



# NSCLC

**National Senior Citizens Law Center**

Protecting the Rights of Low-Income Older Adults

*The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at [www.NSCLC.org](http://www.NSCLC.org).*

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# **SSI Non-Disability Appeals: What Isn't Working**

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# Today's webinar topics

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1. Explanation of due process protections
2. Examination of how and why system breaks down
3. Recommendations

# SSI non-disability appeals

**Issues once individual is receiving SSI benefits**

**SSA determinations that propose suspension or reduction of SSI benefits for any reason(s) other than disability status**

# SSA administrative appeal process

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Levels of appeal after initial determination



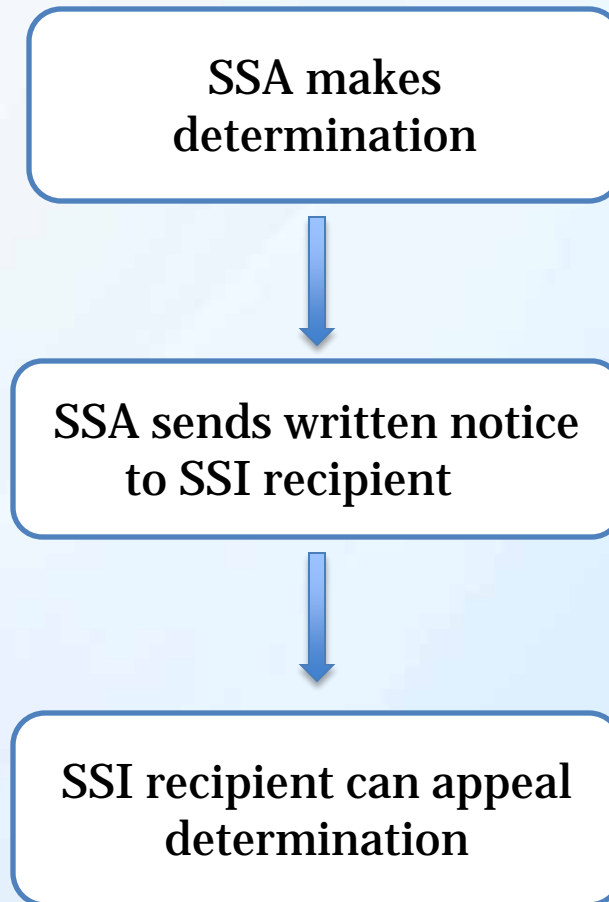
# NOT covered today

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1. Disability determinations, continuing disability reviews
2. ALJ hearings
3. Title II (OASDI) benefits
4. Requests for waiver of recovery of overpayments
5. Reconsiderations of denials of application for benefits

# Right to appeal initial determination

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# Request for reconsideration

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Form 561 (<http://www.ssa.gov/online/ssa-561.pdf>)

**REQUEST FOR RECONSIDERATION**

(Do not write in this space)

NAME OF CLAIMANT		NAME OF WAGE EARNER OR SELF EMPLOYED PERSON (if different from claimant)	
CLAIMANT SSN	CLAIMANT CLAIM NUMBER (if different from SSN)	SUPPLEMENTAL SECURITY INCOME (SSI) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER	
SPOUSE'S NAME (Complete ONLY in SSI cases)		SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases)	

CLAIM FOR (Specify type, e.g., retirement, disability, hospital/medical, SSI, SVB, etc.)

SSI

I do not agree with the determination made on the above claim and request reconsideration. My reasons are:

I am still entitled to full benefits

**SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY**  
(See the three ways to appeal in the Facts About Your Supplemental Security Income (SSI) or Special Veterans Benefits (SVB) Decision booklet.)  
"I want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB). I've read about the three ways to appeal. I've checked the box below."

- Case Review     Informal Conference     Formal Conference

**ENTER ADDRESSES FOR THE CLAIMANT AND THE REPRESENTATIVE**

CLAIMANT SIGNATURE (OPTIONAL)			NAME OF CLAIMANT'S REPRESENTATIVE		
MAILING ADDRESS			MAILING ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
TELEPHONE NUMBER (include area code)			TELEPHONE NUMBER (include area code)		
DATE			DATE		

**TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION**

See list of initials' determinations

1. HAS INITIAL DETERMINATION BEEN MADE?     YES     NO

2. CLAIMANT INSISTS ON HEARING?     YES     NO

3. IS THIS REQUEST FILED TIMELY? (if "NO", attach claimant's explanation for delay and attach any pertinent letter, material, or information to Social Security office.)     YES     NO

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (CN 02102.125)

NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300)

REQUIRED DEVELOPMENT ATTACHED

REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS

SOCIAL SECURITY OFFICE ADDRESS

ROUTING INSTRUCTIONS (CHECK ONE)

DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER)

PROGRAM SERVICE CENTER

DISTRICT OFFICE-RECONSIDERATION

C/O, BALTIMORE

C/O, BALTIMORE

CENTRAL PROCESSING SITE (S2H)

**NOTE:** Take or mail the completed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records.

# Due process protections

**Goldberg v. Kelly, 397 US 254 (1970)**

**For those receiving “means-tested” benefits from government, there must be processes in place to protect them**

**Procedural protections to ensure FAIRNESS**

# *Goldberg* requirements

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1. Timely and adequate notice

42 U.S.C. § 1383 (c)

20 CFR § 416.1404

2. Full benefits continue while appeal pending

20 CFR § 416.1336(b)

# *Goldberg* requirements

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3. Opportunity to cross-examine agency witnesses  
20 CFR § 416.1413(c)
4. Opportunity to present arguments and evidence orally  
20 CFR § 416.1413(a) & (b)

# *Goldberg* requirements

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5. Right to retain attorney

42 U.S.C. § 1383 (d)(2)

20 CFR § 416.1505

6. Impartial decision maker

20 CFR § 416.1420

# *Goldberg* requirements

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7. Decision based on evidence in record

20 CFR § 416.1420

8. Notice of decision states specific reasons

20 CFR § 416.1422

# Due process protections

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Notice must inform recipient that they have 60 days from day of receipt to file appeal

“If appeal is filed within 10 days after the individual’s receipt of the notice, the payment shall be continued . . . until a decision on such initial appeal is issued. . .”

20 C.F.R. § 416.1336



**Good cause for missing deadline to file:**

**If Request for Reconsideration submitted after 60 day deadline, SSA representative must accept appeal and develop for good cause**

**Request for extension of time must be in writing, giving reasons why appeal not filed timely**

**20 C.F.R. §§ 416.1409(b) & 416.1411**

**If Request for Reconsideration submitted more than 10 days after receipt but within 60 day period, no right to benefits continuing UNLESS good cause for missing deadline established**

**20 C.F.R. § 416.1336**

# Due process protections

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Conference must be scheduled to be held within 15 days of request being filed

At SSA's discretion or claimant's request, can be delayed to ensure conference conducted efficiently and properly

Notice of conference sent at least 10 days before may be held sooner if all parties agree

20 C.F.R. § 416.1413c

# Due process protections – formal conference

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Requirements for formal conference:

- Opportunity to review evidence in file and present oral and written evidence
- Opportunity to present witnesses
- Opportunity to cross-examine adverse witnesses and request subpoena for adverse witnesses and relevant documents
- Summary of proceeding becomes part of record

20 C.F.R. § 416.1413

## Informal conference:

- Opportunity to review evidence in file and present oral and written evidence
- Opportunity to present witnesses
- Summary of proceeding becomes part of record

## Case review:

- Opportunity to review evidence in file and present oral and written evidence

**ONLY Formal Conference meets all *Goldberg* requirements**

# Due process protections – impartial decision-maker

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In all three types of proceedings, person making decision will have had no prior involvement with initial determination

20 C.F.R. § 416.1420

# Due process protections – written decision

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Decision-maker must review evidence in case file and any  
new evidence received

Decision based on preponderance of evidence

20 C.F.R. § 416.1420

Written notice of decision must:

1. State specific reasons for determination
2. Inform of right to request ALJ hearing

20 C.F.R. § 416.1422

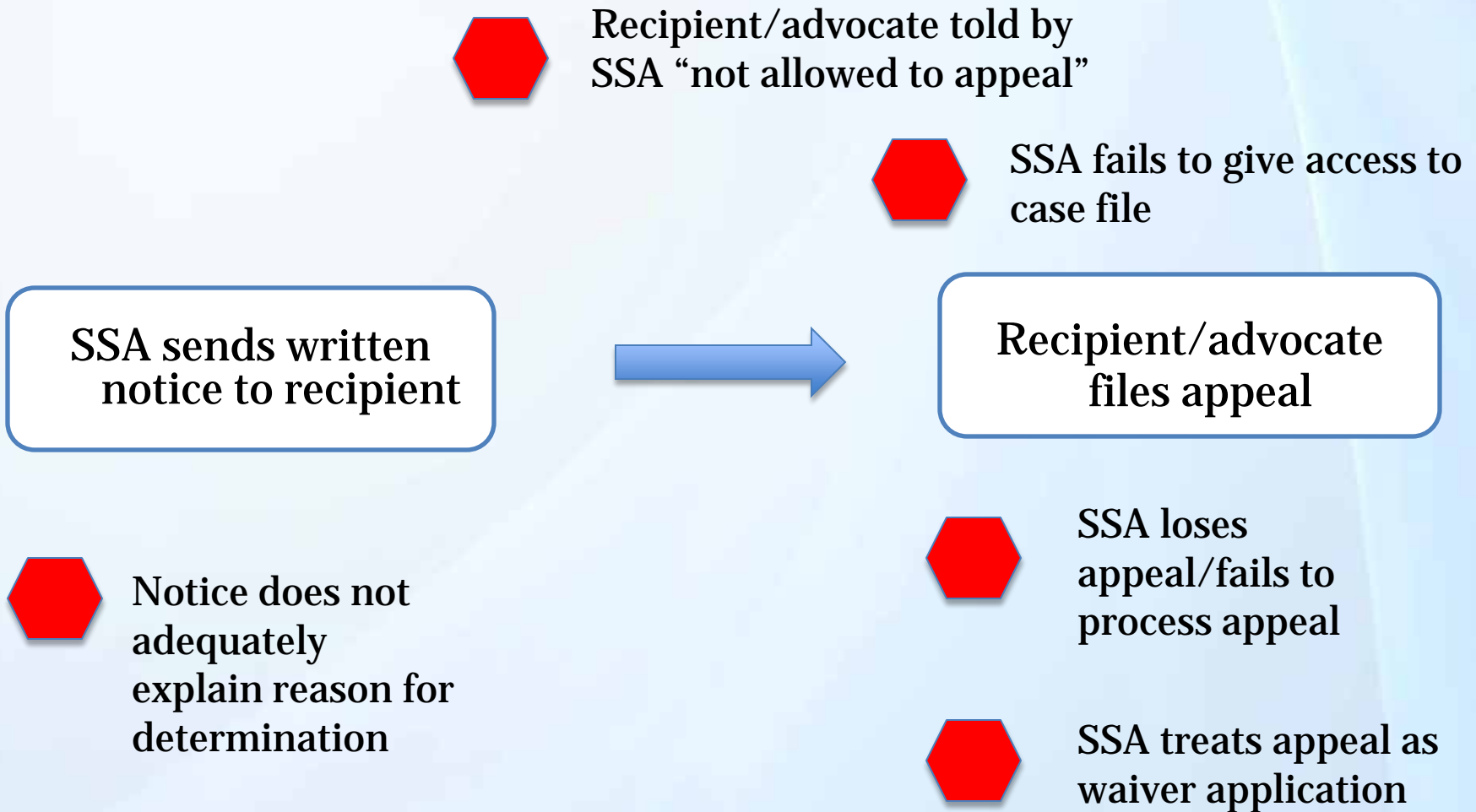
# Non-disability appeals: what actually happens...

**Rules in place**

**BUT**

**not being followed  
at reconsideration level**

# Where does the process break down?





# Where does the process break down?



# Why do these problems exist for non-disability appeals?

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- Manual process for inputting appeals
- Automated benefit suspensions and reductions
- No uniform system for tracking pending appeals
- Lack of basic training on appeal process
- Low priority assigned to non-disability appeals
- Generally low staffing levels in local offices with highest SSI caseloads
- Inadequate administrative funding for SSA

# Recommendations

- **Uniform system to input and track appeals**
- **Eliminate automatic benefit suspension or reduction**
- **Require manual entry that no appeal filed before suspension or reduction can take place**
- **Train staff on due process requirements**
- **Give recipients/advocates access to full SSA file**

# What can you do?

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- Represent claimants at request for reconsideration level
- Request formal conferences
- Let NSCLC know you are interested in issue
  - Ø [klang@nsclc.org](mailto:klang@nsclc.org)
  - Ø (202) 683-1997
- Spread word about systemic advocacy to networks

## For further information:

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