

## The Appeals System in Old-Age and Survivors Insurance

By Ernest R. Burton\*

EARLY IN 1940, when the appeals system in old-age and survivors insurance was established, it was estimated that from 5,000 to 20,000 claimants a year would ask for hearings on their disallowed claims. Actually, however, the number of requests for hearings has averaged slightly less than 1,000 a year, the highest number being 1,307 in the fiscal year 1944-45. Compared with benefit applications received by the Bureau of Old-Age and Survivors Insurance, requests for hearing arising from benefit adjudications with which claimants disagree is almost negligible—not more than one-fifth of 1 percent in any year and only one-seventh of 1 percent in 1944-45. Even in relation to the number of disallowed claims, which have ranged from about 6 to nearly 9 percent of all claims filed, requests for hearings have never exceeded 3 percent.

When it is considered that only one in three of the cases in which hearings are held results in a final decision which changes in any way the previous determination of the Bureau, these questions naturally occur: Is the expense of an appeals system justified? Does it perform a necessary or important function?

### *The Function of an Appeals System*

Operation of the appeals system over a period of nearly 6 years<sup>1</sup> indicates that its function is vital and essential. The Office of the Appeals Council, that arm of the Board responsible for administering the appeals system, conducts its work quietly, without fanfare and without newspaper headlines or radio publicity. Of the 72 million individuals who have acquired wage credits under the program since 1936, only an infinitesimal fraction is aware of the appeals system. Although every award certificate as well as every disallowance letter sent to a claimant notifies

him of his right to appeal if he disagrees in any way with the Bureau's action, it is evident that very few of the nearly 3 million persons whose claims have been adjudicated have ever given the matter a second thought. Yet thousands of actual or potential claimants, who may never have sought hearings or even filed claims have nevertheless benefited, or stand to benefit, from precedent decisions rendered by hearing referees or the Appeals Council in cases appealed by other individuals who, in most instances, are the only persons directly affected. Not all precedent decisions favor claimants, of course, but they all serve to clarify, for future application, the principles defining or governing claimants' rights under the Social Security Act. In this way and in others, the appeals system has made an important contribution to the efficient administration of the insurance program.

Like every other large-scale undertaking dealing with the public, social insurance has some dissatisfied customers. As in private business also, some of the dissatisfaction is groundless, either wholly imaginary in its origin or perhaps with no basis other than an attempt to get more than one's due. On the other hand, some of it results from misunderstanding or negligence, often on the part of claimants themselves, sometimes on that of persons representing the Government agency. Just as private enterprises, motivated by considerations of good will or expediency, have found it good business to set up special departments to hear the complaints of the dissatisfied few and to make suitable adjustments, so, also, a Government agency responsible for processing a large number of benefit claims finds that it must maintain a specialized unit, operating under definite procedures, to hear complaints and to make final decisions. Without such a unit, either its regular staff of adjudicators must become overburdened and slowed down by irregular, exceptional cases or the whole insurance program is likely to become discred-

ited by the public clamor of a few contentious claimants whose complaints are ignored.

Efficient administration, then, requires courteous, prompt, and adequate consideration of every expressed grievance. But underneath this practical reason for establishing hearings in disputed claims lies a categorical imperative implanted deep in our democratic tradition. Under our concept of government, its agencies are servants of the citizens, not private enterprises at liberty to please or displease their patrons as may suit their fancy. They are engaged in the public's business, not their own. The individuals who seek the services of a Government agency, or who claim particular benefits which that agency is created to furnish, either do or do not possess a *right* to those services or benefits, depending upon what criteria the citizenry, acting through its legislators and courts of law, has adopted for determining the matter.

The agency, of course, must decide whether, under the facts of each specific case and the authorized interpretations of applicable law, the individual is entitled to what he claims. Exercise of judgment in such respects, however, does not imply authority either to act capriciously or to operate in a wholesale, mass-production fashion which prevents proper discrimination between cases exhibiting significant differences. The criteria inherent in the program as legally established must govern each determination, not the whim or personal opinion of the agency's staff, however well-intentioned. This objective requires that actions be based on both a full knowledge of all relevant facts and an understanding of the governing legal principles. It also demands the adoption of appropriate special devices to ensure adequate analysis of any case which involves an unusual factual situation or which raises a legal issue rarely confronted; and, we may add as a corollary, any claimant who *thinks* his case is unusual—even if all indications are that it is not—should be assured, if he so requests, that it will be processed in the special manner established for determining unusual cases.

The hearing system in old-age and survivors insurance is such a special device. The fact that two-thirds of

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<sup>1</sup> For earlier discussions of the system and its operation see the *Bulletin*, July 1940, pp. 21-24, and August 1941, pp. 18-23.

the cases heard are found by the hearing referees or the Appeals Council not to warrant any change in the Bureau's initial determinations suggests that approximately that proportion of the requests for hearing may not involve "unusual" circumstances. In such cases, it may be argued, hearings are not needed to ascertain facts or clarify legal issues. But appraisal of a hearing system on that basis alone overlooks the fact that making hearings available to all claimants who want them—after the ordinary handling of their claims has resulted in determinations which they think incorrect—gives claimants and the public at large that assurance of fair play which a democratic people demands. Whatever one's opinion regarding the broad allegation that government bureaucracy sometimes tramples roughshod over the sacred rights of individuals, this generalization clearly does not apply to an agency which encourages everyone with whom it deals to question any action it takes affecting him and to seek determination of any disputed matter by an independent authority. Such, from its inception, has been the animating spirit of the Social Security Board's appeals system.

### *Establishing the Appeals System*

The Social Security Act of 1935 had no requirement that a dissatisfied benefit claimant be given a hearing. The Board could have treated the disallowance of claims by adjudicators in the Bureau of Old-Age and Survivors Insurance as final; and it is at least debatable whether aggrieved claimants could have obtained judicial review of such determinations. As early as April 1936, however, the Board's staff set to work to devise procedures which would guarantee every dissatisfied claimant an opportunity for a "fair hearing," with the full safeguarding of his rights which that term connotes in American jurisprudence. When the drafters of the 1939 amendments developed the provision establishing that assurance as a matter of statutory right, the Board was therefore in full accord with the proposal.<sup>2</sup>

For several months before the new

statute was enacted, a special research staff within the Bureau, working under the direction of a consulting expert on administrative law<sup>3</sup> and in close cooperation with the Office of the General Counsel of the Federal Security Agency, studied the appeals procedures and experience of comparable Federal and State agencies and of various foreign social insurance systems. This staff also analyzed the anticipated subject matter of appeals under the program and developed a tentative statement of principles and an outline of organization and procedures considered necessary to implement a fair-hearing mandate. The ensuing report of the Bureau was subjected to critical study and comment by several groups and individuals outside the Board, including the social security committees of the American Federation of Labor, the Congress of Industrial Organizations, and the Business Advisory Council of the Department of Commerce; the late Abraham Epstein, executive secretary of the American Association for Social Security; and Edwin E. Witte, who had served as executive director of the President's Committee on Economic Security before the Social Security Act became law.

This extensive study and consideration culminated, in December 1939, in the Board's adoption of 14 basic provisions for the hearing and review of old-age and survivors insurance claims. In February 1940 the Board established the Office of the Appeals Council, responsible directly to the Board and wholly independent of the Bureau of Old-Age and Survivors Insurance. Its personnel comprised 12 regional hearing referees, a council of 3 members to sit in Washington and, in certain circumstances, review referees' decisions, a consulting referee to serve as legal adviser to the hearing referees, and the necessary technical and clerical assistants. An intensive course of training for this personnel was inaugurated, and detailed regulations governing the procedures to be applied in the new appeals system were drafted. To the Appeals Council the Board delegated authority to make final decisions,

subject only to judicial review in the United States courts, as provided by law. The first requests for hearing were received in July 1940, about 3 months after the Bureau had issued a large number of disallowances of claims on which its action has been pending for several months.

### *Availability of Hearings*

Under the Board's regulations a claimant is allowed 6 months from the date of the Bureau's determination in which to file a hearing request, but most requests are filed within 3 months. The few received after the 6-month period are, as a rule, accepted by referees because extenuating circumstances are found responsible for the delay. Many of the dissatisfied claimants elect to ask the Bureau to reconsider its determinations before they seek the somewhat more formal process of a hearing. This procedure reduces substantially the number of hearings; since the Bureau, upon reconsideration, is often able to reverse its previous actions, generally because of the additional evidence which the claimants submit, or, if a reversal is not possible, to make a further explanation to the claimant which frequently convinces him that its action was correct.

Hearings are available, after an initial determination by the Bureau, when claimants are dissatisfied with the action taken on their claims for monthly benefits or for a lump-sum death payment; when dissatisfaction arises over the Bureau's action in temporarily suspending benefit payments under the "work clause" or some other section of the act requiring such action; and also when young workers who, although ineligible for benefits, have asked for a check of their social security account to make sure they have credit for all their taxable wages—on which their future benefits or those of their survivors depend—disagree with the Bureau's statement of their wage credits. The last group has never constituted as much as 2 percent of the claimants requesting hearings.

Genuine availability of hearings has been one of the primary objectives of the Board's appeals policy. The act of requesting a hearing has been made very simple. The only requirement is

<sup>2</sup> From the beginning the Social Security Act has provided for fair hearings under State laws in both the unemployment insurance and the public assistance programs.

<sup>3</sup> Ralph F. Fuchs, then professor of law at Washington University, St. Louis, Mo., and a member of the Attorney General's Committee on Administrative Procedure.

that the request be in writing, either signed by the claimant or bearing his mark, and that it be filed with some office of the Board, whether a field office, an itinerant station visited perhaps once in 2 weeks by a Board representative, or the Board's headquarters in Washington. While a special "request for hearing" form is provided, it need not be used, and some requests are written almost illegibly on scrap paper or penny post cards. No reason for the request, or grounds for the claimant's disagreement with the determination, need be stated.

If the claimant expresses a preference as to the time or place for the hearing, an effort is made to comply with it. In nearly every case the hearing is held within the county of the claimant's residence, often in the town or village where he lives, sometimes in his home. This policy of trying to suit the convenience of claimants by holding hearings as near to their homes as practicable means that the referees must be traveling officials, not judges who hold court only in their established forums. One of the referees, located in New York City, is kept almost continuously busy with hearings held in his office, but all other referees are circuit riders, moving about their regions, which in each instance cover several States. In a recent typical month the total mileage of all referees was 16,000, or an average of almost 1,500 miles per referee; the referee with the largest region to cover traveled 3,500 miles. Since a reporter accompanies each referee, to record the testimony taken at the hearing, the actual mileage of Board employees occasioned by hearings is at least double that of the referees; occasionally one or more field office employees attend as witnesses.

Ordinarily a hearing is held in the local post office in a room assigned by the postmaster, in a court room in the county building or the city hall, or in some other public building, such as a school or library. Because of unusual circumstances, however, hearings have been held in many other places. Among the less conventional have been the living room, kitchen, bedroom, or front porch of a private home, a doctor's office, a county jail, a Federal penitentiary, hospitals, a municipal bath house, a post-office lobby

(on a holiday when all other rooms were locked and villagers, coming to open their mail boxes, passed in and out during the hearing), in an abandoned one-room school house (with boards stretched across sawhorses to form a table and upturned kegs for chairs), in an automobile parked outside a chicken house (which the claimant was cleaning when the referee arrived), in the back room of a saloon (the only place in town where there was an available table), at the mouth of a coal mine, and in a cabin in the heart of an Idaho mountain forest, 17 miles from the nearest settlement.

"Availability" of a hearing is more than a matter of mere convenience of location. Unless hearings entail little or no expense to claimants and unless the parties to a hearing actually understand what it is all about, so that they can answer intelligently the referee's questions and proffer any relevant evidence they may have of which he is unaware, the advantages of a hearing have not been made truly available to them. No hearing costs are assessed against claimants. Their only expenses are for their local transportation to the hearing, loss of a day's wages in some cases, a nominal charge sometimes made for a certified copy of a marriage or birth certificate or some other essential document, and occasionally a lawyer's fee. Under the Board's regulations an attorney is not permitted to charge a claimant more than \$10 unless a larger fee is specifically approved, upon the attorney's request, by the referee or the Appeals Council. Attorneys have represented parties in about one-sixth of the hearings held, and in very few cases has authorization of a fee in excess of \$10 been requested. When a higher fee has been sought, approval has seldom been given to a charge of more than \$50. The Board, of course, assumes no obligation to assist a lawyer in collecting the fee authorized, leaving the matter wholly to the attorney and his client. By placing a ceiling on such a fee, however, and by notifying the claimant of the limit approved, the action of the referee or the Appeals Council tends to restrain any unscrupulous members of the bar from trying to develop a lucrative practice as social security specialists.

### *The Hearing Itself*

To prepare a claimant adequately for intelligent participation in a hearing requires a process which begins with his first contact with the field office. Some cases reach the hearing stage simply because the explanations given by field offices fail, for one reason or another, to make claimants understand just what facts must be established or what sort of evidence will establish them, or the legal significance of the facts which the undisputed evidence has established. In some of these cases, moreover, neither the hearing nor the referee's decision clears up the claimant's mental foggy, and he appeals to the Appeals Council and perhaps finally to the courts. Such instances are infrequent, however, and an analysis of the great majority of hearing cases probably would reveal that, before they seek a hearing, claimants generally are reasonably well informed regarding the issues and the kind of evidence they will be called on to furnish or to assist the referee in obtaining. That they are adequately informed is principally due to the care with which the Bureau states in its notices of disallowance actions the reasons underlying the unfavorable determinations, or, when there is an award with which the claimant disagrees as to some particular, explains the situation in conference or by letter.

There are other cases, however, in which the referee, after studying the claim file, deems it advisable to write the claimant before the hearing, apprising him of the exact issue and suggesting what witnesses or documentary evidence may be needed. In all cases, moreover, the referee opens the hearing by reciting—in nontechnical language, unless the claimant is absent and is represented by counsel—the procedural history and relevant facts as then shown by the claim file, and stating clearly the issues to be decided. The claimant or his representative then has an opportunity to examine all the documents in the claim file which the referee wishes to introduce as exhibits and to object to the inclusion of any of them.

*No "trial" and no prosecutor.*—As the hearing proceeds and the testimony of the claimant and other witnesses is taken, it is generally quite

apparent that this is not a "trial" in which the claimant and the Government are adversaries. While opposing interests occasionally appear, particularly in connection with survivors' claims, which require proof of the claimant's relationship to the wage earner—something which may be disputed by rival pretenders to the title of "widow" or "child," for example—in most cases no one is opposing the claimant's claim, nor can anyone be injured by its allowance. In all cases which are decided in favor of the claimants, however, the facts showing that they meet every statutory requirement for entitlement must be established in the record. This may require reconciliation of apparent conflicts in the evidence to separate the spurious from the true, or the drawing of reasonable inferences from evidence which is not conclusive. Sometimes it may call for careful analysis of undisputed facts to determine their legal significance, particularly in a "mixed question of fact and law"—such as often arises when the outcome turns on whether children are legitimate, whether they were equitably adopted, or whether an alleged marriage was valid—but not infrequently when the question is purely legal and depends on the interpretation of the Social Security Act, the Board's regulations, or some other law, either Federal or State.

In only one type of case is the claimant likely to regard himself as "on trial" and the Government as the accuser and, hence, his adversary. This is a case involving "additional deductions" from a claimant's monthly benefits, which the Board is required under the act to impose when a claimant, "having knowledge thereof," has failed to report promptly to the Board an "event" (such as earnings of \$15 or more in a month in covered employment or the failure of a child to attend school) which would have necessitated temporary suspension of his benefits. Even in such instances, however, the hearing is very different from a trial at which the Government's "side" is presented and argued by a prosecutor. Although a Bureau official sometimes testifies as to what he told the claimant about his obligation to make such reports, no such official appears in the role of either a prosecutor or an

advocate supporting the Bureau's administrative action. The question before the referee is one of fact as to whether, under the very liberal interpretation of the phrase approved by the Board, the claimant did "have knowledge" both of the critical "event" and of his duty to report it. Such a case calls for skillful and conscientious use of those methods of fact-finding which are peculiar to a fair hearing and which, in some instances, are superior to the methods available to a field office. Among them are the art of examining witnesses to bring out all of the relevant circumstances, a careful appraisal of the demeanor of witnesses, and a completely unbiased attitude, free from any inclination to presume that the previous administrative action is correct or to give the claimant the "benefit of the doubt" without making every reasonable effort to remove all doubts.

The peculiar merits of the hearing process in this special class of cases apply, in a large measure, to all hearings, and especially those in which the facts are complex and those in which the governing legal principles, in view of the paucity of definitive court decisions interpreting the Social Security Act or other legislation having comparable purposes, are not altogether certain. The use of oral questions to obtain answers given under oath has at times revealed the weakness of standardized questionnaires contrived with the more usual factual possibilities in mind. It has also shown that staff reports of interviews and affidavits intended to condense into manageable size the relevant information furnished by witnesses are not always reliable.

*The major issues appealed.*—Approximately three-fourths or more of the hearings each year relate to claims for monthly benefits or lump-sum death payments. Most of these grow out of disallowances, but a few result from dissatisfaction with the size of the benefit or lump-sum awarded or with the effective date of the award. During the war years, hearings on benefit suspensions increased disproportionately to hearings on benefit claims; in the fiscal year 1944-45 they comprised 26 percent of all hearings requested or twice the proportion in

any previous year. That this high proportion did not result from a marked increase in suspension actions, as might be supposed, is indicated by the fact that, although there were 12,000 more of such actions in 1945 than in 1944, the ratio of suspension actions to the number of claimants on the benefit rolls in 1945 was the lowest since payment of monthly benefits began. Suspensions, although considered unfair by some beneficiaries, are not a serious cause of dissatisfaction, for the hearing requests arising from such suspensions in 1945 represented less than one-fourth of 1 percent of the number of suspensions ordered by the Bureau.

The explanation for the high proportion of hearings involving suspensions in 1945 is probably to be found in the decrease in the ratio of hearing requests on claims to the number of benefit claims disallowed. From 3 percent in 1941, the ratio has declined each year, to 1.7 percent in 1945. In other words, year after year a diminishing proportion of the persons filing claims have shown, by requesting hearings to rectify alleged injustices, that they felt the determinations of the Bureau were either in disregard of the facts or contrary to law. If this decline in the relative number of claims carried to the hearing stage had been paralleled by a declining proportion of claims disallowed, it might be supposed that the Bureau had gradually become "soft" or "liberal" in its consideration of claims; but during these same years there was an increase in the percentage of total claims disallowed, from 6.3 percent in 1941 to 8.0 percent in 1945.

The greater apparent satisfaction of claimants is due, probably, to the greater care given by the Bureau, especially in field offices, to completing the factual development of applications and to the staff's clearer understanding of the multifarious legal angles which arise. These improvements are largely the natural outcome of experience in handling the increasing variety of cases; in considerable measure also, I think, they have resulted from the operation of the appeals system.

### *The Appeals Council*

The Office of the Appeals Council is housed in no ivory tower. Without

impairing its judicial integrity, it has kept informed on the administrative problems which confront the Bureau in handling a large volume of claims and has cooperated in developing consistent principles of adjudication. Though not on the firing line, it is in constant communication with the front-line forces of the Bureau and with the logistics staff of the Federal Security Agency's Office of the General Counsel, which advises both the Bureau and the Appeals Council on legal issues involved in the program.

As questions arise regarding the proper interpretation of the act or regulations, or concerning State law applicable to certain issues, the representatives of the Bureau, the Appeals Council, and the Office of the General Counsel confer so that the appropriate principles will be uniformly applied whether in adjudications by the Bureau or in decisions of the referees or the Appeals Council. When these three offices find that they cannot reach complete agreement, and particularly if legal considerations permit alternative treatments and thus raise a question as to the wisest policy, the matter is submitted to the Board for decision. While the questions presented to the Board have usually arisen in connection with one or more specific claims pending before the Bureau, the referees, or the Appeals Council, the Board has not undertaken to decide the particular cases; it has concerned itself solely with determining principles to be applied or policy to be adopted in the interest of the social insurance program and its underlying purposes.

### *The Board's Function*

During the first 5 years of the appeals system's operation, 59 distinct substantive questions, an average of one a month, were submitted to the Board—40 initiated by the Bureau, 15 by the Appeals Council, and 4 by the Office of the General Counsel. This number does not include the many problems concerned with operating procedures or with technical amendments of the regulations which were needed to conform them to provisions in statutes relating primarily to programs administered by other agencies but affecting some part of the

Board's operations. It also excludes several supplemental submissions designed to give the Board, before it took final action, more complete analyses of the problems presented or raising subsidiary questions growing out of new types of cases and not fully or explicitly covered by the Board's actions on the original questions.

That so many of these questions took shape during the consideration of appealed claims, although such claims are only a trivial fraction of all claims disallowed, is an indication of the contribution which an appeals system can make to efficient and equitable administration. An adjudicative staff, handling many thousands of claims every month, must classify them according to categories which, at certain points, are not sufficiently flexible to accommodate every minor factual variation. An appeals system serves to screen out the cases presenting the more unusual of these variants and thus may bring to light exceptional situations which could not be foreseen when the act, the Board's interpretative regulations, or the adjudicators' detailed instructions were written.

Such cases raise the question whether, on the one hand, under the rules of statutory construction, it is possible to hold the claimants' contentions valid, or whether, on the other hand, the Board—when the matter is within the limits of its discretionary power—should, as a matter of policy and giving due weight to administrative feasibility, allow such claims. These are the same types of questions as those which confronted the drafters of the act, the regulations, and the adjudicators' instructions, but they relate to narrower areas about which "reasonable men" may well hold conflicting opinions, or about which there may be some uncertainty even when the considered opinions of Bureau officials, the Appeals Council, and the legal staff of the Agency are in substantial agreement. By presenting such questions to the Board, definitive answers are recorded in the Board's minutes, which then become authoritative directives to the Bureau and the Appeals Council, modifying or amplifying previous directions contained in

the regulations and adjudicators' instructions. In some instances the question can be answered properly only by amending the Board's regulations, but generally an interpretation of existing regulations has sufficed.

Written submissions to the Board, setting forth the problems which incite these questions, with illustrative examples and analyses of legal or administrative aspects, may be prepared by any of the three offices, but they are always cleared with the other two, which append their concurring or dissenting views on any recommendation the submitting office has seen fit to make. When a submission has originated with the Appeals Council or the Office of the General Counsel, the Bureau, drawing upon its much greater fund of cases and sometimes making an extensive sampling survey to guide it in formulating its opinion, has often amplified the presentation by adding variant examples involving the particular question at issue. In considering such a submission, therefore, the Board has before it one or possibly several concrete cases with an analysis showing how each of the varying interpretations of the specific language of some section of the act or of the regulations would produce differing results. Representatives of the three offices attend the Board meeting at which a submission is considered and participate in the discussion which precedes action on the question presented.

By means of this orderly process, governing principles are continually refined to meet realistically the requirements of efficient administration. From one standpoint this result is a byproduct of an appeals system intended primarily to assure fair treatment in individual cases. From another, however, it fully justifies an appeals system as one of the means of improving the administration of the insurance program as a whole.

### *The Appeals Process v. Civil Action*

A possible alternative to our administrative appeals system would be a provision enabling any claimant who was dissatisfied with the Bureau's determination to appeal directly to the courts. In support of such a pro-

vision it might be argued that under an administrative appeals system, even though its quasi-judicial personnel is administratively independent of the initial adjudicating authority, final decisions are much too likely to become a mere rubber stamp of the initial actions. It may be thought that there is some basis for this conclusion in the fact that both the original and final actions are taken by subdivisions of the same agency, and that there is a strong tendency within any agency making for uniformity. This conclusion assumes, also, that the courts, being under no obligation to follow instructions of an executive superior and governed solely by judicial precedent and established principles developed through generations for the protection of individual rights, will more often accord each claimant the full measure of what Congress intended that he should receive.

One answer to this proposal is that the anticipated cost of prosecuting a civil action in the courts, in view of the small amounts involved, might deter many claimants from such recourse. Moreover, if direct court appeal were made available to claimants under all other Federal programs, as well as to those applying for benefits under the Social Security Act, and if any appreciable number of claimants should seek judicial determination of their rights, the courts might become so overburdened as to cause almost interminable delay. The provision in the amended Social Security Act whereby a dissatisfied claimant may obtain a hearing before a referee of the Board and, if dissatisfied with his decision, may seek review of it by the Appeals Council enables most such claimants to obtain at almost no cost to themselves and within a relatively short time\* a thorough review of the claims and the decisions, on their

\*In the average case which is not delayed for reasons beyond the control of the referee—such as some unusual difficulty in obtaining needed documents or the testimony of essential witnesses—the hearing is held within 30 days after the claimant requests one and the referee's decision is rendered within 2 weeks after the hearing. Cases appealed to the Appeals Council are usually decided in from 2 to 4 weeks after the claimants have filed simple statements of their contentions or have waived their right to do so.

merits. For any claimant who is dissatisfied with this final administrative result and believes that there is enough at stake, either from the standpoint of the money benefits or the principle involved, the path is still open for court review and determination of his rights.

### Court Review

From July 1, 1940, to December 31, 1945, there were 42 civil actions begun in the United States district courts to obtain judicial review of final decisions which had been rendered by the Appeals Council. Claims of 70 individuals were involved in these 42 actions, representing 1.6 percent of all cases in which decisions had been rendered by the referees or the Appeals Council or 4.5 percent of those decided adversely to the claimants' contentions. By the close of the calendar year 1945, final court decisions had been rendered in 24 of these actions; 18 suits were still pending, 15 in the district courts, 2 in circuit courts of appeal, and 1 before the United States Supreme Court. The final court decisions upheld the decisions of the Appeals Council in all but 4 cases, involving 10 claimants. Thus, during the first 5½ years of operation of the appeals system, the final decisions of the Appeals Council had been reversed by the courts in one-fourth of 1 percent of all cases decided and in two-thirds of 1 percent of the cases which it had decided against the claimants.

These low percentages of reversals imply a high standard of performance by the referees and the Appeals Council, but they are not conclusive. There is no way of telling, of course, what proportion of the claimants who were dissatisfied with the decisions of the Appeals Council were deterred from seeking court review solely by considerations of expense, or how many, on the other hand, refrained from such a course because they had come to believe—either with or without legal advice—that the courts would not support their contentions. Yet it seems reasonable to suppose that in most instances claimants who still believed—after the successive adverse actions by the Bureau, a referee, and the Appeals Council—that their contentions were sound and supported by the evidence would appeal to the courts. Conversely, then, the failure

of 95.5 percent of the claimants whose claims were finally denied by the action of the Appeals Council to appeal may be taken to signify that they acknowledged at least the *legal* validity of the Council's conclusions, although they may have continued to be dissatisfied with the results flowing from those conclusions.

The cases which have gone to the courts have run almost the entire gamut of possible issues, but with a somewhat different distribution from that of the cases before referees. Relatively twice as many of the court cases as of those heard by referees have involved the question of employment relationship, for example. On the other hand, the courts have received relatively fewer cases involving family relationship. Perhaps the reason for a higher proportion of court cases turning on the question of whether the wage earner was an "employee" is that this vital coverage question concerns an area which, as respects the purposes underlying the Social Security Act and similar remedial legislation, is not clearly defined by long-established legal precedents and still leaves room for some uncertainty. The legal status of family relationships is probably more clearly expressed in the law of domestic relations, which has developed through centuries of litigation and legislation. Cases turning on an issue of this type, therefore, less often involve legal uncertainty but, as a rule, depend solely on the facts; and the courts are directed by the amended Social Security Act to treat as conclusive the Board's findings "as to any fact, if supported by substantial evidence."

Of the four civil actions in which the ultimate court decisions reversed the Appeals Council, one involved interpretation of section 209 (m) of the act relative to the applicability of State law where such law barred a widow from taking her husband's intestate personal property if she had abandoned him; one involved the status as an "employee" of an individual who was the receiver of a State bank; a third depended on the interpretation to be given the Board's regulation on "constructive payment" of wages under a rather unusual factual situation; the fourth concerned the question whether, under State law as

interpreted by the courts having jurisdiction, it was possible to find a common-law marriage by estoppel. Each of these suits involved a fine point of law on which competent legal opinion was divided. The same is true of many of the court cases now pending. Such legal issues can be settled finally only by the courts; in the meantime the Appeals Council must be guided by what appears to be the import of court decisions in cases which are not always

squarely analogous. A decision of the Appeals Council which denies a claimant benefits in such circumstances may be contrary to what it would prefer to conclude; being bound by what, in its judgment, is the weight of legal precedent, however, it is constrained to decide adversely to the claimant. To have its decision reversed in the courts, in such a case, enables the Board, in future cases, to achieve the result which the Appeals Council had

avored but believed itself without authority to effect.

In the light of the court decisions thus far, it is reasonable to conclude that the appeals system of the old-age and survivors insurance program is achieving results which are fair to claimants and fully in accord with what they would have obtained by direct appeal to the courts and that these results are obtained expeditiously and economically.

## The Administrative Review in Federal-State Social Security Programs

By William L. Mitchell\*

ADMINISTRATORS in and out of government have struggled for years with the problem of keeping in sufficiently close touch with their organizations to know currently and accurately what is going on; to ensure that all their divisions or departments are following established policy and are operating efficiently and economically, and to know that the number of checks and balances is sufficient to achieve honest and competent administration but not so great as to impede accomplishment. From the first day of its existence the Social Security Board likewise has had to concern itself with the controls and sources of information that, in a large organization, will ensure that the purposes of the act are being carried out and that channels exist to provide an orderly and continuing flow of information to enable the Board to report on its stewardship and, as occasion necessitates, to make intelligent recommendations to Congress and others on program improvements.

It would be impractical to attempt to discuss or even to describe here all the devices employed by the Board to review and measure the administration of social security. These include fiscal audits, the extremely well-organized processes for appraising Federal administration of old-age and survivors insurance, the advance for-

mulation of 6-month operating programs for all Board functions, the periodic review of budget justifications, periodic review of State merit systems, and many other well-established and productive appraisal procedures. The present discussion relates only to the formally adopted set of procedures, routines, and reports that we have come to identify as the "administrative review" in the two Federal-State programs—the public assistance program, in which the Board is responsible for making grants-in-aid to States for assistance and administration under State plans for old-age assistance, aid to the blind, and aid to dependent children; and the unemployment insurance program, under which the Board has responsibilities for approving State unemployment compensation laws for tax-offset purposes and for making Federal grants to meet the costs of administering those laws.

### *The What and Why of the Administrative Review*

The conditions specified in the Social Security Act for Federal participation in these programs give us our marching orders. There can be no evading the discharge of these specific mandates. At first sight they may appear to allocate to the Board essentially negative police duties—and under a less progressive and imaginative type of administration they could easily have been so interpreted.

Over its years of operation, however, the Board has evolved a positive concept of the "Federal role" inherent in the statutory mandates for these Federal-State systems.

The formally adopted statements of the Federal role in public assistance and in unemployment insurance differ in language but are identical in substance. They encompass five main areas of Board activity and responsibility: approval of State laws and plans; grants of Federal funds; maintenance of "proper and efficient administration"; consultation and advice relating both to program and to administration, including the maintenance of a clearing-house service; and public and legislative information looking toward improvement of the programs.

These are the ends served by the Board's administrative review of State operations. Basically, the "review" is a system for evaluating the State's administration of its law in order to determine conformity with the act. But any review outline or any review report is deficient to the extent that it is not consciously oriented to each of the characteristics of the Federal role. Methods may and do differ substantially, but the purposes remain the same.

Looked at from another point of view, what does the Board expect to get from the review process? Three words sum up the answer: conformity, information, improvement. The review should give assurance as to continuing conformity or should identify and explain nonconformity; it should provide the clearing-house material on program and administration for use in giving advice and consultation; and it should furnish a rich source of research data for pointing the way

\*Assistant Executive Director, Social Security Board. This article is taken from an address at the field staff conference, State Technical Advisory Service, Washington, D. C., April 1, 1946.