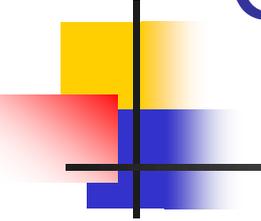


APPEALS COUNCIL REVIEW OF ALJ DECISIONS

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The Legal Aid Society
New York, New York
March 17, 2017

WHAT IS THE APPEALS COUNCIL?

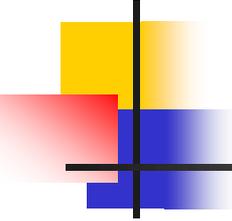


The highest level of SSA administrative review

Accepts requests for review of determinations made by an Administrative Law Judge (“ALJ”).

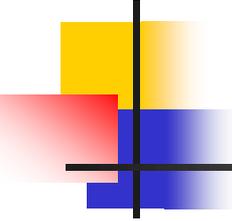
Governed by the Code of Federal Regulations (“CFR”)

SSA’s Hearings, Appeals and Litigation Law Manual (“HALLEX”)



WHAT IS THE JURISDICTION OF THE APPEALS COUNCIL?

- To review unfavorable ALJ decisions:
 - Denying SSI/SSD disability benefits
 - Denying request to vacate ALJ order
dismissing hearing request
- To extend the time to appeal to AC and to federal court



TO REQUEST REVIEW OR NOT

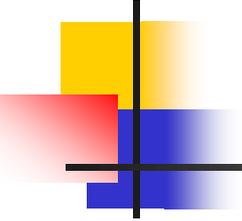
- **REQUESTING REVIEW VS. REAPPLICATION**

SSR 11-1p: Prohibits the filing of subsequent applications while an appeal is pending. Few exceptions.

- **UNFAVORABLE VS. PARTIALLY FAVORABLE**

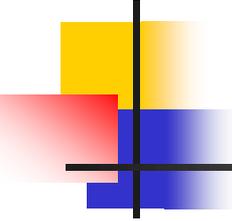
AC may re-open entire partially favorable decision.

FILING A REQUEST FOR REVIEW



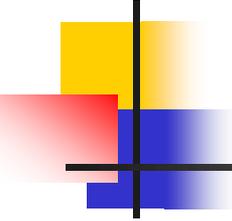
- Time limit: 60 days + 5 for mailing
- In writing
- Who may request review
Claimant or his/her appointed representative.
Third parties.

HOW TO FILE A REQUEST FOR REVIEW

- 
-
- In Person: at a District Office
 - Mail to: Appeals Council SSA/ODAR
5107 Leesburg Pike, Falls Church, VA 22045
 - Fax to: (703) 605-7101. (*Preferred*).

But not by:

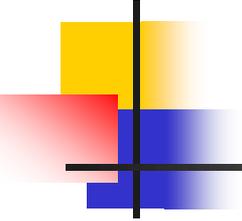
- ERE – Not available so far for a RR.
[Note: Can't use same Hearing bar code at AC]



FORM OF REQUEST FOR REVIEW

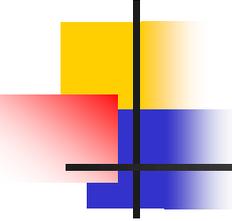
- The Request must be in Writing:
Use HA-520 form or Written Statement
- Once RR filed, can submit additional evidence by ERE:
 - ◇ Need new bar code
 - ◇ Request Bar Code from:
Congressional & Public Affairs Branch
at 1-877-670-2722 or 1-703-605-8000.

Requesting Additional Time



- Submit a request for an extension of time to submit evidence or your legal argument with the request for review.
- Can request the hearing record and the exhibit file from the AC
- Fax request to: 703-605-7201

See Guide: https://www.ssa.gov/appeals/best_practices.html

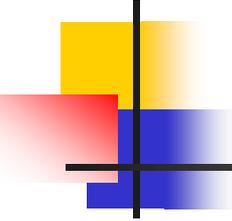


EXTENSION OF TIME TO REQUEST REVIEW: “good cause”

- Explain the circumstances that caused delay.

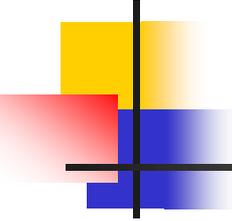
Examples:

- SSA’s action misled claimant
- Claimant has mental, physical, language limitations
- Claimant was ill & unable
- Documents destroyed by natural disaster



AC "OWN MOTION" REVIEW

- Within 60 days of the ALJ decision/-dismissal
- Cases selected randomly by AC
- Problematic fact patterns/issues
- Notice is sent to the claimant
- If AC doesn't make a decision w/in 110 days after deciding to review, interim benefits are payable to the claimant



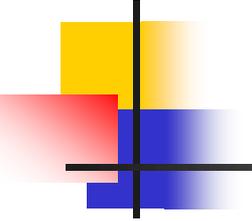
ADDITIONAL EVIDENCE

Can submit “NEW AND MATERIAL”
evidence

Hallex I-3-3-6

Can submit it w/RR, but can submit it
later

Can submit N&M evidence
electronically (via ERE)



WHEN WILL THE AC EXPEDITE REVIEW

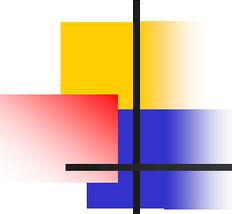
Only if the new evidence indicates:

- A “dire need” case, the AC will expedite
- A “critical or disabling condition”, the AC will expedite.

Hallex I-3-1-5 & I-2-1-40 20 CFR 404.970, -976(b) & 416.1470(b), -1476(b)

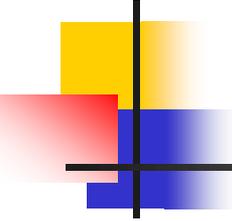
To get AC to Consider it a Critical/Dire case, try:

Fax to: (a) Critical Care Unit: 703-605-8021; or
(b) Congressional Public Affairs Branch: 877-670-2722.



BASES FOR AC REVIEW

- Abuse of discretion
- Error of law
- Lack of substantial evidence
- New and material evidence



ABUSE OF DISCRETION

- Occurs where an ALJ's action is erroneous and without any rational basis, or is clearly not justified under the particular circumstances of the case.

Hallex I-3-3-2

- Included are cases where ALJ shows bias, prejudice, misconduct, discrimination

See also SSR 13-1p

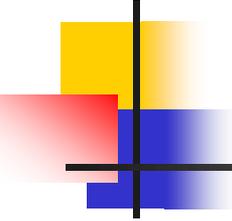
ERROR OF LAW

- An Error of Law: a misinterpretation, misapplication, or failure to consider or apply pertinent laws, regulations, SSR or AR.

Hallex I-3-3-3

- Examples:
 - Ignoring an acceptable medical source
 - Improper evaluation of PRW or use of GRID rules
 - Not adhering to dismissal procedures
 - Not notifying the claimant of certain rights

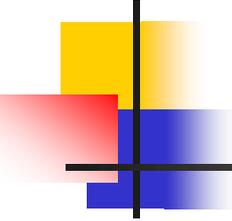
SUBSTANTIAL EVIDENCE



- At ALJ Hearing: a *preponderance of the evidence* standard is used.

20 CFR 404.901 and 416.1401

- At AC: a *substantial evidence* standard is
 - ◆ such relevant evidence as a **reasonable mind** might accept as adequate to support a conclusion.



AC REVIEW OF DISMISSALS

Common reasons:

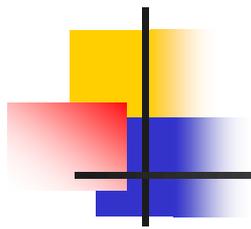
- Untimely hearing request
- Failure to appear at Hearing
- Party asks to w/draw the hearing (at any time prior to the ALJ decision)

Hallex I-2-4-5

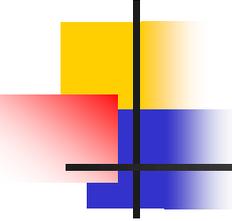
Hallex I-2-4-11

Hallex I-2-4-10

Hallex I-2-4-25



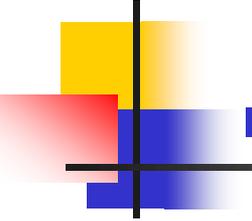
STRATEGIES



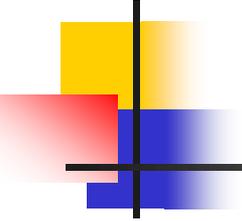
APPEALS COUNCIL DISPOSITIONS FY 2016

- **Granted Review: 13.49%**
Almost all are remands
- **Denied Review: 82.51%**
Does not include dismissals or grants

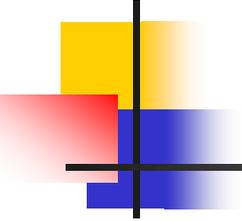
STRATEGIES

- 
- If you need more time to submit your argument:
 - Request review & an extension of time
 - AC usually gives 25 days to submit evidence and your argument
 - Be mindful that the AC may not mail the extension of time in time:
 - Monitor the ERE for the extension of time
 - Submit some type of argument with the initial request for review & more time

STRATEGIES

- 
-
- Don't submit:
 - only an HA-520
 - only an HA-520 with a brief statement
 - Do submit:
 - a full statement/brief

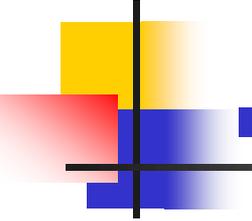
STRATEGIES

- 
-
- Keep in mind the following when strategizing & writing your appeal:



- Don't waste the AC's time:
 - ⇒ Don't include separate statements of facts and the law.
 - ⇒ Don't use boilerplate arguments

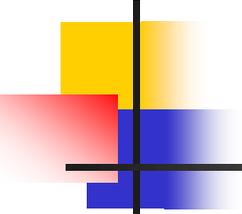
STRATEGIES

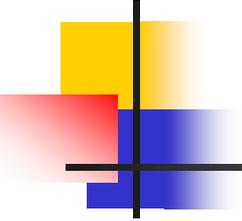
- 
- Don't rely solely on case law:
-

At the AC, case law is mostly irrelevant except if it: involves some key circuit court cases or relevant acquiescence rulings

- Don't attack the ALJ
- Don't simply address favorable evidence and not address evidence that the ALJ relied on

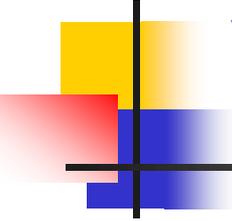
STRATEGIES

- 
-
- Do: read the ALJ decision; review the evidence (or listen to the recording of the hearing)
 - Do: identify the main issue up front (don't bury it in your brief)
 - Do: understand the standard of review
 - Do: focus the AC on the arguments



DECISION OF THE AC

- Deny review; affirm ALJ
- Remand for new hearing
- Reverse and issue its own decision



“FINAL DECISION”

- Time to file in federal court:
60 days + 5 days for mailing
- Extension of time to file in federal court
 - Good cause standards
 - AC decision on this issue is not reviewable