

October 1988

AD-A201 135

SOCIAL SECURITY

Time Required to Approve and Pay Attorney Fees Can Be Reduced



DTIC
ELECTE
NOV 30 1988
S D
E

88 11 30 027



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

Human Resources Division

B-224648

October 18, 1988

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

The Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate

This report presents the results of our review of the Social Security Administration's (SSA) attorney fee approval and payment process. Our review, done between March and May 1988, covered SSA's Office of Hearing and Appeals and Office of Disability Operations and hearing offices in selected states. The report contains recommendations to the Secretary of Health and Human Services that could shorten the processing time for approving and paying attorney fees. Also, it provides data on Social Security claimants' access to attorneys and on the fees claimants pay their attorneys.

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

Lawrence H. Thompson

Lawrence H. Thompson
Assistant Comptroller General



Accession For	
NTIS GRA&I	☒
DTIC TAB	☐
Unannounced	☐
Justification	
By _____	
Distribution/	
Availability Codes	
Dist	Avail and/or Special
A-1	

Executive Summary

Purpose

Attorneys who represent Social Security claimants in appeals must have their fees approved by the Social Security Administration (SSA). In 1987, SSA made changes to the fee approval process. Concerned that these changes might adversely impact on claimants' abilities to obtain adequate representation, the Congress directed SSA and GAO to do concurrent studies on the issues.

GAO's objectives were to

- identify the obstacles to the timely payment of attorney fees;
- provide information on claimants' access to attorneys; and
- provide information on attorney fee processes in state workers' compensation programs, including information on attorney charges. (S12)

Background

At each decision level, Social Security disability claimants who are denied benefits can appeal the decision; usually the claimant is represented by an attorney. The Social Security Act requires that the Secretary of the Department of Health and Human Services (HHS) assure that attorney fees charged are reasonable compensation for services rendered. HHS's administrative law judges have responsibility for reviewing all fees charged in claimants' cases heard before them.

In early 1987, the HHS Inspector General reported that excessive fees were being paid to some attorneys. In response, SSA temporarily revised the authority of administrative law judges to approve certain fee requests, requiring that those over \$1,500 be approved by regional chief judges. Before this change, administrative law judges could approve attorney fees up to \$3,000.

Results in Brief

It takes a median of 7 months for attorney fees to be approved and paid. GAO found opportunities for shortening the process somewhat.

Claimants do not appear to have much difficulty finding attorneys to represent them. Currently, about two-thirds of the claimants are represented on appeal by attorneys. The HHS Inspector General also has recently reported little difficulty for claimants in finding representation.

GAO's Analysis

The attorney fee approval and payment process following a disability hearing involves five steps: a formal issuance of the disability decision; the calculation of benefits due the claimant, including any past-due

amounts; the attorney's submission of a fee petition; the review and approval of the fee by an administrative law judge; and the fee payment.

The overall median time between the hearing date and attorney fee payment, in a sample of current cases reviewed by GAO, was 211 days, or about 7 months.

It took a median time of 73 days from the date of a hearing before an administrative law judge until the date that the written decision was issued.

The benefit calculation, which is done by SSA's Office of Disability Operations, begins when the office receives the notice of the disability decision, and took a median time of 40 days. This time could be shortened if development of additional information needed for the benefit calculation could be initiated before the Office of Disability Operations receives the notice of disability decision from the hearing offices. (See p. 16.)

The median time between the submission of the fee petitions to fee approvals was 42 days. For much of this time (30 days) the petitions were held pending any complaint from claimants about the fees. GAO found no instances where a claimant contested the fee petition. GAO believes that having the fee petition signed by claimants before the attorneys submit them to the hearing offices would not only eliminate the need for the 30-day waiting period, but also would assure that claimants were aware of requested fees. (See pp. 17-18.)

A study by HHS's Inspector General, based on telephone interviews with about 240 claimants, showed that only about 4 percent reported some difficulty finding an attorney during the period in which SSA had revised its delegation of authority for administrative law judges. (See pp. 20-21.)

GAO's analysis of a sample of cases showed that attorney fees paid under the current system generally are not unreasonable.

- A fee agreement charging 25 percent of a claimant's past-due benefits and contingent on a successful appeal is the most often used type of attorney fee arrangement.
- The median effective hourly fee rate currently being authorized for attorneys in cases decided by administrative law judges averages about \$89. Considering that nearly 40 percent of the attorney-represented

cases are not won, and that fees are rarely charged in such cases, the effective hourly rate for all cases, won or lost, would be about \$50.

- Three-fourths of the attorney fees are currently being approved for the exact amount requested.
- The median percentage of past-due benefits paid to attorneys in GAO's sample was 24 percent. The median authorized attorney fee was \$1,500. This is equivalent to less than 4 percent of the total average amount of disability benefits that a disabled worker is expected to receive over his or her stay on the disability rolls.

Comparatively, under state workers' compensation programs, attorney fees are normally charged on a percentage of total benefits to be awarded, rather than just past-due benefits. (See p. 23.)

Recommendations

To shorten the attorney fee approval and payment process, GAO recommends that the Secretary of HHS require SSA to

- require attorneys to have claimants sign fee petitions before they are sent to the hearing offices and
- perform a detailed review of the entire approval and payment process with the objective of determining where other efficiencies may be gained.

Agency Comments

HHS agreed with GAO's recommendation that claimants should sign fee petitions before they are sent to the hearing offices. However, HHS informed GAO that the Omnibus Budget Reconciliation Act of 1987 precludes it from changing attorney fee regulations until after July 1989. HHS said that it will seek a legal opinion to determine if the change can be made before July 1989. If the legal opinion is favorable, HHS said that it will revise its instructions and its current fee petition form to provide space for claimants' concurrence on the amount the attorney is seeking.

Regarding GAO's second recommendation, HHS said that SSA has met this recommendation by fulfilling its requirement for a study under section 9021(b) of the Omnibus Budget Reconciliation Act of 1987. At the time of this report, SSA's study was not complete and GAO had not evaluated SSA's efforts.

Contents

Executive Summary		2
Chapter 1		8
Introduction	Representation During Appeals	10
	Chronology of Events Leading to Congressional Request for Studies	11
	Objectives, Scope, and Methodology	12
Chapter 2		14
Changes in the Fee Process Can Speed Up Payment	Current Approval and Payment Process	14
	Conclusions	18
	Recommendations	18
	Agency Comments	19
Chapter 3		20
Access to Attorneys and Amount of Legal Fees Claimants Pay	Claimant Access to Attorneys	20
	Attorney Fees and Payments	21
	Conclusions	24
Appendixes	Appendix I: Attorney Fee Limits in State Workers' Compensation Programs	28
	Appendix II: Sampling Methodology	29
	Appendix III: Comments From the Department of Health and Human Services	31
Tables	Table II.1: Analysis of Attorney Fee Request Processing Times (Apr. 1988)	29
	Table II.2: Amount of Past-Due Benefits (Apr. 1988)	30
	Table II.3: Attorney Fees That Were Requested and Approved (Apr. 1988)	30
	Table II.4: Attorney Hours Claimed (Apr. 1988)	30
Figures	Figure 1.1: Appeals Process (Apr. 1988)	9
	Figure 2.1: Time From Hearing to Payment of Attorney Fee (Apr. 1988)	14
	Figure 2.2: Attorney Fee Payment Process (Apr. 1988)	15
	Figure 3.1: Contractual Basis for Attorney Fees (Apr. 1988)	23

Contents

Figure 3.2: Amount of Requested Attorney Fees (Apr. 1988)	24
Figure 3.3: Attorney Fees That Were Approved in Full (Apr. 1988)	25
Figure 3.4: Totals of Attorney Fees Requested and Approved in Cases GAO Reviewed (Apr. 1988)	26

Abbreviations

ALJ	administrative law judge
DDS	disability determination service
GAO	General Accounting Office
HHS	Department of Health and Human Services
IG	Inspector General
ODO	Office of Disability Operations
OHA	Office of Hearings and Appeals
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income

Introduction

The Social Security Administration (SSA) administers two programs that provide cash benefits to the totally disabled—Social Security Disability Insurance (SSDI) under title II of the Social Security Act and Supplemental Security Income (SSI) under title XVI. SSDI provides monthly benefits to those who were insured for disability benefits at the onset of disability; that is, they had been paying Social Security taxes for an established minimum amount of time. The monthly benefit amount depends on the claimant's earnings history. Auxiliary benefits are also provided to the claimant's dependents. SSI provides monthly benefits to those who meet certain minimum financial need requirements. These benefits are not based on previous work history or Social Security taxes paid.

Both programs operate under essentially the same criteria for determining disability. Benefits from one program are offset against the other for those who qualify for benefits under both.

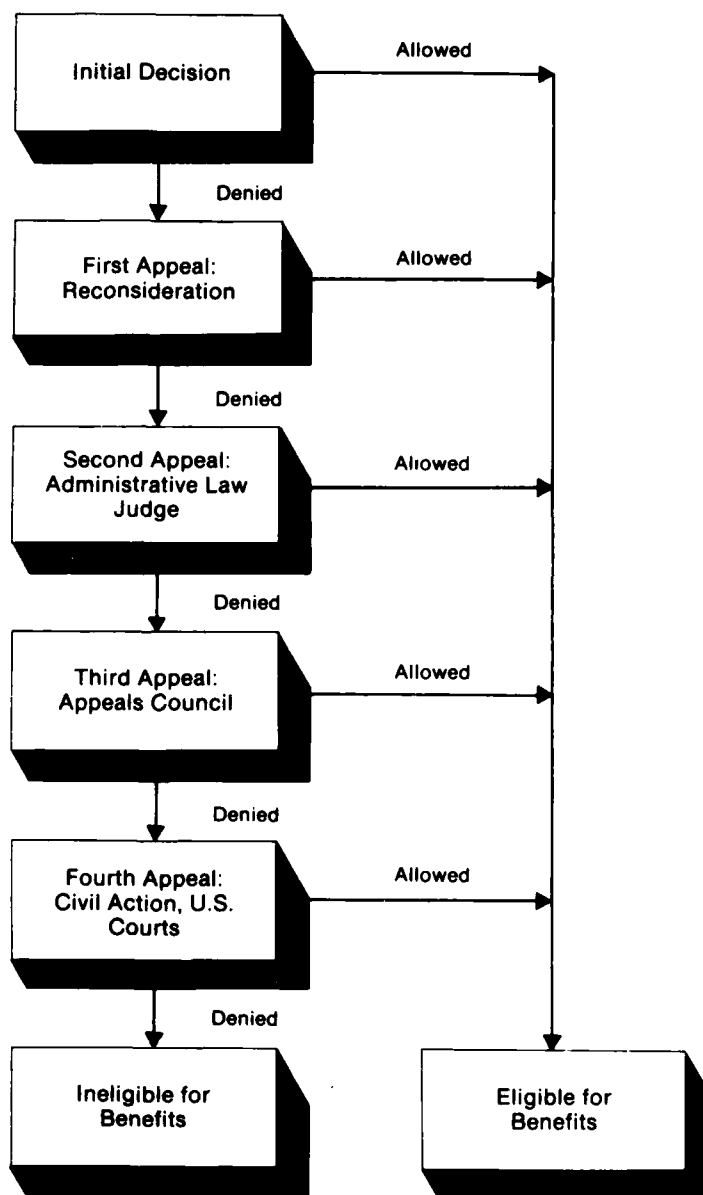
Application for disability benefits can be made at any SSA district or branch office. Applications are processed by SSA claims representatives, who interview applicants and prepare reports for use by state disability determination services (DDSS). DDSS are state agencies that are fully funded by the federal government and operate under regulations published by the Department of Health and Human Services (HHS). DDSS develop and evaluate medical, vocational, and other necessary evidence and make determinations as to whether claimants meet the disability criteria established by SSA. After a DDS determines that a claimant meets the criteria, SSA calculates the benefits payable and makes the award.

The SSDI and SSI programs both provide essentially the same appeal process for those who are denied benefits or are dropped from the disability rolls. As shown in figure 1.1, individuals can appeal any adverse decision through an administrative process within SSA and, if necessary, outside SSA to the federal courts.

At the first level of appeal (the DDS), a claimant may ask for a reconsideration of the decision, in which case a second review of the claimant's case will be made by a different DDS adjudicator. If the denial is upheld, the claimant may appeal to an administrative law judge (ALJ) who is employed by SSA's Office of Hearings and Appeals (OHA). SSI claimants who request a reconsideration bypass the DDS and go directly to an ALJ.

ALJs are in 132 hearing offices around the country. ALJs hold hearings at which claimants are usually represented by attorneys. At the hearing, claimants are given the opportunity to present their case, including

Figure 1.1: Appeals Process (Apr. 1988)



bringing witnesses and any additional information they believe would be useful in the determination process. Claimants who are denied benefits by an ALJ may appeal to the OHA Appeals Council, which has the option of reviewing the case or not. If a claimant is still dissatisfied after a review by the Council, the claimant may take the case to the federal court system.

Representation During Appeals

Claimants who appeal the decisions may, if they choose, be assisted by a representative. Attorney¹ fees are most frequently based on contingency fee agreements, which ask for a percentage, usually 25 percent, of the claimant's awarded past-due benefits, or no fee if the appeal is unsuccessful. The past-due benefits are the monthly benefits that accrue up to the month the favorable disability decision is made. Other fee agreements include charges based on an hourly rate, flat fee, or the larger of a percentage or other basis. SSI claimants are often represented for free by a representative from a legal services organization.

The Social Security Act requires the Secretary of HHS to (1) monitor the fees charged claimants and (2) assure that the fees charged are reasonable compensation for services rendered. The primary purpose of this provision in the act is to ensure that claimants are protected from excessive fees. The act also allows the Secretary to prescribe, by rules and regulations, maximum fees for representation; no maximum fee however, has been established.

ALJs currently have responsibility for reviewing all fees charged by attorneys. The presiding ALJ evaluates the fee petition submitted by an attorney, taking into consideration factors prescribed by regulations. Factors to be considered include the complexity of the case, the extent of services provided, the skill and competence required of the attorney, the time spent on the case, the results achieved, and the amount of the requested fee. The petition must include an itemized account of time spent by the attorney on the case and how the fee was determined.

The act also provides for the government to make payments directly to attorneys for their services to SSDI claimants. The government will withhold 25 percent of a claimant's past-due SSDI benefits and pay the approved attorney fee from this reserve. If a fee is approved at an

¹Except where clarification is necessary, for the rest of this report, we use the term "attorney" instead of "representative." Although people who are not attorneys can represent claimants, our review focused on attorney fees and the processing of these fee requests by SSA.

amount higher than the withheld amount, the attorney may collect the difference from the claimant.² If the approved fee is less than the withheld amount, the government sends the difference to the claimant. The withholding provision does not apply to SSI benefits, and only applies to attorney representation.

The number of attorneys representing Social Security claimants has grown over the years. Currently, about two-thirds of the claimants appealing decisions to an ALJ are represented by attorneys.

Chronology of Events Leading to Congressional Request for Studies

In January 1987, the HHS Inspector General (IG) reported³ that improvements in the attorney fee process could save SSDI beneficiaries millions of dollars in excessive fees. After studying a sample of fee approvals made by ALJs in December 1984, the IG determined that ALJs were generally not objective in evaluating attorney fee petitions; they were, for the most part, giving perfunctory approval to fee arrangements agreed to between attorneys and disability claimants.

The report recommended that attorneys be limited to charging claimants no more than \$75 an hour. The IG considered amounts above this to be excessive, finding that about one-half of the fee petition approvals exceeded this amount.

SSA generally agreed with the IG's findings and began developing new regulations to address the IG's concerns. In March 1987, the Associate Commissioner of OHA issued a directive requiring that only regional chief ALJs could approve attorney fees above \$1,500. Before the March 1987 directive, any ALJ could approve fees up to \$3,000.

Concerned about claimants' access to attorneys in light of SSA's planned regulations and the reduction in ALJ attorney fee approval authority, the House Committee on Ways and Means held hearings in May 1987, during which several attorneys and attorney groups testified. The attorneys generally defended their current fee agreements, particularly the fees based on 25 percent of past-due benefits, as important to the claimants' access to representation. Some attorneys suggested that they would no

²Except for cases appealed to the court level, the 25-percent rate is not a ceiling on attorney fees. For court cases, the Social Security Act provides that an attorney's fee shall not be in excess of 25 percent of the past-due benefits.

³Improvements Needed in Attorney Fee Process Could Save SSA Beneficiaries Millions (Jan. 14, 1987).

longer represent SSA claimants if presiding ALJs continued to be limited to approving fees up to \$1,500 or if an hourly fee limit were imposed. Attorneys also complained about delays in (1) receiving fee approvals by ALJs and (2) the fee payment process at SSA.

In December 1987, OHA rescinded the \$1,500 limitation on ALJ approvals and the Congress imposed a moratorium until July 1989 on any further changes by SSA to its attorney fee procedures. The Congress also directed HHS and GAO to (1) do concurrent studies on the issues and (2) report to the Congress by July 1988.

Objectives, Scope, and Methodology

In the Budget Reconciliation Act of 1987, the Congress directed that we study the fee payment system for the attorneys of SSDI claimants under title II of the Social Security Act. Specifically, we were asked to

- identify obstacles to the timely payment of attorney fees under present law;
- assess the effect, if any, that the temporarily reduced ALJ approval limit on attorney fees had on SSDI claimants' access to legal representation; and
- study the impact of the current system on claimants and attorneys.

After discussions with staff of the Senate Finance Committee and the Subcommittee on Social Security, House Committee on Ways and Means, we focused our review on the SSDI program and on identifying obstacles to the timely payment of attorney fees. Additionally, the committees were interested in information on (1) claimants' access to attorneys in the SSDI program, and (2) the attorney fee processes in state workers' compensation programs.

We did our review at SSA's OHA headquarters in Arlington, Virginia, and the Office of Disability Operations (ODO) in Baltimore, Maryland. We also visited OHA hearing offices, which we selected because of their time differences in processing attorney fees. At these offices—in Baltimore, Maryland; Greenville, South Carolina; Atlanta, Georgia; and Pittsburgh, Pennsylvania—we spoke with ALJs and support staff, as well as with several attorneys who represented disability claimants. Our field work was done between March and May 1988.

We did not study whether the temporary change in ALJ authority had any effect on claimants' access to attorneys because this issue had been recently addressed in a study by HHS's IG. We did, however, assess the

scope and methodology of the IG's study. To supplement the study, we talked with several attorneys about claimants' access to attorneys.

To determine the current overall processing time, we analyzed a sample of 399 cases that were adjudicated at hearing offices during 1987 and 1988. All cases in our sample had attorney representation and, as of March and April 1988, were in the final stage of payment processing within SSA. We also used these sample cases to compare attorney fees (both requested and the approved fees) with claimants' benefits. We present median statistics from our sample in the report (instead of the mean) because of the skewed distribution within our sample. Given our limited time, we decided to study attorney fees for cases adjudicated at the ALJ hearing level, because these cases are in the majority.

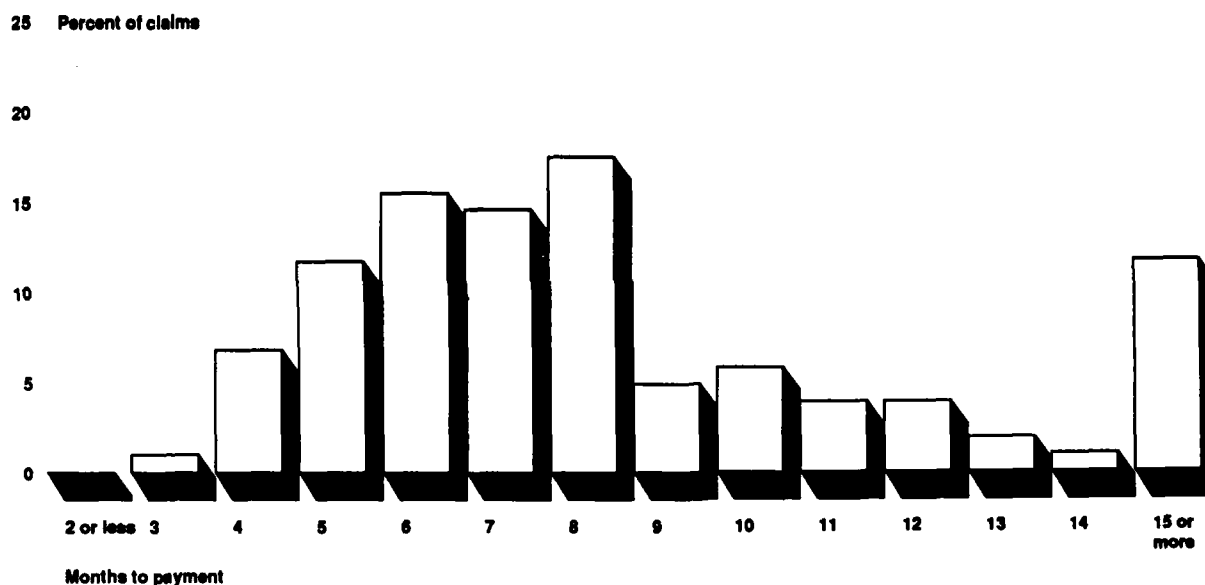
To obtain a broader perspective of the attorney fee process under Social Security, we made a comparison of attorney fees in state workers' compensation programs. We used data from a January 1988 report published by the Department of Labor on state workers' compensation laws.

Our work was done in accordance with generally accepted government auditing standards.

Changes in the Fee Process Can Speed Up Payment

The process for paying attorneys begins once an ALJ makes a decision on a disability claim. Our evaluation of a sample of 397 recently awarded disability cases with attorney fees showed that the median time from the completion of the hearing until an attorney receives his or her fee is 211 days, or about 7 months.¹ We believe several opportunities exist for shortening this time.

Figure 2.1: Time From Hearing to Payment of Attorney Fee (Apr. 1988)

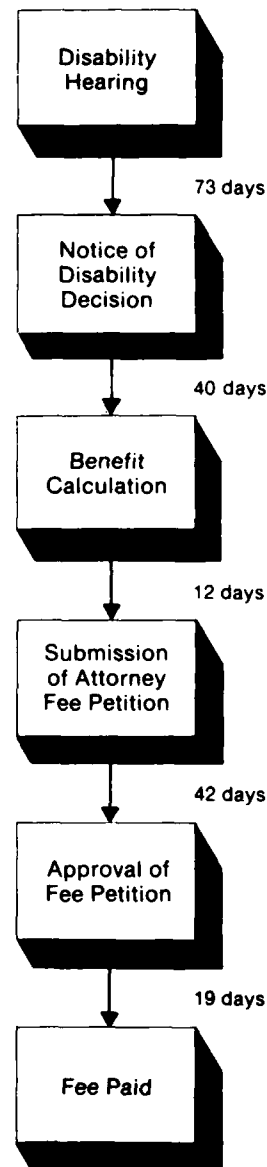


Current Approval and Payment Process

The fee approval and payment process consists of five steps: (1) notice of disability decision, (2) benefit calculation, (3) fee petition, (4) fee approval, and (5) fee payment. We studied the time spent on each of these steps to determine where improvements could be made. Figure 2.2 shows the fee process and the median time for each major step. Median times for a combination of steps do not equal the sum of the medians of the individual steps.

¹ The mean time was 243 days, or about 8 months. The disparity between the median and mean times, as can be seen in figure 2.1, is attributable to the significant number of cases that take more than 15 months to process.

**Figure 2.2: Attorney Fee Payment
Process** (Apr. 1988)



Note: The overall median time from the hearing to payment was 211 days.

Notice of Disability Decision

SSA's approval and payment process begins with the date of the disability hearing. Based on our sample, the median time between this date and the notice of a disability decision formally prepared by an ALJ is about 73 days. We analyzed this time period in two of the hearing offices. In two-thirds of the cases we examined, no posthearing development took place. For these cases, ALJs told us they generally know what their decision will be within 2 days of the hearing.

According to officials in hearing offices we visited, heavy workloads of ALJs and their office staff were the main reason for the delays. For cases involving posthearing development, the additional time that was needed involved development of medical evidence.

Benefit Calculation

The median time for the second step, from the date of disability decision to the submission of information on past-due benefits to attorneys was 40 days. This step is usually performed by ODO in Baltimore. The process begins when the office receives the notice of the disability decision and the case file from a hearing office. Based on a sample of cases arriving at ODO from hearing offices, about 9 to 14 of the 40 days involve mailing and handling of the cases. Currently, cases are sent to SSA's central mailroom at headquarters where they are sorted and then sent to ODO.

Some cases take longer than the median because they need further development. This can occur when the disabled worker (1) has dependent auxiliary beneficiaries or (2) has been receiving workers' compensation or SSI benefits, which may need to be offset. Sometimes the needed information is in the case file; however, additional case development, often is required by SSA district offices. In our sample, cases with auxiliary beneficiaries took a median time of 85 days to process.

If the development of this additional information could be started before ODO receives the notice of disability decision, the 40 day period between the notice of decision and the completion of the benefit calculation could be shortened accordingly. This would not only shorten the attorney fee processing time, but would also expedite payment of claimants' benefits. The current case handling procedures might need modification, including developing procedures to get folders or necessary information from hearing offices earlier. SSA officials we spoke with were not sure whether efficiencies could be gained and said that further analysis of this area would be required to see if changes would be practical.

Fee Petition

The median time for the third step, from the date of benefit calculation to when the attorney submits a fee petition, was 12 days. Although these petitions could be submitted earlier, attorneys are encouraged to wait for the notification of past-due benefits before submitting their petition because most fees are based on a percentage of past-due benefits.

Fee Approval

To obtain payment of a fee, an attorney submits a fee petition to the presiding ALJ for approval. The petition shows (1) the fee agreement between the attorney and the claimant and (2) the time spent by the attorney on the case. The ALJ then evaluates the fee petition for its reasonableness.

The median time between the submission and approval of a fee petition in our sample was 42 days. On receipt of a fee petition at a hearing office, the petition is held for 30 days pending any complaint from the claimant. SSA requires the attorney to also submit a copy of the fee petition to the client. In our review of case files at hearing offices and in ODO, we did not see any instances of a claimant contesting the fee petition.

After a 30-day waiting period, the hearing office staff prepares a worksheet with information needed by the ALJ for evaluating the fee. This includes the fee, the amount of past-due benefits withheld from the beneficiaries, and the hours claimed on the fee petition. The ALJ then determines the fee to be authorized and records this (and sometimes a rationale for the amount authorized as well) on a worksheet. The office staff then prepares a fee authorization for the ALJ's signature. When the ALJ signs the authorization, it is sent to ODO for further processing. This process (excluding the 30-day waiting period) took about 12 days; yet from our review, appeared to take less than a few hours of actual work for each petition.

The time to process the fee determinations depends on the priority given to the process by an individual hearing office. SSA has not established processing goals or expectations for its ALJs in processing fee determinations. Our observations in four hearing offices showed that the processing time varied greatly. In these offices, in addition to the priority given, it appeared that staffing ratios of ALJs to legal clerks may also be a factor.

In the Baltimore hearing office, for example, where there was one legal clerk to one ALJ, the mean processing time was 121 days. In Greenville, South Carolina, where there were three legal clerks to two ALJs, the mean processing time was 57 days. In Atlanta, the mean processing time had been 132 days when the office ratio was one to one, and processing of fee petitions was only done at the end of each month. Atlanta's processing time has dropped, however, to a mean of 71 days, after adding another legal clerk who processes fee petitions full time.

Aside from increasing the ratio of staff to ALJs, requiring offices to give greater priority to processing, or both, we believe this approval process could be shortened by at least 30 days by requiring a fee petition to be signed by the claimant before the attorney submits it to the hearing office. This would not only eliminate the need for the 30-day waiting period, but would also assure that claimants were aware of the proposed fee. (In situations where a claimant may refuse to sign a fee petition an explanation by the attorney or claimant could be attached.)

Fee Payment

On receipt at ODO, the fee authorization is matched with the claimant's case folder, and computer tapes are prepared and transmitted to the Department of the Treasury, authorizing payment of the fee. The median time between the date of fee authorization and ODO's processing of the authorization is 15 days. The Treasury prints checks for payment of attorney fees about 4 days later.

Conclusions

Opportunities exist for shortening the fee approval and payment process. Requiring that claimants sign fee petitions before attorneys submit them to hearing offices could save up to 30 days. Additional time could be saved if SSA did an analysis of the entire process. Such an analysis might identify where other efficiencies may be realized by exploring (1) the earlier development of information needed for computing claimants' benefits, (2) establishing time processing standards for the fee approval process at the hearing offices, and (3) direct mailing between hearing offices and ODO.

Recommendations

We recommend that the Secretary of HHS require SSA to

- require attorneys to have claimants sign fee petitions before submitting them to hearing offices and

- do a detailed review of the approval and payment process to determine where other efficiencies may be gained.

Agency Comments

On September 7, 1988, HHS provided written comments to us on a draft of this report. (See app. III.)

HHS concurred with our recommendation that claimants should sign fee petitions before submitting them to hearing offices but said it was uncertain when it would be able to implement it. HHS stated that because its current regulations describe the process for requesting approval of fees in very precise terms, it might be necessary for it to amend its regulations before the new procedures could be implemented. HHS said that it would seek a legal opinion from its General Counsel on whether its regulations needed to be amended and whether certain provisions in the Omnibus Budget Reconciliation Act of 1987 might preclude it from making the recommended change before July 1, 1989. If the legal opinion finds that it can proceed, HHS said it will revise its instructions to allow for immediate processing of fee petitions when the claimant signs a statement indicating that he or she agrees with the amount sought.

Regarding our recommendation for SSA to review the approval and payment process to determine where other efficiencies may be gained, HHS said SSA has already met this by conducting the study, called for by Section 9021(b) of the Omnibus Budget Reconciliation Act of 1987. At the time of our report, SSA's study was not complete, and therefore, we could not evaluate SSA's efforts. Consequently, we do not know whether SSA's study covered in sufficient detail the potential for further efficiencies to be gained in the fee approval and payment process.

Access to Attorneys and Amount of Legal Fees Claimants Pay

Recently, the Congress expressed concern about whether the fee payment system has ensured that (1) qualified attorneys are not discouraged from representing claimants and (2) claimants pay only reasonable fees for representation. Our observations on the process are that (1) claimants' access to attorney representation has not been impaired to date and (2) attorney fees in the SSDI program generally are not unreasonable and represent less than 4 percent of the total average disability benefits of a disabled worker while on the rolls. In contrast, under state workers' compensation programs, the attorney fees in most states are about 20 percent or more of total benefits.

We reviewed 341 fee petitions that were approved during April 1988. Contingency fee agreements based on a percentage of past-due benefits awarded were the most often used type of agreement between an attorney and a claimant. About 93 percent of the attorney fees requested were for \$3,000 or less. About 94 percent of the total amount requested in these cases was approved; only fee requests exceeding \$3,000 appeared to be significantly reduced.

Claimant Access to Attorneys

In response to the HHS IG's report concerning possible excessive attorney fees, SSA instructed its hearing offices, in March 1987, that ALJs could only approve fee amounts up to \$1,500. Fee requests above \$1,500 were to be approved by the regional chief ALJs. Before the change, ALJs had the authority to approve fees up to \$3,000, with regional chief judges having authority to approve fees above \$3,000. Concern had been raised in May 1987 during congressional hearings by attorneys and attorney groups that if this policy of referrals to regional chief ALJs was to continue (1) many experienced attorneys might no longer represent Social Security claimants and (2) claimants might have problems finding competent representation.

During our review we found that the HHS IG had already begun a survey of claimants who had requested a hearing during the time the \$1,500 policy was in effect. The results of this survey were reported by the IG to the Commissioner of SSA in December 1987. We assessed the IG's efforts, and contacted several attorneys for their views of the issue.

We believe the IG's study was adequate to obtain a general assessment of the situation. From telephone interviews with about 240 claimants, the IG found that only about 4 percent of the claimants reported any difficulty finding an attorney. The IG also contacted 26 lawyer referral agencies and found that only one reported any decrease in the number of

attorneys handling SSA cases or in attorneys being willing to accept SSA claimants.

Although the IG's survey found no negative impact from the \$1,500 policy on claimant access to attorneys during the 9 months the policy was in effect, SSA data we obtained as part of our review showed that the policy appeared to have an effect on the ratio of fees requested to fees approved during this period. While the average fees authorized (\$1,333) during fiscal year 1986 were 88 percent of the amount requested, the average amount authorized during the \$1,500 policy (\$1,334) was 73 percent of the amount requested. For the first 3 months of 1988, after the \$1,500 policy was rescinded, the average amount authorized (\$1,556) was 86 percent of the amount requested.

Attorneys in Greenville, Atlanta, and Pittsburgh told us that if the \$1,500 policy became the standard for reviewing attorney fees, they would either reduce their SSA caseloads or stop taking these cases entirely. Most of the attorneys said they could live with the current system without the \$1,500 policy. In addition, some of the attorneys noted that they were not satisfied with (1) the slow payment of fees and (2) the appearance, to them, of arbitrary reductions of fees by some ALJs.

Attorney Fees and Payments

SSA data indicate that over the past 15 years, attorney fees have remained about the same relative to claimants' benefits. In 1973, the average attorney fee awarded for cases reaching the hearing level was \$600, about 3-1/3 times the average monthly benefit paid to a disabled worker in the SSDI program. During the first 3 months of 1988, the average attorney fee was \$1,556, about 3-1/10 times the current average monthly benefit. In the meantime, representation of disability claimants by attorneys at the hearing level increased from 35 percent in 1973 to about 66 percent in fiscal year 1987.

The type of attorney fee arrangement most often used in the SSDI program is a contingency fee agreement based on a percentage of past-due benefits awarded. Usually, the fee involves charging 25 percent of the claimant's past-due benefits. If no benefits are awarded, there is no fee. Under such arrangements, the number of hours spent by the attorney and his or her staff is not relevant to the requested fee.

The hours actually spent by the attorneys on cases, however, range widely depending on the amount of development necessary to adequately present the case. In some cases, this development may be minimal, and the fee may have the appearance of being unreasonably high if looked at from the point of view of an hourly rate. For other cases, requiring extensive development and communication with the claimant, the hourly fee may appear to be unusually low.

Based on our sample, the fees recently being authorized for cases decided at hearings (all of which were authorized after the \$1,500 policy was rescinded) reflect a median hourly rate of \$89. Considering that nearly 40 percent of the attorney-represented cases are not won, and that fees are rarely charged in such cases, the effective hourly rate for all cases, won or lost, would be about \$50. We believe that the attorney fees currently being paid generally are not unreasonable.¹

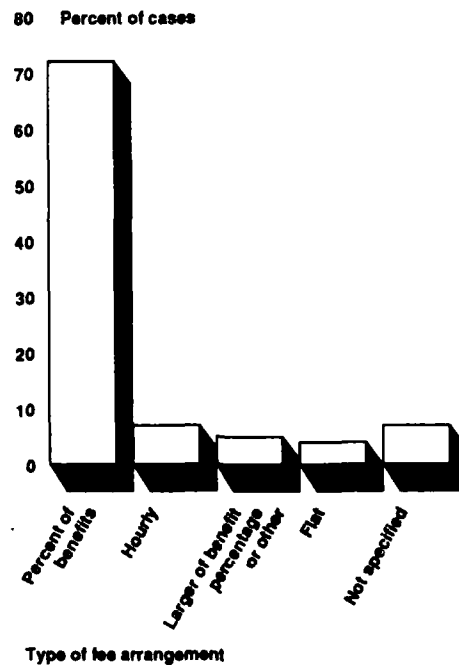
To gain a perspective on the amount of fees attorneys were requesting and the amount being approved, we looked at fee information in our 399 case samples (see p. 13). Most of the fees in these cases had been approved during March 1988. Of these 399 cases, there were requests for fees in 341 (85 percent). The others consisted of fee waivers and cases with insufficient information about the fees requested and approved. Of those cases where fees were requested, 240 fees (about 70 percent) were based on 25 percent of past-due benefits. Another 2 percent were based on other percentages. Figure 3.1 provides a breakdown of the 341 fee requests.

Overall, 88 percent of the total amount of fees requested was approved. As illustrated by figures 3.2, 3.3, and 3.4, the approval rates for cases in our sample were relatively high for requests up to \$3,000 (about 93 percent of the cases). For these, 94 percent of the amount requested was approved, with 78 percent of these cases being approved for the full amount requested. For fee requests over \$3,000, 59 percent of the amount requested was approved, with 8 percent being approved for the full amount.

Typically, the amount of fee approved was 24 percent of the total amount of past-due benefits that were awarded to a claimant. The median approved fee was \$1,500, which is less than 4 percent of the

¹Consider for example that the Equal Access to Justice Act provides for attorney fees of up to \$75 per hour (or higher where justified by certain factors) to be paid by the government in court cases where the government's position was not substantially justified.

**Figure 3.1: Contractual Basis for
Attorney Fees (Apr. 1988)**



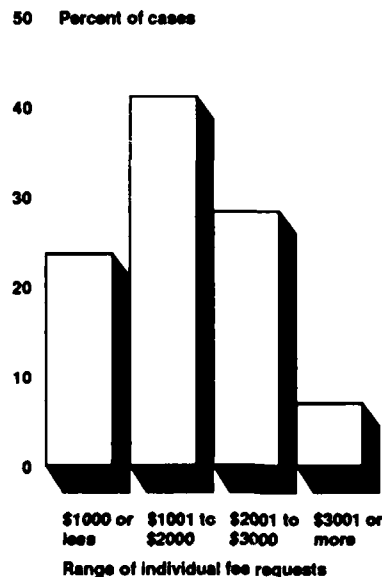
\$44,000 that an average disabled worker receives during the entire time that he or she is eligible for benefits.²

Attorney Fee Criteria in State Workers' Compensation Programs

Under state workers' compensation programs, attorney fees are also normally charged on a percentage of benefits awarded, except that they are usually based on total benefits, rather than just past-due benefits. Thirty-two states prescribe limits on attorney fees paid in their workers' compensation programs based on percentages of benefits awarded. As shown in appendix I, these percentages vary from state to state, but most are 20 to 30 percent of total benefits. Some are based on a declining percentage scale (e.g., 20 percent of the first \$15,000, 15 percent of the next \$15,000, and 10 percent of the balance). By comparison, as previously mentioned, the median attorney fee paid under SSA represents less than 4 percent of total expected benefits. Information about how

²"Present Value of OASDI and Medicare Benefits for Entitled Disability Workers." Actuarial Note Number 128, Sept. 1986, U.S. Department of Health and Human Services, Social Security Administration. OASDI refers to the old-age, survivors, and disability insurance programs.

**Figure 3.2: Amount of Requested
Attorney Fees (Apr. 1988)**



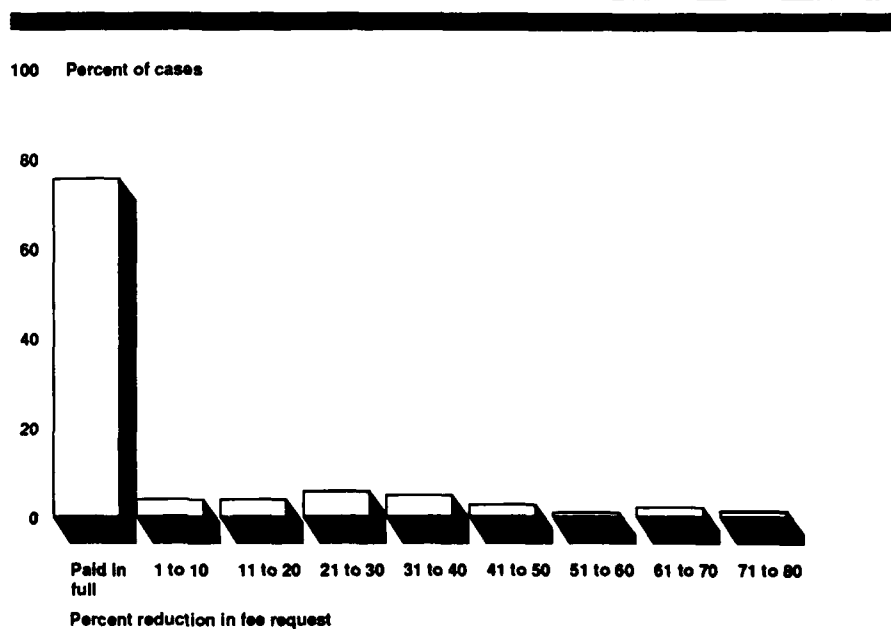
these attorney fee awards would translate into an effective amount of compensation per hour was not available.

Conclusions

While SSA's revised delegation of authority (from \$3,000 to \$1,500) for ALJ's fee approval during 1987 appeared to have an effect on the ratio of fees requested to fees approved while the policy was in effect, it does not appear to have had a negative impact on claimants' access to attorneys during this period of time. The IG's telephone interviews with claimants showed that only about 4 percent of the claimants reported any difficulty in finding an attorney.

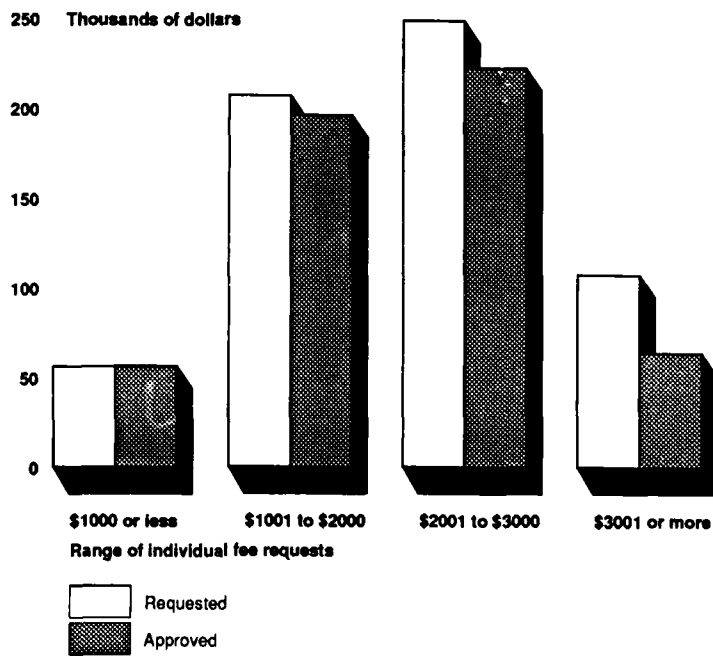
Attorney fees paid under the current system generally are not unreasonable. In our sample of recently approved attorney fees, about 93 percent of the attorney fees requested were for \$3,000 or less. About 94 percent of the total amount requested in these cases was approved; only fee requests exceeding \$3,000 appeared to be significantly reduced. In about 70 percent of our sample cases, the fees requested were based on 25 percent of past-due benefits. Overall, the median attorney fee approved was about 24 percent of a claimant's past-due benefit. This is equivalent

**Figure 3.3: Attorney Fees That Were
Approved in Full (Apr. 1988)**



to less than 4 percent of the total average disability benefits of a disabled worker while on the rolls. In contrast, under state workers' compensation programs, the attorney fees in most states are about 20 percent or more of total benefits.

**Figure 3.4: Totals of Attorney Fees
Requested and Approved in Cases GAO
Reviewed (Apr. 1988)**



Note: Includes fee data from 341 cases where attorney fees had both been requested and approved.

Attorney Fee Limits in State Workers' Compensation Programs¹

	Number of states
States with percentages of benefits	
30%	1
30% or \$2,250, whichever is smaller	1
25 to 40%	1
25 to 33-1/3%	1
25% before commission; 33-1/3% in court	1
25%	4
25% not to exceed \$3,000	1
20 to 25%	2
20% maximum \$3,000	1
20% in disputed cases	1
20%, 208-week limit	1
20% on lump sum settlement, individual case basis	1
20%	4
20%: 10% on temporary total disability cases	1
15%	1
States with declining percentages of benefits	
30% first \$1,000; 20% next \$2,000; 10% balance	1
30% up to time of trial; 15% first \$25,000; 10% balance	1
25% first \$5,000; 20% next \$5,000; 15% balance	1
25% first \$4,000; 20% next \$27,500	1
25% first \$1,000; 10% balance	1
20% first \$25,000; 15% next \$10,000; 5% balance; \$6,500 maximum	1
20% first \$15,000; 15% next \$15,000; 10% balance; \$9,051 maximum	1
20% first \$10,000; 10% balance	1
20% first \$7,000; 15% next \$18,000; 10% balance	1
20% first \$5,000; 15% next \$5,000; 10% balance	1
States with attorney fees established on an individual case basis	17
Other	
\$50 per hour maximum	1
Maximum of \$12,500	1
No provision	1

¹"State Workers' Compensation Laws," U.S. Department of Labor, Employment Standards Administration, Jan. 1988.

Sampling Methodology

In order to estimate how long it takes to process claims that are decided by administrative law judges, and to estimate how much attorneys are being paid to represent clients in these cases, we obtained case files from the SSA Division of Appeals Processing. Information from one-third of the cases that had been completely processed during an 8-day period in April 1988 was recorded on data collection forms that we designed. We verified that this information was copied correctly. The information from the data collection forms was then keypunched for computerized analysis. We verified that this information was keypunched correctly. We obtained a final sample of 399 cases that are representative of the cases that were closed during those 8 days.

Time Taken to Process Attorney Fee Requests

In order to estimate how long it takes to process attorney fee requests, from the time that the hearing before an ALJ is completed to the time that a payment to an attorney is made, we calculated the number of days between each step in the process for all of the cases we obtained. The amount of time taken to process cases varied widely within each step. We chose the median as the best measure of how long each step in the process takes. The median is the value above and below which one-half of the observations fall.

Table II.1: Analysis of Attorney Fee Request Processing Times (Apr. 1988)

Time period	Median days to process	Number of cases
Hearing to decision notice	73	121
Decision notice to benefit calculation	40	384
Benefit calculation to fee submission	12	322
Fee submission to fee approval	42	296
Fee approval to payment	19	314
Hearing to payment	211	103

Note: The number of cases for each time period may be less than the total number of cases in our sample because some files contained incomplete information on when a particular action occurred. The sum of the median times for each step does not necessarily equal the overall median time from the hearing to the attorney fee payment.

Amount of Attorney Fee Payments

We examined attorney fees from several perspectives. We compared the amount of attorney fees that were requested to (1) the amount of past-due benefits, (2) the amount of fees that were approved, and (3) the number of hours an attorney typically spent on a case. We further limited our analysis by only using cases in which a fee had been both requested and approved. This limitation reduced our sample to 341

Appendix II
Sampling Methodology

cases. We chose to use median values as the best estimate of the typical amounts of fees and hours.

Table II.2: Amount of Past-Due Benefits
(Apr. 1988)

Amount of fee requested	Median before offset	Median after offset	Number of cases
\$1,000 or less	\$3,668	\$2,855	81
\$1,001 to \$2,000	6,614	6,014	140
\$2,001 to \$3,000	11,256	10,811	96
Over \$3,000	14,745	14,433	24
All cases	8,189	7,007	341

Note: Offsets are deductions from an individual's disability insurance benefit of other benefits that he or she may also receive from disability programs such as workers' compensation or Supplemental Security Income.

Table II.3: Attorney Fees That Were Requested and Approved (Apr. 1988)

Amount of fee requested	Median fee requested	Median fee approved	Percent of fee requests reduced	Number of cases
\$1,000 or less	\$749	\$741	5	81
\$1,001 to \$2,000	1,500	1,449	19	140
\$2,001 to \$3,000	2,543	2,327	34	96
Over \$3,000	3,928	2,600	92	24
All cases	1,500	1,500	25	341

Table II.4: Attorney Hours Claimed
(Apr. 1988)

Amount of fee requested	Median hours	Median hourly fee		Number of cases
		Requested	Approved	
\$1,000 or less	11	\$67	\$66	75
\$1,001 to \$2,000	15	96	93	133
\$2,001 to \$3,000	22	123	101	90
Over \$3,000	27	149	100	22
All cases	16	96	89	320

Note: The total number of cases shown in this table is less than the 341 cases in our sample because some files contained incomplete information on the number of hours an attorney spent on a case.

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

SEP 7 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Social Security: Time Required to Approve and Pay Attorney Fees Can Be Reduced." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

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

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

Appendix III
Comments From the Department of Health
and Human Services

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICE DRAFT REPORT, "SOCIAL SECURITY: TIME
REQUIRED TO APPROVE AND PAY ATTORNEY FEES CAN BE REDUCED"

General Accounting Office (GAO) Recommendation

That the Secretary of the Department of Health and Human Services (HHS) require the Social Security Administration (SSA) to require attorneys to have claimants sign fee petitions before submitting them to hearing offices.

Department Comment

We concur with the recommendation, but we are uncertain when we will be able to implement it. Because the current regulations regarding requests for approval of a fee (section 404.1725) describe our present process in very precise terms, it may be necessary to amend the regulations before the new procedure can be implemented.

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) precludes any changes in the regulations governing attorney fees before July 1, 1989. We will seek a legal opinion from the General Counsel regarding whether or not the regulations must be amended before we implement the GAO recommendation, and if so, whether OBRA 1987 would preclude the change. If the legal opinion finds that we can proceed, we will revise our instructions to allow for immediate processing of fee petitions when the claimant signs a statement that he or she agrees with the amount sought. In addition, we intend to revise the current fee petition form to provide space for the claimant's concurrence on the amount the representative is seeking. In addition to improving our processing time, such a procedure should ensure that the claimant has received a copy of the fee petition.

GAO Recommendation

That the Secretary of HHS require SSA to do a detailed review of the approval and payment process in order to determine where other efficiencies may be gained.

Department Comment

We have met this recommendation. Section 9021(b) of the Omnibus Budget Reconciliation Act of 1987 directed the Secretary of HHS to conduct a study of the attorney fee payment process under title II of the Social Security Act. The law required that this study include recommendations to eliminate unnecessary delays in the approval and payment of attorney fees and thereby streamline the payment process. This study report is in the final clearance process and should be ready for submission to the Congress shortly.