

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

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to a better social security system—for program development and standard setting.

### *The Administrative Review in Public Assistance*

From the beginning the Board has recognized its responsibility for assisting the States in improving their public assistance programs. In view, however, of the absence of specific information on the adequacy of individual State operations and because the standards against which State practice might be judged were imperfect or lacking, at the outset we concentrated temporarily on the proper expenditure of funds. In those days the Board's Bureau of Accounts and Audits made a complete audit of the eligibility of the individuals who received assistance toward which Federal funds were used, examining every case file in every State. The audit staff, which was twice its present size, was not equipped by training or experience to draw from these records the information needed for standard setting and program development. As auditors, they were a credit to themselves and to the Board. Skills other than auditing, however, were needed to get the whole job done.

By January 1940 the 100-percent audit of eligibility was discontinued; public assistance auditing was then limited to the fiscal aspects of payment, audit of the State's accountability for expenditures, and a general review of fiscal procedure and accounting. At the same time the Bureau of Public Assistance instituted a continuing review of State and local administrative procedures and operations, including an appropriate review of sample case records to assure the Board of the State's adherence to Federal requirements and to the State's own approved plan.<sup>1</sup> The Bureau of Accounts and Audits was to be called on for consultative service and, if special circumstances necessitated, for an audit of individual eligibility determinations.

It was recognized that the review process must be consistent with the Board's determination to assist the States in strengthening their admin-

istration and should not represent processes that might have the effect of weakening State administration and initiative through spoon-feeding. Likewise, the administrative review was recognized as an extension of, rather than a substitute for, existing methods of fact finding and dealing with the States. It was to be carried on by the Bureau cooperatively with State officials, and its results were to be made available to the States for their use in accomplishing administrative improvements. The importance of decentralizing the process to the regions was recognized; while uniformity of procedure was regarded as important, flexibility was introduced to assure adaptability to the individual needs of each State.

The review is geared to encompass the entirety of the State's administrative process, working back from the end product, which is the assistance payment to the individual or the denial of assistance, through all the earlier steps involved. Since the fiscal audit of eligibility had been discontinued, provision was made for the reporting of errors in assistance payments to the States for proper adjustment. It was recognized at the beginning, and is still found to be true, that the review process must be changed and refined continuously as circumstances indicate need for change.

A review of each State is completed annually. To have it reflect the most nearly current situations, the information relating to each of the local agencies reviewed covers the last 2 quarters preceding the field work. The field work is spaced so that activities of some local agencies would be reviewed for each quarter within the established annual period.

To keep the job within manageable proportions and costs, the conventional practices of "sampling" and "test checking" were adopted. Contrary to most studies on a sample basis, however, the public assistance review is organized so as to assure that over a period of years the accumulation of the samples will provide a much more extensive coverage of State operations than is gained in any single year.

The first year was frankly experimental. In States where the case load

was heavily concentrated, the Bureau attempted to review the operations of local units responsible for 50 percent of the case load. When this was not feasible, units were selected to assure good geographic distribution and as large a representation of the case load as possible.

Within the local units thus selected, a review was made of random samples representing 10 percent of the approved applications within the 2 preceding quarters, 5 percent of the applications rejected, and 2 percent of the cases which had received assistance continuously for a year or more. Appropriate schedules were designed to permit uniform recording of information and to assist the reviewers in performing their work on a uniform basis. The schedules were of two general types, one to record information on administrative practices and the other on individual cases. The administrative schedules, likewise, were adapted to the recording of information on local units, on the one hand, and on State agency operations on the other.

The State agency schedule was largely limited to operations which could be most readily made the subject of study by schedule methods, such as the method and extent of field supervision. Other aspects of State agency operation were left to the general responsibility of the regional representative to handle as circumstances required. The schedules relating to individual cases were devised to reduce writing and transcription to a minimum by use of check marks and figures to report information. All schedules were designed to take account of the differences in the three categories of public assistance.

Moreover, an effective use was made of testing and sampling methods to eliminate the necessity of even the entire sample review in States which already had some form of review that constituted a practical equivalent. In those States, we make only a test check of the agency's plan in order to establish its validity. Thus, we are able to get what we need with a minimum of effort and to avoid duplication of the State's work.

The public assistance review requires only three reports: a statement from the regional representative giving the advance plan for each year of

<sup>1</sup> See Goodwin, Kathryn D., "Administrative Review in Public Assistance," *Social Security Bulletin*, October 1943, pp. 5-16.

review in each State; a quarterly report of progress; and an annual report formalizing and evaluating the State situation as seen through the review; plus any other pertinent factual information. The annual report, while primarily designed for use by the Board, is also given to the State for its information.

### *The Administrative Review in Unemployment Insurance*

The administrative review in unemployment insurance has many points in common with that in public assistance but also many points of difference. During the first few years the Bureau of Employment Security had no formalized review, though a review outline was in use, primarily as a guide when it became necessary to make a special review in a State where difficult problems of administration or conformity issues arose. Four years ago the Bureau established a review on a more regularized basis, but it was not until early 1943 that a rough equivalent of the current process was introduced. Until last year, this review was conducted every 6 months. It is now on an annual basis, and all reviews are completed between July 1 and February 28.

The representative of the Bureau in each region is primarily responsible for the conduct of the review, but all members of the regional professional staff aid in carrying it out.

The process begins with a review in the regional office of the previous year's report; a check of current items of important business with the State; a review of the relative efficiency of the State as compared with others in the region and country in such items as unit administrative costs, time lapse in benefit payments, and so on; and a brief review of State manuals, procedures, and organizational charts. Clearance is made with State officials at the beginning of the review, and the State administrator is asked to participate closely and continuously. In the smaller States and in States with relatively few problems, the actual collection of the review material takes 9 or 10 working days; in more complicated situations, as much as 18 to 21 working days.

If a comparison may be ventured, the unemployment insurance review seems to be more highly proceduralized than that in public assistance. A 43-page outline is provided, with space for a brief answer on each point. The outline is divided into 9 major sections, representing the major areas of State administration. Varying numbers of questions are included in each section, carefully selected to require review of each detail of operation that is of real importance.

As in public assistance, test checks are used to appraise the administration of mass operations. For example, there is a careful examination of 60 benefit decisions selected at random, 60 of the most recent benefit decisions involving disqualification, and 60 appeals. The reviewer must attend from 1 to 3 appeal hearings and must make an on-the-ground review of operations of at least 3 local offices.

Statistical schedules, the preparation of which was found burdensome and time consuming by the regional staff, have recently been eliminated from the review outline. Schedules are now prepared and submitted voluntarily by the States themselves. The content of these schedules is changed somewhat each year in order to reflect changes in operations and the varying interests of those who use the figures.

The completed outline, in most instances, constitutes the report of the review, although it is ordinarily submitted to the Board with a covering memorandum that often takes the form of a report, summarizing findings of the review and including any additional comments deemed significant on the State's administration of its program.

As in public assistance, if serious evidence of poor administration or nonconformity is discovered during the course of the review, it is immediately called to the attention of State officials. Items of lesser importance are held for discussions at the conclusion of the review.

A copy of the completed review outline is always made available to the State. The time and method of presenting it to the State are left to the discretion of the regional representative. He may conclude that a conference is unnecessary because of

continuing discussions during the course of the review; he may arrange for a conference immediately upon completion of the review; or he may postpone discussion until the materials have been analyzed and a formal program for the presentation and discussion of findings has been worked out in the regional office.

The only differences of consequence between the public assistance and unemployment insurance reviews appear to be those attributable to basic characteristics of the two programs. Public assistance is ordinarily administered on a county basis, while the administration of unemployment insurance is usually highly centralized. Review of public assistance, because of the matching provisions of the Federal law, must give more concern to payments to individuals, toward which Federal funds are used. The unemployment insurance review, because of the 100-percent Federal grant for administration, places a special emphasis on the details of administration and on budgetary aspects of administration.

### *Results of the Administrative Review*

Within recent months the Bureau of Public Assistance has spent much time evaluating its administrative review process, gathering information from many sources, including the regional offices, on the present operation of the review process. Most of the Bureau's findings of fact and some of its conclusions and recommendations apply also to the review by the Bureau of Employment Security. Here are some of them:

The State agencies, with few exceptions, have commended the process and have accepted the conclusions. Credit for State progress toward the accomplishment of Board standards is given in large degree by the Board's representatives to the friendly cooperation during the review and the contacts thus established. The review has disclosed important problems in each of the regions and has been used frequently to explore the problems in detail. It has brought about an opportunity to discuss with the States emerging problems of administration as soon as they come to light; better planning in the regions

for consultative service from the Washington staff; more effective regional planning of regional operating programs; and easier and better analysis of revised State plan material and new legislation. In addition, the review process has aided the research consultants in interpreting State statistical material, has made useful background material available to regional attorneys, regional auditors, and State Technical Advisory Service consultants, and has kept the regional staff continuously in touch with all aspects of State operation.

*Use of review findings by the States.*—The Bureau of Public Assistance is strongly of the opinion that the findings of the administrative review included in the reports sent to the State administrators are chiefly useful in improving the administration of the State central agency, and that the results are shown chiefly in the supervision over the local units. Within the State central office, the findings are useful principally to the operating staff, rather than to the members of the State board. The reports are not intended for local agency use, since they attempt to present over-all State-wide findings, nor are their details discussed with local administrators during the course of the review, because they are not at that point in analyzed form. For these and other reasons, it is expected that the State agency's field staff will present the findings of the review report to local offices. The presentation and follow-up have not always been adequate, though individual case referrals have been adequately presented to the local offices. The present shortcoming, so

far as the local offices are concerned, is that emphasis is placed on preventing recurrences of lapses in individual cases, rather than in correcting basic causes of trouble.

The Bureau also reports that in most States the review has had a very definite influence on State policy, especially in stimulating preparation of adequate over-all instructions and manuals. Several States have themselves developed administrative reviews patterned largely on that of the Bureau. In many instances, though perhaps not as many as could be hoped, the review reports have prompted special State studies or inquiries.

In employment security a large majority of the State administrators believe that the administrative review process is valuable to them in improving operations. The review process provides a detailed analysis of all agency operations by an outside technician. This fresh, objective viewpoint gives the administrator valuable information for the improvement of agency operations. In many cases in which no improvement is possible or necessary, it at least provides the administrator with an annual review of the effectiveness of his operations made by a person who knows operations in a number of States and whose sole objective is to present findings for the State's use in improving operations. A number of State administrators comment that the material presented to them as a result of the administrative review has brought to their attention areas of operations which were not functioning properly, so that technical assistance could be requested for a complete survey of the area. In many cases, this defect in

operations would otherwise be long delayed in coming to the administrator's attention.

*Use of review findings by the Board.*—Both Bureaus are convinced that the greatest value of the review to their own staffs has been in promoting better and broader understanding of the programs of individual States. In public assistance the reports have not yet proved as effective as had been hoped in giving an integrated picture of a cross-section of a specific practice in all States. The Bureau consultants have found the reports particularly helpful in obtaining needed background information. Likewise, they have been extremely useful in aiding in the review of laws, plan material, and audit exceptions. The research staff testify also as to their usefulness in aiding in the interpretation of State statistics and planning future statistical schedules.

The reviews provide the raw material for the progress reports which are presented periodically for consideration by members of the Board. They furnish a clear picture of operations and results and thus have given the Board the basis for confidence in making the required determinations of the conformity of agency operations to the Social Security Act. Materials developed through the review process have been used extensively in determining the course of the Board's legislative proposals and in supporting its recommendations at legislative conferences and hearings. Members and other officers of the Board have found the reports helpful in familiarizing themselves with State situations before meeting with agency officials, Congressmen, and others.