

# Streamlining SSA Decisionmaking

Harold J. Krent  
Dean and Professor of Law  
IIT Chicago-Kent College of Law  
[hkrent@kentlaw.iit.edu](mailto:hkrent@kentlaw.iit.edu)

December 2013

# Streamlining SSA Decisionmaking

- 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

# Streamlining SSA Decisionmaking

- 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
  - Consider Closing Record at State DDS level – tightening entire process

# Streamlining SSA Decisionmaking

- 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

# Streamlining SSA Decisionmaking

- Term Disability Concept
  - Reversing Presumption of Continuous Disability
    - Normatively Accurate
    - Heuristic Value
    - Billions at Stake From Delay
- Worth the Risk that ALJ would Find Term Disability Too Readily?