCR mourns the passing of Congressman John Lewis, who represented Georgia's Fifth congressional district since 1986. Called "the conscience of the Congress" by colleague Nancy Pelosi, Representative Lewis was best known for his decades long fight for equality and voting rights. Representative Lewis was also an advocate for people with disabilities, recognizing that Social Security keeps millions of seniors and disabled Americans out of poverty and provides a safety net for millions of families. As noted on his webpage, Representative Lewis, who was chair of the Oversight Subcommittee of the House Ways and Means Committee, "fought many times against those who would make damaging or arbitrary cuts to Social Security or gamble that security in the stock market." In one speech, Congressman Lewis implored others to "use what you have to help make our country and make our world a better place, where no one will be left out or left behind." NOSSCR works to continue this legacy.

## Seventh Circuit Issues Narrow Victory in Conn Case

On June 26, 2020, the Seventh Circuit Court of Appeals issued a decision in *Jaxon v. Saul*, Case Nos. 19-3011 & 19-3125, affirming the district court's decision that the summary exclusion of medical reports by Conn's doctor required remand, but "under ordinary norms of administrative law rather than a constitutional command."

Unlike the district court and Sixth Circuit in *Hicks v. Commissioner*, 909 F.3d 786 (6<sup>th</sup> Cir. 2018), which held that SSA's redetermination process violated the Due Process Clause of the Fifth Amendment, the Seventh Circuit explained that the district court should not have started with a constitutional issue, as "[c]onstitutional adjudication is supposed to be a last resort, after all other grounds have been explored." As explained by the Seventh Circuit, 42 U.S.C. §§ 405(u) and 1383(e)(7) "require the agency to redetermine every case that it finds may have been touched by fraud. But they do not say that this step also requires the exclusion of evidence." Only SSA's HALLEX Manual and SSR 16-1p require the agency to disregard any evidence from Conn's doctors. However, "neither document carries legal force. They tell people how the agency plans to carry out its duties, but they do not affect the legal rights of private parties such as Jaxon. That's why they did not need to be adopted through rulemaking."

"The agency's decisional process comes within 42 U.S.C. §405(b)(1), which requires a 'reasonable notice and opportunity for a hearing,' and the word 'hearing' means a procedure at which both sides can give their views on potential dispositive matters." Therefore, "[t]o decide whether 'there is reason to believe that fraud or similar fault was involved in the providing of [Conn's doctor's] evidence' an ALJ needs to hear from both sides." Although "Jaxon may have a hard time persuading an ALJ that there is not even 'reason to believe' that [Conn's doctor's] report is fraudulent... he is entitled to try..."

Although the Seventh Circuit's holding is narrower than the Sixth Circuit's decision finding SSA's redetermination process to be unconstitutional, it still entitles any former Conn clients within the circuit who had evidence from one of Conn's doctors summarily excluded from consideration to a remand for further administrative proceedings.

## Help is Available When SSA Fails to Withhold Fees

NOSSCR's advocacy efforts have paid off and we now have a contact who can help with situations where SSA

- Authorized a representative fee;
- Either failed to withhold past-due benefits or improperly released past-due benefits to the beneficiary;
- Has been notified that the representative has been unable to recover the authorized fee from the beneficiary; and
- Has not paid the representative's fee.

SSA's policy on this situation is described in POMS GN 03920.055 Failure to Withhold Past-Due Benefits for Direct Payment to a Representative. SSA's practice during the pandemic is to not assess any new overpayments, and many field offices and Payment Centers interpreted this to mean that, since the agency cannot recover the authorized fee from the beneficiary, SSA would not pay it to the representative.

However, SSA's Office of Legislation and Congressional Affairs clarified that SSA should not be holding payment to representatives in cases where the agency has already erred by failing to withhold representative fees from a beneficiary's back benefits, and the representative has been unable to collect the fee from the claimant. In these situations, SSA should be paying the representative in full, even though overpayment recovery from claimants is on hold due to the pandemic. Payment of the representative is not contingent on initiation of overpayment recovery.

If you are a NOSSCR member with a fee that was improperly released to your client and that you have not been able to recover, and you have notified SSA of this in accordance with the POMS and not been paid, please [complete this form](#). Stacy Cloyd will call you to obtain additional information on each case and share it with SSA.

SSA is also considering sending a reminder to payment center and other staff about how to properly handle cases where the agency has failed to withhold fees properly, and is thinking about ways to improve its fee withholding process so that these situations happen less frequently.

## Top 10 Remand Reasons from Court or Appeals Council by Fiscal Year

This report shows the top 10 reasons for remand by the federal court when remanding to the agency and by the Appeals Council when remanding to the AU after a request for review or own motion review. The report also contains the percentages of the top 10 reasons as compared to all cited reasons during the same years. We have reprinted the reports from 2017, 2018 and 2019. Additional years may be found at [www.ssa.gov/appeals/DataSets/AC08 Top 10 CR.html](http://www.ssa.gov/appeals/DataSets/AC08 Top 10 CR.html).

Percent of All Cited Reasons	FY 2019 Remand Reason
15.9	Treating Source - Opinion Rejected Without Adequate Articulation
10.9	Inadequate Rationale for Symptom Evaluation Finding
6.8	*RFC - Mental Limitations Inadequately Evaluated
6.7	Consultative Examiner - Inadequate Support/Rationale for Weight Given Opinion
3.3	Non-Examining Source - Inadequate Support/Rationale for Weight Given Opinion
3.1	Incomplete / Inaccurate Record - Record Inadequately Developed
3.1	*RFC - Exertional Limitations Inadequately Evaluated
2.9	*RFC - Other
2.8	VE and DOT Not Reconciled (e.g., sit/stand limitations, time off task, etc.)
2.6	Treating Source - Opinion Not identified or Discussed



## Top 10 Remand Reasons from Court or Appeals Council by Fiscal Year

Percent of All Cited Reasons	FY 2018 Remand Reason
15.4	Treating Source - Opinion Rejected Without Adequate Articulation
10.2	Inadequate Rationale for Symptom Evaluation Finding
7.0	Consultative Examiner - Inadequate Support/Rationale for Weight Given Opinion
6.6	*RFC - Mental Limitations Inadequately Evaluated
3.4	Incomplete / Inaccurate Record - Record Inadequately Developed
3.3	Non-Examining Source - Inadequate Support/Rationale for Weight Given Opinion
2.9	VE and DOT Not Reconciled (e.g., sit/stand limitations, time off task, etc.)
2.8	Non-Examining Source-Opinion Accepted Without Adequate Articulation
2.7	*RFC - Exertional Limitations Inadequately Evaluated
2.4	New Evidence Presented to Agency (Reasonable Probability)
<p>* RFC = Residual functional capacity or the most a claimant can do despite his or her limitations or restrictions.</p>	

## Top 10 Remand Reasons from Court or Appeals Council by Fiscal Year

Percent of All Cited Reasons	FY 2017 Remand Reason
16.9	Treating Source - Opinion Rejected Without Adequate Articulation
10.4	Inadequate Rationale for Symptom Evaluation Finding
7.4	Consultative Examiner - Inadequate Support/Rationale for Weight Given Opinion
4.4	*RFC - Mental Limitations Inadequately Evaluated
3.8	Non-Examining Source - Inadequate Support/Rationale for Weight Given Opinion
3.8	Incomplete / Inaccurate Record - Record Inadequately Developed
2.5	New Evidence Presented to Agency (Reasonable Probability)
2.4	Treating Source - Opinion Not identified or Discussed
2.3	Non-Examining Source-Opinion Accepted Without Adequate Articulation
2.3	Mental Disorder Not Adequately Considered
<p>* RFC = Residual functional capacity or the most a claimant can do despite his or her limitations or restrictions.</p>	

**Disclaimer:** These data are being made publicly available for research purposes. Any findings and conclusions derived from analyses of these data are attributable to the researcher(s) and do not reflect those of the Social Security Administration.

Source: [https://www.ssa.gov/appeals/DataSets/AC08\\_Top\\_10\\_CR.html](https://www.ssa.gov/appeals/DataSets/AC08_Top_10_CR.html)

## Caseload Analysis Report: June 2020

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**CASELOAD ANALYSIS REPORT**  
 NATIONAL  
 Month Ending: 06/26/2020 Run Date: 07/09/2020  
 ODAR WORKLOAD AND PERFORMANCE SUMMARY

	FY19	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	FY20
Work Days	248	19	23	18	23	19	20	20	24	20				186
ALJs Duty	1517.25	1454.00	1451.00	1444.00	1423.00	1418.00	1407.00	1399.00	1388.00	1384.00				1418.67
ALJs Avail	1419.97	1361.00	1357.00	1352.05	1329.80	1320.05	1310.55	1304.70	1299.30	1297.15				1325.73
Adjusted Receipts	510901	39002	42773	32627	43070	39578	37443	29831	38544	34054				336922
Receipts Total	511841	39074	42863	32690	43117	39656	37511	29856	38576	34068				337411
VE Opt Out	182836	14320	15864	12011	14196	13897	11821	10831	12379	11165				116484
Receipts Daily	2063.88	2056.53	1863.61	1816.11	1874.65	2087.16	1875.55	1492.80	1607.33	1703.40				1814.04
Receipts Daily Per Available ALJ	1.45	1.51	1.37	1.34	1.41	1.58	1.43	1.14	1.24	1.31				1.37
Transfers In	209082	23545	16737	7896	11944	12159	8781	5472	9548	8044				104126
Transfers Out	209081	23545	16737	7896	11944	12159	8781	5472	9548	8044				104126
Dispos Total	793863	52807	63852	48636	64517	54819	52896	46914	43800	37069				465310
Dispos Daily	3201.06	2779.32	2776.17	2702.00	2805.09	2885.21	2644.80	2345.70	1825.00	1853.45				2501.67
ALJ Dispos Total	791930	52660	63673	48511	64364	54672	52739	46748	43624	36932				463923
ALJ Dispos Daily	3193.27	2771.58	2768.39	2695.06	2798.43	2877.47	2636.95	2337.40	1817.67	1846.60				2494.21
ALJ Dispos Daily Per Avail ALJ	2.25	2.04	2.04	1.99	2.10	2.18	2.01	1.79	1.40	1.42				1.88
Attorney Adj Dispos Total	1933	147	179	125	153	147	157	166	176	137				1387
Attorney Adj Dispos Daily	7.79	7.74	7.78	6.94	6.65	7.74	7.85	8.30	7.33	6.85				7.46
DISP/REC Ratio	155	135	149	149	150	138	141	157	114	109				138
DISP/ADJ Receipts	155	135	149	149	150	139	141	157	114	109				138
Prod Index	97.89	92.27	92.58	94.97	94.47	95.51	88.38	79.09	65.46	67.62				85.15
Total O/T Hours	638733.61	15001.25	22008.25	86.75	58.25	117.00	161.75	13.75	1313.25	14607.25				53367.50
Average Proc Time	506	417	414	410	413	402	391	376	357	349				395
Opening Pending	858383	575421	561616	540537	524528	503081	487840	472387	455304	450048				575421
Closing Pending Total	575421	561616	540537	524528	503081	487840	472387	455304	450048	447033				447033
Closing Pending Per Duty ALJ	394.66	386.26	372.53	363.25	353.54	344.03	335.74	325.45	324.24	323.00				323.00
Pending Over 120 Days	425385	411410	393866	383282	366738	350398	334008	318319	315938	316156				316156
% Pending Over 120 Days	74	73	73	73	73	72	71	70	70	71				71
Pending Over 180 Days	348608	335000	317692	307944	289944	273988	259539	251494	250395	247129				247129
% Pending Over 180 Days	61	60	59	59	58	56	55	55	56	55				55
Pending Over 270 Days	240453	226779	212889	204758	189880	175022	163640	154805	158078	159927				159927
% Pending Over 270 Days	42	40	39	39	38	36	35	34	35	36				36
Pending Over 365 Days	152867	145078	134456	126119	113280	102571	94166	89560	91607	94105				94105
% Pending Over 365 Days	27	26	25	24	23	21	20	20	20	21				21
Pending > 365 Per Duty ALJ	104.85	99.78	92.66	87.34	79.61	72.33	66.93	64.02	66.00	67.99				67.99
Pending 750 and Over Days	5229	5061	5941	6462	6600	6770	6734	7159	8031	8809				8809
% Pending 750 and Over Days	1	1	1	1	1	1	1	2	2	2				2
Pending 800 and Over Days	3749	3644	3281	3199	3897	4029	3966	4328	5135	5895				5895
% Pending 800 and Over Days	1	1	1	1	1	1	1	1	1	1				1
Pending 850 and Over Days	2645	2582	2374	2198	1975	2159	2316	2544	3082	3601				3601
% Pending 850 and Over Days	0	0	0	0	0	0	0	1	1	1				1
Pending 900 and Over Days	1754	1791	1717	1562	1425	1295	1217	1453	1833	2148				2148
% Pending 900 and Over Days	0	0	0	0	0	0	0	0	0	0				0
Pending 1000 and Over Days	643	723	750	753	718	690	647	649	710	738				738
% Pending 1000 and Over Days	0	0	0	0	0	0	0	0	0	0				0

Per-ALJ calculations exclude 1387 dispositions for Attorney Adjudicator Cases; there are 9 cases pending for Attorney Adjudicators.  
 To date, 489 cases have been deleted.

## Meetings with SSA Leadership Yield Updates and Practice Tips continued from page 1

changes before they are implemented.

Legal services advocates who participated in the call encouraged SSA to place a moratorium on dismissals of requests for ALJ hearings throughout the pandemic, either for all claimants or, at a minimum, for those without representation. Deputy Chief ALJ Christopher Dillon noted that SSA's dismissal rate for failure to appear is about one-sixteenth of what it was before the pandemic. He said that ALJs' qualified decisional independence makes "a moratorium all but impossible" but could continue to emphasize to judges the need to "liberally apply good cause" rules. Judge Dillon said he felt confident that OHO is reducing technical problems with telephone hearings and that when they occur, hearings are being rescheduled rather than dismissed. He said he did not feel that any changes to HALLEX were appropriate because circumstances are changing so rapidly. He said OHO leadership was "more than happy" to hear about situations where hearing offices or ALJs are not following policies or procedures, and committed to look into hearing offices that are outliers in terms of dismissal rates (see chart on [pages 17-20](#)).

NOSSCR Director of Policy and Administrative Advocacy Stacy Cloyd and NOSSCR member Beth Bates of West Tennessee Legal Services discussed the challenges claimants and beneficiaries are experiencing when field offices are requiring them to mail in passports, green cards, birth certificates, or other documents that are critical to providing identity and citizenship and are difficult and expensive to replace. They asked SSA to clarify that people can make in-person appointments for document verification, allow people to submit images of documents and verify through data sharing rather than mailing original documents, and communicate these changes to field office staff with publicly-accessible emergency messages or other guidance documents. Dawn Wiggins, the Associate Commissioner of the Office of Income Security Programs, expressed willingness to work with SSA's Communications staff to change the language on the coronavirus website. She noted that SSA law and regulations may permit more flexibility in alternative methods of verification to allow a disability claim to proceed to medical review, but less for issuing Social Security numbers

or effectuating awarded benefits. She acknowledged that the Department of Homeland Security requires immigrants to keep certain documents with them and it is not appropriate for SSA to ask people to mail in such documents, and that SSA has a variety of data-sharing and other methods of verification. Although SSA wants to maintain the option for claimants to mail documents if they choose to, they also want to expand other options, from in-person appointments to video kiosks with black lights to authenticate security features on documents to additional data-sharing with other agencies. If you have a client experiencing difficulty with verification of documents, please email [Stacy.Cloyd@nosscr.org](mailto:Stacy.Cloyd@nosscr.org).

Other topics raised during the call included:

- Better notification to beneficiaries about the right to elect statutory benefit continuation during Continuing Disability Reviews and SSI age-18 redeterminations.
- How SSA can better collect data on its own operations to increase efficiency and accuracy and identify best practices.
- SSA outreach to vulnerable populations during the pandemic, with each Regional Communications Director crafting a plan.

Finally, Jebby Rasputinis, the Executive Director of the Office of Appellate Operations provided an update on the Appeals Council. She noted that the Appeals Council has reduced its backlog during the pandemic. She said that since the pandemic, fax machines have been replaced with electronic models so that staff no longer need to load the machines with paper. Staff are now able to sign documents electronically and send notices to central mailing processors while working remotely. The Appeals Council has also developed ways to create Certified Administrative Records in federal court cases, though a backlog arose while these processes were being developed. The Certified Administrative Record is the claimant's entire file, including a transcript of the ALJ hearing, that is needed when a case is appealed to federal court. This will allow for processing of cases appealed to federal court. While there are a small percentage of paper cases, the Appeals Council is working on ways to scan those documents so they can be worked on by teleworking staff. She said that the Appeals Council wants to be accessible to claimants and representatives.

***continued on page 13***

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## Meetings with SSA Leadership Yield Updates and Practice Tips continued from page 12

Slides from her presentation, including contact information for the Appeals Council, are reprinted on [pages 15-16](#).

In a phone call with NOSSCR staff the following week, Deputy Commissioner Marianna LaCanfora, who oversees the component that includes the Appeals Council, expanded on the information that Jebby Rasputinis provided. Deputy Commissioner LaCanfora noted that representatives with questions about Appeals Council issues can call the Congressional and Public Affairs Branch at (877) 670-2722 or send faxes to Appeals Council ombudsperson Monica Graham at 833-769-0254. She said that although OHO has been able to use encrypted emails to send files to claimants and representatives without ERE access, the Appeals Council could not do so because the audio recordings of hearings make the files too big to email. Therefore, the Appeals Council is beginning to have staff who go into the offices burn and mail CDs. Items mailed to the Appeals Council are slowly being processed; Deputy Commissioner LaCanfora said they are continuing to consider requests for good cause extensions “as flexibly as possible” under current regulations.

In response to questions about the Appeals Council’s processing of Certified Administrative Records for federal district court cases, Jebby Rasputinis said the backlog is higher than usual but they are making progress. Before the pandemic, hearing recordings were downloaded onto encrypted CDs and “routed” to one of three transcription contractors. Five to 10 days later, a paper copy of the transcript was sent back to the Appeals Council. During the pandemic, one transcription service “went offline” and SSA had few people working in their offices. The Appeals Council “initiated a secure process” to do more of this workload with most staff working remotely, using secure emails in some places. But they had systems issues sending and receiving secure emails—the files are too big and it is slower than they would like. So they are going back to burning CDs with the limited number of staff in the office. They have staff “ramping up” but the transcription services are at full capacity. The Appeals Council is working with the contractors to bring more staff onboard and are engaging with an additional contractor as well. Requests for certified administrative records are

generally fulfilled in the order of when the Appeals Council is notified that a federal court action has been filed, although some cases are prioritized when a court orders it, or when there are technological problems with a file and specialized staff are required.

In a July 22 conversation about hearing scheduling practices with Allison Page of the Office of Hearing Operations (OHO), NOSSCR raised the issue of OHO changing the ALJs assigned to telephone hearings, often with limited notice. This practice was opposed by NOSSCR in a [July 1 letter to OHO Deputy Commissioner Gruber and Chief Judge Nagle](#), which said “ALJ assignments must not change based on the manner of hearing the claimant selects. If the assignment changes for another reason (e.g., the retirement of an ALJ) the claimant and representative must be given timely notice.” OHO leadership will look into the situations NOSSCR reported.

On the call, OHO also announced revised COVID enhanced outreach procedures that began July 20. All members were sent an email alert about these changes on August 3. Telephone hearings will be scheduled without prior phone contact with representatives or represented claimants. Only unrepresented claimants will be called prior to scheduling a phone hearing. However, since the agency is still taking the position that phone hearings are not mandatory, claimants can opt out of a phone hearing at any time.

Under the new procedure, OHO will send a letter and a form to representatives for all scheduled hearings and cases that are in ready to schedule (RTS) status. The letter will outline the best way to send evidence electronically, while the form will specifically ask if the claimant agrees to appear by telephone and, if so, request the best phone numbers for the claimant and the representative ([click here to view a sample](#)). Since schedulers will not be reaching out beforehand to schedule hearings, they will only be using the representative’s stated availability. Be sure your availability is current with your CSU. Because this is a new process, for now, the letter and the form will only be sent out for cases that are already scheduled as phone hearings and

***continued on page 21***



## Policy Change Permits Use of Fee Agreement Process for Representatives in Different Firms

**continued from page 1**

signed by all of the appointed representatives.” As such, the fee agreement will be approved so long as all appointed representatives have signed the same fee agreement and the fee agreement meets all the other statutory conditions for approval and is not otherwise excepted from the fee agreement process, even if the appointed representatives are in different firms. This same policy change was made in [POMS GN 03940.003D.1](#) in July 2018. This new procedure can be utilized in situations where a new representative takes over a case on appeal, or when a representative leaves one firm and joins another, so that no representatives have to withdraw or waive fees, which would require the submission of fee petitions.

No changes were made to policy excepting the fee agreement from the fee agreement process when more than one representative signs the fee agreement and a representative(s) is later discharged or withdraws, unless that representative(s) waives fees. However, [HALLEX I-1-2-18](#) was also updated in May 2020 to reflect a policy change that was made in [POMS GN 03920.050](#) in August 2017 about the distribution of fees under an approved fee agreement when multiple representatives are involved, regardless of whether they are in the same or different firms. Specifically, since August 2017, SSA no longer considers any representatives in the fee calculation who has waived the right to charge and collect a fee. Instead, the authorized fee is simply divided amongst the representatives who did not waive their right to a fee. Since the entire fee is now paid to the remaining representative(s) who did not waive fees, there is no waived portion to send to the claimant, as was the case under SSA’s former fee splitting policy. This policy change was discussed in more detail in the August and September 2017 NOSSCR *Forums*.

For example, as a result of these changes, after an ALJ denial, the claimant and hearing representative work with a representative from a different firm to take the case to the Appeals Council. Instead of withdrawing and waiving fees, the hearing representative remains appointed to the case and signs on to the new representative’s fee agreement. The Appeals Council then remands the case back to the ALJ for another hearing, resulting in a favorable decision. In its decision, the ALJ approves the fee

agreement since both appointed representatives signed the same fee agreement, which was the most recently signed fee agreement received before the date of the favorable decision (*see* [HALLEX I-1-2-12C.1](#)). SSA will then divide the authorized fee amongst the representatives and issue direct payments to them, assuming they are eligible and registered.

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## SSA Releases Trove of FOIA Proactive Disclosures

SSA’s [FOIA Reading Room](#) often includes interesting information the agency has proactively disclosed, meaning they made it publicly available rather than simply giving it to the person or organization that requested it.

On July 2, SSA proactively disclosed several dozen documents. Among the items that might be interesting to NOSSCR members were:

- Supplemental ALJ training notebooks from 2017, 2018, and 2019 and guidance for ALJs on evaluating medical source statements
- Information about representative fees in 2018 and 2019 and representative travel costs paid by the agency in Fiscal Years 2012-2018
- Lists of consultative examiners used in Rhode Island and Texas and reports by state agencies about problematic consultative examiners (for example, those with criminal convictions or complaints to state licensing bodies)
- Heavily redacted POMS on communicating with third parties and on benefits for incarcerated people
- Statistics on the outcomes of different types of ALJ hearings by representation rate and outcomes from 2010-2018
- Statistics on representation rates for 2019 Appeals Council determinations, broken down by Title II, SSI, and concurrent claims
- The number of disability examiners in each state agency each fiscal year from 2002-2018.

Future issues of the *Forum* will analyze some of these documents.



# Social Security Administration

OFFICE OF APPELLATE OPERATIONS



## Office of Appellate Operations (OAO) - Background

OAO has three divisions:

- Division of Quality;
- Division of Civil Actions; and
- Division of Program Adjudication.

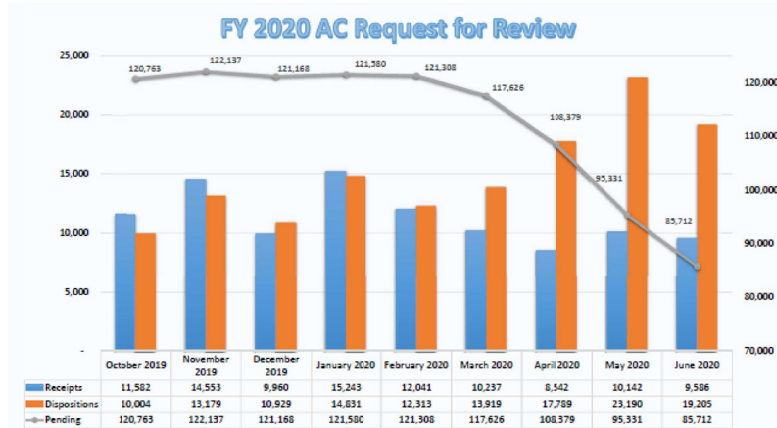
OAO adjudicators (known as The Appeals Council) conduct the final level of administrative review for claims arising under Title II and Title XVI of the Social Security Act.

During the week of March 16th OAO employees began working at home for pandemic safety reasons.



## Request for Review Receipts and Dispositions

Note: We have seen OAO pending levels decrease substantially since February



## Contact Information

- ❖ To inquire about a pending request for review, contact us toll-free at 1-877-670-2722 or via fax at 703-605-8021.
- ❖ To submit additional evidence or legal argument:
  - ❖ With an AC barcode, fax to our FECS numbers:
    - ❖ 877-310-0025 for Falls Church and Crystal City Branches (1-10, RSI, and 38-46);
    - ❖ 877-490-7119 for Baltimore Branches 23-27; or
    - ❖ 877-730-3366 for Baltimore Branches 28-36.
  - ❖ Without an AC barcode, fax to 703-605-7201.
  - ❖ Online via the Electronic Records Express (ERE) website - <https://secure.ssa.gov/acu/iresear/login?URL=/apps9/ERE/home.do>.

## Dismissal Rate Changes by Hearing Office

Hearing Office	October 2019- March 2020	April-June 2020	Change (in percentage points) from pre- pandemic to post- pandemic
AKRON OH	13.0	7.7	-5.3
ALBANY	16.5	8.4	-8.1
ALBUQUERQUE	13.5	9.9	-3.5
ALEXANDRIA	16.6	7.6	-9.0
ANCHORAGE	31.2	15.1	-16.1
ATLANTA DOWNTOWN	20.0	8.8	-11.2
ATLANTA NORTH	17.0	10.7	-6.4
BALTIMORE	20.9	9.6	-11.3
BILLINGS	20.3	9.4	-10.8
BIRMINGHAM	15.6	6.9	-8.7
BOSTON	19.9	9.9	-10.0
BRONX	17.5	8.4	-9.1
BUFFALO	19.5	8.5	-11.1
CHARLESTON SC	16.2	8.0	-8.2
CHARLESTON WV	14.6	7.5	-7.1
CHARLOTTE	15.5	7.6	-7.9
CHARLOTTESVILLE	18.1	9.5	-8.6
CHATTANOOGA	18.7	8.1	-10.6
CHICAGO	17.3	6.2	-11.0
CINCINNATI	14.9	6.0	-8.9
CLEVELAND	15.5	9.2	-6.3
COLORADO SPRINGS	20.5	13.1	-7.4
COLUMBIA MO	15.6	8.0	-7.6
COLUMBIA SC	13.4	5.4	-8.0
COLUMBUS	19.2	11.0	-8.2
COVINGTON GA	20.0	8.9	-11.1
CREVE COEUR	20.1	11.3	-8.7
DALLAS DOWNTOWN	17.3	10.8	-6.5
DALLAS NORTH	19.0	12.7	-6.4
DAYTON	13.9	5.8	-8.1
DENVER	18.6	7.7	-10.9
DETROIT	14.2	6.3	-7.9
DOVER	18.0	8.7	-9.3
ELKINS PARK	21.3	14.6	-6.7
EUGENE	17.6	8.7	-8.9
EVANSTON	13.6	8.9	-4.8
EVANSVILLE	13.0	7.3	-5.7
FARGO	13.2	7.3	-5.9
FAYETTEVILLE NC	14.0	7.0	-7.0
FLINT	12.8	5.8	-7.0
FLORENCE	18.0	10.1	-7.9
FORT MYERS FL	15.0	9.1	-5.9
FORT SMITH	11.7	8.8	-2.9
FORT WAYNE	12.8	6.1	-6.7
FORT WORTH	16.6	13.3	-3.2
FRANKLIN TN	14.0	7.4	-6.7
FRESNO	12.7	6.5	-6.2
FT LAUDERDALE	18.4	7.9	-10.4

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GRAND RAPIDS	13.5	6.5	-7.0
GREENSBORO	12.7	6.2	-6.6
GREENVILLE	13.1	5.0	-8.2
HARRISBURG	19.8	11.2	-8.6
HARTFORD	17.7	6.8	-10.9
HATTIESBURG	13.9	5.3	-8.5
HONOLULU	15.4	12.9	-2.5
HOUSTON NORTH	16.4	7.5	-8.9
HOUSTON-BISSONNET	19.7	10.3	-9.3
HUNTINGTON WV	11.1	8.5	-2.5
INDIANAPOLIS	14.4	8.8	-5.5
JACKSON MS	15.2	6.1	-9.0
JACKSONVILLE	16.1	11.1	-5.0
JERSEY CITY	14.9	8.0	-6.9
JOHNSTOWN	15.9	6.6	-9.3
KANSAS CITY	21.7	12.0	-9.7
KINGSPORT	11.6	6.3	-5.2
KNOXVILLE	14.9	8.8	-6.1
LANSING	13.4	6.6	-6.9
LAS VEGAS	15.3	10.2	-5.0
LAWRENCE MA	16.9	8.5	-8.4
LEXINGTON	14.7	8.4	-6.4
LITTLE ROCK	14.0	9.0	-5.1
LIVONIA MI	14.8	6.9	-7.9
LONG BEACH	18.6	11.8	-6.7
LONG ISLAND	16.3	8.5	-7.8
LOS ANGELES DOWNTOWN	25.3	6.1	-19.2
LOS ANGELES WEST	24.2	8.1	-16.1
LOUISVILLE	15.7	9.2	-6.5
MACON	13.4	7.4	-5.9
MADISON	12.1	5.1	-7.0
MANCHESTER	19.4	8.6	-10.8
MCALESTER	16.0	9.4	-6.6
MEMPHIS	17.9	6.2	-11.8
METAIRIE	18.5	8.3	-10.2
MIAMI	19.5	5.9	-13.6
MIDDLESBORO	9.3	13.4	4.1
MILWAUKEE	16.9	8.2	-8.7
MINNEAPOLIS	16.3	9.0	-7.3
MOBILE	17.0	8.9	-8.1
MONTGOMERY	16.2	6.3	-9.9
MORENO VALLEY	17.0	9.6	-7.4
MORGANTOWN	17.7	9.1	-8.6
MT PLEASANT MI	11.2	6.9	-4.3
NASHVILLE	14.6	7.1	-7.5
NEW HAVEN	18.9	11.5	-7.4
NEW ORLEANS	17.1	7.6	-9.5
NEW YORK	21.5	5.8	-15.7
NEW YORK VARICK	25.8	5.5	-20.3
NEWARK	17.1	8.2	-8.9
NHC ALBUQUERQUE	17.3	5.9	-11.4
NHC BALTIMORE	17.8	7.3	-10.5

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NHC CHICAGO	19.3	7.0	-12.2
NHC FALLS CHURCH	17.8	6.6	-11.1
NHC ST LOUIS	17.2	6.5	-10.7
NORFOLK	15.0	9.1	-5.9
NORWALK	14.7	6.8	-7.8
OAK BROOK	13.0	6.9	-6.2
OAK PARK	14.8	6.7	-8.2
OAKLAND	24.6	16.5	-8.1
OKLAHOMA CITY	15.4	11.0	-4.4
OMAHA	17.9	12.5	-5.3
ORANGE	20.3	11.1	-9.2
ORLAND PARK	14.0	7.2	-6.8
ORLANDO	15.4	8.7	-6.7
PADUCAH	11.9	6.0	-5.9
PASADENA	18.3	8.9	-9.4
PEORIA	13.2	5.9	-7.3
PHILADELPHIA	19.5	8.6	-10.9
PHILADELPHIA EAST	23.4	7.3	-16.0
PHOENIX	16.7	11.1	-5.6
PHOENIX NORTH	17.8	8.7	-9.1
PITTSBURGH	17.6	7.3	-10.3
PONCE	10.9	10.9	0.1
PORTLAND ME	16.7	11.7	-5.0
PORTLAND OR	19.8	10.0	-9.8
PROVIDENCE	19.0	8.2	-10.8
QUEENS	16.8	8.0	-8.8
RALEIGH	14.0	8.3	-5.7
RENO	20.4	13.4	-7.0
RICHMOND	20.4	5.6	-14.8
RIO GRANDE VALLEY TX	14.5	10.7	-3.8
ROANOKE	13.9	7.0	-6.9
ROCHESTER	14.2	8.0	-6.2
SACRAMENTO	17.6	10.0	-7.6
SALT LAKE CITY	18.1	9.3	-8.8
SAN ANTONIO	16.9	9.6	-7.4
SAN BERNARDINO	17.3	9.4	-7.9
SAN DIEGO	19.3	11.6	-7.6
SAN FRANCISCO	19.3	12.6	-6.7
SAN JOSE	17.0	11.6	-5.4
SAN JUAN	8.4	8.0	-0.3
SAN RAFAEL	19.3	8.7	-10.6
SANTA BARBARA	20.4	13.3	-7.2
SAVANNAH	17.0	6.6	-10.4
SEATTLE	19.5	9.4	-10.1
SEVEN FIELDS	16.4	7.9	-8.6
SHREVEPORT	13.2	5.1	-8.1
SOUTH JERSEY	14.8	7.6	-7.2
SPECIAL REVIEW CADRE	6.2	5.6	-0.7
SPOKANE	18.0	14.6	-3.4
SPRINGFIELD MA	13.3	4.5	-8.8
SPRINGFIELD MO	21.6	14.7	-6.9
ST LOUIS	17.8	9.2	-8.7

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ST PETERSBURG FL	17.6	13.3	-4.3
STOCKTON	17.9	9.7	-8.2
SYRACUSE	19.1	7.7	-11.4
TACOMA	20.2	11.7	-8.5
TALLAHASSEE FL	17.6	11.4	-6.3
TAMPA	16.2	8.2	-8.0
TOLEDO OH	17.1	8.0	-9.1
TOPEKA KS	21.7	11.3	-10.4
TUCSON	15.8	8.0	-7.9
TULSA	14.6	8.3	-6.3
TUPELO	11.8	7.5	-4.4
VALPARAISO IN	13.4	7.3	-6.1
WASHINGTON	20.7	8.4	-12.3
WEST DES MOINES	15.3	9.5	-5.8
WHITE PLAINS	15.3	7.1	-8.2
WICHITA	15.9	10.1	-5.8
WILKES BARRE	16.3	6.6	-9.7

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## Introducing NOSSCR's Auto-Renewal Program

**NOSSCR is now offering a new, simpler way to pay your NOSSCR dues: enroll in auto-renew!**

With this convenient system, we will send you an email 30 to 60 days before your renewal date reminding you that your membership will be automatically renewed. If your credit card information has changed, we ask that you update it at that time. We will also ask you to provide information if you wish to change membership levels or cancel your membership. We will then automatically charge your credit card for the membership level you requested, and will send you a letter confirming your membership renewal for the following 12 months.

### NOSSCR AUTO-RENEW FAQ

#### What is the automatic renewal option?

NOSSCR's automatic renewal option is a convenient way for you to renew your membership so you never experience a lapse in your benefits. Your membership will be automatically renewed at the same level annually until you change levels or cancel.

#### When and how will I be charged?

You will be charged the membership dues for the membership level you select at the time your membership is due for renewal. You will have the option to change your membership level prior to the automatic renewal. If you have a balance due at the time of your membership renewal, the balance due and the membership dues will be collected at that time.

#### Will I be notified before my card is charged?

Yes, you will receive an email reminder between 30 and 60 days before your credit card will be charged.

#### Will I be notified after my card is charged?

Yes, you will receive an email receipt to confirm your payment. You will continue to receive the same renewal notifications you currently receive with information about NOSSCR benefits, conferences, awards and PAC contributions.

#### What if my card is no longer valid?

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## Meetings with SSA Leadership Yield Updates and Practice Tips continued from page 13

those in RTS. Once those cases are worked through, the letters and forms will come earlier in the process, which will vary by region since some have more requests for hearing than others. Although there is no required timeframe for representatives to send the form back to OHO, the form should be returned as soon as possible in every case (either to provide an objection to appearing by phone or to provide the necessary contact information to proceed with the phone hearing). The form will be sent to representatives by mail, but there are electronic options (outlined in the form) for returning it to OHO, specifically through ARS or eFax. Notably, the form will only be sent to the representative, but the claimant will be copied on the letter.

On the OHO call, NOSSCR was also told that the agency is working on a plan to scan paper cases, with efforts led by longtime OHO staffer Harriette Perry. They expect that scanning will begin in August. Stacy Cloyd also participated in a call with the Office of the General Counsel on July 27 regarding hearings in non-disability and/or paper cases and will be receiving regular updates on SSA's progress in adjudicating the roughly 8,000 such cases currently pending at OHO.



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Dear Colleague,

I want to share an update regarding ways to contact our hearing offices during the Coronavirus (COVID-19) pandemic. On Tuesday, March 17, 2020, we suspended face-to-face service to the public in our hearings offices nationwide. While our hearing offices are closed to the public for in-person services, our staff is still available to answer your questions via our local hearing office general inquiries lines during regular business hours. Those numbers are available here [www.ssa.gov/appeals/ho\\_locator.html](http://www.ssa.gov/appeals/ho_locator.html).

We are committed to providing several electronic options for doing business with us when possible and reducing paper mail and faxes in our hearing offices. Examples of how you can send information electronically and efficiently to our offices include the following:

- **Fax and e-Fax:** Claimants and Representatives can use a physical fax machine or their own e-fax solution to send documents. Sending documents to us via fax now delivers a secure, electronic copy to the specific hearing office's designated email inbox. To submit documents electronically via fax, use the toll-free fax number with area code "833" assigned to the servicing hearing office. For a specific hearing office's designated fax number, visit [www.ssa.gov/appeals/ho\\_locator.html](http://www.ssa.gov/appeals/ho_locator.html)
- **Appointed Representative Services (ARS)/Electronic Records Express (ERE) -** Registered representatives with a recognized notice of appointment in a case should continue to use the **"Upload New File" function** available when viewing a claimant's electronic folder in ARS to upload documents. This process does not require a barcode. Alternatively, representatives can also submit documents with a barcode using the "Send Individual Response" function in ARS and ERE. Registered representatives should use these methods to submit any documents to us electronically, whenever possible.
- **"Contact OHO" email** – Representatives registered through ARS can use the "Contact OHO Office" function to send a one-way communication to a designated email box for the servicing hearing office. You can see additional information about the "Contact OHO Office" tool at <https://www.ssa.gov/ar>.

We strongly recommend appointed representatives submit fee petitions electronically during this time. Appointed representatives who have ARS access can submit the fee petition via the Contact OHO Office feature in ARS. For representatives who do not have ARS access and those who were previously terminated/ended their services prior to the case being closed out, please fax the fee petition to the hearing office's 833 fax line.

As a reminder, for an appointment of representative to be valid the claim(s) file must contain a completed and properly signed notice of appointment, which can be on form SSA-1696, Claimant's Appointment of Representative, or another written document that meets the

requirements of 20 CFR [404.1707](#) and [416.1507](#). Form SSA-1696 is accessible on the Social Security website at <https://www.ssa.gov/forms/ssa-1696.pdf>.

We have more information available on the [Coronavirus Disease \(COVID-19\) internet page](#). Please visit and subscribe to keep up to date during the COVID-19 crisis.

I encourage you to share this information with your members, colleagues, affiliates, and other interested parties.

Jeffrey Buckner  
Associate Commissioner

Office of Strategic and Digital Communications

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## Available Materials

### **No. 2238, Subsequent Application; Remand vs. Reversal**

In January 2019, the district court ordered the claimant's case to be reversed and remanded for payment of benefits dating back to January 2016. Shortly thereafter, his attorney moved for EAJA fees, which the court granted. But in May 2020, the claimant filed an application for a writ of assistance, noting that he had not received any benefits despite his and his lawyer's repeated contact with the SSA field office, the Office of the USA Attorney, and his Senator.

SSA's response to the claimant's application for a writ of assistance noted that the claimant had been awarded benefits beginning in May 2018 based on a subsequent application. In February 2020, SSA informed the claimant they had decided to reopen in light of the court's decision, and in March 2020 the agency asked the payment center to process the additional back benefits. Within weeks of the writ being filed, SSA deposited more than \$26,000 in the claimant's account, but the claimant says "neither he nor his counsel had received any document explaining how that amount was calculated, if the amount included dependents' benefits, or whether attorney fees were withheld from the amount."

The magistrate judge's order says "Defendant makes no attempt to explain its delay of more than one year in awarding Hurst benefits as directed by this court." The order gives SSA six weeks to provide the claimant with an accounting of the benefits disbursed. The claimant's request to hold SSA in contempt and for SSA to pay him interest on the delayed benefits were denied. The claimant's request for additional attorney's fees for his work in obtaining the benefits ordered to be paid to his client was denied without prejudice because he did not provide an hourly rate for time expended.

The claimant was represented by Gary Ficek of Fargo, North Dakota.

### **No. 2239, Lupus; Working While Disabled**

After two court remands, an ALJ had a medical expert testify about the evidence submitted since

the last state agency review. The ME testified that the claimant's chronic discoid lupus erythematosus met listing 8.04 (chronic infections of the skin or mucous membranes) and equaled 14.02 (Systemic lupus erythematosus) from the alleged onset date in March 2013 until claimant went back to work at the SGA level and the ALJ agreed.

The claimant testified she received accommodations from her employer but the ALJ found there was no evidence of this and thus granted benefits for a closed period. Although the claimant had stopped working due to her health before the hearing, her employment lasted longer than would qualify for an Unsuccessful Work Attempt and she was furloughed rather than no longer employed, facts the ALJ used to limit benefits to a closed period.

The claimant was represented by John Horn of Tinley Park, Illinois.

No. 2238, *Hurst v. Social Security Administration*, Case No. 3:18-cv-54, D.N.D. (June 10, 2020). Magistrate Judge's Order, also includes Plaintiff's Application for Writ of Assistance, affidavit of plaintiff's attorney, defendant's response to application, and plaintiff's reply to defendant's response.

No. 2239, Notice of Decision—Partially Favorable (June 26, 2020)

*Available Materials are available for purchase in the [NOSSCR store online](#).*

*Do you have a successful case you would like to share with readers of the NOSSCR Forum? Available Materials includes ALJ, Appeals Council, and federal court decisions. Representatives can also submit their briefs along with the favorable decisions if they choose. Inclusion in Available Materials helps members who may have similar cases, and is an excellent way to publicize your victories!*

*Please send submissions to [Stacy.Cloyd@nosscr.org](mailto:Stacy.Cloyd@nosscr.org), making sure to redact the claimant's personally identifiable information from all materials (the claimant's name can remain in the case caption of federal court cases).*

## Selected Cases

### REMAND v. REVERSAL

*Sacilowski v. Saul*, 959 F.3d 431 (1<sup>st</sup> Cir. 2020)

After the district court found the claimant disabled and awarded benefits on the record, the Commissioner timely appealed. On appeal, the Commissioner asks the First Circuit to reverse the district court's judgment and order awarding benefits and instead remand for further administrative proceedings.

"Under the Social Security Act, courts are empowered to 'enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a hearing.'" Courts generally exercise this power "when it is clear from the record that a claimant is entitled to benefits."

Here, the First Circuit finds that "there is ample evidence in the record, particularly related to the severity and frequency of her migraine headaches and worsening bladder ailments, to render [the claimant] disabled for the Relevant Time Period and justify an award of benefits." Specifically, the medical evidence and the claimant's testimony at the ALJ hearing show that her impairments "would have caused her to be absent from work at least once a month during the Relevant Time Period, which, according to the VE's testimony, would have precluded full-time competitive employment." Therefore, there is overwhelming evidence in the record supporting a finding of disability and an outright award of benefits and so the district court's order is affirmed.

### ATTORNEYS' FEES - EAJA

*Hill v. Com'r of Social Sec.*, 428 F.Supp.3d 253 (E.D.Cal. 2019)

The Commissioner's position was not substantially justified and the plaintiff, who is the prevailing party, is entitled to an award of attorney fees and costs pursuant to EAJA. "[W]hen the government violates its own regulations, fails to acknowledge settled circuit case law, or fails to adequately develop the record, its position is not substantially justified." Here, the court remanded because the

ALJ's decision discounting the treating physicians' opinions was not supported by substantial evidence. In the remand order, the court specifically noted the ALJ's boilerplate language "that failed to sufficiently identify which medical evidence the ALJ relied on to reject the opinions of the medical providers." Just as in *Meier v. Colvin*, 727 F.3d 867 (9<sup>th</sup> Cir. 2013), the Commissioner's position in defending the ALJ's flawed opinion was not substantially justified. Therefore, the plaintiff is entitled to an award of fees and costs under EAJA.

Although "the applicable EAJA rate will be the statutory maximum as set by this circuit for the year in which the work was performed..." there is no indication that the EAJA award should be reduced due to any substandard performance by plaintiff's counsel or any evidence that plaintiff's counsel "engaged in any dilatory conduct resulting in delay." As such, an EAJA fee is awarded in the amount of \$21,988.53, plus costs and expenses of \$232.45, for a total award of \$22,220.98, which is to be made payable to plaintiff's counsel subject to offset of any government debt and the government's waiver of the Anti-Assignment Act requirements pursuant to the plaintiff's assignment. However, "[i]f the government chooses not to accept the assignment, payment shall be made to Plaintiff, and mailed to Plaintiff's Counsel."

### APPEALS COUNCIL

*White v. Saul*, 414 F.Supp.3d 377 (W.D.N.Y. 2019)

The ALJ's one-sentence analysis of the consultative examiner's medical opinion does not comply with the Appeals Council's remand order instructing the ALJ to "give further consideration to the treating and nontreating source opinions... explain the weight given to such evidence [and] specifically address each of the proposed limitations from these doctors and the reasoning for adopting or declining to adopt those limitations as a part of the residual functional capacity." SSA's regulations clearly require an ALJ to take any action ordered by the Appeals Council. See 20 CFR § 404.977(b). "The failure of an ALJ to abide by the directive in an Appeals Council remand order constitutes legal error requiring remand."

***continued on page 26***

**Selected Cases****continued from page 25**

Here, on remand by the Appeals Council, the ALJ stated that “Dr. Miller’s opinion is also generally consistent with the somewhat vaguer opinion of consultative examiner, Dr. Dave.” Because the court finds that the medical record has been fully developed for the relevant period and that the ALJ would have found the claimant disabled had he adopted the opinions of the claimant’s treating physician, remand is required solely for the calculation of benefits.

**BACK IMPAIRMENTS**

*York v. Com’r of Social Sec.*, 357 F.Supp.3d 259 (W.D.N.Y. 2019)

“The ALJ’s failure in considering Listing 1.04 to specifically identify and discuss the pertinent evidence of record, or to acknowledge and reconcile conflicting evidence, necessitates remand.” Listing 1.04C requires a spinal disorder with “[l]umbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively...” The ALJ incorrectly found that the listing did not apply because “there is no evidence of nerve root compression or spinal arachnoiditis” or ineffective ambulation. However, the record references the claimant’s diagnoses and treatment for neurological claudication and foraminal stenosis with complaints of pain and weakness as well as the claimant’s difficulties with ambulation, described as “decreased mobility, limping, spasms and tingling in the legs, transient weakness, and loss of balance.” Therefore, remand is required for a reassessment of whether the claimant meets or equals Listing 1.04.

**WEIGHT OF MEDICAL EVIDENCE**

*Duffy v. Saul*, 415 F.Supp.3d 579 (E.D.Pa. 2019)

Substantial evidence does not support the ALJ’s decision to credit the reviewing psychologist’s medical opinion over the opinion of the claimant’s treating psychiatrist of 14 years. “[W]hen an ALJ decides to credit a non-treating physician over a treating physician, the ALJ must determine ‘the degree’ to which the non-treating physician considered the opinions of the treating physicians.” Here, there is nothing in the reviewing psychologist’s

report that shows she reviewed and considered the treating psychiatrist’s extensive records and incorporated them into her opinion. The treating psychiatrist’s records were only added to the file one day before the reviewing psychologist signed her assessment and, although there is reference to the treating psychiatrist’s records in the “Evidence of Record” section of the Notice of Disapproved Claim, this does not provide substantial evidence that the reviewing psychologist considered those records, as the evidence suggests that the DDS examiner, not the reviewing psychologist, completed this section. “Therefore, remand is warranted so that, consistent with the applicable regulations, ‘if the Commissioner is to give significant weight to the opinion of one or more non-treating physicians, the Commissioner must be assured that such non-treating physicians considered, and explained the value of, the treating physicians’ opinions.’”

*Case summaries, organized by circuit or topic, are available for purchase in the NOSSCR store online or using the form on page 27.*

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<b>A</b> ABSENTEEISM ACTIVITIES OF DAILY LIVING AGE AIDS/HIV INFECTION ALCOHOLISM/SUBSTANCE ABUSE ALIENS ALJ'S DUTIES AMERICANS WITH DISABILITIES ACT APPEALS COUNCIL APPEALS COUNCIL: NEW EVIDENCE ARTHRITIS ATTORNEYS' FEES ATTORNEYS' FEES - EAJA AUXILIARY BENEFITS	<b>J</b> JUDICIAL REVIEW	RETIREMENT TEST RETROACTIVE APPLICATION
<b>B</b> BACK IMPAIRMENTS	<b>K</b> KERNER DOCTRINE KNEE IMPAIRMENTS	<b>S</b> SCHOOL ATTENDANCE SEVERITY SIGNIFICANT NUMBER OF JOBS SIT & SQUIRM SKIN CONDITIONS SSI: DISABLED CHILDREN SSI: NON-DISABILITY ISSUES SUBJECTIVE SYMPTOM EVALUATION SUBSEQUENT APPLICATION SUBSTANTIAL GAINFUL ACTIVITY
<b>C</b> CANCER CARPAL TUNNEL SYNDROME CHRONIC FATIGUE SYNDROME COMBINATION OF IMPAIRMENTS	<b>L</b> LACK OF COUNSEL LATE FILING IN FEDERAL COURT LATE REQUEST FOR HEARING LATE REQUEST FOR RECONSIDERATION LATE REQUEST FOR REVIEW LAY WITNESS TESTIMONY LITIGATION DELAY LUPUS	<b>T</b> TERMINATIONS TRANSFERABLE SKILLS TRIAL WORK PERIOD
<b>D</b> DIABETES DIGESTIVE DISORDERS DISABLED ADULT CHILDREN DISABLED WIDOWS	<b>M</b> MANUAL DEXTERITY MEDICAL ADVISOR MEDICATIONS MENTAL IMPAIRMENTS MISINFORMATION MULTIPLE SCLEROSIS	<b>U</b> UNEMPLOYMENT COMPENSATION
<b>E</b> EPILEPSY/SEIZURES	<b>N</b> NEUROLOGICAL IMPAIRMENT NON-ACQUIESCENCE NON-ENGLISH SPEAKING	<b>V</b> VETERANS' DISABILITY BENEFITS VISUAL IMPAIRMENTS VOCATIONAL EXPERT TESTIMONY VOCATIONAL REHABILITATION
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<b>G</b> GARNISHMENT GOVERNMENT PENSION OFFSET GRIDS: Non-Exertional Impairments GROWTH IMPAIRMENTS	<b>P</b> PAIN PAST RELEVANT WORK PRESUMPTION OF DEATH PRISONERS' BENEFITS PRIVACY ACT	
<b>H</b> HEADACHES HEARING LOSS HEART CONDITIONS	<b>R</b> RAILROAD RETIREMENT BENEFITS REMAND v. REVERSAL REMAND: LOST TAPE REMAND: "GOOD CAUSE" REMEDIABILITY REOPENING REPRESENTATIVE PAYEE RES JUDICATA RESIDUAL FUNCTIONAL CAPACITY RESPIRATORY IMPAIRMENTS	
<b>I</b> ILLEGITIMATE CHILDREN ILLITERACY INSURED STATUS INTELLECTUAL DISABILITY INTERIM BENEFITS		

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