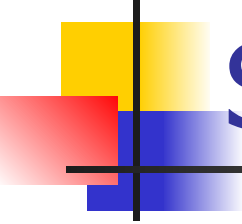


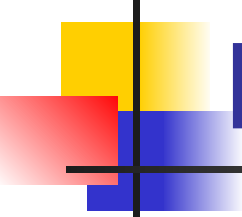
NASI Roundtable
January 28, 2005:
Proposed Changes to the
Disability Appeals Process

The Disability
Community's Perspective



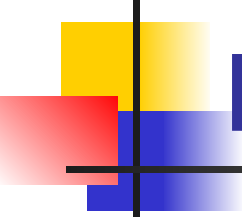
Sources

- CCD Position Paper: May 2004
 - Signed by more than 20 national organizations
 - Available at www.nosscr.org
- Testimony at 9/30/04 W&M Hearing
 - CCD and NOSSCR testified
 - Available at: <http://waysandmeans.house.gov>
- Meetings with Commissioner:
 - December 2003 and October 2004



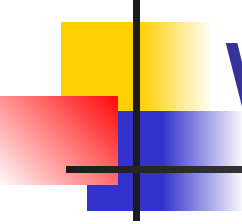
Major CCD Recommendations:

- The record should not be closed to new evidence after the ALJ decision.
- If the record is closed, there should be a “good cause” exception to submit new and material evidence.
- The claimant’s right to request review by the Appeals Council should be retained.
- Postpone Appeals Council changes pending success of earlier stage changes.



Keep record open for new evidence

- Proposal would close record after the ALJ decision.
- **CCD: Retain claimant's right to submit new and material evidence after ALJ decision.**
 - Keeps process informal
 - Medical conditions change
 - Ability to submit not always in claimant's control
 - New application not viable option
 - Current process does have limits in place
- **CCD: If record is closed, provide "good cause" to submit.**



What happens to AC review?

Proposal

- No claimant's right to request AC review
- Replace with:
 - QA review of ALJ decisions
 - If QA disagrees, refer to Oversight Panel (OP)
- OP is 2 ALJs, 1 AAJ
- OP can "reverse" ALJ
- Claimant can still appeal ALJ decision to federal court

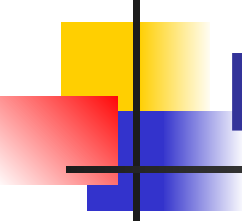
CCD

- Retain claimant's right to request adm. review of unfav. ALJ decision
- Retain AC or ensure that functions are carried out
- Postpone consideration of AC elimination until front end changes implemented
 - Further changes may not be needed



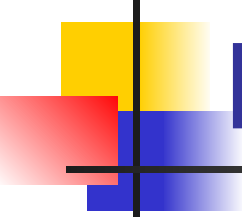
Why retain the Appeals Council?

- **Provides efficient review and effective relief**
 - Over 25% of claimants get relief; 60% of AC remands to ALJs are allowances
 - Allows administrative correction of ALJ errors
 - Effective screen between ALJ and court
 - Simple appeals process (vs. court)
- **C can submit new and material evidence**
 - Reopening problematic because (1) must be requested by C; (2) discretionary; and (3) no appeal if denied



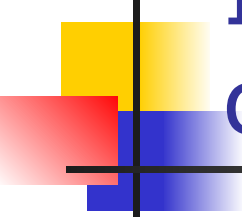
Retain Appeals Council – cont'd

- **Review of improper ALJ dismissals**
 - E.g., late appeals, nonappearance at hearing
 - Current system: C can request AC review (based on “good cause”) but no right to appeal to court – can be end of case!
 - Substantial number of appealed dismissals are remanded
- **Review allegations of unfair ALJ hearings**
- **Review of nondisability issues**



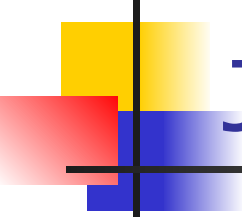
Problems with Oversight Panel

- OP review cannot be initiated by C
- ALJs reviewing ALJs – neutral review??
- How will C know if ALJ decision is under review?
- When is decision “final” for judicial review? When can C appeal?
- If under OP review, what due process safeguards?
 - Current process: AC reopening provides notice and opportunity to respond
 - Current process: Payment of interim benefits if AC reopening of ALJ decision not “final” within 110 days



Impact of AC elimination on federal courts

- Federal courts have played critical role:
 - Generalist judges
 - Geographic access
 - Contribute to national uniformity – “percolation”
- Will elimination of C’s right to AC review overwhelm courts with increased filings?
 - Will this increase pressure to create a Social Security Court?
 - Disability advocates generally oppose SS Court



Judicial Conference of U.S. Weighs In

- **May 1994: Comments on Reengineering to SSA**
 - Similar proposal was “likely to be inefficient and counterproductive”
 - “Present system ... as a precondition to judicial review is sound”
 - “Wiser to seek to streamline and expedite the process of review rather than to bypass it”
- **September 28, 2004: Letter to Chairman Shaw**
 - Statistics suggest “that a substantial number of cases are being resolved at the Appeals Council level without claimants having to seek judicial review...”
 - “It may be that substituting Appeals Council consideration with judicial review ... would result in more costs and further delay for many claimants.”