



ALASKA'S SOCIAL SECURITY HEARING PROCESS

IS IT FAIR TO ALASKANS?

Reply to the Acting Commissioner's Response Addressing The Anchorage Office
of Disability Adjudication and Review

March 2014

On May 20, 2013, Senator Begich sent a letter to Acting Commissioner Colvin requesting that she provide him with a full accounting on the numbers and explain why the Anchorage Office of Disability Adjudication and Review has the lowest claim approval rate in the country. On June 20, 2013, the Acting Commissioner responded and attributed the low approval rate on local conditions. This is a reply to that response.

As addressed later in this paper, the Acting Commissioner's response falls significantly short in its effort to explain the problems Alaskans are experiencing in their attempts to secure Social Security benefits. Based on SSA's own studies and reports, the Anchorage ODAR should be fully investigated to determine why the allowance rate is so low and the dismissal rate so high.

Studies and Reports

Before addressing the specifics of the Acting Commissioner's response, I will preface my reply with two observations. First, the ODAR approval rate continues to drop. In April of 2013, I noted that within the span of 18 months, Alaska went from a hearing allowance rate that equaled the national average (approximately 57%) to an allowance rate dead last in the country - estimated to be 26.53%. By the end of FY 2013, the allowance rate had dropped to approximately 23.5%. The Anchorage ODAR approval rate for FY 2014 is approximately 20% whereas the national rate is roughly 53%.¹ See Attachment A for graphs depicting allowance, denials, and dismissal rates over the last several years.

Second, despite the attention directed over the last few years at decisional inconsistencies at the ODAR adjudication stage, the Acting Commissioner failed to acknowledge any ownership, or possible ownership, of this problem. There have been several reports and studies demonstrating problems with "outlier" Administrative Law Judges (ALJ) – judges with hearing disposition rates that vary from most other judges. In a 2010 report, the Social Security Administration's Office of Inspector General noted inconsistencies in ALJ dismissal rates:

¹ As implied by the Acting Commissioner, most dismissals are in effect denials. If dismissals were considered 'denials' for statistical purposes, the Anchorage ODAR claim allowance rate for FY2014 would be 14%. The next lowest state is Wisconsin at 31%. (Source: www.disabilityjudges.com)

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Our analysis of dismissal rates identified **wide variances among ODAR regions, hearing offices, and ALJs**. ODAR stated that scientific or statistical data do not exist to support an explanation of dismissal rate variances. Although ODAR stated economic and demographic factors might explain the variances, it did not expand on those factors or how they impact variances in dismissal rates.²

A year later, in a July 2011 joint hearing before Congress on the Role of Social Security Administrative Law Judges, then Commissioner Astrue noted (emphasis supplied):

Let me echo Mr. Coble and emphasize that most of our ALJs responsibly handle their cases. However, recent Wall Street Journal articles by Damien Paletta have provoked constructive debate about an issue I have raised several times before Congress—the small number of judges who do not properly apply the statute.

It is critical that all Members of Congress understand what our Subcommittee understands. We have not taken action against judges based strictly on allowance or denial rates because Congress has put great weight on an ALJ's qualified decisional independence.

The Administration is open to exploring options for addressing these situations in consultation with ALJs, other Federal agencies, and other stakeholders. **Areas to explore could include examining statistical evidence showing very significant variations between the decisions of a small number of ALJs and the decisions of other agency ALJs, whether in the direction of approving or denying claims.**³

Six months later, the Office of Inspector General (“OIG”) conducted another review on ALJ workload trends in February 2012. The OIG noted:

We believe greater Agency attention is needed to ensure outliers in ALJ performance, be it high or low, are monitored and the underlying work processes are periodically reviewed. The SSA-commissioned study should also be helpful in determining how to address these variances. While we believe the Agency should remain mindful of the ALJs' qualified decisional independence, it is possible that other unrelated factors could be contributing to strong variations in workloads. **We believe it is important that the public have confidence in SSA's hearings process.** To the extent SSA management

² Congressional Response Report: *Office of Disability Adjudication and Review Hearing Request Dismissals*, A-07-10-21049 at 2 (July 2010) (emphasis supplied).

³ *Role of Social Security Administrative Law Judges: Joint Hearing Before the Subcommittee on Courts, Commercial and Administrative Law of the Committee on the Judiciary and the Subcommittee on Social Security of the Committee of Ways and Means*, 112th Congress 35 (2011) (testimony of Michael J. Astrue, Commissioner of Social Security, Social Security Administration).

can offer greater assurances as to the quality of this process, this confidence can be further enhanced.⁴

In January of 2013, OIG issued yet another report that looked at ALJ risk factors. Therein OIG notes:

In FY 2010, ODAR asked the newly created Division of Quality (DQ) in OAO to conduct focused reviews on ALJ-related issues to ensure compliance with Agency policies and procedures. ALJ issues identified during the testing of the early monitoring system have been added to DQ's workload. **DQ has conducted numerous focused reviews of ALJ issues, including the dispositions of ALJ outliers in terms of decisional outcomes** and case rotation between ALJs and claimant representatives.⁵

SSA commissioned the Administrative Conference of the United States to study SSA's adjudication process. Part of the study reviewed the role of the Appeals Council in reducing observed variances in ALJ decisional outcomes and measures the Agency can take to identify and address issues posed by "outlier" ALJs to reduce the observed variances and other irregularities, while also improving the quality in ALJ decisions.

In an April 1, 2013 memorandum on draft recommendations from the Administrative Conference of the United States to the Committee on Adjudication, the Conference noted:

Nonetheless, **divergent allowance rates among ALJs suggest that claims are being resolved in an inconsistent, if not inaccurate, manner. The Appeals Council similarly struggles to fulfill its error-correction and quality-review roles.** That these steps may have room for improvement is evidenced by the 45% rate at which cases are remanded back to the agency from federal courts in recent years. Bringing greater consistency and accuracy to the disability claims adjudication process will enhance the fairness and integrity of the program.⁶

In the final report commissioned by the Administrative Conference of the United States, the following observations were made:

- From a purely statistical perspective, an outlier is defined as a score that is atypical given the overall distribution. This approach merely identifies outliers and does not provide any information that might explain why a score is atypical. **This kind of outlier is thus an observation that warrants further attention** to determine why the unusual event has occurred.

⁴ Congressional Response Report *Oversight of Administrative Law Judge Workload Trends*, A-12-11-01138 at 15 (February 2012) (emphasis supplied).

⁵ Office of Inspector General, Audit Report: *Identifying and Monitoring Risk Factors at Hearing Offices*, A-12-12-11289 at 5 (January 2013) (references omitted) (emphasis supplied).

⁶ Memorandum from Amber G. Williams, Staff Counsel with the Administrative Conference of the United States to the Committee on Adjudication on Draft Recommendations at 4 (April 1, 2013) (footnotes omitted) (emphasis supplied).

- Because only a small fraction of observations will naturally fall outside a 2 SD range, **scores outside these bounds are not likely to have occurred due to chance**, and are therefore likely to have been produced by some process that differs from the rest of the distribution.
- Applying a 2 SD rule to allowance rates would **classify outliers as all ALJs with allowance rates below 23%** (approximately 37, or 3% ALJs in FY 2011) and ALJs with allowance rates above 82% (approximately 30, or 2% ALJs). Similarly, 3% of ALJs (approximately 38) had disposition frequencies over 878.
- Another way to identify outliers is to evaluate the consistency of outcomes over time. An ALJ who is in the top or bottom 1% one year might be the result of chance variation. **However, if the same individual appears in the top or bottom 1% in multiple years, this is more likely to be due to something unique to that individual. Therefore, special attention should be paid to ALJs who have consistent extreme scores in multiple years.**
- The agency's pledge to target neither particular ALJs nor hearing offices in own motion review strikes us as excessively broad. For instance, SSA might decide to review decisions from judges whose allowance rates are both well under and well above the statistical average. **Indeed, several scholars have noted the potential salutary effect of using statistics as a basis for review of "outlier" ALJs** (based on several SD above or below the norm) and, thereby, ensure greater decisional accuracy and consistency.
- For instance, the agency reasonably could decide to review decisions by outlier judges, those whose allowance rates were two SD from the mean. **The distance from the mean strongly suggests that such judges' decisions are not due to case mix or chance, but, rather, some other factor(s) such as lack of policy compliance (whether for reasons of ideology, misapplication of regulations, or cutting corners).** There should be no allegation of partiality from a review program that targets an *equal* number of judges whose rates are well outside the statistical mean, whether in terms of denying or allowing claims.
- Moreover, the remand statistics from both federal courts and the Appeals Council previously discussed suggest that **ALJ decisionmaking has room for improvement.** With remand rates at close to 50% from the federal courts and over 20% from the Appeals Council, there is little question as to the need to enhance consistency and accuracy
- Given the pressure to decide 800,000 cases annually, the challenges endemic to ALJ decisionmaking should not be surprising. Based on the high remand rate, the subcommittee investigation, and OQP's analysis, **much improvement is needed in ALJ decisionmaking.**⁷

Even more perplexing about the Acting Commissioner's response is that SSA reportedly has data that might explain Alaska's low allowance rate. In June of 2011, members of the Social Security Subcommittee requested the Inspector General provide information on ALJs who are

⁷ *Achieving Greater Consistency In Social Security Disability Adjudication: An Empirical Study And Suggested Reforms*, Harold J. Krent, IIT Chicago-Kent College Of Law, Scott Morris, IIT College Of Psychology (April 3, 2013) (footnotes omitted) (emphasis supplied).

significant outliers either in terms of their productivity or their decisional outcomes.⁸ Not only has SSA been tracking outlier judges, SSA has been collecting multiple data sets on each judge. In response to an OIG report, SSA explains:

Data anomalies, whether found in an individual measure or a combination of measures, do not correlate directly to problems. Only after investigation into the causes of the data anomalies can we determine whether a problem exists and if so, its root cause.

In 2011, we began work on data aggregations that could serve as indicators of quality issues. These data aggregations examine at least 18 different factors, both individually and in combination. We continue to test different combinations of factors and experiment with weighting factors to determine those that are most predictive of problems.

Identifying and remediating problems at the individual, office, regional, or national level is not a one-dimensional effort. We are using every tool at our disposal to identify and solve problems. We use our case processing systems to collect data on common problems in adjudication then train all our adjudicators quarterly on how to avoid those problems. We provide direct quality feedback to adjudicators through “How MI Doing.” We use statistical studies to identify anomalous behaviors, and we perform focused reviews to identify actionable policy compliance issues. We counsel, train, mentor, and, if necessary, use the disciplinary process to correct chronic problems in following procedure or policy.⁹

In light of the reports and studies examining decisional inconsistencies, the ALJ data being collected by SSA, and the former Commissioner’s testimony before Congress, it was disingenuous for the Acting Commissioner to place all of the blame for the low approval rate on local conditions in her June 20th letter.

Acting Commissioner’s Letter

In that letter, the Acting Commissioner asserts that several factors could be contributing to Alaska’s “variance” in allowance rates. The factors cited include the small number of cases in the sample size, the local job market, access to health care, the age and educational attainment of the applicants, access to accommodations in the local area, and the high approval rate at the first stage of the adjudication process. Let me address these factors in turn.

The first factor cited by the Acting Commissioner was the limited number of cases examined, only 245 through the first half of the FY 2013 fiscal year. As of this writing, that sample size

⁸ Congressional Response Report: *Oversight of Administrative Law Judge Workload Trends*, A-12-11-01138 at 1 (February 2012).

⁹ Office of Inspector General, Audit Report: *Identifying and Monitoring Risk Factors at Hearing Offices*, A-12-12-11289, Appendix d (January 2013).

is now 905 cases in FY 2013 and FY2014 and the allowance rate has dropped from 26.53% to approximately 20%. The sample size has nearly quadrupled and the allowance rate continues to drop.

The second possible factor identified by the Acting Commissioner was the local job market. However, according to the Bureau of Labor Statistics current population survey, Alaska's unemployment rate during that period was regularly below the national average by 1% or greater.

The third possible factor - access to health care – may carry a little more legitimacy. Most claimants who seek assistance with their Social Security hearing have medical records. So the absence of medical care and medical records cannot completely explain the low allowance rate. However, if the Acting Commissioner is referencing the evidentiary weight given to a physicians report versus a report from a nurse practitioner, then this dialogue must happen. As noted in one report:

Only diagnostic evidence from an “acceptable medical source” can be relied on to support a finding of a disability without an independent examination. Currently, the following medical professionals are the acceptable medical sources: (1) licensed physicians, (2) licensed or certified psychologists, (3) licensed optometrists, for the purposes of establishing visual disorders, (4) licensed podiatrists, for the purposes of establishing impairments of the foot and ankle only, and (5) qualified speech-language pathologists, for the purposes of establishing speech or language impairments only.⁷ If an applicant's medical record contains diagnostic evidence only from a nurse practitioner or a physician assistant, for example, then that applicant will need to attend a consultative examination to have the acceptable professional provide the required information.

The current narrow list of acceptable medical sources creates unnecessary delays in processing the applications of low-income individuals. For many low-income individuals—even those with health insurance—nurse practitioners, physician assistants, and licensed clinical social workers provide most of their primary physical and mental health care.¹⁰

Notwithstanding the potential legitimacy of this factor, it is unfortunate that the Acting Commissioner did not use this as an opportunity to examine the medical source issue within Alaska to ensure otherwise eligible claimants are not being denied benefits because they are poor or live in rural Alaska and do not have access to “acceptable medical sources.”

As a fourth possible factor, the Acting Commissioner suggests that the “age and educational attainment of the applicants during a particular time” could account for the low allowance rate. Again, it is difficult to believe that Alaska's demographics shifted radically during a period of a few years to explain a plummeting allowance rate. If this is data that the Social Security Administration tracks, perhaps they could examine it to see if it explains the low rate,

¹⁰ National Law Center on Homelessness & Poverty, *Improving Access: Expanding Acceptable Medical Sources for the Social Security Administration Disability Determination Process*.

or provide it to the public for review. Alaska's educational attainment has remained relatively static over the last few decades and the overall population is aging, a factor which should increase allowances, not serve as the basis for a decrease.

The fifth possible factor raised by the Acting Commissioner was Alaskans access to disability accommodations. It is difficult to discern what exactly was meant by this statement and how it could relate to the allowance rate. Is the suggestion that if Alaska employers readily accommodated Alaskans with disabilities, fewer claimants who can work would be seeking Social Security benefits? If this is what the Acting Commissioner meant, it is unsubstantiated. According to a Cornell University's Disability Statistics, Alaska has one of the highest percentages of non-institutionalized individuals with a disability, ages 21-64, who were employed in 2011, approximately 47%. It would appear that Alaskans have greater access to disability accommodations than other states that have substantially higher allowance rates.

Finally the Acting Commissioner alludes to Alaska's higher than average percentage of allowances at the application stage of the process – 48.5% - as influencing the hearing allowance rate. On its face, this argument appears to have merit. However the Acting Commissioner may not be aware of the fact that, unlike most states, Alaska does not have the "reconsideration" step in the adjudication process – a step between the initial decision and a hearing before an ALJ. The national allowance rate at the reconsideration stage is approximately 15%. Therefore, the percentage of claims allowed prior to the hearing stage in Alaska is right on mark with the national average and therefore cannot explain Alaska's dismal allowance rate. At the end of FY 2013, the application allowance rate in Alaska was down to 44%.

Regarding the absence of a reconsideration stage in Alaska (a prototype state), it is instructive to note findings from one of the studies cited earlier.

In fact, the multiple regression analysis presented above (Table A-15) showed that, after controlling for these effects, ALJs from prototype states had 2% higher allowance rates than those from non-prototype states.¹¹

The Acting Commissioner also notes that the Appeals Council's agree rate with the decisions issued by the Alaska ALJs follows the national average, suggesting that the Appeals Council would identify and correct bad decisions. This assumption is incorrect. As an initial matter, the Appeals Council reviews cases for errors of law and/or abuse of discretion, not bias. Second, as most Alaskan claimants are unrepresented at this stage of the process, they likely lack the capability to adequately illustrate for the Appeals Council where the ALJ erred as a matter of law or abuse of discretion.

¹¹ *Statistical Appendix To Report On Achieving Greater Consistency In Social Security Disability Adjudication: An Empirical Study And Suggested Reforms - Analysis Of Administrative Law Judge Disposition And Allowance Rates (Fiscal Years 2009 – 2011)*, Harold J. Krent, IIT Chicago-Kent College Of Law, Scott Morris, IIT College Of Psychology, at page 51 (April 3, 2013).

Also, the Appeals Council's capacity to ensure ALJ compliance with SSA regulations and policies is questionable. Nearly 50% of the cases that are taken to federal court from an Appeals Council decision are remanded.¹² Consider the following observation appearing in one of the studies that examined the Social Security adjudication process:

There is other evidence that the Council's review itself is far from complete.

...

The Appeals Council twice had the opportunity to remedy the deficiencies in the ALJ reasoning in the case and declined, despite the ALJ's failure to follow SSA guidelines. The district court ordered immediate payment of the claim instead of remanding the case in light of the prohibitive delay.¹³

See Attachment B for the discussion in which this excerpt appears.

Finally, the Acting Commissioner acknowledges that the Anchorage ODAR dismissal rate is high, but explains these are primarily claimant initiated actions and there is nothing that the ALJs can do about it. As noted in her letter, abandonment and withdrawal are the primary cause for the dismissals in Anchorage, and this is true for the country as a whole. Acknowledging this fact, however, does not explain why there are significantly more dismissals in Alaska than elsewhere.

Regardless of a claimant's failure to appear, the ALJ has specific responsibilities that must be fulfilled before dismissing a claim. For example, the ALJ must determine whether the claimant was properly notified of the hearing, verify that the address used is the most recent address and ensure that all attempts to contact the claimant are documented in the file. In fact, the ALJ must consider whether there is sufficient evidence in the record to approve the claim.¹⁴ See Attachment C for the relevant sections of ODAR's Hearings, Appeals, and Litigation Law Manual.

Are these efforts to locate individual claimants being made and documented as required in every case? The SSA's own Office of Quality Performance has determined that full compliance with these obligations is wanting. As noted in an OIG report:

In a separate Office of Quality Performance study, it disagreed with 30 percent of the dismissals reviewed, with the greatest disagreement related to withdrawal dismissals.¹⁵

¹² *Achieving Greater Consistency In Social Security Disability Adjudication: An Empirical Study And Suggested Reforms*, Harold J. Krent, IIT Chicago-Kent College Of Law, Scott Morris, IIT College Of Psychology, at 9 (April 3, 2013).

¹³ *Id.*, at 73-74.

¹⁴ HALLEX I-2-4-25. Dismissal Due to Claimant's Failure to Appear.

¹⁵ Office of Inspector General, Audit Report: *Identifying and Monitoring Risk Factors at Hearing Offices*, A-12-12-11289 at 9 (January 2013).

Since FY12, the Anchorage ODAR has dismissed 590 Social Security claims. Assuming a 30 percent error rate as identified by Office of Quality Improvement, 177 Alaskans had their claims inappropriately dismissed.

The Anchorage ODAR is clearly an outlier office for allowances, denials and dismissals. As noted in one of the studies, outliers distant from the mean “**strongly suggests that such judges’ decisions are not due to case mix or chance, but, rather, some other factor(s) such as lack of policy compliance**”. Attributing the precipitous decline in approval rates to local factors – factors that do not shift precipitously – without even acknowledging the possible role of the two judges in the Anchorage ODAR ignores SSA’s own studies, reports, Congressional testimony, and data and significantly undermines the credibility of the Acting Commissioner’s response.

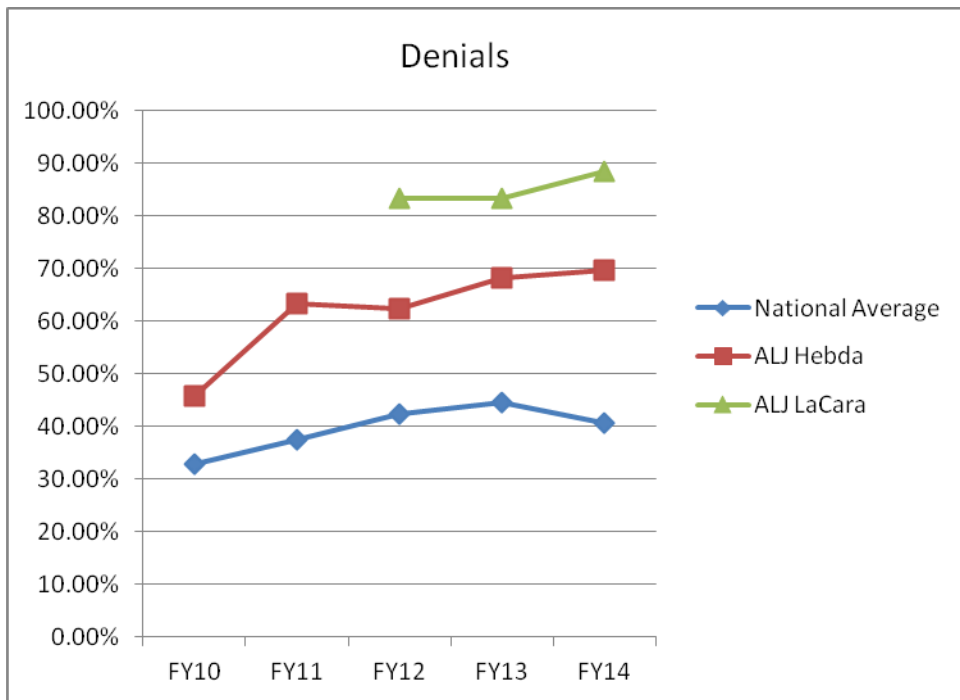
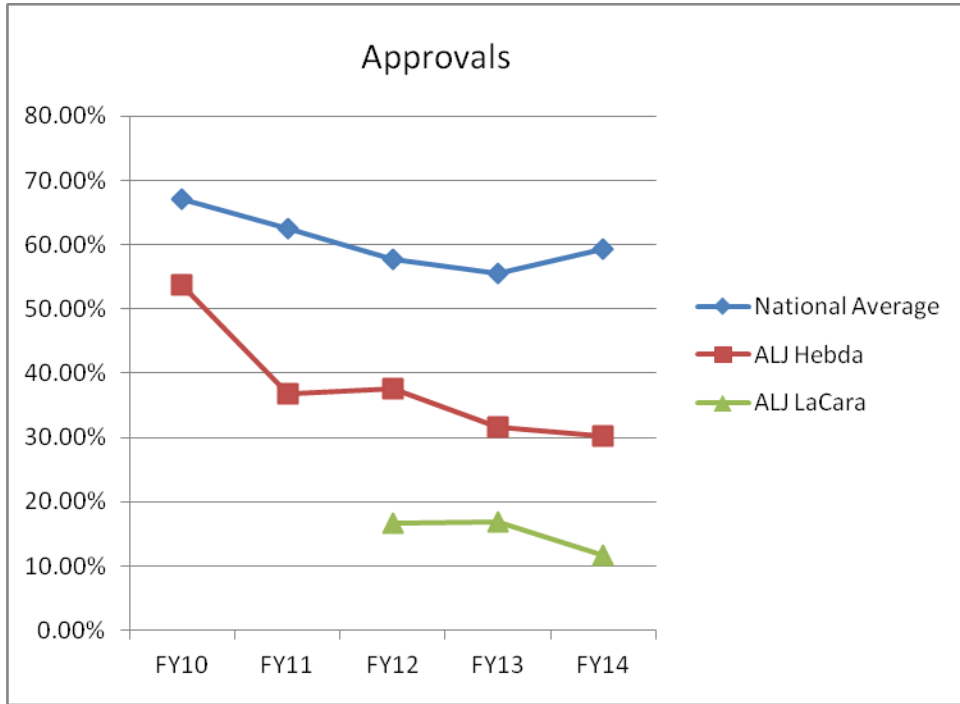
In speaking with Social Security claimants, disability advocates, and claimant representatives, the situation in Alaska is dire and getting worse. Nothing short of a comprehensive review by the Office of Inspector General can address the problem with the Anchorage ODAR.

SSA also has the authority to conduct post-effectuation reviews of specific ALJ decisions based on anomalies, such as unusually high percentages of allowance or denial decisions. Post-effectuation reviews occur after the 60-day period within which the AC can take own motion review and ordinarily do not result in a change to the decision. The post-effectuation reviews identify whether ALJs followed SSA’s policies and procedures. If SSA determines an ALJ failed to comply with the Agency’s policies and procedures, it can issue directives to the ALJ to comply. If the ALJ fails to comply with the directives, SSA can seek disciplinary actions against the ALJ.¹⁶

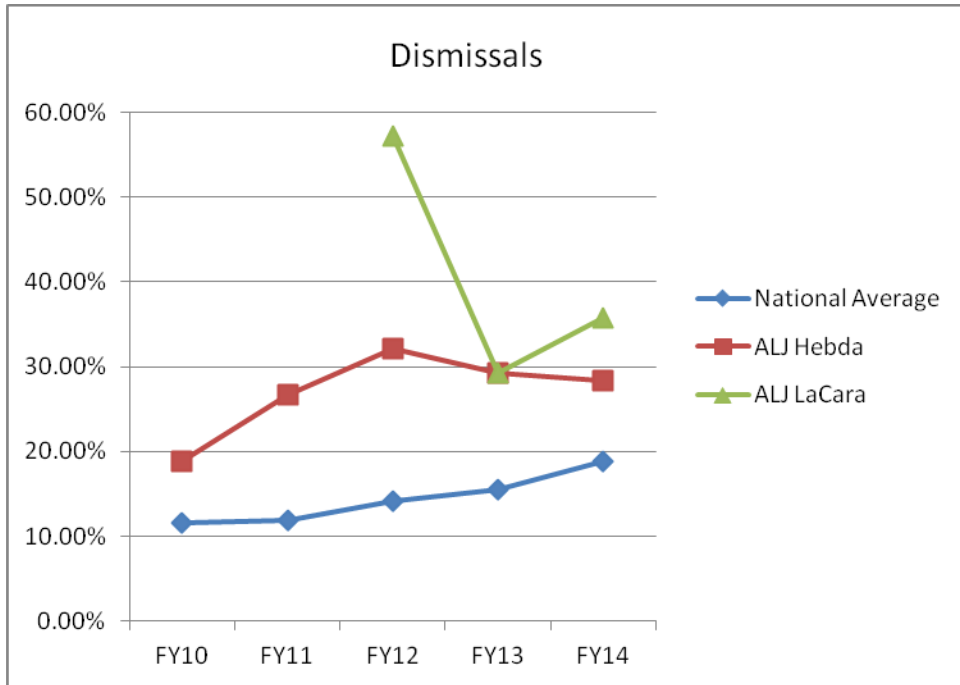
SSA should exercise its authority now and undertake a comprehensive review of the Anchorage ODAR before more Alaskans are unfairly denied their Social Security benefits.

¹⁶ Congressional Response Report: *The Social Security Administration’s Review of Administrative Law Judges’ Decisions*, A-07-12-21234 at 3 (March 2012) (emphasis supplied) (footnotes omitted).

ATTACHMENT A¹



¹ ALJ LaCara had 14 dispositions and issued 6 decisions in FY 12.



ATTACHMENT B

Excerpt from *Achieving Greater Consistency In Social Security Disability Adjudication: An Empirical Study And Suggested Reforms*, Harold J. Krent, IIT Chicago-Kent College Of Law, Scott Morris, IIT College Of Psychology, at pages 73-74 (April 3, 2013) (footnotes omitted).

D. Consideration of More Extensive Reform of the Appeals Council

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Third, there is serious question as to the Council's current effectiveness in screening cases before they reach court. OGC [Office of General Council] seeks consent from the claimant for a voluntary remand in approximately 15% of all cases appealed to the federal courts. That OGC is unwilling to defend in federal court 15% of cases that the Appeals Council affirms (or declines to review) itself suggests gaping holes in the system.

There is other evidence that the Council's review itself is far from complete. It is not difficult to provide troubling examples. In *Coleman v. Astrue*, for instance, the ALJ denied benefits for a claimant suffering epileptic seizures. The testimony from two different medical experts ("MEs"), which was contradictory, is almost beside the point. The ALJ convened a hearing on February 15, 2005, and the ALJ called an SSA-provided ME who agreed with the treating physician's statements that the claimant could only control his epilepsy with large doses of medication that made him unfit for work. Without explanation, the ALJ scheduled a second hearing, which convened on July 1, 2005. This time, a different ME testified that the need for medication would not prevent the claimant from working in a number of jobs in the economy.

The ALJ relied on the second ME and denied the claim. In reaching the decision, the ALJ *never* mentioned the first hearing, let alone justified why a second hearing was necessary, and therefore never even attempted to discredit the first ME's opinion that supported disability. The Appeals Council denied the claimant's request for review. SSA subsequently attempted to justify the ALJ's decision in federal court on the ground that the glaring procedural improprieties were of no moment and that the ALJ *might* have ignored the first ME's testimony for a number of legitimate reasons. Not surprisingly, the court reversed. It is difficult to understand not only how an ALJ could have resolved *Coleman* in the way that he did, but also how the Appeals Council let the decision stand.¹

For a perhaps more typical example, consider the district court's decision in *Larlee v. Astrue*. In that case, the ALJ rejected claimant's testimony of disabling pain from fibromyalgia. In so doing, the ALJ stated that claimant's testimony of disabling pain

¹ *Achieving Greater Consistency In Social Security Disability Adjudication: An Empirical Study And Suggested Reforms* at 73.

was “not entirely credible to the extent alleged in view of the medical evidence and clinical findings[,] as well as claimant’s own testimony.” The court noted that the ALJ not only failed to articulate why he discredited the claimant’s subjective testimony of pain, but that he failed as well to make findings “sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual’s statement and the reason for that weight.” Indeed, social security rulings require such specificity and provide a roadmap to ALJs evaluating subjective evaluations of pain. The ALJ examined only one of the six factors mandated by SSA in determining whether to discredit testimony of pain. The Appeals Council twice had the opportunity to remedy the deficiencies in the ALJ reasoning in the case and declined, despite the ALJ’s failure to follow SSA guidelines. The district court ordered immediate payment of the claim instead of remanding the case in light of the prohibitive delay.²

² *Id.*, at 74.

ATTACHMENT C

Sections of the Hearings, Appeals, and Litigation Law Manual (HALLEX) addressing the failure of a claimant to show for a hearing.

C.1.a. No Proper Notification of the Scheduled Hearing

Good cause for failure to appear at the scheduled time and place of hearing generally exists when the claimant did not receive proper notification of the scheduled hearing. Before dismissing an RH for failure to appear, the ALJ must determine whether there is evidence in the record that shows the claimant was properly notified of the time and place set for the hearing, as described in HALLEX I-2-3-20 C. The ALJ will consider the following:

- If the claimant has an appointed representative, notification to the representative is sufficient to establish notification to the claimant.
- If the follow up contact was made by telephone, the ALJ must ensure the proper documentation is in the file, as noted in HALLEX I-2-3-20 C.
- If the claimant alleges he or she reported a new address to another agency component such as the field office or teleservice center but the notice of hearing was sent to an outdated address, the ALJ will review the queries noted in HALLEX I-2-3-15 B and carefully consider the allegation.

If the record does not show there was proper notification of the scheduled hearing, the ALJ must reschedule the hearing and provide proper notification of the rescheduled hearing.

If the claimant or appointed representative received proper notification and neither appears at the time of the scheduled hearing, see HALLEX I-2-4-25 C.3.a. below.

NOTE:

Regardless of a failure to appear, if a preponderance of the evidence supports a fully favorable decision on every issue, the ALJ will consider whether it is appropriate to issue a fully favorable decision instead of dismissing the RH.

C.3.c. Claimant's Whereabouts Are Unknown

If the Notice of Hearing is returned to the HO as undeliverable, all attempts to contact the claimant by other means are unsuccessful, and it is concluded that the claimant's whereabouts are unknown, the ALJ may dismiss the RH after:

Verifying that the address used on the Notice of Hearing and any other contact correspondence is the most recent address on the PCOM system queries, including the FACT for title II cases, the SSID for title XVI cases, and the MDW for either title; and

Ensuring that all attempts to contact the claimant are clearly documented in the B section of the claim(s) folder and the documentation is exhibited. For example, any envelopes returned by the post office as undeliverable must be associated with the claim(s) folder, as well as any statements

made by individuals regarding the absence or disappearance of the claimant.

An ALJ may not dismiss the RH until after the time scheduled for the hearing because the claimant may learn of the scheduled hearing in another way and appear. If the claimant does not appear at the scheduled hearing, the ALJ may dismiss the RH, but must describe all efforts to contact the claimant in the dismissal order.