2015 No. 052 Executive Summary

Administrative Law Judge Work Analysis Study

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Prepared for:	The Association of Administrative Law Judges	**Prepared under:**	Contract Agreement dated Nov 7, 2014 Work Order 3 dated Oct 14, 2015
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Social Security Administration (SSA) Administrative Law Judges (ALJs) are expected to process adult disability cases as efficiently as possible to reduce the Agency's case backlog and produce timely decisions for claimants. ALJs are also expected to render *high quality legally sufficient decisions.* Numerous Agency policies and memoranda from the Office of the Chief Administrative Law Judge (OCALJ) emphasize that ALJs must carefully read all case materials, make every reasonable effort to obtain relevant evidence for each case, and write well-documented decisions explaining their ruling.

These are not unreasonable expectations. However, the SSA's Office of Disability and Adjudication Review (ODAR) has implemented production quotas that appear to be based entirely on reducing the case backlog and reducing the number of days it takes for claimants to receive a ruling on their case. The quotas appear to have been set without regard to the amount of time (hours) required for an ALJ to carefully process adult disability cases.

One benchmark that ODAR has set is the requirement that each ALJ schedule a certain number of hearings per month. This benchmark is enforced by linking it with the opportunity for the ALJ to telework.

A February 18, 2014 memo from Chief Administrative Law Judge Debra Bice provided this rationale for the benchmark:

> *Considering the necessity for quality, timely, and policy compliant hearings and decisions, and historical data, **scheduling** an average of at least fifty (50) cases for hearing per month will **generally** signify a reasonably attainable number for the purposes of this contractual provision. I want to emphasize that this provision concerns the number of hearings **scheduled**, not cases heard or dispositions issued. Accordingly, if you **schedule** at least an average of fifty (50) cases for hearing per month during a twelve-month rolling cycle, then management generally will determine you have scheduled a reasonably attainable number of cases for hearing for the purposes of this contractual provision. Conversely, if you schedule fewer than an average of fifty (50) cases for hearing per month during a twelve-month rolling cycle, then management likely will determine you have not scheduled a reasonably attainable number of cases for hearing, unless there are extenuating circumstances.* [Author note: Bold, underlined print appeared in the original.]

The **scheduled hearings benchmark** was officially implemented on October 1, 2015. It is being phased in across 3 successive 6-month telework cycles. For the first 6-month cycle, ALJs who wish to telework must schedule 40 hearings per month, on average, or face restrictions on their eligibility to telework. The benchmark increases to 45 scheduled hearing per month, on average, for the 2nd telework cycle, then to 50 scheduled hearings per month, on average, for the 3rd and all subsequent telework cycles.

Another performance standard ODAR established relates to **case disposition**. Specifically, since 2007, each ALJ is expected to achieve 500-700 case dispositions per year. Dispositions include cases that are dismissed and cases for which the ALJ renders a decision (favorable/award or unfavorable). The SSA's public data archive shows that, for the past three

fiscal years, 18% of cases were dismissed, leaving 82% requiring an ALJ's decision. Some portion of case decisions can be made on-the-record (OTR) which means that the ALJ is able to render a favorable decision based entirely on reading the case file without conducting a hearing although the ALJ must still read the entire case file and write a decision. (Data on the percentage of OTR decisions issued per fiscal year is not, apparently, publically available although experienced ALJs report that the percentage of OTR decisions issued per fiscal year is very small.)

Each of the preceding metrics may be very relevant for tracking and monitoring organizational- or unit-level performance, but the process by which the quotas were established for individual ALJs appears not to relate to actual ALJ work requirements. Performance standards for ALJs should take into account the amount of time realistically required to do all of the activities involved in adjudicating cases such as reading the case file, conducting a hearing, developing additional needed information about the case, drafting decision instructions for a decision writer, and editing the draft decision. Performance standards should also take into account other work activities, such as engaging in professional development and training, and performing general case management and office duties, that ALJs must do in addition to processing adult disability cases.

The Association of Administrative Law Judges (AALJ) contracted with Human Resources Research Organization (HumRRO) and its subcontractor, the Dunnette Group, Ltd., in the fall of 2014 to study the amount of time and factors involved in adjudicating adult disability cases. We designed and completed a *work analysis* study to capture the type of information necessary to create performance standards for ALJs. It is the only study to date that uses a work analysis approach to gather information about the amount of time required for ALJs to process adult disability cases.

Work analysis has a long tradition in the fields of industrial-organizational psychology, industrial engineering, human factors, and human resources. It provides the foundation for personnel performance management systems. The design involved identifying the many work activities that ALJs must perform – experienced ALJs helped us identify activities that ALJs do when adjudicating adult disability cases and to identify other work activities ALJs perform. One commonly used work analysis approach is to simply survey job incumbents about time spent on various work activities. In this study, it was important to estimate time spent for a range of easy to difficult cases. Therefore, we designed a simulated case processing task and accompanying survey to collect information from ALJs about how long it takes to perform case processing and other activities. To standardize ALJs' frame of reference in rating time spent on case processing, we asked them to read and render a decision on each of three recent closed cases that varied in length. Thirty-one (31) ALJs read the entire case files, rendered a decision, wrote decision instructions and recorded their time. They then estimated the amount of time they spend on the other adult disability case processing phases as well as professional development and training, general case management, and office duties.

Assuming that the ALJ carefully complies with SSA directives regarding legally sufficient decisions, our study shows that it takes 5.69 hours of ALJ labor, on average, to render a decision for a case that is 206 pages in length. As shown in the Executive Summary Table 1, it takes 7.09 hours to render a decision for a case that matches the FY2014 national case size average of 652 pages. Finally, it takes 8.60 hours, on average, to render a decision for a lengthy case (1,065 pages). As a point of comparison, in FY2014, the majority of adult disability cases consisted of more than 500 pages and 12% of them consisted of more than 1,000 pages.

We calculated the number of hours ALJs could spend processing each case if they rendered 500 decisions per year. Our study indicates that, after subtracting authorized rest breaks, holidays, and annual leave, and the average number of work hours ALJs spend on activities such as professional development and training, ALJs have about 2.5 hours, on average, to spend on each case if they render 500 decisions per year. This seems nearly impossible given that it takes on average a little more than 5½ hours for ALJs to render a legally sufficient decision for a short case (206 pages), slightly more than 7 hours to render a legally sufficient decision for a case of average size (655 pages), and a little more than 8½ hours to render a legally sufficient decision for a long case (1065 pages).

We understand that the annual quota of 500-700 case dispositions includes both dismissals and decisions, and that about 18% of cases are dismissed. Clearly, dismissals would require less than 5.69 (or 7.09 or 8.60) hours to process. Still, the dismissal rate would have to be much higher than 18% to reduce the average time available per case for those that require a decision to only 2.5 hours.

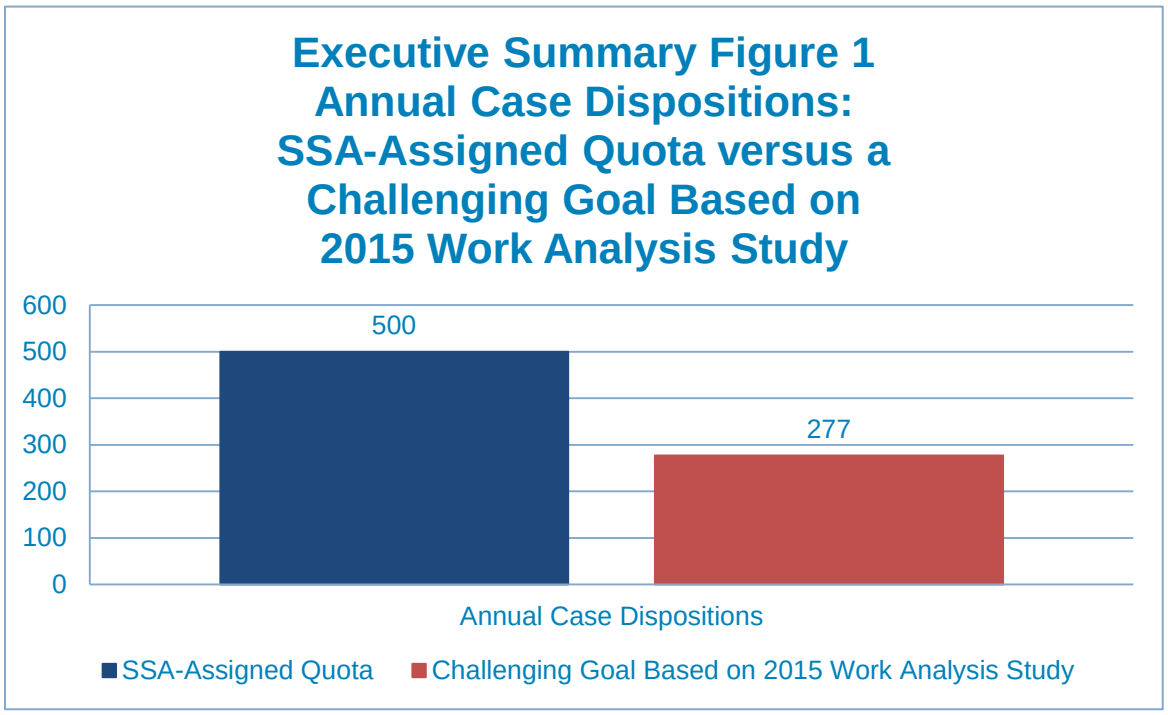
Executive Summary Table 1. Amount of Time Needed to Render a Decision per Case Based on 2015 Work Analysis Study versus Amount of Time Available per Case to Render 500 Decisions in a Year

	Case Size		
	Short (206 pages)	Average (655 pages)	Long (1065 pages)
Time required, on average, to render a decision in accordance with SSA directives regarding legally sufficient decisions	5.69 hours	7.09 hours	8.60 hours
Time available per case, on average, for full-time ALJ after accounting for rest breaks, holidays, leave, and other work activities that ALJs perform	2.5 hours	2.5 hours	2.5 hours

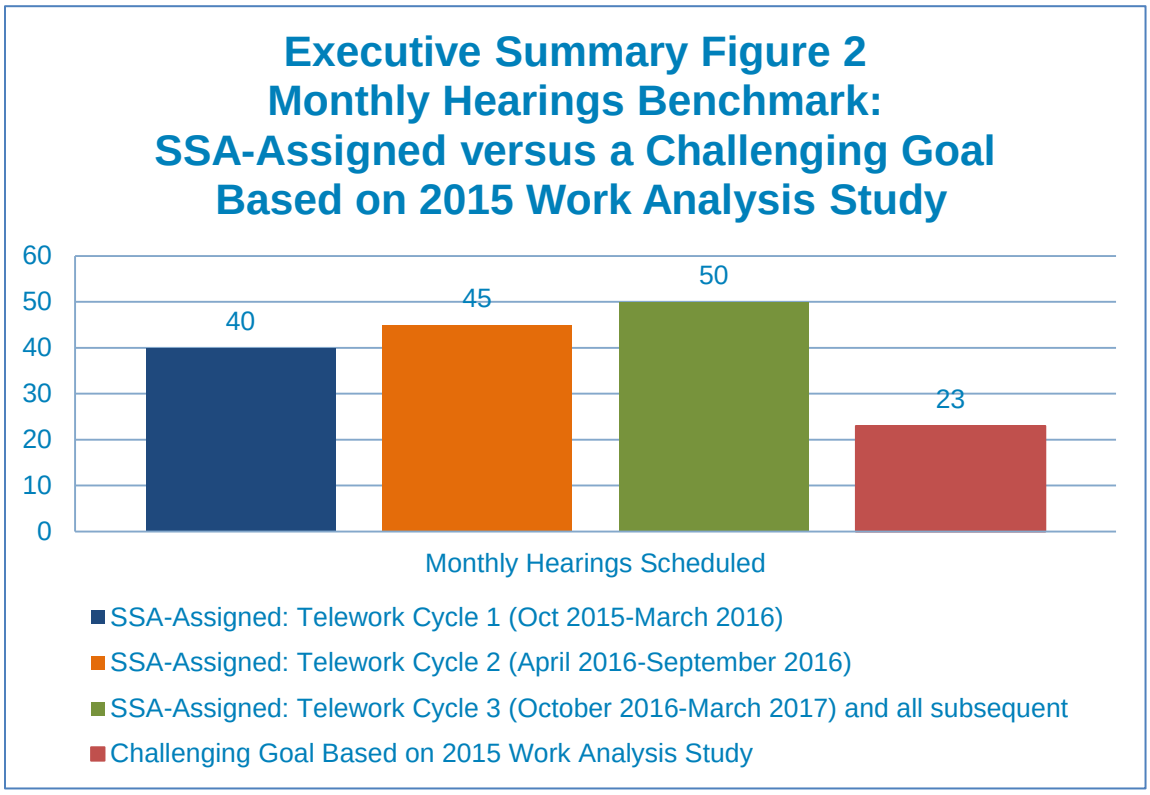
Note. Data in first row are based on work analysis study in which 31 ALJs adjudicated the same three closed case files. Data in the second row was calculated by subtracting time spent on authorized rest breaks, federal holidays, authorized annual leave, and work activities unrelated to adjudicating specific cases from the 2,087 work hours available in a year for full-time federal government employees.

Next, we calculated the number of adult disability cases of average size that each ALJ could reasonably decide in a year, after taking into account that ALJs, like other federal government employees, have authorized rest breaks, holidays, and annual leave time, and spend work time on activities such as professional development and training, general case management activities, and general office duties – activities separate from processing individual cases.

The work analysis study data indicate that the number of case decisions that an ALJ could render ranges from 70 to 342 per year (with an average of 191 and a median of 195), assuming a case of average size and following SSA policy directives regarding legally sufficient decisions. A challenging goal could be set higher than the average decision rate, but not so high that most ALJs could not reach it. Among the ALJs in the work analysis study, 25% could render decisions for at least 233 cases per year (this is the 75th percentile in the distribution). Thus, a challenging annual goal for ***case decisions*** is 233 cases per year. A challenging goal for ***case dispositions*** is 277 per year, assuming that the national dismissal rate continues to be 18% of all cases. Executive Summary Figure 1 illustrates the results.



Our work analysis study also provides data relevant to the monthly benchmark for scheduling hearings. Using an annual case disposition goal of 277, a challenging *monthly benchmark for scheduling hearings* would be 23 hearings on average per month (277 ÷ 12) as shown in Executive Summary Figure 2.



The challenging goals we describe are lower than current SSA-assigned quotas which are (a) 500-700 case dispositions per year and (b) an average of 40 scheduled hearings per month (with the amount increasing to 50 hearings per month within 18 months). Our work analysis study suggests that the ***SSA scheduling benchmark of 40 hearings per month, on average, is not reasonably attainable if SSA policy directives regarding legally sufficient decisions are followed.***

We understand that some ALJs are able to achieve the annual case disposition quota and the hearings scheduled benchmark. They are powerfully motivated to do so for a variety of reasons, including the following:

- SSA management *expects* ALJs to meet the case disposition production quota unless, in conjunction with their manager, it is determined that there are good reasons why an ALJ should not be required to meet it (e.g., *Social Security Disability Programs,* May 17, 2012*; Social Security Disability Programs,* September, 13, 2012; U.S. SSA OIG, 2010).
- ALJs can be counseled or disciplined if their performance does not meet management expectations for the number of case dispositions they should be able to achieve.
- Productivity data for each ALJ is available to the public through SSA data archives. ALJs with lower productivity levels may be subject to negative publicity or public pressure. (For example, see http://www.ssa.gov/appeals/DataSets/archive/03_FY2015/03_September_ALJ_Disposition_Data.html.)
- ALJs who wish to telework must meet monthly case scheduling benchmarks or they may face restriction on their ability to telework. (See memos from Chief Administrative Law Judge Bice [February 18, 2014; Appendix C] and from HOCALJ Walters [July 17, 2015; Appendix D])

Years of research on goal setting clearly shows that, in many different types of jobs and educational settings, people accomplish more when they work toward specific, difficult goals, as opposed to having no goals at all or only broad, ambiguous goals such as “do your best” (Locke & Latham, 2013). Certainly, SSA has established specific, difficult production and hearings scheduled goals for ALJs. However, goal attainment is also strongly impacted by the extent to which individuals commit to achieving the goals and believe they have the ability and the resources necessary to accomplish them.

Our work analysis study indicates that the SSA’s goals would be very difficult for many ALJs to meet. Kerr and LePelley (2013) report that stretch goals can have a positive impact on performance, but only if people accept them and believe they can be accomplished. If people do not believe they can achieve stretch goals, their motivation and performance often decreases.

Another danger associated with establishing easily counted goals, such as the number of case dispositions and number of hearings scheduled, is that these goals may conflict with an equally important but harder to count goal, namely, decision quality. This is the classic speed-quality tradeoff. SSA requires ALJs to maximize both speed and quality goals. As far back as 1975, Steven Kerr published an article in the Academy of Management Journal entitled, “*On the folly of rewarding A, while hoping for B*” (Kerr, 1975). For ALJs, it appears that the SSA is rewarding case processing production (A) while hoping for high quality decisions (B).

In an article entitled “*Goals gone wild: The systematic side effects of overprescribing goal setting*,” Ordóñez, Schweitzer, Galinsky, and Bazerman (2009) showed that goal setting can

lead to unintended side effects such as neglect of all nongoal areas, increasing the incidence of unethical behavior, corrosion of organizational culture, and reduced motivation among employees, among others. It appears that, over the past few years, the SSA has already experienced some of these unintended side effects including excessively high allowance rates for some ALJs, too many decisions containing errors or of low quality, and low morale among ALJs.

Our study also sheds some light on one likely way in which ALJs accomplish the monthly hearings scheduled benchmark and annual case disposition quota – by working uncompensated hours. According to two independent samples of 31 and 98 ALJs, many ALJs work outside of normal work hours, on holidays, and in lieu of using their authorized annual leave. Most use less than ¼ of their authorized sick leave. Why would they do this? Likely because they care deeply about producing high quality decisions and because they are under tremendous pressure to meet the annual case disposition production quota and the monthly scheduled hearings benchmark.

In conclusion, our study indicates that the requirement to schedule 40 cases per month, on average, is not reasonably attainable, nor is it reasonable to expect ALJs to achieve 500-700 case dispositions annually while also complying with SSA directives on legally sufficient decisions. Obviously, opinions could vary about how challenging "reasonably attainable" goals should be, and some might prefer more or less stringent challenges. The point is that a ***work analysis approach*** **can provide the necessary foundation for an informed discussion about where benchmarks and goals should be set.**

Our study developed and piloted a solid methodology for ALJ work analysis. While our data are based on responses from a relatively small number of ALJs, it is the only study to our knowledge that attempts to establish production goals *based on the amount of labor required to actually adjudicate cases.*

If the SSA conducts its own work analysis study, it could:

- Perform a qualitative study of case processing practices used by the most productive ALJs *who are also producing legally sufficient decisions.*
- Carry out a simulated case processing study similar to the one we designed only with a larger sample of ALJs.
- Develop a modeling tool to estimate the number of cases that ALJs can reasonably process taking into account (a) proportion of cases likely to be dismissed, (b) proportion of likely OTR decisions, (c) case size, (d) case complexity, (e) competence of available decision writers, and (e) assumptions about the number of work hours available for case processing.

We understand that this study would not be easy, but the necessary research could be done. It could start with the variables that we examined, and then add more as they become available. Importantly, the modeling tool should be dynamic, because the factors listed in the third bullet above can and do vary over time and differ across regions and HOs.

Finally, our study also generated ideas and changes in the current SSA ALJ work situation that would reduce the amount of ALJ time needed to adjudicate adult disability cases. SSA could pursue these and other ideas to increase the efficiency of ALJs.