

U.S. Office of Personnel Management
Division for Human Capital Leadership & Merit System Accountability
Classification Appeals Program

Philadelphia Field Services Group
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [appellant's name]

Agency classification: Health Insurance Specialist
GS-107-12

Organization: Program Integrity Branch
Division of Medicare Financial
Management
[name] Region
Centers for Medicare and
Medicaid Services
Department of Health and Human
Services
[location]

OPM decision: (Title at agency discretion)
GS-107-12

OPM decision number: C-0107-12-01

/s/

Marta Brito Pérez
Associate Director
Human Capital Leadership
and Merit System Accountability

March 22, 2005

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant's name and address]

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Introduction

On June 15, 2004, the Philadelphia Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant's name] who occupies a position currently classified as Health Insurance Specialist, GS-107-12. We received the appeal agency administrative report on July 7, 2004, and the appellant's comments on that report on July 17, 2004. The position is in the Program Integrity Branch, Division of Medicare Financial Management, [name] Region, Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, [location]. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

General issues

In his appeal letter dated June 7, 2004, the appellant states that he disagrees with the position review process used by his agency. He says that the recommendation and report developed by the person who audited his position was changed by an agency human resources official based on his supervisor's comments that "minimized my work and falsely stated that I was not performing major job functions assigned to me." The appellant says that his position description (PD) (PD #R30610) does not include "major ranking factors" and does not "encompass all assignments and their proper levels of complexity." The appellant's immediate supervisor stated that the PD was current and accurate.

A PD is the official record of the major duties and responsibilities assigned to a position by an official with the authority to assign work. A position is the duties and responsibilities that make up the work performed by an employee. Position classification appeal regulations permit OPM to investigate or audit a position and decide an appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee. An OPM appeal decision grades a real operating position, and not simply the PD. Therefore, this decision is based on the actual work assigned to and performed by the appellant and sets aside any previously issued agency decision.

Attachment H to the appeal letter includes a list of CMS employees whose positions are evaluated at the GS-13 grade level. The appellant states that "[a]ll of the above analysts/subject matter experts serve as GS-13s or even GS-14s in either Fraud or MSP [Medicare Secondary Payer], while Region [number] staff have FULL and EQUAL responsibilities in BOTH areas as GS-12." Implicit in the appellant's rationale is a concern that his position is classified inconsistently with other positions. By law, a classification appeal decision must be based on comparing the appellant's current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Therefore, other methods or factors of evaluation are not authorized for use in determining the classification of a position, such as comparing the classification of the appellant's position to other positions which may or may not be properly classified, as suggested by the appellant.

Like OPM, the appellant's agency must classify positions based on comparison to OPM's Position Classification Standards (PCSs) and guidelines. Section 511.612 of title 5, Code of Federal Regulations (CFR) requires that agencies review their own classification decisions for

identical, similar, or related positions to ensure consistency with OPM certificates. Thus, the agency has the primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant believes that his position is classified inconsistently with others, he may pursue this matter by writing to his agency headquarters human resources office. In so doing, he should specify the precise organizational location, series, title, grade, duties, and responsibilities of the positions in question. The agency should explain to him the differences between his position and the others, or grade those positions in accordance with this appeal decision.

In adjudicating an appeal, OPM is required by law and regulation to base its decision on the work assigned to and performed by the appellant (5 U.S.C. 5112 and 5 CFR 511.607(a)(1)). The quality of work is not germane to the classification process since the classification analysis of a position is based on the assumption that the assigned work is properly performed (*Introduction to the PCSs*, appendix 3, Factor 5). Therefore, concerns raised by some interviewees regarding the effectiveness of the appellant's work may not be considered in the classification of his position. Rather, they are properly considered as part of the performance management process.

Position information

The PD shows that the appellant performs two primary functions: Medicare Integrity Program (MIP) and processing Workers' Compensation Medicare Set Aside (WCMSA) proposals under the MSP program. The record shows that he spends approximately 60 percent of his time on MIP work and approximately 40 percent of his time on MSP work.

The appellant's MIP work entails providing guidance, technical assistance, and policy interpretation in the fraud and abuse areas to assigned Medicare contractors, State Medicaid agencies, Medicare providers, beneficiaries/representatives, attorneys, and others on MIP policies and procedures. He provides assistance in resolving problems related to MIP policies and procedures. He reviews correspondence from these same individuals and groups regarding routine and complex MIP issues and replies to them.

The PD states that the appellant participates in examining existing contractor (intermediary, carrier, and program safeguard contractor (PSC)) areas and recommends corrections to deficiencies. As part of a review team, he conducts full scope contractor reviews in the MIP areas and Medicaid program reviews. The appellant stressed that he has routinely led such reviews. The PD further states that he collects and analyzes information, statistics, and other pertinent program data to appraise Medicare operations, and that this analysis forms the basis for updating/revising policies, guidelines, and agreements where appropriate. The appellant is responsible for continuous dissemination of fraud and abuse policies and information on fraud schemes.

In his rationale, the appellant states that as an expert in the fraud area he independently makes decisions instructing the [name] PSC on how to handle fraud cases, collect overpayments, make law enforcement referrals, and implement payment suspensions. He states that he is responsible for monitoring the progress of the PSC contractor according to the Program Safeguard Contractor Umbrella Statement of Work and Joint Operating Agreements, and the specific

requirements of the [name] PSC contract. He states that he educates Medicare contractors, law enforcement partners, the legal community, and beneficiaries alleging fraud on fraud prevention and associated regulations, and frequently advises contractors on the handling of complex fraud cases of high dollar overpayments to doctors and hospitals. He also states that he is responsible for ensuring that proper methodologies and procedures are followed in developing the fraud case and overpayment.

The appellant is responsible for using procedures to ensure Medicare's interests have been protected in processing WCMSA proposals submitted by attorneys on behalf of Medicare beneficiaries. The PD states that he is also responsible for assisting CMS components and customers, such as beneficiaries, their representatives, and attorneys, with WCMSA issues, and providing necessary data for WCMSA reports. The appellant states that he is responsible for reviewing proposed settlements of workers' compensation claims to assure that proper funds are set aside to cover future treatment associated with work injury, which is essentially the amount needed to be expended before Medicare will pay. He says that he must be knowledgeable of MSP and workers' compensation regulations, CMS program memoranda and guidelines, and the varying state workers' compensation laws for the six states covered by his CMS region. The appellant states that he independently uses this knowledge in negotiating and processing cases. He says that many cases are difficult and complex and do not have precedents to follow since the program is based on legislation that is only a few years old. The appellant states that he must base his judgment on other existing guidelines and overall program safeguard expectations, and subsequently shares his scenarios and recommended solutions to regional management and CMS Central Office staff for handling complex cases that guidelines do not address.

We conducted an on-site audit with the appellant and on-site interviews with his immediate supervisor and his second-level supervisor who became his immediate supervisor during the course of the appeal adjudication process. We also interviewed CMS Central Office and regional managers and program staff knowledgeable of the appellant's work assignments. Based on the audit and interview findings and all information of record furnished by the appellant and his agency, we find that the PD of record, including its addendum, generally covers the major duties and responsibilities performed by the appellant, and we incorporate it by reference into this decision.

Series, title and standard determination

The agency classified the position in the Health Insurance Administration Series, GS-107, with the title Health Insurance Specialist, and graded it by application of the Administrative Analysis Grade-Evaluation Guide (AAGEG), with which the appellant agrees.

The GS-107 series covers managing, supervising, or performing work concerned with the administration and operation of national health insurance programs, such as Medicare and Medicaid. The work includes interpreting program requirements and formulating policies, methods, and procedures; monitoring, reviewing, evaluating, and assessing the integrity and quality of program operations; preparing and analyzing health care data related to the programs; and performing other related activities. The work primarily requires knowledge of the laws, regulations, principles, and operational requirements of national health insurance programs;

knowledge of the interrelationships among these programs and other related Federal and state programs; and analytical skills and abilities used in planning, developing, and evaluating the operation and delivery of these programs to the public.

We find that the appellant's position is properly allocated to the GS-107 series, for which there are no directly applicable published grading criteria. Since there are no prescribed titles for positions in this series, titling is at the discretion of the agency. His MIP work is a direct match to the series definition, i.e., monitoring, reviewing, evaluating, and assessing the integrity and quality of program operations. The AAGEG is appropriate for evaluating the appellant's MIP work in that it covers analytical, evaluative, and planning work that requires a high degree of qualitative and/or quantitative analytical skills, the ability to research problems and issues, written and oral communication skills, and the application of mature judgment in problem solving. The work that the appellant performs is similar to work directly covered by the AAGEG, i.e., program evaluation, but the work requires application of the technical program knowledge of the GS-107 occupation.

The record shows that the appellant's WCMSA duties are an outgrowth of and require knowledge of Medicare laws, rules, and regulations in that the intent of the program is to protect Medicare Trust Funds from paying for medical services properly funded by workers' compensation settlements. However, OPM classification principles and practices require that work be evaluated by the most directly applicable published standard. The GS-991 Workers' Compensation Claims Examining Series PCS provides grading criteria for work involving the examination, development, and adjudication of claims for compensation (monies and medical services) under the Federal Employees' Compensation Act, and/or the Longshoremen's and Harbor Workers' Compensation Act (LHWA), and their statutory extensions, e.g., District of Columbia Compensation Act (DCCA) which requires a comprehensive knowledge of the workers' compensation program, and an extensive lay medical knowledge of impairments and diseases. The appellant's WCMSA set aside work for medical services requires the application of similar skills, knowledge, and abilities. Therefore, we will apply the GS-991 PCS to evaluate the appellant's MSP duties and responsibilities.

Grade determination

Analysis using the AAGEG

The AAGEG is in Factor Evaluation System (FES) format. Under the FES, positions are evaluated by comparing the duties, responsibilities, and qualifications required with nine factors common to nonsupervisory General Schedule positions. A point value is assigned to each factor in accordance with the factor-level descriptions. For each factor, the full intent of the level must be met to credit the points for that level. The total points assigned for the nine factors are converted to a grade by reference to the grade conversion table in the PCS.

In his comments on the agency's analysis of his position, the appellant accepted the agency's crediting of Levels 2-4, 3-4, 5-4, 6/7-3c, 8-1, and 9-1. He stated that the position should be credited with Levels 1-8 and 4-5. Based on our review of the appeal record, we concur with the

crediting of Levels 2-4, 3-4, 5-4, 6/7-3c, 8-1, and 9-1. Therefore, our analysis focuses on the remaining factors.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information an employee must understand in order to do the work, and the skills needed to apply that knowledge.

In addition to knowledge of the previous level, Level 1-7 assignments require knowledge and skill in applying analytical and evaluative methods and techniques to issues or studies concerning the efficiency and effectiveness of program operations carried out by administrative or professional personnel, or substantive administrative support functions (i.e., internal activities or functions such as supply, budget, procurement, or personnel which serve to facilitate line or program operations). This level includes knowledge of pertinent laws, regulations, policies, and precedents which affect the use of program and related support resources (people, money, or equipment) in the area studied. Projects and studies typically require knowledge of the major issues, program goals and objectives, work processes, and administrative operations of the organization. Knowledge is used to plan, schedule, and conduct projects and studies to evaluate and recommend ways to improve the effectiveness and efficiency of work operations in a program or support setting. The assignments require knowledge and skill in adapting analytical techniques and evaluation criteria to the measurement and improvement of program effectiveness and/or organizational productivity. Knowledge is applied in developing new or modified work methods, organizational structures, records and files, management processes, staffing patterns, procedures for administering program services, guidelines and procedures, and automating work processes for the conduct of administrative support functions or program operations. Knowledge may also be applied in analyzing and making recommendations concerning the centralization or decentralization of operations.

Illustrative of work at this level is knowledge of qualitative and quantitative techniques for analyzing and measuring the effectiveness, efficiency, and productivity of administrative and technical programs, along with knowledge of the mission, organization, and work processes of programs throughout a military command, complex multi-mission local installation, or equivalent, and the relationships of administrative support activities (e.g., data processing, accounting, budget) to such missions. Knowledge is applied in conducting studies, analyzing findings, and making recommendations on substantive operating programs, e.g., weapons testing or commodity management. The work requires skill in preparing project papers and staff reports and skill in organizing and delivering briefings to managers to encourage understanding and acceptance of findings and recommendations.

Also illustrative of Level 1-7 is applying a thorough knowledge of the service or bureau benefit programs, operations, objectives, and policies along with a comprehensive knowledge of management and organizational techniques, systems, and procedures to perform a wide variety of analytical studies and projects related to management improvement, productivity improvement, management controls, and long-range planning. Assignments include developing guidance on techniques for management and methods improvement, analyzing and advising on

proposed reorganizations or realignment of functions, and developing manuals and directives covering the administrative aspects of field station operations.

In contrast, Level 1-8 is the level of the expert analyst who has mastered the application of a wide range of qualitative and/or quantitative methods for the assessment and improvement of program effectiveness or the improvement of complex management processes and systems. In addition to knowledge of the next lower level, this level requires comprehensive knowledge of the range of administrative laws, policies, regulations, and precedents applicable to the administration of one or more important public programs. Typically, this includes knowledge of agency program goals and objectives, the sequence and timing of key program events and milestones, and methods of evaluating the worth of program accomplishments. Work requires knowledge of relationships with other programs and key administrative support functions within the employing agency or in other agencies.

Knowledge characteristic of this level is applied in a variety of ways. For example, knowledge is applied to the design and conduct of comprehensive management studies where the boundaries of the studies are extremely broad and difficult to determine in advance, i.e., the actual limits of the project are developed as the study proceeds. Study objectives are to identify and propose solutions to management problems which are characterized by their breadth, importance, and severity, and for which previous studies and established management techniques are frequently inadequate. For other assignments, knowledge may be applied in preparing recommendations for legislation to change the way programs are carried out; in evaluating the content of new or modified legislation for projected impact upon agency programs and resources; and/or in translating basic legislation into program goals, actions, and services. Also included at this level is skill to plan, organize, and direct team study work and to negotiate effectively with management to accept and implement recommendations, where the proposals involve substantial agency resources, require extensive changes in established procedures, or may be in conflict with the desires of the activity studied.

Illustrative of work at this level is expert knowledge of analytical and evaluative methods plus a thorough understanding of how regulatory or enforcement programs are administered to select and apply appropriate program evaluation and measurement techniques in determining the extent of compliance with rules and regulations issued by the agency, or in measuring and evaluating program accomplishments. This may include evaluating the content of new or modified legislation for projected impact upon the agency's programs or resources. Also illustrative of work at this level is applying knowledge of military command structure, missions, programs, and organizational relationships plus a thorough knowledge of quantitative and qualitative methods and techniques to develop staffing standards covering complex program functions or missions, e.g., management of agency research operations, or staffing requirements for new or substantially altered training or operational missions and programs. Studies and analyses are of such scope that they frequently require a team effort. Projects typically involve development of new approaches to identifying meaningful workload factors and performance quality levels, and determining accurate measurement techniques.

The agency evaluation states that Level 1-8 requires a comprehensive level of expertise to review complex cases; provide formal team leadership guidance to others; analyze problems and issues

to determine value, relevancy, and alternatives; and coordinate issues and details. It states that the work requires expertise in planning, developing, and coordinating studies; and a comprehensive knowledge of the MIP. The agency analysis indicates that aspects of the appellant's work approach Level 1-8, i.e., "representing the region/CMS with the [name] Program Safeguard Contract," but that it does not fully meet Level 1-8. Supplemental information provided by regional office management disagrees with the appellant's description of his team coordinator responsibilities. Management stated that contractor performance evaluation/review (CPE) team coordinators were selected by team members, and not management; CPEs are not recurring program integrity functions because they are no longer performed on PSCs; and that these reviews have been replaced by SAS-70 reviews, performed by Certified Public Accountant firms that require less participation and involvement by CMS. It concludes that this work is not a regular, recurring, or ongoing activity for the appellant. Management stressed that contract oversight responsibility is shared by the Government Task Leader (GTL) at CMS headquarters and the Co-GTL in the regional office, and not the appellant.

The examples and illustrations provided in the AAGEG are neither controlling nor exhaustive, and are primarily intended to be used in evaluating two-grade interval positions in the General Administrative, Clerical, and Office Services Group, GS-300. The key elements of the basic Level 1-8 criteria are (1) the employee is recognized as an authority in a program or functional area, e.g., possessing and applying a comprehensive knowledge of the range of administrative laws, policies, regulations, and precedents applicable to the administration of one or more important public programs; and (2) the work assignments involve major problems, projects, studies, or issues of considerable consequence to the agency, e.g., negotiating with management to accept and implement recommendations where the proposals involve substantial agency resources, require extensive changes in established procedures, or may be in conflict with the desires of the activities studied. These elements are translated into actual operating situations within the context of the illustrations provided. For example, the first illustration involves applying expert knowledge of analytical and evaluative methods and of a regulatory or enforcement program to evaluate and measure program accomplishment. This example states that this *may* include evaluating the content of new or modified legislation for projected impact upon the agency's programs or resources. However, this example does not preclude crediting Level 1-8 to ongoing program evaluation assignments that require the application of equivalent knowledge and skill to resolve major technical program issues. The second illustration indicates that studies and analyses are of such scope that they *frequently* require a team effort. Again, this example does not preclude crediting Level 1-8 when such projects do not entail leading a team. The underlying requirement is that the work at hand involves developing new approaches to identifying meaningful workload factors and performance quality levels, and determining accurate measurement techniques.

Regional management's written and verbal information provided during our fact-finding conveyed their viewpoint that the GTL and Co-GTL are responsible for [name] oversight and that the appellant's assistance role is more limited in authority and responsibility. Similar concerns were raised with regard to the development of WCMSA case procedures and other work products drafted by the appellant and subsequently assigned to another staff member tasked with regional program responsibility for additional action. Implicit in these comments was that the appellant does not produce and is not responsible for complete and unreviewed technical

products expected of an expert delegated responsibility for matters of Level 1-8 difficulty and complexity.

The record shows that the appellant works in a matrix environment for his MIP duties. Although he reports to a regional manager, the record shows that most of his work flows directly from and to the Co-GTL, who is also a regional employee, to the GTL who is on the CMS headquarters staff. Both rely upon the appellant for advice and assistance regarding all [name] MIP issues which flow directly from the appellant. This includes responding to contractor technical questions on interpreting the Medicare Program Integrity Manual (PIM) that is intended to guide PSCs in performing their MIP functions. The appellant is expected to review PIM changes coming from CMS headquarters so as to anticipate potential PSC questions. He is expected to research and formulate proposed solutions, working directly with the agency's Office of General Counsel legal staff to assure that his proposed solutions will withstand legal scrutiny. In this regard, the appellant has worked with [name] to resolve large dollar overpayment issues (from several hundred thousand to those in excess of \$2 million) and dealing directly with law enforcement officials investigating Medicare fraud on issues concerning protection of the Medicare Trust Funds, e.g., determining how long to permit continued payments to participants in suspected Medicare fraud conspiracies, balancing the need to protect Medicare Trust Funds and the need to develop strong, prosecutable cases against the conspiracy.

Management has pointed to the fact that the CPE process has been replaced and, therefore, may not be construed as regular and recurring work within the meaning of the position classification process. Local management officials stated that the appellant's team leader role in those reviews was not approved by them and would not have been approved had they been apprised of his selection to lead those teams by the team members. The record shows, however, that the team leading role was coordinative in nature. Each participant in the review was fully responsible for their own assigned area. The record shows that the CPE review was replaced by the SAS-70 review in which outside auditors conducted reviews of the MIP functions of the PSC and CMS staff, in turn, reviewed the methodology and results of the SAS-70 auditors. Management indicated that the appellant participated on SAS-70 reviews as a team member and did not believe that he was involved in developing the review protocol. Regional management stated that they intended the appellant to participate in but not lead future reviews. Management and other CMS staff interviewed indicated that the agency was not satisfied with the SAS-70 process and believe that the review process will be replaced by a new oversight review methodology.

The record shows that management has permitted the appellant's MIP work to be controlled by the matrix process described previously in which the GTL and Co-GTL rely on the appellant as their technical expert on MIP subject matter issues. The fact that the GTL and Co-GTL retain responsibility for overall [name] oversight does not affect the technical reliance they place on the appellant's subject matter expertise. Information provided by staff knowledgeable of the appellant's work describe his subject matter expert (SME) work as including advising [name] on procedural changes to better manage, document, and justify, with legal sufficiency, overpayment recoupment actions. These issues flowed from the transition of previous cases that the contractor had not been able to resolve in which the appellant worked with [name] to reprioritize how to handle these and current cases which led to operational changes in how the contractor performed work. The appellant identified that another contractor of the same parent company as [name]

was using different overpayment demand letters. This inconsistency made them vulnerable to challenge. His work with the contractor to correct and standardize overpayment demand letters similarly was shared with senior management of the parent company and led to operational changes in format, language, and regulations used for overpayment letters affecting other parent company contracts in addition to [name].

Other program improvement recommendations adopted by [name] have included notification and coordination procedures for potential fraud cases, and maximizing the use of “similar fault/at fault” provisions to strengthen the Government’s case, when appropriate, as an exception to the normal four-year statute of limitations to recoup overpayments. The record shows that the appellant functions as an SME advisor on various working groups, including the MEDI/MEDI state work group participating in a national initiative to identify and detect fraud relevant to both Medicare and Medicaid.

The agency analysis recognizes that aspects of the appellant’s work approaches Level 1-8 in that he represents the region and CMS with the [name] PSC, with which we agree. Based on the appellant’s ongoing, continuing MIP functions described by officials to whom he provides direct SME support, we find that the appellant’s work meets the threshold for crediting Level 1-8. He is relied upon by the GTL and Co-GTL for expert technical advice in the area of fraud, overpayment, and law enforcement referral issues. As the responsible SME in this area, his co-workers and the PSC contractor rely upon him to apply a comprehensive level of expertise to advise them on improving overpayment processes and procedures, handling complex, large dollar value overpayment cases, and dealing with both [name] and law enforcement personnel on major fraud cases, e.g., “[name] fraud.” That work relies on a comprehensive knowledge of where MIP fits within the overall Medicare payment process and CMS’s responsibility to protect Medicare Trust Funds. The roles of the GTL and Co-GTL and the fact that payment suspensions require regional management signature do not diminish these ongoing duties and responsibilities. In addition, the evolving and changing review processes for overseeing PSC contractors, i.e., CPE, SAS-70, and another likely change, present a situation in which the appellant must rely upon basic agency program goals and objectives with regard to safeguarding the Medicare Trust Fund, and general broad methods of evaluating PSC program accomplishment for which previously established techniques are frequently inadequate since the review methods are in a state of flux. Leading these teams as a coordinator is not grade determinative in that each team member is fully responsible for their own area of assignment based on their functional area of technical expertise. As noted in the AAGEG, studies found at Level 1-8 *frequently* require team effort, but that also is not determinative of work at this level. Therefore, based on the current functions performed by the appellant, we credit Level 1-8 (1,550 points).

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

At Level 4-4, the work involves gathering information, identifying and analyzing issues, and developing recommendations to resolve substantive problems of effectiveness and efficiency of

work operations in a program or program support setting. This is in addition to improving conditions of a procedural nature which relate to the efficiency of organizations and workers described at the previous level. By way of contrast with Level 4-3, work at this level requires the application of qualitative and quantitative analytical techniques that frequently require modification to fit a wider range of variables are not always susceptible to direct observation and analysis (e.g., projected missions and functions). Difficulty is encountered in measuring effectiveness and productivity due to variations in the nature of administrative processes studied (e.g., those associated with processing information, reorganizing to meet changes in mission, or providing support services). Information about the subject is often conflicting or incomplete, cannot readily be obtained by direct means, or is otherwise difficult to document. For example, assignments may involve compiling, reconciling, and correlating voluminous workload data from a variety of sources with different reporting requirements and formats, or the data must be carefully cross-checked, analyzed, and interpreted to obtain accurate and relevant information. Characteristic of this level is originality in refining existing work methods and techniques for application to the analysis of specific issues or resolution of problems. For example, the employee may revise methods for collecting data on workload, adopt new measures of productivity, or develop new approaches to relate productivity measurements to a performance appraisal system.

Illustrative of work at this level is studying, analyzing, and developing methods to improve the accuracy, adequacy, and timeliness of information and systems for disseminating information about the agency's programs and workforce to managers at many organizational echelons and/or geographic locations. The employee must consider the information needs, interests, and level of detail needed to satisfy a wide variety of user requirements. Potential sources of data must be cross-checked, analyzed, and interpreted by the employee to obtain accurate, relevant information. Also illustrative of Level 4-4 work is serving as management advisor in the bureau headquarters of an agency (or equivalent organization) with responsibility for performing a range of analytical studies and projects related to field program operations in the areas of management and productivity improvement (including effectiveness of work methods, manpower utilization, and distribution of functions), management controls, and work planning. Assignments typically involve the study of organizations, work processes, or functions that are interrelated. The work requires detailed planning to conduct information gathering; interpretation of administrative records and reports; correlation of information to corroborate facts; and coordination with management representatives.

In contrast, work at Level 4-5 consists of projects and studies which require analysis of interrelated issues of effectiveness, efficiency, and productivity of substantive mission-oriented programs. Typical assignments require developing detailed plans, goals, and objectives for the long-range implementation and administration of the program, and/or developing criteria for evaluating the effectiveness of the program. Decisions about how to proceed in planning, organizing, and conducting studies are complicated by conflicting program goals and objectives which may derive from changes in legislative or regulatory guidelines, productivity, and/or variations in the demand for program services. Assignments are further complicated by the need to deal with subjective concepts such as value judgments, the quality and quantity of actions are measurable primarily in predictive terms, and findings and conclusions are highly subjective and not readily susceptible to verification through replication of study methods or reevaluation of

results. Options, recommendations, and conclusions developed by the employee take into account and give appropriate weight to uncertainties about the data and other variables which affect long-range program performance. For example, the employee may need to consider and assess the relative advantages and disadvantages of centralizing or decentralizing work operations in organizations with several echelons of geographically separated components. In some instances, work is complicated by the need to develop data about workload and program accomplishments which is currently unavailable. Current measurements of program effectiveness may be ambiguous and susceptible to widely varying interpretations. Under these circumstances the employee develops new information about the subject studied and establishes criteria to identify and measure program accomplishments, develops methods to improve the effectiveness with which programs are administered, or develops new approaches to program evaluation which serve as precedents for others.

Illustrative of such work is the analysis of interrelated issues of effectiveness, efficiency, and productivity affecting major administrative programs of an agency. Studies are often complicated by the need to consider and evaluate the impact of changes in legislative and regulatory requirements; long-range program goals and objectives; political, economic, and social consequences of changes in the type or amount of services provided; or the changing nature of the program's clients and beneficiaries. Difficulty characteristic of this level is encountered in planning and establishing the long-range (more than 5 years) program goals, objectives, and measurement criteria.

The appellant states that his position should be credited at Level 4-5. With regard to his MIP work, he states that he is responsible for assessing fraud program vulnerabilities and making recommendations to management and CMS Central Office on how to improve contractor performance and oversight of contracts. He states that he is responsible for participating and representing the region on national fraud workgroups that develop evaluation protocols for contractors and deal with organized crime in Medicare programs which requires partnering with other CMS regional offices, law enforcement at the state and Federal levels, and Medicare contractors on applying widespread fraud prevention efforts to stop inappropriate Medicare claims from being paid. The appellant states that there is a great deal of subjectivity in participating in these workgroups and each member is required to apply themselves by contributing innovative ideas to prevent fraud.

The appellant's MIP work is a direct match to Level 4-4. As at that level, his oversight of [name] requires continuing analysis of [name] operations to resolve substantive problems of effectiveness and efficiency, e.g., how to deal with aging overpayment cases, and improving the consistency of overpayment letters and statistically valid random sample methodologies to better withstand third-party scrutiny. Typical of Level 4-4, this work requires originality in refining existing work methods and techniques for application to the analysis of specific issues or resolution of problems. As at Level 4-4, the appellant's oversight responsibilities require him to evaluate the PSC's effectiveness in meeting its technical program safeguard oversight responsibilities within controlling laws, rules, and regulations, e.g., the PSC statement of work and contract documents, the Medicare PIM, and program updates and guidance issued by higher levels within the agency. His working with law enforcement personnel on balancing the need to allow the development of case supporting evidence and protection of Medicare Trust Funds from

inappropriate expenditures requires the balancing of conflicting program requirements to meet overarching, well-established program integrity goals.

While the appellant participates in working groups on various long-term program issues, he is not responsible for the decisions on those issues as required for crediting Level 4-5. Those functions and responsibilities are vested at higher levels in CMS. Similarly, complications caused by conflicting program goals and objectives would be discussed with and decisions made by CMS headquarters personnel. Although the appellant's decisions about how to proceed in planning, organizing and conducting his reviews are complicated by the flux in program review approaches and methodologies as discussed in Factor 1, the basic decisions on how to approach the new review methods were also controlled at CMS headquarters. Level 4-5 subjectivity does not extend to putting forward and discussing ideas in workgroup meetings as suggested by the appellant. It pertains to such complexities as making decisions on how to measure the impact of major legislative initiatives, such as major changes in client benefits, over the long-term to determine whether and how well the legislative intent has been achieved. Therefore, this factor is credited at Level 4-4 (225 points).

Summary

<i>Factors</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-8	1,550
2. Supervisory controls	2-4	450
3. Guidelines	3-4	450
4. Complexity	4-4	225
5. Scope and effect	5-4	225
6. Personal contacts and 7. Purpose of contacts	3c	180
8. Physical demands	8-1	5
9. Work environment	9-1	<u>5</u>
	Total Points	3,090

A total of 3,090 points falls within the GS-12 grade level point range of 2,755-3,150 points on the Grade Conversion Table.

Evaluation using GS-991 PCS

The GS-991 is written in narrative format. It provides for the evaluation on the basis of two factors: (1) Nature of claims and (2) Level of responsibility. Our analysis of the appellant's WCMSA work follows.

Nature of claims

The appellant's rationale relies upon application of the AAGEG which, as discussed previously, is not applicable to his WCMSA work. The appellant points to his working cases covered by varying state workers' compensation laws for the six states in his region, and the need for him to independently negotiate Medicare's interests in complex cases "for which we do not have precedents to follow" and "that guidelines do not address." Management response to this

rationale is that large dollar value cases are limited in number and, while each case is assigned to one employee, those case issues are worked as a team effort. They questioned the appellant's need to "negotiate" to resolve case issues. Local management pointed out that professionally trained health care staff members are available to provide assistance on medical issues and that another regional staff member is responsible for the bulk of program outreach and is the lead on program workgroups and in any changes to regional program methods, processes, and procedures. Those same managers stated that knowledge of state laws has limited applicability to WCMSA work since CMS's interest is limited to applying CMS's own guidelines in assuring that settlements protect Medicare program interests.

Although the WCMSA program is relatively new to CMS and continues to undergo changes, e.g., moving from regional staff case analysis to contractor case analysis then reviewed by CMS staff, workers' compensation is well established at both the state and Federal levels as discussed in the GS-991 PCS. Characteristic of the GS-12 grade level, the highest level described in the PCS, are assignments that require the examiner to resolve controversial and contested compensation claims through the medium of pre-hearing conferences under programs such as the LHWA or the District of Columbia Compensation Act. In reviewing, developing, and making determinations on the full range of disability and death claims, GS-12 examiners are distinguished from GS-11 examiners under the LHWA and DCCA programs by (1) their freedom from supervision in the scheduling and conducting of pre-hearing conferences, (2) their complete responsibility for negotiating and mediating with the claimant and the claimant's representative and the employer and insurance carrier representatives during the conference, and (3) their authority to make decisions on the controversial issues encountered during the pre-hearing conferences. These distinctions are discussed under level of responsibility.

We find that the most complex cases handled by the appellant do not exceed the GS-12 grade level. The appellant does not hold "conferences" within the meaning of the PCS. However, it would be inappropriate to base grade level analysis on the work control methodologies established and applied by the U.S. Department of Labor (DoL) to work controls instituted by the appellant's employing agency. As at the GS-12 grade level, the appellant is given cases on an unreviewed basis. He is tasked with reviewing the entire record, including all documents supporting the proposed settlement, to ensure that sufficient funds are set aside for future medical costs to protect the Medicare Trust Fund from future medical costs properly paid for under workers' compensation programs. Problems identified by the appellant with regard to ascertaining medical charges and projecting future health care costs to analyze proposed case set asides are integral to case development and analysis in dealing with both contested and controversial claims. The case correspondence presented by the appellant in support of his appeal questioning proposed set aside amounts on the appellant's most complicated cases does not exceed the demands envisioned in face-to-face negotiation and mediation discussed at the GS-12 grade level in the PCS. Training other staff members in how to process these same types of cases also would not exceed the demands of processing these types of cases. The appellant's other program work occupies too limited an amount of his work to potentially control the grade of his WCMSA work or his position. Therefore, we find that the most complex WCMSA work performed by the appellant meets but does not exceed the GS-12 grade level for this factor.

Level of responsibility

GS-12 examiners under the LHWA and DCCA programs perform the kinds of duties described above independently without advice and guidance of the supervisor. They have commitment authority to make claims determinations on highly controversial issues during the pre-hearing conferences, and to prepare and sign letters of agreements reached on these types of issues during the conference or recommendations made after the conference. Under the LHWA and DCCA, the GS-12 grade level exceeds the GS-11 grade level in the following respects:

(1) In the freedom from supervision and independence with which the examiner schedules and conducts pre-hearing conferences. On their own initiative and judgment, GS-12 examiners determine the need for, schedule and conduct pre-hearing conferences. Conferences are scheduled after a review of the correctness of the compensation determinations made by the employers and insurance carriers and a determination that controversial issues cannot be resolved through correspondence or discussion with the claimant, employer or insurance carrier.

(2) In the complete responsibility the examiner has for negotiating and mediating with claimants and their representatives and with employers and insurance carrier representatives during pre-hearing conferences. GS-12 examiners are in complete charge of the pre-hearing conference. They state the issues which are the basis for the conference and have the adversative parties outline their positions. They guide the discussion during the conference in order to resolve amicably the controversies, narrow the issues, and identify methods of proof.

(3) In the unreviewed commitment authority the examiner has for making determinations on highly controversial issues during the conference. GS-12 examiners, as a regular and recurring responsibility, make determinations during the conference on contested and controversial issues which range from moderately difficult to the very difficult (e.g., establishing a causal relationship between employment and disease or death where positive expert medical testimony on whether the illness or death was caused by employment is impossible to obtain). In resolving these contested and highly controversial issues, GS-12 examiners have unreviewed commitment authority during the conference (1) to develop and evaluate all evidence, facts, circumstances, or other incidents relating to the claim; (2) to make determinations that are within the requirements of law, court decisions, agency practices and regulations, and medical standards; and (3) to put into writing, and sign, agreements reached or recommendations made as a result of the conference. GS-12 examiners are responsible for the accuracy and technical sufficiency of claims determinations. Control over the work of these examiners is carried out primarily through the review of cases that come up for formal hearings or Compensation Order. The supervisor, at his discretion, may spot check letters outlining agreements reached or recommendations made as a result of the pre-hearing conference. In addition, the examiners may confer with a supervisor on cases having unusual and complicated questions which may have office or bureau policy implications, or when interpretations or judicial precedents have not been established.

The appellant's responsibility for his work does not exceed the GS-12 grade level. This level includes the responsibility for signing agreements *or* recommendations under DoL's program structure. Therefore, his lack of signatory authority does not preclude crediting this level if equivalent authority is delegated to and exercised by the appellant. Retention of signatory authority does not diminish the appellant's responsibility for complete case analysis and drafting

the final CMS response. The most complex cases that the appellant provided in his appeal package range from difficult to the very difficult as defined in the PCS in that lifetime projections must be made to assure that sufficient settlement funds are set aside to handle complex medical conditions over extended periods of time. The appellant plans and conducts his most complex work with the freedom from supervision typical of the GS-12 grade level. Therefore, we find that the most complex WCMSA work performed by the appellant meets but does not exceed the GS-12 grade level for this factor.

Decision

Based on mixed grade principles, the appellant's position is correctly classified as (Title at agency discretion), GS-107-12.