



SOCIAL SECURITY
The Commissioner

U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.

2013 JUL 22 AM 11:32

JUL 19 2013

Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-12-3069

Dear Ms. Lerner:

I am writing in response to your letter dated March 21, 2013, in which you requested that the Social Security Administration (SSA or the agency) conduct an investigation and prepare a report concerning the allegations SSA employee Administrative Law Judge (ALJ) Christine P. Benagh raised as follows:

- Whether the agency's review of ALJ decisions denying fee increase petitions filed by claimants' attorneys is a violation of 42 U.S.C. § 406(a)(3);
- Whether extending a 15-day deadline for review of fee increase petitions filed by claimants' attorneys by regulation in the Code of Federal Regulations and internal agency manuals is a violation of 42 U.S.C. § 406(a)(3)(A); and
- Whether the agency allows claimants' attorneys to double-bill SSA for work already conducted.

I asked our Office of the Inspector General (OIG) to complete an independent investigation into ALJ Benagh's allegations. As part of the investigation, OIG interviewed ALJ Benagh and other agency employees regarding her allegations and assertions. OIG also collected and reviewed numerous documents related to ALJ Benagh's allegations. For each allegation, OIG reviewed the examples ALJ Benagh provided in support of her claim. OIG also interviewed two claimant's attorneys referenced in one of ALJ Benagh's examples.

After completing its investigation, OIG issued the attached Report of Investigation (ROI) dated June 21, 2013. I have reviewed the ROI, agree with and approve its findings, and designate it and its accompanying exhibits as the agency's investigation of this matter.

A summary of the information with respect to which the investigation was initiated can be found on pages 2-3 of the ROI. A description of the conduct of the investigation can be found on pages 3-18. Specific findings as to each allegation mentioned in your referral letter to me can be found

on pages 18-30. A summary of the evidence obtained from the investigation can be found on pages 30-33.

The investigation of ALJ Benagh's allegations did not reveal any agency conduct or practices in violation of law, rule, or regulation. Based on the investigation's findings, I do not believe further action or a change in agency procedure is warranted. Consequently, no dollar savings are projected to result from this investigation.

If you have further questions, please do not hesitate to contact me or have your staff contact Melissa Melchior at (410) 965-6542.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Colvin".

Carolyn Colvin

**Office of Special Counsel
Whistleblower Referral
File No. DI-12-3069**

**SSA/OIG Case Number
WAS-13-00035Z**

June 21, 2013

Redacted
Copy



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: June 21, 2013

To: Mitch Chitwood
Associate General Counsel
Office of General Law

From: Kelly Bloyer 
Deputy Assistant Inspector General
Intelligence and Administration

Subject: OSC File No. DI-12-3069

On March 21, 2013, Carolyn N. Lerner of the Office of Special Counsel (OSC) referred a whistleblower disclosure to The Honorable Michael J. Astrue, Commissioner of Social Security. The OSC referral contains whistleblower disclosures made by Administrative Law Judge (ALJ) Christine P. Benagh. Judge Benagh alleged that Social Security Administration (SSA) management officials at the Office of Disability Adjudication and Review (ODAR) may be engaging in violations of law, rules or regulations, gross mismanagement, and a gross waste of funds.

The OSC requested that the agency conduct an investigation into the allegations and prepare a report within 60 days of the agency's receipt of the Special Counsel's letter. In discussions with the Inspector General on April 19, 2013, Agency officials indicated that they intended to request the OIG's assistance with this matter.

On April 23, 2013 the Office of General Counsel (OGC) officially requested that the Office of the Inspector General (OIG) thoroughly investigate this matter and submit a final report (attaching all interim Reports of Investigation) to OGC so that it could draft a final report for the Special Counsel's office.

On May 13, 2013 OSC granted OGC's extension request and we agreed to submit our report to your office by June 21, 2013. Pursuant to that agreement, please find our enclosed investigative report and supporting documentation.

Feel free to contact me or Chad Bungard, Counsel to the Inspector General, if you have any questions or concerns.

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE: ODAR Whistleblower Case

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: From: 04/23/2013 To: 06/21/2013

RELATED CASE NUMBERS: N/A

REPORT BY: Mike McGill

FIELD DIVISION / OFFICE: FD: Philadelphia Office: Philadelphia

STATUS OF CASE: () INVESTIGATION CONTINUED

INITIAL REPORT

STATUS REPORT

JUDICIAL STATUS REPORT

() COLLATERAL INVESTIGATION

(XX) INVESTIGATION CLOSED

SYNOPSIS

This is the final report of investigation related to Office of Special Counsel (OSC) File No. DI-12-3069.

ALLEGATION or REFERENCE TO MOST RECENT REPORT

Reference is made to all of the previous reports of investigation associated with this investigation, the most recent of which is dated June 17, 2013.

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INVESTIGATIVE ACTIVITY

Summary of the information with respect to which the investigation was initiated:

On March 21, 2013, Carolyn N. Lerner of the Office of Special Counsel (OSC) referred a whistleblower disclosure to The Honorable Michael J. Astrue, Commissioner of Social Security. (Attachment 1) The OSC referral contains whistleblower disclosures made by Administrative Law Judge (ALJ) Christine P. Benagh. Judge Benagh alleged that Social Security Administration (SSA) management officials at the Office of Disability Adjudication and Review (ODAR) may be engaging in violations of law, rules or regulations, gross mismanagement, and a gross waste of funds. The report summarized the allegations as follows:

“In brief, Judge Benagh alleged that SSA management officials:

- *Review ALJ decisions denying fee increase petitions filed by claimants’ attorneys in violation of 42 U.S.C. § 406(a)(3);*
- *Extend a 15-day deadline for review of fee increase petitions files by claimants’ attorneys by regulation in the Code of Federal Regulations and internal agency manuals, in violation of 42 U.S.C. § 406(a)(3)(A); and*
- *Allow claimants’ attorneys to double-bill for work already conducted, to bill SSA for excessive fees, and accept materially false claims and fee increase petitions from claimant’s attorneys.”*

The OSC requested that the agency conduct an investigation into the allegations and prepare a report within 60 days of the agency’s receipt of the Special Counsel’s letter. In discussions with the Inspector General on April 19, 2013, Agency officials indicated that they intended to request the OIG’s assistance with this matter.

On April 23, the Office of General Counsel (OGC) officially requested that the Office of the Inspector General (OIG) thoroughly investigate this matter and submit a final report (attaching all interim Reports of Investigation) to OGC so that it could draft a final report for the Special Counsel’s office.

On this same date, Resident Agent in Charge (RAC) Misha Kelly and I were assigned to investigate the allegations included in OSC referral letter, referencing OSC File No. DI-12-3069.

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Attorney Erin Justice of the OIG, Office of Counsel to the Inspector General (OCIG) was assigned to assist in the case.

Before describing the conduct of the investigation, it is first necessary to provide a summary of the information with respect to which the investigation was initiated. The specific allegations made by Judge Benagh in her whistleblower disclosure include two broad categories. The first two allegations outlined in the OSC complaint include Judge Benagh's assertions that, contrary to statute, SSA management officials improperly reviewed her decisions as an ALJ on fee petitions, and improperly extended filing deadlines for fee petitions. In the complaint, Judge Benagh referred specifically to the Social Security Act at 42 U.S.C. § 406(a)(3) as the statute governing fee petitions. In the third allegation, Judge Benagh asserted that SSA took no action to address various forms of misconduct on the part of claimant representatives.

To support her claims against SSA management officials, Judge Benagh cited several cases and provided redacted documentation from these cases to the OSC. The documentation included fee petition requests, fee petition determinations, orders and decisions issued by Judge Benagh, correspondence between SSA management officials and Judge Benagh, fee agreements, subpoenas issued by Judge Benagh, and other related documents.

Description of the conduct of the investigation

In conducting the investigation, RAC Kelly, Attorney Justice and I reviewed the OSC referral in detail. The OSC referral indicated that agency investigators were required to interview the whistleblower at the beginning of the investigation. As a result, on April 24, I contacted Judge Benagh to schedule an interview and requested that she provide copies of the documentation she had submitted to OSC to support her allegations.

Beginning on April 25, Judge Benagh provided me with copies of the documentation she had previously provided to OSC. Judge Benagh provided most of the documentation in the form of attachments to emails, via facsimile, and in some cases, provided hand-delivered documents during interviews. These documents included copies of the original memorandum outlining her allegations against SSA she provided to OSC (Attachment 2), copies of additional correspondence between Judge Benagh and the OSC (Attachments 3 and 4), as well as copies of numerous supporting documents from cases she had adjudicated over the years and provided to OSC to support her claims. These included the following documents:

1. Case P [REDACTED] Exhibit List (Attachment 5)
2. Case P [REDACTED] Exhibit A (Attachment 6)

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3. Case P [REDACTED] Exhibit B (Attachment 7)
4. Case P [REDACTED] Exhibit C (Attachment 8)
5. Case P [REDACTED] Exhibit D (Attachment 9)
6. Case P [REDACTED] Exhibit E (Attachment 10)
7. Case P [REDACTED] Exhibit F (Attachment 11)
8. Case P [REDACTED] Exhibit G (Attachment 12)
9. Case P [REDACTED] Exhibit H (Attachment 13)
10. Case P [REDACTED] Exhibit I (Attachment 14)
11. Case P [REDACTED] Exhibit J (Attachment 15)
12. Case P [REDACTED] Exhibit K (Attachment 16)
13. Case P [REDACTED] Exhibit L (Attachment 17)
14. Case P [REDACTED] Exhibit M (Attachment 18)
15. Case P [REDACTED] Exhibit N (Attachment 19)
16. Case K [REDACTED] Fee Petition [REDACTED] (Attachment 20)
17. Case K [REDACTED] Fee Petition [REDACTED] (Attachment 21)
18. Case K [REDACTED] Fee Petition [REDACTED] (Attachment 22)
19. Case K [REDACTED] Fee Petition [REDACTED] (Attachment 23)
20. Case C [REDACTED] (Attachment 24)
21. Case L [REDACTED] Subpoena (Attachment 25)
22. Case L [REDACTED] Judge Banks Decision (Attachment 26)
23. Assorted documents provided by Judge

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Benagh but not referenced in OSC Referral (Attachment 27)

During the course of the investigation, RAC Kelly, Attorney Justice, and/or I interviewed the following individuals who provided information pertinent to the allegations set forth in the OSC referral:

1. Christine P. Benagh, ALJ, Washington, DC Hearing Office, on April 29, 2013 (Attachment 28) and May 6, 2013. (Attachment 29)
2. Joann Anderson, Director of the Office of Payment and Claimant Representative Policy (OPCRP), on April 30, 2013. (Attachment 30)
3. Barb Newbauer, Supervisory Social Insurance Specialist (OPCRP), on April 30, 2013. (Attachment 30)
4. Robert Melvin, Attorney, Office of General Counsel, Office of Program Law, on May 6, 2013. (Attachment 31)
5. Sandy Shultis, Regional Management Officer, Office of Regional Chief Administrative Law Judge, Office of Disability Adjudication and Review, on May 9, 2013. (Attachment 32)
6. Gina Pesaresi, Regional Attorney, Office of Regional Chief Administrative Law Judge, on May 9, 2013. (Attachment 32)
7. [REDACTED], Attorney Advisor, Office of Appeals Operations, on May 13, 2013. (Attachment 33)
8. [REDACTED], Attorney, on May 31, 2013. (Attachment 34)
9. Frank Cristaudo, Regional Chief Counsel, Boston, on June 6, 2013. (Attachment 35)
10. John Thawley, Hearing Office Chief Administrative Law Judge, Washington, DC Hearing Office, on June 6, 2013. (Attachment 36)
11. Jasper Bede, Regional Chief Administrative Law Judge, Philadelphia, on June 17, 2013. (Attachment 37)

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Some of the individuals noted above also provided evidentiary material pertinent to the investigation. The information provided by these individuals will be discussed in the body of the report, and attached relevant documents.

At the outset of the investigation, Attorney Justice contacted Robert Melvin, an attorney with SSA/OGC's Office of Program Law, and an expert in the statutes and regulations cited in the OSC referral. Attorney Justice requested that Melvin provide information relevant to the Code of Federal Regulations (CFR) and Hearings, Appeals and Litigation Law manual (HALLEX) references cited in the OSC referral letter.

Melvin subsequently provided a detailed summary of his assessment of the allegations set forth in the OSC complaint with respect to the accuracy of ALJ Benagh's references to statute, regulation and policy contained in her whistleblower disclosures. (Attachment 38) After reviewing Melvin's summary and carefully reading the actual statutes, regulations and HALLEX citations referenced in the OSC referral, it became clear that Judge Benagh's first two allegations contained numerous errors. Further interviews with various agency experts corroborated this finding. At the outset, it is important to note that two parallel processes exist for claimant representatives to claim fees associated with the representation of claimants before SSA in their efforts to obtain disability benefits. These are the fee petition process and the fee agreement process. Both processes are mutually exclusive.

In his description of the fee petition process, Melvin advised that its authority is derived pursuant to what is now 42 U.S.C. § 406(a)(1). In the late 1960s, SSA issued regulations to create the fee petition process that a representative would use to obtain approval of the fee he or she charged the claimant. The fee regulations are found in various sections of 20 C.F.R. § 404.1700 et seq. . The fee petition process was the only available method for claimant representatives to seek reimbursement until the creation of the fee agreement process.

With respect to the fee agreement process, in the Omnibus Budget Reconciliation Act of 1990, Congress added to the Social Security Act a streamlined procedure for setting representatives' fees. That process, which the agency terms the fee agreement process, is found in 42 U.S.C. §§ 406(a)(2) and (a)(3). Under this process, if the claimant and the representative enter into a written fee agreement, that agreement calls for a fee that doesn't exceed certain limits. That agreement is filed with SSA before SSA issues a favorable decision on the claim for benefits. The ALJ who issues the favorable decision on the claim for benefits also approves the fee agreement as meeting the statutory criteria.

Melvin also pointed out that the agency never issued regulations for the fee agreement process. Thus, all the rules for the fee agreement process are in the Act itself, at 42 U.S.C §§ 406(a)(2)

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and (a)(3). Conversely, the rules for setting fees are the fee petition regulations, which do not apply to the fee agreement process. Thus, there are separate sets of rules for the two processes: fee agreement process in the Act; fee petition process in the agency regulations.

Melvin's analysis called into question the validity of the claims made by Judge Benagh in her first two allegations. In each allegation, Judge Benagh described how SSA management was circumventing requirements set forth in the fee petition statute, while incorrectly citing the fee agreement statute at 42 U.S.C. § 406(a)(3).

On April 29, 2013, the investigative team conducted the first interview of Judge Benagh. (Attachment 28) Judge Benagh described her educational background, her previous employment history, and her credentials as an ALJ going back nineteen years to when she started in the Johnstown, PA Hearing Office.

Judge Benagh then described in detail her allegations related to some of the cases included as examples in the OSC referral. The cases, as noted in the OSC referral, were the P [REDACTED] case, and the K [REDACTED] case. Each of these cases included numerous documents which were reviewed during the interview. Judge Benagh also described a case involving claimant [REDACTED], although no supporting documents associated with this case were provided to the investigators by Judge Benagh prior to the interview.

During the interview, Judge Benagh also described several other issues she identified, including the alleged underreporting of hours by ALJs, the inability of ALJs to report claimant representatives directly to state bars, alleged inappropriate relationships within the ODAR, and an alleged plot to remove former Hearing Office Chief Administrative Law Judge (HOCALJ) David Hardy. Judge Benagh advised that her original referral to OSC and subsequent correspondence with that office included additional allegations against SSA management that did not make it into the final version of the OSC referral eventually sent to the agency. These additional allegations pertained to the inability of ALJs to directly refer claimant representatives to state bars for suspected misconduct, claimant representatives withholding adverse evidence, and claimant representatives abusing travel cost reimbursements with respect to fee petitions.

With respect to fee petitions, ALJ Benagh stated that the regulations can be found in 20 C.F.R. §§ 404 and 416. She noted that the regulations do not have a time deadline for filing fee petitions. The HALLEX, however, has multiple deadlines for fee petitions. ALJ Benagh stated that the statute (42 U.S.C. § 406) clearly has a 15 day deadline after the notice of award letter for the filing of fee petitions. ALJ Benagh went on to state that she has never seen a fee petition filed on time with regards to the 15 day deadline. In her experience, fee petitions were often filed months or sometimes years later.

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On April 30, RAC Kelly and Attorney Justice interviewed Joann Anderson, Director of the Office of Payment and Claimant Representative Policy (OPCRP) within the Office of Retirement and Disability Policy (ORDP). Also present was Barb Newbauer, a Supervisory Social Insurance Specialist with OPCRP. (Attachment 30) Newbauer and Anderson confirmed that they had reviewed the OSC referral. Both agreed that it appeared from the contents of the OSC letter that there was some confusion or misunderstanding on Judge Benagh's part in differentiating between the fee agreement and fee petition processes.

Anderson and Newbauer explained the differences between fee agreements and fee petitions. Their description matched the detailed analysis previously provided by OGC Attorney Robert Melvin. They also provided information relevant to SSA policies relating to Judge Benagh's complaints about billable hours, excessive fees, travel time, and assessing fee petitions. With respect to Judge Benagh's complaints about alleged submission of forged signatures by claimant representatives, Anderson and Newbauer described SSA's process for referring suspected misconduct to OGC to determine whether or not representative sanctions were warranted.

On May 6, 2013, RAC Kelly, Attorney Erin Justice and I conducted a second interview of Judge Benagh. (Attachment 29) At the outset of the interview, I described to Judge Benagh how we had talked to an Agency expert about the statutes and regulations for the fee petition and fee agreement processes. The expert had educated us on the differences between fee petitions and fee agreements. I then explained that 42 U.S.C. § 406(a)(1) was the statute for the fee petition process, which dated back to the 1960's. The statute was written in general terms, and thus SSA has over the years created very detailed regulations that govern the fee petition process. These regulations are found at 20 C.F.R. § 404.1700 et seq. The fee petition process preceded the fee agreement process, which was statutorily enacted in 1990 and is described in the statute at 42 U.S.C. §§ 406(a)(2) and (a)(3). I explained to Judge Benagh that SSA has never created regulations pertaining to the fee agreement process, and the statute stands by itself.

Judge Benagh disagreed with my assertion. Together we read through a copy of the statute, and she advised that it was her opinion as an expert in the statute that 42 U.S.C. § 406(a)(3)(A)(ii) must refer to the fee petition process – not the fee agreement process. She concurred that (a)(3)(A)(i) refers to the fee agreement process. The statute in question reads as follows:

“(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D) –

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- (i) *the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or*
- (ii) *the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.”*

Judge Benagh advised that the only avenue for claimant representatives to request increases to the maximum fees allowed under the fee agreement process is through the fee petition process. Thus, subsection (ii) must refer to the fee petition process. When I explained that the agency expert stated unequivocally that subsection (ii) referred to the fee agreement process, Judge Benagh insisted that she was an expert in the statute, and that (ii) referred to the fee petition process.

Judge Benagh further emphasized that cases cannot originate at the fee petition process. The Form 1696 *Appointment of Representative* must be in place. She stated she had never seen a case where a claimant representative left out a fee agreement. Judge Benagh maintained that if claimant representatives want more than the amount allowed by a fee agreement, their only option is to file a fee petition. According to Judge Benagh, the only people who want to reduce fees are ALJs and claimants. Judge Benagh stated that 42 U.S.C. § 406(a)(3) is the review section for both 406(a)(1) -- fee petitions, and 406(a)(2) -- fee agreements.

I then reviewed with Judge Benagh, Exhibit L for Case P [REDACTED]. Judge Benagh provided this document to the OSC as part of her whistleblower referral. (Attachment 17) Exhibit L consists of a memorandum from then HOCALJ Banks to Judge Benagh on November 6, 2008, titled *Guidance and Counseling Pertaining to fee Matters/Appropriate Language*. Judge Benagh provided this exhibit to OSC as proof to support her claim that she was improperly admonished by the SSA for applying a deadline as required by § 406. In the memo, HOCALJ Banks referred to a May 8, 2008 fee order issued by Judge Benagh to [REDACTED] in which Judge Benagh stated, “*The regulations provide that a representative who wishes to receive more than the amount set forth in a fee agreement must file his request or a letter of intent to file such a request within 60 days of the date of the decision.*” (Attachment 15)

In the memorandum, HOCALJ Banks advised Judge Benagh that she made some mistakes related to the fee order issued to [REDACTED]. HOCALJ Banks advised Judge Benagh that “*...in the second paragraph of the order, you state that the appeal period for requesting administrative review of a fee agreement amount is 60 days, instead of 15 days. The letter also states that a letter of intent to file a fee petition was filed more than a year after the deadline. However, there is no time limit for filing fee petitions.*” I advised Judge Benagh that HOCALJ Banks’ statements were in line with what SSA’s expert on the fee petition and fee agreement

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processes told us – that the fee agreement process has no regulations and is dictated entirely by the statute found at §§ 406(a)(2) and (a)(3). Judge Benagh disagreed, and insisted that she was correct about the statute and regulations.

We then discussed Case C [REDACTED], also provided by Judge Benagh to the OSC to support her claims. According to Judge Benagh, in this case the authorized representative initially filed a fee agreement, then subsequently filed an untimely fee petition past (according to her) the 15 day time limit set forth in 42 U.S.C. § 406(a)(3)(A). Judge Benagh issued an “*Unreviewable Authorization to Charge and Collect fee*” notice to the claimant representative in that case. (Attachment 24) I advised Judge Benagh that according to the regulations, there is no time limit for filing fee petitions. The statute Judge Benagh cited in her Unreviewable Order, 42 U.S.C. § 406(a)(3)(A) applied only to fee agreements – not fee petitions. Judge Benagh disagreed. She advised that another example of a claimant rep filing a late fee petition occurred in case C [REDACTED]. Judge Benagh issued an identical Unreviewable order in this case as well, citing the statute that pertains to fee agreements – not the regulations that pertain to fee petitions. (Attachment 27)

At this point in the interview, I explained to Judge Benagh that having been tasked with investigating the OSC referral to SSA, it appeared that the accuracy of her allegations against SSA management officials described in parts I and II of the OSC referral relied entirely upon whether or not 42 U.S.C. § 406(a)(3) referred to fee petitions, as she claimed. If 42 U.S.C. § 406(a)(3) applied only to fee agreements, then the allegations set forth by OSC in its referral to SSA were without merit. Judge Benagh agreed with this statement, although she continued to maintain that 42 U.S.C. § 406(a)(3) applied to both fee agreements and fee petitions.

Judge Benagh advised that she would review the statutes for fee petitions and fee agreements, and respond to our assertion that the OSC referral contained errors in the citations attributed to those processes.

On May 6, 2013, RAC Kelly, Attorney Justice and I formally interviewed Robert Melvin, a re-hired annuitant attorney with OGC’s Office of Program Law. (Attachment 31) Melvin’s main critique of the OSC referral was that Judge Benagh incorrectly associated the regulations for the fee petition process with the fee agreement process. According to Melvin, the rules governing the fee agreement process are found in the statute itself, at 42 U.S.C. §§ 406(a)(2) and (3). The rules governing the fee petition process are found in the regulations at 20 C.F.R. § 404.1700 et seq. These are mutually exclusive processes, and the rules governing each process simply do not apply to each other. In addition, in the OSC complaint, Judge Benagh maintains that 42 U.S.C. § 406(a)(3) describes the fee petition process, when it does not. It describes the fee agreement process.

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I advised Melvin that following a recent interview, ALJ Benagh conceded that 42 U.S.C. § 406(a)(2) described the fee agreement process only, but still asserted that 406(a)(3)(A)(ii) described the fee petition process. Melvin referred to a copy of the statute, 42 U.S.C. § 406(a)(3)(A), which states “*The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D).*” Melvin advised that because (a)(3)(A) refers back to (a)(2) by stating, “*pursuant to paragraph (2)(D).*” it definitely applies only to fee agreements, and not fee petitions.

Melvin advised that SSA does not recognize a law firm as the claimant’s representative, only the individual representative. Therefore, in cases involving fee petitions, each representative must file a fee petition for their services. Only the representative would be able to sign the SSA Form 1560. Representatives are permitted to bill for a paralegal, or someone directly under their supervision.

Melvin stated that in his experience, ALJ’s normally did not give the billing itemization in fee petitions a lot of scrutiny, unless something appeared to be out of the ordinary. No one can prove the amount of time that a claimant representative spent on each case, so as long as the billing appears reasonable, the fees are approved. SSA policy only dictates that the “quality of services provided” must be acceptable.

With regard to Judge Benagh’s third OSC allegation regarding double billing, Melvin advised that HALLEX policy I-1-2-5 and SSA policy POMS GN 03920.010 both address representative billing charges. The representatives are to provide an itemization of charges, in order to ensure they are not circumventing fees charged to the claimant. There is no policy or statute stating that fees should be split or divided among the claimants represented by the same representative at hearing on the same day.

Melvin reviewed an example of an itemization of services rendered, in which a claimant representative claimed seven hours for a service, but Judge Benagh claimed five hours would have been more accurate. (Attachment 21) The services included, ‘Hearing, inclusive of travel time, review of record, conference with claimant’. Melvin did not think that most ALJ’s would be concerned with the variance between 5 and 7 hours. He indicated that seven hours seemed like a reasonable claim, and there is no way to disprove that claim. Melvin advised that nothing in SSA’s fee petition regulations requires the proration-of travel fees. In his estimation, common ethics would call for that.

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On May 9, 2013, I interviewed Gina Pesaresi, Regional Attorney, and Sandy Shultis, Regional Management Officer for the Regional Chief Administrative Law Judge (RCALJ) office in Philadelphia, PA. (Attachment 32) Prior to the meeting, I had requested that Pesaresi obtain records associated with specific cases referred to by Judge Benagh in her OSC referral. Pesaresi provided records from the Fee Action Tracking System (FAcTS database) associated with all fee petition decisions made by Judge Benagh that were appealed by the claimant representative to the RCALJ.

During the meeting, Pesaresi advised that since 1997, Judge Benagh was the presiding ALJ on only five cases in which a claimant or representative appealed the amount an ALJ authorized for a fee petition. This starkly contrasts with the claim made by Judge Benagh in the OSC referral wherein she estimated that her decisions regarding fee petitions were subjected to further review in an average of six cases per year from 2002 through 2012.

Documents provided by Pesaresi indicated that for the entire Washington DC Hearing Office, there have been only thirty cases in which a claimant or representative appealed to the RCALJ the amount of a fee petition an ALJ authorized since 1997. (Attachment 39) Pesaresi provided me with copies of available documents related to all five of the ALJ Benagh cases containing fee petitions that were appealed to the RCALJ. These included documents associated with two of the cases cited by Judge Benagh in the OSC referral; the K [REDACTED] case (Attachment 40), and the P [REDACTED] case. (Attachment 41)

With respect to the P [REDACTED] case, Judge Benagh had issued a Memorandum Order Denying in Part and Authorizing in Part Fee Petition on May 8, 2008. (Attachment 15) Attorney [REDACTED] subsequently requested a review of the fee petition decision in a letter to Judge Bede, dated July 8, 2008. (Attachment 16) Pesaresi advised that following receipt of the request for review of the fee petition order, Judge Bede sent a memorandum on October 9, 2008 to then HOCALJ Larry Banks directing him to take several actions with respect to Judge Benagh. (Attachment 41)

Judge Bede noted in his memo that, "...*Judge Benagh's actions in this case indicate that her level of understanding of fee agreements and fee petition regulations is inadequate.*"

Judge Bede then directed Judge Banks to do the following:

"Please direct Judge Benagh to view all four videos on Region III's fee Resource Page, located at <http://odar.ba.ssa.gov/philadelphia/fees.htm> or to read the transcripts for those videos. She must confirm to you that she has read or watched all four. You may also wish to suggest that she download the Region III fee Manual from that page if she does not already have one."

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Exhibit L of the P [REDACTED] case (Attachment 17) submitted by Judge Benagh to the OSC contains a memorandum from Judge Banks to Judge Benagh dated November 6, 2008, containing the directives noted in the memorandum referenced above. In fact, part III of the OSC referral alleges that Judge Benagh was “*admonished by the agency in this and other cases... .*” Thus, Judge Benagh interpreted the counseling memo from Judge Banks as an admonishment, rather than an attempt to educate her on the regulations and proper procedures governing the fee petition process

I asked Pesaresi to try and ascertain whether or not ALJ Benagh ever responded to HOCALJ Banks that she had viewed the four videos from Region III’s fee Resource Page. Pesaresi contacted Judge Banks, who could not recall ever receiving an affirmation from Judge Benagh that she had watched the instructional videos. I asked Judge Benagh if she had complied with the directive to view the instructional videos. She advised, “I do not recall now, but I am sure that I did, because I am not permitted to disobey orders.” (Attachment 42)

Pesaresi and I then discussed the K [REDACTED] case. (Attachment 40) In this case, ALJ Benagh alleged that Binder and Binder submitted forged fee petition forms after two attorneys had left the firm. Pesaresi advised that one of the attorneys, [REDACTED], now worked for ODAR in Falls Church. SSA had recognized that fact, and did not pay the fee petition to Binder and Binder.

On May 10, 2013, I received an email from Judge Benagh with an attached memorandum containing her response to the May 6, 2013 interview. (Attachment 43) During the interview, I had pointed out several mistakes in the legal citations included in allegations I and II of the OSC referral.

In the memorandum, Judge Benagh continued to incorrectly attribute the fee petition regulations found at 20 C.F.R. § 404.1720 to the fee agreement process. Specifically, she stated that,

“1) The regulations covering fee agreements 20 CFR 404.1720 and 416.1520, impose a 30-day deadline after approval of the agreement for filing the request review. See also HALLEX I-1-2-1.D.1. The regulation conflicts with the statutory deadline in 406(a)(3) of 15 days after the notice of award letter.”

Attorney Justice asked OGC attorney Robert Melvin to review Judge Benagh’s memorandum. He provided an analysis via email that confirmed our observation that Judge Benagh continued to confuse deadlines for requesting review set forth in the fee petition regulations (20 C.F.R. § 404.1720) with alternate deadlines that apply to requests for review of fee agreements set forth in the statute found at 42 U.S.C. § 406(a)(3). (Attachment 44)

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In order to determine the validity Judge Benagh's allegations with respect to a claimant representative submitting fee petitions containing signatures of attorneys who no longer worked at the firm, the investigative team identified and located the attorneys listed in Case K [REDACTED] from part III of the OSC referral.

On May 13, 2013, RAC Kelly and Attorney [REDACTED] interviewed [REDACTED], a current employee of the Office of Appeals Operations, Quality Review Board (OAO/QRB). (Attachment 33) The purpose of the interview was to determine if she signed SSA Form 1560 associated with case K [REDACTED] from part III of the OSC referral.

According to [REDACTED], [REDACTED] attorneys were only responsible for reviewing the disability cases and preparing for hearings. [REDACTED] had a preparation team that handled all paperwork, and the submission of forms to SSA. On occasion, [REDACTED] would sign forms at the hearings, but did not sign forms most of the time. Attorneys never signed fee petitions. [REDACTED] had a "fee petition" branch that handled all fee petition forms. She was not familiar with the "fee petition" process.

[REDACTED] reviewed page 89 of Exhibit K [REDACTED] ([REDACTED] case) from documents provided by Judge Benagh. (Attachment 20) The document was an SSA Form 1560, *Petition To Obtain Approval Of A fee*, dated April 19, 2011, submitted by [REDACTED] to SSA for services provided to [REDACTED]. The form contains a signature that reads, "[REDACTED]". [REDACTED] stated that the signature on the form was not her signature.

In response to questions related to allegations found in part III of the OSC referral pertaining to Judge Benagh's assertion that claimant representatives "*excessively bill for initial case reviews, clerical expenses and travel expenses, often failing to provide adequate itemized statements of costs*," [REDACTED] described the billable hour's system used by [REDACTED]. The system was automated and automatically generated a set number of default hours for each task that was entered. Attorneys were capable of adjusting the hours for each action. She never saw the billing information or disability payments. She did not know if [REDACTED] billed for all claimants during travel status.

On May 31, 2013, I interviewed attorney [REDACTED]. (Attachment 34) [REDACTED] worked at [REDACTED] from May 1, 2006 until February 6, 2007. [REDACTED] retained numerous records associated with her employment with [REDACTED]. Included in these records was a list of all the hearings she attended. [REDACTED] was able to confirm that she attended a hearing in Washington, DC on December 18, 2006 for claimant [REDACTED].

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I showed [REDACTED] a copy of the Form 1560, *Petition To Obtain Approval Of A fee*, dated April 19, 2011, submitted by [REDACTED] to SSA for services provided to [REDACTED]. (Attachment 21) The form contains a signature that reads, "[REDACTED]." [REDACTED] looked at the form and advised that the signature was not hers. She stated that she left [REDACTED] in February 2007 and never signed anything for [REDACTED] after she left. [REDACTED] advised that no one from [REDACTED] has contacted her regarding work since the day she left.

[REDACTED] explained that most of the claimants' paperwork for hearings was gathered at [REDACTED] New York headquarters office and sent to the local [REDACTED] office in Philadelphia a few days prior to the hearings. She never handled fee paperwork.

I showed [REDACTED] a list of hours and tasks attributed to her for which [REDACTED] submitted the fee petition in the [REDACTED] case. [REDACTED] reviewed them and said they were fairly accurate. She advised that [REDACTED] had a computer system into which an attorney would type a category of work, and the computer would allot a time for that task.

[REDACTED] agreed to provide a sworn statement. (Attachment 45) Her statement reads as follows:

"I verified the fee petition form dated 4/19/2011 baring [sic] my signature. I can attest that this form was never signed by me, this is not my signature. Case in reference is [REDACTED]. I also reviewed the hours of claimed work on my behalf and they appear accurate."

On June 6, 2013, RAC Kelly and Attorney Justice interviewed Regional Chief Counsel Frank Cristaudo. (Attachment 35) Judge Cristaudo was the RCALJ in Philadelphia July 1996, when he first became familiar with Judge Benagh, who worked in the Washington, D.C. Hearing Office. At that time, he was her second line supervisor.

Cristaudo advised that reviewing itemized attorney fees are not something that SSA does in fee agreement cases. In fee petition cases, the ALJ's generally review the itemized expenses to see if anything appears out of the ordinary. If an attorney representative claims an expense that did not occur, it would be referred to OGC for investigation.

Cristaudo confirmed that double billing by claimant representatives is an ethical issue and they are not supposed to charge duplicate travel fees for their claimants. If the ALJ were reviewing a fee petition where this was suspected, they could strike the questionable hours.

With regard to forged signatures on the SSA Form 1560, Cristaudo confirmed that an attorney representative firm should not be submitting hours for a representative if they left the firm.

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According to Judge Cristaudo, a Form 1560 should only be submitted by the representative who did the work. SSA does not recognize firms, only individual attorneys. The fee goes to the last person who represented the claimant.

On June 6, 2013, RAC Kelly and Attorney Justice interviewed Hearing Office Chief Administrative Law Judge John Thawley. (Attachment 36) Judge Thawley is the HOCALJ for the Washington, D.C. hearing office. Judge Thawley provided a description of his dealings with Judge Benagh since he assumed the HOCALJ position in the Washington, DC hearing office.

For example, Judge Thawley described an instance where one of Judge Benagh's decisions was remanded by the Appeals Council citing errors of law and other issues. (Attachment 46) Judge Thawley admonished Judge Benagh via an email after he reviewed the remand decision. (Attachment 47)

Judge Thawley was unaware of the whistleblower allegation to the Office of Special Counsel until Judge Benagh emailed him in September or October of 2012, advising him that he was retaliating against her. He questioned how he could have retaliated against her if he did not know there was an allegation.

Judge Thawley reiterated that fee petitions do not happen often and are not reviewed during a regular course of business. Judge Thawley estimated that during his ALJ career, he has seen approximately five fee petitions out of approximately 2,000 cases.

With regard to SSA Form 1560, attorney representative firms should not be signing the names of attorney's that have left the firm. He believes that the attorney representing the claimant should sign "for", if the original representative left the firm.

On June 17, I conducted an interview of Regional Chief Administrative Law Judge (RCALJ) Jasper Bede. (Attachment 37) During the interview, Judge Bede and I referred to the OSC referral letter that lists the allegations made by Judge Benagh against the SSA.

Judge Bede verified that the OSC referral contains inaccuracies with respect to applying the statute for fee agreements, 42 U.S.C. § 406(a)(3) to fee petitions. I advised that Judge Benagh maintained that 42 U.S.C. § 406(a)(3)(A)(ii) had to apply to fee petitions because she maintained that the only avenue for claimant representatives to request increases to the maximum fees allowed under the fee agreement process was through the fee petition process. Judge Bede stated she was simply incorrect in her belief.

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Judge Bede and I then discussed Part III of the OSC referral letter, which contains allegations made by Judge Benagh that SSA takes no action to address excessive and often materially false petitions for fee increases. Judge Bede explained that the HALLEX provides guidance to ALJs on acceptable claimant representative billing practices. The HALLEX takes a holistic approach. For instance, it takes into consideration the difficulty of the case, the experience of the claimant representative and the amount of work performed and allows the ALJ to make a judgment on an appropriate amount for a fee petition.

If a claimant representative or a claimant disagrees with the amount of a fee petition set by an ALJ, he or she can appeal to the RCALJ for review. Judge Bede advised that he has a staff with extensive experience in judging things like acceptable billable hour amounts submitted with fee petitions. Judge Bede explained that for the most part, ODAR avoids getting too far into the weeds when assessing individual claimant representative billing practices. His team follows the guidance set forth by the HALLEX, and strives to make fair rulings on requested fee petition amounts.

With respect to Judge Benagh's allegations pertaining to the alleged forging of signatures by claimant representatives on Fee Petitions, Judge Bede conceded that this seems to be happening more often lately. Judge Bede explained, however, that Judge Benagh's approach to dealing with the problem was incorrect. Instead of taking it upon herself to issue orders and establish fraud, the proper channel is for Judge Benagh to refer allegations of suspected claimant representative misconduct to the RCALJ, who will assess the situation and refer the matter to OGC for review. OGC acts as the Agency's law firm. There is a process set forth in the regulations for OGC to review alleged misconduct by a claimant representative and hold a hearing to disallow the claimant representative from representing clients before SSA if misconduct is found to have occurred.

Judge Bede reiterated that there is a process in place for any alleged misconduct by claimant representatives that Judge Benagh perceives. All instances of alleged misconduct are to be referred to OGC for consideration. ALJs frequently want to go directly to state bars to report perceived misconduct. This is not Agency policy, however. As the Agency's law firm, OGC is responsible for assessing misconduct and holding any necessary hearings – not individual ALJs.

In the example provided in the OSC referral by Judge Benagh, she complained about not being permitted to hold a fee petition hearing because it was, "*contrary to Region III policy.*" Judge Bede explained that a process is already in place for reviewing fee petitions. For an ALJ to hold a fee petition hearing in an effort to uncover misconduct would set a bad precedent. OGC is charged with holding hearings related to claimant representative misconduct. The proper

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procedure is for Judge Benagh to refer the matter to the RCALJ, who will refer the matter to OGC if the allegation has merit.

Part III of the OSC referral letter also details allegations made by Judge Benagh that she was admonished for her attempts to uncover misconduct by a claimant representative, and thus the claimant representative was never sanctioned. Judge Bede explained that Judge Benagh was not admonished. If anything, she was sent a counseling letter pointing out where she was wrong on the law, and acting contrary to guidance set forth in the HALLEX. Furthermore, the claimant representative was never sanctioned because Judge Benagh never referred the case to the RCALJ as a potential misconduct case. Judge Bede explained that in most instances, he tries to use an informal process for counseling ALJs when they are wrong on the law. This usually takes the form of a phone call or a meeting. In this instance, Judge Benagh's citation of incorrect deadlines in a fee petition order required that the counseling letter be memorialized in writing.

Summary of Investigative Findings

Due to the technical nature of the allegations set forth in the OSC complaint and the subsequent findings of the investigation, I will address each of the allegations and summarize the investigative findings. In doing so, reference is made to OSC File No. DI-12-3069, dated March 21, 2013. (Attachment 1)

I. Review of ALJ Decisions Denying fee Increase petitions Contrary to Statute

Allegation from OSC referral

“The Social Security Act, 42 U.S.C. § 406(a)(3), established two procedures for the review of petitions to increase or decrease fees for a claimant’s representative. If the petition for review is filed by a claimant or a claimant’s representative, the ALJ who heard the underlying disability claim is charged with the review, unless they are unavailable. §406(a)(3)(B)(i). If the fee increase petition is filed by an ALJ, the Commissioner of Social Security or his designate reviews it. §406(a)(3)(B)(ii). In either case, “the decision of the administrative law judge or other person conducting the review shall not be subject to further review.” §406(a)(3)(C)

Finding:

This statement is factually incorrect. Title 42 U.S.C. § 406(a)(3) did not establish two procedures for the review of petitions to increase or decrease fees for a claimant’s representative. Title 42 U.S.C. § 406(a)(3) actually established two procedures for the review of fee agreements

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to increase or decrease fees for a claimant's representative. The fee petition regulations at 20 C.F.R. § 404.1720(d) expressly allows for the review of fee petition determinations by stating, "An authorized official of the Social Security Administration who did not take part in the fee determination being questioned will review the determination."

The fee agreement provisions found at 406(a)(2) and (3) were enacted in 1990 to provide a streamlined process for claimant representatives to receive payment for their services. The legislative history describes that this is a separate and distinct process from the fee petition process. "The provision(s) would generally replace the fee petition process with a streamlined process in which SSA would approve any fee agreement jointly submitted in writing and signed by the representative and the claimant if the Secretary's determination with respect to a claim for past-due benefits was favorable and if the agreed-upon fee did not exceed a limit of 25 percent of the claimant's past-due benefits up to \$4,000. The \$4,000 limit could be increased periodically for inflation at the Secretary's discretion. If a fee was requested for a claim which did not meet the conditions for the streamlined approval process, it would be reviewed under the regular fee petition process." H.R. Conf. Rep. 101-964, 101st Cong., 2nd Sess. P. 908 (1990).

Allegation from OSC referral

"Contrary to §406, Judge Benagh estimates that her decisions in such reviews have been subjected to further review in an average of six cases per year since 2002."

Finding:

Even though the fee petition regulations allow for reviews, the statement that Judge Benagh's fee petition determinations were subject to review an average of six cases per year is inaccurate. For the ten year period from 2002 until 2012, this would equate to approximately sixty cases. Documents provided by Regional Attorney Pesaresi indicated that for the entire Washington DC Hearing Office, there have been only thirty cases in which a claimant or representative appealed to the RCALJ the amount of a fee petition an ALJ authorized since 1997. (Attachment 39) Of these thirty cases reviewed by the RCALJ, only five cases were assigned to Judge Benagh.

Allegation from OSC referral

"For example, in Case P [REDACTED] Judge Benagh received a petition from a claimant's attorney for a fee increase. Judge Benagh denied the petition in May 2008 pursuant to §406(a)(3)(B)(i), after finding the firm had overbilled the claimant and submitted materially false and misleading statements. (The false statements include the attorney's failure to disclose to Judge Benagh that he had already been paid for approximately two years of work

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that he had included in his new fee petition, and a statement that he “dictated” an on-the-record decision to Judge Benagh. These false statements are also addressed in Part III below.)” Judge Benagh’s decision was overruled by then-Regional Chief Administrative Law Judge (RCALJ) Frank Cristaudo.”

Finding:

As noted above, the fee petition regulations at 20 C.F.R. § 404.1720(d) allow for the review of fee petitions and mandate that the review be conducted by someone who did not take part in the fee determination. Furthermore, the statement that “*Judge Benagh’s decision was overruled by then-Regional Chief Administrative Law Judge (RCALJ) Frank Cristaudo.*” is also incorrect. Regional Chief Administrative Law Judge Jasper Bede (not Frank Cristaudo) overruled Judge Benagh’s fee petition determination in this case in an order dated March 12, 2009. (Attachment 19) The alleged false statements will be addressed in Part III below.

II. Extension of Filing Deadlines for fee Increase Petitions Contrary to Statute

Allegation from OSC referral

“Judge Benagh also alleges that SSA has promulgated regulations that extend a statutory 15-day deadline for claimants’ attorneys to file fee increase petitions after a decision on the merits of the claim. Section 406 states the procedure for attorney’s fees to be paid out of a claimant’s past-due benefits, which includes the approval of the fee agreement by the Commissioner prior to a determination of the underlying claim, followed by a notice to the claimant of the amount of past-due benefits and the maximum attorney’s fees that may be charged. Section 406(a)(3)(A) requires that fee petitions must be filed within 15 days after receiving a notice of award of a claimant’s benefits and authorization of fee payment. SSA’s own “Notice of Award” letter, sent to the claimant and the claimant’s representative, notes this 15-day deadline.”

Finding:

This statement is factually incorrect. The 15-day deadline noted in 42 U.S.C. § 406(a)(3) applies only to the request for review of fee agreements – not to the filing of fee increase petitions. The “Notice of Award” letters for fee agreements (Form HA-L15) contain language advising claimants and representatives they have 15 days to request review of the agreement. (Attachment 48) The “Notice of Award” letter for fee petitions (Form HA-L17) contain language advising

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claimants and representatives they have 30 days to request review of the fee petition determination. (Attachment 49)

Allegation from OSC referral

“However, other SSA regulations countermand this statutory requirement. 20 C.F.R. §404.1720(c)(4) and (d)(1) states that the claimants (and their attorneys) have 30 days to petition for a fee increase.”

Finding:

Although the cited regulation actually does pertain to the fee petition process, the remainder of the statement is factually incorrect. 20 C.F.R. § 404.1720(c)(4) states, *“That within 30 days of the date of the notice, either you or your representative may request us to review the fee determination.”* Thus, this regulation does not place a time limit on filing petitions for fee increases, it places a 30-day deadline on requesting review of the fee petition determination.

20 C.F.R. § 404.1720(d) *“Review of fee determination”* (1) states in part, *“Request filed on time. We will review the decision we made about a fee if either you or your representative files a written request for the review at one of our offices within 30 days after the date of the notice of the fee determination...”* Again, this regulation only provides a time limit for filing a request for review of a fee petition determination. It does not place a time limit on filing fee petitions.

The fee petition regulations do not place a time limit within which claimant representatives must file a fee petition request. The regulations at 20 C.F.R. § 404.1730(c) state, in part, that *“To receive direct payment of a fee from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.”* This deadline, however, only applies to direct payment of fees.

Allegation from OSC referral

“In addition, the SSA’s HALLEX Manual also contains sections apparently inconsistent with § 406. While HALLEX § I-1-2-42(A) provides a 15-day deadline for filing a fee petition consistent with statute, by contrast, HALLEX § I-1-2-61(B) states that requests for review must be filed within 30 days after receiving notice, and also allows for review of petitions filed more than 30 days after notice for good cause. Further, HALLEX § I-1-2-53(B) says that in certain

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cases, there is no time limit on fee increase petitions where the representative has waived direct payment from the claimant's past due benefits, and a 60-day time limit where representatives have not waived direct payment."

Finding:

This statement is factually incorrect. HALLEX § I-1-2-42 is titled, "*Administrative Review of the Approval or Disapproval of the Fee Agreement - Overview.*" (Attachment 50) The 15-day deadline described herein applies only to fee agreements. It does not apply to fee petitions.

HALLEX § I-1-2-61 is titled, "*Fee Petition Administrative Review — General Policy.*" (Attachment 51) Section B. states that "*A request for administrative review of a fee authorization under the fee petition process must be filed at one of SSA's offices within 30 days after the date of the notice of SSA's initial fee authorization.*" Therefore, it is consistent with the regulation found at 20 C.F.R. § 404.1720(c)(4).

HALLEX § I-1-2-53 is titled, "*Filing a Fee Petition.*" (Attachment 52) Section B. states, in part, that "*The representative files the petition for fee approval only after he/she has completed providing services for the claimant and any auxiliary beneficiary(ies).*" It also states in Section B.1. entitled "*Representative Eligible for Direct Fee Payment Waives Direct Payment From Past-Due Benefits*" that "*There is no time limit within which a representative must petition.*" However, Section B.2. entitled "*Representative Eligible for Direct Fee Payment Has Not Waived Direct Payment of a Fee From Past-Due Benefits*" states "*To obtain direct payment of all or part of an authorized fee withheld from title II and/or title XVI past-due benefits, the representative who is eligible for direct fee payment should file the petition, or a written notice of his/her intent to petition, within 60 days after the date of the first notice of favorable decision.*"

Therefore, HALLEX § I-1-2-53 is consistent with the fee petition regulations found at 20 C.F.R. § 404.1730(c), which state, in part, that "*To receive direct payment of a fee from your past-due benefits, a representative who is an attorney or an eligible non-attorney should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices, or electronically at the times and in the manner that we prescribe if we give notice that such a method is available, within 60 days of the date we mail the notice of the favorable determination or decision.*" This deadline, however, only applies to direct payment of fees.

Allegation from OSC referral

"These multiple, inconsistent deadlines for when claimants' attorneys must file petitions for fee increases appear to contradict § 406's 15-day deadline."

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Finding:

The multiple deadlines apply to multiple, mutually exclusive processes. The 15-day deadline noted in 42 U.S.C. § 406(a)(3) applies only to the request for review of fee agreements – not to the filing of fee increase petitions.

Allegation from OSC referral

“According to Judge Benagh, the SSA “changes HALLEX at will,” including filing deadlines.”

Finding:

This is a rather broad allegation with no evidentiary supporting materials available to corroborate or refute the claim. The procedures for making changes to HALLEX can be found at HALLEX § I-1-0-7. (Attachment 53) Susan Swansiger, Director of the Division of Field Procedures within the Office of the Chief Administrative Law Judge, described the process for making changes to HALLEX as follows:

“Essentially, revisions to HALLEX may be necessary for a variety of reasons including, but not limited to, the following: legislative changes; regulatory changes; Social Security and Acquiescence Rulings; Program Operations Manual System (POMS) updates; Emergency Messages, Administrative Messages, Modernized System Support messages, and Chief Judge Bulletins; agency-wide initiatives; and request from another ODAR or SSA component. The format of the issuance is determined, and a draft transmittal is prepared and distributed for comment.

The ODAR reviewing audience includes the Associate Commissioner level components in ODAR. Generally, the Office of Retirement and Disability Policy, and the Office of the General Counsel provide comments on any HALLEX drafts, and based on subject matter, comments may be requested from other SSA components, such as the Office of Public Service and Operations Support in the Office of Operations, the Office of Quality Performance, or the Office of Legislation and Congressional Affairs.

The draft is revised to incorporate comments and suggestions that are being adopted or accommodated, and a background book is prepared, which includes the final versions of the transmittal or other issuance, the draft circulated for comment, the comments received, and the comment summary and resolution. The background book is provided to the ODAR Deputy

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Commissioner for approval, and if approved, the issuance is uploaded to SSA's Policy Repository."

Allegation from OSC referral

"Judge Benagh was admonished on November 6, 2008, by the SSA for applying a deadline as required by § 406.

Finding:

As detailed at length above, § 406 does not require a deadline for filing fee petitions. The regulations governing fee petitions do not require a deadline for filing fee petitions. Judge Benagh received a memorandum titled, *"Guidance and Counseling Pertaining to Fee Matters/Appropriate Language"* on November 6, 2008. (Attachment 17) The memorandum stated, *"On May 8, 2008, you issued a fee petition order in the case of P [REDACTED]. The order contains inaccuracies and inappropriate language. In addition, your actions in this case demonstrate the need for further training and guidance on fee matters."*

The purpose of the memorandum was to correct errors in law made by Judge Benagh in orders she issued to claimants and claimant representatives. In the memorandum, Judge Banks notified Judge Benagh that she had failed to provide the claimant or the representative with appeal rights or instructions on requesting review, incorrectly stated the appeal period for requesting review of a fee agreement was 60 days, instead of 15 days, and incorrectly indicated in her order that a letter of intent to file a fee petition was filed more than a year after the deadline, when in reality, there is no time limit for filing fee petitions.

Allegation from OSC referral

In C [REDACTED], the claimant's attorney filed a letter of intent for a fee petition more than one year after the deadline. Judge Benagh estimates that this has occurred in an average of 10 cases per year to which she was assigned, and notes that she has "not seen more than a handful of timely requests" in her 18 years as an ALJ. Judge Benagh no longer attempts to enforce the statute."

Finding:

Neither the statute authorizing fee petitions, 42 U.S.C. § 406(a)(1), nor the regulations authorizing fee petition requests, 20 C.F.R. § 404.1725, contain a fixed deadline for filing fee petitions. The only deadline associated with filing fee petitions is found in HALLEX § I-1-2-

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53(B), which states that there is no time limit for filing a fee petition, but in the event a representative wants to be paid directly out of the claimant's past due benefits, he or she must file the fee petition within 60 days. This is because the agency cannot indefinitely hold 25 percent of a claimant's past due benefits in escrow.

None of the "late" fee petition requests received by Judge Benagh over her 18 years as an ALJ were ever actually late because there is no deadline for filing fee petition requests. In Case C [REDACTED], Judge Benagh issued an order titled, "*Unreviewable Authorization to Charge and Collect Fee.*" (Attachment 24) The order contained numerous errors of law, including applying the statutory deadline for filing requests for review under the fee agreement process to the fee petition case at hand.

III. Improper Allowance of Billing for Work Already Performed, Excessive Billing, and Materially False Submissions by Claimant's Attorneys

Allegation from OSC referral

"Judge Benagh also alleges that lawyers appearing before her file excessive and often materially false petitions for fee increases, which SSA takes no action to address. 42 U.S.C. § 406(a)(1) states that claimants' representatives are only to receive "a reasonable fee to compensate such attorney for the services performed by him in connection with such claim." Section 406 does not allow SSA to pay "expenses" or "costs" related to a claim. Section 408(a) imposes criminal penalties upon any person who makes false statements or a false representation of material fact in connection with any payments made under the Social Security Act, or who conceals or fails to disclose material information with the intent to fraudulently secure unauthorized or excessive payment.

Judge Benagh asserts that many of the petitions she receives contain materially false submissions from claimants' representatives, and that SSA has taken no action to prevent such filings or discipline the attorneys who make them. Specifically, Judge Benagh determined that SSA has allowed claimants' attorneys to double-bill claimants for work already conducted, and excessively bill for initial case reviews, clerical expenses, and travel expenses, often failing to provide adequate itemized statements of costs."

Finding:

This is a rather broad allegation with no evidentiary supporting materials available to corroborate or refute the claim. However, it may be useful to consider the potential scale of the alleged

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problem associated with “*lawyers filing excessive and often materially false*” fee petition requests. A rudimentary analysis of information contained in SSA’s Case Processing and Management System management information indicated that from fiscal year 2010 through May 14, 2013, the Washington, DC Hearing Office received a total of 12,368 fee agreements and fee petitions. A vast majority of the fee requests were in the form of fee agreements (a total of 12,323, or 99.6 percent) rather than fee petitions (a total of 45, or 0.4 percent).

With respect to fee petitions, Judge Benagh disposed of four fee petitions during fiscal years 2010-13. According to available management information, she authorized an amount less than the representative requested on two of the four fee petitions, and the remaining two fee petitions at the amount each representative requested or higher. Thus, the scope of any alleged problem involving excessive fee petition requests described by Judge Benagh seems to be limited in nature.

During interviews with various ODAR management officials, they indicated that ALJ Benagh has the right to review fee petitions and make fee determinations based on her own judgment. The fee petition regulations at 20 C.F.R. § 404.1725(b) provide measures for ALJ’s to evaluate requests for approval of a fee. These include: “(i) *The extent and type of services the representative performed; (ii) The complexity of the case; (iii) The level of skill and competence required of the representative in giving the services; (iv) The amount of time the representative spent on the case; (v) The results the representative achieved; (vi) The level of review to which the claim was taken and the level of the review at which the representative became your representative; and (vii) The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses her or she incurred.*”

ODAR management officials further advised that if Judge Benagh identified excessive or potentially fraudulent activity on the part of a claimant representative, she should have followed proper procedures set forth in HALLEX I-1-1-50, titled “*Referring an Alleged Violation,*” (Attachment 54), HALLEX I-1-2-81, titled, “*Evidence or Allegations of Violations of Law,*” (Attachment 55), or Chief Judge Bulletin 09-04, titled “*Procedures for Referring Observed or Suspected Misconduct by Claimant Representatives,*” (Attachment 56).

According to Judge Bede, SSA took no action against the claimant representatives included in the OSC referral because Judge Benagh never actually referred the claimant representatives for potential sanctions per the policies and procedures set forth in the above guidance. Judge Bede advised that Judge Benagh never formally referred a case for potential representative misconduct to him since he assumed the RCALJ position in 2007 until recently. In May 2013, he received a

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referral related to a law firm submitting signatures on fee petitions for attorneys that no longer worked at the firm. Judge Bede referred this matter to OGC.

Allegation from OSC referral

“In the fee increase petition in Case K [REDACTED] Judge Benagh alleges that a law firm representing the claimant used signatures of attorneys no longer working for the firm on claim documents, and submitted inflated claims of hours worked, including \$6,000 for 32 hours of work performed by clerical employees. Each attorney in the case also billed 3.5 hours of travel time, a charge which should have been apportioned among all the claimants whom the attorneys represented before SSA ALJ’s that day. The Region III Regional Attorney for SSA, Abby S. Means, contacted Judge Benagh to inform her that she was not permitted to hold a hearing on this fee increase petition, as such a hearing would be ‘contrary to Region III policy.’”

Finding:

The investigation corroborated part of this allegation. The law firm of [REDACTED] did submit fee petition requests for attorneys [REDACTED] and [REDACTED] for work performed by those attorneys after both had left employment with the firm. This appears to be a technical violation of the policy governing ODAR employees found at HALLEX I-1-2-53, which states, *“If a representative works or worked for a firm or corporation, neither the firm nor anyone else in the firm may file a petition on behalf of the appointed representative.”* (Attachment 57)

Neither the statute authorizing fee petitions, 42 U.S.C. § 406(a)(1), nor the regulations authorizing fee petition requests, 20 C.F.R. § 404.1725 expressly prohibit the submission of fee petition requests by firms on behalf of employees who performed work on a claimant’s case. According to HALLEX I-1-0-1, *“Through HALLEX, the Deputy Commissioner for Disability Adjudication and Review conveys guiding principles, procedural guidance, and information to Office of Disability Adjudication and Review staff. HALLEX defines procedures for carrying out policy and provides guidance for processing and adjudicating claims at the hearing, Appeals Council, and civil action levels. It also includes policy statements resulting from Appeals Council en banc meetings under the authority of the Appeals Council Chair.”* (Attachment 58)

During interviews of [REDACTED] employees [REDACTED] and [REDACTED], both indicated that paperwork for fee petitions was handled out of [REDACTED] headquarters in New York. With all fee petition paperwork being handled out of a central office, it is unlikely that anyone intentionally forged the names with intent to defraud. In any event, SSA recognized that [REDACTED] was a

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current SSA employee, and did not pay the requested fee on her behalf to [REDACTED] (Attachment 40)

SSA did pay [REDACTED] the fee petition requested in the name of [REDACTED] however, in reviewing the petition, Judge Bede reduced the amount paid on behalf of [REDACTED] down to \$700, from the requested amount of \$875. Thus, even if this claim was improperly submitted by [REDACTED] the total potential fraud loss in this case is \$700.

With respect to the allegations involving inflated claims of hours worked, work performed by clerical employees and the billing of travel time with respect to Case*****K, it may be useful to determine how much [REDACTED] requested via the four fee petitions in the case, and how much SSA ultimately paid after a review by Judge Bede. [REDACTED] originally submitted fee petitions to Judge Benagh in the names of [REDACTED] (\$875), [REDACTED] (\$1,100), [REDACTED] (\$2,507.87), and [REDACTED] (\$10,000). All four petition requests amounted to a total of \$14,482.87. (Attachment 40)

After Judge Benagh denied payment because she (incorrectly) ruled the fee petitions were late, [REDACTED] submitted a request for review to Judge Bede. Judge Bede reviewed the petitions and revised the requested amounts down as follows: [REDACTED] (\$700), [REDACTED] (\$0), [REDACTED] (\$463.10), and [REDACTED] (\$2,791). Judge Bede recognized that [REDACTED] fee petitions were excessive during his review, and adjusted them down to a total of \$3,954.10. (Attachment 40) Thus, the process currently used by SSA to review fee petition requests worked, and [REDACTED] never received the total amount it requested in this case.

With respect to Judge Benagh's wish to hold a hearing on the fee petition in this case, interviews of ODAR management indicated that a hearing on a fee petition was both inappropriate and unprecedented. Judge Bede explained during an interview that a process is already in place for reviewing fee petitions. For an ALJ to hold a fee petition hearing in an effort to uncover misconduct would set a bad precedent. OGC is responsible for holding hearings related to claimant representative misconduct. The proper procedure is for an ALJ to refer the matter to the RCALJ, who will refer the matter to OGC if the allegation has merit.

Allegation from OSC referral

"In Case P [REDACTED] an attorney submitted a fee increase petition that falsely claimed he "dictated" a decision to Judge Benagh. The petition also contained an excessive claim of hours worked. This was the same case in which Judge Benagh denied the fee petition, only to be overruled by the RCALJ. Judge Benagh has been admonished by the agency in this and

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other cases not only for applying a filing deadline, but also for removing double-billed charges, reducing fees for clerical work, and for criticizing attorneys.”

Finding:

In this case, ██████████ received a partially favorable award for its client and was reimbursed \$5,300 minus a user fee via the fee agreement Process. ██████████ subsequently appealed the case to SSA’s Appeals Council, which remanded the case to Judge Benagh, who granted a fully favorable decision. ██████████ then filed a fee petition request with Judge Benagh seeking the full 25 percent of his client’s back pay award, or \$10,079.

In a Memorandum Order Denying in Part and Authorizing in Part Fee Petition, Judge Benagh (incorrectly) stated that, *“The letter of intent to file a fee petition was filed more than a year after the deadline.”* (Attachment 15) Judge Benagh also alleged that ██████████ was double-billing for work it had already been compensated for via the fee agreement process. In the same memorandum, Judge Benagh authorized a fee of \$1,179.63.

In accordance with regulation, ██████████ filed a request for review of her decision to Judge Bede. In his request for review to Judge Bede, ██████████ explained that the line item, *“OTR dictated to ALJ”* was misinterpreted by Judge Benagh. According to ██████████ a summary of the medical evidence and theory of the claimant’s disability was initially dictated and mailed to Judge Benagh in September 2003. This document was not found during the investigation to corroborate ██████████ statement. (Attachment 16)

Judge Bede reviewed the fee petition and agreed with ██████████ that his fee petition request for \$10,079 should be granted. However, RCALJ Bede indicated in his ruling that ██████████ had already been paid \$5,300 minus a user fee, and was only entitled to an additional \$4,779. (Attachment 19) Thus, the process currently used by SSA to review fee petition requests worked, and SSA never paid ██████████ “twice” for the alleged “double billing.”

Allegation from OSC referral

“In another example, Case L ██████████ an attorney elicited perjured testimony from a witness, withheld evidence, and filed false evidence about a claimant’s disability. Judge Benagh found information that the attorney had taken testimony under oath from her client that there had never been a functional capacity evaluation in her case. Judge Benagh, however, subpoenaed records from the claimant’s private disability carrier, which included a functional capacity evaluation, as well as the records of the carrier’s private investigator contradicting the findings of the evaluation, and records showing that that carrier was taking

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action to cut off disability benefits to the claimant. To Judge Benagh's knowledge, the attorney was not sanctioned by SSA. Judge Benagh also received a formal reprimand for finding that these attempts to withhold documents weighed against the credibility of the claimant."

Finding:

With respect to Case L [REDACTED] ([REDACTED]), Judge Benagh was unable to provide any documentation that corroborated her claims. The only documentation provided consisted of several subpoenas she issued in the case. (Attachment 25) The subpoenas she provided to investigators actually included subpoenas referencing several individuals, only one of whom was [REDACTED]. A search of SSA's eView system returned a Notice of Decision for [REDACTED] that resulted in a fully favorable on-the-record decision by Judge Larry Banks dated July 29, 2010. (Attachment 26) Without any additional evidence in this case, the allegation remains unsubstantiated.

Allegation from OSC referral

"As such, she asserts that SSA has failed to address the impact of possible misconduct by claimants' attorneys on the validity of claims. In addition, she believes that the agency's positions have resulted in most judges "rubber-stamping" fee petitions, encouraging multiple abuses."

Finding:

This is another rather broad allegation with no evidentiary supporting materials available to corroborate or refute the claim. As Judge Bede indicated during an interview, OGC is charged with holding hearings related to claimant representative misconduct. The proper procedure is for an ALJ to refer the matter to the RCALJ, who will refer the matter to OGC if the allegation has merit. Judge Bede advised that Judge Benagh never formally referred a case for potential representative misconduct to him since he assumed the RCALJ position in 2007 until recently. In May 2013, he received a referral related to a law firm submitting signatures on fee petitions for attorneys that no longer worked at the firm. Judge Bede referred this matter to OGC.

Summary of Evidence Obtained from Investigation

The following evidence was gathered during the course of the investigation and is attached hereto.

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Attachments:

1. OSC Referral
2. Memorandum Judge Benagh to OSC
3. Benagh correspondence 1
4. Benagh correspondence 2
5. Case P [REDACTED] Exhibit List
6. Case P [REDACTED] Exhibit A
7. Case P [REDACTED] Exhibit B
8. Case P [REDACTED] Exhibit C
9. Case P [REDACTED] Exhibit D
10. Case P [REDACTED] Exhibit E
11. Case P [REDACTED] Exhibit F
12. Case P [REDACTED] Exhibit G
13. Case P [REDACTED] Exhibit H
14. Case P [REDACTED] Exhibit I
15. Case P [REDACTED] Exhibit J
16. Case P [REDACTED] Exhibit K
17. Case P [REDACTED] Exhibit L
18. Case P [REDACTED] Exhibit M
19. Case P [REDACTED] Exhibit N
20. Case K [REDACTED] Fee Petition [REDACTED]

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21. Case K [REDACTED] Fee Petition ([REDACTED])
22. Case K [REDACTED] Fee Petition ([REDACTED])
23. Case K [REDACTED] Fee Petition ([REDACTED])
24. Case C [REDACTED]
25. Case L [REDACTED] - Subpoena
26. Case L [REDACTED] - Judge Banks Decision
27. Assorted documents provided by Judge Benagh but not referenced in OSC Referral
28. ROI Judge Benagh 1
29. ROI Judge Benagh 2
30. ROI Anderson and Newbauer
31. ROI Melvin
32. ROI Pesaresi and Shultis
33. ROI [REDACTED]
34. ROI [REDACTED]
35. ROI Judge Cristaudo
36. ROI Judge Thawley
37. ROI Judge Bede
38. Melvin summary 1
39. RCALJ FACTS Database Docs
40. RCALJ K [REDACTED] Docs
41. RCALJ P [REDACTED] Docs

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42. Email from Judge Benagh to SAC McGill
43. Judge Benagh memorandum responding to Interview
44. Melvin summary 2
45. [REDACTED] statement
46. Appeals Council Remand
47. Judge Thawley email to Judge Benagh
48. HA-L15 Form
49. HA-L17 Form
50. HALLEX I-1-2-42
51. HALLEX I-1-2-61
52. HALLEX I-1-2-53
53. HALLEX I-1-0-7
54. HALLEX I-1-1-50
55. HALLEX I-1-2-81
56. Chief Judge Bulletin 09-04
57. HALLEX I-1-2-53
58. HALLEX I-1-0-1

Violations of any Violation or Apparent Violation of Law, Rule, or Regulation

In the OSC referral, Judge Benagh alleged that the law firm of [REDACTED] submitted fee petition requests for attorneys no longer working for the firm. The investigation corroborated that [REDACTED] did submit fee petition requests for [REDACTED] and [REDACTED] for work performed by those attorneys after both had left employment with the firm. This appears to be a technical violation of the policy governing ODAR employees found at HALLEX

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I-1-2-53, which states, "If a representative works or worked for a firm or corporation, neither the firm nor anyone else in the firm may file a petition on behalf of the appointed representative." (Attachment 57)

Neither the statute authorizing fee petitions, 42 U.S.C. § 406(a)(1), nor the regulations authorizing fee petition requests, 20 C.F.R. § 404.1725 expressly prohibit the submission of fee petition requests by firms on behalf of employees who performed work on a claimant's case. According to HALLEX I-1-0-1, "Through HALLEX, the Deputy Commissioner for Disability Adjudication and Review conveys guiding principles, procedural guidance, and information to Office of Disability Adjudication and Review staff. HALLEX defines procedures for carrying out policy and provides guidance for processing and adjudicating claims at the hearing, Appeals Council, and civil action levels. It also includes policy statements resulting from Appeals Council en banc meetings under the authority of the Appeals Council Chair." (Attachment 58)

During interviews of [REDACTED] employees [REDACTED] and [REDACTED], both indicated that they never completed paperwork related to fee petitions, and paperwork for fee petitions was handled out of [REDACTED] headquarters in New York. With all fee petition paperwork handled out of a central office, it is unlikely that anyone intentionally forged the names with intent to defraud. In any event, SSA recognized that [REDACTED] was a current SSA employee, and did not pay the requested fee on her behalf to [REDACTED] (Attachment 40)

SSA did pay [REDACTED] the fee petition requested in the name of [REDACTED], however, in reviewing the petition, Judge Bede reduced the amount paid on behalf of [REDACTED] down to \$700, from the requested amount of \$875. Thus, even if this claim was improperly submitted by [REDACTED] the total potential fraud loss in this case is \$700.

This investigation is hereby closed by the Office of Investigations, and referred to the Social Security Administration for whatever action it deems appropriate.

SUBMITTED BY: /s/ Mike McGill June 21, 2013
Signature of Reporting Agent Date

APPROVED BY: /s/ Kelly Bloyer June 21, 2013
Signature of Approving Supervisor Date

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3. Benagh correspondence 1
4. Benagh correspondence 2
5. Case P [REDACTED] Exhibit List
6. Case P [REDACTED] Exhibit A
7. Case P [REDACTED] Exhibit B
8. Case P [REDACTED] Exhibit C
9. Case P [REDACTED] Exhibit D
10. Case P [REDACTED] Exhibit E
11. Case P [REDACTED] Exhibit F
12. Case P [REDACTED] Exhibit G
13. Case P [REDACTED] Exhibit H
14. Case P [REDACTED] Exhibit I
15. Case P [REDACTED] Exhibit J
16. Case P [REDACTED] Exhibit K
17. Case P [REDACTED] Exhibit L
18. Case P [REDACTED] Exhibit M
19. Case P [REDACTED] Exhibit N
20. Case K [REDACTED] Fee Petition ([REDACTED])
21. Case K [REDACTED] Fee Petition ([REDACTED])
22. Case K [REDACTED] Fee Petition ([REDACTED])
23. Case K [REDACTED] Fee Petition ([REDACTED])
24. Case C [REDACTED]
25. Case L [REDACTED] – Subpoena
26. Case L [REDACTED] – Judge Banks Decision
27. Assorted documents provided by Judge Benagh but not referenced in OSC Referral
28. ROI Judge Benagh 1
29. ROI Judge Benagh 2
30. ROI Anderson and Newbauer
31. ROI Melvin
32. ROI Pesaresi and Shultis
33. ROI [REDACTED]
34. ROI [REDACTED]
35. ROI Judge Cristaudo
36. ROI Judge Thawley
37. ROI Judge Bede
38. Melvin summary 1
39. RCALJ FACTS Database Docs
40. RCALJ K [REDACTED] Docs
41. RCALJ F [REDACTED] Docs
42. Email from Judge Benagh to SAC McGill
43. Judge Benagh memorandum responding to Interview

44. Melvin summary 2
45. ██████ statement
46. Appeals Council Remand
47. Judge Thawley email to Judge Benagh
48. HA-L15 Form
49. HA-L17 Form
50. HALLEX I-1-2-42
51. HALLEX I-1-2-61
52. HALLEX I-1-2-53
53. HALLEX I-1-0-7
54. HALLEX I-1-1-50
55. HALLEX I-1-2-81
56. Chief Judge Bulletin 09-04
57. HALLEX I-1-2-53
58. HALLEX I-1-0-1

ATTACHMENT 1



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

March 21, 2013

The Honorable Michael J. Astrue
Commissioner
Social Security Administration
6401 Security Boulevard, Suite 300
Baltimore, MD 21235

Re: OSC File No. DI-12-3069

Dear Mr. Commissioner:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that employees at the Social Security Administration (SSA), Office of Disability Advocacy and Review (ODAR), may be engaging in a violation of law, rule or regulation, gross mismanagement, and a gross waste of funds. The whistleblower, Judge Christine P. Benagh, an Administrative Law Judge (ALJ) assigned to ODAR's Washington, D.C., Hearing Office, has consented to the release of her name.

In brief, Judge Benagh alleged that SSA management officials:

- Review ALJ decisions denying fee increase petitions filed by claimants' attorneys in violation of 42 U.S.C. § 406(a)(3);
- Extend a 15-day deadline for review of fee increase petitions filed by claimants' attorneys by regulations in the Code of Federal Regulations and internal agency manuals, in violation of 42 U.S.C. § 406(a)(3)(A); and
- Allow claimants' attorneys to double-bill for work already conducted, to bill SSA for excessive fees, and accept materially false claims and fee increase petitions from claimant's attorneys.

The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). If I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of our findings, and the agency head is required to conduct an investigation of the allegations and prepare a report within 60 days of notification of the allegations. 5 U.S.C. § 1213(c). OSC will not ordinarily grant an extension of time to an agency in conducting a whistleblower disclosure investigation. However, OSC will

consider an extension request where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete.

Upon receipt, I review the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). I will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

I. Review of ALJ Decisions Denying Fee Increase Petitions Contrary to Statute

The Social Security Act, 42 U.S.C. § 406(a)(3), established two procedures for the review of petitions to increase or decrease fees for a claimant's representative. If the petition for review is filed by a claimant or a claimant's representative, the ALJ who heard the underlying disability claim is charged with the review, unless they are unavailable. § 406(a)(3)(B)(i). If the fee increase petition is filed by an ALJ, the Commissioner of Social Security or his designate reviews it. § 406(a)(3)(B)(ii). In either case, "the decision of the administrative law judge or other person conducting the review shall not be subject to further review." § 406(a)(3)(C).

Contrary to § 406, Judge Benagh estimates that her decisions in such reviews have been subjected to further review in an average of six cases per year since 2002. For example, in Case P [REDACTED], Judge Benagh received a petition from a claimant's attorney for a fee increase. Judge Benagh denied the petition in May 2008 pursuant to § 406(a)(3)(B)(i), after finding the firm had overbilled the claimant and submitted materially false and misleading statements.¹ Judge Benagh's decision was overruled by then-Regional Chief Administrative Law Judge (RCALJ) Frank Cristaudo.

II. Extension of Filing Deadlines for Fee Increase Petitions Contrary to Statute

Judge Benagh also alleges that SSA has promulgated regulations that extend a statutory 15-day deadline for claimants' attorneys to file fee increase petitions after a decision on the merits of the claim. Section 406 states the procedures for attorney's fees to be paid out of a claimant's past-due benefits, which includes the approval of the fee agreement by the Commissioner prior to a determination of the underlying claim, followed by a notice to the claimant of the amount of past-due benefits and the maximum attorney's fee that may be charged. Section 406(a)(3)(A) requires that fee petitions must be filed within 15 days after receiving a notice of award of a claimant's benefits and authorization of fee payment. SSA's own "Notice of Award" letter, sent to the claimant and the claimant's representative, notes this 15-day deadline.

¹ The false statements include the attorney's failure to disclose to Judge Benagh that he had already been paid for approximately two years of work that he had included in his new fee petition, and a statement that he "dictated" an on-the-record decision to Judge Benagh. These false statements are also addressed in Part III below.

However, other SSA regulations countermand this statutory requirement. 20 C.F.R. § 404.1720(c)(4) and (d)(1) states that claimants (and their attorneys) have 30 days to petition for a fee increase. In addition, the SSA's HALLEX Manual also contains sections apparently inconsistent with § 406. While HALLEX § 1-1-2-42(A) provides a 15-day deadline for filing a fee petition, consistent with the statute, by contrast, HALLEX § 1-1-2-61(B) states that requests for review must be filed within 30 days after receiving notice, and also allows for review of petitions filed more than 30 days after notice for good cause. Further, HALLEX § 1-1-2-53(B) says that in certain cases, there is no time limit on fee increase petitions where the representative has waived direct payment from the claimant's past due benefits, and a 60-day time limit where representatives have not waived direct payment.

These multiple, inconsistent deadlines for when claimants' attorneys must file petitions for fee increases appear to contradict § 406's 15-day deadline. According to Judge Benagh, the SSA "changes HALLEX at will," including filing deadlines. Judge Benagh was admonished on November 6, 2008, by the SSA for applying a deadline as required by § 406. In C [REDACTED], the claimant's attorney filed a letter of intent for a fee petition more than one year after the deadline. Judge Benagh estimates that this has occurred in an average of 10 cases per year to which she was assigned, and notes that she has "not seen more than a handful of timely requests" in her 18 years as an ALJ. Judge Benagh no longer attempts to enforce the statute.

III. **Improper Allowance of Billing for Work Already Performed, Excessive Billing, and Materially False Submissions by Claimant's Attorneys**

Judge Benagh also alleges that lawyers appearing before her file excessive and often materially false petitions for fee increases, which SSA takes no action to address. 42 U.S.C. § 406(a)(1) states that claimants' representatives are only to receive "a reasonable fee to compensate such attorney for the services performed by him in connection with such claim." Section 406 does not allow SSA to pay "expenses" or "costs" related to a claim.² Section 408(a) imposes criminal penalties upon any person who makes false statements or a false representation of material fact in connection with any payments made under the Social Security Act, or who conceals or fails to disclose material information with the intent to fraudulently secure unauthorized or excessive payments.

Judge Benagh asserts that many of the petitions she receives contain materially false submissions from claimants' representatives, and that SSA has taken no action to prevent such filings or discipline the attorneys who make them. Specifically, Judge Benagh determined that SSA has allowed claimants' attorneys to double-bill claimants for work already conducted, and excessively bill for initial case reviews, clerical expenses, and travel expenses, often failing to provide adequate itemized statements of costs.

² See also *Missouri v. Jenkins*, 491 U.S. 274, 285(1989) (holding that attorney's fees should take into account the contributions of paralegals, secretaries, and other support staff).

In the fee increase petition in Case K [REDACTED], Judge Benagh alleges that a law firm representing the claimant used signatures of attorneys no longer working for the firm on claim documents, and submitted inflated claims of hours worked, including \$6,000 for 32 hours of work performed by clerical employees. Each attorney in the case also billed 3.5 hours of travel time, a charge which should have been apportioned among all the claimants whom the attorneys represented before SSA ALJ's that day. The Region III Regional Attorney for SSA, Abby S. Means, contacted Judge Benagh to inform her that she was not permitted to hold a hearing on this fee increase petition, as such a hearing would be "contrary to Region III policy."³

In Case F [REDACTED], an attorney submitted a fee increase petition that falsely claimed he "dictated" a decision to Judge Benagh. The petition also contained an excessive claim of hours worked. This was the same case in which Judge Benagh denied the fee petition, only to be overruled by the RCALJ. Judge Benagh has been admonished by the agency in this and other cases not only for applying a filing deadline, but also for removing double-billed charges, reducing fees for clerical work, and for criticizing attorneys.

In another example, Case L [REDACTED], an attorney elicited perjured testimony from a witness, withheld evidence, and filed false evidence about a claimant's disability. Judge Benagh found information that the attorney had taken testimony under oath from her client that there had never been a functional capacity evaluation in her case. Judge Benagh, however, subpoenaed records from the claimant's private disability carrier, which included a functional capacity evaluation, as well as the records of the carrier's private investigator contradicting the findings of the evaluation, and records showing that the carrier was taking action to cut off disability benefits to the claimant. To Judge Benagh's knowledge, the attorney was not sanctioned by SSA. Judge Benagh also received a formal reprimand for finding that these attempts to withhold documents weighed against the credibility of the claimant. As such, she asserts that SSA has failed to address the impact of possible misconduct by claimants' attorneys on the validity of claims. In addition, she believes that the agency's positions have resulted in most judges "rubber-stamping" fee petitions, encouraging multiple abuses.

Based on Judge Benagh's 18 years of experience as a Social Security Administrative Law Judge, her first-hand knowledge of these events, and the documentation she provided to our office, I have concluded that there is a substantial likelihood that the information she provided to OSC may disclose violations of law, rule, or regulation, gross mismanagement, and a gross waste of funds. As previously stated, I am referring this information to you for an investigation of the

Ms. Means informed Judge Benagh that Region III policy prohibits hearings on fee matters because case law suggests that these hearings hold "no useful purpose," and that such hearings are a waste of agency resources. See *Thomason v. Schweiker*, 692 F.2d. 333,337 (4th Cir. 1982), *Copaken v. Sec'y of Health, Education & Welfare*, 590 F.2d. 729 (8th Cir. 1979). Ms. Means also stated "Although this case law only addresses a representative's request for a hearing. I believe the same logic can be applied to any attempt to schedule a hearing on a fee matter. If we allow one hearing on a fee matter, the possibility of fee hearings being requested in countless other situations is too great."

The Special Counsel

The Honorable Michael J. Astrue

March 21, 2012

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whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, this report should be reviewed and signed by you personally. Nevertheless, should you delegate your authority to review and sign the report to the Inspector General, or other agency official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of section 1213(d) is enclosed. As you conduct your review of Judge Benagh's disclosures and prepare your report pursuant to section 1213(d), OSC requests that you include information reflecting any dollar savings, or projected savings, and any management initiatives related to these cost savings, that may result from your review.

As a matter of policy, OSC also requires that your investigators interview the whistleblower at the beginning of the agency investigation when, as in this case, the whistleblower consents to the disclosure of her name. As the subject matter expert, Judge Benagh can provide additional information and an explanation of her allegations, thereby streamlining the agency investigation. Please note that where specific violations of law, rule, or regulation are identified, these specific references are not intended to be exclusive.

Further, in some cases, whistleblowers who make disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213, or witnesses who are interviewed in connection with disclosures, allege retaliation once the agency is on notice of the claims. I urge you to take all appropriate measures to ensure that anyone who reports wrongdoing, or participates in the investigation, is protected from such retaliation and other prohibited personnel practices, including informing those charged with investigating Judge Benagh's allegations that retaliation is unlawful and will not be tolerated.

As required by 5 U.S.C. § 1213(e)(3), I will send copies of the report, along with any comments on the report from Judge Benagh and any comments or recommendations from me, to the President and the appropriate oversight committees in the Senate and House of Representatives. Unless the report is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, OSC will place a copy of the report in a public file in accordance with 5 U.S.C. § 1219(a). To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for the public file.

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule, or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. With the exception of patient names, OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for inclusion in the public file.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

The Special Counsel

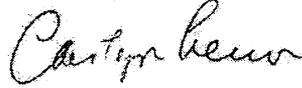
The Honorable Michael J. Astrue

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Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine McMullen, Chief of the Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolyn Lerner".

Carolyn N. Lerner

cc: The Honorable Patrick P. O'Carroll, Inspector General

Enclosure

ATTACHMENT 2

MEMORANDUM

TO: Mark Cohen, Deputy Special Counsel,
United States Office of Special Counsel

FROM: Judge Christine P. Benagh,
Social Security Administration, Washington,
DC Hearing Office

DATE: May 20, 2012

RE: FALSE CLAIMS AND ABUSE IN THE FEE
PROCESS AND TRAVEL REIMBURSEMENTS
FOR HEARINGS BEFORE THE SOCIAL
SECURITY ADMINISTRATION [1] [2]

For More Than 15 Years, The Social Security Administration Has Been Encouraging And Authorizing Fees To Claimant Representatives From Funds of the United States To Which The Representatives Are Not Entitled By Statute, And There Is Good Cause To Believe That Representatives Are Being Paid Excessive Travel Expenses As Well.

Administrative law judges preside over hearings for claimants for disability benefits. These claimants are often represented. By statute, the fee to a

representative may only be authorized “for the services performed by him”, 42 USC 206(a)(1) and may be authorized only by the presiding judge. 42 USC 206. The fees are paid by the Administration to the representatives out of the benefit amount that the government pays to the claimant. 42 USC 206(a)(4). Over a hundred million dollars are paid to representatives annually from the Trust Fund, and each payment reduces the amount of disability benefits owed the claimant, which have accrued from the date that the claimant’s disability began.

Usually, no problem arises, as there is a statutory process, by which the judge approves a standardized, contingency fee agreement between the claimant and representative for a fee set by regulation, currently, at \$6,000.00 or 25 percent of back due benefits owed the claimant.[3] The statute, however, also permits complaints regarding that fee.

The Act also permits the representative to petition the presiding judge for greater or lesser fee, or for a fee in a case that resulted in an unfavorable decision. 42 USC 206(a)(3)(A) and (B). The statute provides a deadline for filing a fee petition, 42 USC 206(a)(3)(A). By statute also states that there is no review of the fee decision of the administrative law judge. 42 USC 206(a)(3)(B)(i)

and (C).

The agency does not follow the statute. Its regulations regarding fees to representatives under the fee agreement process, 20 CFR 404.1720, do not advise claimants of their right to contest the agreed-upon fee. Its regulations regarding fees under the fee petition process, 20 CFR 404.1725, do not advise claimants of their right to contest the fee for which the representative petitioned. Those are only provided in notices mailed to the claimant. The fee petition regulations mention no filing deadline. Moreover, it enumerates several statements that must be contained in the fee petition. The agency, in practice, does not require three of the statements mandated by regulation, hampering the analysis of the presiding administrative law judge:

- (5) The amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid;
- (6) A description of the special qualifications which enabled the representative, if he or she is not an attorney, to give valuable help in connection with your claim; and
- (7) A statement showing that the representative sent a copy of the request for approval of a fee to you.

The actual procedures for fee petitions are contained in the *Hearings, Appeals and Litigation Law Manual* ("HALLEX"). HALLEX is not promulgated under the notice-and-comment provisions of the Administrative Procedure Act.[4] In HALLEX, the agency has constructed an unlawful process for reviewing the fee decisions of the administrative law judge. HALLEX I-1-2-42 *et al.* and I-1-2-61 *et al.*. In HALLEX I-1-2-53.A, the agency states that each authorized representative must file a separate fee petition, but, under its unlawful review process, ignores that requirement. *See example below.* In HALLEX I-1-2-53.A, the agency also permits the authorized representative to petition for work that he did not perform, but only supervised.[5] In addition, the agency countermands the statutory petition filing deadline, and states that there is no filing deadline. HALLEX I-1-2-53.B.1. The agency changes HALLEX at will. The timing of some of the HALLEX provisions suggest malfeasance, as it appears the agency changed HALLEX regarding deadlines and fees of assistants during the pendency of a hotly-contested fee petition before a judge. The changes favored the attorney, [REDACTED] of [REDACTED]. I was the presiding judge. At that time, I was unaware of the statutory conflicts and applied then-agency policy. I was formally

admonished by the agency for applying a filing deadline, for removing double-billed charges, for reducing the fees for clerical work, and for criticizing the attorney. The usual fee for the representation would have been \$5,300. Upon unlawful review, my Regional Chief Administrative Law Judge authorized a fee to [REDACTED] of approximately \$10,000.

As my admonishment illustrates, the agency's unlawful review process for fee petitions is hostile to the presiding judges. Our fee decisions are regularly overturned on review. Judges who reduce fees are viewed as trouble-makers. Judges are prohibited from reporting attorney fraud or misconduct directly to the Inspector General or SSA Office of Special Counsel. Such complaints must go through channels. To my knowledge, none has ever been acted upon. *See example below.* Judges are also prohibited from reporting attorney fraud or misconduct to their bar associations. The hostility is so fierce that I have already received improper agency pressure from the Regional Chief Administrative Law Judge, the Office of General Counsel, and the Office of the Deputy Commissioner. I have been directed not to hold a hearing on a contested fee petition before me, and threatened with discipline if I do, although a hearing is needed to elicit the facts. I am afraid

to rule on fee petitions currently pending before me until after I have filed this disclosure with you. In this milieu, and after many rebuffs in the review process, most judges have resigned themselves to rubber-stamping the fee petitions. The agency's policies have encouraged multiple abuses, see *examples below*, including:

- double-billing for services for which the representative has already been compensated.
- billing for clerical work not performed by the authorized representative.
- multiple fee petitions from a single authorized representative, for work done by other representatives.
- inflating hours by overstating the amount of time needed to perform a task.
- inflating hours by duplicating work, such as multiple, lengthy reviews of the evidence file.
- withholding adverse evidence.
- billing in no less than 15 minute segments for tasks that take less time.
- false statements of work performed that was not.

It also appears that some representatives (who often appear for multiple clients on the same day in an SSA hearing office) are billing each claimant for

whom they appeared for the full travel time under the fee petition process and full travel expenses (reimbursed by the agency—not the judge, under 42 USC 201(j)). Auditing is critical here, as a judge does not the fee petitions of all cases in which a specific representative appeared on a given day, but it appears that neither fee petitions nor travel expense vouchers are effectively audited, if they are audited at all.

Please feel free to contact me if you have any questions at 202-253-3420 or dogsofwar9@gmail.com. My office number is 1 (866) 414-6259 ext 23953. I could also come to your office, as mine is only a few blocks away.

Examples From Past or Current Cases Before Me

1. [REDACTED] petitioned for work for which he had already been compensated. When I denied that and other portions of the petition, I was admonished by the Administration for criticizing the attorney and coming close to accusing him of fraud. P [REDACTED] (attached).
2. [REDACTED] petitioned for the work of clerical personnel and other attorneys in his firm, although the Social Security Act 206(a)(1) prohibits an

individual from petitioning for a fee except for work “done by him.” P [REDACTED]. Each authorized representative must file his/her own petition. No one other than an authorized representative may petition.

3. [REDACTED] petitioned for the work of clerical personnel, although the statute does not permit such compensation, as clerical support is part of overhead/expenses/costs of doing business. P [REDACTED]. *Missouri v. Jenkins*, 491 US 274 (1989); *West Virginia University Hospitals c. Casey*, 499 US 83 (1991). It appears that, during the pendency of the petition before me, the Administration changed its policy manual (HALLEX, which is not published according to APA notice and comment procedures), to permit attorneys to collect fees for the work done by clerical employees (“assistants”).

4. [REDACTED] filed his fee petition late. P [REDACTED]. 42 USC 206(a)(3)(A). It also appeared that the hours claimed were inflated, and no task was billed in less than 15 minute segments.

5. [REDACTED] alleged in his fee petition that he had dictated an on-the-record decision to me, which was not true, nor was a draft of such a requested

decision submitted in the case. P [REDACTED].

6. Although the statute prohibits review of the presiding judge's decision on a fee petition, 42 USC (a)(3)(B)(i) and (C), and notwithstanding the violations mentioned above, the Social Security Administration has promulgated a series of policies (HALLEX, never published under APA procedures) that permit review of the presiding judge's fee decision. In this case, P [REDACTED], the Regional Chief Judge overruled Judge Benagh and granted [REDACTED] a fee of more than \$10,000. The normal fee is \$6,000.

7. During the pendency of the P [REDACTED] case before me, the Administration changed its policies (but not its regulations) to permit attorneys to petition for the work of their assistants, which is not permitted by the Social Security Act.

8. Currently, I have another fee petition from [REDACTED] [REDACTED] pending before me. K [REDACTED] (attached) I have received improper calls from the Regional Attorney, Anna Means, Region III, in which she stated that the Office of the Deputy Commissioner and the Office of the General Council were concerned about the case. She informed me that I was not permitted to hold a hearing on the fee petition, as that would be contrary to Region III

policy. Such policy was not provided to me. (Copy of confirming e-mail to follow.)

9. In the K [REDACTED] petition, I have received a written threat of discipline unless I decide the petition in accordance with the Administration's policy manual (HALLEX), which does not comport with the Social Security Act's fee provisions, I will be disciplined. (Copy to follow.)

10. In the K [REDACTED], [REDACTED] filed for a \$6,000 fee on the basis of 32 hours of work by clerical employees.

11. [REDACTED] assigned the first two hearings in that case to junior attorneys, in which one claimed it required her an hour to write a letter, and in which she conducted multiple, lengthy reviews of the same file.

12. Each attorney in that case claimed 3.75 hours for the work on the date of hearing, inclusive of travel. That is an unlikely coincidence, as the first two hearings were held before a judge who normally holds 15 minute hearings.

13. In any event, those hours should have been apportioned among all claimants for whom those attorneys appeared at hearing that day. It raises

other issues: Are they billing travel expense to each claimant in a day as well?

14. Each of these petitions in K [REDACTED] had checked the box on the Fee Petition Form that no reimbursement for expenses had been received or was expected, although the work-log shows invoices being sent for expenses, and the Administration reimburses some travel expenses for representatives.

15. [REDACTED] fee petition in K [REDACTED] omitted pages from the work-log submitted, and redacted other portions, by blacking them out.

16. One fee petition in K [REDACTED] shows that [REDACTED], an attorney working for [REDACTED], duplicated much work done by other attorneys earlier, and specifically directed that evidence marked in RED by the clerks was not to be submitted, allegedly because it was duplicative. There are references to GREEN evidence to be submitted, and YELLOW evidence in which the clerk was unsure whether it should be submitted, so did submit.

17. A current fee petition before me, filed by an attorney other than those with [REDACTED], (M [REDACTED], attached) seeks compensation

of \$3,500 for a claimant whose case the firm dropped when it reviewed her medical records—a request that turns the statutory contingency-fee scheme on its head, and includes clerical hours. This petition claims more hours than the other two completed cases with hearings, an effective hourly rate of \$120. Moreover, they claim they had received and did not expect reimbursements of expenses, although travel had been required.

18. In yet another current fee petition before me, filed by an attorney other than those with [REDACTED] (C [REDACTED], attached) was filed months late, although less was claimed than the \$6,500 that would have been received under the fee agreement process. A fee of only \$214 per hour is sought. It also bundled all of the work, including clerical work, into a single statement, signed by the owner of the firm; the separate representatives did not file their own. No mandatory statement of expenses or received/expected reimbursements is included, although the firm is based in Florida.

19. None of the petitions discussed above included the mandatory statement of expenses for which the authorized representative has been reimbursed or expects to be reimbursed, although invoices to clients for expenses do appear.

19. The third (CR [REDACTED], attached) also bundled all work into a single statement, included clerical work, and separate representatives did not file their own petitions. No task listed took less than 12 minutes, suggesting that is the minimal charge. A fee of \$265 per hour is claimed, although almost all of the work is clerical, for a total of \$6,630.00. A statement of expenses is included, but not for travel expenses.

20. With respect to travel expenses, although judges do not usually see such expenses, there is good reason to believe that there are substantial abuses. When I was assigned to Johnstown (a decade ago), and holding hearings at the remote site of DuBois, PA, an attorney with the firm of [REDACTED] (Pittsburgh) represented five or six different claimants in a single day. I granted some of the claims, and, by coincidence, those fee petitions arrived on my desk for signature on the same day. The attorney had charged each of the successful claimants the full travel time from Pittsburgh to DuBois. I denied the fees and reported the situation to my HOCALJ. My denials were appealed to the Regional Chief, then Judge Frank Cristaudo, who overruled me. As I recall, he did not grant the double-billed travel time. It was distributed among the successful claimants that

day. I requested that the matter be referred to Office of the Special Counsel or the Office of the Inspector General, because there were probably many instances of such improper charges to multiple claimants. Nothing happened. However, the agency has been aware of these potential abuses for nearly two decades, such as billing both time and expenses to multiple clients for a single trip (including billing unsuccessful clients, a process which the Administration does not monitor in any way).

Summary Conclusion. There have been unlawful payments to fraudulent petitions for attorney fees and travel expenses. These payments are made from government funds, wasting United States resources. The agency's policies knowingly permitting these excessive payments, establishing an unlawful review system, and admonishing administrative law judges who adhere to the law, is an abuse of authority, and the involvement of the agency policymakers may rise to the level of criminal malfeasance.

[1] The names of the claimants are confidential, under the Privacy Act; arguably the names of their representatives are confidential, under the same statute.

[2] I am also filing the requisite OSC-Form 12 with the enclosed information and attachments, but the attachments are too voluminous to fax.

[3] Even there, however, the statute permits the claimant or a judge to complain about the fee agreement, such as complaints that the attorney did little or no or incompetent work. HALLEX I-1-2-12.C(4)(a) undermines the statutory right by precluding consideration of the number of hours spent on a claim or the specific services.

[4] HALLEX is not binding on judges or the courts. It is only internal guidance, as it is not published in accordance with the notice and comment requirements of section 553 of the Administrative Procedure Act. 5 U.S.C. 553. See *Christensen v. Harris County*, 529 U. S. 576, 587 (2000) (holding that agency interpretations contained in policy statements, agency manuals, and enforcement guidelines lack the force of law); accord *United States v. Mead Corp.*, 533 U.S 218 (2001) (policy statements, manuals, and guidelines are not entitled to deference under *Chevron v. Nat. Resources Defense Council*, 467 U.S. 837, (1984), as they are not published under the notice and comment procedures of the APA). E.g. (addressing HALLEX specifically), *Davenport v. Astrue*, 2011 WL 1196274 at 3 (7th Cir.); *Lockwood v. Comm'r Soc. Sec. Admin.*, 616 F.3d 1068, 1072 (9th Cir.2010) (the HALLEX is merely a non-binding, internal administrative guide); *Ferriell v. Commissioner.*, 614 F.3d 611, 618 n. 4 (6th Cir.2010) (same); *Clark v. Astrue*, 529 F. 3d 1211, 1216 (9th Cir. 2008); *Power v. Barnhart*, 292 F.3d 781, 785–86 (D.C.Cir.2002) (same); *Cromer v. Apfel*, 234 F.3d 1272 (7th Cir., 2000); *Moore v. Apfel*, 216 F.3d 864 (9th Cir. 2000); *DeChirico v. Callahan*, 134 F.3d 1177, 1184 (2d Cir.1998) (same); *Thompson v. Astrue*, 2010 WL 1718212 (E.D. Pa.); *Donnersbach v. Astrue*, 2011 WL 294519 (N.D. Ind.); *Hitchcock v. Commissioner*, 2009 WL 5178806 (W.D. Pa); *Sheets v. Astrue*, 2011 WL 1157877 at 41 (N.D.W.Va); *Lang v. Barnhart*, 2006 WL 3858579 (W.D. Pa.). (There are a few older cases to the contrary, but only from the Fifth Circuit. *Shave v. Apfel*, 238 F.3d 592, 596–97 (5th Cir.2001) (prejudicial violations of the HALLEX entitle a claimant to relief); *Newton v. Apfel*, 209 F.3d 448, 459–60 (5th Cir.2000) (same).)

[5] The Social Security Act is clear that fees are restricted only to services performed by the authorized representative. Even if it were not, There is relevant Supreme Court case law as to whether fee award statutes permit the fees to include paralegal. The lead case is *Missouri v. Jenkins*, 491 US 274 (1989). The court summarized the case law in *West Virginia University Hospitals c. Casey*, 499 US 83 (1991). Pointing out that the court has come to accept the dissent of the Chief Justice in *Jenkins*, the court held that the statutory language controls what may be recovered as “fees” or “costs”. Only when a statute provides for recovery of “costs” or “expenses” may the services of a paralegal, secretary, or janitor be

recovered. The attorney fee itself is supposed to cover expenses and profits.

ATTACHMENT 3

MEMORANDUM

To: Disclosure Investigation Unit, United States Office of Special Counsel

From: Honorable Christine P. Benagh
Administrative Law Judge

Date: November 26, 2012

Re: Social Security Directives Violating Statutes and Regulations, Interfering with Statutory Duty to Develop Records in Disability Proceedings, Encouraging Fraud, and Gross Mismanagement and Waste

I have received a letter from Regional Chief Administrative Law Judge, Jasper J. Bede, dated, October 31. Attachment at page 15. He issued three directives to me, arising from a motion for recusal filed by [REDACTED], in a Social Security disability case decided by me. The underlying motion has not been provided to me. Judge Bede's letter threatens me with discipline if I do not comply with its terms.

These directives violate multiple statutes and regulations, constitute significant and substantive interference with my statutory duty to develop the record, encourage fraud, and expose gross mismanagement and waste by the Administration.

1) Judge Bede directed me not to issue further orders mandating a deadline the submission of documentary evidence. Having discovered that [REDACTED] was withholding evidence in disability proceedings, I issued orders requiring the submission of evidence 30 days prior to the scheduled hearing. Judge Bede directed me to cease this practice. His position rests on 20 CFR 404.935 and 416.1435, under which a claimant is required "to make every reasonable effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for hearing."

The regulations quoted in no way preclude issuance of a deadline for the submission of documentary evidence. Judge Bede's position is absurd. The Administration's regulations require submission of written evidence no later than five business days before the date of the scheduled hearing. 20 CFR 404.331. No published regulation prohibits the administrative law judge from ordering an early deadline.

The Administrative Procedure Act reserves to the presiding judge the authority to regulate the course of the hearings. 5 USC 556(c)(5). The Social Security Administration may only direct the manner in which I exercise my statutory power to administer oaths and affirmations, 5 USC 556(c)(1), and the direction must be by published rules of the agency. The Administration may not withhold that statutory power.¹

¹ The Attorney General's Manual on the Administrative Procedure Act, 1947, is explicit:

It is true that the Chief Administrative Law Judge has issued an internal reminder, ordering judges not to issue mandatory time frames for the submission of evidence. D. Bice, *Use of Prehearing Orders—Reminder* (letter 12-992, April 16, 2012)(attached). First, this is an internal memorandum, not the published regulation required by the APA in order for an agency to direct the manner in which a judge exercises her powers under the APA. Second, Judge Bice also takes the position that any mandatory time deadline for the submission of evidence violate the agency's regulations, a position controverted by the Administration's regulations that do require advance filing of documentary evidence.²

I am being threatened with discipline for an action performed as part of my judicial duties that does not violate any published regulation of the Administration.

In addition, the directive and threat of discipline are gross violations of my statutory judicial independence, under the APA,³ as incorporated in my formal position description:

Under the provisions of Titles II and XVI of the Social Security Act and applicable Federal, State, and foreign laws, and in conformity with the

The [APA] language automatically vests in hearing officers the enumerated powers to the extent that such powers have been given to the agency itself, i.e., "within its powers." In other words, not only are the enumerated powers thus given to hearing officers by section 7 (b) without the necessity of express agency delegation, but **an agency is without power to withhold such powers from its hearing officers.** 74. [Fn. omitted, emphases added.]

² It is disturbing that Judge Bice states in her reminder that she learned judges were issuing mandatory timeframes for the submission of written evidence from the National Organization of Social Security Claims Representatives. The Executive Director of NOSSCR is Nancy Shor, who is married to Charles Binder.

³ The concept of judicial independence suggests that "supervision" of judicial conduct needs to be carefully restrained so as to minimize its inhibiting effect on the exercise of judicial functions. Thus, it is almost a universal rule that a judge is not removable because of an erroneous decision or a mistake in judgment. *See 53 A.L.R.3d 911, § 11 (1973)*. Likewise, an administrative law judge should be free of harassment, intimidation or improper influences from agency officials-the Administrative Procedure Act built safeguards into the administrative process, as the Court pointed out in [*Butz v. Economou*, 438 US 478 (1978)], to enhance the impartiality of the decision-making process. . . . The conclusion of the Council that "the claimant was not afforded a fair and proper hearing" is of only collateral interest and is not, as such, an issue in this disciplinary proceeding. A fair hearing is the right of the claimant, a right protected, not by the Commission, but by Appeals Council and the federal courts.

Matter of Chocallo, 2 MSPB 23, 1 MSPR 612 1980).

Administrative Procedure Act, and with full and complete individual independence of action and decision, and without review, the Administrative Law Judge has full responsibility and authority to hold hearings and issue decisions as stated under the above Titles and (1) dismiss or allow requests for hearings and rule on requests for extensions; (2) identify problems and issues to be resolved; . .

The Social Security and Administrative Procedure Acts prohibit substantive review and supervision of the Administrative Law Judge in the performance of his/her quasi-judicial functions of holding hearings and issuing decisions. His/Her decisions may not be reviewed before publication and after publication only by the Appeals Council in certain prescribed circumstances. . . . POSITION DESCRIPTION, Administrative Law Judge (Licensing & Benefits), Agency Position No. 666220, 1-3 (2007).

There is no question but that the Judge Bede's counseling letter is prohibited substantive review and supervision after publication⁴ of my judicial actions and decisions. It is gross interference with my full and complete independence of action and decision without review.

Judge Bice's reminder letter is *ultra vires* in the purest meaning of that term.⁵ The Chief Administrative Law Judge has no authority to supervise the judicial functions of an administrative law judge. To attempt to do violates the Administrative Procedures Act and the position description of the judge. Not even by published regulation may an agency take from a presiding judge the

independent power to conduct the hearing. A published timeframe for the submission of evidence, such as 20 CFR 404.331, may not intrude on the ability of the judge to set other deadlines, as in her discretion are necessary for the conduct of specific cases.

Judge Bede and Judge Bice abuse their authority.

Further, the Administration's position that mandatory timeframes for the submission of written evidence are prohibited and its own regulation mandating the submission of written evidence at least five business days for the hearing are gross mismanagement and produce enormous waste of government resources, delay the hearings, and contribute significantly to the growing backlog of cases.

⁴ The Agency has argued that Judge Benagh's judicial independence was not compromised, as it only issued the counseling letters after the decision had been issued, that Judge Benagh had not been told how to decide pending case. As the position description makes clear, it is immaterial whether a case is still live before a judge. (Management's argument is fallacious in any event, as the counseling letters are, at least, telling her how to act in and decide future cases. Tr. 389-91, 428-29 and 499-502.)

⁵ Among the earliest of all writs at common law, originating before the reign of Edward I, 1274, was *Quo Warranto*, i.e., "by what authority to you act". It was, and its progeny, remain stalwart obstacles to unrestrained government power.

Early filing of documentary evidence, such as within 60 days after a claimant requests a hearing, permits the judge to ascertain whether the claim can be granted on-the-record without the need for an oral hearing. It permits the judge to know whether a single additional document or set of records may enable her to grant the claim without a full (and expensive) hearing. It permits the judge to determine whether there is or may be missing evidence, such as Workers Compensation examinations or wage information, that she needs to obtain. It permits the judge to understand enough of the claim to know whether the claimant needs a consultative examination. Early filing allows a judge to discover whether the claimant is facing dire financial circumstances or a terminal illness, justifying expedited action. It permits the judge to identify claimants who may be dangerous, in time for appropriate security measures to be taken.

Cases that could have been decided earlier clog the backlog of cases awaiting hearing, because the Administration unlawfully prohibits us from obtaining the complete record early in the proceeding.

In practice, without a serious early filing requirement, many, many hearings must be postponed in order to obtain additional evidence that the claimant did not submit. Each delayed hearing costs the taxpayers additional money. In practice, the record evidence in each cases runs to hundreds, even thousands of pages. A five day deadline is insufficient for the staff to organize the mountains of evidence that come in at the last minute. The deadline is often insufficient for the judge to review and analyze the new evidence in time for the hearing. A judge at hearing without a thorough understanding of the evidence fails in her duty to afford a due process hearing. Material issues are easily missed in such a setting, and production pressures act strongly against delaying the case further to complete the record.

The failure of the Administration to enact a early deadline for the filing of evidence, and its internal, unlawful prohibitions against a judge doing so, are gross mismanagement, abuse of authority, and wasteful of time and resources, as well as violating the Administrative Procedure Act and the terms of the administrative law judge's position description.

2) Judge Bede has no statutory or regulatory authority under which he may prohibit me from administering an oath to a representative. Having discovered that [REDACTED] was withholding evidence, I began placing representatives in disability proceedings under oath, solely for the purpose of ascertaining whether the record were complete. As noted above, the Social Security Administration may only direct the manner in which I exercise my statutory power to administer oaths and affirmations, 5 USC 556(c)(1), and the direction must be by published rules of the agency. The Administration may not withhold that statutory power.

His prohibition against an oath is inconsistent with the Administration's requirement of a declaration under penalty of perjury from representatives on fee petitions. Form SSA-1560-U-4 EF (2-2005) requires a representative, petitioning for a fee, to sign a specific declaration:

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

It is shocking that a federal judge would suggest that representatives have no duty of candor to a tribunal. Judge Bede's directive serves to perpetuate the commission of fraud and prohibited conduct by claimants' representatives and to obstruct the potential criminal and civil penalties that attend the same. Absent the penalty of perjury, an administrative law judge has no ability to ensure that the record is complete.⁶

It is especially disturbing that Judge Bede's directive serves protect [REDACTED] when the Administration is well aware that that attorney has filed false and misleading fee petitions, and withheld evidence. OSC Complaint DI-12-3069.

Judge Bede's directive countermands the statutes and regulations that require truth. Criminal penalties are imposed under 18 USC 1001(a):

- (a) Except as otherwise provided in this section [exceptions pertaining to the judicial and legislative branches], whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

The Administration has the power to impose civil penalties on representatives, under 42 USC 1320a-8 in pertinent part.

⁶ Administrative law judges at the Social Security Administration do not have the enforcement powers that belong to other federal judges. We have no contempt power. We are prohibited from reporting attorney misconduct to a bar association. OSC DI-12-3069. (See United States Department of Justice, *Overview of the Privacy Act of 1974*, 2010, finding that attorneys in their entrepreneurial capacity are not protected by the Privacy Act. www.justice.gov/opc/1974definitions.htm.)

Indeed, in the federal judicial context, formal administration of an oath by a representative is unnecessary to trigger the criminal penalty for perjury, 18 USC 1623(a), it is imposed by statute. Under 18 USC 1621, false certification of truth under penalty of perjury carries criminal penalties. See Charles Doyle, *Perjury Under Federal Law: A Brief Overview*, Cong. Research Serv. (Nov. 2010).

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a-7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or subchapter VIII of this chapter, or eligible for benefits or payments under subchapter XVI of this chapter.

The standards of conduct for representatives before the Administration require a representative to assist a claimant in complying with our requests for information or evidence, and prohibit a representative from knowingly making or presenting, or participating in the making or presentation of, false or misleading oral or written statements, assertions, or representations about a material fact or law concerning a matter within our jurisdiction. 20 CFR 404.1740:

(c) *Prohibited actions.* A representative must not: . . .

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about

- a material fact or law concerning a matter within our jurisdiction; . . .
- (7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to: . . .
- (ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; . . .
- (8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

The regulations also make clear the duty to provide complete evidence, 20 CFR 404.1512.

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other factors showing how your impairment(s) affects your ability to work. [Emphasis added.]

See also 42 USC 405(u)(1)(2000); 42 USC 1383(e)(7)(B), and Social Security Ruling 00-2p, *Fraud and Similar Fault*.

In addition, the directive and threat of discipline are gross violations of my statutory judicial independence, under the APA,⁷ as incorporated in my formal position description:

⁷ The concept of judicial independence suggests that “supervision” of judicial conduct needs to be carefully restrained so as to minimize its inhibiting effect on the exercise of judicial functions. Thus, it is almost a universal rule that a judge is not removable because of an erroneous decision or a mistake in judgment. *See 53 A.L.R.3d 911, § 11 (1973)*. Likewise, an administrative law judge should be free of harassment, intimidation or improper influences from agency officials—the Administrative Procedure Act built safeguards into the administrative process, as the Court pointed out in [*Butz v. Economou*, 438 US 478 (1978)], to enhance the impartiality of the decision-making process. . . . The conclusion of the Council that “the claimant was not afforded a fair and proper hearing” is of only collateral interest and is not, as such, an issue in this disciplinary proceeding. A fair hearing is the right of the claimant, a right protected, not by the Commission, but by Appeals Council and the federal courts.

Matter of Chocallo, 2 MSPB 23, 1 MSPR 612 (1980).

Under the provisions of Titles II and XVI of the Social Security Act and applicable Federal, State, and foreign laws, and in conformity with the Administrative Procedure Act, and with full and complete individual independence of action and decision, and without review, the Administrative Law Judge has full responsibility and authority to hold hearings and issue decisions as stated under the above Titles and (1) dismiss or allow requests for hearings and rule on requests for extensions; (2) identify problems and issues to be resolved; . . . The Social Security and Administrative Procedure Acts prohibit substantive review and supervision of the Administrative Law Judge in the performance of his/her quasi-judicial functions of holding hearings and issuing decisions. His/Her decisions may not be reviewed before publication and after publication only by the Appeals Council in certain prescribed circumstances. . . . POSITION DESCRIPTION, Administrative Law Judge (Licensing & Benefits), Agency Position No. 666220, 1-3 (2007).

The directive that I may not administer an oath to a representative to ensure that the record is complete violates the Administrative Procedure Act and the Social Security Act. It is inconsistent with 18 USC 1001(a), 42 USC 1320a-8, 20 CFR 404.1740, and 20 CFR 404.1512. It is inconsistent with agency practice in other settings. Form SSA-1560-U-4 EF (2-2005).

The directive also could constitute both obstruction of justice, 18 USC 1502, and a corrupt attempt to intimidate or impede, by letter, an officer and employee of the Social Security Administration acting in an official capacity to carry out a duty under the Social Security Act and to attempt to obstruct or impede the due administration of the Act. 42 USC 1320a-8b.

3) Judge Bede may not prohibit me from requiring the submission of specific evidence. He has no authority to do so. There is no regulation that restricts the scope of relevant evidence that may be requested. 20 CFR 404.1512 gives examples of evidence that may be requested, but by its own terms does not limit the types of evidence that may be requested, as its response requirement extends to all other relevant evidence that is requested, without redaction.

Judge Bede singled out two categories of evidence he thought it improper for me to request. The first category was any arrest records. This is inconceivable. Arrest records are almost always relevant. They can reveal whether the claimant is engaged in substantial gainful activity, as a drug dealer, burglar, or prostitute. Arrest records can reveal additional impairments, not otherwise available, such as substance abuse. These are issues that an administrative law judge is required to address. 20 CFR 404.1520, 404.1535, and 404.416.935. Judge Bede is instructing me, on pain of discipline, to leave the record incomplete.

Judge Bede is instructing me to leave out of the record "documents in the possession of [REDACTED] containing specific denotations". [REDACTED] firm has used

“stoplight” markings to identify evidence: green for that evidence that should go through to the administrative law judge, yellow for evidence that should only be submitted with caution, and red for evidence that should be withheld from the judge. In five cases, I directed the submission of evidence marked yellow and red, to the extent that these had not previously been submitted and was not duplicative. (Template order attached with identification of the five cases involved.)

As I cannot know whether evidence is being withheld and have no means of knowing or discovering what that evidence might be or the source from which it came, the only means at my disposal is to order the production of withheld evidence by the coding method employed by [REDACTED].

Judge Bede ordered me not to pursue such evidence. His order is unlawful and an abuse of authority.

If my orders related to evidence production are over-reaching, jurisdiction lies with the Appeals Council, not with Judge Bede. This directive constitutes substantial interference on the merits with my obligation to fully and fairly develop the record before me.

The directive suggests that the claimant and representative have a right to withhold relevant, particularly, specifically adverse evidence. That is, in fact, the position of the Administration.

In May of this year, in response to a question from Senator Thune (R-SD) regarding the December 2011 *Wall Street Journal* article re withholding evidence, specifically by Binder & Binder, the Commissioner testified before the Senate Finance Committee.

Commissioner Astrue: Senator, I'm afraid I am going to have to disagree with a number of the assumptions of your question. First of all, I am familiar with the Wall Street Journal article. We did not take no action - we did refer that to the Office of the Inspector General. If you have questions about the progress of that, I would encourage you to talk to the Inspector General.

But that article was relatively thin in terms of the content of allegations. There really was not, in my opinion, very much there. It's also based in part on the misassumption that there's a requirement for all relevant evidence to be provided to the judge. Right now, that is not the law. The previous two Commissioners tried to make that the law and my understanding is that they received a lot of opposition and not much support here in the Congress for that.⁸

First of all, the Wall Street Journal had it dead wrong on what the law is. And second, there wasn't much in the way of allegations. Third, it would be unprecedented to go back and review all cases by a law firm on evidence anywhere near this thin. If you had proof of real fraud, and I have no information

⁸ I am aware of no support for this sentence.

from the Inspector General that suggests that we have that, then it would be totally unprecedented to do that. Any court that would look at that would throw it out. It would be an enormous waste of the taxpayers' dollars for me to do that.

Sen. Thune asked the Commissioner whether he could summarize the Inspector General's findings. He responded that there is no report yet and he testified:

Commissioner Astrue: I don't have much more than that. But certainly, my expectation ... Again, Senator, read that Wall Street Journal article very carefully. When you realize, first of all, that there is not a legal obligation to present every bit of evidence to the Agency because our rules are not written that way, there is a factual error underlying that whole article. Past that, there is not very much very specific in terms of evidence: there is unsupported hearsay, that type ... It may be true. But in order for us to take action, we've got to have some proof and evidence. The Wall Street Journal article did not provide very much for the Inspector General to go on.

http://socsecnews.blogspot.com/2012_05_01_archive.html. [Emphases added.]

The Commissioner, head of the agency, himself a lawyer, assisted by a General Counsel, and overseen by an Inspector General,⁹ cannot be unaware of the requirements that all relevant evidence be submitted, contained in the criminal code, the Social Security Act, and the Administration's own regulations. 18 USC 1001(a), 42 USC 1320a-8, 20 CFR 404.1740, and 20 CFR 404.1512. His testimony to Congress was false. *See* 18 USC 1505; C. Doyle, *Obstruction of Congress: a Brief Overview of Federal Law Relating to Interference with Congressional Activities*, 17 – 20 (Cong. Research Serv. Rept., 2007).

There have been organized attempts to eliminate the requirement that adverse evidence be submitted. 63 FR 41,404 at 41,407 (Aug. 4, 1998)(e.g., comments of the American Bar Association and NOSSCR); Robert E. Rains, *Professional Responsibility and Social Representation: The Myth of the State-Bar Bar to Compliance with Federal Rules on Production of Adverse Evidence*, 92 CORNELL L. REV. 364 (2007)(Congress has prohibited claimants and their representatives from withholding material facts through section 201 of the Social Security Protection Act of 2004, Pub. L. No. 108-203, 118 Stat. 493 (amending sections 1129(a) and 1129A of the Social Security Act, codified at 42 USC 1320a-8(a)(1) and 1320A(a)). (Statute attached.)

The conflict between the plain language of the statutes and regulations, and the Administration's interpretation has been constant over time. When the Social Security Protection Act was passed in 2004, I queried the Regional Attorney for Region III whether section 201 required the filing of adverse evidence. In a telephone discussion,

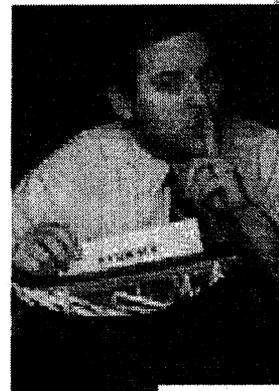
⁹ The Commissioner, the General Counsel, and the Inspector General, took no action to correct that testimony, of which I am aware.

she informed me that it did not, that the only purpose to the statute was to permit the imposition of civil penalties, in the event that a claimant was paid benefits obtained by fraud. I have been reprimanded in the past for finding that an attempt to withhold material adverse evidence undercut the credibility of a claimant. I have been told that Sarah Humphries, Esq., from the Administration's Office of General Counsel, has made repeated, official presentations to representative groups, in which she took the position that no one was required to file adverse evidence. In fact, the Office of the General Counsel goes further and affirmatively advises representatives to withhold adverse evidence. S. Humphries, *Ethical Considerations In Representing Social Security Disability Claimants*, Slide 14 (slide presentation, 2010):

ADVERSE EVIDENCE

In both 1995 and 1997 the ABA opined that these rules are overly broad with regards to the duty to submit evidence. "The ABA believed that the rules continue to include provisions that could give rise to serious ethical conflicts." 63 FR 41407

- Advise from SSA in 2004:
 - The regulations require claimants to prove their *disability*, not their *ability*.
 - The representative stands in the same position as the claimant.
 - If faced with a request for information that is adverse, decline to provide it because it does not support the claim for disability.
 - But don't make a false or misleading statement.
- ***Sarah Humphreys, Office of General Counsel ODAR/SSA, 2004 FOSSCR, Austin, TX.***



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Even if everything the agency interpretation of its own statute and regulations were accurate, the criminal statute still has the force of law. 18 USC 1001. Official statements by the Administration on adverse evidence assiduously avoid any mention of that.

This Administration's position is a perversion of a representative's duty to assist a claimant in submitting evidence that the claimant wishes to be submitted. 20 CFR 404.1740(b)(1). Section 404.1740 in no way suggests that a representative's obligations to submit evidence ends there. The controlling criminal and civil statutes

have been cited above, as well as 20 CFR 404.1512, 416.912, and 404.1740, in their entirety.

Section 404.1740 prohibits representatives from making false or misleading statements or representations. Section 404.1512 specifically requires the claimant to “bring to our attention everything that shows that you are blind or disabled.” Then, the regulations continue that the claimant must:

provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other factors showing how your impairment(s) affects your ability to work. 20 CFR 404.1512(c). . . .

(d)(2) By “complete medical history,” we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. *See* 20 CFR 416.912 *for corresponding provisions related to title XVI.*

Judge Bede is prohibiting me from developing evidence that may be adverse to a claimant, specifically the evidence being withheld. Under statute and ethical considerations, as a federal administrative law judge, I cannot be party to or condone any fraud or attempted fraud on the federal government by failing in my solemn duty and public trust to develop evidence adverse to the claim before me, protecting the integrity of the process as well as assisting all claimants in developing the evidence that supports their claims. My requests for medical and vocational records of the claimant being withheld by [REDACTED] fall squarely within authority of the statutes and regulations, as the statutes and regulations require evidence without material omission or redaction. I am aware of no avenue to satisfy Judge Bede’s directive that I refrain from requesting evidence being withheld in a manner that would be consistent with the statutes and regulations and my obligations thereunder.

4) The ramifications of a policy position advocating that representatives withhold evidence are enormous. For nearly 20 years, representatives have been given official *carte blanche* by the Social Security Administration to evade the criminal penalties for falsehood and misrepresentation. While there are many claimants’ advocates who are conscientious in producing adverse evidence, there are others who are not, to my

knowledge, [REDACTED], [REDACTED], and [REDACTED]. OSC DI-12-3069.

Thousands, possibly millions of claimants, have been granted and paid benefits on incomplete records from which adverse evidence was withheld. Since each claimant found to be disabled, on average, receives roughly \$250,000 in lifetime disability benefits, the burden on the nation's budget is staggering.

Hours of time and millions of dollars are expended by the agency to obtain a partial record. Time and resources are squandered by the agency admonishing judges who attempt to complete the record. OSC DI 12-3069.

The backlog is swollen with claimants whose only chance at receiving benefits is to withhold adverse evidence. The costs to the claimants with legitimate disabilities is incalculable. Many die while waiting.

The Social Security Administration has made a travesty of the due process hearing. For the process to have any integrity, the interests of the taxpayers must be respected as well. The American people have the right to expect that disability benefits are granted to people who are disabled. By permitting claimants and representatives to withhold the whole truth, the Administration does not just condone fraud on a massive scale. As shown by the statements of Ms. Humphries, Judge Bede, Judge Bice, and the Commissioner, the agency actively encourages fraud.

5) The last of Judge Bede's instructions directs that I "observe all government-wide and agency standards of conduct". I do not know what that means. I am unaware of any standards of conduct applicable to me that could be related to [REDACTED]'s motion and complaint. This directive is mere license for the Administration to discipline me at whim.

6) Finally, it is unlawful for Judge Bede to withhold a motion from me or to consider or to act on such a motion, as the Administrative Procedure Act reserves to the presiding judge the power to dispose of procedural requests or similar matters. 5 USC 556(c)(9).

Moreover, under HALLEX I-2-1-60, jurisdiction for a recusal lies with the presiding judge. If the presiding judge does not recuse, the appeal lies with the Appeals Council. Judge Bede has no authority to consider or to act upon such a motion, and, certainly, no authority to withhold such pleadings from me.

Third, as to [REDACTED] complaint, the Collective Bargaining Agreement between the agency and the Association of Administrative Law Judges, IFPTE (AFL-CIO), requires that the agency provide such complaints to the subject judge as soon as possible after receipt. Art. 5. Sec. 7. Judge Bede violated the Collective Bargaining Agreement, and continues to do so, as I have not even yet been provided with a copy of the motion or complaint.

Neither the motion nor the complaint appear in the current record of the case, Will8113, which is also improper.

In conclusion, Judge Bede's directives to me of October 31, 2012, violate law and regulation, and constitute abuse of authority and gross mismanagement. 5 USC 1213(b).

LETTER OF JUDGE BEDE



SOCIAL SECURITY
Office of the Regional Chief Judge

Office of Disability
Adjudication & Review
P.O. Box 13496
Philadelphia, PA 19101

OVERNIGHT DELIVERY

October 31, 2012

Christine Benagh
Administrative Law Judge
SSA/ODAR
1227 25th Street, N.W.
Suite 300
Washington, D.C. 20037

Dear Judge Benagh:

The purpose of this letter is to bring to your attention certain issues concerning an August 2, 2012, prehearing order you issued to the law firm of [REDACTED] in the case of [REDACTED]. The prehearing order is inconsistent with Social Security Administration (SSA) policy and regulations. The order was brought to my attention via correspondence from the representative, [REDACTED], wherein he also requested that you recuse yourself from this case.

To ensure that you serve the public efficiently and effectively, I am directing you to observe all government-wide and Agency standards of conduct, including a focused attention to duty and claimants' needs, and the requirements of your position as an Administrative Law Judge. This includes the following:

- 1) You are directed to refrain from issuing prehearing orders that require mandatory timeframes for submission of evidence.

Your order requires that the representative submit all requested evidence into the record 30 days before the scheduled hearing date. Under 20 C.F.R. §§ 404.935 and 416.1435, however, a claimant is only required to "make every effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for the hearing." Mandatory timeframes for submission of evidence are inconsistent with these regulations. Therefore, you are directed to refrain from imposing such timeframes on claimants. For your information, on April 16, 2012, Chief Administrative Law Judge Debra Bice issued a reminder memorandum (12-992) discussing this very topic.

- 2) You are directed to avoid placing representatives under oath at hearing and requiring them to testify as witnesses.

Your order states that the representative will be placed under oath at hearing and will be required to state "on penalty of perjury" that all documentation you requested has been submitted. Representatives are required to comply with the regulations set forth in 20 C.F.R. §§ 404.1740 and 416.1540. Under the regulations, a representative has no duty to provide sworn testimony in a case as a witness. Being required to do so is fundamentally inconsistent with the representative's role as counsel to the claimant. It undermines the claimant's right to due process by changing the representative's role from counsel to witness. Furthermore, it is inconsistent with the Rules of Professional Conduct for attorneys in most jurisdictions to serve as a witness in a matter where they are representing a party absent extenuating circumstances.

It is ultimately the duty of SSA to ensure that the administrative record is fully developed. See 20 C.F.R. §§ 404.1512(d) and 416.912(d). While it is appropriate to question representatives regarding the completeness of the record, it is inappropriate to require them to testify under oath regarding the evidence in a case. Accordingly, I direct you to refrain from this practice.

- 3) When issuing requests for evidentiary submissions, you are directed to conform with 20 C.F.R. §§ 404.1512 and 416.912.

Your order states that the claimant "must submit into evidence" numerous categories of documents, including arrest records and documents in the possession of Binder & Binder containing specific denotations. Under 20 C.F.R. §§ 404.1512(c) and 404.912(c), if asked, a claimant "must provide evidence about" age, education and training, work experience, daily activities, efforts to work, and any other factors showing how the claimant's impairment affects his/her ability to work. You are directed to refrain from issuing orders mandating the production of evidence not set forth in 20 C.F.R. §§ 404.1512 and 404.912.

Claimants are only required to "bring to our attention everything that shows that [they] are blind or disabled." 20 C.F.R. §§ 404.1512(a), 416.912(a). ALJs, moreover, "have a duty to ensure that the administrative record is fully and fairly developed." HALLEX I-2-6-56, Note 2. An ALJ must develop the claimant's "complete medical history" for at least the 12 months preceding the month in which the claimant filed the application, and "make every reasonable effort" to help the claimant get medical reports from medical sources when he or she gives us permission to request them. 20 C.F.R. §§ 404.1512(d), 416.912(d). It also bears reminding that our proceedings are non-adversarial in nature. *Id.* §§ 404.900(b), 405.1(c)(1), and 416.1400(b). Please be mindful of these basic principles when requesting evidence.

Although this directive does not constitute disciplinary action, please be advised that failure to follow this management directive may lead to disciplinary action. As this case has been resolved based on your finding that the claimant is entitled to benefits, the issue of whether or not you should

recuse yourself due to bias is moot. When issuing pre-hearing orders in the future, please be mindful of any appearance of bias that may arise from your orders.

I urge you to accept this in the spirit in which it is given, as notice that your efficient case management has a profound effect on this Agency and the public we serve. For your convenience, I am enclosing copies of the Chief Judge Memorandum concerning prehearing orders and the C.F.R. sections cited herein.

Respectfully,


Jasper J. Bede
Regional Chief Administrative Law Judge

Enclosure:



cc:
John A. Thawley, Hearing Office Chief Administrative Law Judge

On October 31, 2012, the original letter was sent to Judge Benagh's work address via UPS overnight mail.


Jasper J. Bede
Regional Chief Administrative Law Judge

10/31/2012
Date

Cited portions of 18 USC

18 USC 1001. Statements or entries generally.

(a) Except as otherwise provided in this section [relating solely to matters within the jurisdiction of the legislative or judicial branches], whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

18 USC 1505. Obstruction of proceedings before departments, agencies, and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

18 USC § 1621 - Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 USC § 1622 - Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

18 USC §1623.

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

THE SOCIAL SECURITY ACT
CIVIL MONETARY PENALTIES AND ASSESSMENTS FOR TITLES II, VIII,
AND XVI

Sec. 1129. [42 U.S.C. 1320a-8] (a)(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1128, such a person who is a medical provider or physician from participation in the programs under title XVIII.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or title VIII, or eligible for benefits or payments under title XVI.

SEC. 1129B. [42 U.S.C. 1320a-8b]

Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or

communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than \$5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than \$3,000, imprisoned not more than 1 year, or both. In this subsection, the term “threats of force” means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

20 CFR § 404.1512. Evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by “evidence.”* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 404.1528 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 404.1513(d);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind;

(6) At the initial level of the administrative review process, when a State agency disability examiner makes the initial determination alone (*see* § 404.1615(c)(3)), opinions provided by State agency medical and psychological consultants based on their review of the evidence in your case record; *See* § 404.1527(e)(2)-(3).

(7) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (*see* § 404.1615(c)(3)),

findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (*see* § 404.1527(f)(1)(iii)); and

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. *See* §§ 404.1527(f)(2)-(3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
 - (2) Your education and training;
 - (3) Your work experience;
 - (4) Your daily activities both before and after the date you say that you became disabled;
 - (5) Your efforts to work; and
 - (6) Any other factors showing how your impairment(s) affects your ability to work.
- In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) “Every reasonable effort” means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days

after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By “complete medical history,” we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for the 12-month period prior to (1) the month you were last insured for disability insurance benefits (see § 404.130), (2) the month ending the 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability (see § 404.335(c)(1)), or (3) the month you attain age 22 and you are applying for child's benefits based on disability (see § 404.350(e)).

20 CFR 404.1740. Rules of conduct and standards of responsibility for representatives. . . .

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see 404.1512 in disability and blindness claims):

(1) Act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim, and forward the same to us for consideration as soon as practicable. [N.B., This duty to assist the claimant does not exclude the additional duties imposed by the regulations.] In disability and blindness claims, this includes the obligations to assist the claimant in bringing to our attention everything that shows that the claimant is disabled or blind, and to assist the claimant in furnishing medical evidence that the claimant intends to personally provide and other evidence that we can use to reach conclusions about the claimant's medical impairment(s) and, if material to the determination of whether the claimant is blind or disabled, its effect upon the claimant's ability to work on a sustained basis, pursuant to 404.1512(a);

(2) Assist the claimant in complying, as soon as practicable, with our requests for information or evidence at any stage of the administrative decisionmaking process in

his or her claim. In disability and blindness claims, this includes the obligation pursuant to § 404.1512(c) to assist the claimant in providing, upon our request, evidence about:

(i) The claimant's age;

(c) *Prohibited actions*. A representative must not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act; . . .

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction; . . .

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to: . . .

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules or regulations;

TEMPLATE EVIDENCE PRODUCTION ORDER

[REDACTED]	[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

To whom it may concern:

The disability hearing regarding the application[s] of the above-named claimant is before me and has been scheduled for hearing. At least 30 days before the scheduled hearing date, the claimant must submit into evidence any and all medical and vocational documents, not heretofore submitted, but excluding any and all records duplicating documents previously submitted, that are in any way relevant to the disability analysis during the period beginning one year before the alleged disability onset date through the present:

- a) Records from medical sources, excluding dentists, optometrists, and opticians;
- b) Reports of independent medical examiners;
- c) Pharmaceutical records;
- d) Drug and/or alcohol treatment;
- e) Arrest records;
- f) Vocational rehabilitation, training, testing, or placement records;
- g) Transcripts of Workers' Compensation hearings;
- h) Decisions of Workers' Compensation insurers and boards;
- i) Time and attendance pay records from employers; and
- j) Medical and/or vocational documents in the possession of Binder & Binder (now or in the past), specifically including materials marked as "red" or "yellow" in Binder & Binder's records (other such designations that indicate the material is not to be submitted or submitted only with caution).

Please be aware that the individual representing the claimant at hearing will be required to state, under oath and on penalty of perjury, that all documentation requested herein has been submitted.

Very truly yours,

Christine P. Benagh

ATTACHMENT 4

Factual Summary for the Hon. Christine Benagh
OSC File No. DI-12-3069

I. Review of ALJ Decisions Denying Fee Increase Petitions Contrary to Statute

Judge Benagh alleges that employees of SSA are improperly reviewing her denials of petitions for fee increases. Judge Benagh has provided documents showing that SSA has improperly reviewed her denials of fee petitions.

The Social Security Act, 2 U.S.C. §406(a)(3), provides, in relevant part:

(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). **The**

decision of the administrative law judge or other person conducting the review shall not be subject to further review. [Emphasis added.]

Judge Benagh estimates that her decisions in such reviews have been subjected to further review in an average of six cases per year. Two examples follow: in Case P [REDACTED], Judge Benagh received a petition from a claimant's attorney, the law firm of [REDACTED] for a fee increase. Judge Benagh denied the petition pursuant to §406(a)(3)(B)(i), after finding that the attorney had overbilled the claimant and submitted materially false statements. Judge Benagh's decision was not only overruled by the Regional Chief Administrative Law Judge (RCALJ), Benagh received a formal admonition from the RCALJ.

In another case provided to us, K [REDACTED], Judge Benagh denied a fee petition from another [REDACTED] Attorney after holding a hearing. The Region III Regional Attorney for SSA, Anna Means, contacted Judge Benagh to inform her that she was not permitted to hold a hearing on this fee increase petition, as such a hearing would be "contrary to Region III policy."² Judge Benagh also received a written threat of discipline from Clifford Sturek, the Acting RCALJ, demanding she resolve the petition without a hearing "based on the record and [her] knowledge and observation of the services provided" in accordance with SSA's Hearings, Appeals, and Litigation Law Manual (HALLEX) § I-1-2-57. However, nothing in this section expressly prohibits an ALJ from holding a hearing on a fee increase petition.

II. Extension of Filing Deadlines for Fee Increase Petitions Contrary to Statute

Judge Benagh also alleges that SSA has promulgated regulations that extend a statutory 15-day deadline for claimant attorneys to file fee increase petitions after a decision on the merits of the claim. Section 406 states the procedures for attorney's fees to be paid out of a claimant's past-due benefits, which includes the approval of the fee agreement by the Commissioner prior to a determination of the underlying claim, followed by a notice to the claimant of the amount of past-due benefits and the maximum attorney fee that may be charged. Section 406(a)(3)(A) provides, in part,

The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, **within 15 days** after receipt of the notice provided [submits a written request for an increase or decrease of a fee]. [Emphasis added.]

¹ These case numbers were partially redacted by Judge Benagh.

² Ms. Means stated in her e-mail that it is against Region III policy to allow hearings on fee matters because case law dealing with claimant representative requests for hearings on fee matters holds that these hearings hold "no useful purpose" and that such hearings are a waste of agency resources. See *Thomason v. Schweiker*, 692 F.2d 333,337 (4th Cir. 1982), *Copaken v. Sec'y of Health, Education & Welfare*, 590 F.2d 729 (8th Cir. 1979). Ms. Means also stated "Although this case law only addresses a representative's request for a hearing, I believe the same logic can be applied to any attempt to schedule a hearing on a fee matter. If we allow one hearing on a fee matter, the possibility of fee hearings being requested in countless other situations is too great."

SSA's own "Notice of Award" letter, sent to the claimant and the claimant's representative, notes this 15-day deadline. However, the SSA's regulations countermand this statutory requirement. 20 C.F.R. §404.1720 tells claimants and their attorneys:

Comment [JTZ1]: Please send us a copy of the "Notice of Award" Letter.

(c) *Notice of fee determination.* We shall mail to both you and your representative at your last known address a written notice of what we decide about the fee. We shall state in the notice . . .

(4) That **within 30 days** of the date of the notice, either you or your representative may request us to review the fee determination.

(d) *Review of fee determination—*

(1) *Request filed on time.* We will review the decision we made about a fee if either you or your representative files a written request for the review at one of our offices **within 30 days** after the date of the notice of the fee determination. [Emphasis added.]

The SSA's HALLEX Manual also contains sections apparently inconsistent with §406. HALLEX §1-1-2-42(A) provides:

When the claimant or representative disagrees with the Social Security Administration's (SSA's) determination approving or disapproving a fee agreement, he/she may protest that determination by requesting an administrative review. The party requesting administrative review must do so **within 15 days** of receiving the notice of the determination approving or disapproving the fee agreement. [Emphasis added]

HALLEX §1-1-2-61(B) says:

A request for administrative review of a fee authorization under the fee petition process must be filed at one of SSA's offices **within 30 days** after the date of the notice of SSA's initial fee authorization.

If a request is filed more than 30 days after the date of the notice, the requestor must state in writing why the request was not filed on time. In such cases, SSA will conduct an administrative review only if it determines that there was good cause for not filing the request on time. [Emphasis added.]

HALLEX §1-1-2-53(B) says:

1. Representative Eligible for Direct Fee Payment Waives Direct Payment From Past-Due Benefits

There is no time limit within which a representative must petition.

2. Representative Eligible for Direct Fee Payment Has Not Waived Direct Payment of a Fee From Past-Due Benefits

To obtain direct payment of all or part of an authorized fee withheld from title II and/or title XVI past-due benefits, the representative who is eligible for direct fee payment should file the petition, or a written notice of his/her intent to petition, **within 60 days** after the date of the first notice of favorable decision. [Emphasis added.]

These multiple, inconsistent deadlines for when claimant attorneys must file petitions for fees or fee increases appear to contradict §406's 15-day deadline. According to Judge Benagh, the SSA "changes HALLEX at will," including filing deadlines. Judge Benagh herself was admonished on November 6, 2008, by the SSA for applying a deadline as required by §406, in a case, C [REDACTED], where the claimant's attorney filed a letter of intent for a fee petition more than one year after the deadline. Judge Benagh estimates that this has occurred in an average of 10 cases per year to which she was assigned, and notes that she has "not seen more than a handful of timely requests" in her 18 years as an ALJ.

III. Improper Allowance of Double-Billing, Billing for Work Already Performed, Billing for Clerical Services and Travel Expenses, and Materially False Submissions by Claimant Attorneys.

Judge Benagh also alleges that lawyers appearing before her representing claimants have repeatedly filed materially false petitions for fee increases. These petitions include Cases K [REDACTED], M [REDACTED], and C [REDACTED] where claimant attorneys have double-billed claimants for work already conducted, for clerical expenses, and for travel expenses. Section 406(a)(1) states:

whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this title, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix... a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. [Emphasis added.]

Judge Benagh interprets this provision to mean that the attorney's fee itself is supposed to cover work performed by secretaries, paralegals, and administrative staff, noting the statute itself does not provide separately for SSA to pay "expenses" or "costs" related to a claim.³ Section 406(b)(2) also provides that "any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court [rendering a favorable judgment to a plaintiff] any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor."

Additionally, Judge Benagh claims that in K [REDACTED], there was a fee increase petition where employees of [REDACTED], a firm representing a claimant before her, apparently forged the signatures of attorneys no longer working for the firm on claim documents, as well as

³ See also *Missouri v. Jenkins*, 491 U.S. 274, 285(1989) (holding that attorney's fees should take into account the contributions of paralegals, secretaries, and other support staff).

double-billing a claimant. In [REDACTED], the attorney from [REDACTED] submitted a fee increase petition that falsely claimed a firm attorney "dictated" a decision to Judge Benagh. This was the same case where Judge Benagh denied the fee petition, only to be overruled by the RCALJ and given a written admonition.

Section 408(a) imposes penalties upon any person who

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this title; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized.

Judge Benagh reports that [REDACTED] continues to represent claimants before the SSA.

In another example involving representation by attorneys working for [REDACTED] attorney elicited perjury from a witness, withheld evidence, and filed false evidence about a claimant's disability. Although Judge Benagh could not recall the file number, she did recall that the attorney had taken testimony under oath from her client that there had never been a functional capacity evaluation in her case. Judge Benagh, however, subpoenaed records from the claimant's private disability carrier, which included a functional capacity evaluation, as well as the records of the carrier's private investigator contradicting the findings of the evaluation, as well as records showing that the carrier was taking action to cut off disability benefits to the claimant. In another example, Case A*****[REDACTED], an attorney, [REDACTED] of [REDACTED] withheld evidence adverse to the claimant he was representing, which was referenced in other documents. Judge Benagh repeatedly requested that [REDACTED] produce the evidence, but [REDACTED] denied on the record that it was in his possession or in possession of the firm that had represented the claimant in a worker's compensation claim. After months of delay, Judge Benagh told [REDACTED] to produce the document or she would call a conference between the head of [REDACTED] and the firm that had handled the worker's compensation claim. Shortly before the deadline, [REDACTED] sent the document. Not only were neither of these attorneys disciplined to Judge Benagh's knowledge, Judge Benagh herself received a formal reprimand for finding that this attempt to withhold the document weighed against the credibility of the claimant.

Comment [JTZ2]: Please provide us with the file number of this case, if you have access to it.

Comment [JTZ3]: Please provide us with the letter of reprimand you received in this case.

IV. Restrictions on the Ability of SSA ALJ's to Report Professional Misconduct By Claimant Attorneys to State Bars As Required By State Rules of Professional Conduct

Finally, Judge Benagh alleges that SSA prohibits ALJ's from disclosing misconduct by claimant attorneys to state bar associations, pursuant to a duty required of all lawyers by state rules of professional conduct.⁴ The SSA requires information about attorney misconduct to be sent through the Hearing Office Management Team (HOMT), which then passes the allegation up to the Regional Chief Administrative Law Judge, and then to the SSA Office of General Counsel (OGC). Judge Benagh is unaware of any action taken by SSA that would restrict or disqualify a lawyer from practice before the SSA, even though SSA has the authority under §406 to refuse to recognize or disqualify an attorney who has violated SSA rules and regulations on claimant representation. In particular, Judge Benagh does not believe that any disciplinary action has been taken on the cases from [REDACTED] mentioned above involving overbilling and material misrepresentation (K [REDACTED], M [REDACTED], C [REDACTED], and P [REDACTED]),⁵ as these attorneys continue to represent claimants before SSA. The SSA specifically prohibits ALJ's from reporting attorney misconduct to state bars on the basis of the Privacy Act, 5 U.S.C. §552a, as well as §1106 of the Social Security Act (42 U.S.C. §1306). The relevant directive is codified in HALLEX §I-1-1-50(A), which states

Staff must not report suspected violations to the alleged violator's State bar association or other officials. . . If the Commissioner suspends or disqualifies a representative after appropriate notice and opportunity for a hearing, the Office of the General Counsel (OGC) will inform relevant State courts and bars of the sanction imposed.

Due to the lack of SSA and HOMT actions on her reports of attorney misconduct in the cases described above, Judge Benagh concludes that current SSA internal procedures for investigating attorney misconduct and overbilling are inadequate. Judge Benagh states that SSA, in practice, is not acting upon reports of attorney misconduct submitted to HOMT and OGC. She claims that allowing SSA ALJ's to directly report attorney misconduct to state bar associations would better protect Social Security claimants from having to pay excessive fees out of their legally-entitled past due benefits, would deter attorney misconduct before the SSA itself, and prevent the potential waste of millions of dollars in claimant benefits. We note that SSA's Inspector General has previously investigated SSA's system for tracking attorneys who have been suspended or disqualified from representing claimants before the SSA, and found that SSA needed new screening procedures to proactively match representative data against outside

⁴ See, e.g. D.C. Rules of Prof'l Conduct R. 8.3(a) ("A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority."), ABA Model Rules of Prof'l Conduct R. 8.3(a) (same).

⁵ Judge Benagh informs us that the SSA told the Wall Street Journal in December of 2011 that Binder & Binder was under investigation for forging the signatures of ex-employees, but she is unaware of any SSA efforts to sanction or disqualify the firm or its employees from representing claimants before SSA. See Damian Palcetta and Dionne Searcey, *Two Lawyers Strike Gold in U.S. Disability System*, Wall St. J., December 22, 2011, at A1.

information to detect disqualified attorneys and representatives.⁶ We also note that Judge Benagh is not the only SSA ALJ who has spoken out about attorney misconduct before SSA in disability claims cases.⁷

⁶ See Social Security Administration, Office of the Inspector General, A-12-07-17057, *Claimant Representatives Barred From Practicing Before the Social Security Administration* (September 2007).

⁷ The Hon. Drew A. Swank, an ALJ at the SSA's Richmond, Virginia, ODAR office recently published a law review article calling upon SSA to allow ALJ's to refer suspected misconduct directly to state bars. See Drew A. Swank, *The Social Security Administration's Condoning Of and Colluding With Attorney Misconduct*, 64 Admin. L. Rev. 507 (2012).

ATTACHMENT 5

P [REDACTED]

EXHIBIT LIST RE CASE OF P [REDACTED]

EXHIBIT A July, 2004, Petition of [REDACTED]

BACKGROUND EXHIBITS

EXHIBIT B June, 2003, Appeals Council Order Remanding the Case

EXHIBIT C January, 2004, Favorable Decision On-The-Record of Judge Benagh, including Approval of Fee Agreement

FEE PETITION EXHIBITS

EXHIBIT D April, 2004, [REDACTED] Request to Vacate the Fee Agreement Approval

EXHIBIT E April, 2004, Judge Benagh's Order Denying the Request to Vacate

EXHIBIT F May, 2004, [REDACTED] Appeal to Judge Cristaudo, Regional Chief Administrative Law Judge, of Judge Benagh's Order (Exh. E)

EXHIBIT G November, 2004, Judge Cristaudo's Order to Judge Benagh Directing Consideration of [REDACTED] Fee Petition and [REDACTED] April, 2005, Follow-up Letter to Judge Benagh

EXHIBIT H May, 2006, Judge Benagh's Unsuccessful Attempt to Refer the Fee Petition to Judge Bede, Acting Regional Chief Administrative Law Judge

EXHIBIT I October, 2006, Analysis of Virgilio Bajo, Program Analyst, of Problems with Fee Petition for Judge Banks, DC Hearing Office Chief Administrative Law Judge (double-billing, late filing, probable false statements, recommending a fee of \$2,949)

EXHIBIT J May, 2008, Judge Benagh's Order Approving a Fee of \$1,179.63.

EXHIBIT K July, 2008, [REDACTED] Appeal of Judge Benagh's 2008 Fee Order, *inter alia*, referencing HALLEX I-12-53, amended during the pendency of the Fee Petition, as authority to charge for work of clerical staff

EXHIBIT L November, 2008, Judge Bank's Counseling Letter to Judge Benagh, admonishing her for, *inter alia*, using an incorrect form, for stating that there is a deadline for filing fee petitions, for attempting to refer the petition to the Regional Chief Judge, for using a bold font, for coming close to accusing [REDACTED] of fraud, for not using a more appropriate hourly rate, for criticizing [REDACTED], for comparing the hours of work claimed by [REDACTED] with the hours of work the agency expects a judge to spend on a

case, and, lastly, for stating that staff members to not propose fees to an administrative law judge, although Mr. Bajo had done so, and sent the proposal to Judge Banks

EXHIBIT M December, 2008, Grievance of Judge Benagh and Association of Administrative Law Judges Requesting that the Counseling Letter Be Withdrawn

EXHIBIT N March, 2009, Judge Bede's Authorization of a Total Fee of \$10,079 to [REDACTED]

EXHIBITS

ATTACHMENT 6

EXHIBIT A

[REDACTED]

July 13, 2004

Honorable Frank Cristaudo
Regional Chief Administrative Law Judge
Office of Hearings and Appeals
Social Security Administration
300 Spring Garden Street, 4th Floor
P.O. Box 13496
Philadelphia, PA 19101

ATTN: FEE PETITION UNIT

RE: P [REDACTED]

Dear Judge Cristaudo

As noted in my previous letter dated May 21, 2004, enclosed herein please find my Petition to Obtain Approval of a Fee for representing the above-named claimant before the Social Security Administration with regard to a claim for disability benefits. For your reference, I have enclosed a copy of my letter dated May 21, 2004.

Said Fee Petition is in the sum of \$10,079.00, which is 25% of the past due benefits awarded the claimant pursuant to the Award Certificate previously forwarded to this office.

Kindly proceed in processing said request for approval of a fee. Please forward the undersigned, as attorney, Authorization to Charge and Receive a Fee as soon as possible. Please note that a copy of this petition has been forwarded to the claimant.

Thank you for your courtesy and cooperation.

Sincerely,
[REDACTED]

[REDACTED]

Enc.

55

HOW TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

FORM NO. 0360-010
IMPORTANT INFORMATION ON REVERSE SIDE

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

request approval to charge a fee of _____ → Fee \$ 10,079.00 (Show the dollar amount)

for services performed as the representative of _____ →

My Services Began: 12 / 13 / 00
Month Day Year

My Services Ended: 4 / 27 / 04

Mr. Mrs. Ms. [REDACTED]

Type(s) of claim(s) TITLE II

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.
[REDACTED] [REDACTED]

1. Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
2. Have you and your client entered into a fee agreement for services before SSA? If "yes," please specify the amount on which you agreed, **25% PAST DUE** and attach a copy of the agreement to this petition. **BENEFITS \$10,079.00** and YES NO See attached
3. (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
 (b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
 If "yes" to either or both of the above, please specify the source(s) and the amount(s).
 Source: _____ \$ _____
 Source: _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
4. Have you received, or do you expect to receive, reimbursement for expenses you incurred? If "yes," please itemize your expenses and the amounts on a separate page. YES NO
5. Did you render any services relating to this matter before any State or Federal court? If "yes," what fee did you or will you charge for services in connection with the court proceedings? YES NO
 Please attach a copy of the court order if the court has approved a fee. \$ _____

I certify that the information above, and on the attachment(s), is true and correct to the best of my knowledge and belief. I also certify that I have furnished a copy of this petition and the attachment(s) to the person(s) for whom I performed the services. I understand that failure to comply with Social Security laws and regulations pertaining to representation may result in suspension or disqualification from practice before SSA, the imposition of criminal penalties, or both.

Signature of Representative [REDACTED] Date 07/12/2004 Address (include Zip Code) [REDACTED]

Firm with which associated, if any [REDACTED] Telephone No. and Area Code (631) 271-6278

Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.
- OR**
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant [REDACTED] Date _____

Address (include Zip Code) [REDACTED] Telephone No. and Area Code [REDACTED]

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

2000

Initial telephone consultation with claimant	n/c
12/13 Initial review of case, review of all papers, notes made for file	2 3/4 hrs.
12/14 Preparation of file, necessary office forms completed	2 hrs.
12/29 Correspondence with SSA re: representation; forms; forms to claimant; medicals	2 3/4 hrs.

2001

1/5 Correspondence with Washington Hosp.	1/2 hr.
1/5 Correspondence with Prince Hosp.	1/2 hr.
1/5 Correspondence with Dr. Bone	1/2 hr.
1/5 Correspondence with Dr. Makki	1/2 hr.
1/5 Correspondence with Dr. Gaskins	1/2 hr.
1/19 Communication with claimant re: Medicals	1/4 hr.
5 Correspondence with claimant re: fee for medicals	1/2 hr.
2/5 Review of medicals from Dr. Bone	1 hr.
2/12 Communication with claimant re: status	1/4 hr.
2/12 Review of claimant's e/r	1/2 hr.
2/28 Communication with claimant re: denial; forms	1/2 hr.
3/6 Communication with SSA re: documents	1/4 hr.
3/16 Communication with claimant re: documents	1/4 hr.
4/16 Prepared hearing req; review forms, submission to SSA	1 hr.
4/24 Correspondence with Dr. Bone	1/2 hr.
4/24 Correspondence with Dr. Gaskins	1/2 hr.
4/24 Correspondence with Washington Hosp.	1/2 hr.
4/24 Correspondence with Prince Hosp.	1/2 hr.
4/24 Correspondence with Dr. Bone	1/2 hr.
4/24 Correspondence with Dr. Gaskins	1/2 hr.

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

2001 con't

5/10 Correspondence with Washington Hosp.	1/2 hr.
5/10 Correspondence with Prince Hosp.	1/2 hr.
6/8 Review of medicals from Washington Hosp.	1 hr.
6/12 Review of medicals from Dr. Bone	1 hr.
6/19 Correspondence with SSA re: submission of medicals	1/2 hr.
6/28 Communication with claimant re: status	1/4 hr.
7/6 Communication with Dr. Bone re: medicals	1/4 hr.
7/6 Correspondence with Dr. Bone	1/2 hr.
7/6 Communication with Dr. Gaskins re: Medicals	1/4 hr.
7/6 Correspondence with Prince Hosp.	1/2 hr.
7/11 Correspondence with Dr. Bone	1/2 hr.
7/11 Correspondence with Prince Hosp.	1/2 hr.
7/23 Communication with OHA re: status	1/4 hr.
7/25 Correspondence with claimant re: fee for medicals	1/2 hr.
7/25 Correspondence with Dr. Makki	1/2 hr.
8/27 Correspondence with Dr. Gaskin	1/2 hr.
8/31 Review of medicals from Dr. Gaskin	1 hr.
8/30 Correspondence with claimant re: fee for medicals	1/2 hr.
9/20 Correspondence with Dr. Makki	1/2 hr.
10/4 Communication with claimant re: Medicals	1/4 hr.
10/4 Correspondence with Dr. Gaskins	1/2 hr.
10/25 Correspondence with claimant re: Medicals	1/2 hr.
10/25 Correspondence with Dr. Gaskin	1/2 hr.
10/25 Correspondence with Dr Makki	1/2 hr.
10/29 Communication with SSA re: status	1/4 hr.
11/29 Correspondence with claimant re: case	1/2 hr.

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

2001 con't

11/2	Correspondence with Dr. Gaskin	1/2 hr.
11/2	Correspondence with Dr. Snieder	1/2 hr.
11/8	Review of medicals from Dr. Gaskin	3/4 hr.
11/12	Review of file	1/2 hr.
11/19	Communication with claimant re: status	1/4 hr.
12/20	Communication with SSA re: status	1/4 hr.
12/20	Correspondence with Dr. Gaskin	1/2 hr.
12/20	Correspondence with Dr. Snieder	1/2 hr.

2002

1/31	Review of medicals from Maryland Cancer Care	1 hr.
2/6	Communication with SSA re: status	1/4 hr.
2/21	Communication with SSA re: status	1/4 hr.
2/22	Correspondence with Dr. Bone	1/2 hr.
2/27	Communication with claimant re: status	1/4 hr.
3/1	Correspondence with Dr. Bone	1/2 hr.
3/11	Review of medicals from Dr. Bone	3/4 hr.
3/19	Correspondence with OHA re: submission of medicals	1/2 hr.
4/8	Communication with OHA re: status	1/4 hr.
4/11	Correspondence with claimant re: forms needed	1/2 hr.
5/2	Correspondence with OHA re: submission of forms	1/2 hr.
5/2	Correspondence with Dr. Singer	1/2 hr.
5/3	Correspondence with Dr. Alxion	1/2 hr.
5/3	Communication with OHA re: hearing date	1/4 hr.
5/4	Correspondence with claimant re: hearing date	1/2 hr.
5/7	Correspondence with Dr. Singer	1/2 hr.
	Review of medicals from Dr. Alxion	1 hr.

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

002 con't

5/24	Communication with OHA re: hearing	1/4 hr.
5/30	Communication with Dr. Singer re: Medicals	1/4 hr.
6/5	Communication with claimant re: medicals	1/4 hr.
6/5	Prepared file for hearing	1 1/2 hrs.
6/6	Hearing, inclusive of travel time, review record, conf. with claimant	3 3/4 hrs.
6/10	Communication with claimant re: medicals	1/4 hr.
6/10	Correspondence with Dr. Bone	1/2 hr.
6/10	Communication with claimant re: case	1/4 hr.
6/13	Communication with Dr. Bone re: Medicals	1/4 hr.
6/18	Communication with Dr. Bone re: Medicals	1/4 hr.
6/21	Communication with Dr. Bone re: Medicals	1/4 hr.
6/27	Communication with Dr. Bone re: Medicals	1/4 hr.
6/27	Communication with OHA re: status	1/4 hr.
7/5	Communication with Dr. Bone re: Medicals	1/4 hr.
7/8	Review of RFC from Dr. Bone	1/2 hr.
7/11	Correspondence with Dr. Bone re: medicals	1/2 hr.
7/17	Communication with OHA re: status	1/4 hr.
7/17	Communication with claimant re: status	1/4 hr.
8/2	Communication with OHA re: status	1/4 hr.
8/9	Communication with OHA re: status	1/4 hr.
8/23	Review of decision of ALJ, notes made for appeal	1 3/4 hrs..
9/18	Correspondence with A/C re: req. for review/cassettes	1/2 hr.
10/11	Review of file	1/2 hr.
10/16	Communication with claimant re: appeal	1/4 hr.
10/18	Communication with claimant re: status	1/4 hr.
11/18	Communication with A/C re: status	1/4 hr.

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

2002 con't

12/18	Review of file	1/2 hr.
2003		
1/17	Correspondence with claimant re: case	1/2 hr.
1/21	Communication with claimant re: Medicals	1/4 hr.
3/14	Review of medical report from Dr. Bone	1 hr.
4/30	Review of medical report from Dr. Weisher	1 hr.
4/30	Correspondence with A/C re: submission of medicals	1/2 hr.
5/2	Communication with A/C re: status	1/4 hr.
5/2	Review of decision of ALJ, review of all medicals, review cassettes, outline of appeal prepared	4 1/2 hrs.
5/12	Dictation of letter to A/C appealing decision of ALJ	3 3/4 hrs.
7/2	Review of remand from A/C	1/4 hr.
7/21	Communication with OHA re: case	1/4 hr.
7/21	Communication with claimant re: case	1/4 hr.
8/1	Atty analysis of file and remand strategy	2 3/4 hrs.
8/13	Communication with OHA re: hearing date	1/4 hr.
8/14	Correspondence with claimant re: hearing date	1/2 hr.
8/27	Correspondence with Dr. Bone	1/2 hr.
8/29	OTR dictated to ALJ	1 1/2 hrs.
9/5	Communication with OHA re: status	1/4 hr.
9/15	Communication with claimant re: status	1/4 hr.
11/5	Communication with OHA re: status	1/4 hr.
11/14	Communication with claimant re: status	1/4 hr.
12/12	Communication with claimant re: status	1/4 hr.
2004		
	Communication with claimant re: status	1/4 hr.

P [REDACTED]

PETITION TO OBTAIN APPROVAL OF A FEE FOR SERVICES RENDERED

2004 con't

2/2 Review of decision of ALJ

1/2 hr.

4/27 Correspondence with claimant re: decision of ALJ

1/2 hr.

TOTAL HOURS-----77 3/4 hrs.

6

ATTACHMENT 7

EXHIBIT B

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

AFFIRMATION AND ORDER OF APPEALS COUNCIL
REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

In the case of

Claim for



Period of Disability
Disability Insurance Benefits

(Claimant)



(Wage Earner)(Leave blank if same as above)

(Social Security Number)

The Administrative Law Judge issued a decision on August 16, 2002 finding the claimant disabled for the period beginning February 27, 2000 and ending July 1, 2001. The claimant has asked the Appeals Council to review this decision.

The Appeals Council affirms the Administrative Law Judge's finding that the claimant was disabled beginning February 27, 2000. The Council grants the request for review under the substantial evidence provision of the Social Security Administration regulations (20 CFR 404.970). Under the authority of 20 CFR 404.977, the Appeals Council vacates the hearing decision only with respect to the issue of disability after July 1, 2001, and remands this case to an Administrative Law Judge for resolution of the following issues during that period:

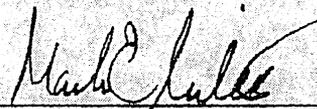
- The hearing decision indicates, Finding No. 4, that the claimant's subjective complaints for the period February 27, 2000- July 1, 2001 are generally credible. For the period after July 1, 2001, only a brief reference is made regarding his subjective complaints (decision, page 3) noting that the claimant had complaints of extreme fatigue and pain, but due to medical improvement there was no evidence of recurrent diagnosis. The decision also indicated the claimant's testimony of his activities was consistent with his established capacity for medium work (decision, pages 3-4). In fact, the claimant testified at the hearing he could stand for 20 minutes, sit for 35 minutes and walk up to two and a half blocks. The claimant also testified to continued bouts of extreme fatigue. This is not consistent with performing medium work eight-hours a day, five days a week. Further evaluation of the claimant's symptoms is necessary.

Upon remand, the Administrative Law Judge will, for the pertinent period:

- Further evaluate the claimant's subjective complaints and provide rationale in accordance with the disability regulations pertaining to evaluation of symptoms (20 CFR 404.1529) and Social Security Ruling 96-7p.
- Further evaluate the issue of medical improvement and give further consideration to the claimant's maximum residual functional capacity, employing an appropriate rationale with specific references to evidence of record in support of the assessed limitations (20 CFR 404.1545 and Social Security Ruling 96-8p).

In compliance with the above, the Administrative Law Judge will offer the claimant an opportunity for a hearing, take any further action needed to complete the administrative record and issue a new decision on the issue of disability since July 1, 2001.

APPEALS COUNCIL



Mark E. Milett
Administrative Appeals Judge



Adelaide Edelson
Administrative Appeals Judge

Date:



ATTACHMENT 8

EXHIBIT C

TRANSMITTAL OF DECISION OR DISMISSAL BY OHA

Date: 12/23/2003

TO: Claims Processing Component
 Mid-Atlantic PSC
 SSA, Disability Rev. Sect. 7402
 P.O. Box 2857
 Philadelphia, PA 19122

Control Name:

[REDACTED]

Cross Reference Name:

Control SSN:

X-Ref SSN:

[REDACTED]

Type of Claim:

DIWC

FROM: CHRISTINE P. BENAGH (1833)
 Administrative Law Judge
 WASHINGTON HO (5029)
 8th Floor
 820 First Street, N.E.
 Washington, DC 20002

Date of Birth:

[REDACTED]

FOR OHA HQ USE ONLY

Forwarded for further
 action to Processing
 Center or SSO below:

Servicing Hearing Office Code: 5029

Processing HO Tel #: (202)523-0408

Claims Folder(s) attached:

ATTACHMENTS:

DECISION
 Claim Folder: DI

DI RSI SSI HI

Reviewed Not Reviewed

Branch

Initials

Date

REMARKS:

FURTHER ACTION NECESSARY TO EFFECTUATE DECISION.

ATTORNEY REPRESENTATION -- FEE AGREEMENT APPROVED.

Form HA-5051-U3 (01/86) Staple original to outside of Claims File;
1st copy to HO File; 2nd copy to SSO (discard in Foreign Claims).
 Accompanying memoranda addressed to a Processing Center or HQ, OHA
 should be stapled over the form.



Refer To: [REDACTED]

Office of Hearings and Appeals
Union Center, Plaza II
820 First Street, NE, 8th Floor
Washington, DC 20002-4205

Date: JAN 27 2004

[REDACTED]
[REDACTED]
[REDACTED]

NOTICE OF DECISION - FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

If You Disagree With The Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal, you or your representative, if you choose to appoint one, must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

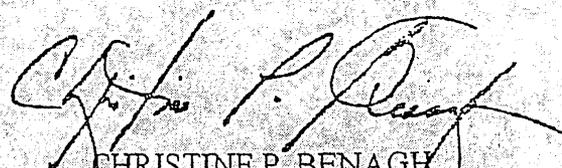
If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits, or not qualify for any benefits. My decision could also be used to deny a new application for insurance benefits, if the facts and issues are the same. So, if you disagree with this decision, you should file an appeal within 60 days.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is 301-763-1009. Its address is MANOR BUSINESS PARK SUITE 201, 337 BRIGHTSEAT ROAD, LANDOVER MD 20785.



CHRISTINE P. BENAGH
Administrative Law Judge

cc: [REDACTED]
[REDACTED]
Philadelphia, PA 19103

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

ORDER

IN THE CASE OF

CLAIM FOR

P [REDACTED]
(Claimant)

Period of Disability and
Disability Insurance Benefits

[REDACTED]
(Wage Earner)

[REDACTED]
(Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits.

My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

For *Jan 14 2004*
CHRISTINE P. BENAGH
Administrative Law Judge

JAN 27 2004
Date

remanded the case to an Administrative Law Judge for resolution of issues during that period. Upon remand, the Administrative Law Judge would issue a new decision on the issue of disability since July 1, 2001.

After reviewing the documentary evidence, the Administrative Law Judge concludes that a fully favorable decision can be issued without the necessity of a hearing. The claimant is represented by [REDACTED]

ISSUES

The issues to be decided in this case are whether the claimant continued to be disabled after July 1, 2001, and whether he continues to be entitled to a Period of Disability under Section 216(i) and to Disability Insurance Benefits under 223(a) of the Social Security Act.

EVALUATION OF THE EVIDENCE

After a thorough evaluation of the entire record, the Administrative Law Judge concludes that the claimant has been disabled since February 27, 2000 and continuing. The claimant meets the insured status requirements of the Social Security Act through December 31, 2005. The claimant has not engaged in any substantial gainful activity since the disability onset date. Earnings acquired after the alleged onset date are short-term disability payments.

Although the claimant has impairments which are considered to be "severe," they are not attended, singly or in combination, with the specific clinical signs and diagnostic findings required to meet or equal the requirements set forth in the Listing of Impairments. Appendix 1 to Subpart P, 20 C.F. R. Part 404.

A determination in this case cannot be based on medical considerations alone. Therefore, it is necessary to proceed to steps four and five of the sequential evaluation. Steps four and five require a determination of whether the claimant has, during the time at issue, retained the residual functional capacity to perform past relevant work, and if not, to perform other work existing in significant numbers in the national economy consistent with the claimant's age, education and past work experience. In order to make these determinations, it is necessary to assess the claimant's mental and physical residual functional capacity. Residual functional capacity is what the claimant can still do despite limitations due to the impairments.

The claimant was born on [REDACTED] and is currently [REDACTED] years-old. He has an eleventh grade education and past work as a rail operator.

In October 1999, the claimant noticed lumps forming on the right side of his neck, subsequently increasing in size. He was evaluated and treated in January, but eventually stopped working late February 2000. The claimant was diagnosed with extrathyroid mass and hyperthyroidism, and CT scans of his neck and chest revealed adenopathy. In March 2000, a CT scan of his lymph nodes revealed Stage IA lymphocyte depleted Hodgkin disease. The claimant was referred to oncologist Dr. Melvin Gaskins for treatment which consisted of six cycles of chemotherapy,

lasting through November 2000. During treatment from Dr. Gaskins, the claimant also underwent portable catheter insertion with Dr. William in May 2000. After six months of chemotherapy, a September 2000 CT scan of the claimant's neck revealed reduction in the size of lymph nodes since February. However, a few clinically significant lymph nodes remained, and a CT scan of the pelvis revealed apparent soft tissue mass increased since February 2000. Progress notes from Dr. Gaskins shows the claimant experienced loss of appetite, subsequent weight loss, dyspnea on exertion, and depleted immune system. Exhibits 6F, 7F, 14F.

In December 2000, Dr. George Bone, a treating physician since April 2000, requested a repeat CT neck scan, revealing findings unchanged since September 2000. However, in a multiple impairment questionnaire dated January 2001, he opined that the claimant was not capable of performing sedentary work, with bilateral arm reaching and environmental limitations, given the combined effect of neck cancer, history of C5 and L4-5 disc herniation, and effects of chemotherapy. However, results of a PET scan in January 2001 revealed no evidence of residual or recurrent Hodgkin disease, results of a report from Dr. William Snyder in March 2001 shows the claimant reported he felt great and had a normal appetite, and a follow-up examination by Dr. Gaskins in July 2001 was unremarkable, except for occasional coughing. Subsequently, in January 2002, a repeat CT neck scan revealed a few enlarged lymph nodes decreased in size since the last report. However, repeat CT scans of the chest, abdomen, and neck revealed no significant changes. Exhibits 10F, 12F, 16F.

In addition to chemotherapy and catheter insertion, the claimant began radiation therapy under the direction of Dr. Matthew Snyder, in January 2001. Upon completion three months later, the claimant reported his appetite was normal, he felt great, and his examination was unremarkable. Exhibit 12F.

At the prior hearing, the claimant testified he worked as a track equipment operator for 27 years, stopping in February 2000, after being diagnosed with cancer. He described his job duties involved building and maintaining subway systems, including lifting tires, using and cutting rail jacks, and operating machinery. He testified since his alleged onset date, he felt tired and listless, lost 40 pounds, had a very stiff back, and experienced daily muscle spasms, more on the right, neck tingling, and leg weakness. Since March 2001, he added that his neck discomfort radiated to the right side of his jaw. He stated that his cancer was currently in remission, and he took no medication for his pain. However, he took medication for asthma, and had not had the catheter removed. He testified that his pain limited him to standing up to 20 minutes, sitting up to 35 minutes, lifting up to 25 pounds, and walking up to 2 1/2 blocks. He described that he sometimes "just don't feel like working". Otherwise, he testified that his typical day was spent listening to the radio, reading a lot of articles, cooking two times per week, dusting, washing dishes, vacuuming, and grocery shopping. He stated he also could trim hedges around his yard and drive up to 15 miles. He stated that his sleep varied, due to his pain.

The claimant has the residual functional capacity perform the exertional demands of sedentary work, or work which is generally performed while sitting and does not require lifting in excess of ten pounds. The claimant experiences debilitating fatigue. He can occasionally feel and finger. He must avoid more than occasional exposure to chemicals, dust, fumes, chemicals, humidity and temperature extremes, heights, moving machinery, noise, and vibration.

In accordance with Social Security Ruling 96-6p, the Administrative Law Judge has considered the administrative findings of fact made by the State agency medical physicians and other consultants. These opinions are outdated. New medical evidence from the treating source is given more weight than the State Agency. The treating physician's opinion that the claimant continues to be disabled subsequent to July 1, 2001, is given controlling weight. The State agency consultants failed to consider the combined effect of all of the claimant's impairments as required by the regulations, especially fatigue.

The claimant's impairments could reasonably be expected to produce his subjective symptoms. The claimant is credible because his subjective symptoms are generally consistent with the longitudinal record of objective evidence, clinical observation, complaints, and treatment. The claimant cannot perform his past relevant work.

Since the claimant cannot perform past relevant work, the burden shifts to the Commissioner to show that there are other jobs existing in significant numbers that the claimant can perform, consistent with the medically determinable impairments, age, education, and work experience. The claimant was [REDACTED] years-old (closely approaching advanced age, [REDACTED]) at issue here, and is now [REDACTED] years-old (advanced age, [REDACTED]). The claimant has a high school education. The claimant's past relevant work of over 25 years as a rail operator was performed at a very heavy level of exertion. The claimant does not have skills which are transferable to sedentary work.

The Commissioner has promulgated Medical-Vocational Rules found in Appendix 2, Subpart P, Social Security Regulations No. 4 which take into account the claimant's age, education, work experience and residual functional capacity. Therefore, using the framework of Medical-Vocational Rule 201.14 Appendix 2, Subpart P, Regulations No.4, the Administrative Law Judge finds that the number of jobs the claimant is able to perform is reduced to fewer than significant numbers. The claimant has been disabled within the meaning of the Social Security Act and Regulations since February 27, 2002 and continuing.

FINDINGS

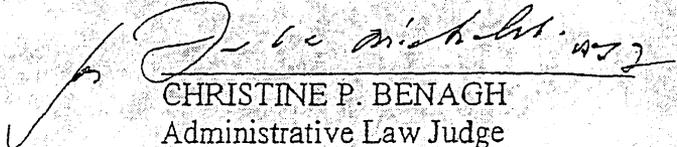
After consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant has not engaged in any substantial gainful activity since the disability onset date.
2. The claimant's impairments which are considered to be "severe" under the Social Security Act are as follows: Hodgkin's Lymphoma.
3. The claimant's impairments do not, singly or in combination, meet or equal in severity the appropriate medical findings contained in 20 CFR Part 404, Appendix 1 to Subpart P (Listing of Impairments).

4. The claimant's allegations are credible.
5. The claimant has the residual functional capacity to perform the exertional demands of sedentary work, or work which is generally performed while sitting and does not require lifting in excess of ten pounds.
6. The claimant is unable to perform his past relevant work.
7. The claimant was [REDACTED]-years-old (closely approaching advanced age, [REDACTED]), at issue, and is now [REDACTED]-years-old (advanced age, [REDACTED]). The claimant has a high school education.
8. The claimant does not have skills which are transferable to sedentary work.
9. Based upon the claimant's residual functional capacity, and vocational factors, there are no jobs existing in significant numbers which he can perform. This finding is based upon the framework of Medical-Vocational Rule 201.14.
10. The claimant meets the disability insured status requirements of the Social Security Act on the date disability began, and through December 31, 2005.
11. The claimant has been under a disability as defined by the Social Security Act and Regulations since February 27, 2000 and continuing.

DECISION

Based on the Title II application "protectively" filed on June 29, 2000, the claimant is entitled to a Period of Disability beginning February 27, 2000 and to Disability Insurance Benefits under Sections 216(i) and 223, respectively, of the Social Security Act.


CHRISTINE P. BENAGH
Administrative Law Judge

JAN 27 2004

Date

ATTACHMENT 9

EXHIBIT D

[REDACTED]

April 27, 2004

VIA FACSIMILE (202) 408-8995

Honorable Christine P. Benagh
Administrative Law Judge
Office of Hearings and Appeals
Union Center, Plaza II
820 First Street, NE, 8th Floor
Washington, DC 20002-4205

RE: P. [REDACTED] SSN: [REDACTED]

Dear Judge Benagh:

This office received a Fully Favorable decision you issued on January 27, 2003, wherein you approved the fee agreement on a claim, which we will present for fee petition. I have enclosed the decision for your review. We ask that you withdraw your approval of a fee agreement so that this office can submit a petition for attorney fees.

Thank you for your consideration.

Sincerely, [REDACTED]

[REDACTED]

ATTACHMENT 10

EXHIBIT E



Social Security Administration

Office of Hearings and Appeals

Union Center Plaza II, 8th Floor
820 First Street, N.E.
Washington, D.C. 20002
Telephone: (202) 523-0408
Facsimile: (202) 408-8995

April 27, 2004-04-27

[REDACTED]

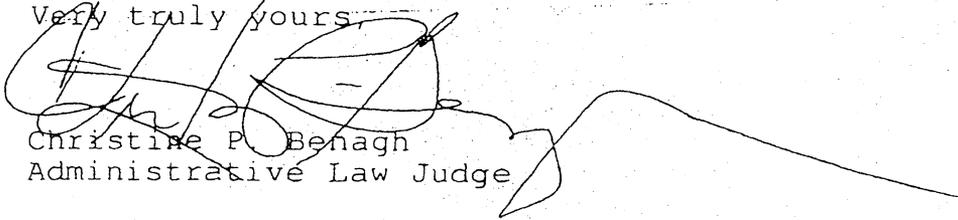
Re: P [REDACTED] 30

Dear [REDACTED]:

I will not withdraw my order. You have stated no reason why I should do so, especially as my decision turned only upon the issue of continuing disability, which was not the point on which the case was remanded. Judge Taggart's earlier decision was partially favorable, entitling you to a full fee at that time. You took no action to inform me that you did not wish action upon the fee agreement in evidence at all times while the case was before the Office of Hearings and Appeals. You have not informed your client of your intent to seek a fee above the regulatory maximum available for a fee agreement. No new evidence was offered and no hearing was held on remand. The fee agreement was in evidence and not withdrawn after the Appeals Council remand on a single point, i.e., whether the first decision adequately addressed the subjective complaints of [REDACTED] (standard issue before the Appeals Council, requiring little to pursue the appeal). I see no basis for authorizing fees above those available under the fee agreement regulations.

You may consider this decision final and appeal is to the Regional Chief Administrative Law Judge for Region III, Judge Frank Cristaudo, 300 Spring Garden, 4th Floor, P.O. Box 13496, Philadelphia, PA 19101.

Very truly yours,


Christine P. Benagh
Administrative Law Judge

ATTACHMENT 11

EXHIBIT F

[REDACTED]

May 21, 2004

Honorable Frank Cristaudo
Regional Chief Administrative Law Judge
Office of Hearings and Appeals
300 Spring Garden Street, 4th Floor
P.O. Box 13496
Philadelphia, PA 19101

RE: P [REDACTED]

Dear Judge Cristaudo:

I am in receipt of Judge Benagh's letter dated April 27, 2004, a copy of which is enclosed. In her letter she states that she will not withdraw her approval of the fee agreement and finds no basis for authorizing fees above the cap. Inasmuch as the fee agreement was erroneously approved, I am hereby requesting review of this determination for the following reasons:

As noted in the fee agreement, it will not apply if an appeal of an unfavorable or partially favorable decision is made to the Appeals Council. Therefore, as we appealed the judge's partially favorable decision granting a closed period of benefits and the case progressed to the Appeals Council level, the fee agreement submitted at the initial hearing held on June 6, 2002 is no longer valid. Therefore, I intend to file a fee petition on this case to obtain approval of a fee.

As the record reflects, this office represented Mr. [REDACTED] from the initial application level through an Appeals Council remand. Therefore, based upon the complexities of the case and the level of skill utilized in securing the remand and obtaining a fully favorable decision on behalf of our client, I believe capping the fee at \$5,300.00 would be inequitable and unfair. Because we successfully appealed the partially favorable decision, Mr. [REDACTED] will be awarded additional retroactive benefits for the period of October 2001 through the present, as well as continuing monthly benefits.

Honorable Frank Cristaudo

RE: P [REDACTED]

May 21, 2004

Page Two (2)

In view of the above and attached hereto I respectfully request that you vacate Judge Benagh's order approving the fee agreement so that I can submit a fee petition for the services rendered on this case. Please note that we are still awaiting receipt of the new information notice regarding the claimant's additional retroactive and continuing benefits.

Please forward your decision to my Huntington Station, NY office with instructions as to where I should forward my petition.

Thank you for your consideration in this matter.

Very truly yours,

By: [REDACTED]

[REDACTED]
Encs.

cc: P [REDACTED]
Mid-Atlantic Program Service Center

EXPEDITED FEE AGREEMENT

[REDACTED] ([REDACTED] Primary Representative) and the CLAIMANT agree that pursuant to Section 406(a)(2)(A) of the Social Security Act fees shall be as follows:

1. Whichever is less of:
 - a. Twenty-five percent (25%) of the past due benefits, or
 - b. Five thousand three hundred dollars (\$5,300) or the applicable maximum amount set by the Commissioner pursuant to 42 USC §406(a).
2. Under the Social Security Regulations, "past-due benefits" include all benefits payable to claimants and/or their families/dependents.
3. There will be no minimum fee.
4. Any withheld amounts greater than the limited fee specified above may be released directly to the CLAIMANT without further notice.
5. This fee agreement will not apply if an appeal of an unfavorable or partially favorable decision is made to the Appeals Council, or if the Appeals Council exercises review on its own motion.

Dated: 6-6-02

[REDACTED]
[REDACTED]
S.S.# [REDACTED]

By: [REDACTED]
[REDACTED]
Primary Representative

By: [REDACTED]
Co-Representative
[REDACTED]

ATTACHMENT 12

EXHIBIT G



SOCIAL SECURITY

Office of the Regional Chief Judge
Office of Hearings and Appeals – Region III
P.O. Box 13496
Philadelphia, PA 19101

Refer to: [REDACTED]

Dear [REDACTED]

Enclosed please find an order regarding the administrative review of the fee agreement in the above-referenced matter. The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

FRANK A. CRISTAUDO
Regional Chief Judge

cc: [REDACTED]

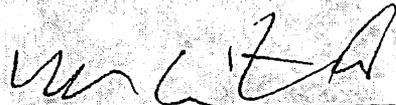
Mid-Atlantic PSC
300 Spring Garden Street
Module 14, 4th Floor
Philadelphia, PA 19123

By letter dated April 27, 2004, Counsel ██████ asked the presiding judge to withdraw her approval of the fee agreement. The presiding administrative law judge gave the following detailed response:

I will not withdraw my order. You have stated no reason why I should do so, especially as my decision turned only upon the issue of continuing disability, which was not the point on which the case was remanded. Judge Taggart's earlier decision was partially favorable, entitling you to a full fee at that time. You took no action to inform me that you did not wish action upon the fee agreement in evidence at all times while the case was before the Office of Hearings and Appeals. You have not informed your client of your intent to seek a fee above the regulatory maximum available for a fee agreement. No new evidence was offered and no hearing was held on remand. The fee agreement was in evidence and not withdrawn after the Appeals Council remand on a single point, i.e., whether the first decision adequately addressed the subjective complaints of Mr. ██████ (standard issue before the Appeals Council, requiring little to pursue the appeal). I see no basis for authorizing fees above those available under the fee agreement regulations.

Because the favorable decision was made after an Appeals Council remand, the agreement did not meet the statutory requirements of the Social Security Act, as amended, and should have been disapproved.

Because the Social Security Administration cannot process the representative's fee under the fee agreement process, the representative must file a fee petition in order to charge and collect a fee. If the attorney wishes to receive direct payment of the fee, a fee petition must be filed within 60 days of the date of this order. The fee petition should be submitted to the Administrative Law Judge who issued the favorable decision. A fee petition form is enclosed for the convenience of the representative.



FRANK A. CRISTAUDO
Regional Chief Judge

NOV 16 2004

Date

Enclosure

[REDACTED]

RECEIVED
APR 19 2005
OFA

April 12, 2005

Honorable Christine Benagh
Administrative Law Judge
Office of Hearings and Appeals
Social Security Administration
820 First Street N.E., 8th Floor
Washington, DC 20002

ATTN: FEE PETITION UNIT

FEE PETITION FOLLOW-UP

RE: P [REDACTED]

Dear Judge Benagh:

As your records will reflect, this office successfully represented the above-noted claimant in regard to an application for Social Security Disability benefits.

On 07/12/2004, we forwarded a fee petition in the amount of \$10,079.00 to your office for approval. However, as of the above date, we have not received the "Authorization to Charge and Collect a Fee" on this case.

Please process said fee petition and forward your authorization to my Huntington Station, NY office. If an authorization has already been issued, kindly forward a copy to my Huntington Station, NY office, or if you have forwarded the petition to the Regional Chief Administrative Law Judge in charge for review, please notify my office in writing.

If you require additional information or a copy of the fee petition in order to process my request, please contact my Huntington Station, NY office.

Thank you for your cooperation in this matter.

Very truly yours,

[REDACTED]

By:

CEB: fh

ATTACHMENT 13

EXHIBIT H

Routing

May 8, 2006

TO: Judge Benagh (ARPR)

RE: Fee Petition – P [REDACTED]

Letter was sent to claimant to protest of Fee petition on March 30, 2006, as you directed.

No protest, nor return mail from claimant as of today.

Please review Attorney Fee Recommendation and Memorandum, and advise. Thank you.

FROM: Changsun

DATE: May 8, 2006

ALJ: CHRISTINE P. BENAGH

ATTORNEY FEE RECOMMENDATION

Claimant: P [REDACTED]

SSN: [REDACTED]

Representative: [REDACTED]

Date Decision mailed: 1/27/04

Date SSA-1129 received: _____

Date Award Certificate or PHUS received: 3/24/2006

Date Fee Petition received: 4/12/2005

Hours Claimed: 77.75

25% past due/withheld Title II benefits (Amount of fee not based on benefits alone; 404.1725(b)): \$ 21,330.00

25% past due benefits SSI (amount of fee not based on benefits alone; 416.1525(b)): \$ 0

Total: \$ 21,330.00

Amount requested: \$ 10,079.00

Fee Per Hour: \$ 129.64

Amount approved by ALJ: \$ _____

ALJ initials: _____

Date: _____

Please return to: Changsun Boyles

██████████
P██████████

Office of Hearings and Appeals
Union Center, Plaza II
820 First Street, NE, 8th Floor
Washington, DC 20002-4205
Tel: (202) 523-0408 / Fax: (202) 408-8995

May 8, 2006

MEMORANDUM

To: Jasper J. Bede
Acting Regional
Chief Administrative Law Judge
3rd Spring Garden Street
4th Floor
Philadelphia, PA 19123

From: CHRISTINE P. BENAGH

Subject: Fee Petition in Excess of \$7,000 – Recommendation

Claimant: P██████████

SSN: ██████████

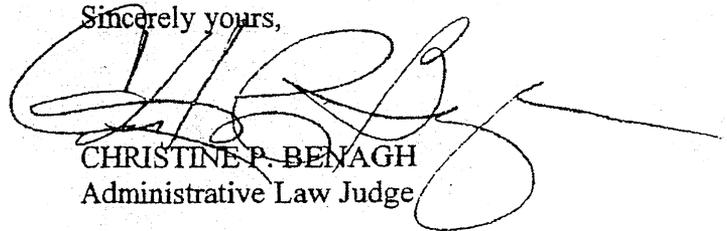
You are advised that I have carefully reviewed the Fee Petition presented in the above entitled case, as well as observed the conduct of the representative at the hearing.

It is my recommendation that you authorize a fee of \$7,000.00.

JUSTIFICATION:

The case was not complicated.

Sincerely yours,


CHRISTINE P. BENAGH
Administrative Law Judge

cc: Office of Regional Chief Judge
3rd Spring Garden Street
4th Floor
Philadelphia, PA 19123

ATTACHMENT 14

EXHIBIT I

	<p>[REDACTED] DIWC-30 [REDACTED] *10-10-06</p>
<p>* Note: HOCALJ is reviewing recommendation for approval of fee petition recommendation. ***** Do not purge until 10-10-08 *****</p>	<p>ALJ: [REDACTED] 1833 site: DC</p>

ajo, Virgilio

From: Bajo, Virgilio
Sent: Tuesday, October 10, 2006 11:05 AM
To: Freimuth, Karen
Cc: Banks, Larry; Kirkwood, John
Subject: RE: Fee Petition re: P [REDACTED]

Karen -

Here is my completed verification and review of the attorney's fee petition.

2002			Reviewer's Notes
9/18/02	A/C Correspondence re: Request for Review/Cassettes	0.50	0.2
10/11/02	Review of file	0.50	
10/16/06	Communication w/ CL re: appeal	0.25	0.2
11/18/02	Communication w/ CL re: status	0.25	0.2
11/18/02	Communication w/ A/C re: status	0.25	0.2
12/18/02	Review of file	0.50	
2003			
1/17/03	Correspondence w/ CL re: case	0.50	0.2
1/21/03	Communication w/ CL re: Medicals	0.25	0.2
3/14/03	Review of medical report from Dr. Bone	1.00	0.1
4/30/03	Review of medical report from Dr. Weisner	1.00	0.1
4/30/03	Correspondence w/ AC re: submission of medicals	0.50	0.2
5/2/03	Communication w/ AC re: status	0.25	0.2
5/2/03	Review ALJ decision, all medicals, cassettes, prepare appeal outline	4.50	
5/12/03	Dictate letter to AC appealing ALJ decision	3.75	
7/2/03	Review AC Remand	0.25	
7/21/03	Communication w/ OHA re: case	0.25	0.2
7/21/03	Communication w/ CL re: case	0.25	0.2

8/1/03	File analysis and remand strategy	2.75	0.5
8/13/03	Communication w/ OHA re: hearing date	0.25	0.2
8/14/03	Correspondence w/ CL re: hearing date	0.50	0.2
8/27/03	Correspondence w/ Dr. Bone	0.50	0.2
8/29/03	OTR dictated to ALJ	1.50	The ALJ File does not contain any correspondence or indication of contact initiated by the attorney.
9/5/03	Communication w/ OHA re: status	0.25	0.2
9/15/03	Communication w/ CL re: status	0.25	0.2
11/5/03	Communication w/ OHA re: status	0.25	0.2
11/14/03	Communication w/ CL re: status	0.25	0.2
12/12/03	Communication w/ CL re: status	0.25	0.2
2004			
1/2/04	Communication w/ CL re: status	0.25	0.2
2/2/04	Review ALJ decision	0.50	0.2
4/27/04	Correspondence w/ CL re: ALJ decision	0.50	0.2
	Appeals Council Order affirmed initial ALJ decision and Remanded for a New Determination (see Hallex I-1-2-15(B) (5))	22.75	HOURS itemized by Attorney Binder for the period 9/01/2002 - 4/30/2004.
		\$129.63	* Attorney's Fee Rate per hour (on Fee Petition)
		\$ 2,949.00	** ALJ's Recommendation for approval of attorney's Fee Petition (rounded to nearest dollar)

Notes:

- * Fee Petition was submitted by attorney on 7/12/2004 for services rendered between (12/00 - 4/04), a total of 77.75 hours. Total dollar amount on attorney's Fee Petition is \$10,079.

Attorney's Fee Petition Rate = (\$10,079) ÷ (77.75 hrs) = \$129.63 per hour

- * * Mid Atlantic Payment Service Center (MATPSC) had previously released attorney fees of \$4,966.10 to the attorney on 8/29/02. \$4,966 is 25% withholding of claimant's disability benefits less user fees (i.e., \$5,300 less \$333.90).

Under the approved Fee Agreement Process, SSA released 25% of retroactive benefits (less user fees) on 8/29/02.

On 7/12/04, attorney submitted a Fee Petition after receiving funds from SSA Payment Service Center. The Fee Petition includes itemization of services that would otherwise be settled under the initially approved fee agreement.

The total PROPOSED attorney fees for ALJ Benagh's approval/authorization under the Fee Petition process by RCALJ Order dated 11/16/04 is \$2,949.00.

Hallex I-01/I-1-2-52(C) provides the line authority on proposed authorization of fees in excess of \$7,000. If the ALJ or the Regional Chief ALJ (RCALJ) with initial jurisdiction over the fee petition proposes to authorize a fee in excess of \$7,000, he/she must refer the fee petition(s) to the reviewing official, as indicated in the chart below, and recommend the amount of the fee(s) to be authorized.

The total hours on the above itemized list attached to the attorney's fee petition was verified for accuracy on 10/02/06. The total figure does not include itemized attorney expenses, retainer discussion, billing, creation of the fee petition, and other activities unnecessary to the prosecution of the claim.

Per visit of Attorney's Fee Petition re: [REDACTED] dated 10-2-06:

6/06/02	Fee Agreement signed by CL and Attorney.
8/16/02	Partially Favorable decision released finding CL disabled for a period beginning 2/27/00 and ending 7/01/01.
8/29/02	<p>Mid Atlantic Payment Service Center (MATPSC) releases attorney fees of \$4,966.10 to the attorney on 8/29/02.</p> <p>\$4,966 is 25% withholding of claimant's retroactive disability benefits less user fees (i.e., \$5,300 less \$333.90).</p> <p>Under the approved Fee Agreement Process, SSA released 25% of retroactive benefits (less user fees) on a partially favorable decision.</p> <p>There is no evidence in the ALJ file the representative requested administrative review of either the action on the fee agreement or the amount of the fee authorized under the fee agreement.</p> <p>Further, there is no written evidence the representative stated why a request for administrative review was not filed timely.</p>

	<p>HALLEX I-1-2-41(C). Fee Agreement Administrative Review — General Policy</p> <p>C. Time Limit for Requesting Review</p> <p>The timeframe for requesting administrative review of either the action on the fee agreement or the amount of the fee authorized under the fee agreement is 15 days from the date of receipt of the respective notice. In the absence of evidence to the contrary, assume receipt within 5 days of the date of the notice. ...</p> <p>If a request is filed more than 15 days after the date the notice was received, the requestor must state in writing why it was not filed on time. In such cases, SSA will conduct an administrative review only if it determines that there was good cause for not filing the request on time.</p> <p>HALLEX I-1-2-15(B)(1). Fee Authorized Under the Approved Agreement Is \$5,300</p> <p>If the representative wants to be able to charge more, for any reason (e.g., because of the additional work anticipated on the appeal), he/she must file a request for administrative review of the fee amount within 15 days after he/she receives the award notice. ... If no party requests administrative review timely, SSA will not review the fee authorization unless good cause for late filing is established.</p>
<p>9/18/02</p>	<p>Request for AC Review & Cassettes filed by representative.</p>
<p>7/7/03</p>	<p>AC Affirmation and Order of Remand received in HO. AC vacates partially favorable decision <i>only with respect to the issue of disability after July 1, 2001.</i></p>
<p>1/27/03</p>	<p>OTR, Fully Favorable decision released attached with Order approving fee agreement signed on 6/6/02.</p>
<p>4/27/04</p>	<p>Representative requests withdrawal of ALJ's Order approving of fee agreement on Fully Favorable decision (dated 1/27/03, after AC remand); request received via fax.</p>
<p>4/27/04</p>	<p>ALJ responds to rep; ALJ declines the request, stating no basis for authorization of fees above those available under the fee agreement.</p>
<p>5/21/04</p>	<p>Attorney requests RCALJ to vacate ALJ Benagh's Order approving fee agreement.</p>
<p>7/12/04</p>	<p>On 7/12/04, attorney submits a Fee Petition. The Fee Petition includes itemization of services that would otherwise be settled under the initially approved fee agreement for services rendered between (12/00 - 4/04), a total of 77.75 hours. Total dollar amount on attorney's 77.75-hours (Fee Petition) is \$10,079.</p> <p>On 8/29/2002, Mid Atlantic Payment Service Center (MATPSC) released attorney fees in the amount of \$4,966.10 to the attorney.</p>

<p>11/16/04</p>	<p>Order of Regional Chief Administrative Law Judge informs representative that a fee petition must be filed in order to charge and collect a fee. RCALJ states the Fully Favorable decision was made after AC remand, and the fee agreement should have been disapproved because it did not meet the statutory requirements of the Social Security Act.</p>
<p>10/02/06</p>	<p>Fee Matters closed in RO per Regional Attorney. Fee Petition and RCALJ Order of 11/16/04 revisited in HO.</p> <p>Upon verification of hours and itemizations attached to fee petition, a proposal is being submitted to ALJ Benagh for approval and authorization of \$2,949 under the Fee Petition process.</p> <p>Attorney's Fee Petition Rate = $(\\$10,079) \div (77.75 \text{ hrs}) = \\129.63 per hour</p> <p>For the period 9/02 – 4/04, the attorney provided 22.75 hours of services.</p> <p>Attorney had already received fees on previously approved fee agreement (\$4966.10 on 8/28/02). Fee Agreement after AC remand on fully favorable decision should have been disapproved; RCALJ informed rep to submit fee petition to ALJ Benagh for authorization to charge and collect a fee.</p> <p>Upon revisiting the fee matter, the proposed attorney fees under the attorney's fee petition could be set at \$2,949 (i.e., 22.75 hours at the rate of \$129.63 per hour); unless ALJ Benagh decides no fees should be further approved or authorized.</p> <p>Because the proposed approval of attorney fees is less than \$7000, the ALJ may approve \$2,949 in fees authorizing the attorney to charge and collect this amount.</p>
	<p>Hallex I-01/I-1-2-52(C) provides the line authority on <u>proposed authorization of fees in excess of \$7000</u>. If the ALJ or the Regional Chief ALJ (RCALJ) with initial jurisdiction over the fee petition proposes to authorize a fee in excess of \$7,000, he/she must refer the fee petition(s) to the reviewing official..., and recommend the amount of the fee(s) to be authorized.</p>

From: Kirkwood, John
Sent: Tuesday, October 10, 2006 11:02 AM
To: Freimuth, Karen
Cc: Banks, Larry; Bajo, Virgilio
Subject: FW: Fee Petition re: [REDACTED]

Karen

Virgil gave background info on this issue. We need to have the matter resolved locally but it appears Judge Benagh is taking the position that she does not have jurisdiction because of the amount of money involved. You will need to resolve this with Judge Banks.

Thanks.

J.R.

From: Quinn, Helena
Sent: Friday, October 06, 2006 10:27 AM
To: Kirkwood, John
Cc: Bousono, Elba; Hamel, Gregory
Subject: Fee Petition re: [REDACTED]

J.R.,

Yesterday the RO received a packet from the DC hearing office (there was no routing slip or any other way to tell who sent it) which contained a copy of a memo, dated May 8, 2006, from Judge Benagh to Judge Bede, recommending authorization of a fee of \$7,000 in the referenced case. The packet also contained a number of attachments, including the fee petition, correspondence between Judge Benagh and the attorney, the hearing decision, etc.

This memo from Judge Benagh appears to be the same thing we received last month. Please see the email string below. Unless you request otherwise, I will not return this packet and we will not be processing it in any way here. Please don't hesitate to contact either Elba or me if you have any questions about this.

Helena Quinn

Attorney-Advisor, ODAR Region III Philadelphia
(215) 597-1821

P.S. Hope things are good down there and you're enjoying DC a little!

From: Hamel, Gregory

Sent: Thursday, September 28, 2006 7:04 AM

To: Bajo, Virgilio

Cc: Bede, Jasper J.; Banks, Larry; Bracchi, Barbara; Axelsen, Curtis; Kirkwood, John; Quinn, Helena; Bousono, Elba

Subject: FW: P [REDACTED]

Virgil,

The governing factor is the amount of the fee the presiding ALJ proposes to approve, not the amount the representative is asking on the petition. Attached is the reference. Please keep me posted on this as we do have the case logged here as a closed matter. Thanks.

http://www.ssa.gov/OP_Home/hallex/I-01/I-1-2-52.html

Gregory M. Hamel

ODAR Regional Attorney - Region III Philadelphia

(215) 597-4111

From: Benagh, Christine

Sent: Wednesday, September 27, 2006 10:51 AM

To: Bajo, Virgilio

Cc: Frye, Thelma; Hamel, Gregory; Tolliver, Cynthia

Subject: RE: P [REDACTED]

Virgil,

Actually, the fee petition is for more than \$10,000. We will send the documents back to Judge Bede, to your attention.

Thank you,

Judge Benagh

From: Bajo, Virgilio

Sent: Wednesday, September 27, 2006 10:45 AM

To: Benagh, Christine

Subject: RE: P [REDACTED]

Hi, Judge Benaugh - FYI.

I intended to prepare the fee authorization for your signature of release, but the DGS function (in Word) currently is not set up correctly at my workstation. The closed ALJ file is in Thelma's office for assignment to an SCT.

Virgil

x3037

From: Bousono, Elba

Sent: Tuesday, September 26, 2006 4:32 PM

To: Bajo, Virgilio

Cc: Hamel, Gregory; Benagh, Christine

Subject: P [REDACTED]
[REDACTED]
[REDACTED]

I received an initial fee petition for processing from Judge Benagh on the above claimant. However, I was only sent the Memo by the ALJ. In the Memo, Judge Benagh is recommending a fee of \$7,000. Please note that since the request is not over \$7,000, the RCALJ does not have to review it. Also, there was no fee petition or itemized sheet with this case.

In any case, since Judge Benagh is recommending \$7,000, she may prepare the authorization. I will be closing this case on our end.

Elba Luz Bousono

Paralegal Specialist

Regional Office - Region III

elba.bousono@ssa.gov

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Volume 1/Division 1/Chapter 2/Section 49

I-1-2-49. ALJ or AAJ Incorrectly Approved Fee Agreement

Last Update: 2/25/05 (Transmittal I-1-48)

A. Effectuating Component Actions

1. Referral Procedures

Processing center (PC) and field office (FO) personnel may not reverse an Administrative Law Judge's (ALJ's) or Administrative Appeals Judge's (AAJ's) fee agreement determination. If the PC or FO authorizer responsible for effectuating a favorable hearing or Appeals Council (AC) decision concludes that the ALJ or AAJ incorrectly approved a fee agreement because it does not meet the requirements of the Act or an exception to the fee agreement process applies (see [I-1-2-12](#)), the authorizer will take the following actions:

- process the claim to payment;
- withhold 25 percent of past-due benefits if the representative is eligible for direct fee payment ;
- request an incomplete notice to the claimant, deferring action on the fee agreement;
- if the decision maker is an ALJ, prepare a memorandum addressed to the Regional Chief ALJ (RCALJ);
- if the decision maker is an AAJ, prepare a memorandum to the Deputy Chair, AC; and
- send the above memo with a copy of the ALJ's or AAJ's decision, the appointment(s) of representative(s), the fee agreement, the order approving the fee agreement, and any relevant documents, to the RCALJ or the Attorney Fee Branch (AFB) if the Deputy Chair, AC has jurisdiction.

If the effectuating component does not get a response within 45 days, it will:

- follow up with the RCALJ or the Deputy Chair, AC, through the AFB, by fax or telephone, and
- diary the claim for another 15 days.

2. Procedures After OHA Acts on Referral

- If the Office of Hearings and Appeals (OHA) reverses the fee agreement determination, the PC or FO will diary the case for receipt of a fee petition and fee authorization from OHA.
- If OHA affirms the fee agreement determination, the PC will follow standard procedures for processing an approved fee agreement.

B. OHA Actions

After a PC or FO authorizer refers a case to OHA because he/she believes the ALJ or AAJ incorrectly approved a fee agreement:

- on a case resolved at the hearing level, the RCALJ who has jurisdiction over the claimant's servicing hearing office (HO) will determine whether action on the fee agreement is needed; or
- on a case resolved at the Appeals Council level, the Deputy Chair, AC, will determine whether action is needed.

Within 30 days, the RCALJ or Deputy Chair will review the disputed action to determine if the agreement meets the provisions in § 206(a)(2)(A) of the Social Security Act (refer to I-1-2-12 (A.)), or is excepted from the process for one of the reasons listed in I-1-2-12 (B.).

- If the RCALJ or Deputy Chair, AC concludes that the fee agreement was approved incorrectly, he/she will:

1. Issue an order to the claimant disapproving the fee agreement and advising that if the representative intends to charge and collect a fee, he or she must file a fee petition.
2. Send a copy of the order disapproving the fee agreement to the representative with a cover letter.
3. Send a copy of the corrective action to the respective PC or FO and the ALJ or AAJ who signed the prior order. If the PC has jurisdiction, use the cover sheet at I-1-2-114 (B.) to fax the action to the PC.

Refer to I-1-2-112 for sample language for the order disapproving the fee agreement and the cover letter to the representative.

- If the RCALJ or Deputy Chair affirms the fee agreement approval, he/she will advise the PC or FO by memorandum to process the representative's fee under the fee agreement process. Refer to I-1-2-113 for sample language for that memorandum.

Added to this file 02/24/2005

Last Updated: 02/24/2005

Link to this document: <http://policynet.ba.ssa.gov/hallex.nsf/links/10102049>

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Volume 1/Division 1/Chapter 2/Section 15

I-1-2-15. Two-tiered Fee Agreements

Last Update: 2/25/05 (Transmittal I-1-48)

A. General Policy

A claimant and his/her representative may submit a fee agreement that includes a provision limiting the agreement's application to services through a specific level of the administrative appeals process. Such an agreement would provide, in essence, for a two-tiered fee structure. The decision maker will be able to readily ascertain, at the time of the favorable decision, which tier of the fee structure applies, and will either approve or disapprove the fee agreement, based on the current level of appeal.

- The decision maker will approve such an agreement if, considering the tier that applies to the level at which the claim was favorably decided, the agreement meets the statutory conditions for approval and none of the exceptions apply. (See [I-1-2-12](#).)
- The decision maker will disapprove the agreement if, considering the tier that applies to the level at which the claim is first favorably decided, the agreement does not meet the statutory conditions for approval. Disapproval of the fee agreement notifies the claimant and the representative that the Social Security Administration (SSA) will not authorize a fee based on the fee agreement. The basis for the disapproval is that the agreement does not limit the fee to the lesser of 25 percent of the claimant's past-due benefits or \$5,300.

Example: The claimant and representative submit a fee agreement that provides the following:

1. If SSA favorably decides the claim(s) at or below the first Administrative Law Judge (ALJ) hearing decision, the fee shall be the lesser of 25 percent of past-due benefits or \$5,300.
2. If the claim progresses beyond that level of the administrative review process, the representative will request a fee through the fee petition process.

If the applicable clause is the first clause, the requirement of § [206\(a\)\(2\)\(A\)\(ii\)](#) of the Social Security Act is satisfied (i.e., the fee requested did not exceed the lesser of 25 percent of past-due benefits or \$5,300), and the ALJ will approve the agreement if it meets all other conditions for approval and no exceptions apply.

If the second clause applies (e.g., the ALJ issues the first favorable decision following a remand by the Appeals Council (AC)), § [206\(a\)\(2\)\(A\)\(ii\)](#) of the Social Security Act would not be satisfied and the ALJ will disapprove the fee agreement because the fee specified was not limited to the lesser of 25 percent of past-due benefits or \$5,300.

If the representative's involvement begins after the initial hearing decision and the representative and claimant enter into an agreement that applies to administrative decisions made through the initial hearing decision, the SSA decision maker can not approve the fee agreement.

Partially Favorable Decisions

When an ALJ issues a partially favorable decision at the initial hearing level and approves a two-tiered fee agreement that applies only to services through the initial hearing level, SSA authorizes the

representative's fee in effectuating the partially favorable decision. Generally, if the representative is eligible for direct fee payment from the claimant's past-due benefits, SSA will process the representative's fee payment.

If the claimant appeals the partially favorable decision, further action related to the fee agreement and the representative's fee for services will depend upon:

1. whether the representative pursues additional fees above \$5,300 for his/her services,
2. whether the fee initially authorized was less than \$5,300, and
3. the action SSA takes on the claim on appeal.

Example: The following example illustrates a case involving both a subsequent decision (see I-1-2-14) and a two-tiered fee agreement. For the purpose of the discussion in 1. through 6. below, assume:

- The fee agreement between the claimant and his/her representative is a two-tiered agreement that includes terms similar to the following:
 - If SSA favorably decides the claim at or below the first ALJ hearing level, the representative's fee will be the lesser of 25 percent of past-due benefits or \$5,300.
 - If SSA favorably decides the claim at the AC level, or at the ALJ hearing level after a remand by the AC or a Federal court, the representative will petition SSA for approval to charge a fee not in excess of 25 percent of all past-due benefits.
 - If SSA does not issue a favorable decision, no fee will be charged in the case. With this provision, the representative agrees to represent the claimant on a contingency basis (i.e., the representative receives a fee only if SSA favorably decides the claim).
- At the initial ALJ hearing level, an ALJ issues a partially favorable decision and approves the fee agreement.
- The representative or claimant appeals the partially favorable decision or the AC reviews the decision on its own motion.

1. Fee Authorized Under the Approved Agreement Is \$5,300

If the representative wants to be able to charge more, for any reason (e.g., because of the additional work anticipated on the appeal), he/she must file a request for administrative review of the fee amount within 15 days after he/she receives the award notice. The claimant or SSA decision maker may also ask SSA to decrease the fee amount. If no party requests administrative review timely, SSA will not review the fee authorization unless good cause for late filing is established.

If the representative requests administrative review, he/she should explain, for example: "If additional benefits are payable as a result of our appealing the ALJ's partially favorable decision, I intend to seek approval to charge a fee greater than \$5,300. At the conclusion of the case, I will identify the amount I want to charge, the amount authorized before, the services performed for the claimant (and auxiliary beneficiary(ies) (if any)) and the time spent on each type of service."

If the representative files a timely request for administrative review:

- He/she may accept the fee authorized under the approved agreement while recognizing that the amount he/she is authorized to charge and collect may change as a result of administrative review.
- There is no statutory time limit within which SSA must act on the administrative review; therefore, SSA will delay action on the request until it completes its action on the appeal.

After SSA completes its action on the appeal, the component that takes the last administrative action will send the request for administrative review to the SSA official authorized to conduct the review. If the AC issued the last administrative action, the Attorney Fee Branch (AFB) will consider the administrative review request. If an ALJ issued the final administrative action, the Regional Chief ALJ is the reviewing official. The reviewing official will:

- notify the representative where to send his/her statement of time and services to support the administrative review request, and
- give the claimant and any other parties to the claim 15 days to comment on what the representative submitted to support his/her request for administrative review. (Refer to I-1-2-41 ff. for guidelines on evaluating requests for administrative review.)

2. Fee Initially Authorized Under the Approved Agreement Is Less Than \$5,300

It is not necessary for the representative to request administrative review when he/she receives the first award certificate if he/she only wishes to obtain a greater fee of up to \$5,300 total based on any additional past-due benefits. If, on appeal, the decision is more favorable to the claimant and additional past-due benefits result, SSA will issue an amended notice of award indicating a new fee amount.

If the representative then wants to charge more than the total authorized fee for any reason, the representative must file a request for administrative review of the amount of the fee within 15 days after he/she receives the amended notice. Also, the claimant or SSA decision maker may ask SSA to decrease the fee. Refer to 1. above to determine the correct reviewing official.

3. Appeals Council Vacates the ALJ's Favorable Decision and Remands the Case

As stated in I-1-2-11, if the AC vacates the ALJ's favorable decision and remands the case, the ALJ's approval of the fee agreement and any authorization of fees under the agreement are vacated as well because there is no favorable decision. In the two-tiered fee agreement example described above, the representative agreed to represent the claimant on a contingency basis with the fee premised on a percentage of past-due benefits if successful, and nothing if unsuccessful.

If the outcome on remand is favorable:

- The ALJ who issues the decision should disapprove the fee agreement because the agreement does not limit the fee to the lesser of 25 percent of past-due benefits or \$5,300.
- If the representative wants to charge and collect a fee, he/she must submit a fee petition when his/her services have ended. This fee petition should include the services and time spent in conjunction with the first hearing.

If the outcome on remand is unfavorable:

- The representative has agreed, based on the contingency agreement he/she had with the claimant, not to charge the claimant a fee.
- The ALJ who issues the decision will not act on the fee agreement or invite the representative to file a fee petition. If the representative files a fee petition, the ALJ will authorize \$00.00 fee and explain why.

If the representative has not already done so, the processing center will request the representative to refund any fee paid directly to him/her from past-due benefits.

4. Appeals Council Issues a Fully Favorable Decision

If the AC grants a request for review or reviews the hearing decision on its own motion and issues a fully favorable decision, the fee agreement the ALJ approved remains in effect. If a party requested administrative review of the fee resulting from the ALJ's decision, or requests administrative review of the fee resulting from the AC's decision, refer to 1. above.

5. Appeals Council Upholds the ALJ's Decision and Remands for a New Determination on the Onset Date

If the AC grants the request for review, upholds and does not vacate the favorable aspect of the ALJ's decision, and remands the case to an ALJ for a new decision with regard to the unfavorably decided issues(s), the fee agreement (which the ALJ approved) remains in effect. If a party requested administrative review of the fee resulting from the ALJ's decision, or requests administrative review of the fee resulting from the AC's decision, refer to 1. above.

6. Appeals Council Reverses the ALJ's Partially Favorable Decision and Issues a Fully Unfavorable Decision

If the AC grants the request for review or reviews a decision on its own motion, vacates the hearing decision, and reverses the ALJ's partially favorable decision by issuing a wholly unfavorable decision, the ALJ's approval of the fee agreement is no longer in effect because one of the criteria for fee agreement approval (i.e., a favorable decision), is not met. Because the attorney is representing the claimant on a contingency basis, with the fee premised on a percentage of past-due benefits if successful and nothing if unsuccessful, the attorney is not entitled to a fee and must return any previously paid fee amount to SSA if the unfavorable decision becomes the final decision of the Commissioner.

NOTE: If the representative did not represent the claimant on a contingency basis, the representative must file a fee petition to obtain authorization to charge and collect any fee (including any amount SSA previously authorized and paid) for services provided at the administrative level.

Added to this file 02/24/2005

Last Updated: 02/24/2005

Link to this document: <http://policy.net.ba.ssa.gov/hallex.nsf/links/10102015>

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Volume 1/Division 1/Chapter 2/Section 15

ROUTING AND TRANSMITTAL SLIP

Date 9/29/06

TO: (Name, office symbol, room number, building, Agency/ Post)	Initials	Date
1. Virgilio Bazo (Free Contact)		
2. Union Center (Floor)		
3. 820 First Street, N.E., 8th Floor		
4. Washington, DC 20002		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	<input checked="" type="checkbox"/> For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Per E-mail (attached)
 La matu an [REDACTED]
 [REDACTED]

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/ Post)	Room No. — Bldg.
[Signature]	Phone No. (202) 597-1816

NSN 7540-00-935-5862
 5041-103

OPTIONAL FORM 41 (Rev. 1-94)
 Prescribed by GSA
 UNICOR FPI - S&T

Bousono, Elba

From: Bousono, Elba
Sent: Tuesday, September 26, 2006 4:32 PM
To: Bajo, Virgilio
Hamel, Gregory; Benagh, Christine
Subject: [REDACTED]

[REDACTED]

I received an initial fee petition for processing from Judge Benagh on the above claimant. However, I was only sent the Memo by the ALJ. In the Memo, Judge Benagh is recommending a fee of \$7,000. Please note that since the request is not over \$7,000, the RCALJ does not have to review it. Also, there was no fee petition or itemized sheet with this case.

In any case, since Judge Benagh is recommending \$7,000, she may prepare the authorization. I will be closing this case on our end.

Elba Luz Bousono
Paralegal Specialist
Regional Office - Region III
elba.bousono@ssa.gov

To edit a specific record, enter either the SSN, the Claimant's Last Name
or the Representative's Last Name and click Find Record

SSN	Claimant Last Name	Rep Last Name	<input type="button" value="Find Record"/>	<input type="button" value="Browse All Records"/>
SSN: [REDACTED]	Name: [REDACTED] Last	[REDACTED] First	MI	STATUS: ACKL DATE: 5/31/06
X-Ref: [REDACTED]	ET DIWC HT 30	Rep Name: [REDACTED] Last	[REDACTED] First	MI
Address: [REDACTED]		Address: [REDACTED]		
City: [REDACTED]		City: [REDACTED]		
State: [REDACTED]	Zip: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]	
Phone: [REDACTED]	FO Code	Phone: [REDACTED]	Attorney? Y	
ACL #: -0		Rep Beginning on:	Ending on:	
Type: FPIN	Date Received: 5/24/06	Title: 6/30/06	ALJ: Benagh, Christine	HO: WASHINGTON
Req By: ALJ	PC: Mid-Atlantic PSC	MOD:	PC Contact:	PC Phone:
Employee: ELB	Date Assigned: 5/24/06	Award Notice:	25% II>: \$5,300.00	XVI>:
Amount Requested:	ALJ Amount: \$7,000.00	Hours Claimed:	AmE Authorized:	
Agreement Approved/Disapproved:	RCJ Agreement Approved/Disapproved:		Final Action Date:	
Remarks:				

CPS NO

ACCOUNT PCOC-2 NOP-01 SP-M MS-DER CIS-N TAC-D LUM-05 LMM-02/06 RCC-5
 ERC-00 FLI-M SEC-D CDY-0 DRAMS READ
 PRIMARY P [REDACTED] DOB-[REDACTED] LSPA-\$0.00
 INSURED CLAIM TYPE-DISABILITY DATE OF FILING-06/15/2000
 FIRST MET-01/1995 DIB QC EARNED-00 FULL QC REQUIRE-32
 FULL QC EARNED-40 CURR QC EARNED-00 HLTHBEN QC EARN-00
 CONVERTED
 SP MSG1 TRANS DT-09/02
 HA IS REPRESENTED BY ATTY [REDACTED]
 [REDACTED]
 SP MSG2 TRANS DT-09/02
 FEE AGREEMENT APPROVED; PAST-DUE = \$21330.00 FEE = \$5300.00
 LESS USER FEE
 SP MSG3 TRANS DT-09/02
 CLOSED PERIOD OF DIB - DIB TERM T8 EFF 10/01
 PMT CYC CYI-2 PCEFD-10/31/2000 PCCOM-11/00 PCCR-I
 PIA HIS 08/00 \$1480.90 L2 FMAX-\$2221.30D ELY-00 IME-\$4191 YOC-00
 12/00 \$1532.70 L2K FMAX-\$2299.00D ELY-00 IME-\$4191 YOC-00
 01/01 \$1542.30 L22 FMAX-\$2313.50D ELY-00 IME-\$4253 YOC-00
 07/01 \$1542.30 L2I FMAX-\$2313.50D ELY-00 IME-\$4253 YOC-00
 12/01 \$1582.30 L2K FMAX-\$2373.60D ELY-00 IME-\$4253 YOC-00
 12/02 \$1604.40 L2K FMAX-\$2406.80D ELY- IME-\$ 00
 12/03 \$1638.00 L2K FMAX-\$2457.30D ELY-00 IME-\$4253
 12/04 \$1682.20 L2K FMAX-\$2523.60D ELY-00 IME-\$4253
 12/05 \$1751.10 L2K FMAX-\$2627.00D ELY-00 IME-\$4253
 PAYMENT PIC-A MPA-\$1751.00 DOC-530 SCC-21160 RD-02/10/06 LAP-5 PSC-C
 F/LLOA-2/3 ZDPC-107 EDA-10/31/00 EDL-10/31/00
 TELE NO BTN-[REDACTED] BTC1-O CPND-09/02
 PAYEE P [REDACTED]
 ADDRESS [REDACTED]
 NK RT [REDACTED] DAN-[REDACTED] BDCD-06/17/05
 ATTY FEE FAT-A PFA-\$5300.00 FADT-09/02 PDB-\$21330.00
 BENEFIT BIC-A P [REDACTED] SB-M DOB-[REDACTED] B DOEI-08/00 DOEC-08/00
 ABN-3TFQ LAF-C MBP-\$1751.00 DRD-06/17/05 LANG-E TOC-5
 HI CONTS PRD-08/2002
 BENE. ENT START-08/2000 DATE OF FILING-06/15/2000 APP RECEIPT-00/00/0000
 ID CODE-A CUR ENT CODE-DISABLED FULL RETIRE AGE-11/2012
 ANN EARN FRA-11/2012 CONVERTED
 DIB DDO-02/27/00 DIG-2020 DOED-08/00
 RESIDNCY START-06/29/2000
 CITIZEN START-11/08/1946 COUNTRY-UNITED STATES PROVEN
 HI-DIB START-08/2002 BASIS-DISABILITY TYPE-FREE FILING-07/2002
 SMI-DIB START-02/2004 TERM-05/2004 BASIS-DISABILITY PERIOD-IEP
 FILING-07/2002 NON COVER RSN-ENROL WITHDRAW EQUIT RELIEF-GRANTED
 NON EQIT START-08/2002
 SMI PREM START-02/2004 PENALTY-000% CURRENT AMT- \$0.00
 LPDD LPDA-\$5300.00 LPWD-09/01
 DED/ADD COM MTH UPDATED TYPE SOURCE AMOUNT START STOP ITEM
 12/2005 11/19/2005 MBP BRI \$ 1751.00 12/2005 010
 12/2005 11/19/2005 MBP BRI \$ 1751.00 999
 HISTORY 08/00 \$1480.90 \$ 0.00 900 01 R \$1480.00
 12/00 \$1532.70 \$ 0.00 700 01 R \$1532.00
 01/01 \$1542.30 \$ 0.00 300 01 R \$1542.00
 12/01 \$1582.30 \$ 0.00 300 01 R \$1582.00
 12/02 \$1604.40 \$ 0.00 400 01 R \$1604.00
 12/03 \$1638.00 \$ 0.00 000 01 R \$1638.00
 01/04 \$1638.00 \$ 66.60 400 01 SR \$1637.60
 04/04 \$1638.00 \$ 0.00 000 01 R \$1638.00
 12/04 \$1682.20 \$ 0.00 200 01 R \$1682.00
 12/05 \$1751.10 \$ 0.00 100 01 R \$1751.00

DATE: 05/30/06 SUMM UN: EZTOOL AN: [REDACTED] PG: 1 + X AH59
 SUMMARY REC: 2 ACD: 12/23/03 LOU: 12/24/03 PHT:
 AH: [REDACTED] P CLT: DIWC HGT: ACR-REG 30 BIC: A SSO: 530
 OFC: 5029 WASHINGTON DC ACC: CASE TRANS OUT OF HO 335
 XAH: XAN: XBI: SPC: HRD: 06/26/03
 HSD: HHD: CST: MD ISI: D CIF:
 CFL: FLD: FOC: X73
 ALJ: 1833 BENAGH C P RIN: A HOI: 5029
 AAJ: RRD: OAO:
 ASD: AVD: HRM: CRT:
 DID: 12/23/03 ADD: CDD:

TITLE 2/MEDICARE/BLACK LUNG/MISC

HEARING APPEAL COURT
 DSP: FREV DSP: DSP: CTT: 7402
 TITLE 16
 2SP: 2SP: 2SP: 2TT:

SUMMARY REC: 2 ACD: 06/26/03 LOU: 06/26/03 PHT:
 AH: [REDACTED] P CLT: DIWC HGT: NRH-REG 10 BIC: A SSO: 530
 OFC: 5808 OAO DIS PG BR 8 ACC: CASE TRANS OUT OF HQ 430
 XAH: XAN: XBI: SPC: HRD: 12/21/01
 HSD: 06/06/02 HHD: 06/06/02 CST: MD ISI: D CIF:
 CFL: FLD: FOC: X73
 ALJ: 0970 TAGGART J W RIN: A HOI: 5029
 AAJ: 0025 MILETT M E RRD: 09/25/02 OAO:
 ASD: AVD: HRM: CRT:
 DID: 07/26/02 ADD: 06/26/03 CDD:

TITLE 2/MEDICARE/BLACK LUNG/MISC

HEARING APPEAL COURT
 DSP: FREV DSP: ACRM DSP: CTT: 5029
 TITLE 16
 2SP: 2SP: 2SP: 2TT:

[REDACTED] 60 - SSI - SSN NIF

ADD A NEW FEE CASE

N: [REDACTED]	Name: [REDACTED] <small>Last First MI</small>	P: [REDACTED] <small>First MI</small>	STATUS: RECD	DATE: 5/24/06
X-Ref: [REDACTED]	CT: [REDACTED] HT: [REDACTED]	Rep Name: [REDACTED] <small>Last First MI</small>	Address: [REDACTED]	
Address: [REDACTED]	City: [REDACTED]		City: [REDACTED]	
State: [REDACTED]	Zip: [REDACTED]	State: [REDACTED]	Zip: [REDACTED]	Attorney? [REDACTED]
Phone: [REDACTED]	FO Code: [REDACTED]	Phone: [REDACTED]	Rep Beginning on: [REDACTED]	Ending on: [REDACTED]
Type: FPIN	Date Received: 5/24/06	Tickle: 6/3/06	ALJ: Benagh, Christine	HO: WASHINGTON
Req By: ALJ	PC: [REDACTED]	MOD: [REDACTED]	PC Contact: [REDACTED]	PC Phone: [REDACTED]
Employee: ELB	Date Assigned: 5/24/06	Award Notice: [REDACTED]	25% II>: [REDACTED]	XVI>: [REDACTED]
Amount Requested: [REDACTED]	ALJ Amount: [REDACTED]	Hours Claimed: [REDACTED]	Amt Authorized: [REDACTED]	
Agreement Approved/Disapproved: [REDACTED]	RCJ Agreement Approved/Disapproved: [REDACTED]	Final Action Date: [REDACTED]		
Remarks: [REDACTED]				

NEW CASE

Bajo, Virgilio

n: Toliver, Cynthia
Sent: Thursday, September 28, 2006 8:56 AM
To: Bajo, Virgilio
Cc: Frye, Thelma; Benagh, Christine
Subject: RE: P [REDACTED]

The information was mailed back to The Chief Regional Judge per Judge Benagh. Cynthia

From: Bajo, Virgilio
Sent: Thursday, September 28, 2006 8:52 AM
To: ||PHI ARC PCO PA3 Mod 14
Cc: Frye, Thelma; Toliver, Cynthia
Subject: FW: P [REDACTED]
Importance: High

MOD 14:

The Washington DC Office of Adjudication and Review (ODAR) received a fee petition concerning the above subject from the attorney of record, [REDACTED]. ALJ Benagh initially issued a partially favorable decision back in 8/2002, and we are now considering the amount of fees for proposed approval (if any) on the petition.

ALJ decision dated 8-16-2002 was partially favorable for a closed period resulting in past due benefits payable to claimant in the amount of \$21,330. However, the claimant requested review by the Appeals Council; subsequently, the review was granted by the Appeals Council and remanded back to Washington DC hearing office for a new decision. A fully favorable decision was then issued on 1-27-04. The attorney of record has since submitted a fee petition in the amount of \$10,079 for services rendered from 12/13/00 - 04/27/04.

Can you please confirm the exact amount of attorney fees (\$5,300 less the user fee) that have been paid already to the attorney of record on the above case?

Please indicate the exact amount of fees and to whom the fees were paid/released.

Thank you in advance for your assistance.

Virgil Bajo
ODAR LDP Associate
Washington, DC ODAR
202-523-0408 Ext. 3037
FAX 202-408-8995

From: Hamel, Gregory
Sent: Thursday, September 28, 2006 7:04 AM
To: Bajo, Virgilio
Cc: Bede, Jasper J.; Banks, Larry; Bracchi, Barbara; Axelsen, Curtis; Kirkwood, John; Quinn, Helena; Bousono, Elba
Subject: FW: P [REDACTED]

Hi, Virgil,

The governing factor is the amount of the fee the presiding ALJ proposes to approve, not the amount the representative is asking on the petition. Attached is the reference. Please keep me posted on this as we do have the case logged here as a closed matter. Thanks.

http://www.ssa.gov/OP_Home/hallex/I-01/I-1-2-52.html

Gregory M. Hamel
ODAR Regional Attorney - Region III Philadelphia
(215) 597-4111

Bajo, Virgilio

From: Bajo, Virgilio
Sent: Thursday, September 28, 2006 9:23 AM
To: Kirkwood, John; Frye, Thelma
Cc: Benagh, Christine
Subject: FW: P [REDACTED]

Thelma/J.R. -

I'm holding the ALJ file on the above claimant. A FACT inquiry indicates attorney fees withheld by PC2 were paid in 9/2002 on the initial partially favorable decision and fee order approving the fee agreement.

The case was appealed to the AC and remanded; subsequently, a fully favorable decision was issued on 1/27/04. The fee petition indicates a period of services were provided from 12/3/00 through 4/27/04, and the rep is seeking \$10,079.

The MBR indicates an amount (\$5,300 less user fees), and may have already been paid to the attorney of record during 9/2002. I have emailed PC2/Mod-14 to confirm the exact amount of attorney fees that were withheld for release to the attorney during 9/2002, and I'm now awaiting PC2/Mod-14's reply.

The period of time shown on the fee petition (period for which services were rendered) is misleading. As indicated on the fee petition, the time period includes the period of time prior to 9/2002. This period of time is significant and indicates the rep is "double billing" for which after the payment center had already released attorney fees (i.e., \$5,300 less user fees). Do you agree?

ORCALJ should not re-open the fee matter. We can close the fee matter from this office; I am just waiting for PC2/Mod-14 to confirm the exact amount of attorney fees that were previously released to Attorney Binder during 9/2002 so that Judge Benagh can fully consider the fee petition and the amount/type of attorney services performed since 9/2002.

Virgil
x3037

From: Hamel, Gregory
Sent: Thursday, September 28, 2006 7:04 AM
To: Bajo, Virgilio
Cc: Bede, Jasper J.; Banks, Larry; Bracchi, Barbara; Axelsen, Curtis; Kirkwood, John; Quinn, Helena; Bousono, Elba
Subject: FW: P [REDACTED]

Hi, Virgil,

The governing factor is the amount of the fee the presiding ALJ proposes to approve, not the amount the representative is asking on the petition. Attached is the reference. Please keep me posted on this as we do have the case logged here as a closed matter. Thanks.

http://www.ssa.gov/OP_Home/hallex/I-01/I-1-2-52.html

Gy M. Hamel
CR Regional Attorney - Region III Philadelphia
(215) 597-4111

From: Benagh, Christine
Wednesday, September 27, 2006 10:51 AM
Bajo, Virgilio
Subject: Frye, Thelma; Hamel, Gregory; Toliver, Cynthia
RE: P [REDACTED]

Virgil,

Actually, the fee petition is for more than \$10,000. We will send the documents back to Judge Bede, to your attention.

Thank you,
Judge Benagh

From: Bajo, Virgilio
Sent: Wednesday, September 27, 2006 10:45 AM
To: Benagh, Christine
Subject: RE: P [REDACTED]

Hi, Judge Benaugh - FYI.

I intended to prepare the fee authorization for your signature of release, but the DGS function (in Word) currently is not set up correctly at my workstation. The closed ALJ file is in Thelma's office for assignment to an SCT.

Virgil
x3037

From: Bousoño, Elba
Sent: Tuesday, September 26, 2006 4:32 PM
To: Bajo, Virgilio
Cc: Hamel, Gregory; Benagh, Christine
Subject: P [REDACTED]
[REDACTED]

I received an initial fee petition for processing from Judge Benagh on the above claimant. However, I was only sent the Memo by the ALJ. In the Memo, Judge Benagh is recommending a fee of \$7,000. Please note that since the request is not over \$7,000, the RCALJ does not have to review it. Also, there was no fee petition or itemized sheet with this case.

In any case, since Judge Benagh is recommending \$7,000, she may prepare the authorization. I will be closing this case on our end.

Elba Luz Bousoño
Paralegal Specialist
Regional Office - Region III
elba.bousoño@ssa.gov

Bajo, Virgilio

From: Williams, Walt
Sent: Friday, September 29, 2006 3:20 PM
To: Bajo, Virgilio
Subject: RE: P [REDACTED]

Our records indicate that a total of \$5300.00 was withheld from [REDACTED]'s retroactive benefits. After deducting a \$333.90 user fee, a payment of \$4966.10 was authorized on 08/29/2002. Payment was issued to Atty [REDACTED]

From: [PHI ARC PCO PA3 Mod 14
Sent: Thursday, September 28, 2006 11:04 AM
To: Hawkins, Sheila; Williams, Walt
Subject: FW: P [REDACTED]
Importance: High

From: Bajo, Virgilio
Sent: Thursday, September 28, 2006 8:52 AM
To: [PHI ARC PCO PA3 Mod 14
Cc: Frye, Thelma; Tolver, Cynthia
Subject: FW: P [REDACTED]
Importance: High

MOD 14:

The Washington DC Office of Adjudication and Review (ODAR) received a fee petition concerning the above subject from the attorney of record, [REDACTED]. ALJ Benagh initially issued a partially favorable decision back in 8/2002, and we are now considering the amount of fees for proposed approval (if any) on the petition.

ALJ decision dated 8-16-2002 was partially favorable for a closed period resulting in past due benefits payable to claimant in the amount of \$21,330. However, the claimant requested review by the Appeals Council; subsequently, the review was granted by the Appeals Council and remanded back to Washington DC hearing office for a new decision. A fully favorable decision was then issued on 1-27-04. The attorney of record has since submitted a fee petition in the amount of \$10,079 for services rendered from 12/13/00 - 04/27/04.

Can you please confirm the exact amount of attorney fees (\$5,300 less the user fee) that have been paid already to the attorney of record on the above case?

Please indicate the exact amount of fees and to whom the fees were paid/released.

Thank you in advance for your assistance.

Virgil Bajo

ODAR LDP Associate
Washington, DC ODAR
202-523-0408 Ext. 3037
FAX 202-408-8995

From: Hamel, Gregory
Sent: Thursday, September 28, 2006 7:04 AM
To: Bajo, Virgilio
Cc: Bede, Jasper J.; Banks, Larry; Bracchi, Barbara; Axelsen, Curtis; Kirkwood, John; Quinn, Helena; Bousono, Elba

Subject:

FW: [REDACTED]

Hi, Virgil,

The governing factor is the amount of the fee the presiding ALJ proposes to approve, not the amount the representative is asking on the petition. Attached is the reference. Please keep me posted on this as we do have the case logged here as a closed matter. Thanks.

http://www.ssa.gov/OP_Home/hallex/T-01/I-1-2-52.html

Gregory M. Hamel

ODAR Regional Attorney - Region III Philadelphia

(215) 597-4111

ATTACHMENT 15

EXHIBIT J



CHRISTINE P. BENAGH,
ADMINISTRATIVE LAW JUDGE
Social Security Administration
Office of Disability, Adjudication, and Review

Union Center Plaza II, 8th fl.
820 First Street, N.E.
Washington, D.C. 20002
Telephone: (202) 523-0408
Facsimile: (202) 408-8995
Date: May 8, 2008

MEMORANDUM ORDER
DENYING IN PART AND AUTHORIZING IN PART
FEE PETITION

In re: [REDACTED]

On June 6, 2002, the claimant and his attorney signed a two-tier fee agreement, which provided for, in the event of a favorable decision and approval, payment of the lesser of \$5,300.00 or 25 percent of the back due benefits, but stating that the agreement was inapplicable in the event of an Appeals Council remand. A partially favorable decision was issued in August, 2002. In the same month, the attorney was paid \$4,966.10. The decision was partially vacated and remanded on July 7, 2003. No hearing was held; no new evidence was offered. A fully favorable decision issued on January 27, 2003. Payment under the fee agreement was approved at the same time.

The regulations provide that a representative who wishes to receive more than the amount set forth in a fee agreement must file his request or a letter of intent to file such a request within 60 days of the date of the decision. On April 27, 2004, substantially more than 60 days after the issuance of the decision, the representative requested withdrawal of his fee agreement. I declined his request. The attorney requested review and submitted a fee petition on July 12, 2004, requesting a fee of \$10,079, for alleged 77.75 hours of work.

In November, 2004, the Regional Chief Administrative Law Judge vacated my approval of the fee agreement. In October, 2006, the Regional Chief Judge's staff proposed a fee of \$2,949.00 for the period from September, 2002, through April, 2004, accepting 22.75 in alleged hours of work. The proposal was provided to me on May 9, 2008.

1. The letter of intent to file a fee petition was filed more than a year after the deadline.
2. The fee petition contains material false and misleading statements by the attorney, certified by him to be accurate.
 - i. The central one is, obviously, his allegation that he dictated the on-the-record decision to me. Never in my career as a judge has any attorney (or anyone else)

dictated a decision to me. Moreover, the file contains my instructions to the ODAR decision writer. The decision was signed by the Acting Hearing Chief Administrative Law Judge. I neither wrote nor signed the decision that bears my name.

ii. Second, the attorney's alleged itemization uses ¼ hours as a billing unit, which significantly overstates the amount of time required by many of the tasks alleged to have been performed.

iii. Third, the attorney's itemization appears to include many tasks that, in that firm, are normally performed by clerical employees, but the attorney failed to disclose that, giving the impression that the tasks were performed by an attorney.

iv. Fourth, the attorney's itemization and requested sum of \$10,079.00 included tasks allegedly performed in 2000 through August 9, 2002, but the attorney failed to disclose that he had already be paid \$4,966.10 for that work.

3. The attorney's material false and misleading statements undermine the credibility of his asserted time and tasks.

4. The attorney represented that some 22.75 hours were spent prosecuting the case after issuance of the first decision. In preparation of the appeal to the Appeals Council, he alleged that it required him half an hour to send the surely-standard letter advising the Appeals Council of the appeal and requesting tape cassettes, a half hour to review the file a month later,¹ another half hour to review the file again two months later (although no new material had been received since the first decision issued), an hour to review a single medical review from a Dr. Bone and another hour to review a second medical report from a Dr. Weisher, and that (eight months after the decision issued) another 4.50 hours to review the decision and the file for the third time,² and another 3.75 hours to prepare the appeal itself. After the remand, there was no hearing; he obtained and submitted no new evidence. He alleged that it required two and ¾ hours to analyze the file and develop his strategy. ODAR expects a judge to perform all analysis of the case, order all needed development, hold the hearing, instruct and correct the decision in less than two and ½ hours total. (50 cases per month divided by the approximately 22 working days in report month.) Even had the credibility of the attorney not been seriously discredited, I view with extreme skepticism the allegations that the attorney required more than 22 hours on the remand for a simple case,³ in which he submitted no evidence and which required no hearing. Even if the assertions were true, that time expenditure by an attorney would be excessive.

5. The record does not reflect that the attorney submitted the fee petition to his client or that his client was ever provided with an opportunity to protest the fee petition.

¹ Although the review was unnecessary when performed, the time alleged appears to be accurate for review of a standard-size evidence file.

² This time for review and notes appears to be overstated by about four hours.

³ The term "simple" could be defined by this case on remand. The claimant had been treated for Hodgkin's lymphoma and had arthritis, credibly alleged fatigue and back pain, was nearly on the first date under consideration with a high school education and past relevant work that was unskilled and very heavy, and there was no clinical evidence that he had improved to the point of being able to perform medium work.

In light of the foregoing, the 22.75 hours allegedly performed between September 18, 2002, and April 27, 2004, are reduced as follows:

- a. The time for all "communications" that were, or should be standard letters, are reduced to 12 minutes. The common billing unit in private law practice has been 1/10th of an hour (6 minutes) for about a decade. Preparation and mailing of a standard letter and file handing would require about 12 minutes. (In total, these represent 4 hours.)
- b. The file reviews of October and December, 2002, were unnecessary, and are not compensated.
- c. The reviews of medical reports are reduced to 6 minutes each. (In total, 0.2 hours)
- d. The ground for the remand were the failure of the original judge to substantiate imposition of a closed period (as there was no objective evidence for that period) and the inaccurate statement in the first decision that the claimant's subjective complaint's for that period were consistent with the ability to perform work at the medium exertional level. It could not have required eight and a quarter and a half hours to figure that out and prepare the appeal. Recognizing that an appeal must raise all issues that may need to be raised later on court review, the time for these tasks is reduced by half to 4.2 hours.
- e. The file analysis and remand strategy time of 2.75 hours is excessive and is reduced to 0.5 hours.
- f. The OTR was never dictated to the judge. The time claimed is reduced to zero.
- g. Review of the five-page final, fully favorable decision could not have consumed 30 minutes. Twelve minutes will be allowed.

The total hours authorized herein are 9.1 at \$129.63 (the requested hourly rate), \$1,179.63.



Christine P. Benagh
Administrative Law Judge

cc: Honorable Jasper J. Bede
Elba Bousono
P [REDACTED]

ATTACHMENT 16

EXHIBIT K

[REDACTED]

July 8, 2008

Honorable Jasper J. Bede
Regional Chief Judge
SSA ODAR, Regional Office III
P.O. Box 13496, 4th Floor
Philadelphia, PA 19101

RE: [REDACTED]

Dear Judge Bede:

Thank you for your letter dated June 6, 2008 regarding Judge Benagh's order denying in part and authorizing in part my petition to obtain approval of a fee. Please note that my office did not receive a copy of the order until the above date, at which time it was sent via fax. Therefore, please consider this request for review of Judge Benagh's order timely.

As the record reflects, we represented Mr. [REDACTED] from the reconsideration level through an Appeals Council remand. During this time, we developed the case both medically and vocationally, secured a remand, prepared for and appeared at the administrative hearing, submitted a medical summary and theory of the medical evidence in an effort to facilitate a favorable decision and maintained active communication with our client and the Social Security Administration throughout the history of the case. In view of the amount of time invested in the case, the complexity of the case and the level of skill required, we believe the requested fee of \$10,079.00 is fair and reasonable compensation for the results achieved.

While Judge Benagh takes offense to the 8/29/03 entry listed on page 5 of the itemized list of services: "OTR dictated to ALJ", she completely misinterpreted the entry. Although she claims I dictated the on-the-record decision to her, it was not our intention to convey that, it simply means that our summary of the medical evidence and theory of the disability was initially dictated and addressed to the ALJ and subsequently it was transcribed, edited and mailed to Judge Benagh on September 2, 2003. A copy of this request for an on-the-record decision is enclosed for your review.

Furthermore, the requested fee is in accordance with the agreement signed by the claimant that states our fee for successful representation will be 25% of the past due benefits awarded. As the Administration withheld a total of \$10,079.00 for anticipated fees, our requested fee does not exceed the 25% cap, nor does it result in a windfall to the representative and there is no evidence that it is unreasonable or that the services provided were substandard. Moreover, the regulations do not set an hourly rate. Instead it outlines the criteria to be followed in evaluating an attorney's request for approval under Section 404.1725(b). However, it is obvious that Judge Benagh failed to follow these guidelines and arbitrarily and capriciously reduced the fee to a mere \$1,179.63.

Although Judge Benagh provides two and one half pages of rationale for reducing the fee, her reasons are baseless and without merit. While she claims false and misleading statements were made, she should be aware that pursuant to Section I-1-253(A) of the Hallex, a duly appointed representative may include the services of support staff to whomever he or she supervises and delegates tasks regarding the development of the claimant's case. Inasmuch as the undersigned is the duly appointed primary representative of this case, the itemized list of services may include tasks that were delegated to support staff. Furthermore, all work provided is contemporaneously logged into our computer system as part of our everyday business practice. As such, the itemized list of services provided is a true and accurate reflection of the work provided. Finally, increments of .25, .50, etc. include reviewing the claimant's file and updating the computer records. Lastly, as noted above, the requested fee is based on a contingency fee whereby the attorney charges 25% of the past due benefits if the claim is successful and receives nothing if the claimant is not successful. While the fee was paid for the partially favorable decision, had our appeal for continuing benefits been unsuccessful, no additional fee would have been charged for the amount of work and time invested. Furthermore, the payment center would have credited the amount previously paid toward the final authorized fee, as they are instructed to do so. As noted on the petition form, the requested fee represents 25% of the past due benefits, it does not imply we are seeking an additional \$10,079.00.

In conclusion, to penalize an attorney for successfully representing the claimant is unfair and against good conscience. Our fee is based on both awards and represents the total amount withheld from both decisions. As such, we should be compensated accordingly.

Page Three (3)

[REDACTED]

In view of the above and attached hereto, please review this matter in its entirety and increase the fee to an amount that is fair, reasonable and commensurate with the level of skill required, the complexity of the case and the fully favorable results that were achieved on this case.

Thank you for your consideration in this matter.

Sincerely,

[REDACTED]

Enclosures

[REDACTED]

ATTACHMENT 17

EXHIBIT L



SOCIAL SECURITY ADMINISTRATION

A

Refer To:

Office of Disability Adjudication and Review
Union Center, Plaza II
820 First Street, NE, 8th Floor
Washington, DC 20002-4205
Tel: (202) 523-0408 / Fax: (202) 408-8995

November 6, 2008

Memorandum To: Christine P. Benagh
Administrative Law Judge
Washington, DC Hearing Office

From: : Larry K. Banks
Hearing Office Chief Administrative Law Judge
Washington, DC Hearing Office

Subject: : Guidance and Counseling Pertaining to Fee Matters/Appropriate Language

Judge Bede, Regional Chief Judge, Region III, has become aware of two fee orders issued by you which necessitate that you receive guidance regarding the form and content of fee orders, and counseling on using appropriate language in such orders.

On May 8, 2008, you issued a fee petition order in the case of [REDACTED]. The order contains inaccuracies and inappropriate language. In addition, your actions in this case demonstrate the need for further training and guidance on fee matters.

As a preliminary point, the form of your order in the [REDACTED] case is improper. The order is entitled "Memorandum Order Denying in Part and Authorization in Part Fee Petition" and is under your own personal letterhead. A fee petition order should be entitled "Authorization to Charge and Collect Fee" and should appear with the usual SSA case caption and the hearing office's general letterhead, per the form in DGS under "Fee Documents."

With respect to procedural errors, your order in the [REDACTED] case does not give the claimant or the representative appeal rights or instructions for requesting a review. This is a serious omission.

In addition, in the second paragraph of the order, you state that the appeal period for requesting administrative review of a fee agreement amount is 60 days, instead of 15 days. The letter also states that a letter of intent to file a fee petition was filed more than a year after the deadline. However, there is no time limit for filing fee petitions.

Furthermore, in May 2006, you sent Judge Bede your recommendation for a fee of \$7,000, with respect to the representative's petition. Since the upper limit an Administrative Law Judge can authorize is \$7,000, you could have authorized the fee at that point. As you will recall, the fee review was returned to you so that you could issue the fee order, which you did not do until May 2008 (after receiving reminders from staff within the Regional Office).

COUNSELING PERTAINING TO TONE AND LANGUAGE IN FEE ORDERS

In bold, enlarged letters, as a section heading, you wrote: "The fee petition contains material false and misleading statements by the attorney, certified by him to be accurate." You then go on to criticize the attorney on several issues that the Regional Chief Judge believes to have mostly been miscommunication, clerical errors or a difference in philosophy. The Regional Chief Judge does encourage Administrative Law Judges to carefully review fee documents, but using diplomatic language when responding is a requirement. In your order in the [REDACTED] case, you come very close to accusing the representative of fraud.

Compounding matters, in Paragraph #4 of the order, you set forth your interpretation of Agency expectations/goals pertaining to the adjudication of cases by Administrative Law Judges. You state, "ODAR expects a judge to perform all analysis of the case, order all needed development, instruct and correct the decision in less than two and 1/2 hours total. (50 cases per month divided by the approximately 22 working days in a report month.)" You then go on to use very caustic language regarding the attorney's credibility, and by the end of Paragraph #5, you reduce 22.75 hours of charges to 9.1 hours. It is clearly inappropriate for an Administrative Law Judge to discuss internal Agency expectations or goals within a fee order.

Please note that within the order, you indicate that Regional Office staff "proposed a fee of \$2,949." However, it is not the practice of staff members to propose fee amounts to Administrative Law Judges, and the Regional Office has no record of this occurring in the [REDACTED] case.

It is also noted that you authorized only \$129.63 per hour as the hourly rate which you termed as the "requested" rate. Mathematically, this is the effective rate of the requested total fee, but only because the attorney capped his request at 25% of past-due benefits. In any event, it is suggested that you use an hourly rate commensurate with the local of the case.

The second fee order is a January 18, 2008 order [REDACTED]

[REDACTED] approved the fee agreement, but [REDACTED]

and [REDACTED] (the appearance of [REDACTED] referencing the [REDACTED]

case. Although [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

As discussed in more detail above, with respect to the [REDACTED] case, your fee order did not provide the claimant or the representative appeal rights or instructions for requesting a review or that an ALJ may authorize a fee **up to and including \$7,000**. You are reminded that the correct language pertaining to fee orders is set forth in the DGS shell for "Authorization to Charge and Collect Fee" which can be found in DGS under the "Fee Documents" section.

By issuing this memorandum, you are hereby counseled about using appropriate language in your fee orders. You are directed to review HALLEX I-2-8-35(A)(1), which states, "Avoid using emotionally charged words, pejorative terms, and personal judgments or opinions..." Although this section refers to evidence, the noted principle aptly applies.

You also are directed to review HALLEX I-2-8-25 (D), which states:

- The ALJ must not use emotionally charged words; e.g., "malingerer," "hypochondriac, etc."
- The ALJ must not use the decision as a forum for criticizing other government components, the courts, the representative or the claimant.

Additionally, you are requested to discontinue discussing internal operations within orders. You should also refrain from using all capital letters or oversized font such as in context described above, as it can be received as "shouting" by the claimant and representative.

You are instructed to view all of the four videos on the Region III Fee Resource page, located at <http://odar.ba.ssa.gov/philadelphia/fees.htm> or to read the transcripts for those videos. Please inform me when you have either completed the viewing of all four videos or read the transcripts. You may also wish to print out the Region III Fee Manual from the same web page for your review.

Cc: Jasper J. Bede
Regional Chief Judge

ATTACHMENT 18

EXHIBIT M



CHRISTINE P. BENAGH,
ADMINISTRATIVE LAW JUDGE
Social Security Administration
Office of Disability, Adjudication, and Review

Union Center Plaza II, 8th fl.
820 First Street, N.E.
Washington, D.C. 20002
Telephone: (202) 523-0408
Facsimile: (202) 408-8995

NOTICE OF GRIEVANCE

STEP ONE

Christine P. Benagh, Administrative Law Judge,

Washington, DC, Office of Disability Adjudication and Review

vs.

**Larry K. Banks, Hearing Office Chief Administrative Law Judge,
and Office of Disability Adjudication and Review**

This grievance is filed pursuant to Article 10 of the Collective Bargaining Agreement between the Association of Administrative Law Judges, IFPTE, AFL-CIO (AALJ) and the Social Security Administration, Office of Disability Adjudication and Review (ODAR).

The Grievant, Judge Benagh, serves as an Administrative Law Judge in the Washington, DC ODAR office and is a member of the bargaining unit represented by the Association of Administrative Law Judges, IFPTE, AFL-CIO (AALJ).

Respondent Larry K. Banks is the Washington, DC ODAR Hearing Office Chief Administrative Law Judge (HOCALJ). In that capacity, he is responsible for the fair and equitable treatment of the Administrative Law Judges (ALJ) and for the implementation of the terms of the Collective Bargaining Agreement (CBA) in the Washington, DC ODAR. Respondent ODAR is a component of the Social Security Administration and its management officials are responsible for the fair and equitable treatment of the Administrative Law Judges (ALJ) and for the implementation of the terms of the Collective Bargaining Agreement (CBA) in the Washington, DC ODAR.

1. On November 6, 2008, Respondent Banks issued a "Guidance and Counseling" memorandum to Judge Benagh with regard to her decisions in two fee orders; this

document is attached as Exhibit A, attached at pages 1-4. This memorandum contains misstatements of fact and law and encroaches on Judge Benagh's judicial independence.

2. With regard to the [REDACTED] Fee Decision, the fee petition at issue involved a two-tiered fee agreement. In 2002, another judge granted a closed period of disability to Mr. [REDACTED]. At that time, the claimant's attorney, [REDACTED], was paid \$5,300 (less a processing fee) under his fee agreement with [REDACTED]. [REDACTED] appealed the 2002 partially favorable decision. [REDACTED] did not file the request for fee review with a statement of intent to file for further charges in the event additional benefits were obtained, required by HALLEX I-1-2-15.B.1. Exhibit B, attached at pages 5-31, esp. 8 (E-mail of Virgilio Bajo, Oct. 10, 2006, to Judge Banks and J.R. Kirkwood).

The 2002 decision was remanded by the Appeals Council on a single issue. Exhibit C, attached at pages 32-34. No additional evidence was filed thereafter. In January, 2004, without holding a hearing, Judge Benagh issued a fully favorable decision. Unaware that fees had been paid earlier, her decision approved the fee agreement of \$5,300. Exhibit E, attached at pages 40-49.

On April 27, 2004, Judge Benagh received a letter from [REDACTED] firm requesting that withdrawal of the fee agreement approval, so that a fee petition could be filed. Exhibit F, attached at page 50. Judge Benagh denied the request, by letter dated the same day, stating that she was holding the representative to the amount of the fee agreement signed by the claimant and denying any fee petition request above that amount. Judge Benagh ruled on both the fee agreement and the impending fee petition. The central reasons were that a) the remand had been on a single point (assessment of the claimant's subjective complaints, b) the issue had been so simple that the claim had been decided on the documentary record, and c) no evidence had been submitted after the remand from the Appeals Council. Exhibit G, attached at page 51.

[REDACTED] sought review of her order. Exhibit H, attached pages 52-54. Although [REDACTED] had not filed for review of the 2002 fee so that he could later request more, and although [REDACTED] failed to file the statement of intent to file a fee petition at that time, and although Judge Benagh had denied the proposed fee petition for an amount above \$5,300, the then-Regional Chief Administrative Law Judge, Frank A. Cristaudo, vacated her order in November 2004, and authorized [REDACTED] to file his fee petition. Exhibit J, attached pages 63-65.

[REDACTED] submitted his fee petition to Judge Cristaudo in July 2004, Exhibit I, attached pages 55-62; it was sent to the Washington, DC Hearing Office in November 2004. A brief perusal of the petition suggested that it was seriously flawed. The petition requested additional payment for work for which the representative had already been paid; it failed to acknowledge that payment of \$5,300 had already been made; it contained the false statement that the representative had dictated the on-the-record decision to Judge Benagh; it listed a large number of hours, far in excess of what would be considered reasonable, and the it implicitly represented that the attorney had performed a great deal of clerical work, which would merit a lower hourly rate for clerical tasks. *Id.*

The matter was, therefore, filed until there was time for more deliberate consideration. A series of personnel changes in the hearing office prevented the matter from coming to Judge Benagh's attention again for about 18 months.

Judge Benagh did not feel that the fee petition met the legal standard for approval; therefore, she used a recommendation procedure to send the matter to the Regional Chief Judge. Exhibit L, attached pages 67-71. However, the Regional Attorney returned it to her, informing her that she had used the incorrect procedure. Exhibit B, attached pages 5-31, esp. page 11. Judge Benagh accepted the interpretation of the Regional Attorney.

This file returned by the Regional Attorney was accompanied by various e-mails from Virgilio Bajo, an employee in the Regional Office. He was concerned that the fee petition seemed to contain "double billing" for work underlying the 2002 partially favorable decision. Exhibit B, attached pages 5-31, esp. 8 and 27, and Exhibit M, attached at page 72. Mr. Bajo was also concerned that the representative had not timely filed his request for additional fees or statement of intent to file a fee petition after appeal, and that there was no documentation that the attorney had dictated the on-the-record decision to the judge, as alleged. *Id.* at 7-10, and Exhibit D, attached at pages 35-39 (Judge Benagh's instructions for the [REDACTED] decision).

On October 10, 2006, Mr. Bajo completed his review of the fee petition and verified the appropriate timeframe. He e-mailed these to Judge Banks and the Acting Hearing Office Manager for the Washington, DC hearing office. He determined that the representative could only collect additional payment for the period from September 18, 2002, through the Appeals Council remand order, as he had already been paid for earlier work. According to Mr. Bajo, the representative claimed only 22.75 hours for the latter period. Mr. Bajo used the representative's fee rate per hour, calculated from the attorney's own fee petition, and set out a figure of \$2,949.00 as an amount that the "ALJ" could recommend. *Id.*

There followed a period in which Judge Benagh had no legal assistant, followed by a period with a part-time legal assistant, who only organized evidence files, and, finally, a permanent legal assistant, but one who had not had agency training for that position. Eventually, however, the fee petition file and memoranda from Mr. Bajo were provided to Judge Benagh.

On May 8, 2008, using Mr. Bajo's papers as a starting point, Judge Benagh issued the order in question on her official letterhead. Exhibit O, attached pages 74-76.

3. There is no requirement in the regulations or HALLEX that a judge must use a specific title, a specific format, general office letterhead, or the DGS templates, for any document. In any event, Judge Benagh could not have used the DGS templates for this order as her computer access to them was inoperative on May 8, as she informed management. Exhibit N, attached page 73. This is not an uncommon problem. See Exhibit B, attached pages 5-31, esp. 12. (Virgilio Bajo e-mailed Judge Benagh, stating

that he had intended to prepare a fee authorization form for her, but could not, because the DGS function was not set up properly on his computer.)

4. The counseling memorandum rebukes Judge Benagh because her 2008 fee order in the [REDACTED] case provided neither the claimant nor representative with appeal rights or instructions for requesting review. The Judge does not write the notices of appellate rights that are attached to orders and decisions. Notices are produced and added to decisions and orders by legal assistants, writers, or other clerical personnel. In fee orders, the judge writes only the justification, as Judge Benagh did. *See, e.g.*, Exhibit L, attached pages 67-71. Notices are not the responsibility of the Judge, but of the staff. The actions of the staff are not directed by Judges, but by management.

5. Judge Benagh was reprovved for using "bold, enlarged letters, as a section heading: **"The fee petition contains material false and misleading statements by the attorney, certified by him to be accurate."** Respondents assert that the use of all capital or enlarged letters could be perceived as "shouting." *Cf.* Exhibit P, attached pages 77-78 (the agency's own fee template).

There are no regulations or procedural manuals prohibiting the use of bold, enlarged letters, and it is common practice in Administration decisions to place section headings in bold, capitalized, and/or underlined fonts.

Further, emphasis was used to highlight for any reviewing official the gravity of the false and misleading statements in the fee petition of [REDACTED] and to fulfill Judge Benagh's reporting obligations with regard to [REDACTED] conduct.

6. The counseling memo states that Judge Benagh's order comes "very close to accusing the representative of fraud." The order, however, describes the facts of the fee petition, including an allegation that the attorney asserted that he had dictated the decision to Judge Benagh, double billing, inflated hours, and a claim that an attorney should receive professional rates for clerical work. These facts make it clear that the representative had made false and misleading statements. Judge Benagh did not use the term "fraud." The facts may suggest possible fraud, but the judge cannot leave out the facts material to the fee reduction. They must be addressed in the decision, as HALLEX I-1-3-3.E makes clear.

Judge Benagh is being reprimanded for setting out the material facts in a decision—one of the most fundamental duties of an independent judge. It is not alleged that she misstated them. It is not alleged that she omitted material facts. She set forth the truth. Respondents may not reprimand any Judge appointed under the APA for such an act. To do so fundamentally violates the statutory independence of the Administrative Law Judge.

7. The counseling memorandum chastises Judge Benagh for attacking [REDACTED] credibility. As an independent Judge who must conduct all proceedings before her fairly, accurately, fully, and impartially, she is required to question the credibility of material

statements unsupported by the facts, as demonstrated by HALLEX I-1-3-3.E. She is required to do this without regard to the importance or prestige of the individual involved. [REDACTED] is a very important person, indeed, [REDACTED]

But importance, prestige, high federal office, or friendship, should immunize no one from judicial scrutiny. Judge Benagh is being told that she may not exercise her statutory duties impartially. Respondents are prohibited by the Administrative Procedures Act from telling Judge Benagh, or any other Administrative Law Judge, how she will decide this or any future case. The purpose of the APA is to protect the decisional process, to ensure that decisions under the Act are made on the law, on the facts, and on the merits

8. Judge Benagh is charged with using "very caustic language" with regard to the representative's credibility. This is false. The fee decision contains a stern denial of the attorney's allegation that he dictated a decision to her. The other criticisms of the fee petition are straight-forward discussions of the facts. Those facts are very serious, but the descriptions are short and to the point, using neither sarcasm nor caustic language.

Judge Banks admonished Judge Benagh that she is to use "diplomatic language." There is no such requirement. Judge Banks is misstating HALLEX. Judges are prohibited from name-calling, from "emotionally charged words; e.g., 'malingerer,' 'hypochondriac, etc.'" HALLEX I-2-8-25.D.

Judge Benagh used no "emotionally charged words" at all. She used the words of the statutes and regulations, *i.e.*, "false and misleading". Judge Benagh described those false and misleading statements, but not with "emotionally charged words". Judge Benagh concluded that the attorney's allegations were not credible. It cannot be objectionable to use the words of the statutes and regulations that apply to the factual situation before the Judge.

The language of diplomacy is purposefully the language of indirection and vagary. The language of a judge should be clear and forthright without ambiguity.

9. In the counseling memorandum, Judge Banks complains that Judge Benagh "criticize[d] the attorney". A judge is required to provide the reasons for her actions. It is impossible to write an order reducing an attorney's fee and explaining the reasons for the reductions without being critical of him. Respondents are castigating the Judge for carrying out her statutory and regulatory obligations.

10. Moreover, Judge Banks criticized Judge Benagh for finding fault with [REDACTED] "on several issues that the Regional Chief Judge believes have been mostly miscommunication, clerical errors or a difference in philosophy." The "beliefs" of the Regional Chief Judge have no basis in this record of the fee decision. There is no question but that the double billing occurred. The false statement about dictating a decision to the Judge can be read on the face of the petition. There is no evidence in the record to support theories of miscommunication or clerical error. Respondents are criticizing Judge Benagh for failing to take into account assertions of belief, which are

not facts, from a *ex parte* management official, who formulated his views after her decision, and which are not in the record. The APA requires Judge Benagh to make decisions strictly on the basis of the record. Respondents' direction that she should do otherwise contradicts the statute.

The reference to "a difference in philosophy" is interesting, because there is a regulatory statement of the philosophy that Respondents, including its Judges, should bring to any fee decision. We are to "consider the purpose of the social security program, which is to provide a measure of economic security for the beneficiaries of the program." To allow benefits to be wrongfully diverted from claimants to their representatives is not in accord with the philosophy of the Social Security Administration.

11. Judge Banks reproved Judge Benagh for mentioning the Agency's production goals for Judges within a fee order, as those are internal goals.

There are no regulatory or procedural prohibitions against mentioning the Agency's internal production expectations in a decision.

Further, there is nothing "internal" about the fact that the Agency expects a judge to produce between 500-700 decisions each year. Those expectations are quite public. Commissioner Astrue described them in recent testimony to the United States Senate as a major initiative to handle the backlog.

http://www.ssa.gov/legislation/testimony_052307_addendum.htm. Commissioner Astrue and the Deputy Commissioner for Disability Adjudication and Review, Lisa deSoto, described them in recent presentations to claimants' representatives at a NOSSCR conference. <http://socsecnews.blogspot.com/search?q=700>.

The analogy used by Judge Benagh, comparing [REDACTED]'s allegation that he spent more than 77 hours on the [REDACTED] case to the average of 2 1/2 hours in which the Agency has publicly stated a Judge can complete all work on a case, was highly effective in demonstrating the likelihood that [REDACTED] claims were fallacious. To decide a case, a Judge must read and analyze all of the evidence, request needed factual development, read and rule on all procedural motions, obtain and apply all pertinent law, hear testimony, question the claimant, witnesses and experts, and instruct and correct decisional drafts. The disparity between the hours alleged by [REDACTED] and the hours expected of a Judge is too wide to be true. The fault here lies not in Judge Benagh's analogy, but in the Agency's refusal to recognize the impropriety of such claims from representatives.

Judge Benagh's conclusion is also supported by her long experience in private practice and with Social Security practitioners. Representatives who are compensated for their work in the disability field must work on a volume basis. The fee limitations (generally \$5,300) and the likelihood of success are both too low to permit a representative to put anything close to 77 hours into a straight-forward, uncomplicated case. That number of hours would limit the representative to three cases a month. Considering the likelihood

understand the Respondents' position that the Claimant might have
[REDACTED]

Respondent attempted to comply with the order of the Administrative Law
Agency. The order permitted 75% of the claimant's benefits to be
due to the Respondent's procedural mistakes. Respondent's position
is that the procedural mistakes were not the cause of the claimant's
benefits being terminated.

Respondent's position is that the claimant's benefits were terminated
because of the claimant's failure to file a timely appeal.

Individuals who are not eligible for Social Security benefits are
entirely dependent on the Social Security Administration for their
entire income. The claimant's benefits are not being advanced.

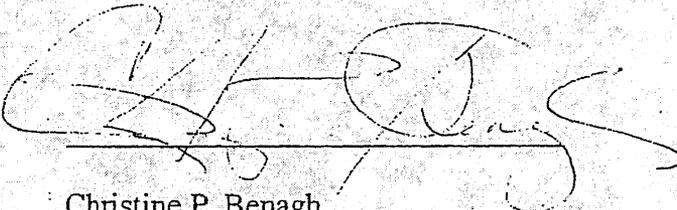
Even though the claimant's benefits are not being advanced, the
claimant must file a timely appeal to receive the benefits.

The claimant's benefits were terminated because of the claimant's
failure to file a timely appeal. The claimant's benefits were
terminated because of the claimant's failure to file a timely appeal.

But the procedure available to the claimant to receive benefits
is of no use to the claimant because he was not able to file a
timely appeal.

The claimant fully requests that the Respondent order the Personnel
the November 6, 2008 Guidance and Counseling memorandum and expunge all
references to it from all of Judge Benagh's personnel files and the Respondents' records.

Marilyn Zahm, AALJ Regional Vice President, is the designated representative and will
handle this grievance.



Christine P. Benagh,

Administrative Law Judge

Dec 8 2008

Date

ATTACHMENT 19

EXHIBIT N



SOCIAL SECURITY

Office of the Regional Chief Judge

MAR 12 2009

[REDACTED]

Dear Counsel:

Enclosed please find an order regarding the administrative review of the case of P [REDACTED]. The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

Jasper Bede
Jasper Bede
Regional Chief Judge

cc: [REDACTED]

Mid-Atlantic PSC
300 Spring Garden Street, Module 7
Philadelphia, PA 19123

Office of Disability Adjudication and Review
Union Center Plaza
820 First St., N.E., 8th Floor
Washington, DC 20002

Enclosure

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review
300 Spring Garden Street
P.O. Box 13496
Philadelphia, PA 19123
Tel: (215) 597-4100 / Fax: (215) 597-2328

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF THE REGIONAL CHIEF JUDGE
AUTHORIZATION TO CHARGE AND COLLECT A FEE

IN THE CASE OF

[REDACTED]

(Claimant)

CLAIM FOR

Period of Disability and
Disability Insurance Benefits

(Wage Earner)

[REDACTED]
(Social Security Number)

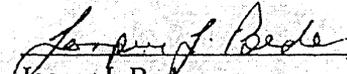
On May 8, 2008, the presiding Administrative Law Judge (ALJ) approved a fee of \$1,179.63. By letter, dated July 8, 2008, the representative, [REDACTED] requested administrative review of the prior authorized fee. Counsel [REDACTED] stated the following:

.....
...In view of the amount of time invested in the case, the complexity of the case and the level of skill required, we believe the requested fee of \$10,079.00 is fair and reasonable compensation for the results achieved.

.....
Furthermore, the requested fee is in accordance with the agreement signed by the claimant that states our fee for successful representation will be 25% of the past due benefits awarded. As the Administration withheld a total of \$10,079.00 for anticipated fees, our requested fee does not exceed the 25% cap, nor does it result in a windfall to the representative and there is no evidence that it is unreasonable or that the services provided were substandard. Moreover, the regulations do not set an hourly rate. Instead it outlines the criteria to be followed in evaluating an attorney's request for approval under Section 404.1725(b)...

After reviewing the itemized list of services rendered by Counsel [REDACTED], I am satisfied that the amount of \$10,079 is reasonable for services rendered by the representative. All parties should note that on August 30, 2002, the Social Security Administration already sent Counsel [REDACTED] a payment of \$5,300, minus a user fee, for this case. **Thus, the balance due Counsel [REDACTED] is \$4,779.** The amount approved is based on consideration of the factors set forth in 20 C.F.R. §§ 404.1725 and 416.1525 and HALLEX I-1-2-57, and is appropriate given the nature of the services rendered, the time actually required to render the service, and the complexity of the issues involved. There are no further reviews or appeals of this determination available.

We will directly pay the attorney representative's fee from that portion of the claimant's title II, title XVI, or Black Lung past-due benefits which has been set aside for representative fees. Non-attorney representatives approved under the special demonstration project (Federal Register notice published January 13, 2005 (70 Fed. Reg. 2447)) also qualify for direct payment. If the direct payment check does not cover the authorized fee, payment of the balance is a matter for the claimant and attorney to settle. The representative should send any questions concerning the status of the check to the processing center that issued the claimant's award letter.



Jasper J. Bede

Regional Chief Judge

MAR 12 2009

Date

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and/or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review, which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount of benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney representative from the claimant's title II or black lung past-due benefits exceed the amount of the authorized fee.

Possible Refund to the Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty for Charging an Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services provided in any claim, including services before a court, which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; 30 U.S.C. § 923(b); and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, 410.684 *et seq.*, and 416.15 *et seq.*
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)

Fee Petition

Administrative Review

View Recommendation Report

Print Recommendation Report

Submitted by **Randell, Phil H.**, Program Analyst

Claimant's Name **[REDACTED]** SSN **[REDACTED]**

Representative Name **[REDACTED]** Attorney Yes

Claim Type **DIWC** AR requested by **Representative**

Level of Appeal **Appeals Council** # of Hrgs. **one**

Claimant agrees with appeal? Other: Other **copy of rep letter sent to claimant by RO & Rep**

Date RECD by RO **7/8/2008** Timely Filed? Yes

Type of Fee Request **Administrative Review** Basis for Request **Rep seeks increase**

ALJ/AA **Benagh, Christine** HO: **Washington (5029)**

ALJ recommendation Made? Yes ALJ justification **See ALJ Memo dated 5/8/08**

% of II: **\$5,332.50** + 25% of XVI: **\$0.00** = Total of 25% **\$5,332.50**

Fee Agreement terms **Percent of PDB**

Total Rep time **77.75** Reasonable? No

Fee Requested **\$10,079.00** Hourly rate **\$129.62**

ALJ recommendation **\$1,179.63** ALJ Hourly rate **\$15.17**

Fee recommended by RO Staff Member **\$10,079.00**

Justification for reduction of fee by RO staff member **OTHER-See Billable Hours**

- | | | |
|--|---|---|
| <input type="checkbox"/> Time for meetings with clmt not needed | <input type="checkbox"/> Hrly rate seems excessive | <input type="checkbox"/> File review with no follow-ups |
| <input type="checkbox"/> Rep didn't appear at Hrg/did not submit new evidence | <input type="checkbox"/> Many services itemized seem routine | |
| <input type="checkbox"/> Claimant's economic circumstances | <input type="checkbox"/> Rep's billing list shows no entries less than .25 hrs. | |
| <input checked="" type="checkbox"/> Most records submitted before rep was involved | <input type="checkbox"/> Calls/Ltrs to/from ODAR/SSA/Clmt not needed | |
| <input type="checkbox"/> No major complex, legal, med or voational issues involved | <input type="checkbox"/> Some time claimed is Fed Court Time | |

- There were significant issues involved
- The favorable decision was issued after a remand
- Other-See Billable Hours
- The representative appeared at multiple hearings
- The representative submitted key evidence
- Time claimed is reasonable in light of the case
- Significant weight given to ALJ's recommendation

BILLABLE HOURS

	<u>Hours Spent</u>	<u>Hours Removed</u>	<u>Remaining Hours</u>
Calls to/from-ODAR/SSA/Clmt	10.00	3.60 40 calls @ .25 each	6.40
Ltrs to/from-ODAR/SSA/Clmt	14.25	0	14.25
Calls to/from Med Sources	2.00	0	2.00
Ltrs to/from Med Sources	27.50	17.50 (clerical)	10.00
Meetings/Conferences with clmt	0	0	0
Briefs-includes draft prep	8.25	0	8.25
File review	9.00	1.50 (no follow-ups included)	7.50
Time spent on Hearing(s)	3.75	0	3.75
OTHER: Hrg prep 1.50; Ltr to clmt RE: fees for med sources 1.50.	3.00	1.50	1.50
Total	77.75	24.10	53.65

Remarks I

Data compiled by Elba Bousoño, Paralegal Specialist. The attorney has requested \$10,079. We usually pay less than \$200/hr. for successful work in Washington, D.C. Since even 53.65 hrs x 200 = \$10,730, we should pay the requested fee of \$10,079.

Remarks I (Con't)

PLEASE NOTE: (1) The attorney was already paid \$5,300 on this case, so the balance is \$4,779 (see attached). (2) Judge Benagh received counseling regarding her fee order in this case.

Fee Authorized by RCALJ

10,790 -

RCALJ signature:

[Handwritten Signature]

Date

2/27/09

Previous
New
Save
Print
Undo
Delete
Search
Close
Next

mant's Name:

[REDACTED]

SSN:

[REDACTED]-6160

Fee Petition

Administrative Review

View Recommendation Report
Print Recommendation Report

Submitted by **Bousoño, Elba L.**, Paralegal Specialist

Claimant's Name **[REDACTED]** SSN **[REDACTED]**

Representative Name **[REDACTED]** Attorney Yes

Claim Type **DIWC** AR requested by **Representative**

Level of Appeal **Appeals Council** # of Hrgs. **one**

Claimant agrees with appeal? Other Other **copy of rep letter sent to claimant by RO & Rep**

Date RECD by RO **7/8/08** Timely Filed? Yes

Type of Fee Request **Administrative Review** Basis for Request **Rep seeks increase**

ALJ/AA **Benagh, Christine** HO: **Washington (5029)**

ALJ recommendation Made? Yes ALJ justification **See ALJ Memo dated 5/8/08**

% of II: **\$5,332.50** + 25% of XVI: **\$0.00** = Total of 25% **\$5,332.50**

Fee Agreement terms **Percent of PDB**

Total Rep time **77.75** Reasonable? No

Fee Requested **\$10,078.00** Hourly rate **\$129.62**

ALJ recommendation **\$1,179.63** ALJ Hourly rate **\$15.17**

Fee recommended by RO Staff Member **\$6,974.50**

Justification for reduction of fee by RO staff member **OTHER-See Billable Hours**

- | | | |
|---|--|--|
| <input type="checkbox"/> Time for meetings with clmt not needed | <input type="checkbox"/> Hrly rate seems excessive | <input checked="" type="checkbox"/> File review with no follow-ups |
| <input type="checkbox"/> Rep didn't appear at Hrg/did not submit new evidence | <input checked="" type="checkbox"/> Many services itemized seem routine | |
| <input checked="" type="checkbox"/> Claimant's economic circumstances | <input checked="" type="checkbox"/> Rep's billing list shows no entries less than .25 hrs. | |
| <input type="checkbox"/> Most records submitted before rep was involved | <input checked="" type="checkbox"/> Calls/Ltrs to/from ODAR/SSA/Clmt not needed | |
| <input checked="" type="checkbox"/> No major complex, legal, med or voational issues involved | <input type="checkbox"/> Some time claimed is Fed Court Time | |

- There were significant issues involved
- The favorable decision was issued after a remand
- Other-See Billable Hours
- The representative appeared at multiple hearings
- The representative submitted key evidence
- Time claimed is reasonable in light of the case
- Significant weight given to ALJ's recommendation

BILLABLE HOURS

	<u>Hours Spent</u>	<u>Hours Removed</u>	<u>Remaining Hours</u>
Calls to/from-ODAR/SSA/Cmnt	10.00	3.60 40 calls @ .25 each	6.40
Ltrs to/from-ODAR/SSA/Cmnt	14.25	0	14.25
Calls to/from Med Sources	2.00	0	2.00
Ltrs to/from Med Sources	27.50	17.50 (clerical)	10.00
Meetings/Conferences with clmt	0	0	0
Briefs-includes draft prep	8.25	0	8.25
File review	9.00	1.50 (no follow-ups included)	7.50
Time spent on Hearing(s)	3.75	0	3.75
OTHER: <div style="border: 1px solid black; padding: 2px; display: inline-block; width: 200px;">Hrg prep 1.50; Ltr to clmt RE: fees for med sources 1.50.</div>	3.00	1.50	1.50
Total	77.75	24.10	53.65

Remarks I

I recommend a fee of \$6974.50 for 53.65 hours @ \$130 an hour. Only 1 hrg was held, & case did not seem @ all complex. 53.65 hrs is a reasonable amount of time expended on a non-complex, one hearing case.

Remarks I (Con't)

Fee Authorized by RCALJ

RCALJ signature:

Date

Previous
New
Save
Print
Undo
Delete
Search
Close
Next

mant's Name: P

██████████

SSN:

██████████6160

Print All

Call Tracking System - CATS

Call Date

Message For:

Caller Name

Caller#

Claimant Name (if applicable)

Claimant SSN (if applicable)

ALJ:

Hearing Office

Case RECD Date

Case Type:

Basis f/Call:

Last Action Date

Current Status:

Message taken by:

Call Return Date

Call Returned by

Action on Call

Person Spoken To

Remarks:

PREVIOUS

NEW

PRINT

RESET

DELETE

SEARCH

SAVE

CLOSE

NEXT



SOCIAL SECURITY

Office of the Regional Chief Judge

July 14, 2008

[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

Enclosed is a copy of a letter from [REDACTED], requesting administrative review of the authorized fee in the case of [REDACTED].

If you wish to comment on this statement, please do so within 15 days from the date of this letter. A copy of your response should be sent to Counsel [REDACTED].

If you have any questions or concerns, please contact Elba Luz Bousoño, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,

Jasper J. Bede
Regional Chief Judge

Enclosures

SOCIAL SECURITY ADMINISTRATION

Office of Disability Adjudication and Review

300 Spring Garden Street

P.O. Box 13496

Philadelphia, PA 19123

Tel: (215) 597-4100 / Fax: (215) 597-2328

Routing and Transmittal Slip

Date: July 14, 2008

To: (Name, office symbol, room number, building, Agency/Post)

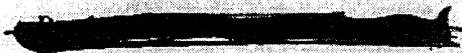
Initials

Date

Mid-Atlantic PSC-ATTN:		
300 Spring Garden Street		
Module 7, 5th Floor		
Philadelphia, PA 19123		

<input type="checkbox"/> Coordination	<input type="checkbox"/> File	
<input type="checkbox"/> Note & Return	<input type="checkbox"/> Approval	
<input type="checkbox"/> For Clearance	<input type="checkbox"/> Per Conversation	
<input type="checkbox"/> As Requested	<input type="checkbox"/> For Correction	
<input type="checkbox"/> Prepare Reply	<input type="checkbox"/> Circulate	
<input type="checkbox"/> Justify	<input type="checkbox"/> See Me	
<input type="checkbox"/> Comment	<input type="checkbox"/> Investigate	
<input type="checkbox"/> Action	<input checked="" type="checkbox"/> FYI	

REMARKS:



Please note that the Office of the Regional Chief ALJ has received a request for administrative review of an attorney fee matter for the claimant. It is now pending in our office, please do not release any withheld benefits until the review is concluded. For now, you will find enclosed a copy of an acknowledgement letter sent to the attorney.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

From: (Name, org., symbol, Agency/Post)	Telephone Number:
Elba L. Bousoño, Paralegal Specialist Region III - Office of Hearings and Appeals P.O. Box 13496, 4th Floor Philadelphia, PA 19101	(215) 597-1816
Signature	Date 7/14/08



SOCIAL SECURITY

Office of the Regional Chief Judge

July 14, 2008

[REDACTED]

Dear Counsel:

This letter is to acknowledge receipt your request for administrative review of the authorized fee in the case of [REDACTED]

We have requested the necessary records. In the interim, all parties will be afforded 15 days from the date of this letter to comment. Thereafter, we will reevaluate all services and notify all parties of our decision.

If you have any questions or concerns, please contact Elba Luz Bousoño, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,

Jasper J. Beale
Regional Chief Judge

cc: Mid-Atlantic PSC
300 Spring Garden Street
Module 7, 5th Floor
Philadelphia, PA 19123

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review
300 Spring Garden Street
P.O. Box 13496
Philadelphia, PA 19123
Tel (215) 597-4100 / Fax (215) 597-2328

1111

[REDACTED]

FAX MEMORANDUM

To: Helena Quinn Recipient Fax No. (215)597-2328

From: [REDACTED]

Re: [REDACTED]

Date: 6/7/08

Number of pages including this one: 20

Comments:

Please see the attached. Any questions, please
call me at 361-6699 ext. 5018

The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.

ATTACHMENT 20

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

WORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 208 of the Social Security Act (42 U.S.C. 408).

I request approval to charge a fee of for services performed as the representative of	Fee \$ 1,100.00 (Show the dollar amount)
My Services Began: 05 / 30 / 2008 Month / Day / Year	Mr. [REDACTED] Mrs. [REDACTED] Ms. [REDACTED]
My Services Ended: 07 / 08 / 2008 Month / Day / Year	Type(s) of claim(s) SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 1,100.00 and See attached
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ _____
Source: \$ _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings? \$ _____
Please attach a copy of the court order if the court has approved a fee.
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative	Date	Address (Include Zip Code)
[REDACTED]	04/18/2011	[REDACTED]
Firm with which associated, if any	Telephone No. and Area Code	
[REDACTED]	[REDACTED]	

(Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.)

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant	Date
[REDACTED]	[REDACTED]
Address (Include Zip Code)	Telephone No. and Area Code
[REDACTED]	[REDACTED]

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INSTRUCTIONS FOR USING THIS PETITION

Any attorney or other representative who wants to charge or collect a fee for services rendered in connection with a claim before the Social Security Administration (SSA), is required by law to first obtain approval of the fee [sections 206(a) and 1831(d)(2) of the Social Security Act (42 U.S.C. 406(a) and 1383(d)(2)) and sections 404.1720 and 416.1620 of Social Security Administration Regulations Numbers 4 and 16, respectively.]

The only exceptions are if the fee is for services rendered (1) when a nonprofit organization or government agency pays the fee and any expenses out of funds which a government entity provided or administered and the claimant incurs no liability, directly or indirectly, for the cost of such services and expenses; (2) in an official capacity such as that of legal guardian, committee, or similar court-appointed office and the court has approved the fee in question; or (3) in representing the claimant before a court of law. A representative who has rendered services in a claim before both SSA and a court of law may seek a fee from either or both, but generally neither tribunal has the authority to set a fee for services rendered before the other [42 U.S.C. 406(a) and (b)].

When to File a Fee Petition

The representative should request fee approval only after completing all services (for the claimant and any auxiliaries). The representative has the option to petition either before or after SSA effectuates the determination(s).

In order to receive direct payment of all or any part of an authorized fee from past-due benefits, the attorney representative or non-attorney representative whom SSA has found eligible to receive direct payment should file a request for fee approval, or written notice of intent to file a request within 60 days of the date of the notice of the favorable determination is mailed. When there are multiple claims on one account and the attorney or non-attorney will not file the petition within 60 days after the mailing date of the first notice of favorable determination, he or she should file a written notice of intent to file a request for fee approval within the 60-day period.

Where to File a Fee Petition

The representative must first give the "Claimant's Copy" of the SSA-1560-U4 petition to the claimant for whom he or she rendered services, with a copy of each attachment. The representative may then file the original and third carbon copy, the "OHA Copy," of the SSA-1560-U4, and the attachment(s), with the appropriate SSA office:

- If a court or the Appeals Council issued the decision, send the petition to the Office of Hearings and Appeals. Attention: Attorney Fee Branch, 5107 Leesburg Pike, Falls Church, VA 22041-3255.
- If an Administrative Law Judge issued the decision, send the petition to him or her using the hearing office address.
- In all other cases, send the petition to the reviewing office address which appears at the top right of the notice of award or notice of disapproved claim.

Evaluation of a Petition for a Fee

If the claimant has not agreed to and signed the fee petition, SSA does not begin evaluating the request for 30 days. SSA must decide what is a reasonable fee for the services rendered to the claimant, keeping in mind the purpose of the social security or supplemental security income program. When evaluating a request for fee approval, SSA will consider the (1) extent and type of services the representative performed; (2) complexity of the case; (3) level of skill and competence required of the representative in giving the services; (4) amount of time he or she spent on the case; (5) results achieved; (6) levels of review to which the representative took the claim and at which he or she became the representative; and (7) amount of fee requested for services rendered, including any amount authorized or requested before but excluding any amount of expenses incurred.

SSA also considers the amount of benefits payable, if any, but authorizes the fee amount based on consideration of all the factors given here. The amount of benefits payable in a claim is determined by specific provisions of law unrelated to the representative's efforts. Also, the amount of past-due benefits may depend on the length of time that has elapsed since the claimant's effective date of entitlement.

Disagreement

SSA notifies both the representative and the claimant of the amount which it authorizes the representative to charge. If either or both disagree, SSA will further review the fee authorization when the claimant or representative sends a letter, explaining the reason(s) for disagreement, to the appropriate office within 30 days after the date of the notice of authorization to charge and receive a fee.

Collection of the Fee

Basic liability for payment of a representative's approved fee rests with the client. However, SSA will assist in fee collection when the representative is an attorney or a non-attorney whom SSA has found eligible to receive direct payment, and SSA awards the claimant benefits under Title II or Title XVI of the Social Security Act. In these cases, SSA generally withholds 25 percent of the claimant's past-due benefits. Once the fee is approved, SSA pays the attorney or the eligible non-attorney from the claimant's withheld funds. This does not mean that SSA will approve as a reasonable fee 25 percent of the past-due benefits. The amount payable to the attorney or eligible non-attorney from the withheld benefits is subject to the assessment required by section 206(d) and 1831(d)(2)(C) of the Social Security Act, and it is also subject to offset by any fee payment(s) the attorney or eligible non-attorney has received or expects to receive from an escrow or trust account. If the approved fee is more than the amount of the withheld benefits, collection of the difference is a matter between the attorney or eligible non-attorney and the client.

SSA will not pay a fee from withheld past-due benefits when the authorized fee is for an attorney or non-attorney who was discharged by the client or who withdrew from representing the client.

Penalty for Charging or Collecting an Unauthorized Fee

Any individual who charges or collects an unauthorized fee for services provided in any claim, including services before a court which has rendered a favorable determination, may be subject to prosecution under 42 U.S.C. 406 and 1383 which provide that such individual, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500, by imprisonment not exceeding one year, or both.

Computer Matching

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security Offices. If you want to learn more about this, contact any Social Security Office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 30 minutes to read the instructions, gather the facts, and answer the questions. You may send comments on our time estimate above to: SSA, 1338 Annex Building, Baltimore, MD 21236-8401. Send only comments relating to our time estimate to this address, not the completed form.

ITEMIZATION OF SERVICES RENDERED

05/30/08	Representative review of file, hearing date certain - notes and instructions made for file	0.75 hrs
06/08/08	Representative drafted letter	1.00 hrs
06/19/08	Representative review of file, hearing date certain - notes and instructions made for file	0.75 hrs
06/20/08	Representative review of file and preparation of pre-hearing memorandum	1.50 hrs
06/25/08	Representative final file review for hearing	1.25 hrs
06/26/08	Hearing, inclusive of travel time, review of record, conference with claimant	3.75 hrs
07/08/08	Representative post-hearing review of remand hearing; notes and instructions made for file	0.50 hrs
	Total	9.50 hrs

ATTACHMENT 21

SOCIAL SECURITY ADMINISTRATION

TOE 850

Form Approved
OMB No. 0850-0104
IMPORTANT
INFORMATION
ON REVERSE SIDE

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 208 of the Social Security Act (42 U.S.C. 408).

I request approval to charge a fee of _____ for services performed as the representative of _____	Fee \$ 875.00 (Show the dollar amount)
My Services Began: 12 / 15 / 2006 Month / Day / Year	Mr. Mrs. Ms. [Redacted]
My Services Ended: 12 / 19 / 2006 Month / Day / Year	Type(s) of claim(s) SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 875.00 and See attached
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ _____
Source: \$ _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings? \$ _____
Please attach a copy of the court order if the court has approved a fee.
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative [Redacted]	Date 04/19/2011	Address (include Zip Code) [Redacted]
Firm with which associated, if any [Redacted]	Telephone No. and Area Code [Redacted]	

[Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.
- OR
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant [Redacted]	Date
Address (include Zip Code) [Redacted]	Telephone No. and Area Code [Redacted]

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INSTRUCTIONS FOR USING THIS PETITION

Any attorney or other representative who wants to charge or collect a fee for services, rendered in connection with a claim before the Social Security Administration (SSA), is required by law to first obtain approval of the fee [sections 206(a) and 1331(d)(2) of the Security Act (42 U.S.C. 406(a) and 1383(d)(2)) and sections 1720 and 416.1620 of Social Security Administration Regulations numbers 4 and 16, respectively].

The only exceptions are if the fee is for services rendered (1) when a nonprofit organization or government agency pays the fee and any expenses out of funds which a government entity provided or administered and the claimant incurs no liability, directly or indirectly, for the cost of such services and expenses; (2) in an official capacity such as that of legal guardian, committee, or similar court-appointed office and the court has approved the fee in question; or (3) in representing the claimant before a court of law. A representative who has rendered services in a claim before both SSA and a court of law may seek a fee from either or both, but generally neither tribunal has the authority to set a fee for services rendered before the other [42 U.S.C. 406(a) and (b)].

When to File a Fee Petition

The representative should request fee approval only after completing all services (for the claimant and any auxiliaries). The representative has the option to petition either before or after SSA effectuates the determination(s).

In order to receive direct payment of all or any part of an authorized fee from past-due benefits, the attorney representative or non-attorney representative whom SSA has found eligible to receive direct payment should file a request for fee approval, or written notice of intent to file a request within 60 days of the date of the notice of the favorable determination is mailed. When there are multiple claims on one account and the attorney or non-attorney will not file the petition within 60 days after the mailing date of the first notice of favorable determination, he or she should file a written notice of intent to file a request for fee approval within the 60-day period.

Where to File a Fee Petition

representative must first give the "Claimant's Copy" of the SSA-1560-U4 petition to the claimant for whom he or she rendered services, with a copy of each attachment. The representative may then file the original and third carbon copy, the "OHA Copy," of the SSA-1560-U4, and the attachment(s), with the appropriate SSA office:

- If a court or the Appeals Council issued the decision, send the petition to the Office of Hearings and Appeals, Attention: Attorney Fee Branch, 5107 Leesburg, Pike, Falls Church, VA 22041-3255.
- If an Administrative Law Judge issued the decision, send the petition to him or her using the hearing office address.
- In all other cases, send the petition to the reviewing office address which appears at the top right of the notice of award or notice of disapproved claim.

Evaluation of a Petition for a Fee

If the claimant has not agreed to and signed the fee petition, SSA does not begin evaluating the request for 30 days. SSA must decide what is a reasonable fee for the services rendered to the claimant, keeping in mind the purpose of the social security or supplemental security income program. When evaluating a request for fee approval, SSA will consider the (1) extent and type of services the representative performed; (2) complexity of the case; (3) level of skill and competence required of the representative in giving the services; (4) amount of time he or she spent on the case; (5) results achieved; (6) levels of review to which the representative took the claim and at which he or she became the representative; and (7) amount of fee requested for services rendered, including any amount authorized or requested before but excluding any amount of expenses incurred.

SSA also considers the amount of benefits payable, if any, but authorizes the fee amount based on consideration of all the factors given here. The amount of benefits payable in a claim is determined by specific provisions of law unrelated to the representative's efforts. Also, the amount of past-due benefits may depend on the length of time that has elapsed since the claimant's effective date of entitlement.

Disagreement

SSA notifies both the representative and the claimant of the amount which it authorizes the representative to charge. If either or both disagree, SSA will further review the fee authorization when the claimant or representative sends a letter, explaining the reason(s) for disagreement, to the appropriate office within 30 days after the date of the notice of authorization to charge and receive a fee.

Collection of the Fee

Basic liability for payment of a representative's approved fee rests with the client. However, SSA will assist in fee collection when the representative is an attorney or a non-attorney whom SSA has found eligible to receive direct payment, and SSA awards the claimant benefits under Title II or Title XVI of the Social Security Act. In these cases, SSA generally withholds 25 percent of the claimant's past-due benefits. Once the fee is approved, SSA pays the attorney or the eligible non-attorney from the claimant's withheld funds. This does not mean that SSA will approve as a reasonable fee 25 percent of the past-due benefits. The amount payable to the attorney or eligible non-attorney from the withheld benefits is subject to the assessment required by section 206(d) and 1331(d)(2)(C) of the Social Security Act, and it is also subject to offset by any fee payment(s) the attorney or eligible non-attorney has received or expects to receive from an escrow or trust account. If the approved fee is more than the amount of the withheld benefits, collection of the difference is a matter between the attorney or eligible non-attorney and the client.

SSA will not pay a fee from withheld past-due benefits when the authorized fee is for an attorney or non-attorney who was discharged by the client or who withdrew from representing the client.

Penalty for Charging or Collecting an Unauthorized Fee

Any individual who charges or collects an unauthorized fee for services provided in any claim, including services before a court which has rendered a favorable determination, may be subject to prosecution under 42 U.S.C. 406 and 1383 which provide that such individual, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500, by imprisonment not exceeding one year, or both.

Computer Matching

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security Offices. If you want to learn more about this, contact any Social Security Office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3607, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 30 minutes to read the instructions, gather the facts, and answer the questions. You may send comments on our time estimate above to: SSA, 1335 Annex Building, Baltimore, MD 21236-6401. Send only comments relating to our time estimate to this address, not the completed form.

[REDACTED]
ITEMIZATION OF SERVICES RENDERED
[REDACTED]

12/15/06	Representative final file review for hearing	1.25 hrs
12/15/06	Pre-hearing with claimant	1.50 hrs
12/18/06	Hearing, inclusive of travel time, review of record, conference with claimant	3.75 hrs
12/19/06	Representative post-hearing review; notes and instructions made for file	0.50 hrs
	Total	7.00 hrs

ATTACHMENT 22

SOCIAL SECURITY ADMINISTRATION

TOE 850

Form Approved OMB No. 0960-0104
IMPORTANT INFORMATION ON REVERSE SIDE

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

I request approval to charge a fee of _____ for services performed as the representative of _____	Fees \$ 2,507.87 (Show the dollar amount)
My Services Began: 03 / 31 / 2005 Month / Day / Year	Mr. _____ Mrs. _____ Ms. _____
My Services Ended: 04 / 24 / 2006 Month / Day / Year	Type(s) of claim(s) SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative. In this case, attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 2,507.87 and See attached
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ 6,000.00
Source: \$ SSA \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings?
Please attach a copy of the court order if the court has approved a fee. \$ _____
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative	Date	Address (Include Zip Code)
_____	04/19/2011	_____
Firm with which associated, if any	Telephone No. and Area Code	
_____	_____	

[Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect. OR
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant	Date
_____	_____
Address (Include Zip Code)	Telephone No. and Area Code
_____	_____

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INSTRUCTIONS FOR USING THIS PETITION

Any attorney or other representative who wants to charge or collect a fee for services rendered in connection with a claim before the Social Security Administration (SSA) is required by law to first obtain SSA's approval of the fee [sections 206(a) and 1631(d)(2) of the Social Security Act (42 U.S.C. 406(a) and 1383(d)(2)) and sections 404.1720 and 416.1520 of Social Security Administration Regulations Numbers 4 and 16, respectively].

The only exceptions are if the fee is for services rendered (1) when a nonprofit organization or government agency pays the fee and any expenses out of funds which a government entity provided or administered and the claimant incurs no liability, directly or indirectly, for the cost of such services and expenses; (2) in an official capacity such as that of legal guardian, committee, or similar court-appointed office and the court has approved the fee in question; or (3) in representing the claimant before a court of law. A representative who has rendered services in a claim before both SSA and a court of law may seek a fee from either or both, but generally neither tribunal has the authority to set a fee for services rendered before the other [42 U.S.C. 406(a) and (b)].

When to File a Fee Petition

The representative should request fee approval only after completing all services for the claimant and any auxiliaries. The representative has the option to petition either before or after SSA effectuates the determination(s).

In order to receive direct payment of all or any part of an authorized fee from past-due benefits, the attorney representative or non-attorney representative whom SSA has found eligible to receive direct payment should file a request for fee approval, or written notice of intent to file a request within 60 days of the date of the notice of the favorable determination is mailed. When there are multiple claims on one account and the attorney or non-attorney will not file the petition within 60 days after the mailing date of the first notice of favorable determination, he or she should file a written notice of intent to file a request for fee approval within the 60-day period.

Where to File a Fee Petition

The representative must first give the "Claimant's Copy" of the SSA-1560-U4 petition to the claimant for whom he or she rendered services, with a copy of each attachment. The representative may then file the original and third carbon copy, the "OHA Copy," of the SSA-1560-U4, and the attachment(s), with the appropriate SSA office:

- If a court or the Appeals Council issued the decision, send the petition to the Office of Hearings and Appeals, Attention: Attorney Fee Branch, 5107 Leesburg Pike, Falls Church, VA 22041-3256.
- If an Administrative Law Judge issued the decision, send the petition to him or her using the hearing office address.
- In all other cases, send the petition to the reviewing office address which appears at the top right of the notice of award or notice of disapproved claim.

Evaluation of a Petition for a Fee

If the claimant has not agreed to and signed the fee petition, SSA does not begin evaluating the request for 30 days. SSA must decide what is a reasonable fee for the services rendered to the claimant, keeping in mind the purpose of the social security or supplemental security income program. When evaluating a request for fee approval, SSA will consider the (1) extent and type of services the representative performed; (2) complexity of the case; (3) level of skill and competence required of the representative in giving the services; (4) amount of time he or she spent on the case; (5) results achieved; (6) levels of review to which the representative took the claim and at which he or she became the representative; and (7) amount of fee requested for services rendered, including any amount authorized or requested before but excluding any amount of expenses incurred.

SSA also considers the amount of benefits payable, if any, but authorizes the fee amount based on consideration of all the factors given here. The amount of benefits payable in a claim is determined by specific provisions of law unrelated to the representative's efforts. Also, the amount of past-due benefits may depend on the length of time that has elapsed since the claimant's effective date of entitlement.

Disagreement

SSA notifies both the representative and the claimant of the amount which it authorizes the representative to charge. If either or both disagree, SSA will further review the fee authorization when the claimant or representative sends a letter, explaining the reason(s) for disagreement, to the appropriate office within 30 days after the date of the notice of authorization to charge and receive a fee.

Collection of the Fee

Basic liability for payment of a representative's approved fee rests with the client. However, SSA will assist in fee collection when the representative is an attorney or a non-attorney whom SSA has found eligible to receive direct payment, and SSA awards the claimant benefits under Title II or Title XVI of the Social Security Act. In these cases, SSA generally withholds 25 percent of the claimant's past-due benefits. Once the fee is approved, SSA pays the attorney or the eligible non-attorney from the claimant's withheld funds. This does not mean that SSA will approve as a reasonable fee 25 percent of the past-due benefits. The amount payable to the attorney or eligible non-attorney from the withheld benefits is subject to the assessment required by section 208(d) and 1631(d)(2)(C) of the Social Security Act, and it is also subject to offset by any fee payment(s) the attorney or eligible non-attorney has received or expects to receive from an escrow or trust account. If the approved fee is more than the amount of the withheld benefits, collection of the difference is a matter between the attorney or eligible non-attorney and the client.

SSA will not pay a fee from withheld past-due benefits when the authorized fee is for an attorney or non-attorney who was discharged by the client or who withdrew from representing the client.

Penalty for Charging or Collecting an Unauthorized Fee

Any individual who charges or collects an unauthorized fee for services provided in any claim, including services before a court, which has rendered a favorable determination, may be subject to prosecution under 42 U.S.C. 406 and 1383 which provide that each individual, upon conviction thereof, shall for each offense be punished by a fine not exceeding \$500, by imprisonment not exceeding one year, or both.

Computer Matching

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information you provide us may be used or given out are available in Social Security Offices. If you want to learn more about this, contact any Social Security Office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 30 minutes to read the instructions, gather the facts, and answer the questions. You may send comments on our time estimate above to: SSA, 1335 Annex Building, Baltimore, MD 21236-6401. Send only comments relating to our time estimate to this address, not the completed form.

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
03/31/2005	2	[REDACTED]	[REDACTED]	Complete claimant intake, preparation of file, necessary office and draft SSA forms completed
04/25/2005	1	[REDACTED]	[REDACTED]	Interview/Initial review of case, review of all papers, notes and instructions made for file.
04/25/2005	.25	[REDACTED]	[REDACTED]	Edits to drafts of SSA Forms
04/26/2005	2.75	[REDACTED]	[REDACTED]	Open claimant's file, review and submit completed forms to SSA; forms to claimant
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/28/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/05/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/11/2005	.5	[REDACTED]	[REDACTED]	Initial Representative review
05/23/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
06/06/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
06/07/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/15/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: submission of medical evidence
07/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
07/19/2005	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
07/25/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
08/11/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/26/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
08/27/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical records/report
08/31/2005	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/31/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/06/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/20/2005	1	[REDACTED]	[REDACTED]	Prepared hearing request; review of forms; submission to SSA

PD

[REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
09/20/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update
09/28/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
10/21/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/24/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
10/24/2005	.75	[REDACTED]	[REDACTED]	Representative file review at hearing level - notes and instructions made for file
10/25/2005	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
11/04/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/11/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/18/2005	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
11/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
11/28/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
12/05/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
12/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
12/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
12/19/2005	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
12/30/2005	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
01/09/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/09/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/13/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/25/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/25/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
01/25/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
02/01/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/01/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
02/08/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/08/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
02/08/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/16/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/16/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
02/24/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case

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[REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
03/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
03/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
03/23/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
03/23/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/06/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
04/20/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
04/24/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
Total Hours in all:			32	

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ATTACHMENT 23

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

WORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not approve any fee unless it receives the information this form requests. The Administration will use the information to determine a fair value for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

I request approval to charge a fee of _____ for services performed as the representative of _____	Fees: 10,000.00 (Show the dollar amount)
My Services Began: 05 / 04 / 2006 Month / Day / Year	Mr. Mrs. Ms. [Redacted]
My Services Ended: 02 / 04 / 2011 Month / Day / Year	Type(s) of claim(s): SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.
[Redacted]

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 10,000.00 and See attached
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____
Source: \$ _____
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- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings?
Please attach a copy of the court order if the court has approved a fee. \$ _____
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative: [Redacted]	Date: 4/19/2011	Address (include Zip Code): [Redacted]
Firm with which associated, if any: [Redacted]	Telephone No. and Area Code: [Redacted]	

(Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.)

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect. **OR**

I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant: [Redacted]	Date: _____
Address (include Zip Code): [Redacted]	Telephone No. and Area Code: [Redacted]

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INSTRUCTIONS FOR USING THIS PETITION

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Disagreement

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[REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
05/04/2006	.75	[REDACTED]	[REDACTED]	Representative file review at hearing level - notes and instructions made for file
05/05/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
05/05/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/05/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/05/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/23/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/19/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
06/19/2006	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
06/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
06/22/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
07/27/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/15/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/28/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
09/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
09/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/28/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/28/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
10/11/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
10/11/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update

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[REDACTED] [REDACTED]

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Service Date	Hours	SSN	Client	Work Description
10/12/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
10/12/2006	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/17/2006	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/17/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
10/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
10/25/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
10/25/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
10/25/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
10/31/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing data
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: hearing
11/01/2006	1.5	[REDACTED]	[REDACTED]	Prepared file for hearing
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/01/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/02/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
11/09/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/09/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
11/14/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: Hearing
11/15/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
11/28/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
11/28/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/04/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/07/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/08/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/13/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing data
12/14/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
12/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/21/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
12/21/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
12/26/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case

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Service Date	Hours	SSN	Client	Work Description
12/26/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
01/04/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/16/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/16/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/22/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/26/2007	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
01/26/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
01/30/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
01/30/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
02/01/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/01/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
02/05/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
02/05/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
02/15/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/23/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/23/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/27/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
02/28/2007	1.75	[REDACTED]	[REDACTED]	Representative review of ALJ decision, notes made for appeal
02/28/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
03/16/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for review/cassettes
03/16/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/30/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: case
04/13/2007	.75	[REDACTED]	[REDACTED]	Review of file
05/22/2007	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
05/22/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/22/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/25/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/05/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/20/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/20/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
06/21/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
07/31/2007	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
07/31/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status

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ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
07/31/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
08/14/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/06/2007	6.75	[REDACTED]	[REDACTED]	Representative A/C appeal prep; review of cassettes, draft of argument
09/13/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
09/14/2007	.75	[REDACTED]	[REDACTED]	Review of file
09/14/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of comments
09/21/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
11/01/2007	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
11/01/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
11/01/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
01/08/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
01/08/2008	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
01/08/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
01/28/2008	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
02/12/2008	2.75	[REDACTED]	[REDACTED]	Analysis of file and remand strategy
02/25/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/29/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
03/12/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: HIPAA forms
03/12/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to complete and return enclosed forms
04/09/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
04/09/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/15/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/01/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
05/14/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing date
05/15/2008	3.5	[REDACTED]	[REDACTED]	Prep for remand hearing
05/15/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: hearing
06/02/2008	.5	[REDACTED]	[REDACTED]	Request ODAR file
06/02/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
06/11/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/13/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
06/18/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records

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Service Date	Hours	SSN	Client	Work Description
06/20/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
06/20/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to ALJ re: case
06/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
08/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
07/03/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
07/03/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
07/14/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/17/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
07/30/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
08/13/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
08/21/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for review/cassettes
09/30/2008	1.75	[REDACTED]	[REDACTED]	Representative review of ALJ decision, notes made for appeal
10/02/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: transfer of file
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: case
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: HIPAA forms
11/25/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/29/2008	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
01/04/2009	.75	[REDACTED]	[REDACTED]	Review of file
01/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records

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Service Date	Hours	SSN	Client	Work Description
01/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/30/2009	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
01/30/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/30/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
01/30/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
02/03/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
03/13/2009	6.75	[REDACTED]	[REDACTED]	Representative A/C appeal prep; review of cassettes; draft of argument
03/18/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of comments
03/19/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
03/19/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/19/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
03/24/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/29/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/29/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/29/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
08/11/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
08/11/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
08/11/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
08/11/2009	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/24/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/02/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/03/2009	.75	[REDACTED]	[REDACTED]	Review of file
09/08/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
09/21/2009	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
09/22/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
10/27/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/20/2010	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
01/20/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/26/2010	.75	[REDACTED]	[REDACTED]	Review of file
04/01/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report

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ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
04/01/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/05/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/07/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/13/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/13/2010	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
04/15/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/21/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
04/27/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/27/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/28/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/28/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/04/2010	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
05/05/2010	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
05/05/2010	.5	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/05/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
05/05/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/21/2010	2.75	[REDACTED]	[REDACTED]	Analysis of file and remand strategy
06/21/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
07/15/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
07/15/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/11/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
08/18/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing date
08/19/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/19/2010	3.5	[REDACTED]	[REDACTED]	Prep for remand hearing
08/26/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: hearing
08/30/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/07/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case

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Service Date	Hours	SSH	Client	Work Description
09/08/2010	.5		[REDACTED]	Correspondence to claimant re: request to contact our office
09/08/2010	.5		[REDACTED]	Correspondence to claimant re: request to complete and return enclosed forms
09/10/2010	.75		[REDACTED]	Representative review of file, hearing date certain - notes and instructions made for file
09/15/2010	.25	X	[REDACTED]	Communication with ODAR re: case
09/29/2010	.25	X	[REDACTED]	Communication with ODAR re: case
09/29/2010	.75	X	[REDACTED]	Representative review of file, hearing date certain - notes and instructions made for file
10/01/2010	.25	X	[REDACTED]	Communication with ODAR re: case
10/04/2010	.25	X	[REDACTED]	Communication with ODAR re: case
10/04/2010	.5	X	[REDACTED]	Correspondence to claimant re: request to contact our office
10/05/2010	.25	X	[REDACTED]	Communication with ODAR re: case
10/05/2010	.5	X	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
10/06/2010	1.25	X	[REDACTED]	Representative final file review for hearing
10/07/2010	3.75	X	[REDACTED]	Hearing, inclusive of travel time, review of record, conference with claimant
10/11/2010	.5		[REDACTED]	Representative post hearing review of remand hearing and instructions for file
10/11/2010	.1		[REDACTED]	Representative drafted letter
10/12/2010	.25	X	[REDACTED]	Communication with claimant re: case
10/12/2010	.5	X	[REDACTED]	Correspondence to claimant re: case
10/26/2010	.25	X	[REDACTED]	Communication with ODAR re: status of decision
10/26/2010	.5	X	[REDACTED]	Correspondence to claimant re: request to contact our office
11/09/2010	.5	X	[REDACTED]	Correspondence to claimant re: copies of medical records
11/09/2010	.5	X	[REDACTED]	Correspondence to claimant re: decision
11/10/2010	.25	X	[REDACTED]	Communication with SSA re: case
11/10/2010	.5	X	[REDACTED]	Correspondence to claimant re: request to contact our office
11/11/2010	.5	X	[REDACTED]	Review of decision
11/18/2010	.25	X	[REDACTED]	Communication with claimant re: case
11/18/2010	.25	X	[REDACTED]	Communication with SSA re: case
11/23/2010	.5	X	[REDACTED]	Correspondence to claimant re: case
11/30/2010	.25	X	[REDACTED]	Communication with claimant re: case
12/06/2010	.25	X	[REDACTED]	Communication with SSA re: case

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[REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
12/22/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/22/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for copy of award notice
01/05/2011	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
01/06/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/07/2011	.6	[REDACTED]	[REDACTED]	Correspondence to SSA re: status on claimant's benefits
01/21/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/25/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/25/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
01/31/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
01/31/2011	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: status on claimant's benefits
02/01/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/03/2011	1.5	[REDACTED]	[REDACTED]	Analysis of Award Notice and clarification of calculations
02/04/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/04/2011	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
Total Hours In all:			135.5	

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ATTACHMENT 24



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE

To: [REDACTED]

IN THE CASE OF

[REDACTED]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[REDACTED]

(Social Security Number)

The representative is not authorized to charge or collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between the claimant and the representative.

A favorable disability decision was issued on November 2, 2009, regarding the claimant. The award certificate was issued on November 26, 2009. The authorized representative, [REDACTED] filed his fee petition on March 2, 2011.

The submitted fee petition was accompanied by a time and task statement, reflecting 21.25 hours of work performed by various individuals, none of whom was [REDACTED]

The fee petition must be denied for several reasons:

- a) The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on November 26, 2009. The claimant appears to have received his decision and notice of award. The

copies of the decision and the notice of award mailed to the authorized representative were not returned. The firm did not request a copy of the decision or the notice of award until April, 2010. There is no indication that the authorized representative did not obtain them timely, beyond the tardy request, nor that given the tardy request, the firm did not receive them at that time. The fee petition was filed significantly after the statutory deadline.

- b) The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 206(a)(3)(A)(ii), and only for work performed by him. 42 USC 406(a)(1); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees or costs can be paid to attorneys, as the costs of paralegals are costs recoverable under those statutes. Under the Social Security Act, costs and expenses may not be recovered. Further, the Social Security Act permits “a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim.” Only [REDACTED] was an authorized representative. All of the work for which the authorized representative claims compensation through a fee petition was performed by individuals other than the authorized representative. [REDACTED] may submit a fee petition only for work performed by him.

Therefore, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) (“The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.”) If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through his local bar association.

AUTHORIZING OFFICIAL

Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc: [REDACTED]
[REDACTED]

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and /or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs.
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review to which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount the benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative can not charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney or non-attorney representative from the claimant's title II or title XVI past-due benefits exceeds the amount of the authorized fee.

Possible Refund To The Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty For Charging An Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services before a court which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, 410.684 *et seq.*, and 416.15 *et seq.*
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)

ATTACHMENT 25

United States of America
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY, ADJUDICATION, AND REVIEW
820 First Street NE
8th Floor
Washington, DC 20002
Tel: (202)523-0408

SUBPOENA for the PRODUCTION OF DOCUMENTS

In the case of

[REDACTED]

(Claimant)

Claim for

DIWC

(Wage Earner) (Leave blank if same as above)

[REDACTED]
(Social Security Number)

To:

You, your client, [REDACTED] and your employer, [REDACTED] are hereby required to produce the offices of Christine P. Benagh, an Administrative Law Judge of the Office of Disability, Adjudication Review, Suite 800, 820 First Street NE, Washington, DC, 20002, on or before 4:00 pm, June 19, 2006, all records, including books, correspondence, papers, reports, tests, or other documents, photographs, videotapes, or other records in whatsoever media stored and any other evidence in the possession or control of yourself, [REDACTED] or [REDACTED] or in the possession or control of any [REDACTED] corporate affiliate relating to the above matter or to withholding or destroying material related to claims for disability benefits under the Social Security Act, together with a statement identifying by date, author, author's address, and document description any and all other evidence, as specified above, which is neither in the possession or control of yourself, [REDACTED] or [REDACTED] or in the possession or control of any [REDACTED] corporate affiliate relating to the above matter, but of which you, [REDACTED] or any [REDACTED] corporate affiliate have knowledge, excepting only portions of the above-described material containing legal advice or analysis specifically related to the above-captioned proceeding, but not excepting such legal advice or analysis that relates in any way to withholding evidence.

IMPORTANT – PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY SUBMISSION RESPONSE TO THIS SUBPOENA.

COMMISSIONER OF SOCIAL SECURITY
By Christine P. Benagh
Administrative Law Judge

Date: May 19, 2006

UNITED STATES OF AMERICA
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
820 First Street, NE—8th Floor
Washington, DC 20002
(202)523-0408

SUBPOENA
FOR THE PRODUCTION OF DOCUMENTS

In the case of

Claim for

SSN [REDACTED]

DIWC

To: [REDACTED]

[REDACTED] and any corporate affiliate or contractor thereof, specifically Unum Provident, are hereby required to produce at my offices (address in caption) on or before 4:00 p.m., on September 8, 2006, any and all records, including papers, reports, tests, books, correspondence, or other documents, photographs, videotapes, or other records, in whatsoever media stored; and any other evidence related in any way to matters that are or could be relevant to the application of [REDACTED] (LTD Claim No. [REDACTED]) referred to [REDACTED] by Sivan S. Wall, Unum Provident, Glendale, on April 27, 2004) for disability benefits under the Social Security Act to the extent that such records are in the possession or control of [REDACTED] and any corporate affiliate or contractor thereof, specifically Unum Provident, and excepting records containing legal advice or analysis.

PLEASE PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY
SUBMISSION RESPONSIVE TO THIS SUBPOENA.

COMMISSIONER, Social Security Administration
By Christine P. Benagh
Administrative Law Judge

Date: _____

UNITED STATES OF AMERICA
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
820 First Street, NE—8th Floor
Washington, DC 20002
(202)523-0408

SUBPOENA
FOR THE PRODUCTION OF DOCUMENTS

In the case of

Claim for

SSN [REDACTED]

DIWC

To: [REDACTED]

[REDACTED] hereby required to produce at my offices (address in caption) on or before 4:00 p.m., on December 4, 2006, any and all records, including papers, reports, tests, books, correspondence, or other documents, photographs, videotapes, or other records, in whatsoever media stored, and any other evidence related in any way to matters that are or could be relevant to the application of [REDACTED] [REDACTED] treated at Rehab At Work, Rockville, MD, on or about August – December, 2004) for disability benefits under the Social Security Act to the extent that such records are in the possession or control of [REDACTED]; its corporate affiliates or contractor thereof, and excepting records containing legal advice or analysis.

PLEASE PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY
SUBMISSION RESPONSIVE TO THIS SUBPOENA.

COMMISSIONER, Social Security Administration
By Christine P. Benagh
Administrative Law Judge

Date: _____



Social Security Administration

Office of Hearings and Appeals
Union Center Plaza II, 8th Floor
820 First Street, N.E.
Washington, D.C. 20002
Telephone: (202) 523-0408
Facsimile: (202) 408-8995

November 20, 2003

[REDACTED]

Re: [REDACTED], SSN [REDACTED]

Dear [REDACTED]

By telephone in July, you were asked again to provide the functional capacity evaluation of this claimant, which, according to his treating orthopedist, was finally approved some time before February, 2002, and performed coincident with work hardening between July 10, 2002, and September 11, 2002. After the evaluation, the doctor stated that the work hardening program released the claimant for work at the sedentary to medium work levels. Exhibit 8F. On the same date, you were informed that if that were unavailable, then we wanted the name and address of the entity that performed the claimant's work hardening program. Instead, you have provided me with an unsigned letter from UnumProvident stating that they have no record of having requested a functional capacity evaluation. That letter is substantially unresponsive; the record does not indicate that UnumProvident requested the evaluation.

You are hereby ordered to provide either the evaluation or the name, address, and name of the person in charge of records of the entity that performed the claimant's work hardening program within 10 days of receipt of this letter.

Very truly yours,

Christine P. Benagh
Administrative Law Judge

McGill, Michael

From: Christine Benagh <christine.benagh@gmail.com>
Sent: Friday, May 10, 2013 11:09 AM
To: McGill, Michael
Cc: Kelly, Misha; Justice, Erin
Subject: Re: OSC Referral Memo

Good morning,

I do not have the L [REDACTED] documentation. It went into agency storage some time ago. I sent you what I had on this case from my office computer earlier in the week. I will double-check when I am back in the office on Wednesday, to be sure you have everything I have on that.

Thank you,
Judge Benagh

On Fri, May 10, 2013 at 10:40 AM, McGill, Michael <Michael.McGill@ssa.gov> wrote:

Thanks, ALJ Benagh. We will take this into consideration. I believe we are still waiting to receive documents related to Case L [REDACTED] as described on page 4 of the OSC Referral to SSA. This was the Genex case you described in our last meeting.

Thanks,

Mike

From: Christine Benagh [mailto:christine.benagh@gmail.com]
Sent: Friday, May 10, 2013 10:30 AM
To: McGill, Michael; Kelly, Misha; Justice, Erin
Subject: OSC Referral Memo

Good morning,

The attached is for you. I hope it is helpful. Is there anything else that you want me to send you?

Thank you again,

ATTACHMENT 26



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
SSA ODAR Hearing Office
1227 25th St NW
3rd Floor
Washington, DC 20037

Date: July 29, 2010

[REDACTED]

Notice of Decision – Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Although my decision is fully favorable, you have the right to an oral hearing and to examine the evidence on which I based my decision. Please contact the office listed above if you want to have an oral hearing or examine the evidence in your case record.

Another office will process my decision. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

**Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255**

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did

not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

[REDACTED]

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (301)423-1051. Its address is:

Social Security Administration
6110 Allentown Road
Suitland, MD 20746-4552

Larry Banks
Administrative Law Judge

Enclosures:
Form HA-L15 (Fee Agreement Approval)
Decision Rationale

cc:

[REDACTED]
[REDACTED]
[REDACTED]
Washington, DC 20007

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF



(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability and Disability Insurance
Benefits



(Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Jasper J. Bede
Regional Chief Administrative Law Judge
SSA ODAR Regional Office
4th Floor East
300 Spring Garden St
Philadelphia, PA 19123

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ Larry Banks

Larry Banks
Administrative Law Judge

July 29, 2010

Date

ATTACHMENT 27

FEE PETITIONS—STATUTORY CONFLICTS WITH REGULATIONS

I was recently surprised to discover that the agency's regulations & policies on fee petitions DO NOT COMPORT with the statute. Today, I was informed by my HOCALJ that I am correct that there is a statutory DEADLINE for filing petitions and the ALJ's ORDER IS UNREVIEWABLE. I am afraid that this may be a very big deal.

NO. 1

The administrative law judge's decision on a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) ("The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.") The regulation and other pronouncements providing for additional review by the Regional Chief or others are invalid, such as 20 CFR 404.1720(d), HALLEX I-1-2-61.

NO. 2

Section 406(a)(3)(A) imposes a time limit on filing of a petition of 15 days after the notice of the dollar amount of the past-due benefits to be paid. The regulations set forth no deadline.

NO. 3

To receive compensation through the fee petition process, each authorized representative must petition for a fee for the work performed by him or her. The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 406(a)(3)(A)(ii), and only for work performed "by him". Notwithstanding the exception in HALLEX I-1-2-53 permitting the work of assistants to be compensated through a fee petition, the Social Security Act does not permit compensation to anyone other than the authorized representative. 42 USC 406(a)(1)(last sentence); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees and expenses can be paid to attorneys, as the expenses of attorneys are recoverable under those statutes, e.g., 28 USC 2412(a)(1). Under the Social Security Act, costs and expenses may not be recovered. The Social Security Act is unambiguous. It permits only "a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim." Therefore, costs and services performed by individuals other than the authorized representative are not compensable under the statute. The regulations are in accord, requiring the representative to state the "services that he or she gave". 20 CFR 404.1725.

NO. 4

There is no statutory provision authorizing payment of fees in the absence of a favorable decision.

NO. 5

Given the erroneous regulations and HALLEX provisions, thousands of beneficiaries have been deprived of the portion of benefits paid through the fee petition process. Having sworn to uphold the Constitution and laws of the United States, I am aware that those beneficiaries probably are entitled to compensation. I have no confidence that, alone, I would be able to achieve that result. It is my considered judgment that there is no effective avenue available other than a report to the U.S. Office of Special Counsel.

The OSC provides a secure channel through its Disclosure Unit for federal workers to disclose information about various workplace improprieties, including a violation of law [such as under the False Claims Act and the perjury statutes], rule or regulation, gross mismanagement and waste of funds, abuse of authority, or a substantial danger to public health or safety. Its primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

NO. 6

I have just issued [unreviewable] denials of six fee petitions from various law firms. Two of those petitions contain what could be forged signatures, four contain overstatements of time spent, two misstatements of address for attorneys who have left the firm, statements that an unsigned fee petition is binding against the claimant, possible evidence of adverse evidence being intentionally withheld, and petitioning for attorney fees for work performed by clerks and paralegals [inclusions precluded by statute].

In the past, I have moved through agency channels, reporting documented activity, including fee petitions, by attorneys that appeared to me to be fraudulent, potentially even felonious. The agency did not report any of these incidents to the Department of Justice or bar associations. In one instance, I was advised, in writing, that reprisals would be taken against me if I reported the activity (credit card abuse of nearly \$30,000). In one instance (billing multiple claimants full travel time each for a single day hearing trip), I was told that I could only reduce the fee by the fraudulent amount. In the most recent situation (billing for work that had already been compensated through a fee agreement), I was counseled for criticizing an attorney and implying that there might be fraud. I have been threatened with more serious action if I criticize an attorney in the future. Already, with the current fee petitions, I have received pressure from the Office of the General Counsel, a Deputy Commissioner [not

Mr. Skylar], and a directive from my Regional Chief Judge that I could not hold a hearing on four fee petitions in a case from a single firm.

Given that experience, I have already reported a current fee petition situation to the U.S. Office of Special Counsel.

CR [REDACTED]

DATE: April 20, 2012

ALJ: Christine P. Benagh

ATTORNEY FEE RECOMMENDATION

Claimant: C [REDACTED]

SSN: [REDACTED]

Representative: [REDACTED]

Date Decision mailed: 10/25/2011

Date SSA-1129 received: _____

Date Award Certificate or PHUS received: 11/06/2011

Date Fee Petition received: 12/22/2011

Hours Claimed: 25.50

25% past due/withheld Title II benefits (Amount of fee not based on benefits alone; 404.1725(b)): \$ 9,015.00

25% past due benefits SSI (amount of fee not based on benefits alone; 416.1525(b)): \$ _____

Total: \$ 9,015.00

Amount requested: \$ 6,630.00

Fee Per Hour: \$ N/A

Amount approved by ALJ: \$ 0

ALJ initials: _____

Date: 10/24/2011

Please return to: Linda Camphor

INVOICE

CASE NAME: [REDACTED]
DATE: NOVEMBER 29, 2011

Date	Description	Time Spent	Expenses
4/13/2010	Client Contact: Ms. [REDACTED] contacted Disability Advocates about possible representation. She was sent an Intake letter.	0.20	
5/20/2010	Telephone Call: voicemail message left for Ms. [REDACTED]	0.20	
6/23/2010	Client Letters: contact letter and introduction package mailed to Ms. [REDACTED]	0.20	
7/6/2010	Client Contact: left voicemail message for client to schedule appointment to file an appeal after denial at the reconsideration level.	0.20	
7/12/2010	Client Contact: appointment made with client to file appeal.	0.20	
7/16/2010	Client Contact: client called to reschedule appointment to file appeal.	0.20	
7/20/2010	Client Contact: appointment rescheduled	0.20	
7/22/2010	Client Contact: left voicemail message for client.	0.20	
7/22/2010	Appointment: filed Request for Hearing	1.00	
7/27/2010	Forms: 501 form submitted.	0.20	
7/28/2010	Mail: Request for Hearing Package mailed to Greenbelt SSA via certified mail.	0.20	
8/18/2010	Mail: received confirmation from ODAR in Washington D.C. that Request for Hearing has been received.	0.20	
10/15/2010	Client Contact: received phone call from Ms. [REDACTED] to advise that she has mailed paperwork to Disability Advocates.	0.20	
11/19/2010	Client Contact: received phone call from client inquiring whether her hearing has been scheduled. It was explained to [REDACTED] that it may take ten months to a year for her to receive a hearing date.	0.20	
1/12/2011	Mail: Entrance of Representation for D. Mehlman mailed to Greenbelt SSA via certified mail.	0.20	
2/2/2011	Fax: Entrance of Representation & Fee Agreement for D. Mehlman faxed to ODAR in Washington D.C.	0.20	
2/10/2011	Fax: Entrance of Representation & Fee Agreement for D. Mehlman faxed to Greenbelt SSA.	0.20	
2/16/2011	Client Contact: received phone call from Ms. [REDACTED] with status update regarding her medical condition and new diagnosis. She confirmed that she has stayed clean from drugs and alcohol.	0.20	
3/18/2011	Telephone Call: requested confirmation from Greenbelt SSA that Entrance of Representation & Fee Agreement for D. Mehlman have been received. Requested return call from [REDACTED]	0.20	
3/28/2011	Client Contact: client called for status updated and to inquire whether hearing has been scheduled.	0.20	

Date	Description	Time Spent	Expenses
4/12/2011	Telephone Call: confirmed with ODAR in Washington D.C. that Entrance of Representation has been received. Also called Greenbelt SSA and left message inquiring whether or not forms were received there.	0.20	
5/10/2011	Client Contact: spoke to [REDACTED] to give status updated and confirm phone number.	0.20	
5/17/2011	Telephone Call: spoke to Greenbelt SSA and confirmed receipt of 1696 for D. Mehlman. There was some confusion because both D. Mehlman & B. White were listed as representatives but the Fee Agreement listed only B. White as the representative. Re-faxed 1696 & Fee Agreement for D. Mehlman.	0.50	
6/16/2011	Telephone Call: case status call made to Washington D.C. ODAR. Informed that the case is unassigned.	0.20	
6/22/2011	Client Contact: Ms. [REDACTED] called requested a status update. She was advised that her case has not yet been assigned to a judge and it may still take a few months for her to get a hearing date. New phone number updated.	0.20	
6/29/2011	Mail: received CD from Washington D.C. ODAR. Earnings sections printed & placed in client file.	0.20	
7/7/2011	Client Contact: called Ms. [REDACTED] to advise her that her hearing has been scheduled.	0.20	
7/11/2011	Review MER.	0.40	
7/12/2011	Review MER.	0.40	
7/12/2011	Client Contact: called and left voicemail messages for Ms. [REDACTED] at two numbers.	0.20	
7/13/2011	Mail: mailed Medical Authorization Form to client.	0.20	
7/18/2011	Client Contact: obtained updated medical treatment information from Ms. [REDACTED] Also confirmed that she has received the Medical Authorization forms and will return them. Discussed receipt of unemployment benefits in 2009 & 2010.	0.30	
7/18/2011	Medical Development: researched contact information for medical treatment providers.	0.40	
7/20/2011	Medical Development: requested updated treatment records from Envision Care Medical Associates, Anne Arundel Medical Center, Bowie Health Center, Dr. Andrew Gergely and Dr. Stuart Goodman.	0.60	
7/20/2011	Medical Development: reviewed & e-filed medical records from Dr. Goodman.	0.20	
7/21/2011	Telephone Call: phone call to Greenbelt SSA to confirm receipt of 1695 and request written verification of receipt. 1695 for D. Mehlman re-faxed to Greenbelt SSA and written verification requested.	0.20	
7/29/2011	Mail: abbreviated introduction packet mailed to client with updated 1696 & fee agreement forms.	0.20	
8/5/2011	Invoice for Records: Dr. Gergely's office.		\$19.50
8/5/2011	Invoice for Records: Anne Arundel Medical Center via Health Port.		\$34.03
8/10/2011	Medical Development: called and spoke to medical records at Envision Care to follow up on request for records. Explained that records request had been faxed and I would like to confirm receipt. I was advised that the request for records had not been received. The request was re-faxed. I was advised that the request would take up to seven (7) days to process.	0.20	
8/12/2011	Telephone Call: received oral confirmation from Greenbelt SSA that 1695 has been received and processed. Requested written verification.	0.20	
8/17/2011	Medical Development: reviewed & e-filed medical records from Anne Arundel Medical Center.	0.20	
8/18/2011	Client Contact: received call from Ms. [REDACTED] to advise me that she broke her ankle and was hospitalized for two (2) weeks at Southern Maryland Medical Center. She also had a car accident on 7/18/2011 and she blacked out. She has a court date for this and will give me an update after the court hearing.	0.20	
8/18/2011	Medical Development: requested treatment records from Southern Maryland Medical Center.	0.20	
8/19/2011	Invoice for Records: Bowie Health Campus.		\$163.77
8/30/2011	Medical Development: left oral message for medical records at Dr. Gergely's office to determine if payment of \$19.50 has been received. Also, spoke to Angela Price at Envision Care. She took my name and agreed to return my call after checking to see if records request is in [REDACTED] chart. Also, spoke to Southern Maryland Hospital Center and was advised that records for [REDACTED] were mailed 8/29/11.	0.20	

Date	Description	Time Spent	Expenses
8/30/2011	Medical Development: spoke to office manager at Dr. Gergely's office. Requested that records be faxed to me because I have not yet received records via mail.	0.20	
8/31/2011	Medical Development: spoke to Angela Price at Envision Care. I was advised that the request for records is in [REDACTED] chart but has not yet been forwarded to her doctor.	0.20	
8/31/2011	Medical Development: reviewed & e-filed medical records from Southern Maryland Hospital Center.	0.60	
9/1/2011	Invoice for Records: Southern Maryland Hospital Center.		\$15.00
9/13/2011	Medical Development: reviewed & e-filed medical records from Dr. Gergely. Also reviewed & e-filed records from Bowie Medical Campus.	1.00	
9/14/2011	Client Contact: client called because she has not yet received her notice of hearing. She was given the date, time and location of the hearing. She was asked to arrive thirty (30) minutes early for the hearing.	0.20	
9/14/2011	Medical Development: called Angela Price at Envision Care because there has been no response to the request for records.	0.20	
9/19/2011	Pre-Hearing Case Workup	1.50	
9/21/2011	Pre-Hearing Case Workup	0.60	
9/23/2011	Pre-Hearing Case Workup	0.90	
9/29/2011	Medical Development: canceled request for records from Envision Care due to lack of response.	0.20	
9/30/2011	Pre-Hearing Case Workup	0.30	
9/30/2011	Appointment: Pre-Hearing Client Interview	0.60	
10/5/2011	Hearing held at ODAR in Washington D.C. - includes travel time from Baltimore to hearing location.	5.00	
10/7/2011	Client Contact: [REDACTED] requested copy of my notes from her hearing.	0.20	
10/13/2011	Client Contact: [REDACTED] called to ask about the difference between Title II and Title XVI. She wanted to know which she is entitled to receive.	0.20	
10/20/2011	Client Contact: [REDACTED] called regarding the Judge's written decision. I advised her that I still am waiting to receive the written judgment.	0.20	
10/28/2011	Telephone Call: received call from Monica Bridges at SSA who requested a 1695 for B. White in order to process the full fee for this claim. Fax was sent to Ms. Bridges at Greenbelt SSA.	0.20	
10/28/2011	Telephone Call: received call from Ms. Bridges at Greenbelt SSA. She orally confirmed receipt of 1695 for B. White.	0.20	
11/2/2011	Fully Favorable Decision: received and reviewed.	0.20	
11/2/2011	Mail: sent congratulatory letter to client with fee agreement reminder. Left voicemail message for client to advise her that Fully Favorable decision has been received.	0.20	
11/3/2011	Client Contact: received call from client who had not yet received Judge's decision in the mail. Copy of decision mailed to client.	0.20	
11/8/2011	Fax: request for payment of fees faxed to Greenbelt SSA.	0.20	
11/21/2011	Mail: received letter from Chief Regional Judge Jasper Bede stating that fee will not be processed for failure to meet statutory requirements. Discussed the meaning of this letter and the possibly necessity to file a fee petition with Ms. [REDACTED]	0.20	
11/29/11	Telephone Call: called Judge Bede's office to determine why the statutory requirement was not met. Advised to file a fee petition.	0.20	
11/29/11	Fee Petition Composed and Filed	1.00	
Totals:		25.50	\$232.30

TOTAL AMOUNT OF FEES PER CATEGORY

Total Time	25:50
Total Expenses	\$232.30
Multiply total time by the DA hourly rate (25.50 x \$260 =)	\$6,630.00

	Total Amount of Fees \$6,862.30
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Time Unit Chart

1- 6 minutes = .10	31-36 minutes = .60
7-12 minutes = .20	37-42 minutes = .70
13-18 minutes = .30	43-48 minutes = .80
19-24 minutes = .40	49-54 minutes = .90
25-30 minutes = .50	55-60 minutes = 1.00



SOCIAL SECURITY ADMINISTRATION

Refer To: [Redacted]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

**UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE**

To: [Redacted]

IN THE CASE OF

[Redacted]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[Redacted]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 25, 2011, regarding the claimant. The award certificate was issued on November 6, 2011. The authorized representative, [Redacted], filed her fee petition on December 22, 2011.

The submitted fee petition was accompanied by a time and task statement, reflecting 25.50 hours of work performed by various, unidentified individuals.

The fee petition must be denied for several reasons:

- a) The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on November 6,

[REDACTED]

2011 (the same date that [REDACTED] received a letter advising her that a fee petition was required). The claimant appears to have received her decision and notice of award timely. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline.

- b) The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 206(a)(3)(A)(ii), and only for work performed by him. 42 USC 406(a)(1); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees or costs can be paid to attorneys, as the costs of paralegals are costs recoverable under those statutes. Under the Social Security Act, costs and expenses may not be recovered. Further, the Social Security Act permits “a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim.” Only [REDACTED] was an authorized representative. She declined our request to identify in a timely manner the individuals who had performed the work claimed on the fee petition, precluding review of the entries.

Therefore, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) (“The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.”) If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

AUTHORIZING OFFICIAL

Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc: [REDACTED]
[REDACTED]
[REDACTED]

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and /or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs.
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review to which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount the benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative can not charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney or non-attorney representative from the claimant's title II or title XVI past-due benefits exceeds the amount of the authorized fee.

Possible Refund To The Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty For Charging An Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services before a court which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, 410.684 *et seq.*, and 416.15 *et seq.*
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)

UNFAVORABLE-INITIAL ADULT DECISION

DATE:

CLAIMANT: [REDACTED]

SSN: [REDACTED]

ALJ: Eugene Bond

WRITER: E.D. Curtis

COMMENTS:

Disposition:	IMPAIRMENT CODES – INSERT	
	Body System (link)	Impairment (link)
Affirmation – Unfavorable (UAFF)	<u>Primary</u> Musculoskeletal System <u>Secondary</u> Special/Other	<u>Primary</u> Disorders of the Back Discogenic Degenerative (7240) <u>Secondary</u>

Basis for Denial	Regulation Basis 1
Title II	DIB Claim-Capacity for SGA-Other Than Past Relevant Work (J1)
Other (insert)	

DAA Codes	CODE
I-DAA not a condition or involved in any way	I ✓
N-DAA is not material	N



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
SSA ODAR
Suite 300
1227 25th Street, NW
Washington, DC 20077-8199

Date: October 3, 2011

[REDACTED]
[REDACTED]
[REDACTED], MD 20774

Notice of Decision – Unfavorable

I carefully reviewed the facts of your case and made the enclosed decision. Please read this notice and my decision.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

**Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255**

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits or not qualify for benefits at all. My decision could also be used to deny a new application for benefits if the facts and issues are the same. If you disagree with my decision, you should file an appeal within 60 days.

[REDACTED] 9)

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (877) 512-3849. Its address is:

Social Security Administration
6110 Allentown Road
Suitland, MD 20746-4552

Eugene Bond
Administrative Law Judge

Enclosures:
Decision Rationale
Form HA-L39 (Exhibit List)

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

DECISION

IN THE CASE OF

CLAIM FOR

(Claimant)

Period of Disability and Disability Insurance
Benefits

(Wage Earner)

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On August 19, 2009, the claimant filed a Title II application for a period of disability and disability insurance benefits, alleging disability beginning June 12, 2008. The claim was denied initially on December 24, 2009, and upon reconsideration on May 17, 2010. Thereafter, the claimant filed a written request for hearing on June 3, 2010 (20 CFR 404.929 *et seq.*). The claimant appeared and testified at a hearing held on September 20, 2011, in Washington, DC. James Ryan, an impartial vocational expert, also appeared and testified at the hearing. The claimant is represented by _____ an attorney.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through June 30, 2014. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful consideration of all the evidence, the undersigned concludes the claimant has not been under a disability within the meaning of the Social Security Act from June 12, 2008, through the date of this decision.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the

See Next Page

claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and

404.1565). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

- 1. The claimant meets the insured status requirements of the Social Security Act through June 30, 2014.**
- 2. The claimant has not engaged in substantial gainful activity since June 12, 2008, the alleged onset date (20 CFR 404.1571 *et seq.*).**

Although the certified earnings record in file reflects amounts for years 2009 and 2010, the undersigned found the record did not reflect substantial wage amounts as this work activity did not rise to the level required to meet substantial gainful activity (SGA) criteria (which for 2010 and 2009 were the annual amounts of \$12,000 and 11,760 respectively).

- 3. The claimant has the following severe impairments: back problems (20 CFR 404.1520(c)).**

The claimant testified that he had to stop working because of back injury. He alleged that his combined back impairments restrict his ability to function on a daily basis and perform work-related activities. He also alleged an inability to stand, sit, walk, climb, carry objects and perform other exertional activities. His testimony additionally included allegations of difficulties in ability to concentrate due to pain and associated medication effects.

The records in file show diagnoses, objective medical testing results and treatment records for back impairments, as well as other conditions including obesity (prior to the applicable year) from 1999 to present year 2011 (Exs. 22F-25F, 27F-28F, 30F-32F). The undersigned finds that these are medically determinable impairments and that the claimant's back problems are severe in that they cause more than a minimal limitation in the claimant's ability to perform basic work activities. This is further discussed below.

Notably, regarding obesity, the claimant testified that he was 6 feet, 1 inch tall and weighed 345 pounds at the time of the hearing. The clinical guidelines issued by the National Institutes of Health define obesity as present in general where there is a BMI of 30.0 or above. He is obese with a body mass index of 45.5 according to the Centers for Disease Control and Prevention (CDC) and National Institute of Health (NIH) guidelines.

In terms of obesity as in impairment, Social Security Regulation 02-1p revoked listing 9.09 because cases adjudicated under this previously existing listing indicated that the criteria for obesity were not appropriate indicators of listing-level severity. However, obesity remains a factor in determining disability, particularly when considered in combination with other body systems conditions and the claimant's impairments and conditions are further compounded by his obesity.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

After consideration of the record as a whole, the undersigned has determined that the severity of the claimant's impairments do not satisfy the required criteria of any of the listings. The undersigned's finding is based upon the review of the evidence of record and based on the fact that no consultative examiner, treating source, medical expert, or State Agency examiner has found that the claimant meets or equals a listing.

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform the full range of light and sedentary work as defined in 20 CFR 404.1567(a) and (b) except the claimant should have a sit/stand option at will and limited general public contact.

In making this finding, the undersigned has considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

In considering the claimant's symptoms, the undersigned must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, the undersigned must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's functioning. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not

substantiated by objective medical evidence, the undersigned must make a finding on the credibility of the statements based on a consideration of the entire case record.

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment.

Inconsistencies were reflected in the claimant's testimony, for example he reported difficulties due to his impairments, but reflected an ability to function despite these conditions such as an ability to take care of basic needs except at a slower pace. He stated that he had limitations due to back problems, but he could bend over and pick up things from the floor. He acknowledged use of a cane just on "some days" and noted that he did not bring or use a cane on the day of the hearing.

He additionally testified to problems with concentration. However, he stated he was able to use the computer to play games and sit (in a message chair) while doing so...

These inconsistencies are further shown in the record, particularly in the applicable medical opinions found at Exhibits 22F-25F and 30F-32F (dated from September 2008 to September 2011) that are offered by examining and treating physicians. These opinions do not reflect significant impairment(s) or restrictive limitations that are greater than those determined in this decision.

For example, the medical opinion found at Exhibit 22F, dated September 4, 2009 reported back condition with findings of "mild limitation of motion of the lumbar spine" (*Id.* p2) and being "fit for duties" with limitations "that if were within the requirements of the job that he was doing, then "he could return to work" (*Id.* p3). Further reported was that the claimant "is not fit for full duty and never has been" indicating that this has been the case since an original back injury dating back to 1999 with no change in status (*Id.*). Notably, the record as a whole shows that the claimant had worked since the 1999 date referenced. This opinion was offered by an examining medical source and is given considerable weight, as it is generally consistent with what is primarily found in the record.

Exhibits 23F-25F, 27F-28F and 30F-32F found in file were provided by a long-term treating doctor and date back to the alleged date of onset and earlier that indicate back and associated problems that were being treated with mixed results. In a report dated June 19, 2008 (within a week of the alleged onset date), the claimant was shown to have back problems with associated conditions and found unable to work, however, it was also reported that medication "clearly and significantly decreases pain, increases function..." (Ex. 23F p21).

This inconsistency is likewise reflected in the subsequent medical reports in file (from the same treating source) dating up to the most recent opinion (September 2, 2011) found at Exhibit 32F in which the claimant is reported to have back problems with "very little limitations..." (*Id.* p2).

Yet an inability to work was assessed (*Id.* p3), particularly noting concentration difficulties. No objective support for this determination is offered.

As these reports reflect inconsistencies and findings of work inability that are not supported by the record as a whole, they are accordingly rendered less persuasive. The undersigned therefore assigns them little weight.

On the other hand, the undersigned assigns considerable weight to the opinion evidence by the State Agency, found at Exhibits 26F and 29F (dated December 2009 and May 2010) because they are also generally consistent with the claimant's medical records and clinical findings in the record concerning his impairments. State Agency medical consultants are qualified physicians who are familiar with Social Security rules and regulations in evaluating medical impairments for disability. Findings of fact made by State Agency medical consultants and other program physicians regarding the nature and severity of an individual's impairment(s) are treated as expert opinion evidence of non-examining sources.

While the undersigned is not bound by these findings, the findings cannot be ignored. Instead, such findings must be considered and given whatever weight deemed proper by the Administrative Law Judge (but not controlling weight, as there is no treating relationship). The opinion of a non-examining physician, such as a State Agency medical consultant, can be accepted over that of an examining physician (*see, for example, Barker v. Shalala*, 40 F.3d 789,794 (6th Cir. 1994)).

In sum, the above residual functional capacity assessment is supported by evidence found in the record.

6. The claimant is unable to perform any past relevant work as a power company service technician and cable slicer (20 CFR 404.1565).

7. The claimant was born on [REDACTED] and was [REDACTED] years old, which is defined as a younger individual age 18-49 on June 12, 2008, the alleged disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569 and 404.1569(a)).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11).

When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.21. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled light occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience, and residual functional capacity.

The vocational expert, James Ryan testified that given all of these factors the individual would be able to perform the requirements of representative unskilled sedentary jobs such as: unarmed security worker with 43,000 jobs available nationally and 980 locally, small part inserter with 38,000 jobs nationally and 650 locally, and quality control worker with 36,000 jobs available nationally and 500 locally and semi-skilled light jobs of machine tenderer with 62,000 jobs available nationally and 910 locally, packer, with 48,000 jobs available nationally and 750 locally and inspector with 43,000 jobs available nationally and 600 locally.

The vocational expert was then asked by the claimant's representative to consider the vocational effect/workplace toleration of particularly in light of difficulties in maintaining concentration, etc., assuming that the claimant's testimony about this was credible and supported by the record. The response was that there would be no work if there would be a resulting 15-20% reduction in productivity and that this would not be tolerated; and an inability to sustain work was indicated. However, the record does not support that the claimant is so limited.

Pursuant to SSR 00-4p, the undersigned has determined that the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles in addition to his professional experience and expertise in the vocational field of knowledge.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above-cited rule.

11. The claimant has not been under a disability, as defined in the Social Security Act, from June 12, 2008, through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on August 19, 2009, the claimant is not disabled under sections 216(i) and 223(d) of the Social Security Act.

/s/ Eugene Bond

Eugene Bond
Administrative Law Judge

October 3, 2011

Date

LIST OF EXHIBITS

Payment Documents/Decisions

Component No.	Description	Received	Dates	Pages
HO 1A	Disability Determination Transmittal		12/24/2009	1
HO 2A	Disability Determination Transmittal		05/17/2010	1

Jurisdictional Documents/Notices

Component No.	Description	Received	Dates	Pages
HO 1B	T2 Notice of Disapproved Claim		12/24/2009	4
HO 2B	Request for Reconsideration		01/14/2010	1
HO 3B	Appointment of Representative		01/25/2010	2
HO 4B	T2 Disability Reconsideration Notice		05/17/2010	2
HO 5B	Request for Hearing by ALJ		06/07/2010	2
HO 6B	Representative Fee Agreement		12/03/2010	2
HO 7B	Acknowledge Notice of Hearing		08/11/2011	1
HO 8B	Hearing Notice			18
HO 9B	Resume of Vocational Expert			1
HO 10B	Notice Of Hearing Reminder			6

Non-Disability Development

Component No.	Description	Received	Dates	Pages
HO 1D	Application for Disability Insurance Benefits		08/20/2009	2
HO 2D	FACT DDSQ DEQY SEQY NH WC OHAQ PUPS FUG		05/02/2011	10

HO 3D Certified Earnings Records 05/02/2011 2

Disability Related Development

Component No.	Description	Received	Source	Dates	Pages
HO 1E	Disability Report - Field Office		V. Forby Steven	to 09/04/2009	3
HO 2E	Disability Report - Adult		Dione Casillas	to 09/04/2009	7
HO 3E	Work History Report		[REDACTED]	to 09/04/2009	8
HO 4E	Function Report - Adult		[REDACTED]	to 12/02/2009	7
HO 5E	Work History Report		[REDACTED]	to 12/02/2009	3
HO 6E	Function Report - Adult		[REDACTED]	to 12/02/2009	8
HO 7E	Disability Report - Appeals		Maria Colflesh	to 01/10/2010	6
HO 8E	Disability Report - Field Office		I Acevedo	to 01/14/2010	3
HO 9E	Disability Report - Appeals		Maria Colflesh	to 06/03/2010	5
HO 10E	Disability Report - Field Office		M. Webber	to 06/07/2010	2

Medical Records

Component No.	Description	Received	Source	Dates	Pages
HO 1F	Radiology Report		Laurance Kupperberg, MD	to 02/22/1999	2

HO 2F	Physical/Occupational Therapy Records	Hanover Park	02/25/1999 to 03/18/1999	7
HO 3F	Radiology Report	Capital Diagnostics, Inc	to 12/21/1999	3
HO 4F	Office Treatment Records	Bijan Ghovanlou, MD	02/16/1999 to 12/29/1999	5
HO 5F	Office Treatment Records	Capital Orthopaedic Associates	to 08/03/2001	4
HO 6F	Radiology Report	Lanham MRI Center	to 05/02/2003	2
HO 7F	Radiology Report	Lanham MRI Center	to 05/02/2003	2
HO 8F	Office Treatment Records	Dr. Kothakota	04/23/2003 to 05/12/2003	3
HO 9F	Office Treatment Records	Lysa Charles, MD	to 10/15/2003	3
HO 10F	Physical/Occupational Therapy Records	Regional Rehab	10/16/2003 to 11/21/2003	14
HO 11F	Office Treatment Records	Lysa Charles, MD	to 12/10/2003	2
HO 12F	Office Treatment Records	Dr. Sidhu	01/10/2000 to 12/20/2003	11
HO 13F	Office Treatment Records	Kevin Hanley, MD	05/28/2003 to 04/22/2004	6
HO 14F	Office Treatment Records	Charles Lancelotta, Jr., MD	to 11/18/2004	4
HO 15F	Radiology Report	Sibley Memorial Hospital	to 12/02/2004	7

HO 16F	Office Treatment Records	Bruce Ammerman, MD	to 01/20/2005	2
HO 17F	Office Treatment Records	Arthur Kobrine, MD	to 03/25/2005	3
HO 18F	Office Treatment Records	Todd Sloan	to 04/01/2005	3
HO 19F	Office Treatment Records	Maryland Orthopedics, PA	07/20/2001 to 02/17/2006	8
HO 20F	Physical/Occupational Therapy Records	Pro Care Management Services, LLC	09/05/2005 to 05/16/2006	4
HO 21F	Physical/Occupational Therapy Records	Pro Care Management Services, LLC	09/02/2005 to 05/16/2006	4
HO 22F	Office Treatment Records	Kevin Hanley, MD	to 09/04/2008	4
HO 23F	Office Treatment Records	Justin Wasserman, MD	10/30/2007 to 01/22/2009	25
HO 24F	Office Treatment Records	Justin Wasserman, MD	04/22/2005 to 07/02/2009	58
HO 25F	Office Treatment Records	Justin Wasserman, MD	08/13/2009 to 09/17/2009	8
HO 26F	Physical RFC Assessment	A Serpick, MD	to 12/24/2009	8
HO 27F	Office Treatment Records	Justin Wasserman, MD	10/29/2009 to 01/20/2010	12
HO 28F	Office Treatment Records	JUSTIN H WASSERMAN MD	11/19/2009 to 03/18/2010	13
HO 29F	Physical RFC Assessment	AR Totoonchie, MD	to 05/17/2010	8

HO 30F	Medical Evidence of Record	WASSERMAN	10/06/2010 to 03/16/2011	14
HO 31F	Medical Evidence of Record	Wasserman	03/16/2011 to 08/10/2011	10
HO 32F	Medical Evidence of Record	Wasserman	09/02/2011 to 09/02/2011	4

United States of America
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY, ADJUDICATION, AND REVIEW
820 First Street NE
8th Floor
Washington, DC 20002
Tel: (202)523-0408

SUBPOENA for the PRODUCTION OF DOCUMENTS

In the case of

[REDACTED]

(Claimant)

Claim for

DIWC

(Wage Earner) (Leave blank if same as above)

[REDACTED]
(Social Security Number)

To:

[REDACTED]
[REDACTED]
[REDACTED]

You, your client, [REDACTED] and your employer, [REDACTED] are hereby required to produce the offices of Christine P. Benagh, an Administrative Law Judge of the Office of Disability, Adjudication Review, Suite 800, 820 First Street NE, Washington, DC, 20002, on or before 4:00 pm, June 19, 2006, all records, including books, correspondence, papers, reports, tests, or other documents, photographs, videotapes, or other records in whatsoever media stored and any other evidence in the possession or control of yourself, [REDACTED] or [REDACTED], or in the possession or control of any [REDACTED] corporate affiliate relating to the above matter or to withholding or destroying material related to claims for disability benefits under the Social Security Act, together with a statement identifying by date, author, author's address, and document description any and all other evidence, as specified above, which is neither in the possession or control of yourself, [REDACTED] or in the possession or control of any [REDACTED] corporate affiliate relating to the above matter, but of which you, [REDACTED] or any [REDACTED] corporate affiliate have knowledge, excepting only portions of the above-described material containing legal advice or analysis specifically related to the above-captioned proceeding, but not excepting such legal advice or analysis that relates in any way to withholding evidence.

IMPORTANT – PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY SUBMISSION RESPONSES TO THIS SUBPOENA.

COMMISSIONER OF SOCIAL SECURITY
By Christine P. Benagh
Administrative Law Judge

Date: May 19, 2006

UNITED STATES OF AMERICA
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
820 First Street, NE—8th Floor
Washington, DC 20002
(202) 523-0408

SUBPOENA
FOR THE PRODUCTION OF DOCUMENTS

In the case of

Claim for

[REDACTED]
SSN [REDACTED]

DIWC

To: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] and any corporate affiliate or contractor thereof, specifically [REDACTED] are hereby required to produce at my offices (address in caption) on or before 4:00 p.m., on September 8, 2006, any and all records, including papers, reports, tests, books, correspondence, or other documents, photographs, videotapes, or other records, in whatsoever media stored, and any other evidence related in any way to matters that are or could be relevant to the application of [REDACTED] (LTD Claim No. [REDACTED] referred to [REDACTED] by [REDACTED] (27, 2004) for disability benefits under the Social Security Act to the extent that such records are in the possession or control of [REDACTED] and any corporate affiliate or contractor thereof, specifically [REDACTED], and excepting records containing legal advice or analysis.

PLEASE PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY
SUBMISSION RESPONSIVE TO THIS SUBPOENA.

COMMISSIONER, Social Security Administration
By Christine P. Benagh
Administrative Law Judge

Date: _____

UNITED STATES OF AMERICA
SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
820 First Street, NE—8th Floor
Washington, DC 20002
(202)523-0408

SUBPOENA
FOR THE PRODUCTION OF DOCUMENTS

In the case of

Claim for

SSN [REDACTED]

DIWC

To: [REDACTED]

[REDACTED] is hereby required to produce at my offices (address in caption) on or before 4:00 p.m., on December 4, 2006, any and all records, including papers, reports, tests, books, correspondence, or other documents, photographs, videotapes, or other records, in whatsoever media stored, and any other evidence related in any way to matters that are or could be relevant to the application of [REDACTED] [REDACTED] treated at Rehab At Work, Rockville, MD, on or about August – December, 2004) for disability benefits under the Social Security Act to the extent that such records are in the possession or control of [REDACTED], its corporate affiliates or contractor thereof, and excepting records containing legal advice or analysis.

PLEASE PLACE A COPY OF THIS SUBPOENA ON TOP OF ANY
SUBMISSION RESPONSIVE TO THIS SUBPOENA.

COMMISSIONER, Social Security Administration
By Christine P. Benagh
Administrative Law Judge

Date: _____



Social Security Administration

Office of Hearings and Appeals
Union Center Plaza II, 8th Floor
820 First Street, N.E.
Washington, D.C. 20002
Telephone: (202) 523-0408
Facsimile: (202) 408-8995

November 20, 2003

[REDACTED]

Re: [REDACTED], SSN [REDACTED]

Dear [REDACTED]

By telephone in July, you were asked again to provide the functional capacity evaluation of this claimant, which, according to his treating orthopedist, was finally approved some time before February, 2002, and performed coincident with work hardening between July 10, 2002, and September 11, 2002. After the evaluation, the doctor stated that the work hardening program released the claimant for work at the sedentary to medium work levels. Exhibit 8F. On the same date, you were informed that if that were unavailable, then we wanted the name and address of the entity that performed the claimant's work hardening program. Instead, you have provided me with an unsigned letter from [REDACTED] stating that they have no record of having requested a functional capacity evaluation. That letter is substantially unresponsive; the record does not indicate that [REDACTED] requested the evaluation.

You are hereby ordered to provide either the evaluation or the name, address, and name of the person in charge of records of the entity that performed the claimant's work hardening program within 10 days of receipt of this letter.

Very truly yours,

Christine P. Benagh
Administrative Law Judge



SOCIAL SECURITY ADMINISTRATION

Refer To: [Redacted]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

**UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE**

To: [Redacted]

IN THE CASE OF

[Redacted]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[Redacted]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 25, 2011, regarding the claimant. The award certificate was issued on November 6, 2011. The authorized representative, [Redacted] filed her fee petition on December 22, 2011.

The submitted fee petition was accompanied by a time and task statement, reflecting 25.50 hours of work performed by various, unidentified individuals.

The fee petition must be denied for several reasons:

- a) The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on November 6,

[REDACTED]

2011 (the same date that [REDACTED] received a letter advising her that a fee petition was required). The claimant appears to have received her decision and notice of award timely. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline.

- b) The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 206(a)(3)(A)(ii), and only for work performed by him. 42 USC 406(a)(1); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees or costs can be paid to attorneys, as the costs of paralegals are costs recoverable under those statutes. Under the Social Security Act, costs and expenses may not be recovered. Further, the Social Security Act permits “a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim.” Only [REDACTED] was an authorized representative. She declined our request to identify in a timely manner the individuals who had performed the work claimed on the fee petition, precluding review of the entries.

Therefore, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) (“The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.”) If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

AUTHORIZING OFFICIAL

Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc: [REDACTED]
[REDACTED]
[REDACTED]

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and /or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs.
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review to which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount the benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative can not charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney or non-attorney representative from the claimant's title II or title XVI past-due benefits exceeds the amount of the authorized fee.

Possible Refund To The Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty For Charging An Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services before a court which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, 410.684 *et seq.*, and 416.15 *et seq.*
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)



SOCIAL SECURITY
Office of the Regional Chief Judge

Office of Disability
Adjudication & Review
P.O. Box 13496
Philadelphia, PA 19101

OVERNIGHT DELIVERY

October 31, 2012

Christine Benagh
Administrative Law Judge
SSA/ODAR
1227 25th Street, N.W.
Suite 300
Washington, D.C. 20037

Dear Judge Benagh:

The purpose of this letter is to bring to your attention certain issues concerning an August 2, 2012, prehearing order you issued to the law firm of [REDACTED] in the case of [REDACTED]. The prehearing order is inconsistent with Social Security Administration (SSA) policy and regulations. The order was brought to my attention via correspondence from the representative, [REDACTED], wherein he also requested that you recuse yourself from this case.

To ensure that you serve the public efficiently and effectively, ***I am directing you*** to observe all government-wide and Agency standards of conduct, including a focused attention to duty and claimants' needs, and the requirements of your position as an Administrative Law Judge. This includes the following:

- 1) You are directed to refrain from issuing prehearing orders that require mandatory timeframes for submission of evidence.

Your order requires that the representative submit all requested evidence into the record 30 days before the scheduled hearing date. Under 20 C.F.R. §§ 404.935 and 416.1435, however, a claimant is only required to "make every effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for the hearing." Mandatory timeframes for submission of evidence are inconsistent with these regulations. Therefore, you are directed to refrain from imposing such timeframes on claimants. For your information, on April 16, 2012, Chief Administrative Law Judge Debra Bice issued a reminder memorandum (12-992) discussing this very topic.

- 2) You are directed to avoid placing representatives under oath at hearing and requiring them to testify as witnesses.

Your order states that the representative will be placed under oath at hearing and will be required to state “on penalty of perjury” that all documentation you requested has been submitted. Representatives are required to comply with the regulations set forth in 20 C.F.R. §§ 404.1740 and 416.1540. Under the regulations, a representative has no duty to provide sworn testimony in a case as a witness. Being required to do so is fundamentally inconsistent with the representative’s role as counsel to the claimant. It undermines the claimant’s right to due process by changing the representative’s role from counsel to witness. Furthermore, it is inconsistent with the Rules of Professional Conduct for attorneys in most jurisdictions to serve as a witness in a matter where they are representing a party absent extenuating circumstances.

It is ultimately the duty of SSA to ensure that the administrative record is fully developed. *See* 20 C.F.R. §§ 404.1512(d) and 416.912(d). While it is appropriate to question representatives regarding the completeness of the record, it is inappropriate to require them to testify under oath regarding the evidence in a case. Accordingly, I direct you to refrain from this practice.

- 3) When issuing requests for evidentiary submissions, you are directed to conform with 20 C.F.R. §§ 404.1512 and 416.912.

Your order states that the claimant “must submit into evidence” numerous categories of documents, including arrest records and documents in the possession of Binder & Binder containing specific denotations. Under 20 C.F.R. §§ 404.1512(c) and 404.912(c), if asked, a claimant “must provide evidence about” age, education and training, work experience, daily activities, efforts to work, and any other factors showing how the claimant’s impairment affects his/her ability to work. You are directed to refrain from issuing orders mandating the production of evidence not set forth in 20 C.F.R. §§ 404.1512 and 404.912.

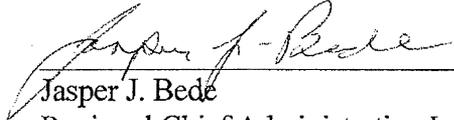
Claimants are only required to “bring to our attention everything that shows that [they] are blind or disabled.” 20 C.F.R. §§ 404.1512(a), 416.912(a). ALJs, moreover, “have a duty to ensure that the administrative record is fully and fairly developed.” HALLEX I-2-6-56, Note 2. An ALJ must develop the claimant’s “complete medical history” for at least the 12 months preceding the month in which the claimant filed the application, and “make every reasonable effort” to help the claimant get medical reports from medical sources when he or she gives us permission to request them. 20 C.F.R. §§ 404.1512(d), 416.912(d). It also bears reminding that our proceedings are non-adversarial in nature. *Id.* §§ 404.900(b), 405.1(c)(1), and 416.1400(b). Please be mindful of these basic principles when requesting evidence.

Although this directive does not constitute disciplinary action, please be advised that failure to follow this management directive may lead to disciplinary action. As this case has been resolved based on your finding that the claimant is entitled to benefits, the issue of whether or not you should

recuse yourself due to bias is moot. When issuing pre-hearing orders in the future, please be mindful of any appearance of bias that may arise from your orders.

I urge you to accept this in the spirit in which it is given, as notice that your efficient case management has a profound effect on this Agency and the public we serve. For your convenience, I am enclosing copies of the Chief Judge Memorandum concerning prehearing orders and the C.F.R. sections cited herein.

Respectfully,


Jasper J. Bede
Regional Chief Administrative Law Judge

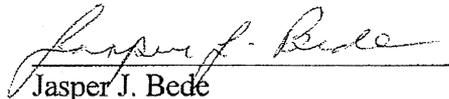
Enclosure:



cc:

John A. Thawley, Hearing Office Chief Administrative Law Judge

On October 31, 2012, the original letter was sent to Judge Benagh's work address via UPS overnight mail.


Jasper J. Bede
Regional Chief Administrative Law Judge

10/31/2012
Date

MEMORANDUM

To: Disclosure Investigation Unit, United States Office of Special Counsel

From: Honorable Christine P. Benagh
Administrative Law Judge

Date: November 26, 2012

Re: Social Security Directives Violating Statutes and Regulations, Interfering with Statutory Duty to Develop Records in Disability Proceedings, Encouraging Fraud, and Gross Mismanagement and Waste

I have received a letter from Regional Chief Administrative Law Judge, Jasper J. Bede, dated, October 31. Attachment at page 15. He issued three directives to me, arising from a motion for recusal filed by [REDACTED], in a Social Security disability case decided by me. The underlying motion has not been provided to me. Judge Bede's letter threatens me with discipline if I do not comply with its terms.

These directives violate multiple statutes and regulations, constitute significant and substantive interference with my statutory duty to develop the record, encourage fraud, and expose gross mismanagement and waste by the Administration.

1) Judge Bede directed me not to issue further orders mandating a deadline the submission of documentary evidence. Having discovered that [REDACTED] was withholding evidence in disability proceedings, I issued orders requiring the submission of evidence 30 days prior to the scheduled hearing. Judge Bede directed me to cease this practice. His position rests on 20 CFR 404.935 and 416.1435, under which a claimant is required "to make every reasonable effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for hearing."

The regulations quoted in no way preclude issuance of a deadline for the submission of documentary evidence. Judge Bede's position is absurd. The Administration's regulations require submission of written evidence no later than five business days before the date of the scheduled hearing. 20 CFR 404.331. No published regulation prohibits the administrative law judge from ordering an early deadline.

The Administrative Procedure Act reserves to the presiding judge the authority to regulate the course of the hearings. 5 USC 556(c)(5). The Social Security Administration may only direct the manner in which I exercise my statutory power to administer oaths and affirmations, 5 USC 556(c)(1), and the direction must be by published rules of the agency. The Administration may not withhold that statutory power.¹

¹ The Attorney General's Manual on the Administrative Procedure Act, 1947, is explicit:

It is true that the Chief Administrative Law Judge has issued an internal reminder, ordering judges not to issue mandatory time frames for the submission of evidence. D. Bice, *Use of Prehearing Orders—Reminder* (letter 12-992, April 16, 2012)(attached). First, this is an internal memorandum, not the published regulation required by the APA in order for an agency to direct the manner in which a judge exercises her powers under the APA. Second, Judge Bice also takes the position that any mandatory time deadline for the submission of evidence violate the agency's regulations, a position controverted by the Administration's regulations that do require advance filing of documentary evidence.²

I am being threatened with discipline for an action performed as part of my judicial duties that does not violate any published regulation of the Administration.

In addition, the directive and threat of discipline are gross violations of my statutory judicial independence, under the APA,³ as incorporated in my formal position description:

Under the provisions of Titles II and XVI of the Social Security Act and applicable Federal, State, and foreign laws, and in conformity with the

The [APA] language automatically vests in hearing officers the enumerated powers to the extent that such powers have been given to the agency itself, i.e., "within its powers." In other words, not only are the enumerated powers thus given to hearing officers by section 7 (b) without the necessity of express agency delegation, but **an agency is without power to withhold such powers from its hearing officers.** 74. [Fn. omitted, emphases added.]

² It is disturbing that Judge Bice states in her reminder that she learned judges were issuing mandatory timeframes for the submission of written evidence from the National Organization of Social Security Claims Representatives. The Executive Director of NOSSCR is Nancy Shor, who is married to Charles Binder.

³ The concept of judicial independence suggests that "supervision" of judicial conduct needs to be carefully restrained so as to minimize its inhibiting effect on the exercise of judicial functions. Thus, it is almost a universal rule that a judge is not removable because of an erroneous decision or a mistake in judgment. See 53 A.L.R.3d 911, § 11 (1973). Likewise, an administrative law judge should be free of harassment, intimidation or improper influences from agency officials-the Administrative Procedure Act built safeguards into the administrative process, as the Court pointed out in [*Butz v. Economou*, 438 US 478 (1978)], to enhance the impartiality of the decision-making process. . . . The conclusion of the Council that "the claimant was not afforded a fair and proper hearing" is of only collateral interest and is not, as such, an issue in this disciplinary proceeding. A fair hearing is the right of the claimant, a right protected, not by the Commission, but by Appeals Council and the federal courts.

Matter of Chocallo, 2 MSPB 23, 1 MSPR 612 1980).

Administrative Procedure Act, and with full and complete individual independence of action and decision, and without review, the Administrative Law Judge has full responsibility and authority to hold hearings and issue decisions as stated under the above Titles and (1) dismiss or allow requests for hearings and rule on requests for extensions; (2) identify problems and issues to be resolved; . .

The Social Security and Administrative Procedure Acts prohibit substantive review and supervision of the Administrative Law Judge in the performance of his/her quasi-judicial functions of holding hearings and issuing decisions. His/Her decisions may not be reviewed before publication and after publication only by the Appeals Council in certain prescribed circumstances. . . . POSITION DESCRIPTION, Administrative Law Judge (Licensing & Benefits), Agency Position No. 666220, 1-3 (2007).

There is no question but that the Judge Bede's counseling letter is prohibited substantive review and supervision after publication⁴ of my judicial actions and decisions. It is gross interference with my full and complete independence of action and decision without review.

Judge Bice's reminder letter is *ultra vires* in the purest meaning of that term.⁵ The Chief Administrative Law Judge has no authority to supervise the judicial functions of an administrative law judge. To attempt to do violates the Administrative Procedures Act and the position description of the judge. Not even by published regulation may an agency take from a presiding judge the

independent power to conduct the hearing. A published timeframe for the submission of evidence, such as 20 CFR 404.331, may not intrude on the ability of the judge to set other deadlines, as in her discretion are necessary for the conduct of specific cases.

Judge Bede and Judge Bice abuse their authority.

Further, the Administration's position that mandatory timeframes for the submission of written evidence are prohibited and its own regulation mandating the submission of written evidence at least five business days for the hearing are gross mismanagement and

produce enormous waste of government resources, delay the hearings, and contribute significantly to the growing backlog of cases.

⁴ The Agency has argued that Judge Benagh's judicial independence was not compromised, as it only issued the counseling letters after the decision had been issued, that Judge Benagh had not been told how to decide pending case. As the position description makes clear, it is immaterial whether a case is still live before a judge. (Management's argument is fallacious in any event, as the counseling letters are, at least, telling her how to act in and decide future cases. Tr. 389-91, 428-29 and 499-502.)

⁵ Among the earliest of all writs at common law, originating before the reign of Edward I, 1274, was *Quo Warranto*, i.e., "by what authority to you act". It was, and its progeny, remain stalwart obstacles to unrestrained government power.

Early filing of documentary evidence, such as within 60 days after a claimant requests a hearing, permits the judge to ascertain whether the claim can be granted on-the-record without the need for an oral hearing. It permits the judge to know whether a single additional document or set of records may enable her to grant the claim without a full (and expensive) hearing. It permits the judge to determine whether there is or may be missing evidence, such as Workers Compensation examinations or wage information, that she needs to obtain. It permits the judge to understand enough of the claim to know whether the claimant needs a consultative examination. Early filing allows a judge to discover whether the claimant is facing dire financial circumstances or a terminal illness, justifying expedited action. It permits the judge to identify claimants who may be dangerous, in time for appropriate security measures to be taken.

Cases that could have been decided earlier clog the backlog of cases awaiting hearing, because the Administration unlawfully prohibits us from obtaining the complete record early in the proceeding.

In practice, without a serious early filing requirement, many, many hearings must be postponed in order to obtain additional evidence that the claimant did not submit. Each delayed hearing costs the taxpayers additional money. In practice, the record evidence in each cases runs to hundreds, even thousands of pages. A five day deadline is insufficient for the staff to organize the mountains of evidence that come in at the last minute. The deadline is often insufficient for the judge to review and analyze the new evidence in time for the hearing. A judge at hearing without a thorough understanding of the evidence fails in her duty to afford a due process hearing. Material issues are easily missed in such a setting, and production pressures act strongly against delaying the case further to complete the record.

The failure of the Administration to enact a early deadline for the filing of evidence, and its internal, unlawful prohibitions against a judge doing so, are gross mismanagement, abuse of authority, and wasteful of time and resources, as well as violating the Administrative Procedure Act and the terms of the administrative law judge's position description.

2) Judge Bede has no statutory or regulatory authority under which he may prohibit me from administering an oath to a representative. Having discovered that [REDACTED] was withholding evidence, I began placing representatives in disability proceedings under oath, solely for the purpose of ascertaining whether the record were complete. As noted above, the Social Security Administration may only direct the manner in which I exercise my statutory power to administer oaths and affirmations, 5 USC 556(c)(1), and the direction must be by published rules of the agency. The Administration may not withhold that statutory power.

His prohibition against an oath is inconsistent with the Administration's requirement of a declaration under penalty of perjury from representatives on fee petitions. Form SSA-1560-U-4 EF (2-2005) requires a representative, petitioning for a fee, to sign a specific declaration:

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

It is shocking that a federal judge would suggest that representatives have no duty of candor to a tribunal. Judge Bede's directive serves to perpetuate the commission of fraud and prohibited conduct by claimants' representatives and to obstruct the potential criminal and civil penalties that attend the same. Absent the penalty of perjury, an administrative law judge has no ability to ensure that the record is complete.⁶

It is especially disturbing that Judge Bede's directive serves protect [REDACTED], when the Administration is well aware that that attorney has filed false and misleading fee petitions, and withheld evidence. OSC Complaint DI-12-3069.

Judge Bede's directive countermands the statutes and regulations that require truth. Criminal penalties are imposed under 18 USC 1001(a):

- (a) Except as otherwise provided in this section [exceptions pertaining to the judicial and legislative branches], whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

The Administration has the power to impose civil penalties on representatives, under 42 USC 1320a-8 in pertinent part.

⁶ Administrative law judges at the Social Security Administration do not have the enforcement powers that belong to other federal judges. We have no contempt power. We are prohibited from reporting attorney misconduct to a bar association. OSC DI-12-3069. (See United States Department of Justice, *Overview of the Privacy Act of 1974*, 2010, finding that attorneys in their entrepreneurial capacity are not protected by the Privacy Act. www.justice.gov/opc/1974definitions.htm.)

Indeed, in the federal judicial context, formal administration of an oath by a representative is unnecessary to trigger the criminal penalty for perjury, 18 USC 1623(a), it is imposed by statute. Under 18 USC 1621, false certification of truth under penalty of perjury carries criminal penalties. See Charles Doyle, *Perjury Under Federal Law: A Brief Overview*, Cong. Research Serv. (Nov. 2010).

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a-7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or subchapter VIII of this chapter, or eligible for benefits or payments under subchapter XVI of this chapter.

The standards of conduct for representatives before the Administration require a representative to assist a claimant in complying with our requests for information or evidence, and prohibit a representative from knowingly making or presenting, or participating in the making or presentation of, false or misleading oral or written statements, assertions, or representations about a material fact or law concerning a matter within our jurisdiction. 20 CFR 404.1740:

(c) *Prohibited actions.* A representative must not: . . .

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about

- a material fact or law concerning a matter within our jurisdiction; . . .
- (7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to: . .
- (ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; . . .
- (8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

The regulations also make clear the duty to provide complete evidence, 20 CFR 404.1512.

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other factors showing how your impairment(s) affects your ability to work. [Emphasis added.]

See also 42 USC 405(u)(1)(2000); 42 USC 1383(e)(7)(B), and Social Security Ruling 00-2p, *Fraud and Similar Fault*.

In addition, the directive and threat of discipline are gross violations of my statutory judicial independence, under the APA,⁷ as incorporated in my formal position description:

⁷ The concept of judicial independence suggests that “supervision” of judicial conduct needs to be carefully restrained so as to minimize its inhibiting effect on the exercise of judicial functions. Thus, it is almost a universal rule that a judge is not removable because of an erroneous decision or a mistake in judgment. See 53 A.L.R.3d 911, § 11 (1973). Likewise, an administrative law judge should be free of harassment, intimidation or improper influences from agency officials—the Administrative Procedure Act built safeguards into the administrative process, as the Court pointed out in [*Butz v. Economou*, 438 US 478 (1978)], to enhance the impartiality of the decision-making process. . . . The conclusion of the Council that “the claimant was not afforded a fair and proper hearing” is of only collateral interest and is not, as such, an issue in this disciplinary proceeding. A fair hearing is the right of the claimant, a right protected, not by the Commission, but by Appeals Council and the federal courts.

Matter of Chocallo, 2 MSPB 23, 1 MSPR 612 1980).

Under the provisions of Titles II and XVI of the Social Security Act and applicable Federal, State, and foreign laws, and in conformity with the Administrative Procedure Act, and with full and complete individual independence of action and decision, and without review, the Administrative Law Judge has full responsibility and authority to hold hearings and issue decisions as stated under the above Titles and (1) dismiss or allow requests for hearings and rule on requests for extensions; (2) identify problems and issues to be resolved; . . . The Social Security and Administrative Procedure Acts prohibit substantive review and supervision of the Administrative Law Judge in the performance of his/her quasi-judicial functions of holding hearings and issuing decisions. His/Her decisions may not be reviewed before publication and after publication only by the Appeals Council in certain prescribed circumstances. . . . POSITION DESCRIPTION, Administrative Law Judge (Licensing & Benefits), Agency Position No. 666220, 1-3 (2007).

The directive that I may not administer an oath to a representative to ensure that the record is complete violates the Administrative Procedure Act and the Social Security Act. It is inconsistent with 18 USC 1001(a), 42 USC 1320a-8, 20 CFR 404.1740, and 20 CFR 404.1512. It is inconsistent with agency practice in other settings. Form SSA-1560-U-4 EF (2-2005).

The directive also could constitute both obstruction of justice, 18 USC 1502, and a corrupt attempt to intimidate or impede, by letter, an officer and employee of the Social Security Administration acting in an official capacity to carry out a duty under the Social Security Act and to attempt to obstruct or impede the due administration of the Act. 42 USC 1320a-8b.

3) Judge Bede may not prohibit me from requiring the submission of specific evidence. He has no authority to do so. There is no regulation that restricts the scope of relevant evidence that may be requested. 20 CFR 404.1512 gives examples of evidence that may be requested, but by its own terms does not limit the types of evidence that may be requested, as its response requirement extends to all other relevant evidence that is requested, without redaction.

Judge Bede singled out two categories of evidence he thought it improper for me to request. The first category was any arrest records. This is inconceivable. Arrest records are almost always relevant. They can reveal whether the claimant is engaged in substantial gainful activity, as a drug dealer, burglar, or prostitute. Arrest records can reveal additional impairments, not otherwise available, such as substance abuse. These are issues that an administrative law judge is required to address. 20 CFR 404.1520, 404.1535, and 404.416.935. Judge Bede is instructing me, on pain of discipline, to leave the record incomplete.

Judge Bede is instructing me to leave out of the record "documents in the possession of [REDACTED] containing specific denotations". [REDACTED] firm has used

“stoplight” markings to identify evidence: green for that evidence that should go through to the administrative law judge, yellow for evidence that should only be submitted with caution, and red for evidence that should be withheld from the judge. In five cases, I directed the submission of evidence marked yellow and red, to the extent that these had not previously been submitted and was not duplicative. (Template order attached with identification of the five cases involved.)

As I cannot know whether evidence is being withheld and have no means of knowing or discovering what that evidence might be or the source from which it came, the only means at my disposal is to order the production of withheld evidence by the coding method employed by [REDACTED]

Judge Bede ordered me not to pursue such evidence. His order is unlawful and an abuse of authority.

If my orders related to evidence production are over-reaching, jurisdiction lies with the Appeals Council, not with Judge Bede. This directive constitutes substantial interference on the merits with my obligation to fully and fairly develop the record before me.

The directive suggests that the claimant and representative have a right to withhold relevant, particularly, specifically adverse evidence. That is, in fact, the position of the Administration.

In May of this year, in response to a question from Senator Thune (R-SD) regarding the December 2011 *Wall Street Journal* article re withholding evidence, specifically by Binder & Binder, the Commissioner testified before the Senate Finance Committee.

Commissioner Astrue: Senator, I'm afraid I am going to have to disagree with a number of the assumptions of your question. First of all, I am familiar with the Wall Street Journal article. We did not take no action - we did refer that to the Office of the Inspector General. If you have questions about the progress of that, I would encourage you to talk to the Inspector General.

But that article was relatively thin in terms of the content of allegations. There really was not, in my opinion, very much there. It's also based in part on the misassumption that there's a requirement for all relevant evidence to be provided to the judge. Right now, that is not the law. The previous two Commissioners tried to make that the law and my understanding is that they received a lot of opposition and not much support here in the Congress for that.⁸

First of all, the Wall Street Journal had it dead wrong on what the law is. And second, there wasn't much in the way of allegations. Third, it would be unprecedented to go back and review all cases by a law firm on evidence anywhere near this thin. If you had proof of real fraud, and I have no information

⁸ I am aware of no support for this sentence.

from the Inspector General that suggests that we have that, then it would be totally unprecedented to do that. Any court that would look at that would throw it out. It would be an enormous waste of the taxpayers' dollars for me to do that.

Sen. Thune asked the Commissioner whether he could summarize the Inspector General's findings. He responded that there is no report yet and he testified:

Commissioner Astrue: I don't have much more than that. But certainly, my expectation ... Again, Senator, read that Wall Street Journal article very carefully. When you realize, first of all, that there is not a legal obligation to present every bit of evidence to the Agency because our rules are not written that way, there is a factual error underlying that whole article. Past that, there is not very much very specific in terms of evidence: there is unsupported hearsay, that type ... It may be true. But in order for us to take action, we've got to have some proof and evidence. The Wall Street Journal article did not provide very much for the Inspector General to go on.

http://socsecnews.blogspot.com/2012_05_01_archive.html. [Emphases added.]

The Commissioner, head of the agency, himself a lawyer, assisted by a General Counsel, and overseen by an Inspector General,⁹ cannot be unaware of the requirements that all relevant evidence be submitted, contained in the criminal code, the Social Security Act, and the Administration's own regulations. 18 USC 1001(a), 42 USC 1320a-8, 20 CFR 404.1740, and 20 CFR 404.1512. His testimony to Congress was false. See 18 USC 1505; C. Doyle, *Obstruction of Congress: a Brief Overview of Federal Law Relating to Interference with Congressional Activities*, 17 – 20 (Cong. Research Serv. Rept., 2007).

There have been organized attempts to eliminate the requirement that adverse evidence be submitted. 63 FR 41,404 at 41,407 (Aug. 4, 1998)(e.g., comments of the American Bar Association and NOSSCR); Robert E. Rains, *Professional Responsibility and Social Representation: The Myth of the State-Bar Bar to Compliance with Federal Rules on Production of Adverse Evidence*, 92 CORNELL L. REV. 364 (2007)(Congress has prohibited claimants and their representatives from withholding material facts through section 201 of the Social Security Protection Act of 2004, Pub. L. No. 108-203, 118 Stat. 493 (amending sections 1129(a) and 1129A of the Social Security Act, codified at 42 USC 1320a-8(a)(1) and 1320A(a)). (Statute attached.)

The conflict between the plain language of the statutes and regulations, and the Administration's interpretation has been constant over time. When the Social Security Protection Act was passed in 2004, I queried the Regional Attorney for Region III whether section 201 required the filing of adverse evidence. In a telephone discussion,

⁹ The Commissioner, the General Counsel, and the Inspector General, took no action to correct that testimony, of which I am aware.

she informed me that it did not, that the only purpose to the statute was to permit the imposition of civil penalties, in the event that a claimant was paid benefits obtained by fraud. I have been reprimanded in the past for finding that an attempt to withhold material adverse evidence undercut the credibility of a claimant. I have been told that Sarah Humphries, Esq., from the Administration's Office of General Counsel, has made repeated, official presentations to representative groups, in which she took the position that no one was required to file adverse evidence. In fact, the Office of the General Counsel goes further and affirmatively advises representatives to withhold adverse evidence. S. Humphries, *Ethical Considerations In Representing Social Security Disability Claimants*, Slide 14 (slide presentation, 2010):

ADVERSE EVIDENCE

In both 1995 and 1997 the ABA opined that these rules are overly broad with regards to the duty to submit evidence. "The ABA believed that the rules continue to include provisions that could give rise to serious ethical conflicts." 63 FR 41407

- Advise from SSA in 2004:
 - The regulations require claimants to prove their *disability*, not their *ability*.
 - The representative stands in the same position as the claimant.
 - If faced with a request for information that is adverse, decline to provide it because it does not support the claim for disability.
 - But don't make a false or misleading statement.
- ***Sarah Humphreys, Office of General Counsel ODA/SSA, 2004 FOSSCR, Austin, TX.***



Suzanne Villalón Hinojosa
1-800-481-0302

svhdisabilityhelp@gmail.com
www.southtexasdisabilitylawyer.com

Even if everything the agency interpretation of its own statute and regulations were accurate, the criminal statute still has the force of law. 18 USC 1001. Official statements by the Administration on adverse evidence assiduously avoid any mention of that.

This Administration's position is a perversion of a representative's duty to assist a claimant in submitting evidence that the claimant wishes to be submitted. 20 CFR 404.1740(b)(1). Section 404.1740 in no way suggests that a representative's obligations to submit evidence ends there. The controlling criminal and civil statutes

have been cited above, as well as 20 CFR 404.1512, 416.912, and 404.1740, in their entirety.

Section 404.1740 prohibits representatives from making false or misleading statements or representations. Section 404.1512 specifically requires the claimant to “bring to our attention everything that shows that you are blind or disabled.” Then, the regulations continue that the claimant must:

provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other factors showing how your impairment(s) affects your ability to work. 20 CFR 404.1512(c). . . .

(d)(2) By “complete medical history,” we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. *See* 20 CFR 416.912 *for corresponding provisions related to title XVI.*

Judge Bede is prohibiting me from developing evidence that may be adverse to a claimant, specifically the evidence being withheld. Under statute and ethical considerations, as a federal administrative law judge, I cannot be party to or condone any fraud or attempted fraud on the federal government by failing in my solemn duty and public trust to develop evidence adverse to the claim before me, protecting the integrity of the process as well as assisting all claimants in developing the evidence that supports their claims. My requests for medical and vocational records of the claimant being withheld by [REDACTED] fall squarely within authority of the statutes and regulations, as the statutes and regulations require evidence without material omission or redaction. I am aware of no avenue to satisfy Judge Bede’s directive that I refrain from requesting evidence being withheld in a manner that would be consistent with the statutes and regulations and my obligations thereunder.

4) The ramifications of a policy position advocating that representatives withhold evidence are enormous. For nearly 20 years, representatives have been given official *carte blanche* by the Social Security Administration to evade the criminal penalties for falsehood and misrepresentation. While there are many claimants’ advocates who are conscientious in producing adverse evidence, there are others who are not, to my

knowledge, [REDACTED] [REDACTED] and [REDACTED]. OSC DI-12-3069.

Thousands, possibly millions of claimants, have been granted and paid benefits on incomplete records from which adverse evidence was withheld. Since each claimant found to be disabled, on average, receives roughly \$250,000 in lifetime disability benefits, the burden on the nation's budget is staggering.

Hours of time and millions of dollars are expended by the agency to obtain a partial record. Time and resources are squandered by the agency admonishing judges who attempt to complete the record. OSC DI 12-3069.

The backlog is swollen with claimants whose only chance at receiving benefits is to withhold adverse evidence. The costs to the claimants with legitimate disabilities is incalculable. Many die while waiting.

The Social Security Administration has made a travesty of the due process hearing. For the process to have any integrity, the interests of the taxpayers must be respected as well. The American people have the right to expect that disability benefits are granted to people who are disabled. By permitting claimants and representatives to withhold the whole truth, the Administration does not just condone fraud on a massive scale. As shown by the statements of Ms. Humphries, Judge Bede, Judge Bice, and the Commissioner, the agency actively encourages fraud.

5) The last of Judge Bede's instructions directs that I "observe all government-wide and agency standards of conduct". I do not know what that means. I am unaware of any standards of conduct applicable to me that could be related to [REDACTED] motion and complaint. This directive is mere license for the Administration to discipline me at whim.

6) Finally, it is unlawful for Judge Bede to withhold a motion from me or to consider or to act on such a motion, as the Administrative Procedure Act reserves to the presiding judge the power to dispose of procedural requests or similar matters. 5 USC 556(c)(9).

Moreover, under HALLEX I-2-1-60, jurisdiction for a recusal lies with the presiding judge. If the presiding judge does not recuse, the appeal lies with the Appeals Council. Judge Bede has no authority to consider or to act upon such a motion, and, certainly, no authority to withhold such pleadings from me.

Third, as to Mr. Binder's complaint, the Collective Bargaining Agreement between the agency and the Association of Administrative Law Judges, IFPTE (AFL-CIO), requires that the agency provide such complaints to the subject judge as soon as possible after receipt. Art. 5. Sec. 7. Judge Bede violated the Collective Bargaining Agreement, and continues to do so, as I have not even yet been provided with a copy of the motion or complaint.

Neither the motion nor the complaint appear in the current record of the case, Will8113, which is also improper.

In conclusion, Judge Bede's directives to me of October 31, 2012, violate law and regulation, and constitute abuse of authority and gross mismanagement. 5 USC 1213(b).

LETTER OF JUDGE BEDE



SOCIAL SECURITY
Office of the Regional Chief Judge

Office of Disability
Adjudication & Review
P.O. Box 13496
Philadelphia, PA 19101

OVERNIGHT DELIVERY

October 31, 2012

Christine Benagh
Administrative Law Judge
SSA/ODAR
1227 25th Street, N.W.
Suite 300
Washington, D.C. 20037

Dear Judge Benagh:

The purpose of this letter is to bring to your attention certain issues concerning an August 2, 2012, prehearing order you issued to the law firm of [REDACTED] in the case of [REDACTED]. The prehearing order is inconsistent with Social Security Administration (SSA) policy and regulations. The order was brought to my attention via correspondence from the representative, [REDACTED], Esq., wherein he also requested that you recuse yourself from this case.

To ensure that you serve the public efficiently and effectively, I am directing you to observe all government-wide and Agency standards of conduct, including a focused attention to duty and claimants' needs, and the requirements of your position as an Administrative Law Judge. This includes the following:

- 1) You are directed to refrain from issuing prehearing orders that require mandatory timeframes for submission of evidence.

Your order requires that the representative submit all requested evidence into the record 30 days before the scheduled hearing date. Under 20 C.F.R. §§ 404.935 and 416.1435, however, a claimant is only required to "make every effort to be sure that all material evidence is received by the administrative law judge or is available at the time and place set for the hearing." Mandatory timeframes for submission of evidence are inconsistent with these regulations. Therefore, you are directed to refrain from imposing such timeframes on claimants. For your information, on April 16, 2012, Chief Administrative Law Judge Debra Bice issued a reminder memorandum (12-992) discussing this very topic.

- 2) You are directed to avoid placing representatives under oath at hearing and requiring them to testify as witnesses.

Your order states that the representative will be placed under oath at hearing and will be required to state "on penalty of perjury" that all documentation you requested has been submitted. Representatives are required to comply with the regulations set forth in 20 C.F.R. §§ 404.1740 and 416.1540. Under the regulations, a representative has no duty to provide sworn testimony in a case as a witness. Being required to do so is fundamentally inconsistent with the representative's role as counsel to the claimant. It undermines the claimant's right to due process by changing the representative's role from counsel to witness. Furthermore, it is inconsistent with the Rules of Professional Conduct for attorneys in most jurisdictions to serve as a witness in a matter where they are representing a party absent extenuating circumstances.

It is ultimately the duty of SSA to ensure that the administrative record is fully developed. See 20 C.F.R. §§ 404.1512(d) and 416.912(d). While it is appropriate to question representatives regarding the completeness of the record, it is inappropriate to require them to testify under oath regarding the evidence in a case. Accordingly, I direct you to refrain from this practice.

- 3) When issuing requests for evidentiary submissions, you are directed to conform with 20 C.F.R. §§ 404.1512 and 416.912.

Your order states that the claimant "must submit into evidence" numerous categories of documents, including arrest records and documents in the possession of Binder & Binder containing specific denotations. Under 20 C.F.R. §§ 404.1512(c) and 404.912(c), if asked, a claimant "must provide evidence about" age, education and training, work experience, daily activities, efforts to work, and any other factors showing how the claimant's impairment affects his/her ability to work. You are directed to refrain from issuing orders mandating the production of evidence not set forth in 20 C.F.R. §§ 404.1512 and 404.912.

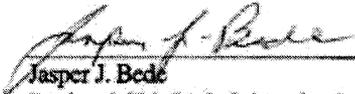
Claimants are only required to "bring to our attention everything that shows that [they] are blind or disabled." 20 C.F.R. §§ 404.1512(a), 416.912(a). ALJs, moreover, "have a duty to ensure that the administrative record is fully and fairly developed." HALLEX I-2-6-56, Note 2. An ALJ must develop the claimant's "complete medical history" for at least the 12 months preceding the month in which the claimant filed the application, and "make every reasonable effort" to help the claimant get medical reports from medical sources when he or she gives us permission to request them. 20 C.F.R. §§ 404.1512(d), 416.912(d). It also bears reminding that our proceedings are non-adversarial in nature. *Id.* §§ 404.900(b), 405.1(c)(1), and 416.1400(b). Please be mindful of these basic principles when requesting evidence.

Although this directive does not constitute disciplinary action, please be advised that failure to follow this management directive may lead to disciplinary action. As this case has been resolved based on your finding that the claimant is entitled to benefits, the issue of whether or not you should

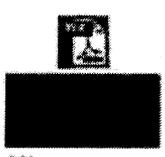
recuse yourself due to bias is moot. When issuing pre-hearing orders in the future, please be mindful of any appearance of bias that may arise from your orders.

I urge you to accept this in the spirit in which it is given, as notice that your efficient case management has a profound effect on this Agency and the public we serve. For your convenience, I am enclosing copies of the Chief Judge Memorandum concerning prehearing orders and the C.F.R. sections cited herein.

Respectfully,


Jasper J. Bede
Regional Chief Administrative Law Judge

Enclosure:



cc:
John A. Thawley, Hearing Office Chief Administrative Law Judge

On October 31, 2012, the original letter was sent to Judge Benagh's work address via UPS overnight mail.


Jasper J. Bede
Regional Chief Administrative Law Judge

10/31/2012
Date

Cited portions of 18 USC

18 USC 1001. Statements or entries generally.

(a) Except as otherwise provided in this section [relating solely to matters within the jurisdiction of the legislative or judicial branches], whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

18 USC 1505. Obstruction of proceedings before departments, agencies, and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

18 USC § 1621 - Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 USC § 1622 - Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

18 USC §1623.

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

**THE SOCIAL SECURITY ACT
CIVIL MONETARY PENALTIES AND ASSESSMENTS FOR TITLES II, VIII,
AND XVI**

Sec. 1129. [42 U.S.C. 1320a-8] (a)(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1128, such a person who is a medical provider or physician from participation in the programs under title XVIII.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or title VIII, or eligible for benefits or payments under title XVI.

SEC. 1129B. [42 U.S.C. 1320a-8b]

Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or

communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than \$5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than \$3,000, imprisoned not more than 1 year, or both. In this subsection, the term “threats of force” means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

20 CFR § 404.1512. Evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything that shows that you are blind or disabled. This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are disabled, its effect on your ability to work on a sustained basis. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by “evidence.”* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim. This includes, but is not limited to:

(1) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 404.1528 (b) and (c);

(2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(4) Information from other sources, as described in § 404.1513(d);

(5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind;

(6) At the initial level of the administrative review process, when a State agency disability examiner makes the initial determination alone (*see* § 404.1615(c)(3)), opinions provided by State agency medical and psychological consultants based on their review of the evidence in your case record; *See* § 404.1527(e)(2)-(3).

(7) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (*see* § 404.1615(c)(3)),

findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (*see* § 404.1527(f)(1)(iii)); and

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. *See* §§ 404.1527(f)(2)-(3).

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your claim. If we ask you, you must provide evidence about:

- (1) Your age;
 - (2) Your education and training;
 - (3) Your work experience;
 - (4) Your daily activities both before and after the date you say that you became disabled;
 - (5) Your efforts to work; and
 - (6) Any other factors showing how your impairment(s) affects your ability to work.
- In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

(d) *Our responsibility.* Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports.

(1) “Every reasonable effort” means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days

after the initial request, if the evidence has not been received, we will make one followup request to obtain the medical evidence necessary to make a determination. The medical source will have a minimum of 10 calendar days from the date of our followup request to reply, unless our experience with that source indicates that a longer period is advisable in a particular case.

(2) By “complete medical history,” we mean the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for the 12-month period prior to (1) the month you were last insured for disability insurance benefits (see § 404.130), (2) the month ending the 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability (see § 404.335(c)(1)), or (3) the month you attain age 22 and you are applying for child's benefits based on disability (see § 404.350(e)).

20 CFR 404.1740. Rules of conduct and standards of responsibility for representatives. . . .

(b) *Affirmative duties.* A representative must, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see 404.1512 in disability and blindness claims):

(1) Act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim, and forward the same to us for consideration as soon as practicable. [N.B., This duty to assist the claimant does not exclude the additional duties imposed by the regulations.] In disability and blindness claims, this includes the obligations to assist the claimant in bringing to our attention everything that shows that the claimant is disabled or blind, and to assist the claimant in furnishing medical evidence that the claimant intends to personally provide and other evidence that we can use to reach conclusions about the claimant's medical impairment(s) and, if material to the determination of whether the claimant is blind or disabled, its effect upon the claimant's ability to work on a sustained basis, pursuant to 404.1512(a);

(2) Assist the claimant in complying, as soon as practicable, with our requests for information or evidence at any stage of the administrative decisionmaking process in

his or her claim. In disability and blindness claims, this includes the obligation pursuant to § 404.1512(c) to assist the claimant in providing, upon our request, evidence about:

(i) The claimant's age;

(c) *Prohibited actions*. A representative must not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act; . . .

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction; . . .

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to: . . .

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence;

(8) Violate any section of the Act for which a criminal or civil monetary penalty is prescribed;

(9) Refuse to comply with any of our rules or regulations;

(10) Suggest, assist, or direct another person to violate our rules or regulations;

(11) Advise any claimant or beneficiary not to comply with any of our rules or regulations;

TEMPLATE EVIDENCE PRODUCTION ORDER

[REDACTED]

[REDACTED]

[REDACTED]

To whom it may concern:

The disability hearing regarding the application[s] of the above-named claimant is before me and has been scheduled for hearing. At least 30 days before the scheduled hearing date, the claimant must submit into evidence any and all medical and vocational documents, not heretofore submitted, but excluding any and all records duplicating documents previously submitted, that are in any way relevant to the disability analysis during the period beginning one year before the alleged disability onset date through the present:

- a) Records from medical sources, excluding dentists, optometrists, and opticians;
- b) Reports of independent medical examiners;
- c) Pharmaceutical records;
- d) Drug and/or alcohol treatment;
- e) Arrest records;
- f) Vocational rehabilitation, training, testing, or placement records;
- g) Transcripts of Workers' Compensation hearings;
- h) Decisions of Workers' Compensation insurers and boards;
- i) Time and attendance pay records from employers; and
- j) Medical and/or vocational documents in the possession of [REDACTED] (now or in the past), specifically including materials marked as "red" or "yellow" in [REDACTED]'s records (other such designations that indicate the material is not to be submitted or submitted only with caution).

Please be aware that the individual representing the claimant at hearing will be required to state, under oath and on penalty of perjury, that all documentation requested herein has been submitted.

Very truly yours,

Christine P. Benagh

ATTACHMENT 28

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 04/29/2013 **TO:** 04/29/2013

RELATED CASE NUMBERS:

REPORTED BY: MICHAEL MCGILL

FIELD DIVISION: PHILADELPHIA

OFFICE: PHILADELPHIA

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of Administrative Law Judge (ALJ) Christine Benagh. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated May 8, 2013.

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INVESTIGATIVE ACTIVITY:

On April 29, 2013, Resident Agent in Charge (RAC) Misha Kelly, Attorney Erin Justice and I conducted a voluntary interview of ALJ Christine Benagh at her residence in Washington, DC. I advised ALJ Benagh that the purpose of the interview was to discuss allegations against employees of the Office of Adjudication and Review (ODAR) made by her to the Office of Special Counsel (OSC). Prior to the interview, we identified ourselves to ALJ Benagh by producing our credentials. ALJ Benagh agreed to the interview, which began at approximately 2:50 PM.

In the days leading up to the interview, ALJ Benagh provided me (via email and facsimile) copies of documentation that she had provided to OSC as part of her complaint. ALJ Benagh advised she has been an ALJ for 19 years. She began working as an ALJ with SSA in 1994. From 1994 until 1997, she served as an ALJ in Johnstown, PA. From 1997 until the present, ALJ Benagh has served as an ALJ in Washington, DC. Prior to her employment with SSA, ALJ Benagh worked at a private law firm (Nixon-Peabody) for eight years. ALJ Benagh also worked at the Federal Energy Regulation Commission. She earned her J.D. degree at Catholic University.

ALJ Benagh began by describing an incident that occurred in 1996 while she served as an ALJ in Johnstown, PA. In this incident, ALJ Benagh noticed that a Pittsburgh claimant representative was filing fee petitions and claiming mileage reimbursement for multiple claimants. According to ALJ Benagh, the claimant representative represented six clients on one particular day, and submitted mileage requests for all six of them. ALJ Benagh tried to deny the fee petitions based on the "double mileage" claims, but was advised by RCALJ Cristaudo that she was only allowed to deny the mileage requests – not the full petitions. ALJ Benagh alleged that she tried to refer this incident to the OIG, but it got lost somehow.

ALJ Benagh then described the "P [REDACTED]" case included in the OSC complaint. The claimant in this case, which began in 2002, was [REDACTED]. According to ALJ Benagh, an ALJ named Jack Taggard originally granted a partially favorable decision on this case. As a result, the claimant representative, [REDACTED], was paid under a fee agreement. ALJ Benagh stated that at the time, the regulations required that the claimant representative make a statement indicating he or she intended to ask for more money on an appeal of the partially favorable decision. [REDACTED] subsequently appealed ALJ Taggard's partially favorable decision to the Appeals Council which upheld its original decision. [REDACTED] then appealed to the Federal Court (paid for by the Equal Access to Justice Act), which remanded the case back to the Appeals Council, which remanded the case back to ODAR where it was assigned to ALJ Benagh. ALJ Benagh granted a fully favorable decision. [REDACTED] then filed paperwork indicating it wanted to file a fee petition requesting \$10,079.

According to ALJ Benagh, [REDACTED] had already been paid by SSA on the partially favorable decision made by ALJ Taggard. As a result, ALJ Benagh denied [REDACTED] fee petition, which appeared to her to be requesting reimbursement for work it had already been paid for

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under the original fee agreement. ALJ Benagh advised that [REDACTED] went to RCALJ Cristaudo directly off the record about the fee petition denial. RCALJ Cristaudo ordered ALJ Benagh to rule on the fee petition. ALJ Benagh sat on the order. ALJ Benagh agreed to a \$7,000 fee petition. According to ALJ Benagh, RCALJ Bede, who had recently taken over for RCALJ Cristaudo told her the fee had to be at least \$7,001. ODAR sent an analyst named Virgilio Bajo to review the fee petition. Using the Bajo analysis, ALJ Benagh then approved a fee of \$1,179.63 which she memorialized in a *Memorandum Order Denying in Part and Authorizing in Part Fee Petition*. (P [REDACTED], Exhibit J) [REDACTED] subsequently appealed ALJ Benagh's fee petition decision to RCALJ Bede.

At this point in the interview, I asked ALJ Benagh to explain the difference between fee agreements and fee petitions. ALJ Benagh advised that both fee agreements and fee petitions are statutorily described in 42 USC 406. According to ALJ Benagh, almost everybody uses fee agreements because the process is easier. Claimants hire representatives on a contingency basis. If benefits are awarded, the representative receives the lesser of 25 percent of past due benefits, or \$6,000. However, attorneys can ask for more money than the amounts provided for in the fee agreement process. ALJ Benagh advised that regulations interpreting 42 USC 406 can be found at 20 CFR 404 (for Title II) and 416 (for Title XVI). There is no discussion of 42 USC 406 in the HALLEX.

ALJ Benagh stated that if she did not want to approve a fee agreement, she could send it to the RCALJ for a decision. This could occur, for example, when a representative did not show up for a hearing and benefits were approved. However, she has had instances where a claimant representative never sent evidence, did not show up at the hearing, or didn't even know the claimant's name, but she refrained from sending it to the RCALJ because RCALJ Bede "would pay it."

ALJ Benagh provided a breakdown of the HOCALJ's in the Washington DC Hearing office. HOCALJ Banks served from 2000 – 2009, Acting HOCALJ Sturek served from 2009 – August 2012, and HOCALJ Thawley has served from August 2012 until the present.

With respect to fee petitions, ALJ Benagh advised the regulations can be found in 20 CFR 404 and 416. The regulations do not have a time deadline for fee petitions in the regulations. The HALLEX, however, has multiple deadlines for fee petitions. ALJ Benagh stated that the statute (42 USC 406) clearly has a 15 day deadline after the notice of award letter for the filing of fee petitions. ALJ Benagh went on to state that she has never seen a fee petition filed on time with regards to the 15 day deadline. In her experience, fee petitions are often filed months or sometimes years later.

ALJ Benagh estimated that only ten percent of her cases are fee petitions cases. The rest are fee agreement cases. In her experience, the "conveyor belt" law firms submit most of the fee petitions. These law firms include [REDACTED] and [REDACTED]. These firms tend to send lawyers in who are not familiar with the case.

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According to ALJ Benagh, the fee petition cover sheet certifies that the claimed amounts are true and correct. Claimant representatives are supposed to attach their hours by time and task. ALJ Benagh insisted that in the "P [REDACTED] case, [REDACTED] submitted a fee petition containing time spent on tasks for the earlier case for which the firm had already been paid. The firm also requested reimbursement for an hour and a half spent "*dictating decision to judge.*" In her *Memorandum Order Denying in Part and Authorizing in Part Fee Petition*, ALJ Benagh cited these two instances (among others) as part of her rationale for denying the full fee petition.

In a July 8, 2008 letter from [REDACTED] to RCALJ Bede, [REDACTED] advised RCALJ Bede that "*Although she claims I dictated the on-the-record decision to her, it was not our intention to convey that, it simply means that our summary of the medical evidence and theory of the disability was initially dictated and addressed to the ALJ and subsequently it was transcribed, edited and mailed to Judge Benagh on September 2, 2003. A copy of this request for an on-the-record decision is enclosed for your review.*" (P [REDACTED], Exhibit K) ALJ Benagh vehemently denies ever receiving a copy of this request for an on-the-record decision, and maintains that Binder and Binder never sent the document to RCALJ Bede, either. RCALJ Bede ultimately approved the \$10,079 fee petition in this case, after a Paralegal Specialist in the Regional Office analyzed the facts of the case. (P [REDACTED], Exhibit N) In addition, ALJ Benagh received a Guidance and Counseling memorandum from HOCALJ Banks relating to her *Memorandum Order Denying in Part and Authorizing in Part Fee Petition*. (P [REDACTED], Exhibit L) ALJ Benagh grieved receipt of the Guidance and Counseling memorandum pursuant to Article 10 of the Collective Bargaining Agreement. (P [REDACTED], Exhibit M) According to ALJ Benagh, an arbitration hearing took place, and the arbitrator agreed with ODAR management. However, the missing document never surfaced during the arbitration hearing.

ALJ Benagh has no idea why RCALJ Bede or anybody else wants to grant all of these fee petitions. She surmised it was a cultural issue involving egos, and claimed neither Cristaudo nor Bede had ever been litigators. ALJ Benagh summed up the [REDACTED] case by stating the main issue were that [REDACTED] requested reimbursement for attorney fees for work actually done by clerks; [REDACTED] was late on the filing deadline, and no funds should have been paid for the line item relating to [REDACTED] dictating the on-the-record decision to ALJ Benagh. According to ALJ Benagh, in the end, RCALJ Bede paid the full \$10,079, and she was admonished.

ALJ Benagh then described the "K [REDACTED]" case included in the OSC complaint. The claimant in this case, which began in 2005, was [REDACTED]. According to ALJ Benagh, the issue in this case involved [REDACTED] submission of Forms SSA-1560 (Fee Petition Approval Requests) for employees of [REDACTED] who no longer worked at the firm. ALJ Benagh strongly suspects the signatures for attorneys [REDACTED] and [REDACTED] are forgeries. [REDACTED] signature appears on page 89 of her exhibits related to "K [REDACTED]", while [REDACTED] signature appears on page 92.

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Upon receiving the Forms 1560 in April 2011, ALJ Benagh noticed the suspected forgeries and brought them to the attention of then Acting HOCALJ Sturek. According to ALJ Benagh, Acting HOCALJ Sturek agreed that the signatures appeared to be forgeries. ALJ Benagh wanted to bring the suspected forgeries to the IG. Ultimately, in January 2012, she sent a subpoena to [REDACTED] requiring that he appear at a hearing on the fee petition scheduled for April 20, 2012.

[REDACTED] hired the law firm of Pillsbury to reply to ALJ Benagh on the matter. Shortly thereafter, Acting HOCALJ Sturek received a phone call from Abby Means of the Regional Chief Counsel's office. They held a conference call during which Means told ALJ Benagh it was not Agency policy to hold hearings on fee petitions. A Deputy Commissioner had called to complain about ALJ Benagh's plans to hold a hearing on the fee petition with [REDACTED]. ALJ Benagh told Means the call had to end because the claimant was disputing the fee petition request. Following the phone call, Abby Means sent ALJ Benagh a letter advising her she could not hold a hearing on the fee petition. ALJ Benagh took the hearing off of the docket. RCALJ Bede later sent ALJ Benagh something advising her not to hold the hearing. After the hearing was removed from the docket, ALJ Benagh issued an opinion with "unreviewable order" written on it. She has no knowledge of whether RCALJ Bede reviewed her "unreviewable order" or paid [REDACTED] requested amount. [REDACTED] never responded to her.

ALJ Benagh's husband is the General Counsel for the Special Inspector General for Afghanistan Reconstruction (SIGAR). The Inspector General for SIGAR is named Slapko. When ALJ Benagh felt she wanted to file a complaint about her allegations against SSA, Slapko suggested she send it over to Mark Cohen at the OSC. ALJ Benagh sent her initial complaint to OSC on May 20, 2012. She later sent additional referrals to OSC. Ultimately, OSC took all of her allegations and winnowed them down to the allegations referred to SSA in March 2013.

Some of the other referrals ALJ Benagh sent to the OSC include her assertion that ALJs are consistently falsifying their time sheets and underreporting their hours. ALJ Benagh alleged that ALJ Sturek was the perfect example. He works many hours, but only reports the hours he is allowed to report. He thus donates time and performs work that he is not paid for in order to avoid violating the Anti-Deficiency Act. According to ALJ Benagh, this behavior is rampant among ALJs who are expected to decide 500 – 700 cases per year. The OSC decided not to move forward with this complaint because it did not have access to ALJ timesheets.

Another complaint of ALJ Benagh's is the fact that the HALLEX states that ALJs are not allowed to refer lawyers to the bar for attorney misconduct. ALJ Benagh advised that as a member of the BAR, she feels she is obligated to tell the bar when she sees misconduct. ALJ Benagh then related a long complicated story involving attorney [REDACTED] who was a Washington, DC ODAR employee. According to ALJ Benagh, sometime around 1999 or 2000, [REDACTED] was detailed to the Regional Office in Philadelphia. [REDACTED] allegedly incurred \$28,000 in unauthorized ATM charges during her detail. The HOCALJ at the time was David Hardy. RCALJ Cristaudo asked Hardy what

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to do about [REDACTED] and Hardy allegedly told RCALJ Cristaudo that [REDACTED] should be fired. RCALJ Cristaudo "hedged" and held off on a decision. Hardy was then detailed to Philadelphia, and Al Costanza became Acting HOCALJ. Costanza also told RCALJ Cristaudo that [REDACTED] should be fired. According to ALJ Benagh, RCALJ Cristaudo "hedged" again. Ultimately, RCALJ Cristaudo decided [REDACTED] case. [REDACTED]

[REDACTED] was demoted to line judge, and his case went before the MSPB because the Agency proposed termination. ALJ Benagh represented [REDACTED] at the MSPB hearing. ALJ Benagh then described how several people, including Linda Suber and she received threatening phone calls. ALJ Benagh received a home visit by [REDACTED] and [REDACTED] in an effort to intimidate her from siding with [REDACTED]. Previously, [REDACTED] asked ALJ Benagh, "How's your baby doing today?" which ALJ Benagh perceived as a threat. She called the Federal Protective Service (FPS Officer Martinez) and reported the threat. She also called both the police and FPS after the home visit and reported that incident as well. Benagh then reported [REDACTED] to the Washington DC bar. When RCALJ Cristaudo visited ALJ Benagh in Washington, DC, she requested protection from the perceived threats made by [REDACTED] and [REDACTED]. According to ALJ Benagh, RCALJ Cristaudo told her he wouldn't move anybody or offer protection. ALJ Benagh then told RCALJ Cristaudo, "Get the f**k out of my office." During [REDACTED]

ALJ Benagh then described the [REDACTED] case. [REDACTED] filed an appeal which was initially denied, by granted on reconsideration. The reconsideration was "mislain". [REDACTED] filed a second appeal, which came to ALJ Benagh. The first ALJ's denial was still in effect, and ALJ Benagh did not have jurisdiction. [REDACTED] produced a letter showing he had been granted benefits. ALJ Benagh talked to Deputy Regional Counsel Jen Muir, who advised that the 4th Circuit had denied [REDACTED] application. ALJ Benagh then granted his case based on the previous reconsideration. ALJ Benagh suggested that [REDACTED] get an attorney. [REDACTED] hired attorney [REDACTED]. The Appeals Council sent the case back to ALJ Benagh on remand with suggestions that would have led to a denial. Out of nowhere, a file from [REDACTED] appeared on ALJ Benagh's desk. ALJ Benagh believes the file was placed on her desk by HOCALJ Banks' secretary. Included in the file were numerous documents that indicated the APA's ex parte contact restrictions had been violated. ALJ Benagh was admonished. ALJ Benagh reissued a reaffirming opinion and footnoted the fact that she had given all of the ex parte documents to attorney [REDACTED]. She also placed the reprimand in the claimant's record. That way, the 4th Circuit would only find out about the ex parte violations if the Appeals

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Council denied the case.

ALJ Benagh alleged that RCALJ Cristaudo made her life miserable. For example, her legal secretary moved to Florida, and ALJ Benagh was advised that she would not receive a replacement legal secretary.

ALJ Benagh wanted to discuss cases involving withholding of adverse evidence, but I advised that the time had come to end the interview for the day. We agreed to meet again the following week to discuss ALJ Benagh's additional allegations. The interview ended at approximately 6:32 PM.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Whistleblower Case

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MICHAEL MCGILL 05/23/2013

APPROVED BY: STEVE MASON 05/28/2013

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ATTACHMENT 29

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 05/06/2013 **TO:** 05/06/2013

RELATED CASE NUMBERS:

REPORTED BY: MICHAEL MCGILL

FIELD DIVISION: PHILADELPHIA

OFFICE: PHILADELPHIA

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I, along with RAC Misha Kelly and OCIG Attorney Erin Justice conducted a voluntary interview of ALJ Christine Benagh regarding her referral to the Office of Special Counsel. This was the second interview of ALJ Benagh. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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Reference is made to the previously submitted report of investigation in this case dated May 13, 2013.

INVESTIGATIVE ACTIVITY:

On May 6, 2013, Resident Agent in Charge (RAC) Misha Kelly, Attorney Erin Justice and I conducted a voluntary interview of ALJ Christine Benagh in a conference room at OIG headquarters in the Meadows East building. I advised ALJ Benagh that the purpose of the interview was to continue discussing her allegations against employees of the Office of Adjudication and Review (ODAR) made by her to the Office of Special Counsel (OSC). Previously, we interviewed ALJ Benagh on April 29. ALJ Benagh agreed to the interview, which began at approximately 10:04 AM.

Prior to any questioning, ALJ Benagh provided me with a copy of a subpoena she had issued related to the K [REDACTED] case we had previously discussed. She also provided a copy of her "judge's file" for the previously discussed P [REDACTED] case. ALJ Benagh advised that she had failed to bring a copy of the admonishment she received for the [REDACTED] case.

I advised ALJ Benagh that we intended to stay focused on the allegations outlined in the OSC complaint. At the outset of the interview, I told ALJ Benagh that we had talked to an Agency expert (Bob Melvin, Office of General Counsel, Office of Program Law) in the statutes and regulations for the Fee Petition and Fee Agreement processes, who had educated us on the differences between Fee Petitions and Fee Agreements. I then explained that 42 USC 406(a)(1) was the statute for the Fee Petition process, which dated back to the 1960's. The statute is written in general terms, and thus SSA has over the years created very detailed regulations that describe the Fee Petition process. These regulations are found at 20 CFR 404.1700's. The Fee Petition process preceded the Fee Agreement process, which was statutorily enacted in 1990 and is described in the statute at 42 USC 406(a)(2) and (a)(3). I explained to ALJ Benagh that SSA has never created regulations pertaining to the Fee Agreement process, and the statute stands by itself.

ALJ Benagh disagreed with my assertion. Together we read through a copy of the statute, and she advised that it was her opinion as an expert in the statute that 42 USC 406(a)(3)(A)(ii) must refer to the Fee Petition process – not the Fee Agreement process. She concurred that (a)(3)(A)(i) refers to the Fee Agreement process. The statute in question reads as follows:

"(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D) –

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

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(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee."

ALJ Benagh advised that the only avenue for claimant representatives to request increases to the maximum fees allowed under the Fee Agreement process is through the Fee Petition process. Thus, (ii) must refer to the Fee Petition process. When I explained that the agency expert stated unequivocally that (ii) referred to the Fee Agreement Process, ALJ Benagh insisted that she was an expert in the statute, and that (ii) referred to the Fee Petition process.

ALJ Benagh further advised that cases cannot originate at the Fee Petition process. The Form 1696 *Appointment of Representative* must be in place. She has never seen a case where a claimant representative left out a Fee Agreement. ALJ Benagh maintained that if claimant representatives want more than the amount allowed by a Fee Agreement, their only option is to file a Fee Petition. The only people who want to reduce fees are ALJs and claimants. ALJ Benagh stated that 42 USC 406(a)(3) is the review section for both 406(a)(1) -- Fee Petitions, and 406(a)(2) -- Fee Agreements.

I then reviewed Exhibit L for Case P [REDACTED], provided by ALJ Benagh to the OSC as part of her whistleblower referral. Exhibit L consists of a memorandum from then HOCALJ Banks to ALJ Benagh on November 6, 2008 titled, *Guidance and Counseling Pertaining to Fee Matters/Appropriate Language*. ALJ Benagh provided this exhibit to OSC as proof that she was admonished by the SSA for applying a deadline as required by § 406. In the memo, HOCALJ Banks refers to a May 8, 2008 fee order issued by ALJ Benagh to [REDACTED] in which ALJ Benagh stated, *"The regulations provide that a representative who wishes to receive more than the amount set forth in a fee agreement must file his request or a letter of intent to file such a request within 60 days of the date of the decision."* (Exhibit J for Case P [REDACTED])

In the memorandum, HOCALJ Banks advised ALJ Benagh that she made some mistakes related to the fee order issued to [REDACTED]. HOCALJ Banks advised ALJ Benagh that *"... in the second paragraph of the order, you state that the appeal period for requesting administrative review of a fee agreement amount is 60 days, instead of 15 days. The letter also states that a letter of intent to file a fee petition was filed more than a year after the deadline. However, there is no time limit for filing fee petitions."* I advised ALJ Benagh that HOCALJ Banks' statements were in line with what SSA's expert on the Fee Petition and Fee Agreement processes told us – that the Fee Agreement process has no regulations and is dictated entirely by the statute found at 406(a)(2) and (a)(3). ALJ Benagh disagreed, and insisted that she was correct about the statute and regulations.

We then discussed Case C [REDACTED]. According to ALJ Benagh, in this case the authorized representative initially filed a Fee Agreement, then subsequently filed an untimely Fee Petition past (according to her) the 15 day time limit set forth in 42 USC 406(a)(3)(A). ALJ Benagh issued an *"Unreviewable Authorization to Charge and Collect Fee"* notice to the claimant representative in that case. I advised ALJ Benagh that according to the regulations, there is no time limit for filing Fee

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Petitions. The statute ALJ Benagh cited in her Unreviewable Order, 42 USC 406(a)(3)(A) applies only to Fee Agreements – not Fee Petitions. ALJ Benagh disagreed. ALJ Benagh advised that another example of a claimant rep filing a late Fee Petition occurred in case CR [REDACTED] (Agents note: ALJ Benagh issued an identical *Unreviewable* order in this case as well, citing the statute that pertains to Fee Agreements – not the regulations that pertain to Fee Petitions.)

At this point in the interview, I explained to ALJ Benagh that having been tasked with investigating the OSC referral to SSA, it appeared that parts I and II of the OSC referral rely entirely upon whether or not 42 USC 406(a)(3) referred to Fee Petitions, as she claimed. If 42 USC 406(a)(3) applied only to Fee Agreements, then the allegations set forth by OSC in its referral to SSA were without merit. ALJ Benagh agreed with this statement, although she continued to maintain that 42 USC 406(a)(3) applied to both Fee Agreements and Fee Petitions.

(Agents note: Part I of the OSC referral contains allegations made by ALJ Benagh that her decisions as an ALJ were improperly reviewed by management with respect to Fee Petitions. The OSC memo, however, cites the statute for Fee Agreements (not Fee Petitions) as proof that management was improperly reviewing ALJ Benagh's decisions. Part II of the OSC referral contains allegations made by ALJ Benagh that SSA improperly promulgated regulations (20 CFR 404.1720(c)(4) and (d)(1)) that countermand the statutory requirements for Fee Petitions set forth at 42 USC 406(a)(3)(A). However, 42 USC 406(a)(3)(A) is the statute for Fee Agreements – not Fee Petitions.)

Part III of the OSC referral contains allegations made by ALJ Benagh that SSA takes no action to address excessive and often materially false petitions for fee increases. One of the cases cited by ALJ Benagh in her OSC complaint was P [REDACTED]. In this case, [REDACTED] received a partially favorable award for its client and was reimbursed \$5,300 minus a user fee via the Fee Agreement Process. [REDACTED] subsequently appealed the case to SSA's Appeals Council, which remanded the case to ALJ Benagh, who granted a fully favorable decision. [REDACTED] then filed a Fee Petition seeking the full 25 percent of its client's back pay award, or \$10,079. ALJ Benagh alleged in her OSC complaint that [REDACTED] was double-billing for work it had already been compensated for via the Fee Agreement process. ALJ Benagh ruled against [REDACTED] in its Fee Petition request, and [REDACTED] appealed her decision to Regional Chief Administrative Law Judge (RCALJ) Jasper Bede. RCALJ Bede reviewed the Fee Petition and agreed with [REDACTED] that its Fee Petition request for \$10,079 should be granted. However, RCALJ Bede indicated in his ruling that [REDACTED] had already been paid \$5,300 minus a user fee, and thus was only entitled to an additional \$4,779.

When questioned about this, ALJ Benagh conceded that RCALJ Bede did change the Fee Petition amount at the end and removed the double-billing. (Exhibit N of case P [REDACTED]) ALJ Benagh, however, asserted that [REDACTED] was seeking reimbursement of the \$5,300 plus the \$10,079. She advised that [REDACTED] changed its request post hoc, as it did with a line item which stated it dictated an on-the-record decision to the ALJ. Furthermore, ALJ Benagh maintained

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that [REDACTED] overstated its hours by billing in quarter hour increments. ALJ Benagh believes firms should bill in tenth of an hour increments.

With respect to ALJ Benagh's assertion that [REDACTED] submitted forged signatures on Fee Petitions, she maintained that the firm probably had an agreement to receive checks for attorneys it employs. ALJ Benagh advised that claimant representatives must request travel expenses in advance. She opined that [REDACTED] requests both travel time and travel expenses.

ALJ Benagh explained that in Case K [REDACTED] [REDACTED] filed fee petitions with what appeared to be average time for certain tasks. ALJ Benagh stated that claimant representatives are required to file petitions containing reimbursements for actual time – not average times. She repeated her opinion that [REDACTED] should charge in 6 minute increments.

ALJ Benagh then discussed Case L [REDACTED] included in the OSC referral. This case involved [REDACTED] – the litigating arm of [REDACTED] (now [REDACTED]). ALJ Benagh advised that Genex has a history of hiding evidence. In this case, [REDACTED] was the claimant representative for a client in front of ALJ Benagh, trying to obtain disability benefits from SSA, while a [REDACTED] attorney was trying to get the same client off of its rolls because he was working as a “shade tree mechanic.” Thus, [REDACTED] knew of information that its client was performing work, but withheld the evidence from the ALJ. ALJ Benagh referred to this as a “double recovery” -- an insurance policy with no risk.

ALJ Benagh stated that the previous Commissioner of Social Security, Michael Astrue testified at a Congressional Hearing that claimant representatives only have to prove a claimant's disability to SSA – not provide adverse evidence. ALJ Benagh went on to state that SSA's Office of General Counsel (Sarah Humphries) goes out and gives speeches to claimant representative groups advising them that they may withhold adverse evidence. She mentioned a PowerPoint with a slide that says something along the lines of, “Sssshhhhh, You may withhold.” ALJ Benagh opined that one of the reasons the backlog was so big was because claimant representatives withhold adverse evidence.

The interview ended at approximately 12:52 PM. ALJ Benagh advised she would provide further documentation related to Case L, the AI Abbott case, the PowerPoint used by OGC, and the [REDACTED] case.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

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N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MICHAEL MCGILL 05/31/2013

APPROVED BY: STEVE MASON 06/03/2013

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ATTACHMENT 30

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 04/30/2013 **TO:** 04/30/2013

RELATED CASE NUMBERS:

REPORTED BY: MISHA KELLY

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

SSA Office of Retirement and Disability Policy (ORDP) employees, Joann Anderson (Anderson), Director of the Office of Payment and Claimant Representative Policy, and Barb Newbauer (Newbauer) were telephonically interviewed regarding their knowledge of SSA "Fee agreements" and "Fee petitions."

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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Reference is made to the previous report of investigation, submitted May 1, 2013.

INVESTIGATIVE ACTIVITY:

On April 30, 2013, I telephonically interviewed SSA ORDP employees, Joann Anderson (Anderson) and Barb Newbauer (Newbauer), with Attorney Erin Justice, Office of Counsel to the Inspector General (OCIG). Justice was present with both employees at SSA's main campus. The following was discussed in substance during the course of the interview:

Newbauer and Anderson both confirmed that they reviewed the allegation forwarded by the Office of Special Counsel (OSC) from Christine Benagh, SSA Administrative Law Judge. Both agreed that it appeared from the OSC letter that there was some confusion or misunderstanding on the difference between "Fee Agreements" and "Fee Petitions".

They explained the difference between Fee Agreements and Fee Petitions. Fee Agreements are statutory and designate a 15-day limit for a request of administrative review of the ALJ decision. Fee Agreements are also simpler and constitute approximately 95 percent of the claimant representative fees process. Once the disability claim is approved, the representative is notified they have 15 days to request an administrative review of the fee agreement.

Until the early 1990's, the only method for claimant representatives to obtain payment for services rendered was via the Fee Petition process. Fee Petitions are not dictated by statute; instead they are governed by regulation and the HALLEX. There is no time limit for submission of Fee Petitions. There are no regulations preventing a claimant representative from filing a fee petition 10 years after a case is approved by an ALJ. SSA processing centers and Field Offices also have the authority to review Fee Petitions for initial applications.

Regarding the issue of reviewing ALJ decisions, Newbauer and Anderson deferred to internal ODAR policies and recommended consulting with ODAR management on that issue.

Anderson and Newbauer advised that SSA does not evaluate a claimant representative's "billable hours". Rather, these are evaluated at the ALJ level. These are not supposed to be hourly computations. It is up to the discretion of the ALJ to assess the petition based on the "value of services" offered by a claimant representative. Anderson and Newbauer opined that there were specific requirements for claimant representatives claiming travel time. Excessive fees are based on ALJ judgment, and ALJs would recognize unusual or excessive fees based upon their experience and familiarity with normal fees. SSA POMS section GN0390.010 indicates that there are specific factors to be considered when reviewing claimant representative fees, such as amount of time spent on a case, the level of administrative review, copies, research of relevant law, and frequent contact with SSA ascertaining the status of a claim. There is also policy guidance in Hallex I-1-2-56 and I-1-2-53 for criteria to be used when evaluating Fee Petitions.

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Suspicious unethical behavior, such as a suspected claimant representative forgery on SSA Form 1560, is to be referred to OGC for a sanctions investigation. Both Anderson and Newbauer indicated it would be a "no -no" for a representative to sign someone else's name on a Form 1560. They also said that the funds are dispersed directly to the person who submitted the Form 1560, so therefore it seems odd that [REDACTED] would submit 1560s for persons no longer working at [REDACTED]. Anderson and Newbauer advised it was not normal procedure for an ALJ to demand a hearing if forgery was suspected.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MISHA KELLY 05/08/2013

APPROVED BY: MICHAEL MCGILL 05/08/2013

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ATTACHMENT 31

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 05/06/2013 **TO:** 05/06/2013

RELATED CASE NUMBERS:

REPORTED BY: MISHA KELLY

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

Bob Melvin, a re-hired annuitant with SSA's Office of General Counsel, was interviewed regarding his knowledge of 42 U.S.C. 406 (a)(3) and Administrative Law Judge Christine Benagh's whistleblower allegations.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previous report of investigation, submitted on May 1, 2013.

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INVESTIGATIVE ACTIVITY:

On May 6, 2013, Attorney Erin Justice, Office of Counsel to the Inspector General (OCIG), Special Agent in Charge Mike McGill, and I interviewed Bob Melvin, a re-hired annuitant attorney with SSA's OGC in the OCIG conference room of the Meadows East building. Prior to the interview, Melvin provided extensive guidance on the fee petition process, the fee agreement process, and a history of both the statute and the regulations associated with these processes. As part of the investigation, Melvin was privy to the OSC complaint filed by ALJ Benagh. As an expert in the statute and regulations surrounding the fee petition and fee agreement processes, Melvin provided a detailed rebuttal to the allegations contained in ALJ Benagh's OSC complaint.

Melvin's main critique of ALJ Benagh's OSC complaint is that ALJ Benagh incorrectly associates the regulations for the fee petition process with the fee agreement process. According to Melvin, the rules governing the fee agreement process are found in the statute itself, at 42 USC 406(a)(2) and (3). The rules governing the fee petition process are found in the regulations at 20 C.F.R. 404.1700's. These are mutually exclusive processes, and the rules governing each process simply do not apply to each other. In addition, in the OSC complaint, ALJ Benagh maintains that 42 U.S.C. 406(a)(3) describes the fee petition process, when it does not. It describes the fee agreement process.

The following was discussed in substance during the course of the interview:

Melvin indicated that upon his retirement, he left his folder containing the legislative history of 42 U.S.C. 406(a)(2) and (3) with OGC Attorney Amy Rigney, who currently maintains information related to this statute; however, Melvin continues to be the expert on the background knowledge and legislative history on this particular statute.

Melvin explained that 42 U.S.C. 406(a)(1) covers the "fee petition" process, and allows SSA to set a max fee for representatives. Prior to 1990, "fee petitions" were the only process that existed for representatives to receive payment. It was previously widespread practice for representatives to file a petition with the agency contingent on the disability decision. Representative petitions were submitted with itemized hours and a description of services they provided. Representatives were not able to charge the beneficiary until a disability decision was final. Now, there is considerably more representative involvement at earlier stages of the disability application process, such as during the initial and "recon" stage.

Melvin asserted that the regulations were never created specific to the fee agreement process created by the passage of OBRA, 42 U.S.C. 406(a)(2) and (3). SSA started to draft regulations several times, but the initiative never received enough focus or backing to follow through with the publishing of actual regulations describing the fee agreement process. Thus, the rules governing the fee agreement process are found solely within the statute itself.

The regulations associated with the fee petition process (found at 20 C.F.R. 404.1700's) have been

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around for years and modified on a few occasions for various reasons. For instance, they were modified to allow non-attorney representatives and for clarification of past due benefits. However, the basic structure of the fee petition regulations has remained constant.

Prior to the passage of the fee agreement legislation, internal studies on the review and approval of fee petitions submitted by representatives showed that fee petitions were approved at the requested rate a vast majority of the time. In the 1960's, the majority of fee petitions were approved. In 1990, it became the default practice to approve the 25 percent fee.

SAC McGill advised that following a recent interview, ALJ Benagh conceded that 42 U.S.C. 406(a)(2) describes the fee agreement process only, but still asserted that 406(a)(3)(A)(ii) described the fee petition process. Melvin referred to 42 U.S.C. 406(a)(3)(A), which states "*The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D).*" Melvin advised that because (a)(3)(A) refers back to (a)(2) by stating, "pursuant to paragraph (2)(D), it definitely applies only to fee agreements, and not fee petitions.

Melvin advised that 406(a)(3)(A)(i) and (ii) describe the fee agreement review process. The statute at (3)(A) only allows for a review of the amount set by the fee agreement. It does not allow for a review of the efficiency of the fee agreement. The statute at (A)(i) allows for claimants to request a review of the fee agreement in an effort to decrease the fee amount. This happens on occasion because a claimant can be approved for benefits after hiring an attorney, but before the attorney actually does any work on the case. In this instance, the claimant can ask for a review because it would be unfair for the attorney to receive 25 percent or \$6,000 of their past due benefits for having done no work on the case. Conversely, the statute at (A)(ii) allows for claimant representatives to request a review of the fee agreement in an effort to increase the fee amount. This happens on occasion when a claimant representative does a lot of work on a case, but the award amount is so low that past due benefits amount to much lower than \$6,000, and 25 percent of past due benefits is nominal. The claimant representative can then ask for more than 25 percent of past due benefits.

If there is a favorable disability decision, the ALJ looks for the agreement and the fee claim proceeds through the fee agreement process. If the fee agreement is disapproved, the representative must file a fee petition. Fee agreements are usually disapproved or made void when a case is appealed to the Appeals Council.

SSA Form 1560 is designed as a fee petition form. It is not associated with the fee agreement process in any way. Melvin believes that if SSA Form 1560 is being submitted by all representatives, it is possible they may not realize they are not required to submit that form. Melvin indicated the Office of Disability Adjudication and Review (ODAR) may be able to provide more information on the use of the form. As a general rule, an ALJ will review and make a ruling as long as there is

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something in writing in the file.

All of 42 U.S.C.(a)(3)(A)(ii) applies solely to fee agreements. This statute developed from a proposal that the National Organization of Social Security Claimant's Representatives (NOSSCR) presented to Congress. The statute started at a fee of 25 percent of the past due benefits or \$4,000. The concept of the statute was for the representatives to agree on a cap amount, and the intention of (a)(3)(A) was to give the claimant an "escape clause." The fee agreement process begins with the ALJ approving the agreement, and the payment center mailing a notice of the fee to the claimant. Section (a)(3)(A) of the statute affords the claimants a right to review the agreement amount and they have 15 days to request an administrative review. The intent of the statute also recognizes the potential for mistakes, and it allows for a review by the Regional Chief ALJ (RCALJ). Section (a)(3)(C) specifies that the decision of the ALJ shall not be subject to further review.

Fee petitions are most often used when the claimants are due a large retroactive award (\$60k-\$70k) in past due benefits and the representative is required to do a significant amount of work, whereas a fee agreement would be capped at \$6,000.

One of the few exceptions to the fee agreement process is when more than one representative is involved in the claimant's case. If SSA followed the statute, all agreements would have to be approved for all representatives. One representative either has to waive their fee agreement, or the ALJ has to disapprove the fee agreement so one of the representatives can file a fee petition.

Melvin advised that fee petitions and fee agreements have POMS and HALLEX chapters. Melvin then addressed the applicable Hallex policies; I-1-2-44, which reviews the fee amount; I-1-2-42, which reviews approval/disapproval; I-1-2-11, which applies to fee agreements; I-1-2-51, which applies to fee petitions.

SSA allows for a good cause exception over the deadline requirement of 15 days and 30 days, even though the statute does not allow for it.

SSA does not recognize a law firm as the claimant's representative, only the individual representative. Therefore, in cases involving fee petitions, each representative must file a fee petition for their services. Only the representative would be able to sign the SSA Form 1560. Representatives are permitted to bill for a paralegal, or someone directly under their supervision.

ALJ's normally do not give the billing itemization a lot of scrutiny, unless something appears to be out of the ordinary. No one can prove the amount of time that was spent on each case, so as long as the billing appears reasonable, the fees are approved. SSA policy only dictates that the "quality of services provided" are acceptable. Melvin advised that SSA's fee petition regulations track attorney fees in an antiquated manner dating back to the 1960's.

With regard to ALJ Benagh's third OSC allegation regarding double billing, Melvin advised that

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Hallex policy I-1-2-5-B and SSA policy POMS-GN03920.010 both address representative billing charges. The representatives are to provide an itemization of charges, in order to ensure they are not circumventing fees charged to the claimant. There is no policy or statute stating that fees should be split or divided among the claimants represented by the same representative. Melvin reviewed an example of itemization of services rendered, in which a claimant representative claimed seven hours for a service, but ALJ Benagh thought five hours would have been more accurate. The services included 'Hearing, inclusive of travel time, review of record, conference with claimant'. Melvin did not think that most ALJ's would be concerned with the variance between 5 and 7 hours. He indicated that seven hours seemed like a reasonable claim, and there is no way to disprove that claim. Melvin advised that nothing in SSA's fee petition regulations requires the proration of travel fees. In his estimation, common ethics would call for that.

Statute 405(G) describes SSA's general jurisdiction limiting decisions to those made after a hearing. There is no jurisdiction to review a fee set by the administration. If an ALJ believes there is inappropriate action by a representative, he or she can refer the matter to OGC for debarment consideration. It would not be wise to hold a hearing on a fee petition because the adjudicator would not want to set a judicial precedent. Representatives do not have a right to a hearing on their fees.

The interview ended at approximately 3:32 PM.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Whistleblower Case Address:

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MISHA KELLY 05/20/2013

APPROVED BY: MICHAEL MCGILL 05/22/2013

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ATTACHMENT 32

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 05/09/2013 TO: 05/09/2013

RELATED CASE NUMBERS:

REPORTED BY: MICHAEL MCGILL

FIELD DIVISION: PHILADELPHIA

OFFICE: PHILADELPHIA

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of Gina Pesaresi, Regional Attorney, and Sandy Shultis, Regional Management Officer for the Regional Chief Administrative Law Judge (RCALJ) office in Philadelphia, PA. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

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Reference is made to the previously submitted report of investigation in this case dated May 31, 2013.

INVESTIGATIVE ACTIVITY:

On May 9, 2013, at approximately 9:00 AM, I met with Gina Pesaresi and Sandy Shultis to discuss complaints made by ALJ Benagh to the Office of Special Counsel (OSC). I identified myself by displaying my credentials. Prior to the meeting, I had requested that Pesaresi obtain records associated with specific cases referred to by ALJ Benagh in her OSC referral. Pesaresi provided records from the Fee Action Tracking System (FACeTS database) associated with all fee petition decisions made by ALJ Benagh that were appealed by the claimant representative to the RCALJ.

During the meeting, Pesaresi advised that since 1997, ALJ Benagh was the presiding ALJ on only five cases in which a claimant or representative appealed the amount an ALJ authorized for a fee petition. (Agent Note: In her OSC referral, ALJ Benagh estimated that her decisions regarding fee petitions were subjected to further review in an average of six cases per year from 2002 through 2012.) For the entire Washington DC ODAR office, there have been only 30 cases in which a claimant or representative appealed the amount an ALJ authorized to the RCALJ. Pesaresi provided me with copies of documents related to all five of the ALJ Benagh cases that were appealed to the RCALJ, including the K [REDACTED] case and the P [REDACTED] case discussed in ALJ Benagh's OSC referral.

With respect to the P [REDACTED] case. Pesaresi advised that following receipt of the fee petition appeal, RCALJ Jasper Bede sent a memorandum on October 9, 2008 to then Hearing Officer Chief Administrative Law Judge (HOCALJ) Larry Banks directing him to take several actions with respect to ALJ Benagh. RCALJ Bede noted in his memo that, "*Judge Benagh states that the appeal period for requesting administrative review of a fee agreement is 60 days, instead of 15 days. The order also states that a letter of intent to file a fee petition was filed more than a year after the deadline. As you know, there is no time limit for filing fee petitions.*"

RCAL Bede then directed HOCALJ Banks to do the following:

"Please direct Judge Benagh to view all four videos on Region III's Fee Resource Page, located at <http://odar.ba.ssa.gov/philadelphia/fees.htm> or to read the transcripts for those videos. She must confirm to you that she has read or watched all four. You may also wish to suggest that she download the Region III Fee Manual from that page if she does not already have one."

(Agents Note: Exhibit L of the P [REDACTED] case submitted by ALJ Benagh to the OSC contains a memorandum from HOCALJ Banks to ALJ Benagh dated November 6, 2008 containing the directives issued in the memorandum noted above.) I asked Pesaresi to try and ascertain whether or not ALJ Benagh ever responded to HOCALJ Banks that she had viewed the four videos from

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Region III's Fee Resource Page. Pesaresi advised that she would try to do so. I also requested that Pesaresi provide me with current links to the videos.

Pesaresi and I then discussed the K [REDACTED] case. In this case, ALJ Benagh alleged that [REDACTED] submitted forged Fee Petition forms after two attorneys had left the firm. Pesaresi advised that one of the attorneys, [REDACTED], now worked for ODAR in Falls Church. SSA had recognized that fact, and not paid the fee petition to [REDACTED]

As part of the same case, ALJ Benagh disputed the fact that [REDACTED] submitted fee petitions for travel expenses as part of its fee petition request. ALJ Benagh opined that the [REDACTED] attorney should prorate travel costs over all clients he or she represented at a hearing on any given day, rather than claiming hours for travel costs for each client. Pesaresi agreed to try and determine if any other hearings took place on the dates of the hearings related to the K [REDACTED] case.

The interview ended at approximately 10:00 AM.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MICHAEL MCGILL 06/04/2013

APPROVED BY: STEVE MASON 06/05/2013

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ATTACHMENT 33

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 05/13/2013 **TO:** 05/13/2013

RELATED CASE NUMBERS:

REPORTED BY: MISHA KELLY

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of Attorney Advisor [REDACTED], former attorney at [REDACTED].

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated May 23, 2013.

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INVESTIGATIVE ACTIVITY:

On May 13th, 2013, at approximately 10:00am, Attorney Erin Justice, Office of Counsel to the Inspector General (OCIG), and I interviewed Attorney Advisor [REDACTED], Office of Appeals Operations/Quality Review Board (OAO/QRB), GS-13, in the lobby of her residence at [REDACTED]. The purpose of the interview was to determine if she signed SSA Form 1560, while employed by [REDACTED], a claimant representative law firm. During the course of the interview, [REDACTED] provided the following in substance:

[REDACTED] was employed by [REDACTED] in the Philadelphia office, from approximately October 2007 until the late summer of 2008. She traveled often while she was there, and covered disability hearings in WV, TN, PA, NY, MI, MD, and DC. She had a heavy workload of cases and was paid a salary. After she left [REDACTED] she was employed by the [REDACTED] for approximately 18 months, and then was employed by SSA in August 2010. There were approximately 25-30 people total in [REDACTED] Philadelphia office, and five were attorneys. All disability payments were processed through the Hauppauge, NY office. The Raleigh, NC, [REDACTED] office, was the next closest office to Philadelphia, PA.

[REDACTED] often combined multiple hearings for the attorneys all in one day. [REDACTED] described two examples, one where she had seven hearings in one day in Mars, PA, and the other where she covered hearings in Ohio in one day, traveling from Dayton, Columbus, and Cleveland. There is a high turn-over for the [REDACTED] attorneys and it is an accomplishment for an attorney to be there after six months. [REDACTED] did not have problems filling positions because attorneys are always looking for litigation experience.

[REDACTED] attorneys are only responsible for reviewing the disability cases and preparing for hearings. [REDACTED] has a preparation team who handled all paperwork, and the submission of forms to SSA. There was also a case management team that handled the medical records. [REDACTED] operates much like an assembly line and was very systematic. There was a "20-day report" that required attorneys to view or act on each case in order to prevent the cases from becoming "aged".

On occasion, [REDACTED] would sign forms at the hearings, but did not sign forms most of the time. Attorneys never signed fee petitions. [REDACTED] had a "Fee Petition" branch that handled all fee petition forms. She is not familiar with the "Fee Petition" process.

[REDACTED] reviewed page 89 (Exhibit K) from Administrative Law Judge (ALJ) Christine Benagh's (Benagh) allegation, which was a SSA Form 1560, for claimant [REDACTED], signed and dated on April 19, 2011. [REDACTED] acknowledged that the signature on the form was not her signature. She thought that there may be a policy or SSA regulation that allowed for signing of the form, as long as the agent or claimant representative worked at the firm requiring services, during the time frame on the form.

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[REDACTED] had nothing to do with the billable hours system. The system was automated and automatically generated a set number of default hours for each task that was entered. Attorneys were capable of adjusting the hours for each action. She never saw the billing information or disability payments. She does not know if [REDACTED] billed for all claimants during travel status.

[REDACTED] often traveled to Washington DC on the train for hearings. She had no discretion of what cases were accepted and they were not permitted to withdraw from the case. They were counseled for unfavorable decisions.

She received an inquiry a few months ago from a SSA employee asking about a "Fee Petition" she signed while at [REDACTED]. The woman told her all "Fee Petitions" were denied for [REDACTED] attorneys who now worked at SSA.

ALJ Benagh is known for extreme behavior during hearings. She observed ALJ Benagh talking to herself during hearings and aggressively typing on her keyboard. It is known that ALJ Benagh is a stickler on medical records, and had her own policies for the hearings, such as making non-witnesses (attorneys) swear in under oath. At one time, ALJ Benagh started to take [REDACTED] attorneys to lunch, and they felt like they were bullied into going.

There was a color-coded labeling system for the documents. [REDACTED] indicated "submit the claim". Yellow indicated the claim required additional information, or was dependent on the claimant's ability. Red indicated "do not submit" for some reason, such as, the claimant may have the ability to work. Sometimes the documents would be labeled but not submitted, however it could be argued that they weren't pertinent to the claim. For instance, a psychologist report vs. a medical doctor who has seen the claimant for the past 10 years. It was viewed that SSA has the burden to fully develop the record. It was not really a question of being ethical. It was done this way because [REDACTED] was advocating on behalf of the client. In [REDACTED] experience, she did not feel attorney's at [REDACTED] were breaking any ethical obligations but were simply advocating for the claimants.

[REDACTED] acknowledged she knows [REDACTED], but does not know [REDACTED]. [REDACTED] still works in the [REDACTED] Philadelphia office.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

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DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MISHA KELLY 05/29/2013

APPROVED BY: MICHAEL MCGILL 05/30/2013

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ATTACHMENT 34

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 05/31/2013 **TO:** 05/31/2013

RELATED CASE NUMBERS:

REPORTED BY: MICHAEL MCGILL

FIELD DIVISION: PHILADELPHIA

OFFICE: PHILADELPHIA

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of attorney [REDACTED] at a Starbucks located at 16th and Market Streets in Philadelphia, PA. [REDACTED] used to work as an attorney at [REDACTED]. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated June 4, 2013.

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INVESTIGATIVE ACTIVITY:

On May 31, 2013, at approximately 9:00 AM, I met with attorney [REDACTED] at a Starbucks located at 16th and Market Streets in Philadelphia, PA. Previously, I attempted to interview [REDACTED] at her residence, and had left a calling card with a relative as [REDACTED] was not at home. [REDACTED] subsequently contacted me and agreed to be interviewed at the Starbucks. I identified myself by displaying my credentials. I explained to [REDACTED] the purpose of the interview, and she agreed to be interviewed.

[REDACTED] advised that she started working for [REDACTED] immediately after graduating from law school. She worked at [REDACTED] from May 1, 2006 until February 6, 2007. When she was first hired, she attended a two week long training, and then immediately started attending hearings before SSA ALJs. [REDACTED] retained numerous records associated with her employment with [REDACTED]. Included in these records was a list of all the hearings she attended. [REDACTED] was able to confirm that she attended a hearing before ALJ Bond in Washington, DC on December 18, 2006 for claimant [REDACTED].

I showed [REDACTED] a copy of the Form 1560, *Petition To Obtain Approval Of A Fee*, dated 4/19/2011 submitted by [REDACTED] to SSA for services provided to [REDACTED]. The form contains a signature that reads, "[REDACTED]". [REDACTED] looked at the form and advised that the signature was not hers. She stated that she left [REDACTED] in February 2007 and never signed anything for [REDACTED] after she left. [REDACTED] advised that her signature is distinct, and she uses a squiggly line for her last name, unlike the signature on the form. [REDACTED] advised that no one from [REDACTED] has contacted her regarding work since the day she left.

[REDACTED] explained that most of the claimants' paperwork for hearings was gathered at [REDACTED] New York headquarters office and sent to the local [REDACTED] office in Philadelphia a few days prior to the hearings. She never handled fee paperwork. [REDACTED] could not recall a color coding system for medical evidence in claimant files used by [REDACTED].

[REDACTED] advised that she left employment at [REDACTED] because she did not want her name ruined. She was the lead attorney in the Philadelphia Office. She reorganized the office and the way things were done while working there. [REDACTED] had an extremely high turnover of attorneys. For the period she worked at [REDACTED] nine other attorneys came and went in the nine months she worked there.

I showed [REDACTED] a list of hours and tasks attributed to her for which [REDACTED] submitted the Fee Petition in the [REDACTED] case. [REDACTED] reviewed them and said they were fairly accurate. She advised that [REDACTED] had a computer system into which an attorney would type category of work, and the computer would allot a time for that task. [REDACTED] handled approximately 150 cases while working at [REDACTED]. She handled six or seven hearings a week. She described [REDACTED] as a factory. [REDACTED] had no recollection of any attorneys named [REDACTED] or [REDACTED] who worked at [REDACTED] in Philadelphia.

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██████ agreed to provide a sworn statement. Her statement reads as follows:

*"I verified the Fee Petition form dated 4/19/2011 bearing my signature. I can attest that this form was never signed by me, this is not my signature. Case in reference is ██████████
██████ I also reviewed the hours of claimed work on my behalf and they appear accurate."*

The interview ended at approximately 9:20 AM.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MICHAEL MCGILL 06/04/2013

APPROVED BY: STEVE MASON 06/05/2013

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ATTACHMENT 35

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 06/06/2013 TO: 06/06/2013

RELATED CASE NUMBERS:

REPORTED BY: MISHA KELLY

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary telephonic interview of Associate Chief Administrative Law Judge (ACALJ) Frank Cristaudo (Cristaudo). A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated June 4, 2013.

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INVESTIGATIVE ACTIVITY:

On June 6, 2013, at approximately 10:06am, Attorney Erin Justice, Office of Counsel to the Inspector General (OCIG), and I conducted a voluntary telephonic interview of Associate Chief Administrative Law Judge (ACALJ) Frank Cristaudo (Cristaudo). The purpose of the interview was to address allegations of retaliation by Whistleblower Christine Benagh (Benagh). During the course of the interview, Cristaudo provided the following information in substance.

Cristaudo became the ACALJ in 2011, and prior to that, he was the Acting Regional Counsel. He has been an ALJ at SSA since July 1990, and began his ALJ career in Savannah, GA. In the 1970's, he worked for SSA in various components (Operations, Systems, and the Bureau of Health Insurance). He left SSA for a period and did general law practice work.

Cristaudo was the Philadelphia Regional Chief Judge (RCALJ) in July 1996, which was when he first became familiar with Benagh, who worked in the Washington, D.C. Hearing Office. At that time, he was her second line supervisor. Although he probably met Benagh when she worked in the Johnstown, PA Hearing Office, he did not recall much about their initial meeting. He explained that it was not until she was transferred to the DC Hearing Office that she "became more free". Back then, ALJ's could not get transferred unless they were well behaved, so he thought Benagh may have been more reserved while in Johnstown, until she was moved to where she wanted to be.

As far as reviewing Benagh's decisions on Fee Agreements, Cristaudo said that he would normally not be involved, with the exception of when attorney representatives appeal the validity of the agreement. The RCALJ can reverse the decision that the fee agreement is not valid. An appeal of a Fee Petition would also come to a RCALJ.

Cristaudo recalled one specific appeal where the claimant had been to several hearings and was back due approximately \$2,000. Benagh lowered the fee and provided a 27 page opinion explaining why she reduced the fee. Cristaudo reversed the decision, increasing the fee, and remembered thinking that a 27 page opinion was a misappropriation of her time. There are approximately six cases that are reviewed each year.

Cristaudo is not certain about the decision reversal Benagh referenced that occurred in 2002. He went to the Chief Judge's Office in 2006, so he was likely not involved in a May 2008 case Benagh described.

The majority of attorney representatives are paid through Fee Agreements. Cristaudo does not recall Benagh's volume of appeals, or whether or not it was different from any other ALJ. RCALJ's are very busy and do not have time to dwell on each appeal. Typically, the RCALJ staff will complete a summary for each appeal for the RCALJ to review. The RCALJ reviews the appeals quickly and signs off on each. He always wanted to empower the ALJ determinations, so unless his staff could point out something substantial evidence for not affirming, the decision would be affirmed. RCALJ's

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generally do not change the ALJ decision.

Cristaudo previously taught a course on ethics each year for ALJ's. ALJ's sometimes don't agree with SSA's determinations, but he often reminds them that they are ALJ's and still have to follow SSA policy regulations.

Reviewing attorney's itemized fees are not something that SSA gets involved in. The specific expenses claimed by firms are not subject to review by SSA. If an attorney representative claims an expense that did not occur, it would be referred to the Office of General Counsel (OGC) for investigation. He has never seen this occur. If an ALJ had evidence of inappropriate expenses, they would have to explain it in the decision justification.

There was policy guidance by the SSA regarding clerical billing. He believes that the clerical expenses of a representative would have to be billed as costs to the claimant rather than included in the fee petition. Cristaudo did not recall specific guidance because the SSA position has changed a few times over the years.

Cristaudo confirmed that double billing by claimant representatives is an ethical issue and they are not supposed to charge duplicate travel fees for their claimants. If the ALJ were reviewing a Fee Petition where this was suspected, they would strike the questionable hours. He doubts SSA has ever given specific guidance addressing travel fees. He suggested confirming this through the Office of Retirement and Disability Policy (ORDP).

With regard to forged signatures on the SSA Form 1560, Cristaudo confirmed that an attorney representative firm should not be submitting hours for a representative if they left the firm. A Form 1560 should only be submitted by the representative who did the work. Firms are not recognized. The fee goes to the last person who represented the claimant.

The firm, [REDACTED], have approximately 20,000-30,000 pending cases at any given time. Most firms have gone with the Fee Agreement process, as opposed to the Fee Petition.

SSA does not have a tracking system for attorney representatives. Only the current representative is in the system. ALJ's would most likely approve a forged petition because they would likely not know if the signature on the petition has been forged.

In Benagh's case example [REDACTED] the RCALJ overturned her decision; however Cristaudo did not recall the specific case. He indicated that if it was a Fee Petition that was appealed, he would have reviewed the appeal.

Cristaudo recalled a time when Benagh filed a grievance on a reprimand he issued, so they both had to go to arbitration. He had to testify at the arbitration probably because he denied her grievance, but he did not recall specifics.

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Cristaudo indicated that Benagh [REDACTED]

Cristaudo does not believe that ALJ's "rubber stamp" decisions. Several ALJ's believe that SSA does not deal with claimant representatives aggressively enough, and they want representatives to be disciplined more often. OGC also pushes disciplinary action for representatives, but a lot of times it is difficult to compile enough evidence or obtain witness statements against the representative.

There was an incident of gross misuse of credit card by an employee. He relied on Labor/Employee Relations to advise the penalty imposed to the employee. There was no favoritism.

He believes Benagh does understand the difference between a Fee Agreement and Fee Petition. While he was the Chief Judge, he was going to implement a training program addressing the difference, but then he moved to another position. SSA has issued memorandum guidance explaining the differences, and Hallex also details the policy around each. 99% understand the difference and address the process correctly, however there are some nuances that may come up that get confusing.

Cristaudo learned about ALJ Benagh's complaint to the Office of Special Counsel from Attorney Justice's email a few days ago. Cristaudo never treated Benagh differently. He was not surprised that she filed a complaint with OSC. Cristaudo indicated that generally ALJ's who are under disciplinary action generally strike back through complaints. [REDACTED]

The interview ended at approximately 11:20am.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

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SUBMITTED BY: MISHA KELLY 06/10/2013

APPROVED BY: MICHAEL MCGILL 06/11/2013

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ATTACHMENT 36

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 06/06/2013 **TO:** 06/06/2013

RELATED CASE NUMBERS:

REPORTED BY: MISHA KELLY

FIELD DIVISION: PHILADELPHIA

OFFICE: WASHINGTON DC

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of John Thawley (Thawley), Hearing Office Chief Administrative Law Judge (HOCALJ), Washington, D.C. Hearing Office. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated June 10, 2013.

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INVESTIGATIVE ACTIVITY:

On June 6, 2013, at approximately 1:15pm, Attorney Erin Justice, Office of Counsel to the Inspector General (OCIG), and I conducted a voluntary interview of HOCALJ Thawley. The purpose of the interview was to address allegations of retaliation by Whistleblower Christine Benagh (Benagh). During the course of the interview, Thawley provided the following information in substance.

Thawley became the HOCALJ on August 13, 2012, and prior to that, was an ALJ for three years in the Raleigh, NC Hearing Office. He was hired as an ALJ at SSA in June 2008, where he worked in the New Orleans, LA Hearing Office, until August 2009.

Thawley first became familiar with Benagh when he arrived in Washington, D.C. as the HOCALJ. He started noticing unusual behavior from Benagh at the end of 2012. In particular, he noticed that Benagh included additional and inappropriate language in her decision determinations. Thawley had to admonish Benagh after an attorney representative inquired about Benagh's decision, which included errors of law in the language. He was alarmed to find out that she included this additional language in the decision, and he wondered how many other cases could be affected and returned to the Hearing Office.

Thawley described a case that Benagh tried to return to the ODAR attorney who drafted the decision, claiming the writer had omitted foot notes and extra questions. He had to review the case for legal defensibility because it went against the standard Office of Disability Review (ODAR) format. He indicated that ODAR follows a template format for consistency and efficiency. Benagh's inclusion of the additional language opens the door for errors of law. His review of this decision prompted Benagh to email him questioning his review of her decision. Thawley denied reviewing the merits of any of Benagh's cases. Instead, he was focused on the legality of the language she used as it deviated rather dramatically from the ODAR template format. Specifically, she included language outside of the accepted template format.

The DC ODAR Hearing Office has recently experienced an increase in disability filings from 200/month to 400/month, and Thawley indicated that he does not have time to review ALJ decisions with additional language incorporated in them.

Thawley also described incidents involving unusual behavior by Benagh. Shortly after he arrived in the DC Hearing Office, Benagh was yelling at the building engineer in the public hallway that there was a security violation. The cleaning lady had plugged her vacuum cleaner into a plug inside of a door that was adjacent to the secure door, which caused a door to be propped open. Thawley was not concerned that there was any sort of security violation because the door that was propped open was still within a secure area.

Thawley described another incident where Benagh emailed a Vocational Expert (VE) directly, while

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he was standing next to her, in order to ask if the VE could attend a hearing. Thawley expressed concern that this was inappropriate behavior, and he would never do such a thing in order to avoid a potential ex parte communication. Thawley opined that Benagh should have made the request for the VE through a clerk.

Thawley also described an incident when Benagh was seen in the office with duct tape across her mouth in a display of protest that the rules only apply to her.

Thawley was unaware of the whistleblower allegation to the Office of Special Counsel until Benagh emailed him in September or October of 2012, advising him that he was retaliating against her. He questioned how he could have retaliated against her if he did not know there was an allegation.

The difference between Fee Petitions and Fee Agreements has been brought up in ALJ meetings. There has been some discussion that "HALLEX" is not consistent with the regulations, but other than that he does not recall specific discussions. Thawley has six ALJ's that currently work for him in the DC Hearing Office. He believes they all understand the difference between Fee Petitions and Fee Agreements.

Fee Petitions do not happen often and are not reviewed during a regular course of business. Thawley estimates that during his ALJ career, he has seen approximately five Fee Petitions out of about 2,000 cases.

With regard to SSA Form 1560, attorney representative firms should not be signing the names of attorney's that have left the firm. He believes that the attorney representing the claimant should sign "for", if the original representative left the firm.

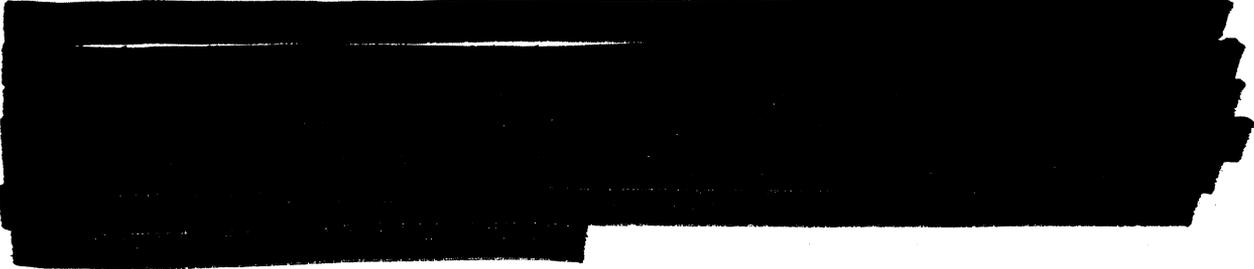
Thawley believes that ALJ's have the ability to address the validity of the claims, and it is incumbent upon the ALJ's to protect the public's fiscal interest. As an ALJ, Thawley asked attorney representatives, "Do we have all documents from treating sources?" Their statements then became part of the official record, so they would have to face ethical issues if they lie to the ALJ on record. ALJ's can take that extra step.

ALJ's with previous litigation experience tend to look more closely at the attorney representatives billable hours. The Fee Petitions do receive more scrutiny because they are not frequently received.

Recently, ALJ Thomas Ray raised some issues on Fee Petitions with Thawley after he received a SSA Form 1560 with SSA employee [REDACTED] signature on the form. (Agent note: [REDACTED] was employed by SSA at the time the form was dated by [REDACTED]. She provided the firm with an electronic signature they maintained on file.)

Thawley reiterated that he did not treat Benagh differently because of any allegations she filed. His primary concern is to make sure the DC Hearing Office runs smoothly.

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The interview ended at approximately 2:00pm.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MISHA KELLY 06/12/2013

APPROVED BY: MICHAEL MCGILL 06/13/2013

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ATTACHMENT 37

Office of the Inspector General
Office of Investigations
Social Security Administration

REPORT OF INVESTIGATION

TITLE OF CASE:

CASE NUMBER: WAS1300035Z

PROGRAM CATEGORY: 938 - OCIG WHISTLEBLOWER

PERIOD COVERED: 06/17/2013 **TO:** 06/17/2013

RELATED CASE NUMBERS:

REPORTED BY: MICHAEL MCGILL

FIELD DIVISION: PHILADELPHIA

OFFICE: PHILADELPHIA

STATUS OF CASE: STATUS REPORT

SYNOPSIS:

I conducted a voluntary interview of Regional Chief Administrative Law Judge (RCALJ) Jasper Bede. A summary of the interview is included in the investigative activity section of this report.

ALLEGATION OR REFERENCE TO MOST RECENT REPORT:

Reference is made to the previously submitted report of investigation in this case dated June 12, 2013.

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INVESTIGATIVE ACTIVITY:

On June 17, 2013, I conducted a voluntary interview of RCALJ Jasper Bede (Bede) in his office located at SSA's Philadelphia Regional office building. I advised Bede that the purpose of the interview was to discuss allegations made by ALJ Christine Benagh to the Office of Special Counsel (OSC). Bede agreed to the interview, which began at approximately 10:00 AM.

During the interview, Bede and I referred to the OSC referral letter addressed to former Commissioner of Social Security Michael J. Astrue dated March 21, 2013. This referral letter lists the allegations made by ALJ Benagh against the SSA.

Part I of the OSC referral contains allegations made by ALJ Benagh that her decisions as an ALJ were improperly reviewed by management with respect to Fee Petitions. The OSC memo, however, cites the statute for Fee Agreements (not Fee Petitions) as proof that management was improperly reviewing ALJ Benagh's decisions. Part II of the OSC referral contains allegations made by ALJ Benagh that SSA improperly promulgated regulations (20 CFR 404.1720(c)(4) and (d)(1)) that countermand the statutory requirements for Fee Petitions set forth at 42 USC 406(a)(3)(A). However, 42 USC 406(a)(3)(A) is the statute for Fee Agreements – not Fee Petitions.

Bede agreed with the assessment that the OSC referral contains inaccuracies with respect to applying the Statute for Fee Agreements, 42 USC 406(a)(3) to Fee Petitions. I advised that ALJ Benagh maintained that 42 USC 406(a)(3)(A)(ii) had to apply to fee petitions because she believed that the only avenue for claimant representatives to request increases to the maximum fees allowed under the Fee Agreement process is through the Fee Petition process. Bede stated she was simply incorrect in her belief.

Bede explained that claimant representatives occasionally file for review of a Fee Agreement under 42 USC 406(a)(3)(A)(ii) when a claimant is awarded retroactive benefits, and the amount is low, or even non-existent. In these cases, the claimant representatives still believe they should be paid a certain amount, and the only avenue for them to receive payment is through agency approval. In these instances when claimant representatives request amounts higher than the \$6,000 or twenty-five percent threshold amounts, the ALJ decides on an authorized Fee Petition amount. It is then up to the claimant representative to obtain any amount that exceeds the allowable thresholds from their client. SSA is not involved with paying claimant representatives any amounts higher than the \$6,000 or twenty-five percent threshold amounts.

Bede and I then discussed Part III of the OSC referral letter, which contains allegations made by ALJ Benagh that SSA takes no action to address excessive and often materially false petitions for fee increases. Bede explained that the HALLEX (Hearings, Appeals and Litigation Law manual) provides guidance to ALJs on acceptable claimant representative billing practices. The HALLEX takes a holistic approach. For instance, it takes into consideration the difficulty of the case, the experience of the claimant representative and the amount of work performed, and allows the ALJ to

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make a judgment on an appropriate amount for a Fee Petition. If a claimant representative or a claimant disagrees with the amount of a Fee Petition set by an ALJ, he or she can appeal to the RCALJ for review. Bede advised that he has a staff with extensive experience in judging things like acceptable billable hour amounts submitted with Fee Petitions. Bede explained that for the most part, ODAR avoids getting too far into the weeds of assessing individual claimant representative billing practices. His team follows the guidance set forth by the HALLEX, and strives to make fair rulings on requested Fee Petition amounts.

Bede further explained that many Fee Petitions are the result of mistakes made in the Fee Agreement process. For the most part, however, Fee Petitions are seldom used in lieu of the Fee Agreement process, which works most of the time. Bede reminded me that the fees in question are not SSA or government money – they are the claimant’s money. Requests for Fee Petition reviews are sometimes made by claimants protesting what they perceive to be high fees set by claimant representatives. In these instances, ODAR often cuts down on fee determination amounts more often than not.

Bede outlined three instances when it becomes necessary for the RCALJ to become involved in the review of Fee Petitions: 1. When the claimant requests review. 2. When the claimant representative requests review. 3. When the requested fee determination amount exceeds \$10,000. Bede explained that fee petition requests for review are pretty rare.

With respect to ALJ Benagh’s allegations pertaining to the alleged forging of signatures by claimant representatives on Fee Petitions, Bede conceded that this seems to be happening more often lately. Bede explained that ALJ Benagh’s approach to dealing with the problem was incorrect. Instead of taking it upon herself to issue orders and establish fraud, the proper channel is for ALJ Benagh to refer allegations of suspected claimant representative misconduct to the RCALJ, who will assess the situation and refer the matter to OGC for review. OGC acts as the Agency’s law firm. There is a process set forth in the regulations for OGC to review alleged misconduct by a claimant representative and hold a hearing to disallow the claimant representative from representing clients before SSA if misconduct is found to have occurred..

I pointed out to Bede that neither the statute nor the regulations speak to the issue of claimant representative law firms submitting signatures on Forms 1560 (*Petition to Obtain Approval for a Fee*) for employees who no longer work for the firm, but who completed work on the case. Only the HALLEX speaks to this issue, and it requires that in cases involving fee petitions, each representative must file a fee petition for their services. I asked Bede who the HALLEX applies to – ODAR or claimant representatives. He advised that HALLEX is a public document which contains the COSS’ interpretation of statutes and regulations. ODAR follows the HALLEX. Information contained in the HALLEX is communicated to claimant representatives via the ALJ website, bar meetings and ongoing feedback. Bede is unaware of any case law challenging the HALLEX.

Bede reiterated that there is a process in place for any alleged misconduct by claimant representatives

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that ALJ Benagh perceives. All instances of alleged misconduct are to be referred to OGC for consideration. ALJs frequently want to go directly to state bars to report perceived misconduct. This is not Agency policy, however. As the Agency's law firm, OGC is responsible for assessing misconduct and holding any necessary hearings – not individual ALJs.

Bede stated that hearings on claimant sanctions are happening more frequently now. He gave an example of a claimant representative double-billing for services by charging a client \$2,000 up front, then seeking reimbursement on the back end via the Fee Agreement process. The claimant complains, and SSA becomes aware of the improper up-front fee.

With respect to ALJ Benagh's allegation that SSA allowed a firm to double bill for hours of travel associated with a Fee Petition case, where multiple hearings may have occurred on the same date for the same attorney. Bede advised that it was highly unlikely that the other hearings on that same date were Fee Petition cases. Instead, they were most likely Fee Agreement cases, in which case travel costs are not an issue.

In the example provided in the OSC referral by ALJ Benagh, she complained about not being permitted to hold a Fee Petition Hearing because it was "*contrary to Region III policy.*" Bede explained that a process is already in place for reviewing Fee Petitions. For an ALJ to hold a Fee Petition hearing in an effort to uncover misconduct would set a bad precedent. OGC is charged with holding hearings related to claimant representative misconduct. The proper procedure is for ALJ Benagh to refer the matter to the RCALJ, who will refer the matter to OGC if the allegation has merit.

Part III of the OSC referral letter also details allegations made by ALJ Benagh that she was admonished for her attempts to uncover misconduct by a claimant representative, and thus the claimant representative was never sanctioned. Bede explained that ALJ Benagh was not admonished. If anything, she was sent a counseling letter pointing out where she was wrong on the law, and acting contrary to guidance set forth in the HALLEX. Furthermore, the claimant representative was never sanctioned because ALJ Benagh never referred the case to the RCALJ as a potential misconduct case. Bede explained that in most instances, he tries to use an informal process for counseling ALJs when they are wrong on the law. This usually takes the form of a phone call or a meeting. In this instance, ALJ Benagh's citation of incorrect deadlines in a fee petition order required that the counseling be memorialized in writing.

I asked Bede if it was common for ALJs to be incorrect on something as fundamental as the difference between Fee Agreements and Fee Petitions, and the laws and statutes governing both. He advised that he oversees over 150 ALJs in the region, and nobody else has a problem distinguishing between the two. Bede stated that ALJs receive initial and ongoing training about Petitions and Agreements. Three years ago, all ALJs received training and now every ALJ receives training once per year. There are Fee Petition sessions at the training. The RCALJ website also has video on demand training on the various fee processes.

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On the topic of adverse evidence, Bede explained that the Agency is conflicted, and is currently developing material right now to clarify its stance. Currently, if an ALJ specifically asks a claimant representative about adverse evidence, they are expected to truthfully answer. If the claimant representative lies when directly asked, they can be referred to OGC for possible sanctions. However, if an ALJ does not request adverse evidence, the claimant representative is not required to produce it on their own volition. Bede explained that adverse evidence is an ethical issue. Some attorneys take the view that if a claimant representative produces adverse evidence that hurts their client's ability to obtain disability benefits, it is akin to malpractice.

Bede reiterated that ALJ Benagh does not set policy for the Agency – the COSS does, with guidance from OGC. If ALJ Benagh believes fraud is occurring, she should follow policy and refer it to the RCALJ, who will refer it to OGC if merited.

I asked Bede if ALJs are authorized to issue subpoenas. He advised that ALJs can issue subpoenas, but the subpoenas must be enforced by the US Attorney's office. ALJs must go through OGC when issuing subpoenas.

With respect to ALJs having lunch with Vocational Experts and Medical Experts, Bede advised that OGC issued guidance that ALJs should not do so. Bede advised that OGC's last Ethics Training Video contained this specific issue as a bullet point. This is an ethical issue, and is not really enforceable by OGC.



The interview ended at approximately 11:12 AM.

SUBJECT(S) AND/OR DEFENDANT(S):

Subject: ODAR Address: Falls Church, VA

JUDICIAL ACTION:

N/A

DISPOSITION OF EVIDENCE, GRAND JURY MATERIAL, AND/OR PERSONAL

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PROPERTY:

N/A

MONETARY ACHIEVEMENT:

N/A

SUBMITTED BY: MICHAEL MCGILL 06/17/2013

APPROVED BY: KELLY BLOYER 06/19/2013

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ATTACHMENT 38

From: Melvin, Robert
Sent: Wednesday, April 24, 2013 4:04 PM
To: Justice, Erin
Subject: RE: Support for OSC Investigation

Erin,

I do not know whether you are familiar with SSA's representative fee procedures, so I'd like to first explain that the agency has two alternative – and mutually exclusive – procedures for approving the fee a representative may collect from his or her client. After reading the OSC memo, I don't think the author understood that, and the distinctions are important to figuring out whether the actions complained of were correct or not.

The “fee petition” process. Pursuant to authority granted in what now is 42 USC 406(a)(1), the agency in the late 1960s issued regulations to create the fee petition process that a representative would use to get approval of the fee he or she would charge the claimant. The regulations are in the 404.1700s, but basically the process is that when the case is over, the representative files an itemized fee petition listing services provided, hours expended, etc. The ALJ (for a case decided at the hearings level) would then review the petition, consider a number of factors set forth in the regs, and then set the fee the representative can charge. If the representative or claimant disagreed with the fee the ALJ set, either one could appeal the ALJ's decision to a higher level (typically the Hearing Office Chief ALJ, sometimes the Regional Chief ALJ), and that higher authority could affirm the fee amount, increase it, or decrease it.

With regard to timeframes, the regulations contain no time limit for the initial filing of the fee petition – so the agency would set a fee based on a fee petition filed even a year or more after the case had been decided. The only time limit here is that the regulations (§404.1730(c)) provide that if the fee petition is not filed within 60 days, the agency may send a close-out letter telling the rep to file something within 20 days or SSA will no longer be responsible for direct payment of the fee. (The agency withholds part of a claimant's past-due benefits to use that money to pay the representative's fee, so the idea here is that if the rep doesn't file a petition, we want to get the claimant's money to the claimant, not hold it indefinitely in SSA.) But even then, the representative still can come in at any time and petition for approval of the fee and the agency would set a reasonable fee under the regulations. Collection of that fee from the claimant would be the rep's problem, though. With regard to appeals, when the ALJ sets a fee under this process, the regulations allow the claimant and the representative 30 days to request further review. See §404.1720(d); HALLEX I-1-2-61-B.

The fee petition was the only procedure for setting fees until 1991, and it is still in limited use today.

The “fee agreement” process. In OBRA 1990, Congress added to the Social Security Act a streamlined procedure for setting representatives’ fees. That process, which the agency terms the “fee agreement” process, is found in 42 USC 406(a)(2) and (a)(3). Under this process, if the claimant and the representative enter into a written fee agreement, that agreement calls for a fee that doesn’t exceed certain limits (the lesser of 25 percent of past-due benefits or [currently] \$6000), that agreement is filed with SSA before SSA issues a favorable decision on the claim for benefits, and none of the exceptions apply, then the ALJ who issues the favorable decision on the claim for benefits also would “approve” the fee agreement as meeting the statutory criteria. Once benefits are computed in the payment center, staff there would compute the fee based on the agreement and that would be the approved fee. Once the fee amount is determined, the Act gives the claimant and the representative 15 days from receipt of the notice to ask the ALJ to review the amount of the fee. 42 USC 406(a)(3(A)). The decision of the ALJ on such a request for review is not subject to further administrative review. 42 USC 406(a)(3(C)).

If all the conditions for the fee agreement process are met, that process is used. If for any reason the fee agreement process cannot be used, then the representative would have to seek approval of any fee under the fee petition process. Currently, fees are set under the fee agreement process in the vast majority of cases (over 90 percent); but fee petitions are still used in some cases where the conditions of the fee agreement process are not met. (For example, fee petitions frequently are required because the claimant has appointed multiple representatives, triggering one of the exceptions to the agreement process.)

Regs vs statute. An important point to keep in mind is that the agency never issued regulations for the fee agreement process. So all the rules for the fee agreement process are in the Act itself. Conversely, the regulations for setting fees are the fee petition regulations, they don’t apply to the fee agreement process. Thus, there are separate sets of rules for the two processes: fee agreement process in the Act; fee petition process in the agency regulations. Confusing, and less than ideal, but that’s the way it is.

Count II of the OSC report. In section II, the OSC report discusses ALJ Benagh’s contention that the agency issued regulations that improperly extended the time limit for appealing a fee amount from the statutory 15 days (42 USC 406(a)(3(A))) to 30 days (20 CFR §404.1720(d)). That simply is wrong – as discussed above, these time limits are for two separate processes, established under two different subsections of the Act. The agency consistently uses the statutory 15-day time frame for appeals of fees set by the fee agreement process (see HALLEX I-

2-44; POMS GN 03960.001.B.3); the 30-day period in the fee petition regulations applies only to appeals from fees set under the fee petition process (see HALLEX I-1-2-61-B; POMS GN 03950.001.B.3). The 30-day limit in the regulation (which again was issued more than 20 years before the fee agreement legislation was enacted) did not extend the statutory time limit for the fee agreement process – it simply has no applicability to that other non-regulatory procedure.

[The HALLEX sections cited in count II as examples of the agency’s inconsistency actually show only the author’s confusion of the two programs. Section I-1-2-42(A) [and its 15-day time limit] explicitly applies only to the fee agreement process (and the more appropriate cite would have been I-1-2-44). The other sections cited – I-1-2-61 and I-1-2-53 – both explicitly apply only to the fee petition process.]

As for the rest of the allegations in the OSC petition, it is hard to guess what actually happened without actual details. But when reviewing these allegations, I think it is imperative that one clearly distinguishes the two different processes. Was the case a fee agreement case or a fee petition case? Was the act in question the setting of the fee amount under one or the other of those processes, or an appeal of the fee set initially? The report is full of highly ambiguous phrases like “fee increase petition” which, frankly, I’m not sure what that would mean. Only by knowing which process applied in the case can we know what rules should have been followed; and only after determining which rules applied can we determine whether the actions of the ALJ or other ODAR officials were proper or not.

I hope my rambling wasn’t too confusing ... Looking forward to talking with you,

Bob

P.S. I also wanted to mention that, if you are looking for a policy contact in SSA, the component responsible for representative fee policy throughout the agency is the Office of Payment and Claimant Representative Policy, a component within the Office of Retirement and Disability Policy’s Office of Income Security Programs. According to the organizational charts, JoAnne Anderson (x56716) is the Director of that component and Jean Marie Ricketts (x57209) is her Deputy.

ATTACHMENT 39

Randell, Philip

From: Randell, Philip
Sent: Monday, May 06, 2013 11:43 AM
To: Pesaresi, Gina A.
Subject: Protests made on Judge Benagh's fee petition authorization

Gina,

I have examined the FACTS database archive (cases prior to the conversion to web-based FACTS in July 2011) and the current web-based FACTS database. For the entire Washington DC office, since 1997, there have only been 30 cases in which a claimant or representative appealed the amount an ALJ has authorized for a fee petition. Judge Benagh was the presiding ALJ in only five of those cases. The RO can only initiate a review when there is a protest by the claimant or representative. I will give you the file I created with a copy of this message.

- 1) [REDACTED]
Representative: [REDACTED]
Amount requested by attorney: \$9,000
Amount ALJ Benagh authorized: one cent
Amount RCJ authorized: \$4,000
RO closed case: 3/19/2004
DIB folder destroyed by PSC due to age of case.
- 2) [REDACTED]
Representative: [REDACTED]
Amount requested by attorney: \$10,079
Amount ALJ Benagh authorized: \$1,179.63
Amount RCJ authorized: \$10,079
RO closed case: 3/12/2009
DIB folder destroyed by PSC due to age of claimant.
*see attached counseling memo regarding this case and another case
- 3) [REDACTED]
Representative: [REDACTED]
Amount requested by attorney: \$8,215.20
Amount ALJ Benagh authorized: \$2,991.50
Amount RCJ authorized: \$8,215.20
RO closed case: 8/3/2009
Paper case, file at PC6.
- 4) [REDACTED]
Representative: [REDACTED]
Amount requested by attorney: \$2,650
Amount ALJ Benagh authorized: \$2,175
Amount RCJ authorized: \$1,451.25
RO closed case: 2/5/2010
Electronic file, but hearing office did not scan in order issued by Regional Chief Judge.
- 5) [REDACTED]

RO close case March 18, 2013
Electronic case

Representative: [REDACTED]
Amount requested by attorney: \$2,507.87
Amount ALJ Benagh authorized: 0
Amount RCJ authorized: \$463.10

Representative: [REDACTED] (currently an SSA employee)
Amount requested by attorney: \$1,100
Amount ALJ Benagh authorized: 0
Amount RCJ authorized: 0

Representative: [REDACTED]
Amount requested by attorney: \$10,000
Amount ALJ Benagh authorized: 0
Amount RCJ authorized: \$2,791

Representative: [REDACTED]
Amount requested by attorney: \$875
Amount ALJ Benagh authorized: 0
Amount RCJ authorized: \$700

Phil Randell, Program Analyst
Office of the Regional Chief Judge
ODAR Region III - Philadelphia
(215) 597-5661, Fax (215) 597-4183

By Claimant Name

Status: CLSD

Case Type: FPAR Office Code: 5029

CLAIMANT NAME	SSN	HO	CASE TYPE	REC'D DATE	AMT AUTH	STATUS	DAYS TICKLE PEND DATE	CLSD DATE	EMP
[REDACTED] G. How	[REDACTED]	5029	FPAR	4/11/2000	\$9,268.57	CLSD	77	6/27/2000	ELB
[REDACTED] Banks	[REDACTED]	5029	FPAR	10/5/2009	\$6,564.00	CLSD	196 11/15/200	4/19/2010	ELB
[REDACTED] michalSKI	[REDACTED]	5029	FPAR	3/23/2000	\$8,500.00	CLSD	18	4/10/2000	RDC
[REDACTED] Brown	[REDACTED]	5029	FPAR	3/23/2009	\$8,215.20	CLSD	133 5/2/2009	8/3/2009	ELB
[REDACTED] Arthur	[REDACTED]	5029	FPAR	5/18/2006	\$7,000.00	CLSD	134 10/2/2006	9/29/2006	ELB
[REDACTED] Bur	[REDACTED]	5029	FPAR	1/8/2004	\$2,442.00	CLSD	103	4/20/2004	ELB
[REDACTED] Stuck	[REDACTED]	5029	FPAR	6/28/2010	\$399.00	CLSD	84 9/25/2010	9/20/2010	ELB
[REDACTED] Beach	[REDACTED]	5029	FPAR	12/1/2010	\$1,543.75	CLSD	106 1/12/2011	3/17/2011	ELB
[REDACTED]	[REDACTED]	5029	FPAR	7/8/2008	\$10,079.00	CLSD	247 3/3/2009	3/12/2009	ELB
[REDACTED] Taggart	[REDACTED]	5029	FPAR	7/12/2001	\$2,200.00	CLSD	40	8/21/2001	ELB
[REDACTED] Banks	[REDACTED]	5029	FPAR	1/5/2006	\$1,300.00	CLSD	173 7/2/2006	6/27/2006	ELB
[REDACTED] Barr	[REDACTED]	5029	FPAR	7/11/2005	\$7,000.00	CLSD	58	9/7/2005	ELB
[REDACTED] Taggart	[REDACTED]	5029	FPAR	5/23/2003	\$2,586.25	CLSD	48	7/10/2003	ELB
[REDACTED] michalSKI	[REDACTED]	5029	FPAR	3/23/2000	\$5,731.37	CLSD	69	5/31/2000	
[REDACTED] Berkeley	[REDACTED]	5029	FPAR	2/7/2001	\$7,500.00	CLSD	145	7/2/2001	ELB
[REDACTED]	[REDACTED]	5029	FPAR	10/20/200	\$1,451.25	CLSD	108 12/18/200	2/5/2010	ELB
[REDACTED] Berkeley	[REDACTED]	5029	FPAR	1/29/2004	\$1,627.50	CLSD	82	4/20/2004	GH
[REDACTED] Dine	[REDACTED]	5029	FPAR	5/23/2006	\$3,700.00	CLSD	143 10/7/2006	10/13/200	ELB
[REDACTED] Berkeley	[REDACTED]	5029	FPAR	7/8/2004	\$6,000.00	CLSD	70	9/16/2004	ELB
[REDACTED]	[REDACTED]	5029	FPAR	2/25/2004	\$4,000.00	CLSD	23	3/19/2004	ELB
[REDACTED] Gux	[REDACTED]	5029	FPAR	11/10/200	\$0.00	CLSD	69	1/18/2006	ELB
[REDACTED] Vest	[REDACTED]	5029	FPAR	10/7/2009	\$475.00	CLSD	146 11/15/200	3/2/2010	ELB
[REDACTED] Banks	[REDACTED]	5029	FPAR	5/13/2003	\$7,000.00	CLSD	37	6/19/2003	ELB
[REDACTED] Arthur	[REDACTED]	5029	FPAR	8/10/2004	\$2,750.00	CLSD	94	11/12/200	ELB
[REDACTED] Berkeley	[REDACTED]	5029	FPAR	8/15/2000	\$4,500.00	CLSD	149	1/11/2001	JAS
[REDACTED] Tasser	[REDACTED]	5029	FPAR	12/28/199	\$1,792.50	CLSD	37	2/3/2000	RDC
[REDACTED] Bond	[REDACTED]	5029	FPAR	8/17/2005	\$10,888.50	CLSD	104	11/29/200	ELB

Total Cases: 27

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Fee Action Tracking System (FACtS)

Randell, Philip
RO: 03

-

Report Search

Case Type		Case Type Group		Employee		HO Office	
FPAR-Fee Petition-Administrative Review						WASHINGTON (X73)	
Case Status	Pending Only	Start Date(mm/dd/yyyy) End Date(mm/dd/yyyy)	Tickle Is Due	Sort By		Report Format	
CLSD	<input type="checkbox"/>			Claimant			

No. of Fee Cases reported : 13

Case ID	Claimant Name	SSN	HO	Case Type	Rec'D Date	Days Pend	AMT AUTH	Status	Status Pend	Tickle Date	Clsd Date	EMP
5647	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	10-05-2009	196	6564	CLSD	1113	11-15-2009	04-19-2010	ELB
5446	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	03-23-2009	133	8215.2	CLSD	1372	05-02-2009	08-03-2009	ELB
15575	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	02-15-2012	174	250	CLSD	272	07-23-2012	08-07-2012	ELB
15781	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	02-24-2012	115	6000	CLSD	322	06-16-2012	06-18-2012	ELB
5977	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	06-28-2010	84	399	CLSD	959	09-25-2010	09-20-2010	ELB
18101	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	07-12-2012	249	1100	CLSD	49	01-18-2013	03-18-2013	ELB
18481	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	07-12-2012	249	700	CLSD	49	01-18-2013	03-18-2013	ELB
18482	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	07-12-2012	249	2791	CLSD	49	01-18-2013	03-18-2013	ELB
18490	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	07-12-2012	249	463.1	CLSD	49	01-18-2013	03-18-2013	ELB
5202	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	12-01-2010	106	1543.75	CLSD	781	01-12-2011	03-17-2011	ELB
5185	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	07-08-2008	247	10079	CLSD	1516	03-03-2009	03-12-2009	ELB
5675	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	10-20-2009	108	1451.25	CLSD	1186	12-18-2009	02-05-2010	ELB
5632	[REDACTED]	[REDACTED]	WASHINGTON(X73)	FPAR	10-07-2009	146	475	CLSD	1161	11-15-2009	03-02-2010	ELB

Sturek
meucci
18101
18481
18482
18490

Crossed out cases appear in archive list.

ATTACHMENT 40



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Fee Action Tracking System (FACTS)

Randell, Philip
RO: 03

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- [Add](#)
- [Utility](#)
- [Reports](#)
- [Letters](#)

View Fee Case - 18490

Name & SSN:		[REDACTED]		Name:		[REDACTED]	
Address & Phone:		[REDACTED]		Address & Phone:		[REDACTED]	
ACL#:		FO:	WASHINGTON M ST DC (270)		Attorney:	Yes	
X-Ref:		CLT:	SSDC	HGT:		32	
Rep Begin:		3/31/05		Rep End:		4/24/06	

Case Type:	FPAR	Date Received:	7/12/12	Status:	CLSD	Status Date:	3/18/13
Tickle:	1/18/13	ALJ:	Christine Benagh [1833]		HO:	WASHINGTON (X73)	
Req By:	REP	PC:	MID-ATLANTIC (PC2)		MOD:	8	PC Contact:
Employee:	Bousoño, Elba L. [ELB]		Date Assigned:	3/18/13		PC Phone:	
Award Notice:	25% II>:	14,482.87		XVI>:	0.00		EF Ind:
Amt Requested:	2,507.87	ALJ Amt:	0.00	HRs Claimed:	32.00	Amt Authorized:	463.10
Agreement:	Disapproved		RCJ Agreement:		Final Action Date:	3/18/13	
Remarks:	one of four fee petitions.						



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Fee Action Tracking System (FACTS)

Randell, Philip
RO: 03

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View Fee Case - 18101

Name & SSN:		[REDACTED]		Name:		[REDACTED]	
Address & Phone:		[REDACTED]		Address & Phone:		[REDACTED]	
ACL#:		FO:	WASHINGTON M ST DC (270)		Attorney:	Yes	
X-Ref:		CLT:	SSDC	HGT:	32	Rep Begin:	5/30/08
						Rep End:	7/8/08
Case Type:	FPAR	Date Received:	7/12/12	Status:	CLSD	Status Date:	3/18/13
Tickle:	1/18/13	ALJ:	Christine Benagh [1833]		HO:	WASHINGTON (X73)	
Req By:	REP	PC:	MID-ATLANTIC (PC2)		MOD:	08	PC Contact:
Employee:	Bousoño, Elba L. [ELB]		Date Assigned:	3/18/13		PC Phone:	
Award Notice:		25% II>:	14,482.87	XVI>:	0.00	EF Ind:	
Amt Requested:	1,100.00	ALJ Amt:	0.00	HRs Claimed:	9.50	Amt Authorized:	1,100.00
Agreement:	Disapproved		RCJ Agreement:		Final Action Date:	3/18/13	
Remarks:	three of four fee petitions.						

[Duplicate Fee Case](#) [Return](#)

Office of Disability Adjudication and Review, Social Security Administration, 2010

**She is currently an SSA employee.*



[Skip to content](#)

Fee Action Tracking System (FACTS)

Randell, Philip
RO: 03

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- Add
- Utility
- Reports
- Letters

View Fee Case - 18482

Name & SSN:		[REDACTED]		Name:		[REDACTED]	
Address & Phone:		[REDACTED]		Address & Phone:		[REDACTED]	
ACL#:		FO:	WASHINGTON M ST DC (270)		Attorney:	Yes	
X-Ref:		CLT:	SSDC	HGT:	32	Rep Begin:	5/4/06
						Rep End:	2/2/11
Case Type:	FPAR	Date Received:	7/12/12	Status:	CLSD	Status Date:	3/18/13
Tickle:	1/18/13	ALJ:	Christine Benagh [1833]		HO:	WASHINGTON (X73)	
Req By:	REP	PC:	MID-ATLANTIC (PC2)		MOD:	8	PC Contact:
Employee:	Bousoño, Elba L. [ELB]		Date Assigned:	3/18/13		PC Phone:	
Award Notice:		25% II>:	14,482.87		XVI>:	0.00	EF Ind:
Amt Requested:	10,000.00	ALJ Amt:	0.00	HRs Claimed:	135.50	Amt Authorized:	2,791.00
Agreement:	Disapproved		RCJ Agreement:		Final Action Date:	3/18/13	
Remarks:	four of four fee petitions.						



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Fee Action Tracking System (FACIS)

Randell, Philip
RO: 03

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- [Add](#)
- [Utility](#)
- [Reports](#)
- [Letters](#)

View Fee Case - 18481

Name & SSN:		[REDACTED]		Name:		[REDACTED]	
Address & Phone:		[REDACTED]		Address & Phone:		[REDACTED]	
ACL#:		FO:	WASHINGTON M ST DC (270)		Attorney:	Yes	
X-Ref:		CLT:	SSDC	HGT:	32	Rep Begin:	12/15/06
						Rep End:	12/19/06
Case Type:	FPAR	Date Received:	7/12/12	Status:	CLSD	Status Date:	3/18/13
Tickle:	1/18/13	ALJ:	Christine Benagh [1833]		HO:	WASHINGTON (X73)	
Req By:	REP	PC:	MID-ATLANTIC (PC2)		MOD:	8	PC Contact:
Employee:	Bousoño, Elba L. [ELB]		Date Assigned:	3/18/13		PC Phone:	
Award Notice:		25% II>:	14,482.87		XVI>:	0.00	EF Ind:
Amt Requested:	875.00	ALJ Amt:	0.00	Hrs Claimed:	7.00	Amt Authorized:	700.00
Agreement:	Disapproved		RCJ Agreement:		Final Action Date:	3/18/13	
Remarks:	Two of four fee petitions.						



DOCUMENT INDEX

Claimant:

SSN:



<u>Document Name</u>	<u>Source Name</u>	<u>EF Received Date</u>	<u>No. of Pages</u>
Fee-Authorization to Charge/Collect Fee (AUTHFEE)		March 18, 2013	10
Fee-Authorization to Charge/Collect Fee (AUTHFEE)		March 18, 2013	10
Fee-Authorization to Charge/Collect Fee (AUTHFEE)		March 18, 2013	25
Fee-Authorization to Charge/Collect Fee (AUTHFEE)		March 18, 2013	14

DATE: May 6, 2013



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge
P.O. Box 13496
Philadelphia, PA 19101
Phone: 215-597-9980 Fax: 215-597-4183

[REDACTED]

MAR 18 2013

Dear Counsel:

Enclosed please find an order regarding the administrative review of the case of [REDACTED]. The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

Sincerely,

Jasper J. Bede
Regional Chief Judge

cc:

[REDACTED]

Social Security
2100 M. Street NW
Washington, DC 20037

MATPSC – Module 8
300 Spring Garden Street
Philadelphia, PA 19123

Office of Disability Adjudication and Review
1227 25th Street NW, Suite 300
Washington, DC 20037

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF THE REGIONAL CHIEF JUDGE
AUTHORIZATION TO CHARGE AND COLLECT A FEE

IN THE CASE OF

CLAIM FOR

[REDACTED]

(Claimant)

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

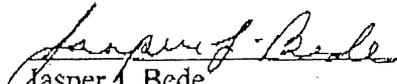
(Wage Earner)

XXX-XX [REDACTED]
(Social Security Number)

On April 19, 2011, an individual from [REDACTED] submitted a fee petition requesting a fee of \$1,100.00 for services provided by [REDACTED], Esquire. Counsel [REDACTED] no longer worked for [REDACTED] at the time the fee petition was signed. On June 15, 2012, the presiding Administrative Law Judge (ALJ) informed the individual who signed Counsel [REDACTED]'s signature on the fee petition that no fee could be approved under the fee petition, as no one may file a petition on behalf of an appointed representative.

Pursuant to HALLEX I-1-2-53(A), "If a representative works or worked for a firm or corporation, neither the firm nor anyone else in the firm may file a petition on behalf of the appointed representative."

After review of the fee petition and all other pertinent records and policy, the ALJ's decision is affirmed. There are no further reviews or appeals of this determination available.


Jasper J. Bede
Regional Chief Judge

Date MAR 18 2013

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and/or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review, which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount of benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney representative from the claimant's title II or black lung past-due benefits exceed the amount of the authorized fee.

Possible Refund to the Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty for Charging an Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services provided in any claim, including services before a court, which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; 30 U.S.C. § 923(b); and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 et seq., 410.684 et seq., and 416.15 et seq.
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge
P.O. Box 13496
Philadelphia, PA 19101
Phone: 215-597-9980 Fax: 215-597-4183

August 3, 2012

[REDACTED]

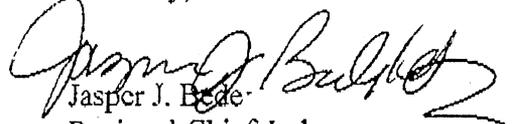
Dear Counsel:

This is to acknowledge receipt of your letter concerning your request for administrative review of the authorized fee in the case of [REDACTED].

We have requested the necessary records. In the meantime, all parties are afforded 15 days from the date of this letter to comment. Thereafter, we will reevaluate all services and notify all parties of our decision.

If you have any questions or concerns, please contact Elba Luz Bousono, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,


Jasper J. Bode
Regional Chief Judge

cc:

[REDACTED]

Social Security Administration
2100 M Street, NW
Washington, DC 20037

Mid-atlantic PC2
300 Spring Garden Street, Module 8
Philadelphia, PA 19123

Enclosure: Copy of letter from the representative





SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]
[REDACTED]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

**UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE**

To: [REDACTED]

IN THE CASE OF

[REDACTED]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[REDACTED]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' records). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 26, 2010, regarding the claimant. The award certificate was issued on December 15, 2010. A fee petition on behalf of [REDACTED] was filed on April 22, 2011.

The submitted fee petition was accompanied by a time and task statement, requesting \$1,100.00 in fees and reflecting nine and a half hours of work.

[REDACTED] no longer works for [REDACTED]. The address given is not hers. The signature on the fee petition does not appear to be hers, and appears to match closely the signatures on two other fee petitions filed in this case. A certification signature on a fee petition from an attorney regarding a proceeding before me must come from that representative. No one may submit a fee petition on behalf of another. 20 CFR 404.1725. A signature by any other individual is invalid. The private arrangements of [REDACTED] with its former employees is beyond my jurisdiction.

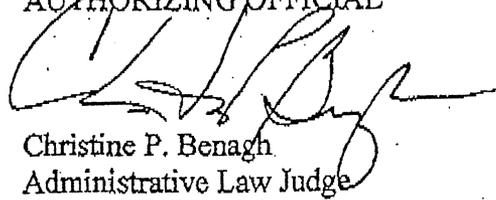
If the fee petition were valid, it must still be denied as untimely. The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on December 15, 2010. The claimant received her decision and notice of award. Work Log Notes. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline. I have no authority to extend the statutory deadline.

Given the foregoing reasons, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) ("The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.") If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

[REDACTED]

AUTHORIZING OFFICIAL



Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

IMPORTANT INFORMATION ON REVERSE SIDE

WORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not be able to process your request unless it receives the information this form requests. The Administration will use the information to determine a fee for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. § 406).

Best approval to charge a fee of \$1,100.00 (Show the dollar amount)
Services performed as the representative of [redacted]
My Services Began: 05 / 30 / 2008
My Services Ended: 07 / 08 / 2008
Type(s) of claim(s) SSD/SSI

Name and the Social Security number of the person on whose Social Security record the claim is based.

[redacted]

[redacted]

Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.

Have you and your client entered into a fee agreement for services before SSA? [] YES [X] NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 1,100.00 and [] See attached

(a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? [] YES [X] NO

(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? [] YES [X] NO

If "yes" to either or both of the above, please specify the source(s) and the amount(s).

Source: \$ [redacted] \$ [redacted]

Source: \$ [redacted] \$ [redacted]

Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.

Have you received, or do you expect to receive, reimbursement for expenses you incurred? [] YES [X] NO
Please itemize your expenses and the amounts on a separate page.

Did you render any services relating to this matter before any State or Federal court? [] YES [X] NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings?

Please attach a copy of the court order if the court has approved a fee. \$ [redacted]

Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? [] YES [X] NO

Have you been disqualified from participating in or appearing before a Federal program or agency? [] YES [X] NO

I am under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Title of Representative [redacted] Date 04/19/2011 Address (Include Zip Code) [redacted]

with which associated, if any [redacted] Telephone No. and Area Code [redacted]

The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or the information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

I agree with the \$ [redacted] fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.

OR

I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Claimant [redacted] Date [redacted]

Address (Include Zip Code) [redacted] Telephone No. and Area Code [redacted]

[REDACTED]

[REDACTED]

ITEMIZATION OF SERVICES RENDERED

[REDACTED]

05/30/08	Representative review of file, hearing date certain - notes and instructions made for file	0.75 hrs	pk
06/06/08	Representative drafted letter	1.00 hrs	pk
06/19/08	Representative review of file, hearing date certain - notes and instructions made for file	0.75 hrs	pk
06/20/08	Representative review of file and preparation of pre-hearing memorandum	1.50 hrs	pk Brief ASD
06/25/08	Representative final file review for hearing	1.25 hrs	pk
06/26/08	Hearing, inclusive of travel time, review of record, conference with claimant	3.75 hrs	pk
07/08/08	Representative post-hearing review of remand hearing; notes and instructions made for file	0.50 hrs	pk
	Total	9.50 hrs	



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge

P.O. Box 13496
Philadelphia, PA 19101
Phone: 215-597-9980 Fax: 215-597-4183

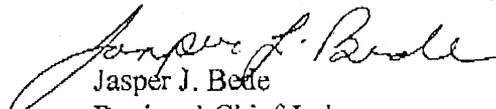
MAR 18 2013

[REDACTED]
[REDACTED]
[REDACTED]

Dear Counsel:

Enclosed please find an order regarding the administrative review of the case of [REDACTED].
[REDACTED] The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

Sincerely,


Jasper J. Bede
Regional Chief Judge

cc: [REDACTED]
[REDACTED]
[REDACTED]

Social Security
2100 M. Street NW
Washington, DC 20037

MATPSC – Module 8
300 Spring Garden Street
Philadelphia, PA 19123

Office of Disability Adjudication and Review
1227 25th Street NW, Suite 300
Washington, DC 20037

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF THE REGIONAL CHIEF JUDGE
AUTHORIZATION TO CHARGE AND COLLECT A FEE

IN THE CASE OF



(Claimant)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Wage Earner)

XXX-XX-

(Social Security Number)

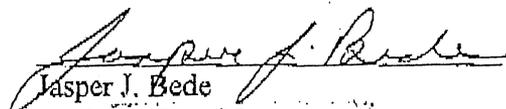
By letter dated July 11, 2012, the representative requested administrative review of the prior authorized fee. The representative is hereby authorized to charge and collect a fee in the amount of \$700.00 for services provided to the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of medical or hospital reports), which is a matter between the claimant and the representative.

The amount approved is based on consideration of the factors set forth in 20 C.F.R. §§ 404.1725 and 416.1525 and HALLEX 1-1-2-57, and is appropriate given the nature of the services rendered, the time actually required to render the services, and the complexity of the issues involved. After reviewing the fee petition and related materials in this case, the amount of time claimed for services provided appears slightly overstated. Specifically, the representative claimed 1.25 hours on December 15, 2006, for a "final review" of the file, and another 1.5 hours that same day for a pre-hearing conference with the claimant. On the date of the hearing, the representative claims to have expended 3.75 hours on services rendered, including additional time for file review and another conference with the claimant. Because the representative claimed to have spent nearly three hours on these tasks only three days prior, at least some of the time allegedly spent on the hearing day seems unnecessary and/or overstated. Finally, there is no indication of research or development that would indicate that this claim was complex in nature.

There are no further reviews or appeals of this determination available.

The Social Security Administration will directly pay the representative's fee from the portion of the claimant's title II or title XVI past-due benefits that has been set aside for representative fees. If the direct payment check does not cover the authorized fee, payment of the balance is a matter for the claimant and representative to settle. If the claimant has been awarded title II benefits,

the representative should send any questions concerning the status of the check to the processing center that issued the claimant's title II award letter. If the claimant has been awarded only title XVI benefits, the representative should contact the field office that issued the award letter.


Jasper J. Bede
Regional Chief Judge

Date MAR 18 2013

SEE ATTACHMENTS FOR OTHER IMPORTANT INFORMATION

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and/or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review, which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount of benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney representative from the claimant's title II or black lung past-due benefits exceed the amount of the authorized fee.

Possible Refund to the Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty for Charging an Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services provided in any claim, including services before a court, which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; 30 U.S.C. § 923(b); and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 et seq., 410.684 et seq., and 416.15 et seq.
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge

P.O. Box 13496

Philadelphia, PA 19101

Phone: 215-597-9980 Fax: 215-597-4183

[REDACTED]

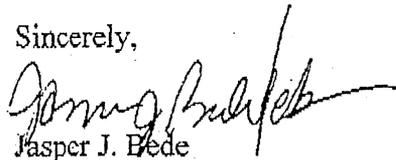
Dear Counsel:

This is to acknowledge receipt of your letter concerning your request for administrative review of the authorized fee in the case of [REDACTED].

We have requested the necessary records. In the meantime, all parties are afforded 15 days from the date of this letter to comment. Thereafter, we will reevaluate all services and notify all parties of our decision.

If you have any questions or concerns, please contact Elba Luz Bousono, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,



Jasper J. Bede

Regional Chief Judge

cc:

[REDACTED]

Social Security Administration
2100 M Street, NW
Washington, DC 20037

Mid-Atlantic
300 Spring Garden Street, Module 8
Philadelphia, PA 19123

Enclosure: Copy of letter from the representative

FILE COPY



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

**UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE**

To: [REDACTED]

IN THE CASE OF

[REDACTED]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[REDACTED]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' records). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 26, 2010, regarding the claimant. The award certificate was issued on December 15, 2010. The authorized representative, [REDACTED], filed her fee petition on April 22, 2011.

The submitted fee petition was accompanied by a time and task statement, requesting \$875.00 in fees and reflecting seven hours of work.

[REDACTED] no longer works for [REDACTED]. The address given is not hers. The signature on the fee petition does not appear to be hers, and appears to match closely the signatures on two other fee petitions filed in this case. A certification signature on a fee petition from an attorney regarding a proceeding before me must from that representative. No one may submit a fee petition on behalf on another. 20 CFR 404.1725. A signature by any other individual is invalid.

[REDACTED]

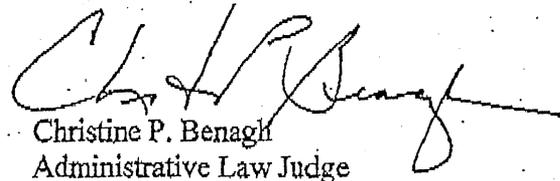
The private arrangements of [REDACTED] with its former employees is beyond my jurisdiction.

If the fee petition were valid, it must still be denied as untimely. The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on December 15, 2010. The claimant received her decision and notice of award. Work Log Notes. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline. I have no authority to extend the statutory deadline.

Given the foregoing reasons, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) ("The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.") If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

AUTHORIZING OFFICIAL


Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc: [REDACTED]

David G. Keyko, Esq.
Pillsbury, Winthrop
1540 Broadway
New York, NY 10036

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not receive any fee unless it receives the information this form requests. The Administration will use the information to determine a fee for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

I request approval to charge a fee of _____ for services performed as the representative of _____	Fee \$ 875.00 (Show the dollar amount)
My Services Began: 12 / 15 / 2006 Month / Day / Year	Mr. Mrs. Ms. [REDACTED]
My Services Ended: 12 / 19 / 2006 Month / Day / Year	Type(s) of claim(s) SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

[REDACTED]

1. Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.

2. Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 875.00 and See attached

3. (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ _____
Source: \$ _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.

4. Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.

5. Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings?
Please attach a copy of the court order if the court has approved a fee. \$ _____

6. Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO

7. Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I am under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative [REDACTED]	Date 04/19/2011	Address (Include Zip Code) [REDACTED]
Firm with which associated, if any [REDACTED]	Telephone No. and Area Code [REDACTED]	

Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Name of Claimant [REDACTED]	Date
Address (include Zip Code) [REDACTED]	Telephone No. and Area Code [REDACTED]

[REDACTED]

[REDACTED]

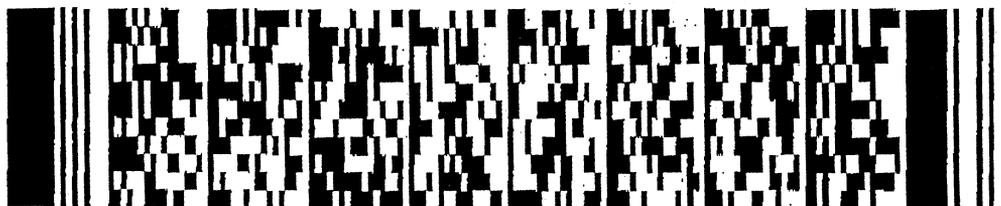
ITEMIZATION OF SERVICES RENDERED

[REDACTED]

12/15/06	Representative final file review for hearing	1.25 hrs
12/15/06	Pre-hearing with claimant	1.50 hrs
12/18/06	Hearing, inclusive of travel time, review of record, conference with claimant	3.75 hrs
12/19/06	Representative post-hearing review; notes and instructions made for file	0.50 hrs
	Total	7.00 hrs

INSERT THIS END FIRST

Claimant Name: [REDACTED]
 Document Description: Fee-authorization To Charge/collect Fee
 Note: RCALJ authorization for [REDACTED]
 Undated: N
 Sensitive: N



RQID:000000000000000000000000102736162 SITE:X73 DR:F
 SSN:***** DOCTYPE:5044 RF:D CS:82ba

Note: AUTHORIZATION MAILED TO CLAIMANT
 & REPRESENTATIVE ON MARCH 19, 2013.



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge

P.O. Box 13496

Philadelphia, PA 19101

Phone: 215-597-9980 Fax: 215-597-4183

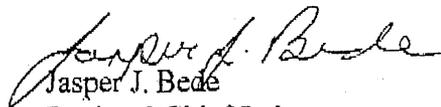
MAR 18 2013

[REDACTED]

Dear Counsel:

Enclosed please find an order regarding the administrative review of the case of [REDACTED].
[REDACTED] The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

Sincerely,


Jasper J. Bede
Regional Chief Judge

cc: [REDACTED]
[REDACTED]
[REDACTED]

Social Security
2100 M. Street NW
Washington, DC 20037

MATPSC – Module 8
300 Spring Garden Street
Philadelphia, PA 19123

Office of Disability Adjudication and Review
1227 25th Street NW, Suite 300
Washington, DC 20037

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

**ORDER OF THE REGIONAL CHIEF JUDGE
AUTHORIZATION TO CHARGE AND COLLECT A FEE**

IN THE CASE OF

CLAIM FOR

[REDACTED]

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Claimant)

XXX-XX-[REDACTED]

(Wage Earner)

(Social Security Number)

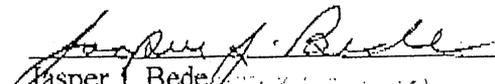
By letter dated July 11, 2012, the representative requested administrative review of the prior authorized fee. The representative is hereby authorized to charge and collect a fee in the amount of \$2,791.00 for services provided to the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of medical or hospital reports), which is a matter between the claimant and the representative.

The amount approved is based on consideration of the factors set forth in 20 C.F.R. §§ 404.1725 and 416.1525 and HALLEX I-1-2-57, and is appropriate given the nature of the services rendered, the time actually required to render the services, and the complexity of the issues involved. After reviewing the fee petition and related materials in this case, the amount of time claimed for services provided appears to be significantly overstated. For example, the itemized list of services reflects approximately 62 hours of merely drafting requests for records. This is despite the fact that the record had already been developed by three other representatives. In addition, the vast majority of the items listed are either routine or clerical in nature (i.e., review of SSA documents, phone calls with the claimant and SSA, completing SSA forms, etc.). Moreover, there is no indication of research or development that would indicate that this claim was complex in nature. Finally, there are no entries of less than 15 minutes.

There are no further reviews or appeals of this determination available.

The Social Security Administration will directly pay the representative's fee from the portion of the claimant's title II or title XVI past-due benefits that has been set aside for representative fees. If the direct payment check does not cover the authorized fee, payment of the balance is a matter for the claimant and representative to settle. If the claimant has been awarded title II benefits,

the representative should send any questions concerning the status of the check to the processing center that issued the claimant's title II award letter. If the claimant has been awarded only title XVI benefits, the representative should contact the field office that issued the award letter.


Jasper J. Bede
Regional Chief Judge

MAR 18 2013

Date

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and/or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review, which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount of benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a Federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney representative from the claimant's title II or black lung past-due benefits exceed the amount of the authorized fee.

Possible Refund to the Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty for Charging an Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services provided in any claim, including services before a court, which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; 30 U.S.C. § 923(b); and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 et seq., 410.684 et seq., and 416.15 et seq.
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge
P.O. Box 13496
Philadelphia, PA 19101
Phone: 215-597-9980 Fax: 215-597-4183

August 3, 2012

[REDACTED]

Dear Counsel:

This is to acknowledge receipt of your letter concerning your request for administrative review of the authorized fee in the case of [REDACTED].

We have requested the necessary records. In the meantime, all parties are afforded 15 days from the date of this letter to comment. Thereafter, we will reevaluate all services and notify all parties of our decision.

If you have any questions or concerns, please contact Elba Luz Bousono, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,


Jasper J. Bede
Regional Chief Judge

cc:

[REDACTED]

Social Security Administration
2100 M Street, NW
Washington, DC 20037

Mid-Atlantic
300 Spring Garden Street, Module 8
Philadelphia, PA 19123

 **FILE COPY**

Enclosure: Copy of letter from the representative

[REDACTED]

FPAR

FAX MEMORANDUM

To: Jason Quick - Regional ODAR Recipient Fax No. 215-597-2328
From: [REDACTED]
Re: [REDACTED] S.S. # [REDACTED]
Date: July 12, 2012

Number of pages including this one: 18

Comments:

Mr. Quick - Please see attached for our fee appeal for the above-named claimant. Due to the volume of copies that are attached to this letter, they will be mailed separately. If you have any questions, please don't hesitate to contact me. Thank you!

V/R
[REDACTED]

The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.

[REDACTED]

July 11, 2012

FPAR

Honorable Jasper Bede
Acting Regional Chief Administrative Law Judge
Office of Disability Adjudication and Review, Regional Office
Social Security Administration
300 Spring Garden Street - 4th Floor
Philadelphia, PA 19123

RE: [REDACTED] - S.S. [REDACTED]

Dear Judge Bede:

As your records will reflect, this office successfully represented the above-noted claimant in regard to an application for Social Security disability benefits with the undersigned being appointed the Primary Representative and [REDACTED] and [REDACTED] being appointed Co-Representatives. At the conclusion of our services, fee petitions for each duly appointed representative were submitted to the Honorable Christine P. Benagh for review. The combined total amount requested by the representatives equals 25% of the past due benefits awarded to [REDACTED] and certainly will not be considered a windfall to the representatives.

We are now in receipt of the "Authorizations to Charge and Collect a Fee" denying the undersigned and both Co-Representatives a fee for services rendered on the above-noted claim. We hereby request administrative review of these decisions and respectfully request your consideration of the following.

Although Judge Benagh includes a multitude of reasons for denying each representative a fee, the following information will prove that the total requested fee is reasonable compensation for the work provided on this claim. Furthermore, although Judge Benagh claims there is no further review, pursuant to CFR § 404.1720 (c) (4), a representative may request review of the authorized fee within 30 days of the determination. Therefore, as the petitions were authorized on June 15, 2012, pursuant to CFR § 404.1720 (c) (4), we hereby request timely review of the determinations.

As your records will reflect, this case involved a claimant with an alleged onset date of July 25, 2000, a DLI of June 30, 2006 and an application that was protectively filed on October 25, 2004. We represented the claimant from April 26, 2005 through February 4, 2011, a period of nearly 6 years, with a total investment of 184 hours before the Administration.

During this time, we developed [REDACTED] medical and vocational evidence to prove her disability, filed all SSA correspondence, submitted comments to the Appeals Council in support of the claimant's appeal, attended three administrative hearings and secured a remand from the Appeals Council. In the February 12, 2007 Notice of Partially Favorable Decision, the ALJ found the claimant disabled as of November 30, 2006. This necessitated a request for review by the Appeals Council, as the claimant alleged an earlier disability onset date that was prior to her Date Last Insured. We submitted detailed comments and additional medical evidence in support of this appeal and persuaded the Appeals council to vacate the Judge's decision and remand the case for a further review. Meanwhile, we continued to develop [REDACTED] case both medically and vocationally. Thereafter, we prepared for and attended the second administrative hearing held on June 26, 2008. Unfortunately, the ALJ issued an unfavorable decision, denying benefits to our client. As a result, we again requested the Appeals Council to review the unfavorable decision and successfully persuaded them to remand the claim for a third administrative hearing. We then prepared for and attended the third hearing on October 7, 2010. Ultimately, we were able to prove [REDACTED] disability as of her alleged onset date and the Judge issued a fully favorable decision.

To deny the representatives a fee for the services performed on this claim is unjustified and goes against the criteria set forth in the Social Security Administration's Regulations. As you know, the regulations discuss the criteria to be followed in evaluating a representative's request for approval of a fee and it is evident that Judge Benagh failed to follow these guidelines when she evaluated this case for approval of a fee. As noted in 404.1725(b), there are seven factors which are listed below along with our comments demonstrating the extent of each one:

1. The extent and type of services the representative performed:
As the record reflects, we represented [REDACTED] from the initial administrative hearing stage through two Appeals Council remands and three administrative hearings. As the case progressed, we filed all SSA correspondence, we obtained, reviewed and submitted applicable medical and vocational evidence in support of her disability, prepared for and appeared at three administrative hearings, twice persuaded the Appeals Council to remand the case for further review, and maintained active communication with our client and the Social Security Administration with regard to the status of the case as well as the medical development throughout the history of this case.

2. The complexity of the case:
Any case that progresses to the Appeals Council level is by definition complex. To overturn an Administrative Law Judge's decision, it must overcome a considerable evidence test which means that either we prove legal error or irrefutable facts. As the record reflects, we persuaded the Appeals Council overturn two Administrative Law Judge's decision and remand the case for further review.
3. The level of skill and competence required of the representative:
Any time an Administrative Law Judge's decision is overturned, the skill level is proven and is proof of the fine job done by this firm. Despite most judges' reluctance to overturn a colleague's decision, we persuaded Judge Benagh to reconsider the merits of this case and grant disability benefits as of the claimant's alleged onset date.
4. The amount of time the representative spent on the case:
As indicated above, we represented the claimant from April 26, 2005 through February 4, 2011 and invested a total of 184 hours of services before the administration. Clearly, a substantial amount of time was invested on this case in order to achieve the favorable outcome.
5. The results the representative achieved:
The result achieved was the claimant being awarded benefits as of her alleged amended onset date and continuing, an outcome sought by both the claimant and her representatives.
6. The level of review to which the claim was taken and the level of review at which the representative entered the case:
As noted above, this case progressed to the Appeals Council on two occasions and was remanded for two supplemental hearings. At the time we commenced representation, we filed the necessary paperwork to appeal [REDACTED] recent denial to the initial administrative hearing stage.

RE: [REDACTED] S.S. # [REDACTED]
Page Four (4)

7. The amount of the fee the representative requests for services rendered:
The total fee of \$14,482.87 represents 25% of the past due benefits awarded to the claimant, which is consistent with the agreement signed by the claimant when she retained our company to represent her.

As you can see, the seven portions of the criteria weigh heavily in our favor and had all of these factors been considered, the requested fee would have been approved. Judge Benagh's denial of a fee for all representatives is arbitrary and capricious considering the services performed and the outcome achieved.

In view of the above and attached hereto, please increase the total fee to \$14,482.87 to commensurate with the complexity of the case, the number of hours invested, the level of skill required and the results achieved. To assist you in evaluating this matter, I have enclosed copies of pertinent information from our files.

Thank you for your consideration in this matter and kindly forward your decision to the above noted address.

Sincerely,
[REDACTED]

Enclosures

cc: [REDACTED]



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE

To: [REDACTED]

IN THE CASE OF

CLAIM FOR

[REDACTED]

(Claimant)

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Wage Earner)

[REDACTED]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' records). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 26, 2010, regarding the claimant. The award certificate was issued on December 15, 2010. The authorized representative, [REDACTED] filed her fee petition on April 22, 2011.

The submitted fee petition was accompanied by a time and task statement, requesting \$10,000 in fees and reflecting 135.5 hours of work performed by various individuals, most of whom were not [REDACTED]

The fee petition must be denied for several reasons:

- a) The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on December 15, 2010. The claimant received her decision and notice of award. Work Log Notes. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline. I have no authority to extend the statutory deadline.
- b) The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 406(a)(3)(A)(ii), and only for work performed by him. 42 USC 406(a)(1); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees and expenses can be paid to attorneys, as the expenses of attorneys are recoverable under those statutes, e.g., 28 USC 2412(a)(1). Under the Social Security Act, costs and expenses may not be recovered. The Social Security Act permits only "a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim." Therefore, costs and services performed by individuals other than the authorized representative are not compensable under the statute. Only [REDACTED] was an authorized representative on this petition. She may only petition for work performed by herself. The regulations are in accord, requiring the representative to state the "services that he or she gave". 20 CFR 404.1725.
- c) [REDACTED] failed to attach a copy of her fee agreement to the fee petition form, as required. Assuming she used the usual fee agreement of [REDACTED] it cannot be recognized. That agreement states that the claimant agrees to pay 25 percent of back due benefits if the claim were successful after the initial decision of an administrative law judge, which could appear to abrogate, without notice, her statutory right to object to any fee petition. 42 USC 406(a)(3)(A). The claimant did not intend to abrogate those rights. She objected strongly to the fee petitions filed, as shown in the Work Log Notes, and as [REDACTED] admitted in his letter of February 1, 2012. At the time of any signing, the claimant was homeless and ill. Without documentation that she knowingly intended to waive her statutory right of objection, such waiver cannot be inferred. See obligation of administrative law judge to insure knowing withdrawal of request for hearing or amendment of alleged disability onset date. Such an agreement is invalid.
- d) [REDACTED] did not attach the amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid. 20 CFR 404.1725. [REDACTED] checked the box that there were no such expenses. The Work Log Notes, submitted by [REDACTED], in response to my subpoena, show that invoices for expenses were sent to the claimant. 24, 25,

- [REDACTED]
- e) [REDACTED] did not identify the individuals, including herself, whose work was shown on her fee petition or to provide their resumes, so that the expertise required for each task could be analyzed.
- f) As [REDACTED] firm declined to provide the information necessary to perform the regulatory analysis (the Work Log Notes provide insufficient information and do not correspond exactly to the fee petition), I must proceed without that information. It seems that [REDACTED] tasks may have accompanied in the time and task statement by the word "Representative". There are seven such entries, plus 3.75 hours for travel and a hearing, totaling 17 hours.
- g) The Work Log Notes demonstrate, however, that much of the work marked as that of a "representative" was performed by other individuals, even the time claimed is erroneous in some cases. For example, [REDACTED] fee petition states that she spent 1.75 hours on February 28, 2007, reviewing a prior judge's decision and making notes for appeal. The Work Log Notes, page 21, demonstrate that that task took 20 minutes, from 12:00 to 12:20 that date, and further that the review was not conducted by [REDACTED] but by a [REDACTED]. Again, [REDACTED] fee petition states that she spent 6.75 hours on September 6, 2007, preparing an appeal, listening to the hearing cassettes, and drafting arguments. The Work Log Notes, page 24, show that was done by someone named Sara. [REDACTED] claimed 3.5 hours for preparing for remand hearing, but the Work Log Notes, page 28, show that no preparation was done that day, and the preparation performed the previous day was done a Sharon Sue. The file review of January 4, 2009, for 0.75 hours was performed by [REDACTED] not [REDACTED] Work Log Notes at 35. The 0.25 hours of records review on September 21, 2009, was performed by James. *Id.* at 39-40. The 2.75 hours of file analysis on June 21, 2010, was performed by "jmf". The 3.75 hours for file preparation on August 19, 2010, was performed by Dayanoara De La Cruz. Page 47.
- h) [REDACTED] certified in her fee petition that the claimant had agreed to a fee of \$10,000.00. The fee agreement is invalid, as discussed above. The claimant opposed this fee, as [REDACTED] stated in his letter of February 1, 2012, and as reflected in the Work Log Notes at page 58.
- i) The Work Log Notes submitted show that specific approval (a green light) was being given to submit evidence, that other evidence was being considered more carefully before submission (a yellow light). *E.g.*, 3, 5, 6, 12, 13, 36, 39. A portion of the Work Log Notes, page 44, was redacted before submission to me—all work performed on May 5, 2010. [REDACTED] fee petition shows that medical records were reviewed on that date. [REDACTED] has not responded to my request for a copy of the redacted text. Under those circumstances, it seems likely that medical evidence was received that was adverse to the claimant's case, marked with a red sticker, and not submitted.

- j) The Work Log Notes reflect what tasks were performed, when the task began, and, sometimes, who performed it, but does not show when the work was completed, so it is the source is unclear for the hours claimed in the fee petition.
- k) [REDACTED] 3.75 hours for a hearing with travel and a conference is unlikely, as the train between Washington, DC, and Philadelphia, PA, takes two hours (consistent with the usual practice of this firm, arriving at 9:55 a.m.) and the taxi to our office, half an hour. There was no time for a pre-hearing conference with the claimant. The hearing took 15 minutes. The time seems to be overstated by about an hour.
- l) Lastly, it appears that [REDACTED] may have signed the names of two other attorneys in this case to their fee petitions, [REDACTED] and [REDACTED] no longer employed by Binder & Binder on the dates the petitions were signed. Those signatures are invalid.

Given the foregoing reasons, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) ("The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.") If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

AUTHORIZING OFFICIAL



Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

cc:

[REDACTED]

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not give you any fee unless it receives the information this form requests. The Administration will use the information to determine a value for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C. 406).

I request approval to charge a fee of _____ for services performed as the representative of _____	Fee \$ 10,000.00 (Show the dollar amount)
My Services Began: 05 / 04 / 2006 Month / Day / Year	Mr. Mrs. Ms. [REDACTED]
My Services Ended: 02 / 04 / 2011 Month / Day / Year	Type(s) of claim(s) SSD/SSI

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.
[REDACTED]

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA?
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 10,000.00 and See attached
 YES NO
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ _____
Source: \$ _____ \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings?
Please attach a copy of the court order if the court has approved a fee. \$ _____
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative [REDACTED]	Date 04/19/2011	Address (include Zip Code) [REDACTED]
Firm with which associated, if any [REDACTED]	Telephone No. and Area Code [REDACTED]	

[Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect.
- OR**
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Name of Claimant [REDACTED]	Date
Address (include Zip Code) [REDACTED]	Telephone No. and Area Code [REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
05/04/2006	.75	[REDACTED]	[REDACTED]	Representative file review at hearing level - notes and instructions made for file
05/05/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
05/05/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/05/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/05/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/19/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/23/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/19/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
06/19/2006	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
06/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
06/22/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
07/27/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/15/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/15/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/28/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
09/26/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
09/26/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/28/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/28/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/11/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
10/11/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
10/11/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update

[REDACTED]

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Service Date	Hours	SSN	Client	Work Description
10/12/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
10/12/2006	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/17/2006	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/17/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
10/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
10/25/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
10/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
10/25/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
10/31/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing date
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: hearing
11/01/2006	1.5	[REDACTED]	[REDACTED]	Prepared file for hearing
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/01/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/01/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/02/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
11/09/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/09/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
11/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
11/14/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: Hearing
11/15/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
11/28/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
11/28/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/04/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/07/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/08/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/13/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing date
12/14/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/20/2006	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: case
12/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
12/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/21/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
12/21/2006	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
12/26/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case

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Service Date	Hours	SSN	Client	Work Description
12/26/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
01/04/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/16/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/16/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/22/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/26/2007	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
01/26/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
01/30/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
01/30/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
02/01/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/01/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
02/05/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
02/05/2007	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
02/15/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/23/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/23/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/27/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
02/28/2007	1.75	[REDACTED]	[REDACTED]	Representative review of ALJ decision, notes made for appeal
02/28/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
03/16/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for review/cassettes
03/16/2007	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/30/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: case
04/13/2007	.75	[REDACTED]	[REDACTED]	Review of file
05/22/2007	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
05/22/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/22/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/25/2007	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/05/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/20/2007	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/20/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
06/21/2007	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
07/31/2007	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
07/31/2007	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status

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Service Date	Hours	SSN	Client	Work Description
07/31/2007	.5			Correspondence to claimant re: status of case
08/14/2007	.25			Communication with claimant re: case
09/06/2007	6.75			Representative A/C appeal prep, review of cassettes, draft of argument
09/13/2007	.5			Correspondence to claimant re: fee for medical records/report
09/14/2007	.75			Review of file
09/14/2007	.5			Correspondence to A/C re: submission of comments
09/21/2007	.5			Correspondence to claimant re: fee for medical records/report
11/01/2007	.25			Communication with A/C re: case
11/01/2007	.5			Correspondence to claimant re: status of case
11/01/2007	.5			Correspondence to A/C re: request for status
01/08/2008	.25			Communication with claimant re: medical development
01/08/2008	.25			Communication with A/C re: case
01/08/2008	.25			Communication with claimant re: status of case
01/28/2008	.25			Communication with A/C re: case
02/12/2008	2.75			Analysis of file and remand strategy
02/25/2008	.25			Communication with claimant re: case
02/29/2008	.25			Communication with claimant re: case
03/12/2008	.5			Correspondence to claimant re: HIPAA forms
03/12/2008	.5			Correspondence to claimant re: request to complete and return enclosed forms
04/09/2008	.5			Correspondence to claimant re: medical development
04/09/2008	.5			Correspondence to claimant re: request to contact our office
04/15/2008	.25			Communication with claimant re: case
05/01/2008	.5			Correspondence to claimant re: request to contact our office
05/14/2008	.25			Communication with ODAR re: hearing date
05/15/2008	3.5			Prep for remand hearing
05/15/2008	.25			Communication with claimant re: hearing
06/02/2008	.5			Request ODAR file
06/02/2008	.5			Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2008	.5			Correspondence to claimant re: medical development
06/11/2008	.5			Correspondence to Doctor/Hospital re: request for report/medical records
06/13/2008	.25			Communication with claimant re: medical development
06/18/2008	.5			Correspondence to Doctor/Hospital re: request for report/medical records

[REDACTED]

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Service Date	Hours	SSN	Client	Work Description
06/20/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
06/20/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to ALJ re: case
06/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
06/24/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
07/02/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
07/03/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
07/03/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
07/14/2008	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/17/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
07/30/2008	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
08/13/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
08/21/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for review/cassettes
09/30/2008	1.75	[REDACTED]	[REDACTED]	Representative review of ALJ decision, notes made for appeal
10/02/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: transfer of file
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: case
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: HIPAA forms
11/25/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
11/25/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/29/2008	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
12/29/2008	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
01/04/2009	.75	[REDACTED]	[REDACTED]	Review of file
01/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records

[REDACTED]

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Service Date	Hours	SSN	Client	Work Description
01/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/30/2009	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
01/30/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/30/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
01/30/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
02/03/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
03/13/2009	6.75	[REDACTED]	[REDACTED]	Representative A/C appeal prep, review of cassettes, draft of argument
03/18/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of comments
03/19/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
03/19/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/19/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
03/24/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/29/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/29/2009	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/29/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
08/11/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
08/11/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
08/11/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
08/11/2009	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/24/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/02/2009	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/03/2009	.75	[REDACTED]	[REDACTED]	Review of file
09/08/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: medical development
09/21/2009	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
09/22/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
10/27/2009	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
10/27/2009	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/20/2010	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
01/20/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
03/26/2010	.75	[REDACTED]	[REDACTED]	Review of file
04/01/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report

[REDACTED]

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Service Date	Hours	SSN	Client	Work Description
04/01/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/05/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/07/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/13/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/13/2010	.25	[REDACTED]	[REDACTED]	Communication with A/C re: case
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: request for status
04/13/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
04/15/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/21/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
04/27/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
04/27/2010	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/28/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
04/28/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
05/04/2010	.5	[REDACTED]	[REDACTED]	Correspondence to A/C re: submission of additional evidence
05/05/2010	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
05/05/2010	.5	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/05/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: status of case
05/05/2010	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
06/21/2010	2.75	[REDACTED]	[REDACTED]	Analysis of file and remand strategy
06/21/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update
06/24/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
07/15/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
07/15/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/11/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
08/18/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: hearing date
08/19/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
08/19/2010	3.5	[REDACTED]	[REDACTED]	Prep for remand hearing
08/26/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: hearing
08/30/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/07/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case

[REDACTED]

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Service Date	Hours	SSN	Client	Work Description
09/08/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
09/08/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to complete and return enclosed forms
09/10/2010	.75	[REDACTED]	[REDACTED]	Representative review of file, hearing date certain - notes and instructions made for file
09/15/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/29/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
09/29/2010	.75	[REDACTED]	[REDACTED]	Representative review of file, hearing date certain - notes and instructions made for file
10/01/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/04/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/04/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
10/05/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
10/05/2010	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
10/06/2010	1.25	[REDACTED]	[REDACTED]	Representative final file review for hearing
10/07/2010	3.75	[REDACTED]	[REDACTED]	Hearing, inclusive of travel time, review of record, conference with claimant
10/11/2010	.5	[REDACTED]	[REDACTED]	Representative post hearing review of remand hearing and instructions for file
10/11/2010	1	[REDACTED]	[REDACTED]	Representative drafted letter
10/12/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
10/12/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
10/26/2010	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: status of decision
10/26/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
11/09/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: copies of medical records
11/09/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: decision
11/10/2010	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
11/10/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
11/11/2010	.5	[REDACTED]	[REDACTED]	Review of decision
11/16/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
11/18/2010	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
11/23/2010	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
11/30/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/06/2010	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case



ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
12/22/2010	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
12/22/2010	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for copy of award notice
01/05/2011	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status on claimant's benefits
01/06/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/07/2011	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: status on claimant's benefits
01/21/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/25/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
01/25/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
01/31/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
01/31/2011	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: status on claimant's benefits
02/01/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: status of case
02/03/2011	1.5	[REDACTED]	[REDACTED]	Analysis of Award Notice and clarification of calculations
02/04/2011	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/04/2011	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: case
Total Hours in all:			135.5	



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge

P.O. Box 13496

Philadelphia, PA 19101

Phone: 215-597-9980 Fax: 215-597-4183

MAR 18 2013

[REDACTED]

Dear Counsel:

Enclosed please find an order regarding the administrative review of the case of [REDACTED].
[REDACTED] The order sets forth the reason for the determination as well as what, if any, further steps are necessary.

Sincerely,

Jasper J. Bede
Regional Chief Judge

cc: [REDACTED]
[REDACTED]
[REDACTED]

Social Security
2100 M. Street NW
Washington, DC 20037

MATPSC – Module 8
300 Spring Garden Street
Philadelphia, PA 19123

Office of Disability Adjudication and Review
1227 25th Street NW, Suite 300
Washington, DC 20037

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

**ORDER OF THE REGIONAL CHIEF JUDGE
AUTHORIZATION TO CHARGE AND COLLECT A FEE**

IN THE CASE OF

CLAIM FOR

[REDACTED]

(Claimant)

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Wage Earner)

XXX-XX [REDACTED]

(Social Security Number)

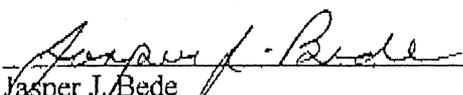
By letter dated July 11, 2012, the representative requested administrative review of the prior authorized fee. The representative is hereby authorized to charge and collect a fee in the amount of \$463.10 for services provided to the claimant and auxiliaries, if any, for proceedings before the Social Security Administration (SSA). The fee does not include any out-of-pocket expenses (for example, costs to get copies of medical or hospital reports), which is a matter between the claimant and the representative.

The amount approved is based on consideration of the factors set forth in 20 C.F.R. §§ 404.1725 and 416.1525 and HALLEX I-1-2-57, and is appropriate given the nature of the services rendered, the time actually required to render the services, and the complexity of the issues involved. After reviewing the fee petition and related materials in this case, the amount of time claimed for services provided does not appear to be reasonable. For example, the itemized list of services reflects over 16 hours of merely drafting requests for records. In addition, all of the items listed are either routine or clerical in nature (i.e., review of SSA documents, phone calls with the claimant and SSA, completing SSA forms, etc.). There is no indication of research or development that would suggest that this claim was complex in nature. Finally, there are no entries of less than 15 minutes.

There are no further reviews or appeals of this determination available.

The Social Security Administration will directly pay the representative's fee from the portion of the claimant's title II or title XVI past-due benefits that has been set aside for representative fees. If the direct payment check does not cover the authorized fee, payment of the balance is a matter for the claimant and representative to settle. If the claimant has been awarded title II benefits, the representative should send any questions concerning the status of the check to the processing

center that issued the claimant's title II award letter. If the claimant has been awarded only title XVI benefits, the representative should contact the field office that issued the award letter.



Jasper J. Bede
Regional Chief Judge

MAR 18 2013

Date

SEE ATTACHMENTS FOR OTHER IMPORTANT INFORMATION

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, Black Lung, and/or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review, which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount of benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- Any fee a federal court allows for the representative's services before it; and
- Out-of-pocket expenses your representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- The funds in the trust or escrow account exceed the amount of the authorized fee; or
- The combined total of the funds in the trust or escrow account and the amount we directly pay the attorney representative from the claimant's title II or black lung past-due benefits exceed the amount of the authorized fee.

Possible Refund to the Claimant

A claimant may be due more money when the Social Security Administration authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because the Social Security Administration deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact the Social Security Administration. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty for Charging an Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before the Social Security Administration. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services provided in any claim, including services before a court, which made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; 30 U.S.C. § 923(b); and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, 416.684 *et seq.*, and 416.15 *et seq.*
- Social Security Rulings 88-10c (C.E. 1988), 85-3 (C.E. 1985), 83-27 (C.E. 1983), and 82-39 (C.E. 1982)



SOCIAL SECURITY

Office of Disability Adjudication and Review
Office of the Regional Chief Administrative Law Judge
P.O. Box 13496
Philadelphia, PA 19101
Phone: 215-597-9980 Fax: 215-597-4183

August 3, 2012

[REDACTED]

Dear Counsel:

This is to acknowledge receipt of your letter concerning your request for administrative review of the authorized fee in the case of [REDACTED]

We have requested the necessary records. In the meantime, all parties are afforded 15 days from the date of this letter to comment. Thereafter, we will reevaluate all services and notify all parties of our decision.

If you have any questions or concerns, please contact Elba Luz Bousono, Paralegal Specialist, of my staff at (215) 597-1816.

Sincerely,


Jasper J. Bede
Regional Chief Judge

cc:

[REDACTED]

Social Security Administration
2100 M Street, NW
Washington, DC 20037

Mid-Atlantic
300 Spring Garden Street, Module 8
Philadelphia, PA 19123

 **FILE COPY**

Enclosure: Copy of letter from the representative



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

Office of Disability Adjudication and Review
Suite 300
1227 25th St NW
Washington, DC 20037-8199
Tel: (866)414-6259 / Fax: (202)254-0634

June 15, 2012

UNREVIEWABLE
AUTHORIZATION TO CHARGE AND COLLECT FEE

To: [REDACTED]

IN THE CASE OF

[REDACTED]

(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

[REDACTED]

(Social Security Number)

The representative is not authorized to charge and collect any fee for services provided the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' records). This is a matter between the claimant and the representative.

A favorable disability decision was issued on October 26, 2010, regarding the claimant. The award certificate was issued on December 15, 2010. The authorized representative, [REDACTED], filed his fee petition on April 22, 2011.

The submitted fee petition was accompanied by a time and task statement, requesting \$2,507.87 in fees and reflecting 32 hours of work performed by various individuals; most of whom were not [REDACTED].

The fee petition must be denied for several reasons:

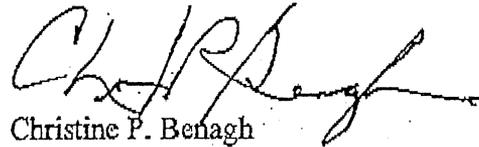
- a) The statutory deadline for filing a fee petition is 15 days after receipt of the notice of award. 42 USC 406 (a)(3)(A). The award in this case was issued on December 15, 2010. The claimant received her decision and notice of award. Work Log Notes. The copies of the decision and the notice of award mailed to the authorized representative were not returned. There is no indication that the authorized representative did not obtain them timely. The fee petition was filed significantly after the statutory deadline. I have no authority to extend the statutory deadline.
- b) The statute authorizes filing of a fee petition only by an authorized representative, 42 USC 406(a)(3)(A)(ii), and only for work performed by him. 42 USC 406(a)(1); *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571 (2008); *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83 (1991); *Missouri v. Jenkins*, 491 U.S. 274 (1989). Under those precedents involving multiple fee shifting statutes, fees can be paid to paralegals when fees and expenses can be paid to attorneys, as the expenses of attorneys are recoverable under those statutes, e.g., 28 USC 2412(a)(1). Under the Social Security Act, costs and expenses may not be recovered. The Social Security Act permits only "a reasonable fee to compensate such attorney [or representative] for the services performed by him in connection with the claim." Therefore, costs and services performed by individuals other than the authorized representative are not compensable under the statute. Only [REDACTED] was an authorized representative on this petition. He may only petition for work performed "by him". The regulations are in accord, requiring the representative to state the "services that he or she gave". 20 CFR 404.1725.
- c) The copy of [REDACTED] fee agreement attached to the fee petition form is invalid. It is unsigned by [REDACTED]. The claimant's signature is not dated. The agreement states that she agreed to pay 25 percent of back due benefits if the claim were successful after the initial decision of an administrative law judge, which could appear to abrogate, without notice, her statutory right to object to any fee petition. 42 USC 406(a)(3)(A). The claimant did not intend to abrogate those rights. She objected strongly to the fee petitions filed, as shown in the Work Log Notes, and as [REDACTED] admitted in his letter of February 1, 2012.
- d) [REDACTED] did not attach the amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid. 20 CFR 404.1725. [REDACTED] checked the box that there were no such expenses. The Work Log Notes, at 24, 25, submitted by [REDACTED], in response to my subpoena, show that invoices for expenses were sent to the claimant.
- e) [REDACTED] did not identify the individuals, including himself, whose work was shown on his fee petition or to provide their resumes, so that the expertise required for each task could be analyzed. The Work Log Notes do not provide this information in most cases.
- f) As [REDACTED] declined to provide the information necessary to perform the regulatory analysis (the Work Log Notes provide insufficient information and do not correspond exactly to the fee petition), I must proceed without that information. It

- seems that [REDACTED] tasks may have accompanied in the time and task statement by the word "Representative". There are two such entries, totaling 1.25 hours.
- g) The Work Log Notes demonstrate, however, that much of the work marked as that of a "representative" was performed by other individuals, even the time claimed is erroneous in some cases. For example, [REDACTED] fee petition states that he spent 2 hours on March 31, 2005, completing intake. The Work Log Notes show 8 minutes and 26 minutes. [REDACTED] claims 0.5 hours on May 11, 2005, for review, but the Work Log Notes reflect no file review that day by a representative. Another representative review of 0.75 minutes was claimed by [REDACTED] on October 24, 2005 (a point when only [REDACTED] was an authorized representative), but the review that day was performed by "SMG". Work Log Notes at 6.
- h) [REDACTED] certified in his fee petition that the claimant had agreed to a fee of \$2,507.87. The fee agreement was invalid, as discussed above. The claimant opposed this fee, as [REDACTED] stated in his letter of February 1, 2012, and as reflected in the Work Log Notes at page 58.
- i) The Work Log Notes submitted show that specific approval (a green sticker) was placed on evidence that was to be submitted, that other evidence was being considered more carefully before submission (a yellow sticker). E.g., 3, 5, 6, 12, 13, 36, 39. A portion of the Work Log Notes, page 44, was redacted before submission to me—all work performed on May 5, 2010. [REDACTED] fee petition for this proceeding shows that medical records were reviewed on that date. [REDACTED] has not responded to my request for a copy of the redacted text. Under those circumstances, it seems likely that medical evidence was received that was adverse to the claimant's case, marked with a red sticker, and not submitted.
- j) The Work Log Notes reflect what tasks were performed, when the task began, and, sometimes, who performed it, but does not show when the work was completed, so it is the source is unclear for the hours claimed in the fee petition.

Given the foregoing reasons, the fee petition is denied.

Review of a fee petition in a favorable case is reserved to the administrative law judge who issued the favorable decision. 42 USC 406(a)(3)(B)(i). This denial of authorization of a fee petition is not reviewable, by statute. 42 USC 406(a)(3)(C) ("The decision of the administrative law judge conducting the review [of the fee petition] shall not be subject to further review.") If review is sought or taken, the claimant is strongly advised to obtain *pro bono* legal representation through her local bar association.

AUTHORIZING OFFICIAL



Christine P. Benagh
Administrative Law Judge

SEE ATTACHMENT FOR OTHER IMPORTANT INFORMATION

CC:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PETITION TO OBTAIN APPROVAL OF A FEE FOR REPRESENTING A CLAIMANT BEFORE THE SOCIAL SECURITY ADMINISTRATION

PAPERWORK/PRIVACY ACT NOTICE: Your response to this request is voluntary, but the Social Security Administration may not charge any fee unless it receives the information this form requests. The Administration will use the information to determine a fee for services you rendered to the claimant named below, as provided in section 206 of the Social Security Act (42 U.S.C.)

I request approval to charge a fee of	Fee \$ 2,507.87	(Show the dollar amount)
for services performed as the representative of	Mr. [REDACTED]	
My Services Began: 03 / 31 / 2005	Mrs. [REDACTED]	
Month / Day / Year	Ms. [REDACTED]	
My Services Ended: 04 / 24 / 2008	Type(s) of claim(s)	
	SSD/SSI	

Enter the name and the Social Security number of the person on whose Social Security record the claim is based.

[REDACTED]

- Itemize on a separate page or pages the services you rendered before the Social Security Administration (SSA). List each meeting, conference, item of correspondence, telephone call, and other activity in which you engaged, such as research, preparation of a brief, attendance at a hearing, travel, etc., related to your services as representative in this case. Attach to this petition the list showing the dates, the descriptions of each service, the actual time spent in each, and the total hours.
- Have you and your client entered into a fee agreement for services before SSA? YES NO
If "yes," please specify the amount on which you agreed, and attach a copy of the agreement to this petition. \$ 2,507.87 and See attached
- (a) Have you received, or do you expect to receive, any payment toward your fee from any source other than from funds which SSA may be withholding for fee payment? YES NO
(b) Do you currently hold in a trust or escrow account any amount of money you received toward payment of your fee? YES NO
If "yes" to either or both of the above, please specify the source(s) and the amount(s).
Source: \$ _____ \$ 6,000.00
Source: \$ SSA \$ _____
Note: If you receive payment(s) after submitting this petition, but before the SSA approves a fee, you have an affirmative duty to notify the SSA office to which you are sending this petition.
- Have you received, or do you expect to receive, reimbursement for expenses you incurred? YES NO
If "yes," please itemize your expenses and the amounts on a separate page.
- Did you render any services relating to this matter before any State or Federal court? YES NO
If "yes," what fee did you or will you charge for services in connection with the court proceedings? \$ _____
Please attach a copy of the court order if the court has approved a fee.
- Have you been disbarred or suspended from a court or bar to which you were previously admitted to practice as an attorney? YES NO
- Have you been disqualified from participating in or appearing before a Federal program or agency? YES NO

I am under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature of Representative	Date	Address (include Zip Code)
[REDACTED]	04/19/2011	[REDACTED]
Firm with which associated, if any	Telephone No. and Area Code	
[REDACTED]	[REDACTED]	

[Note: The following is optional. However, SSA can consider your fee petition more promptly if your client knows and already agrees with the amount you are requesting.]

I understand that I do not have to sign this petition or request. It is my right to disagree with the amount of the fee requested or any information given, and to ask more questions about the information given in this request (as explained on the reverse side of this form). I have marked my choice below.

- I agree with the \$ _____ fee which my representative is asking to charge and collect. By signing this request, I am not giving up my right to disagree later with the total fee amount the Social Security Administration authorizes my representative to charge and collect. OR
- I do not agree with the requested fee or other information given here, or I need more time. I understand I must call, visit, or write to SSA within 20 days if I have questions or if I disagree with the fee requested or any information shown (as explained on the reverse sides of this form).

Signature of Claimant	Date
[REDACTED]	
Address (include Zip Code)	Telephone No. and Area Code
[REDACTED]	[REDACTED]

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
03/31/2005	2	[REDACTED]	[REDACTED]	Complete claimant intake, preparation of file, necessary office and draft SSA forms completed
04/25/2005	1	[REDACTED]	[REDACTED]	Interview/Initial review of case, review of all papers, notes and instructions made for file.
04/25/2005	.25	[REDACTED]	[REDACTED]	Edits to drafts of SSA Forms
04/26/2005	2.75	[REDACTED]	[REDACTED]	Open claimant's file: review and submit completed forms to SSA; forms to claimant
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for earnings record
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/26/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
05/05/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
05/11/2005	.5	[REDACTED]	[REDACTED]	Initial Representative review
05/23/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
06/02/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
06/06/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
06/07/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
06/15/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: submission of medical evidence
07/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
07/19/2005	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
07/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
07/25/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
08/11/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
08/26/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
08/27/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: fee for medical records/report
08/31/2005	.25	[REDACTED]	[REDACTED]	Communication with Doctor/Hospital re: request for medical records/report
08/31/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/06/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
09/20/2005	1	[REDACTED]	[REDACTED]	Prepared hearing request; review of forms; submission to SSA

ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
09/20/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request for medical update
09/28/2005	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
10/21/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
10/24/2005	.25	[REDACTED]	[REDACTED]	Reviewed Medical Records
10/24/2005	.75	[REDACTED]	[REDACTED]	Representative file review at hearing level - notes and instructions made for file
10/25/2005	.5	[REDACTED]	[REDACTED]	Correspondence to ODAR re: submission of medical evidence
11/04/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/11/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/16/2005	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
11/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
11/18/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
11/28/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
12/05/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
12/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
12/19/2005	.5	[REDACTED]	[REDACTED]	Correspondence to SSA re: request for status
12/19/2005	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
12/30/2005	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
01/09/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/09/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/13/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
01/25/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
01/25/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: status of case
01/25/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
02/01/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/01/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
02/06/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
02/08/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
02/08/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/16/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
02/16/2006	.25	[REDACTED]	[REDACTED]	Communication with SSA re: case
02/24/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case



ITEMIZED LIST OF SERVICES

Service Date	Hours	SSN	Client	Work Description
03/13/2006	.5	[REDACTED]	[REDACTED]	Correspondence to claimant re: request to contact our office
03/20/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
03/23/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
03/23/2006	.5	[REDACTED]	[REDACTED]	Correspondence to Doctor/Hospital re: request for report/medical records
04/06/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: medical development
04/20/2006	.25	[REDACTED]	[REDACTED]	Communication with ODAR re: case
04/24/2006	.25	[REDACTED]	[REDACTED]	Communication with claimant re: case
Total Hours in all:			32	

ATTACHMENT 41

To edit a specific record, enter either the SSN, the Claimant's Last Name or the Representative's Last Name and click Find Record

SSN Claimant Last Name Rep Last Name Find Record Browse All Records

SSN: [REDACTED] Name: [REDACTED] STATUS: CLSD DATE: 3/12/2009
Name: [REDACTED] [REDACTED] MI [REDACTED] [REDACTED]
X-Ref: CT DIWC HT 30 Rep Name: [REDACTED] [REDACTED] E
Address: [REDACTED] Address: [REDACTED] MI
City: [REDACTED] City: [REDACTED]
State: [REDACTED] Zip: [REDACTED] State: [REDACTED] Zip: [REDACTED]
Phone: [REDACTED] FO Code: [REDACTED] Phone: [REDACTED] Attorney? Y
ACL #: [REDACTED]-0 Rep Beginning on: 12/13/2000 Ending on: 4/27/2004

Type: FPAR Date Received: 7/8/2008 Tickle: 3/3/2009 ALJ: Benagh, Christine HO: WASHINGTON
Req By: REP PC: Mid-Atlantic PSC MOD: 7 PC Contact: 5th Floor PC Phone:
Employee: ELB Date Assigned: 3/12/2009 Award Notice: 25% II>: \$5,332.50 XVI>:
Amount Requested: \$10,079.00 ALJ Amount: \$1,179.63 Hours Claimed: 77.75 Amt Authorized: \$10,079.00
Agreement Approved/Disapproved: A RCJ Agreement Approved/Disapproved: D Final Action Date: 3/12/2009

Remarks:

Save Changes Print Reset Form Delete Record Main Menu

Paper case.
Destroyed due to
age of claimant.

FACT DTE:05/06/13 SSN: [REDACTED] BIC: DOC:X25 UNIT:PHR PG: 001+
STATUS MBR YES LOU-05/06 DATA FILES YES LOU-05/06 SSACCS NO LOU-05/03
CPS NO

ACCOUNT PCOC-2 SEX-M MS-DER RCC-5 ERC-00 CDY-0 DRAMS READ
PMT CYC CYI-2 PCEFD-10/31/2000 PCCOM-11/00 PCCR-I
PRIMARY [REDACTED] DOB-[REDACTED] LSPA-\$0.00
INSURED CLAIM TYPE-DISABILITY DATE OF FILING-06/15/2000 FIRST MET-01/1995
DIB QC EARNED-00 FULL QC REQUIRE-32 FULL QC EARNED-40
CURR QC EARNED-00 HLTHBEN QC EARN-00 CONVERTED

SP MSG1 TRANS DT-09/02
HA IS REPRESENTED BY ATTY [REDACTED]

SP MSG2 TRANS DT-09/02
FEE AGREEMENT APPROVED; PAST-DUE = \$21330.00 FEE = \$5300.00 LESS
USER FEE

SP MSG3 TRANS DT-09/02
CLOSED PERIOD OF DIB - DIB TERM T8 EFF 10/01

SP MSG4 TRANS DT-01/10
01/20/10 ATTY SENT LETTER TO FO REQUESTING THAT HIS ATTY BE PAID.
I SENT A 409 TO PC2 ASKING TO RELEASE ATTY FEE. 004

PIA HIS 12/11 \$2028.10 L2K FMAX-\$ 3042.70D
11/12 \$2028.10 L2K FMAX-\$ 3549.80T
12/12 \$2062.50 L2K FMAX-\$ 3610.10T

APPREP FAVORABLE DEC-11/18/2006 CLIENT PIC-A BENEFIT DECISION-11/18/2006
ESTABLISHED-09/15/2002 PAST DUE START-08/2000
PAST DUE STOP-09/2001 AMT WITHHELD- \$5332.50
PAST DUE BENS- \$21330.00 FEE TYPE-APPD FEE AGMT
FEE STATUS-AUTHORIZED FEE AGMT %-25 FEE AMT- \$5300.00
AUTHORIZED FEE- \$5300.00 EXCESS WITHHELD- \$32.50
EXCESS PAID-09/25/2009 EXCESS PAID RSN-SYS W/H MONEY

PAYMENT PIC-A MPA-\$1957.00 DOC-C07 RD-01/28/13 LAP-T
TELE NO BTN-[REDACTED] BTC1-O CPND-09/2002
PAYEE

ADDRESS PAYEE UPDATED-10/31/2000
[REDACTED]

ADDR UPDATED-10/31/2000
SCC-21160 SOURCE-C
BANK RTN-[REDACTED] DAN-[REDACTED] B BCD-06/17/05

BENEFIT BIC-A [REDACTED] SB-M DOB-[REDACTED] B DOEI-08/00 DOEC-11/12
ABN-1TJW LAF-C MBP-\$1957.00 DRD-10/23/12 LANG-E
HI CONTS PRD-08/2002 SMI CONTS PRD-07/2011

HIST TOC TOC-5 START-CONV

TOC-1 START-11/2012
BENE ENT START-08/2000 DATE OF FILING-06/15/2000 APP RECEIPT-00/00/0000
ID CODE-A CUR ENT CODE-DISABLED FULL RETIRE AGE-11/2012
ANN EARN FRA-11/2012 TERMINATION-11/2012

START-11/2012 DATE OF FILING-06/15/2000 APP RECEIPT-00/00/0000
ID CODE-A FULL RETIRE AGE-11/2012 ANN EARN FRA-11/2012
DIB DDO-02/27/00 DIG-2020 DIB DOED-08/2000 MEDICARE DOED-08/2000

RESIDNCY START-06/29/2000
CITIZEN START-11/08/1946 COUNTRY-UNITED STATES PROVEN

DOB START-08/2002 TERM-11/2011 BASIS-DISABILITY TYPE-FREE FILING-07/2002
NON COVER RSN-AGE 65 CONV

PCACS 05/06/13

STANDARD QUERY

SQRY

TRANSFER-TO: _____ ENTERING COMPONENT: MODXX

UNIT: PHR

ROUTE RESPONSE TO: 1 1. SCREEN 2. PRINTER

ENTER SSN/SSNX OR SELECT RECORD(S) FOR FULL QUERY:

: [REDACTED] SSNX: _____

SSN	SSNX	AD	I	H	C	TOEL1/2/LIST	LOCATION	LOCDT	SITEDT
— [REDACTED]	20156		P				PC2 IMAGE ON FILE	041410	041410
— [REDACTED]	20101						PC2 DESTR DEST DEST	042011	082402



SOCIAL SECURITY
Office of the Regional Chief Judge

MEMORANDUM

Office of Disability Adjudication &
Review
P.O. Box 13496
Philadelphia, PA 19101

Date: October 9, 2008

To: Larry Banks
Hearing Office Chief Judge
Washington, D.C. Hearing Office

From: Jasper J. Bede *J.B.*
Regional Chief Judge
ODAR – Region III – Philadelphia, PA

Subject: Counseling regarding fee matters/appropriate language - ALJ Christine P. Benagh

I have recently become aware of two fee orders issued by Judge Benagh which necessitate that she receive guidance regarding the form and content of fee orders.

On May 8, 2008, Judge Benagh issued a fee petition order in the case of [REDACTED]. The order contains inaccuracies and inappropriate language. In addition, Judge Benagh's actions in this case indicate that her level of understanding of fee agreements and fee petition regulations is inadequate.

As a preliminary point, the form of the order is improper. The order is entitled "Memorandum Order Denying in Part and Authorizing in Part Fee Petition" and is under Judge Benagh's own personal letterhead. A fee petition order should be entitled "Authorization to Charge and Collect Fee" and should appear with the usual SSA case caption and the hearing office's general letterhead, per the form in DGS under "Fee Documents."

Procedural understanding: First, Judge Benagh's order does not give the claimant or the representative appeal rights or instructions for requesting a review. This is a serious omission.

In addition, in the second paragraph of the order, Judge Benagh states that the appeal period for requesting administrative review of a fee agreement amount is 60 days, instead of 15 days. The order also states that a letter of intent to file a fee petition was filed more than a year after the deadline. As you know, there is no time limit for filing fee petitions.

Furthermore, in May 2006, Judge Benagh sent me her recommendation for a fee of \$7,000, with respect to the representative's petition. Since the upper limit an ALJ can authorize is \$7,000, Judge Benagh could have authorized the fee at that point. The fee review was sent back to her for her own order, which she did not do until May 2008 (after receiving reminders from one of my staff).

Inflammatory tone and language: In bold, enlarged letters, as a section heading, Judge Benagh wrote: "The fee petition contains material false and misleading statements by the attorney, certified by him to be accurate." She then goes on to castigate the attorney on several issues that appear to have mostly been miscommunication, clerical errors or a difference in philosophy. We do encourage ALJs to carefully review fee documents, but using diplomatic language when responding is a requirement. In her order, Judge Benagh comes very close to accusing the representative of fraud.

Compounding matters, in Paragraph #4 of her order, she states, "ODAR expects a judge to perform all analysis of the case, order all needed development, instruct and correct the decision in less than two and ½ hours total. (50 cases per month divided by the approximately 22 working days in a report month.)" Judge Benagh then goes on to use very caustic language regarding Counsel [REDACTED] credibility, and by the end of Paragraph #5, she reduces 22.75 hours of charges to 9.1 hours. It is obviously inappropriate for an ALJ to discuss internal Agency expectations or goals within a fee order.

Other issues: Within the order, Judge Benagh claims that RO staff "proposed a fee of \$2,949." RO staff members do not propose fee amounts to ALJs, and we have no record of this occurring in this case.

Judge Benagh also authorizes only \$129.63 per hour as the hourly rate, which she terms as the "requested" rate. Mathematically, this is the effective rate of the requested total fee, but only because Counsel [REDACTED] capped his request at 25% of past-due benefits.

The second fee order is a January 18, 2008 order regarding the case of [REDACTED]. Judge Benagh correctly disapproved the fee agreement, but she added a paragraph in enlarged, capital letters (the appearance of shouting) referencing the claimant's "inoperable brain cancer." Although Judge Benagh clearly had the claimant's interests in mind, the manner in which she phrased this remark was inappropriate and could have a negative emotional effect on the claimant. Also, according to SSA procedures at the time of the order, in a concurrent dire need case, past-due benefits, less 25 percent, can be released.

Please take the following actions and advise me when they are completed:

1. Review with Judge Benagh the procedural mistakes and inaccuracies in the [REDACTED] case, including the form of the order, the lack of appeal rights, and the fact that an ALJ may authorize a fee **up to and including \$7,000**. Please remind her of the DGS shell.
2. Meet with Judge Benagh and counsel her about using appropriate language in her orders. As part of this discussion, please direct her to review HALLEX I-2-8-35(A)(1), which states, "Avoid using emotionally charged words, pejorative terms, and personal judgments or opinions..." Although this section refers to evidence, the noted principle aptly applies. Please direct her to also review HALLEX I-2-8-25 (D), which states:
 - The ALJ must not use emotionally charged words; e.g., "malingerer," "hypochondriac, etc."

- The ALJ must not use the decision as a forum for criticizing other government components, the courts, the representative or the claimant.

Please remind Judge Benagh not to discuss internal operations within orders. Judge Benagh should also be advised to refrain from “shouting” in orders by using all capital letters or oversized font.

3. Please direct Judge Benagh to view all four videos on Region III’s Fee Resource page, located at <http://odar.ba.ssa.gov/philadelphia/fees.htm> or to read the transcripts for those videos. She must confirm with you that she has read or watched all four. You may also wish to suggest that she download the Region III Fee Manual from that page if she does not already have one.
4. Please suggest to Judge Benagh that she use an hourly rate commensurate with the locale of the case.

Thank you for your attention to this matter. If you need any assistance, the staff contact is Phil Randell, Program Analyst, who can be reached at 215-597-5661. Copies of Judge Benagh’s orders regarding the [REDACTED] and [REDACTED] cases and Counsel [REDACTED] response in the [REDACTED] case are enclosed for your convenience.

Enclosures

ATTACHMENT 42

From: Benagh, Christine
Sent: Friday, May 31, 2013 8:37 AM
To: McGill, Michael
Cc: Kelly, Misha; Justice, Erin
Subject: RE: Questions related to Exhibit L

Mr. McGill,

I do not recall now, but I am sure that I did, because I am not permitted to disobey orders.

Thank you,

Christine P Benagh

From: McGill, Michael
Sent: Wednesday, May 29, 2013 5:15 PM
To: Benagh, Christine
Cc: Kelly, Misha; Justice, Erin
Subject: Questions related to Exhibit L

ALJ Benagh,

I have some questions related to Exhibit L of [REDACTED]. This is the memorandum from then HOCAJ Banks to you dated November 6, 2008 titled, *Guidance and Counseling Pertaining to Fee Matters/Appropriate Language*. The final paragraph of this memorandum states,

"You are instructed to view all of the four videos on the Region III Fee Resource page, located at <http://odar.ba.ssa.gov/philadelphia/fees.htm> or to read the transcripts for those videos. Please inform me when you have either completed the viewing of all four videos or read the transcripts. You may also wish to print out the Region III Fee Manual from the same web page for your review."

Did you ever view the videos or read the transcripts mentioned above? Did you ever report to then HOCAJ Banks that you did so?

Thanks,

Mike McGill

Special Agent in Charge

SSA/OIG

ATTACHMENT 43



SOCIAL SECURITY ADMINISTRATION

Office of Disability Adjudication

And Review, DC Office

1227 25th Street, NW, 3rd Floor

Washington, D.C. 20037

Telephone: 816-414-6259ext 23953

Facsimile: 202-154-0634

To: Michael McGill, Special Agent In Charge
Misha Kelly, Special Agent in Charge
Erin Justice, Esq.
From: Christine P. Benagh, Administrative Law Judge
Date: May 10, 2013
Re: OSC Referral

I have carefully considered the position of the agency expert. He is correct that there are two processes for collecting fees--fee petition and fee agreement. The fee agreement process was the second to be put in place. And his conclusion that 406(a)(1) is limited to fee petitions and 406(a)(2) and (3) seems correct as well; however, statutory conflicts remain.

- 1) The regulations covering fee agreements 20 CFR 404.1720 and 416.1520, impose a 30-day deadline after approval of the agreement for filing the request review. *See also* HALLEX I-1-2-1.D.1. The regulation conflicts with the statutory deadline in 406(a)(3) of 15 days after the notice of award letter.
- 2) More importantly, the statute contains no authorization for the agency to permit a representative to switch from the fee agreement process to the fee petition process. The agency's regulations do not provide for it.

HALLEX states that the processes are mutually exclusive, I-1-2-1.A., but then contradicts itself:

- a) HALLEX permits a representative who misses the fee agreement filing deadline to file a petition. I-1-2-1.B.
- b) HALLEX permits a representative to file a petition if the fee agreement does not meet the statutory conditions. I-1-2-12.
- c) HALLEX exempts certain fee agreements from the fee agreement process. I-1-2-12.

A fee agreement is the claimant's protection against exorbitant fees. Yet HALLEX permits the representative to escape this safeguard after the representative and claimant have chosen the fee agreement process, and they have agreed that the maximum fee will be \$6,000. Worse, the representative can escape the agreement simply by the wording of his agreement (a two-tier agreement, for example), or by failing to get all of the authorized representatives to sign the agreement. Even in the case where a claimant later chooses a representative from a different firm, the reviewing judge under 406(a)(3) could use the HALLEX review standards applicable to

the fee petition process without nullifying the fee agreement. Under the statute, each party has entered into a legally binding agreement, and there is a protest provision. The statute does not permit nullifying the agreement and switching later to the petition provisions--the "bait-and-switch" nature of the HALLEX arrangements benefits only the representative. The claimant protection intended by the statutory fee agreement process is lost.

The deadlines for fee petitions are all in HALLEX, are contradictory, and contradict the agency's admonishment to me in P [REDACTED] stating that there was no deadline for petitions. A judge cannot know that the agency does not enforce the HALLEX deadlines, or, given the contradictions, which deadline to apply. Moreover, HALLEX permits a fee petition to obtain compensation for the work of individuals other than the authorized by statute, I-1-2-53.A, which is prohibited by 406(a)(1) ("performed by him").¹

HALLEX is not law. It is issued without the notice-and-comment due process requirements of the Administrative Procedure Act. It can be changed at agency whim, as it was during the pendency of the P [REDACTED] matter, to benefit the representative. It cannot be used to remove the claimant protections of the Social Security Act.

¹ If there were actual supervision and direction, then it should be reflected on the time-and-task sheets. The time-and-task sheets of [REDACTED] probably demonstrate significant inflation of hours, by use of pro-forma entries, such as the one for travel to, conference, and attendance of hearing. This could be determined by reviewing the time-and-task sheets of [REDACTED] and [REDACTED] by day, rather than by case, especially as to [REDACTED], as the entries I have seen suggest that he bills more than 24 hours a day. In addition, full file review in a normal case takes only about an hour, and subsequent reviews should take much, much less. If the time alleged were actually spent, the firm would not be in business, as one cannot devote many hours to each claim and sustain a high-volume practice. You may find it useful to speak to other attorneys and representatives who do this work. If the times alleged by [REDACTED] and [REDACTED] were accurate and the \$6,000 cap in the fee agreement process were not adequate compensation for the true amount of work required, the bar would be lobbying for a very significant increase in the fee agreement cap.

ATTACHMENT 44

From: Melvin, Robert
Sent: Monday, May 13, 2013 4:10 PM
To: Justice, Erin
Subject: RE: OSC Referral Memo

Hi Erin:

I think the ALJ still is confusing the two alternative processes.

1.) In response to Judge Benagh's first point, the regulations she cited set a 30-day deadline for the representative or claimant to appeal the amount of the fee when the amount of the fee was determined by the adjudicator under the fee petition process. That process is established by the agency's regulations, under authority granted in 42 USC 406(a)(1). The statutory deadline she cites from 42 USC 406(a)(3) applies only to fee amounts "determined under paragraph (2)" (see first sentence of §406(a)(3)) – that is, to fees determined under the fee agreement process of 42 USC 406(a)(2). The 30-day deadline in the regulations does not apply to fee agreement cases; the 15-day deadline in 42 USC 406(a)(3) does not apply to fee petition cases. There is no conflict here; these are two different time limits for two different processes.

2.) With regard to Judge Benagh's second point, I think the Judge is mischaracterizing what happens in these cases. The agency does not allow a representative "to switch from the fee agreement process to the fee petition process." Rather, if all the conditions for use of the fee agreement process are met in a given case, the fee agreement process is used and the fee is determined by the fee agreement process. The alleged contradictions she lists in 2(a) through 2(c) are not situations where the case is in the fee agreement process and the representative is allowed to switch out; rather, those situations are ones where the case simply did not meet the conditions for using the fee agreement process. If the required prerequisites for the fee agreement process are not met, the fee agreement process never applied, and the fee petition is the representative's sole avenue for seeking approval of a fee. And I think that is exactly what Congress intended. I would note here that the statute does not say representatives "must" use the fee agreement process, or "must" agree to a fee not to exceed \$6000. Rather, the fee agreement provision in 42 USC 406(a)(2)(A) begins by saying "if" the conditions are met, "then" the fee will be set under the fee agreement process. Conversely, if the conditions are not met, then the fee agreement process cannot be used and the representative is left with the fee petition process as the only available process. And that is just what the conference report on the 1990 legislation intended: "If a fee was requested for a claim which did not meet the conditions for the streamlined approval process, it would be reviewed under the regular fee petition process."

It is true that a representative can tailor his or her contract with the client either to meet, or not to meet, the prerequisites of 42 USC § 406(a)(2), as Judge Benagh states. It also is true that a representative can avoid the fee agreement process simply by not filing an otherwise-qualifying agreement with SSA until after a favorable decision is issued. But that is the result of the statute: by placing explicit preconditions on the use of the fee agreement process, the statute also gives representatives the ability to avoid the process entirely by ensuring that one or more preconditions is not satisfied.

Judge Benagh also alleges that the deadlines in HALLEX regarding fee petitions are contradictory. I do not believe that is the case, but Judge Benagh offered no examples so there is nothing for me to refute. I also would not agree with Judge Benagh's final assertion that the HALLEX provisions "remove the claimant protections of the Social Security Act," as I see no basis for that assertion.

I do not know the specifics of the case described in footnote to Judge Benagh's memo, so I will not attempt to respond to that point.

If you'd like to discuss further, feel free to give me a call at 410-965-0431 or to send another email.

Bob Melvin

ATTACHMENT 45

SOCIAL SECURITY
Office of the Inspector General

STATEMENT OF _____ PAGE 1 OF 2

"I, _____, hereby make the following free and voluntary sworn statement to Maureen McGraw, who has identified him/herself to me as a Special Agent with the Office of Inspector General, Social Security Administration."

"I Viewed the Fee Petition form dated 4/19/2011 bearing my signature. I can attest that this form was never signed by me, this is not my signature. Case in reference is _____ I also reviewed the hours of claimed work on my behalf and they appear accurate.

State of: PENNSYLVANIA Date: 5/31/13

County of: PHILADELPHIA Location: STARBUCKS, 16TH & MARKET ST.

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ATTACHMENT 46



SOCIAL SECURITY ADMINISTRATION

Refer to: TLC
[REDACTED]

Office of Disability Adjudication
and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255
Telephone (877) 670-2722
Date **SEP 21 2012**

NOTICE OF APPEALS COUNCIL ACTION

[REDACTED]

The Administrative Law Judge's notice of favorable decision dated July 25, 2012 told you that the Appeals Council may decide on its own to review the decision within 60 days.

We Are Reviewing the Hearing Decision

We are writing to tell you that we are reviewing the decision in your case.

Rules We Applied

Under our rules, we will review your case for any of the following reasons.

- The Administrative Law Judge appears to have abused his or her discretion.
- There is an error of law.
- The decision is not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the public interest.
- We receive new and material evidence and the decision is contrary to the weight of all the evidence now in the record.

In your case, we found that the decision is not supported by substantial evidence and there is an error of law.

What We Considered

We considered the written record that was before the Administrative Law Judge and the testimony at the hearing.

See Next Page

What We Plan To Do

We plan to set aside the favorable hearing decision and send your case back to an Administrative Law Judge for more action and a new decision.

Why We Are Taking This Action

The Administrative Law Judge issued a decision on July 25, 2012, finding you disabled as of November 26, 2007, your alleged disability onset date, due to severe impairments of history of seizures, history of head trauma, stroke, hepatitis C, and depression (Findings 3 and 11). The Administrative Law Judge found that you retain the residual functional capacity to perform medium work, except that you can frequently climb ramps or stairs; occasionally climb ladders, ropes or scaffolds; and must avoid concentrated exposure to temperature extremes and hazards such as moving machinery and unprotected heights (Finding 5). She then found that, based on this residual functional capacity, no jobs existed in significant numbers in the national economy that you could perform, citing the framework of Medical-Vocational Rule 203.22 of Appendix 2 to Subpart P, Regulations No. 4 (Finding 10). Upon review of the record, the Appeals Council concludes that the decision is not supported by substantial evidence and contains errors of law.

During your hearing, the Administrative Law Judge asked you, through your representative, to agree to several stipulations. She first asked, "Would you be willing to stipulate to [your] severe impairments and waive consideration of all others as immaterial?" (Hearing Recording at 11:19 ff). She also asked, "Are you alleging a listing here or would you be willing to waive my discussion of listings?" (Hearing Recording at 11:21 ff). She further asked if you would stipulate that testimony from the vocational expert is consistent with the Dictionary of Occupational Titles before any such testimony was taken (Hearing Recording at 11:21 ff). The Administrative Law Judge then asked if you would be willing to stipulate to procedures that would be followed if the Appeals Council exercised its own motion review authority of any favorable decision she issued (Hearing Recording at 11:22 ff). Finally, she asked if, in the event the Appeals Council reviewed any favorable decision she issued and remanded your case for a supplemental hearing, whether you would be willing to waive your right to appear before her at a supplemental hearing if the result of the decision would not change (Hearing Recording at 11:23 ff). Notably, the hearing decision memorializes these stipulations (Decision, page 1). Your representative, acting on your behalf, agreed to the above stipulations. Regardless, an Administrative Law Judge has no authority to ask a claimant or representative to agree to stipulations that effectively circumvent portions of the mandatory sequential evaluation process for evaluating disability claims (20 CFR 404.1520 and 416.920). Similarly, an Administrative Law Judge has no authority to ask a claimant or representative to stipulate to procedures that conflict with our regulations and rulings. Accordingly, the Administrative Law Judge's actions in this regard constitute errors of law.

See Next Page

The finding that jobs do not exist in significant numbers that you could perform with the assessed residual functional capacity is not supported by substantial evidence. The decision cited Medical-Vocational Rule 203.22, which directs a finding of "not disabled." The additional non-exertional limitations related to climbing ladders and scaffolding and avoiding concentrated exposure to temperature extremes and hazards would not be expected to significantly affect the occupational base, even at the medium exertion level (See Social Security Rulings 83-14 and 85-15). The decision states that the vocational expert testified that, given your residual functional capacity and other medical-vocational factors, there are no jobs in the national economy that you could perform (Decision, page 6). This misrepresents the vocational expert testimony. The Administrative Law Judge briefly questioned the vocational expert about your past relevant work (Hearing Recording at 11:25 ff), but she did not pose any hypothetical questions to the vocational expert or in any way inquire as to whether there is other work that an individual with your medical-vocational profile could perform. Accordingly, the finding at step five of the sequential evaluation process is not supported.

The Administrative Law Judge found that you have a severe mental impairment, but did not evaluate those impairments using the "special technique" in 20 CFR 404.1520a and 416.920a. Specifically, she did not rate the degree of limitation you have in the four broad functional areas that make up the "paragraph B" criteria: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation (20 CFR 404.1520a(c) and 416.920a(c)). This represents an error of law. Further, the residual functional capacity finding does not include any work-related mental limitations, which is inconsistent with the finding that your depression is a severe impairment (Finding 5). The decision also did not address evidence from your mental health treatment providers at Threshold Services (Exhibits 14F, 18F, 19F, 21F). One of those sources, psychiatrist Abby Morris, M.D., stated in a letter dated March 30, 2012, that you continue to experience significant symptoms and, in her opinion, would be unable to sustain any gainful employment (Exhibit 19F). While that opinion is generally supportive of your claim, the record reflects that you first received treatment at Threshold Services in April 2010, almost 2½ years after your alleged disability onset date. Thus, even if that evidence is deemed to substantially support a finding of disability, it would not appear to support the disability onset date established in the decision.

Similarly, the evidence related to your other impairments does not appear to substantially support the established onset date of November 26, 2007. The hearing decision only discusses two exhibits in the record, both submitted at the initial determination level (Exhibits 1F and 5F). One relates to an overnight emergency room visit in October 2007, at which time you were diagnosed with a sub-acute stroke (Exhibit 1F). However, the medical evidence of record does not indicate you have had any significant residual neurological complications. Also, your last reported seizure was in 1997 (Exhibit 2F). The evidence reflects that hepatitis C was diagnosed in July 2011, and appears to be reasonably well-controlled under your current treatment regimen (Exhibits 15F/9 and 23F). In a letter dated March 2, 2012,

your treating gastroenterologist, Kathryn Kirk, M.D., stated that your hepatitis C is being treated with potent medications that cause lethargy, anemia, and decreased white blood cell count (Exhibit 16F). However, this appears to be a general statement about the common side effects of this treatment, as there are no records from Dr. Kirk or any other treating source that actually document you have experienced such side effects.

Finally, in addition to the due process concerns previously noted, we observe that the Administrative Law Judge did not offer you the opportunity to testify about your impairments and limitations and did not provide your representative with an opportunity to make legal arguments in support of your claim. Thus, you did not have an opportunity for a full hearing.

Therefore, absent new and material evidence or persuasive legal argument, the Appeals Council intends to remand your case to an Administrative Law Judge to resolve the above issues and offer you the opportunity for a supplemental hearing. The Administrative Law Judge will be instructed to obtain updated evidence from your treating and examining sources, if available; obtain evidence from a medical expert to clarify the nature and severity of your impairments; evaluate your mental impairments pursuant to 20 CFR 404.1520a and 416.920a; further evaluate your maximum residual functional capacity for the entire period at issue considering all of the medical evidence and opinions in the file; and obtain supplemental testimony from a vocational expert to help clarify the effect of the assessed limitations on your ability to perform your past relevant work or other work that exists in significant numbers in the national economy and, as appropriate, whether you have acquired any skills that are transferable to other work within your assessed residual functional capacity. In light of the concerns noted above about the lack of a full hearing and the attempted waiver of future hearing proceedings, we intend, on remand, to instruct that your case be assigned to a different Administrative Law Judge.

You May Send More Information

You may send us more evidence or a statement about the facts and the law in your case within 25 days of the date of this letter.

You May Ask For An Appearance

You may ask for an appearance before the Appeals Council to tell us about your case. You must tell us in writing within 25 days from the date of this letter why you want an appearance.

Under our rules, we will give you an appearance if:

- There is an important question of law or policy;

OR

- Oral argument would help us reach a proper decision.

If we decide to give you an appearance, we will notify you about the time and place at least 10 days before the date scheduled for your appearance.

We Will Not Act For 25 Days

If you have more information, you must send it to us within 25 days of the date of this letter.

Our address and FAX number are:

ADDRESS: Appeals Council
Office of Disability Adjudication and Review
ATTN: QRB 4, Suite 1400
5107 Leesburg Pike
Falls Church, VA 22041-3255

FAX: (703) 306-5090, Attn: QRB 4

Put the Social Security Number shown at the top of this letter on your request.

If you send us anything by fax, do not send duplicates by mail. This may delay processing your claim.

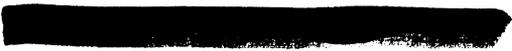
What Happens Next

If we do not hear from you within 25 days, we will assume that you do not want to send us more information or appear before the Appeals Council. We will then send your case back to an Administrative Law Judge.

You May Receive Benefits While We Are Reviewing Your Case

Under Section 8001 of Public Law 100-647, the Social Security Administration must pay interim benefits if we have not made a final decision within 110 days after the date of an Administrative Law Judge's favorable decision. Because we are reviewing the hearing decision, you may receive interim benefits if we do not make a final decision within that time. If you receive interim benefits, they will continue until we make a final decision.

See Next Page



If you are due interim benefits, another office will let you know how much they are and when you will receive them.

If You Have Any Questions

If you have any questions, you may call or write the Appeals Council. Our telephone number and address are shown at the top of this letter. If you do call, please have this notice with you.

Cary C. Kisner
Administrative Appeals Judge

Robert S. Johnson
Administrative Appeals Judge

Enclosure(s):
Self-addressed envelope

cc:



ATTACHMENT 47

From: Thawley, John A.
Sent: Thursday, March 21, 2013 1:30 PM
To: Benagh, Christine; 'Christine Benagh (christine.benagh@gmail.com)'
Cc: Clark, William; Bede, Jasper J.
Subject: AC remand - your "stipulations" constitute errors of law

Hello, Judge Benagh. About an hour ago our office received a call from a representative in one of your cases, drawing attention to an AC Remand order in a case where you rendered a FF decision . . . and basically asking how quickly we will be able to get the case back onto the hearing calendar.

I have reviewed the AC Remand order. It is 6 pages long – in part because of a lengthy paragraph(s) finding that the “Stipulations” in your decision (to waive consideration of the Listings, to waive the right to appear at a post-remand supplemental hearing, etc.) constitute errors of law. The AC is sending the case back to us, and is directing that it be assigned to a different ALJ.

I believe that you have been using these “Stipulations” in most / all of your decisions for quite a while now. I also believe that I previously expressed concern to you regarding the “Stipulations” language. As you know, the DC Hearing Office can ill afford to handle potentially numerous AC remands, given our caseload, the fact that we are currently operating with one less ALJ than normal, etc. Having to do so would consume valuable hearing time-slots, writer work effort, etc., thus delaying hearings / decisions for other claimants.

Therefore, I am directing you to IMMEDIATELY STOP using the Stipulations – including in the cases that you have in EDIT and SIGN (one each, based on current CPMS data). Thank you for your compliance.

John A. Thawley,

Hearing Office Chief Administrative Law Judge

1227 25th Street, NW

Washington, DC 20037

(866) 414-6259, extension 23957

ATTACHMENT 48

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF

CLAIM FOR

(Claimant)

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Wage Earner)

(Social Security Number)

I approve the fee agreement between the claimant and the representative subject to the conditions that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the fee agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Jasper B. Bede
Regional Chief Administrative Law Judge
300 Spring Garden Street
P.O. Box 13496
Philadelphia, PA 19123

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

0

You should include the social security number(s) shown on this order on any papers that you send us.

Administrative Law Judge

Date

ATTACHMENT 49



SOCIAL SECURITY ADMINISTRATION

Refer To:

Office of Disability Adjudication and Review
P.O. Box 13496
Philadelphia, PA 19101
Tel: (215) 597-9980 / Fax: (215) 597-4183

June 20, 2013

AUTHORIZATION TO CHARGE AND COLLECT FEE

To:

IN THE CASE OF

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Claimant)

(Wage Earner)

(Social Security Number)

You are authorized to charge and collect a fee in the amount of _____ for services provided to the claimant and auxiliaries, if any, for proceedings before the Social Security Administration. The amount of the fee does not include any out-of-pocket expenses (for example, costs to get copies of doctors' or hospitals' reports). This is a matter between you and the claimant.

If you or the claimant disagrees with the authorized fee, either or both can ask us to review the amount of the fee. If the claimant thinks the fee is too high or you think the fee is too low, either party must write to us **within 30 days from the date of this notice**. You or the claimant must also send a copy of the request to the other person. The review can result in an increase, decrease, or no change in the amount of the fee. The request for review must give the reasons for disagreeing with the amount of the fee and be sent to:

Office of the Regional Chief Administrative Law Judge
Office of Disability Adjudication and Review.
300 Spring Garden Street
P.O. Box 13496
Philadelphia, PA 19123

The paragraph(s) below refers to payment of the representative's authorized fee.

We will directly pay your fee from the claimant's Title II or Title XVI past-due benefits, or both. (If the check does not cover the authorized fee, payment of the balance is a matter for you and the claimant to settle.) We will also charge you the assessment required by sections 206(d) or 1631(d)(2)(C) of the Social Security Act. You cannot charge or collect this expense from the claimant. You should send any questions about the status of the check to the processing center or Social Security office that issued the claimant's award letter.

You should look to the claimant for payment of the fee authorized in this case. The law does not permit us to make direct payment of a fee when:

- there are no past-due benefits;
- the non-attorney representative is not participating in the direct fee payment project;
- the representative was appointed after December 31, 2006 and did not register for direct payment before we effectuated the favorable determination on the claim; or
- the representative withdrew or was discharged from representing the claimant.

We did not withhold past-due benefits to pay your fee. You must look to the claimant for payment of the fee authorized in this case. If you have problems collecting the fee, you should contact the processing center or the Social Security office that issued the claimant's award letter for further information. If you ask us to collect payment from the claimant to pay for your authorized fee, we must charge you the assessment required by sections 206(d) or 1631(d)(2)(C), or both of the Social Security Act.

AUTHORIZING OFFICIAL

Administrative Law Judge

SEE ATTACHMENTS FOR OTHER IMPORTANT INFORMATION

cc:

INFORMATION CONCERNING THE FEE AUTHORIZATION

Items SSA Considers

When we authorize fees in Social Security, and /or Supplemental Security Income cases, we consider each of the following:

- The purposes of the programs.
- The extent and kind of services the representative provided.
- The complexity of the case.
- The level of skill and competence required of the representative in providing the services.
- The amount of time the representative spent on the case.
- The results the representative achieved.
- The level of review to which the representative took the claim, and the level of review at which he or she became the claimant's representative.
- The fee amount the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

Although we consider the amount the benefits payable, if any, we do not base the fee amount we authorize on the amount of the benefits alone, but on a consideration of all the factors listed above.

How Much the Representative Can Charge

The representative cannot charge, and the claimant never owes, more than the fee we authorize, except for:

- any fee a Federal court allows for the representative's services before it; and
- out-of-pocket expenses the representative incurred, for example, the cost of getting evidence. Our authorization is not needed for such expenses.

Trust or Escrow Account

If the representative established a trust or escrow account, he or she may withdraw the authorized fee from that account. The representative must promptly refund excess funds in the trust or escrow account to the claimant if, for example:

- the funds in the trust or escrow account exceed the amount of the authorized fee; or
- the combined total of the funds in the trust or escrow account and the amount we directly pay the attorney or non-attorney representative from the claimant's title II or title XVI past-due benefits exceeds the amount of the authorized fee.

Possible Refund To The Claimant

A claimant may be due more money when the Social Security Administration (SSA) authorizes a representative's fee and a claimant receives both Social Security and SSI benefits. This is because SSA deducts the authorized fee from the amount of Social Security benefits that count as income for SSI purposes. Then more SSI benefits are due.

If a claimant thinks more SSI benefits are due, and has not received more money or a letter within 90 days of this authorization notice, he or she should contact SSA. If a claimant visits a Social Security office, he or she should take this authorization notice.

Penalty For Charging An Unauthorized Fee

For improper acts, a representative can be suspended or disqualified from representing anyone before SSA. A representative also can face criminal prosecution. Charging or collecting an unauthorized fee or too much for services provided in any claim, including services before a court that made a favorable decision, is an improper act.

References

- 18 U.S.C. §§ 203, 205, and 207; and 42 U.S.C. §§ 406(a), 1320a-6, and 1383(d)(2)
- 20 CFR §§ 404.1700 *et seq.*, and 416.1500 *et seq.*
- Social Security Rulings 88-10c, 85-3, 83-27, and 82-39
- 26 U.S.C. §§ 6041 and 6045(f)

ATTACHMENT 50

I-1-2-42. Administrative Review of the Approval or Disapproval of the Fee Agreement — Overview

Last Update: 1/28/03 ([Transmittal I-1-44](#))

A. Filing the Request

When the claimant or representative disagrees with the Social Security Administration's (SSA's) determination approving or disapproving a fee agreement, he/she may protest that determination by requesting an administrative review. The party requesting administrative review must do so within 15 days of receiving the notice of the determination approving or disapproving the fee agreement.

B. Reviewing Official

The following ODAR officials are delegated the authority to conduct administrative review of the approval or disapproval of the fee agreement, regardless of who requests the administrative review:

Decision Maker	Reviewing Official
Administrative Law Judge (ALJ)	Regional Chief ALJ (RCALJ) who has jurisdiction over the claimant's servicing hearing office
RCALJ	Deputy Chief ALJ or the Chief ALJ
Administrative Appeals Judge (AAJ)	Deputy Chair, Appeals Council
Deputy Chair, Appeals Council	Chair, Appeals Council

C. Informing the Parties

The reviewing official must:

- acknowledge receipt of the request for administrative review;
- notify all other parties of the request, including the decision maker; and
- afford the other parties 15 days to submit written information responding to the request.

D. Reviewing the Fee Agreement Approval or Disapproval

The reviewing official will consider:

- the fee agreement,
- the approval or disapproval of the fee agreement,
- the request for administrative review, and
- any additional information provided.

The reviewing official will affirm or reverse the decision maker's determination on the fee agreement.

E. Issuing Notice of the Administrative Review Determination

The reviewing official must mail a written notice of the determination made on administrative review to the:

- claimant,
- representative and
- decision maker.

The notice will advise the parties that the determination is not subject to further review.

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ATTACHMENT 51

I-1-2-61. Fee Petition Administrative Review — General Policy

Last Update: 1/28/03 ([Transmittal I-1-44](#))

A. Who May Request Review

Regulations [20 CFR 404.1720\(d\)](#) and [416.1520\(d\)](#) give the claimant, affected auxiliary beneficiary(ies) and the representative the right to request administrative review of the initial fee authorization. The request must be filed in writing with a Social Security Administration (SSA) office.

SSA does not conduct administrative review on its own motion under the fee petition process.

B. Time Limit for Requesting Review

A request for administrative review of a fee authorization under the fee petition process must be filed at one of SSA's offices within 30 days after the date of the notice of SSA's initial fee authorization.

If a request is filed more than 30 days after the date of the notice, the requestor must state in writing why the request was not filed on time. In such cases, SSA will conduct an administrative review only if it determines that there was good cause for not filing the request on time. (See [20 CFR 404.1720\(d\)](#) and [416.1520\(d\)](#) for guidance on evaluating good cause.)

C. Review Criteria

Administrative review involves an independent review of SSA's initial fee authorization. The reviewing official will review the determination made on the amount of a fee under the fee petition process if:

- the claimant or affected auxiliary(ies) submits a timely request to reduce the fee; or
- the representative (including any co-representative or co-counsel) submits a timely request to increase the fee.

The purpose of an administrative review is to decide whether the protested fee was based upon:

- complete and accurate knowledge of the facts, and
- proper application of the Act and regulations.

The reviewing official ordinarily modifies (i.e., increases or decreases) the initial fee, if:

- the initial fee authorization was based upon a clear error of fact or law, or
- new and material information is submitted to the reviewer.

The reviewing official will not modify the initial fee authorization:

- solely because one of the parties has protested, or
- merely to substitute the judgment of the reviewer for the judgment of the original authorizer.

D. Finality of Determination

A fee authorization made after an administrative review is final and binding. It is not subject to further administrative or judicial review. (See 20 CFR 404.903(f) and 416.1403(a)(6).)

E. Delegation of Authority for Conducting Administrative Review

Only an authorized SSA official who did not make the initial fee authorization can conduct the review. The reviewing official may authorize a representative's fee on administrative review without obtaining review or concurrence, regardless of the amount of the fee.

Jurisdiction to conduct administrative review under the fee petition process is determined by the component/official who made the initial fee authorization.

Official Who Made Initial Fee Authorization	Official Who Has Authority to Conduct Administrative Review
Administrative Law Judge (ALJ)	Regional Chief ALJ (RCALJ) who has jurisdiction over the claimant's servicing hearing office
RCALJ (either as a presiding ALJ or on a recommendation from a presiding ALJ)	Deputy Chief ALJ
Deputy Chief ALJ (either as a presiding ALJ or on a recommendation from a presiding RCALJ)	Chief ALJ
Attorney Fee Branch (AFB)	Deputy Chair of the Appeals Council

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ATTACHMENT 52

I-1-2-53. Filing a Fee Petition

Last Update: 2/25/05 ([Transmittal I-1-48](#))

A. Who May File

The person, either an attorney or a qualified non-attorney (refer to [I-1-1-2 \(B.\)](#)), whom the claimant appointed in writing to act on his/her behalf in pursuing a claim or asserted right before the Social Security Administration (SSA) may file a fee petition unless:

- the representative previously was authorized to receive a fee for his/her services on that claim based on an approved fee agreement, or
- the representative submitted a contingency fee contract (i.e., agreed to charge and collect a fee only if SSA favorably decides the claim) and SSA's decision is unfavorable.

Except in the above circumstances, any duly appointed representative may request a fee for the services he/she actually provided in pursuing the claimant's benefit rights in proceedings before SSA. If a representative delegates certain tasks, such as developing the claimant's medical record, to another person whom the representative supervises and directs, the representative files a single fee petition which includes the services of his/her unappointed assistant. However, services of another person who actually served as the claimant's representative at a hearing (whether appointed or not) may not be included in the fee petition. That person must file his/her own fee petition, requesting a fee for any services he/she performed in representing the claimant. (See [I-1-2-12 \(C.3.b.\)](#).)

If the claimant appointed more than one representative, each representative who wants to charge and collect a fee for his/her services must file a fee petition and request a fee for the services he/she performed.

If a representative works or worked for a firm or corporation, neither the firm nor anyone else in the firm may file a petition on behalf of the appointed representative.

B. When to File

The representative files the petition for fee approval only after he/she has completed providing services for the claimant and any auxiliary beneficiary(ies). If the representative acted on the claimant's behalf in both obtaining a partially favorable determination or decision, and appealing the unfavorable aspect of that determination or decision, the representative's services do not end until the appealed issues are resolved. The representative who has ended his/her services may file the petition before SSA effectuates a determination or decision.

NOTE:

If the representative's services have not ended, authorization should be delayed. Refer to [I-1-2-56 \(A.3.\)](#) for procedures when delaying authorization. Multiple authorizations based on multiple fee petitions for the same services are not appropriate, even if additional past-due benefits are available.

1. Representative Eligible for Direct Fee Payment Waives Direct Payment From Past-Due Benefits

There is no time limit within which a representative must petition.

2. Representative Eligible for Direct Fee Payment Has Not Waived Direct Payment of a Fee From Past-Due Benefits

To obtain direct payment of all or part of an authorized fee withheld from title II and/or title XVI past-due benefits, the representative who is eligible for direct fee payment should file the petition, or a written notice of his/her intent to petition, within 60 days after the date of the first notice of favorable decision.

C. Where to File

Although the representative may file at any SSA office, generally he/she files the petition with the SSA office shown below.

- If an Administrative Law Judge issued the title II or concurrent title II/XVI decision, the representative sends the petition to him/her using the hearing office address. In title XVI only cases, the representative sends the petition to the appropriate FO.
- If the Appeals Council issued the decision, the representative sends the petition to:
Office of Disability Adjudication and Review, SSA
Attn: Attorney Fee Branch, Suite 805
5107 Leesburg Pike
Falls Church, VA 22041-3255

D. How to File

The representative must give the claimant a copy of the petition and any attachment(s) before filing the original with the appropriate SSA office. If he/she uses the SSA-1560-U4 (Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration), a four-part snap-out form, the representative:

- sends the claimant the “Claimant's Copy,”
- files the original “File Copy” and the “ODAR Copy” with the appropriate SSA office, and
- retains the “Representative's Copy.”

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ATTACHMENT 53

I-1-0-7. Instructions for HALLEX Authors

Last Update: 3/3/11 (Transmittal I-1-61)

A. Determine Need for Revision

Decide whether it is necessary to issue a new instruction or guideline, or revise an existing instruction or guideline. Permanent or longstanding changes in Office of Disability Adjudication and Review (ODAR) guiding principles, procedural guidance, and information should be added to the Hearings, Appeals and Litigation Law (HALLEX) manual through the revision process. Indications for the need to issue revised HALLEX procedures can come from a variety of sources, including, but not limited to, the following:

1. Legislative changes;
2. Regulatory changes;
3. Social Security and Acquiescence Rulings;
4. Program Operations Manual System (POMS) updates;
5. Emergency Messages, Administrative Messages, Modernized System Support messages, and Chief Judge Bulletins;
6. Agency-wide initiatives; and
7. Requests from another ODAR component or a component elsewhere within the Social Security Administration (SSA).

B. Guidelines for Issuances and Clearance Procedures

The Office of Appellate Operations (OAO) or the Office of the Chief Administrative Law Judge (OCALJ), depending on the subject matter, will:

1. Determine whether the new issuance should be a procedural instruction, desk guide, temporary instruction, or action item.
2. Prepare the draft text, using the HALLEX template.
 - For a new chapter or section, the author starts with a blank page, but he or she must use the template.
 - For revisions to existing material, OAO obtains a download of the chapter(s) or section(s) from the SSA Policy Repository. The template is already incorporated in the download.
 - Refer to I-1-0-10 for instructions on using the HALLEX Word template.
3. For procedural instructions (but not temporary instructions or action items), prepare a draft transmittal sheet that includes a brief background statement of the action or events requiring the change, a rationale for the issuance, and an explanation of the substantive changes to previously issued material.

NOTE: Because several HALLEX issuances could be in development at the same time, transmittal numbers are assigned for each issuance after receiving final approval from the Deputy Commissioner.
4. Distribute the draft transmittal for comment. The sample clearance route slip at I-1-0-8 may be used, as well as any similar document (e.g., e-mail message), as long as the pertinent information contained in I-1-0-8 is included.
 - Depending on the nature of the issuance and other considerations such as time limits, the authoring component may circulate a draft to ODAR headquarters components and resolve the comments before seeking comments from other SSA components. Alternatively, the authoring component may do one consolidated circulation of the draft to ODAR and other SSA components for comment.
 - The ODAR reviewing audience includes the Office of the Chief Administrative Law Judge, the Office of Executive Operations and Human Resources, the Office of Budget, Facilities, and Security, the Office of Electronic Services and Strategic Information, and OAO.
 - Generally, the Office of Retirement and Disability Policy and the Office of the General Counsel provide comments on any HALLEX drafts. Based on the subject matter, comments may also be requested from other SSA components, such as the Office of Public Service and Operations Support in the Office of Operations, the Office of Quality Performance, the Office of Legislation and Congressional Affairs, or the Office of Communications. This list is not exhaustive.
5. Revise the draft to incorporate comments and suggestions that are being adopted or accommodated.
6. Summarize the comments and responses using the format at I-1-0-9. Complete comment resolution ensures that all comments are considered, and improves the accuracy of the review and approval process as well as the final product.
 - The comment summary provides resolution of all substantive comments and indicates whether the comment was adopted in full, in part, or not at all. If a comment is not adopted, an explanation is provided.
 - Editorial comments are grouped together and addressed in a consolidated response.
7. Prepare a background book, which includes the final versions of the transmittal or other issuance and the transmittal sheet, the draft that was circulated for comment, the comments received, and the comment summary and resolution. If the issuance changes or incorporates an existing instruction, that instruction and any other background material are also included. The final version of the issuance will be a Word

document formatted with the HALLEX Word template. The final versions of the issuance and the transmittal sheet will be saved to a compact disc (CD) included with the background book.

C. Final Approval and Publication

OAO will forward the background book and the CD through the Executive Communications Staff to the Deputy Commissioner (DC) for approval. (See I-1-0-7 E below for HALLEX Action Items.)

After the DC approves the issuance, OAO will forward the HALLEX issuance to be uploaded to SSA's Policy Repository. OAO will also prepare and provide a brief explanation of the issuance for inclusion in the Daily PolicyNet Instructions Postings e-mail message. OAO will retain the background book and the CD for historical purposes and as documentation that the appropriate clearances were obtained.

D. Other ODAR Component Responsibilities

Each ODAR component is responsible for providing input and support to OAO and OCALJ in developing HALLEX instructions.

E. HALLEX Action Items

In certain instances, OAO may make minor changes to HALLEX via action items without preparing individual transmittals. These changes are announced through an entry in the Daily PolicyNet Instructions Postings messages for Hearings, Appeals and Litigation Law (HALLEX) Manual Action Items. The linked entry leads to a Policy Instruction (see EXHIBIT) describing the specific change(s) and explaining the reason for the change (s). The Policy Instructions are stored in PolicyNet under Instructions, HALLEX, HALLEX Action Items.

1. OAO will not routinely refer for DC-level approval proposed HALLEX action item changes that involve only the following:
 - Nomenclature changes (e.g., updating the name of an SSA component);
 - Minor, nonsubstantive changes;
 - Adding or deleting small amounts of information;
 - Correcting an error (e.g., a typographical error or omission);
 - Changing or adding: an address; a phone or FAX number; a contact name; a cross-reference; a hyperlink or URL (uniform resource locator);
 - Updating the name of a form or screen application; or
 - Updating a dollar amount with no effect on delegation of authority.
2. OAO will continue to refer for DC-level approval proposed HALLEX action item changes that involve any minor change not listed above (e.g., updating a dollar amount that affects a delegation of authority to ODAR personnel, such as the maximum amount an administrative law judge may authorize under the fee petition process).
3. Components wishing to make an action item change to HALLEX should prepare and e-mail to the Executive Director, OAO, the following:
 - a Word document containing the affected section(s) with the necessary updates in "track changes" format; and
 - a Policy Instruction (see exhibit below).
4. OAO staff will review the change(s) for accuracy and consistency with established standards, policies, and procedures. OAO staff will resolve discrepancies or problems with the component that originated the action item.
5. Once the review is complete and the OAO Executive Director has approved the change, OAO will forward the action item to the ^HALLEX Minor Changes mailbox. The Office of PolicyNet and Program Support (OPPS) will make the necessary updates to HALLEX and publish the Policy Instruction.

NOTE: For items not listed in 1. above, OAO will obtain DC approval before forwarding the action item to OPPS. Additionally, OAO will seek DC approval of any action item if it determines a change is significant or if the Executive Director believes a specific change should be brought to the DC's attention.

EXHIBIT:

Policy Instruction

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Identification Number: **HALLEX I-1-2** Effective Date: 01/21/2010

Intended Audience: ODAR HQ and ODAR Field Users

Originating Office: ODAR, OAO, Program Analysis Staff

Title: **Delegation of Authority to Authorize Fees – Increased Authorization Limit Under the Fee Petition Process**

Type: HALLEX Action Items

Program: **Title II (RSI); Title XVI (SSI)**

Link To Reference: **HALLEX I-1-2-0**

After the HALLEX Action Items are incorporated into the HALLEX online, you may find them in the "Instructions" dropdown on the Menu bar in PolicyNet. Select "HALLEX," then "Action Items." After 60 days, this posting will be archived.

I-1-2 Representative Fees

The maximum amount that an administrative law judge or a fee authorizer in a processing center may authorize under the fee petition process has increased from \$7,000 to \$10,000. The Office of Income Security Programs within the Office of Retirement and Disability Policy announced the change on January 22, 2010, through *Program Operations Manual System* action item changes revising POMS GN 03930.015D effective January 21, 2010.

Consistent with this change, we are making minor revisions to *Hearings, Appeals and Litigation Law* (HALLEX) manual sections I-1-2-6, I-1-2-52, I-1-2-56, I-1-2-57, and I-1-2-58, primarily to replace \$7,000 with \$10,000 where necessary. Please refer to the attached for a list of specific changes.

Last reviewed or modified 06/10/2013

ATTACHMENT 54

I-1-1-50. Referring an Alleged Violation

Last Update: 3/29/13 ([Transmittal I-1-63](#))

Citations:

- [20 CFR §§ 404.1745, 404.1750, 404.1755, 416.1545, 416.1550, and 416.1555](#)

A. Initial Referral

Staff in the Office of Disability Adjudication and Review (ODAR) may observe or detect suspected violations of the rules pertaining to a representative's conduct. If this occurs, staff must fully develop the alleged violations and refer the case as described below.

Staff must not report suspected violations to the alleged violator's State bar association or other officials. Any such report could constitute a violation of the Privacy Act, 5 USC §552a, and section 1106 of the Social Security Act, both of which carry criminal penalties. If the Commissioner suspends or disqualifies a representative after appropriate notice and opportunity for a hearing, the Office of the General Counsel (OGC) will inform relevant State courts and bars of the sanction imposed.

OGC, as the Commissioner's designee, will evaluate the referral and consider whether to initiate an administrative sanction action against the representative. OGC may contact the referring office for more information or assistance.

The referring office will continue processing the claim, and will take no other action on the referral unless requested to do so by OGC.

1. Development

ODAR staff who observe possible representative non-fee related misconduct (see [Hearings, Appeals and Litigation Law manual \(HALLEX\) I-1-2-81](#) for documenting fee-related misconduct) will fully develop and refer the case as follows:

- a. Prepare a compact disc (CD) of the electronic file. If a paper file is involved, locate the file. If pertinent, include a copy of the recorded hearing.
- b. Prepare a referral memorandum that includes:
 - the names of the representative and the claimant, as well as the address and telephone number of both individuals;
 - the name, address, and telephone number of any other involved individual or witness;
 - the date(s) the action(s) occurred;
 - the action(s) that led to the representative misconduct allegation;
 - the location(s) where the action(s) took place (i.e., hearing office, representative's office, or other location); and
 - contact information for the reporter.
- c. If possible, obtain copies of other pertinent evidence, such as a notice of the representative's disbarment or suspension.

- d. If possible, obtain signed statements from the claimant and witnesses detailing the misconduct.
- e. Forward the referral memorandum, the CD of the file or the paper file, and any other evidence to component management for review.

NOTE:

If the representative misconduct referral is based on a pattern of misconduct for repeated absences, tardiness, or withdrawal from representation at a time and in a manner that frequently disrupts scheduled hearing proceedings (see 20 CFR 404.1740(c)(7) and 416.1540(c)(7)), the hearing office (HO) must include supporting information for each case. Generally, referrals for these reasons must include sufficient information to establish a clear pattern over time. The referrals should also include information showing how the conduct disrupted the processing of the case (e.g., the hearing had to be rescheduled).

2. Referral by a Hearing Office or National Hearing Center

HO or National Hearing Center (NHC) management will review referrals to ensure that the allegations are fully developed according to the instructions in HALLEX I-1-1-50 A.1. in this section. HO management will forward fully developed referrals to the management team in the ODAR regional office (RO). RO staff will check for other regional referrals involving the same representative before sending the referral package to the Office of the Regional Chief Counsel (ORCC) in the region where the alleged misconduct arose.

For NHCs, the NHC director performs RO functions.

3. Referral by RO or HO Staff in Headquarters

If possible misconduct is observed by RO or HO staff in ODAR headquarters, allegations will be developed as much as possible according to the instructions in HALLEX I-1-1-50 A.1. in this section, and forwarded to the Office of the Chief Administrative Law Judge (OCALJ). OCALJ will forward the referrals to the ORCC in the region where the alleged misconduct arose.

4. Referral by the Appeals Council

Referrals for non-fee related misconduct at the Appeals Council (AC) level are infrequent. Given the unique appellate review function performed by the AC, it is less common for a representative's action or inaction before the AC to constitute misconduct.

NOTE:

If the AC encounters possible representative misconduct that occurred at another level of adjudication, the AC generally presumes it was referred by the component observing the conduct. The AC generally presumes a referral to avoid assumptions that may not be accurate. However, when it is unclear whether another component made a referral, and the circumstances are egregious, the AC and staff may use the instructions noted below.

If the AC becomes aware of an action that may constitute a violation of our rules, the first person discovering the issue will refer the matter to the Executive Director's Office (EDO) via email to |||ODAR OAO, with "Possible representative misconduct" in the email subject line. The content of the email must include:

- the names of the representative and the claimant;
- the date(s) the action occurred;
- a detailed description of the representative misconduct allegation; and

- the location(s) in the record where the action is documented. If the file is paper, copies of the referenced documents must be forwarded to EDO.

The person referring the issue will also add a Remark in the Appeals Review Processing System, documenting the referral. EDO will evaluate the referral and determine whether to refer the matter to OGC.

B. OGC Action After Referral

The Commissioner has designated OGC to examine and process all referrals alleging an administrative violation of our laws, regulations, rules, policies, or standards.

1. When OGC receives a referral, it will evaluate the suspected violation and determine whether further action is required.
2. If OGC determines that the representative may have violated the Social Security Act or regulations and that the matter is appropriate for informal resolution, OGC may prepare an inquiry letter placing the representative on notice of the potential violation and the penalties for failure to comply with the statute or regulations. The inquiry letter will also contain instructions for informal resolution of the alleged violation(s). If the representative complies with the directions given in the inquiry letter, OGC may close the investigation without further action.
3. If the representative neither responds to the inquiry letter with information that resolves the matter nor complies with OGC's instructions, OGC may prepare a notice containing a statement of charges that recommends to the General Counsel (GC) that the Social Security Administration (SSA) initiate a suspension or disqualification action against the representative. OGC will take the same action if the matter is inappropriate for informal resolution.
4. If the GC agrees with the recommendation, he or she will sign the notice containing a statement of charges, and OGC will serve the notice on the representative via certified or registered mail. The notice must describe with specificity the acts or omissions that constitute the basis for the charges and specify whether SSA is seeking a disqualification or a suspension.
5. The notice will advise the representative of his or her right to file within 30 days an answer admitting or denying the factual assertions contained in the notice and stating why SSA should not suspend or disqualify him or her from acting as a representative before SSA.
6. If the representative's answer satisfies OGC that SSA should not suspend or disqualify the representative, OGC will withdraw the charges and notify the representative.
7. If the representative does not file a timely answer or if the answer does not support withdrawal of the charges, OGC will ask OCALJ to designate an administrative law judge (ALJ) to serve as the hearing officer in the case and decide the merits of the charges. Whenever possible, the ALJ designated as the hearing officer will be from outside the region(s) where the representative practices.

ATTACHMENT 55

I-1-2-81. Evidence or Allegations of Violations of Law

Last Update: 2/25/05 (Transmittal I-1-48)

If the hearing office (HO) or Appeals Council (AC) has evidence or receives allegations of violations of the statute or regulations pertaining to charging or collecting fees, the HO or AC staff must refer the matter by memorandum to the Office of General Law in the Office of the General Counsel :

Office of the General Counsel
Office of General Law
One Skyline Tower
Suite 1605
5107 Leesburg Pike
Falls Church, VA 22041-3255

The referring office also will provide complete documentation of the incident or actions in question. To refer the case to the OGC, do the following:

1. Prepare a brief memorandum for signature of the HO Chief Administrative Law Judge or the Deputy Chair of the AC describing the alleged violation and summarizing the facts of the case.
2. Assemble existing evidence pertaining to the alleged violation including:

- copies of any available files;

NOTE:

Because the claim file may already be with another component, indicate in the referral what action has been taken to locate the claim file and what arrangements have been made to have it forwarded to the OGC.

- documents or statements from the claimant(s) or other persons alleging fee violations;
- names, addresses and telephone numbers of witnesses (indicate their relationship to the claimant/beneficiary);
- originals or copies of bills or receipts the representative issued to the claimant;
- originals or copies of cancelled checks or money orders from the claimant, payable to the order of the representative;
- copies of any offer of an opportunity to correct the situation that is made to the representative; and
- copies of fee agreements.

3. Indicate whether the HO or AC has received other complaints concerning the representative.

ATTACHMENT 56

Chief Judge Bulletin

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Identification Number

Intended Audience:

Originating Office:

Title:

Type:

Program:

Link To Reference:

CJB 09-04

Effective Date: 10/21/2009

All ODAR Hearing Level Personnel ODAR Office of the Chief Administrative Law Judge **Procedures for Referring Observed or Suspected Misconduct by Claimant Representatives** Chief Judge Bulletins **All Programs See References at the end of this CJB**

Retention Date: Until HALLEX is updated

Staff in any Office of Disability Adjudication and Review (ODAR) office may observe or detect suspected violations of the rules pertaining to a representative's conduct. The procedures for referring suspected non-fee related representative misconduct in HALLEX I-1-1-50.A and fee related misconduct in HALLEX I-1-2-81 are outdated, and we are issuing this CJB as guidance until updated versions of these provisions are approved.

Any Administrative Law Judge, hearing office manager or staff member who suspects a claimant's representative has engaged in misconduct should promptly identify the matter to the Hearing Office Management Team by following the procedures noted below. Do not report suspected violations to the alleged violator's state bar association. Any such report could constitute a violation of the Privacy Act, 5 USC § 552a and Section 1106 of the Social Security Act, both of which carry criminal penalties. If the Commissioner suspends or disqualifies a representative following the appropriate notice and hearing, the Office of the General Counsel (OGC) will inform relevant state bars of the sanction imposed, per HALLEX I-1-1-50 (B)(9) and (F).

Any staff observing possible representative non-fee related misconduct should fully develop all referrals as outlined below:

1. Burn a CD of the electronic file. If a paper file is involved, annotate the current location of the file. If pertinent, include a copy of the recorded hearing.
2. Prepare a referral memorandum that includes: the name of the representative and claimant, as well as the address and telephone number of both individuals; the name, address, and telephone number of any other involved individual or witness; the date(s) the actions occurred; the actions that led to the representative misconduct allegation; the location(s) where the actions took place (i.e., hearing office, representative's office or other location); and hearing office points of contact.
3. If possible, obtain copies of other pertinent evidence, such as notice of disbarment or suspension.
4. If possible, obtain signed statements from the claimant and witnesses detailing the misconduct.
5. Forward the referral memorandum, the CD of the file, and any

other evidence to

the Hearing Office Management Team (HOMT) for review.

The HOMT will review the referral to ensure the allegations are fully developed. If the referral is fully developed, the HOMT should forward the referral to the Office of the Regional Chief Administrative Law Judge (ORCALJ). After ensuring the referral is fully developed, ORCALJ staff will check for other regional referrals involving the same representative before sending the referral package to the OGC Regional Chief Counsel. OGC will consider whether to initiate an administrative sanction action against the representative.

Please note that fee-related violations should be developed as currently outlined in HALLEX I-1-2-81, numbers 2 and 3. The referral procedures, as outlined above, should then be followed, including forwarding the request and development to the ORCALJ for review. The ORCALJ will then send the referral to the OGC Regional Chief Counsel.

Direct all program-related and technical questions to your RO support staff. RO support staff may refer questions or unresolved issues to their Headquarters' contacts in the Office of the Chief Administrative Law Judge.

References

POMS GN 03970.017

HALLEX I-1-1-50

HALLEX I-1-2-81

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I-1-2-53. Filing a Fee Petition

Last Update: 2/25/05 ([Transmittal I-1-48](#))

A. Who May File

The person, either an attorney or a qualified non-attorney (refer to [I-1-1-2 \(B.\)](#)), whom the claimant appointed in writing to act on his/her behalf in pursuing a claim or asserted right before the Social Security Administration (SSA) may file a fee petition unless:

- the representative previously was authorized to receive a fee for his/her services on that claim based on an approved fee agreement, or
- the representative submitted a contingency fee contract (i.e., agreed to charge and collect a fee only if SSA favorably decides the claim) and SSA's decision is unfavorable.

Except in the above circumstances, any duly appointed representative may request a fee for the services he/she actually provided in pursuing the claimant's benefit rights in proceedings before SSA. If a representative delegates certain tasks, such as developing the claimant's medical record, to another person whom the representative supervises and directs, the representative files a single fee petition which includes the services of his/her unappointed assistant. However, services of another person who actually served as the claimant's representative at a hearing (whether appointed or not) may not be included in the fee petition. That person must file his/her own fee petition, requesting a fee for any services he/she performed in representing the claimant. (See [I-1-2-12 \(C.3.b.\)](#).)

If the claimant appointed more than one representative, each representative who wants to charge and collect a fee for his/her services must file a fee petition and request a fee for the services he/she performed.

If a representative works or worked for a firm or corporation, neither the firm nor anyone else in the firm may file a petition on behalf of the appointed representative.

B. When to File

The representative files the petition for fee approval only after he/she has completed providing services for the claimant and any auxiliary beneficiary(ies). If the representative acted on the claimant's behalf in both obtaining a partially favorable determination or decision, and appealing the unfavorable aspect of that determination or decision, the representative's services do not end until the appealed issues are resolved. The representative who has ended his/her services may file the petition before SSA effectuates a determination or decision.

NOTE:

If the representative's services have not ended, authorization should be delayed. Refer to [I-1-2-56 \(A.3.\)](#) for procedures when delaying authorization. Multiple authorizations based on multiple fee petitions for the same services are not appropriate, even if additional past-due benefits are available.

1. Representative Eligible for Direct Fee Payment Waives Direct Payment From Past-Due Benefits

There is no time limit within which a representative must petition.

2. Representative Eligible for Direct Fee Payment Has Not Waived Direct Payment of a Fee From Past-Due Benefits

To obtain direct payment of all or part of an authorized fee withheld from title II and/or title XVI past-due benefits, the representative who is eligible for direct fee payment should file the petition, or a written notice of his/her intent to petition, within 60 days after the date of the first notice of favorable decision.

C. Where to File

Although the representative may file at any SSA office, generally he/she files the petition with the SSA office shown below.

- If an Administrative Law Judge issued the title II or concurrent title II/XVI decision, the representative sends the petition to him/her using the hearing office address. In title XVI only cases, the representative sends the petition to the appropriate FO.
- If the Appeals Council issued the decision, the representative sends the petition to:
Office of Disability Adjudication and Review, SSA
Attn: Attorney Fee Branch, Suite 805
5107 Leesburg Pike
Falls Church, VA 22041-3255

D. How to File

The representative must give the claimant a copy of the petition and any attachment(s) before filing the original with the appropriate SSA office. If he/she uses the SSA-1560-U4 (Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration), a four-part snap-out form, the representative:

- sends the claimant the "Claimant's Copy,"
- files the original "File Copy" and the "ODAR Copy" with the appropriate SSA office, and
- retains the "Representative's Copy."

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ATTACHMENT 58

I-1-0-1. Purpose

Last Update: 3/3/11 (Transmittal I-1-61)

This chapter describes HALLEX — the Hearings, Appeals and Litigation Law manual. It also provides the format and guidance for those who prepare HALLEX material.

Through HALLEX, the Deputy Commissioner for Disability Adjudication and Review conveys guiding principles, procedural guidance, and information to Office of Disability Adjudication and Review staff. HALLEX defines procedures for carrying out policy and provides guidance for processing and adjudicating claims at the hearing, Appeals Council, and civil action levels. It also includes policy statements resulting from Appeals Council *en banc* meetings under the authority of the Appeals Council Chair.

Last reviewed or modified 06/10/2013