

Comment from Judge Kevin F. Foley on the Social Security Disability Adjudication Project

These views are my own and do not necessarily reflect the views of the Social Security Administration.

The SCOTUS decision *Nord*, and which rejected the treating physician opinion rule in ERISA cases, suggests that the rule was promulgated by the appeals courts (and later codified by SSA) to reign in unruly ALJs. I don't think we need to be corralled. If anything, some think that we pay too many cases (Isn't that what Sen Colburn is saying?).

Concerning the Appeals Council – the first thing that should be done is to require the AC to apply the harmless error rule. It is obvious to me that the analysts up there often look for any excuse to send the case back b/c it gives them an easy disposition. I had one case where the exhibit list had not been properly updated. That was it. This could have been easily cured by a LA. It did not require a remand and a new hearing. But, it came back to me.

They need to get the AC to stop using the boilerplate language that they seem to always use that says, in essence, in conformity with the above the ALJ will offer the claimant an opportunity for a new hearing . . . Why the heck should the claimant always get a new hearing? Like the example I gave above about the exhibit list, or the case where the ALJ inadvertently neglected to discuss one physician opinion (but the ALJ did discuss two other medical source statements from that same doctor), the so-called defect in the ALJ decision could be easily remedied by an amended decision. No need for a completely new hearing. This and the lack of the AC applying the harmless error rule results in, not only unhappiness in the ALJs, they are a big contributor to the ongoing backlog. I am sure there are thousands of AC remands every year that should not have been remanded or at least did not need a new hearing.