



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Qualifying for Disability Benefits in
Puerto Rico Based on an Inability to
Speak English

A-12-13-13062 / April 2015

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: April 3, 2015

Refer To:

To: The Commissioner

From: Inspector General

Subject: Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English
(A-12-13-13062)

The attached final report presents the results of our audit. Our objective was to analyze the effect of regulations requiring that disability adjudicators allow a disability claim based on a claimant's inability to understand the English language for claimants residing in Puerto Rico.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English

A-12-13-13062



April 2015

Office of Audit Report Summary

Objective

To analyze the effect of regulations requiring that disability adjudicators allow a disability claim based on a claimant's inability to understand the English language for claimants residing in Puerto Rico.

Background

The Social Security Administration (SSA) uses a five-step sequential evaluation process for determining whether a claimant qualifies for disability benefits. In claims that reach the last step in the process, adjudicators use medical-vocational guidelines (grids) developed in the 1970s to guide them in deciding a claimant's physical and vocational abilities to adjust to work in the national economy.

When deciding a case under the grids, adjudicators evaluate a claimant's physical capacity to work along with age, education, and work experience. The ability to speak, read, write, and understand English is considered an educational factor. A claimant's inability to communicate in English can lessen the relevance of work experience and education, potentially making it more likely the claimant will receive disability benefits.

Findings

SSA has applied the medical-vocational guidelines nationally and does not make exceptions for claimants who reside in Puerto Rico where both Spanish and English are the official languages. The guidelines assume individuals who are unable to communicate in English are limited in their ability to find a job in the regional or national economy where English is the predominant language, even though residents of Puerto Rico may be able to find local work with their Spanish-speaking skills.

While the Agency had incomplete management information on claimants allowed using the grid rules related to an inability to communicate in English, we identified 218 cases in Puerto Rico from Fiscal Years 2011 to 2013 where disability determination services used the aforementioned grid rules to grant benefits. Moreover, about 4 percent of the hearings we sampled involved these same grid rules.

SSA is preparing to issue an Advanced Notice of Proposed Rulemaking on the need to update the medical-vocational guidelines. This process should lead to changes in how the Agency considers factors that may affect a claimant's ability to adjust to other work in the economy. SSA may also want to review other interpretations of the grid rules. For example, a U.S. District Court's earlier judgment, upheld by a U.S. Court of Appeals, found that, for the most part, it is the ability to communicate in Spanish, not English, that is vocationally important in Puerto Rico.

Recommendations

1. Capture the number of beneficiaries awarded disability based on their inability to communicate in English.
2. Evaluate the appropriateness of the grid rules related to an inability to communicate in English when determining eligibility for disability benefits in circumstances such as those we identified in our audit.

The Agency agreed with our recommendations.

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ABBREVIATIONS

ALJ	Administrative Law Judge
ANPRM	Advanced Notice of Proposed Rulemaking
C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
DDS	Disability Determination Services
DI	Disability Insurance
eCAT	Electronic Claims Analysis Tool
GAO	Government Accountability Office
HALLEX	Hearings, Appeals and Litigation Law Manual
ODAR	Office of Disability Adjudication and Review
ODP	Office of Disability Policy
OIG	Office of the Inspector General
OQR	Office of Quality Review
RFC	Residual Functional Capacity
SGA	Substantial Gainful Activity
SSA	Social Security Administration
VE	Vocational Expert

OBJECTIVE

Our objective was to analyze the effect of regulations requiring that disability adjudicators allow a disability claim based on a claimant's inability to understand the English language for claimants residing in Puerto Rico.

BACKGROUND

The Agency applies a five-step sequential evaluation process to determine whether an individual is disabled.¹ Under this process, each adjudicator must follow a series of steps when evaluating a disability claim to ensure applicable provisions of the *Social Security Act* and Federal regulations are accurately and consistently applied at all levels of disability adjudication. The process was designed to identify the most obvious allowances and denials early in the process by considering the medical severity of a claimant's impairments.

When the claimant's medical impairments do not meet the criteria of a severe impairment, the adjudicator performs a function-by-function assessment of the claimant's physical and mental residual functional capacity to determine the work-related activities the claimant is capable of regularly performing, including lifting, walking, sitting, and following directions. If the claimant can still do the work they performed in the past, the claimant is not disabled. However, if the claimant cannot perform past work, the claim proceeds to the final step.

In the final step, adjudicators make findings of fact with respect to the effects of the claimant's physical or mental limitations in combination with "vocational factors," including the claimant's age, education, and past work experience. The medical-vocational guidelines (grids) direct a conclusion as to whether the individual is, or is not, disabled.² The rules are set out in separate grids³ categorized by the residual functional capacity based on whether the claimant is capable of performing sedentary, light, medium, heavy work, or very heavy work. In this final step, the burden of proof shifts to SSA to show the claimant can adjust to other work that exists in significant numbers in the economy.

¹ 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4). See Appendix A for a discussion of the five-step sequential evaluation process. SSA applies these criteria at all levels of its disability adjudication process: (1) initial determination, (2) reconsideration, (3) hearing before an administrative law judge, and (4) Appeals Council review. Claimants who exhaust all levels of administrative review can take their case to the Federal district court level. See 20 C.F.R. § 404.900.

² SSA, POMS DI 25025.005—*Using the Medical-Vocational Guidelines* (Effective Date February 13, 2015).

³ One set of rules at the "heavy work or very heavy work" level are simply stated rather than provided in a grid. Ordinarily, individuals who retain the functional capacity to perform work at this level will not have a severe impairment or will be able to do their past relevant work.

SSA considers formal schooling, other training, and a claimant's ability to communicate in English⁴ as part of the claimant's education under the vocational factors for purposes of assessing a disability. Under the grid rules, SSA defines the inability to communicate in English as a claimant who cannot speak, understand, read, or write a simple message in English, such as instructions or inventory lists.⁵

To meet our objective, we interviewed managers and staff at the Offices of Central Operations; Disability Adjudication and Review (ODAR); General Counsel; Quality Review (OQR); and Disability Policy (ODP) about the application of the grid rules related to a claimant's inability to communicate in English. We also reviewed available management information at disability determination services (DDS) and hearing office levels, as well as analyzed Federal district court cases, related to these same grid rules.⁶

RESULTS OF REVIEW

SSA has applied the medical-vocational guidelines nationally and does not make exceptions for claimants who reside in Puerto Rico where both Spanish and English are the official languages. The guidelines assume individuals who are unable to communicate in English are limited in their ability to find a job in the regional or national economy where English is the predominant language, even though Puerto Rico residents may be able to find local work with their Spanish-speaking skills.

While the Agency had incomplete management information on claimants allowed using the grid rules related to an inability to communicate in English, we identified 218 cases in Puerto Rico from Fiscal Years 2011 to 2013 where disability determination services used the aforementioned grid rules to grant benefits. Moreover, about 4 percent of the hearings we sampled involved these same grid rules.

SSA is preparing to issue an Advanced Notice of Proposed Rulemaking (ANPRM) on the need to update the medical-vocational guidelines. This process should lead to changes in how the Agency considers factors that may affect a claimant's ability to adjust to other work in the economy. SSA may also want to review other interpretations of the grid rules. For example, an earlier U.S. District Court judgment, upheld by a U.S. Court of Appeals, found that, for the most, it is the ability to communicate in Spanish, not in English, that is vocationally important in Puerto Rico.

⁴ SSA will ask claimants how long they attended school and whether they are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. SSA will also consider other information about how much formal or informal education a claimant may have had through previous work, community projects, hobbies, and any other activities that might help the claimant to work. See 20 C.F.R. § 404.1564 (a)(6).

⁵ SSA, POMS DI 25001.001 B.17.a—*Medical-Vocational Quick Reference Guide* (Effective Date January 12, 2015).

⁶ See Appendix B for more information on our scope and methodology.

Applying the Grid Rules in Puerto Rico

SSA applied the grid rules related to a claimant's ability to communicate in English (hereafter referred to as the "English-language" grid rules) nationally and did not make exceptions for claimants who resided in Puerto Rico, where Spanish is the predominant language in the local economy.⁷ Puerto Rico recognizes both Spanish and English as official languages.⁸ According to the U.S. Census Bureau, 95 percent of the residents of Puerto Rico above age 5 speak Spanish at home. About 84 percent of the residents reported they did not speak English "very well."⁹ SSA managers at various disability decision levels stated Social Security is a national program, and the grids must be applied to the national economy, regardless of local conditions.

The inability to communicate in English relates to the employability of a claimant

Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.¹⁰

Once it is determined the person cannot communicate in English,¹¹ the adjudicator is instructed to use the English-language grid rule as the education criterion, not the claimant's actual years of formal education. SSA policy does not differentiate between someone who is unable to communicate in English and someone who is illiterate in any language. However, elsewhere in its policy, the Agency recognizes the general use of the term "illiterate" would relate to an individual who has little or no formal schooling. In addition, work experience acquired in a language other than English may be considered less transferable to an English-speaking economy. Hence, a Spanish-speaking claimant who performed "skilled" work in Puerto Rico, such as a nurse, could be determined "unskilled" as it relates to past work experience in the grid.¹²

⁷ Puerto Rico residents are not eligible for Supplemental Security Income.

⁸ Congressional Research Service, *Puerto Rico: A Chronology of Political Status History*, 97-625 GOV, Updated June 24, 1998, p. CRS-5.

⁹ Census Bureau, *American Community Survey, Population and Housing Narrative Profile*, 2009 – 2013 American Community Survey 5 Year Estimates.

¹⁰ 20 C.F.R. § 404.1564(b)(5).

¹¹ Adjudicators use grid rule 201.17 for allowing disability to claimants aged 45 to 49, and grid rule 202.09 for claimants aged 50 to 54. See Appendix A for more on the vocational grid rules.

¹² SSA, Regional Program Circular (New York) DPN 02-004-REV—*Inability to Communicate in English as a Vocational Factor* (Effective Date December 23, 2002).

When the grid rules direct an adjudicator to determine a claimant is disabled in part based on his/her inability to communicate in English, the adjudicator is not required to evaluate the types of jobs the claimant might be able to perform in Spanish in the Puerto Rican economy or nationally since the claimant's level of education is no longer relevant and their previous work is considered "unskilled."¹³ As a result, under the grid rules, a claimant who cannot communicate in English may be found disabled when an English-speaking claimant with a similar functional capacity, age, education, and past work experience would be found not disabled.

For instance, we reviewed a DDS case where a 50-year-old female claimant in Puerto Rico filed for disability in FY 2010. She had 2 years' advanced education, previously worked as a dental assistant, and only spoke Spanish. The claimant alleged disability based on depression and disorders of the back. Her doctor noted that, with her medical condition, she could perform light work. Given these factors, as well as inability to communicate in English, the adjudicator was able to cite grid rule 202.09 (see Table 1) and determine the claimant was disabled. Had the claimant been able to communicate in English, grid rules 202.12 or 202.14 would most likely have directed a determination of not disabled.¹⁴

**Table 1: Grid Rules 202.09, 202.12, and 202.14
Maximum Sustained Work Limited to Light Work**

Rule	Age (50-54)	Education	Previous Work Experience	Decision
202.09	Closely Approaching Advanced Age	Illiterate or unable to communicate in English	Unskilled or None	Disabled
202.12	Closely Approaching Advanced Age	Limited or Less	Skilled or Semi-skilled - Skills Transferable	Not Disabled
202.14	Closely Approaching Advanced Age	High School Graduate or More	Skilled or Semi-skilled - Skills Not Transferable	Not Disabled

Note: We have truncated the grid for the purposes of this example. The full grid contains more options under "closely approaching advanced age" and includes rows for "advanced age" and "younger individual."

¹³ In commenting on this report, Agency staff noted, "Because there is no nationally applied data regarding the numbers of occupations in the national economy that do not require the claimant to communicate in English, SSA does not investigate whether there is work the claimant could adjust to in which English is not the primary language in use."

¹⁴ Our analysis of this case was reviewed by an Agency employee specialized in quality review cases, who confirmed the circumstances in this decision.

Lack of Management Information on the English-language Grid Rules

SSA did not capture all the cases allowed under the English-language grid rules.

We found SSA lacked sufficient management information to determine the number of claims allowed under the English-language grid rules 201.17 and 202.09. We interviewed managers and staff in ODP and OQR.¹⁵ Both offices stated the Agency captured some historical data showing the use of these grid rules to direct a favorable decision, but this information was incomplete.¹⁶ For instance, when we reviewed DDS decisional data maintained in the SSA-831, *Disability Determination and Transmittal*,

we found evidence that DDS offices nationwide have allowed disability cases citing the two English-language grid rules. The FY 2011 to FY 2013 SSA-831 reports contained 218 DI cases where the Puerto Rico DDS allowed benefits using these two grid rules. However, the SSA-831 report did not capture all cases allowed under these grid rules. In our discussions with Agency officials, we learned that, while DDS staff was recording the grid codes when the English-language grid rules directed the decision, they were not required to record the grid rule when used as a “framework”¹⁷ for the decision-making.¹⁸

The Agency started capturing more details on initial disability decisions in FY 2012 through its automated eCAT.¹⁹ However, Agency managers noted that the new eCAT system, which

¹⁵ These offices ensure that the nation-wide disability program and policies are consistently applied in disability decision-making at all levels of the process.

¹⁶ In addition, Agency managers said they were unable to separate the “illiterate” cases from the “unable to communicate in English” cases.

¹⁷ SSA POMS, DI 25001.001 B, 33—*Medical-Vocational Quick Reference Guide* (Effective Date: January 12, 2015) defines a “framework” decision as a “. . . decision that is not ‘directed’ by a particular rule in Appendix 2 (Medical-Vocational Guidelines) but uses the Appendix 2 rules as adjudicative guidance.” Agency managers stated past experience led them to believe that the majority of the English-language grid rule determinations were framework decisions rather than directed decisions.

¹⁸ We obtained our case count from the “vocational rule number” field on the SSA-831 report. In a 2004 audit report, the Government Accountability Office (GAO) stated, “SSA lacks electronic data on claimants’ vocational and functional capacity, which are critical factors in the disability decision and are therefore important in a study of the disability decision-making process...for DDS decisions made in 2003, we found that the one variable related to vocational and functional factors is captured in only 10 percent of the cases in which such factors had to be considered for the disability determination. In the remaining 90 percent of these cases, DDS staff did not capture any vocational or functional factors used in the decision. Without this type of information, SSA lacks electronic data in critical factors considered in the disability decision and important to any study of the disability decision-making process.” The “one variable” cited by GAO was the vocational rule number. See GAO, *SSA’s Disability Programs: Improvements Could Increase Usefulness of Electronic Data for Program Oversight*, GAO-05-100R, December 10, 2004.

¹⁹ See our July 2011 audit report, *The Effects of the Electronic Claims Analysis Tool* (A-01-11-21193), for more information. eCAT was piloted in FY 2011 and then became part of the DDS process in FY 2012.

populates some of the fields in the SSA-831 report, still lacks information on “framework” decisions. At the time of our review, management reports on the grid rules used in five-step decisions were not available, and the data itself needed to be validated before such reports could be prepared. We believe management information on the use of grid rules would provide managers with valuable insights on use of English-language grid rules used in decision-making for claimants in Puerto Rico and elsewhere.

We also found that ODAR lacked management information reports that identified the grid rule used in hearing-level disability decisions. We reviewed a random sample of 50 favorable administrative law judge (ALJ) decisions associated with Puerto Rico residents from FY 2011 and identified 2 claims where it appeared the claim was allowed based on English-language grid rule 202.09. For one claim, ODAR’s Appeals Council remanded the case back to the ALJ indicating the case was deficient with respect to the application of grid rule 202.09. The ALJ issued a new decision allowing the case based on grid rule 202.09. In the other case, the ALJ found the claimant was unable to communicate in English and cited grid rule 202.09 to allow the claim.²⁰

Modifying the Grid Rules

SSA’s ODP is preparing to issue an ANPRM,²¹ which could lead to regulatory proposals to reform how the grid rules are applied during the sequential-evaluation process. The grids were first introduced in 1978, and SSA managers and adjudicators we spoke with acknowledged that the grids needed to be updated.²² By publishing the ANPRM in the Federal Register, the Agency is soliciting comments regarding the proposal through outreach efforts to medical experts,

²⁰ Among the remaining sample cases, we found a variety of other scenarios. For instance, in 15 of the cases, the claimants were able to speak English, so language skills did not affect the case’s outcome. We identified other cases where the claimants could not communicate in English. However, the adjudicators for these cases found the claimants disabled for reasons unrelated to their language skills.

²¹ An ANPRM is a document that an agency may choose to issue before it is ready to issue a Notice of Proposed Rulemaking. One of the primary uses of an ANPRM is to involve the interested public in a regulatory action at an early stage, before the agency has arrived at even a tentative decision on a particular regulatory change. In some cases, the agency may issue an ANPRM to test public reaction to a proposal.

²² The Agency has attempted to modify the grids in the past, and Congress is requesting the Agency review the grids again. In 2005, SSA published an NPRM to increase the ages in each of the four age categories used in the vocational factors in line with the increase in the full retirement age. SSA later withdrew this proposal as a result of feedback from the public. In July 2014, the House of Representatives proposed a bill (H.R. 5260, 113th Cong. § 301, 2014) asking the Commissioner to prescribe rules and regulations that update the grid rules. The bill includes a request for SSA to consider the impact of new employment opportunities made possible by advances in treatment, rehabilitation, and technology.

advocacy groups, patients, and adjudicators. For example, SSA has used the ANPRM process to revise the criteria in the Agency's Listing of Impairments.²³

The ANPRM and subsequent actions would provide the Agency an opportunity to revisit the English-language grid rules. In addition, since the English-language grid rules are applied in conjunction with other factors, such as age, changes to these other factors could alter the application of the English-language grid rules. For instance, grid rule 201.17 applies to individuals between ages 45 and 49. Should the Agency decide to modify how it uses age as a vocational factor, all of the grid rules associated with this age group would be similarly modified.

SSA may want to review other interpretations of the grid rules.

The Agency may also want to review other interpretations of the grid rules when considering potential modifications. For example, an earlier U.S. District Court judgment, later upheld by a U.S. Court of Appeals,²⁴ found that a claimant in Puerto Rico was not disabled even though he was unable to communicate in English because the

... claimant is a resident of Puerto Rico. We take judicial notice that for the most part it is the ability to communicate in Spanish, not in English, that is vocationally important in Puerto Rico. The vocational expert in this case testified to the existence of jobs in the Puerto Rican economy that claimant could perform. In using the grid as a framework for consideration of the vocational testimony, therefore, the ALJ was justified in treating claimant's fluency in Spanish as tantamount to fluency in English.²⁵

The Agency uses Vocational Experts (VE) at the hearings level²⁶ to testify about jobs in the regional and national economies.²⁷ The Agency's regulations state, "We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country."²⁸ Moreover, the Agency instructs VEs that

²³ The Listing of Impairments describes, for each major body system, impairments considered severe enough to prevent an individual from doing any gainful activity (or in the case of children under age 18 applying for SSI, severe enough to cause marked and severe functional limitations). Most of the listed impairments are permanent or expected to result in death, or the listing includes a specific statement of duration. For all other listings, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

²⁴ See *Crespo v. Secretary of Health and Human Services*, 831 F.2d 1, 1987. It should be noted, however, that the court explicitly declined to apply this rationale outside of this one case.

²⁵ *Id.* at pp. 6-7.

²⁶ In our May 2012 audit, *Availability and Use of Vocational Experts* (A-12-11-11124), we reported that VEs were used in approximately 99 percent of the FY 2010 hearings held by the Mayaguez, Puerto Rico Hearing Office.

²⁷ DDS offices use internal vocational specialists to acquire occupational information in the evaluation of disability claims.

²⁸ 20 C.F.R. § 404.1566.

they should be prepared to provide “Information about the numbers of jobs in each occupation both locally (e.g., by state or region) and nationally.”²⁹ As a result, and consistent with the earlier court decision, VEs and vocational specialists can already provide information on the existence of jobs found in Puerto Rico or in local areas around major cities in Puerto Rico that the claimant can perform. While VEs and vocational specialists are not required to identify the specific language spoken at job locations, the official status of both the Spanish and English languages in the local economy may not create an employment barrier to claimants who only speak Spanish.

Hence, as part of future policy proposals, SSA could consider modifying the English-language grid rules for the national program, taking into consideration the unique circumstances such as those found in Puerto Rico. This would help ensure only disabled individuals collect SSA disability benefits.

CONCLUSIONS

We found the Agency did not make exceptions regarding the English-language grid rules for claimants who reside in Puerto Rico, even though Spanish is the predominant language spoken in the local economy. A claimant asserting an inability to read, write, or communicate in English may increase his/her likelihood of receiving disability benefits under the English-language grid rules in Puerto Rico when the claimant’s residual functional capacity and other vocational factors line up under grid rules 201.17 and 202.09. In attempting to determine the number of cases associated with the English-language grid rules, we found the Agency lacked complete data to determine how often adjudicators in Puerto Rico used these grid rules since policy required DDS staff report on only a portion of the cases where these grid rules were relevant. Finally, SSA’s ODP is preparing to issue an ANPRM, which should advance reforms to the application of the grid rules during the sequential-evaluation process.

²⁹ SSA, ODAR, *Vocational Expert Handbook*, June 2011, p. 26.

RECOMMENDATIONS

To improve the disability process as it relates to the grid rules, we recommend SSA:

1. Capture the number of beneficiaries awarded disability based on their inability to communicate in English.
2. Evaluate the appropriateness of the grid rules related to an inability to communicate in English when determining eligibility for disability benefits in circumstances such as those we identified in our audit.

AGENCY COMMENTS

The Agency agreed with our recommendations. The Agency's comments are included in Appendix C.

APPENDICES

Appendix A – FIVE-STEP SEQUENTIAL EVALUATION PROCESS

The Social Security Administration (SSA) applies a five-step sequential evaluation process for determining whether an individual is disabled.¹ Adjudicators at all levels of SSA’s disability processes use the five-step sequential evaluation process to make disability determinations for both Disability Insurance and Supplemental Security Income.

The five steps of the sequential process are as follows.

Step 1- Is the Claimant Working?

SSA considers a claimant’s work activity, if any. If a claimant is doing substantial gainful activity (SGA),² SSA will find the claimant not disabled regardless of the claimant’s medical condition, age, education, and work experience. If the claimant is not doing SGA, the process moves to the next step.

Step 2 - Does the Claimant Have a Severe Medical Impairment?

SSA considers the medical severity of a claimant’s impairment(s). If the claimant does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the Agency will find that a claimant is not disabled.³ If the claimant meets these criteria, the process moves to the next step.

¹ 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4).

² SGA means work that involves doing significant and productive physical or mental duties that is done for pay or profit. See 20 C.F.R. §§ 404.1510 and 416.910. See also 20 C.F.R. §§ 404.1572, and 416.972. In Calendar Year 2014, employees’ “countable earnings” indicate SGA, and self-employed individuals’ “countable income” is “substantial” if the amount averages more than \$1,070 per month for non-blind individuals or \$1,800 for blind individuals. See SSA, POMS, DI 10501.015— *Tables of SGA Earnings Guidelines and Effective Dates Based on Year of Work Activity* (Effective Date October 24, 2014).

³ The claimant must have a severe impairment. If a claimant does not have any impairment or combination of impairments that significantly limits his/her physical or mental ability to do basic work activities, the Agency will find that the claimant does not have a severe impairment and is, therefore, not disabled. SSA will not consider a claimant’s age, education, and work experience. However, it is possible for a claimant to have a period of disability for a time in the past even though he or she does not now have a severe impairment.

Step 3 - Does the Severity of the Claimant's Impairment Meet or Equal the Listings?

SSA again considers the medical severity of a claimant's impairment(s). If the claimant has an impairment(s) that meets or equals one of the Agency's Listing of Impairments⁴ and meets the duration requirement,⁵ SSA will find that the claimant is disabled.⁶ If the claimant does not meet these criteria, the process moves to the next step.

Step 4 - Can the Claimant Perform Their Past Relevant Work?

SSA considers its assessment of the claimant's residual functional capacity (RFC) and the claimant's past relevant work.⁷ If the claimant can still do his or her past relevant work, SSA will find that the claimant is not disabled. If the claimant does not meet this criterion, the process moves to the next step.

Step 5 - Can the Claimant Perform Any Work in the National Economy?

In the final step, SSA considers its assessment of the claimant's RFC, age, education, and work experience to determine whether the claimant can make an adjustment to other work. If the claimant can adjust to other work, the Agency will find that the claimant is not disabled. If the claimant cannot adjust to other work, SSA will find that the claimant is disabled.

SSA uses the medical-vocational guidelines (grids) in this step. If the claimant's RFC and vocational factors (age, education, and work experience) coincide with all of the criteria of a particular rule in the grids, then that rule directs a conclusion as to whether the individual is or is

⁴ The Listing of Impairments describes, for each major body system, impairments considered severe enough to prevent an individual from doing any gainful activity (or in the case of children under age 18 applying for Supplemental Security Income, severe enough to cause marked and severe functional limitations).

⁵ Unless the impairment is expected to result in death, it must have lasted, or must be expected to last, for a continuous period of at least 12 months.

⁶ If the claimant has an impairment(s) that meets the duration requirement and is listed in Agency's Listing of Impairments or is equal to a listed impairment(s), the Agency will find the claimant disabled without considering his or her age, education, and work experience.

⁷ If a claimant's impairment(s) does not meet or equal the Agency's Listing of Impairments, SSA will assess and make a finding about the claimant's RFC based on all the relevant medical and other evidence in the claimant's case record. In the fourth step, SSA will compare the RFC assessment with the physical and mental demands of the claimant's past relevant work.

not disabled. If a rule's criteria are not precisely met, the grids do not direct a conclusion, and the grids are used as a framework for a determination or decision.⁸

The grids use the following factors:

- the claimant's RFC,
- the claimant's age,
- the claimant's education level,
- the skill level of the claimant's past relevant work, and
- whether the claimant gained any skills from past relevant work that can be used in a different job.

⁸ In framework cases, adjudicators consider the grid rules that most closely fit the claimant's RFC along with the claimant's age, education, and past work experience.

Appendix B – SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed the Social Security Administration’s (SSA) policies; procedures; Hearings, Appeals and Litigation Manual; and Program Operations Manual System guidelines relevant to processing disability claims.
- Reviewed Federal law and regulations, including applicable U.S. Court holdings, and relevant Agency rulings.
- Reviewed relevant SSA studies and statistical information provided by the Office of Disability Policy (ODP) relevant to disability claim processing in Puerto Rico.
- Interviewed managers and staff at ODP and the Offices of Operations; Quality Review; and General Counsel. We also interviewed administrative law judges, managers, and staff at the Office of Disability Adjudication and Review (ODAR) as well as administrative appeals judges at ODAR’s Office of Appellate Operations.
- Obtained closed case data on disability determination services (DDS) decisions for Fiscal Years (FY) 2011 through 2013 from the SSA-831 *Disability Determination and Transmittal* reports. After we extracted cases indicating the use of the grid codes 201.17 and 202.09, we reviewed a sample of 50 ALJ decisions to assess the application of those grid rules and determined the number of cases decided in Puerto Rico.
- Obtained ODAR Case Processing and Management System (CPMS) FY 2011 close case database on hearing decisions and reviewed a sample of 50 favorable administrative law judge (ALJ) claims decided in Puerto Rico to determine whether grid codes 201.17 or 202.09 were a deciding factor in the ALJ awarding disability benefits.

The SSA-831 data were not sufficiently reliable to meet the objective of our review, which we discuss in the body of the report. We also found that ODAR’s CPMS lacked management information reports that identified the grid rule used in the hearing-level disability decision. The entities audited were the Offices of the Deputy Commissioners for Operations; Disability Adjudication and Review; and Retirement and Disability Policy. We conducted this performance audit from March 2013 through December 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: March 24, 2015 **Refer To:** S1J-3

To: Patrick P. O’Carroll, Jr.
Inspector General

From: Frank Cristaudo /s/
Executive Counselor to the Commissioner

Subject: Office of the Inspector General Draft Report, “Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English” (A-12-13-13062)--INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Gary S. Hatcher at (410) 965-0680.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“QUALIFYING FOR DISABILITY BENEFITS IN PUERTO RICO BASED ON AN
INABILITY TO SPEAK ENGLISH” (A-12-13-13062)**

Our agency uses a five-step sequential evaluation process for determining whether a claimant qualifies for disability benefits. At the last step in the process, adjudicators use medical-vocational guidelines (grids) to guide them in deciding whether a claimant retains the physical and vocational abilities to adjust to work in the national economy.

When adjudicating a case under the grids, adjudicators evaluate a claimant’s physical capacity to work along with age, education, and work experience. The ability to speak, read, write, and communicate in English is considered an educational factor. This audit analyzed the effects of regulations requiring that disability adjudicators allow a disability claim based on a claimant’s inability to communicate in English for claimants residing in Puerto Rico.

We are planning to issue an Advanced Notice of Proposed Rulemaking (ARNPM) to gather information on how the inability to communicate in English affects a claimant’s ability to adjust to other work in the economy. This could lead to changes in our medical vocational rules.

Recommendation 1

Capture the number of beneficiaries awarded disability based on their inability to communicate in English.

Response

We agree. We will begin to capture this data prospectively for disability claims. We are in the early stages of exploring management information initiatives to extract data from the Electronic Case Analysis Tool (eCAT) and differentiate between an individual’s inability to communicate in English, as opposed to illiteracy. In fiscal year 2013, use of eCAT became mandatory in initial and reconsideration cases. Data from 2013 forward will capture vocational rules (when met and when used as a framework). However, at present, we do not differentiate between illiteracy and the inability to speak English. Only in-depth individual case reviews would provide that information.

Recommendation 2

Evaluate the appropriateness of the grid rules related to an inability to communicate in English when determining eligibility for disability benefits in circumstances such as those we identified in our audit.

Response

We agree. Evaluating the appropriateness of the grid rules related to an inability to communicate in English when determining eligibility for disability benefits has been an ongoing process. We are currently moving forward with an ANPRM to address all vocational factors that include age,

education, and work experience. Specifically, we are soliciting public comments and supporting research on how the inability to communicate in English affects an individual's ability to adjust to other work that exists in the national economy. In addition, we are sponsoring a workgroup comprised of Federal agency experts in the field of disability to study the validity of our vocational rules.

Appendix D – MAJOR CONTRIBUTORS

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