Social Security Disability Decision Making – Reframing Professor Richard Pierce’s Recommendations

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Reframing Pierce’s Analysis Within ALJ Framework

- Agency Currently Can and Should Exercise Greater Supervisory Authority
  - Use of Own Motion Review to Monitor ALJs
    - Needed to check ALJ unappealed decisions
    - SSA Should Review Decisions Likely to be Wrong
    - SSA Should Review Outlier ALJs
  - Agency Should Introduce Peer Review
Reframing Pierce’s Analysis Within ALJ Framework

- Closing the Record
  - Minimize Delays
  - Minimize Need for More Hearings
    - 5% of Appeal Council remands arise in part because of new evidence
    - 3% of District Court remands arise in part because of new evidence
Reframing Pierce’s Analysis Within ALJ Framework

- Impose More Obligations on Claimant Representatives
  - Presentation of Relevant Evidence
  - Duty of Candor
  - Streamline Litigation and Facilitate Settlement
Reframing Pierce’s Analysis Within ALJ Framework

- Eliminate Treating Physician Rule and Controlling Weight Formulation
  - Anachronistic Reasoning
  - Overly Complex in Application
  - 35% of court remands cite misapplication of current treating physician rule (10% of Appeals Council remands)
  - Treating Physician Relationship Already a Factor
Reframing Pierce’s Analysis Within ALJ Framework

- Term Disability Concept
  - Reversing Presumption of Continuous Disability
    - Normatively Accurate
    - Heuristic Value
    - Billions at Stake From Delay

- Need More Rehabilitation and Employer Incentives