

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

Harold J. Krent
Dean and Professor of Law
IIT Chicago-Kent College of Law
hkrent@kentlaw.iit.edu

April 19, 2013

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