attach only to ''life, liberty, or property.'' Ms. Harper could not prevail on her constitutional claim, therefore, without showing that she was deprived of ''property'' without due process of law. The existence of a property interest here is far from self-evident.

''The definition of property since the 1972 [Supreme Court] decision in *Board of Regents* v. *Roth* has centered on the concept of 'entitlement.' The Court will recognize interests in government benefits as constitutional 'property' if the person can be deemed to be 'entitled' to them. Thus, the applicable federal, state or local law which governs the dispensation of the benefit must define the interest in such a way that the individual should continue to receive it under the terms of the law. This concept also seems to include a requirement that the person already has received the benefit or at least had a previously recognized claim of entitlement.'' 2 Rotunda & Nowak, Treatise on Constitutional Law § 17.5(a) at 628 (1992).

The right to due process applies to the termination of government benefits already being received, *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), but Ms. Harper has never received disability benefits. Two of our sister courts of appeals have extended *Goldberg* to applicants for government benefits that have not yet been awarded. See *Daniels* v. *Woodbury County, Iowa*, 742 F.2d 1128 (8th Cir.1984) (finding applicants for general assistance on the county level had a right to due process), and *Griffeth* v. *Detrich*, 603 F.2d 118 (9th Cir.1979), *cert. denied sub nom. Peer* v. *Griffeth*, 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (finding applicants for benefits under state general assistance program had a ''legitimate expectation of entitlement'' because of mandatory language in state statute).

The Supreme Court has recognized a right to due process on the part of parole applicants who can point to a statute saying that prisoners ''shall'' be released under certain conditions, *Greenholtz* v. *Nebraska Penal Inmates*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979), but the Court has not determined whether applicants for monetary benefits have a similar right. See *Lyng* v. *Payne*, 476 U.S. 926, 942, 106 S.Ct. 2333, 2343, 90 L.Ed.2d 921 (1986) (''We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment''). See also *Peer* v. *Griffeth*, 445 U.S. 970, 100 S.Ct. 1348, 64 L.Ed.2d 247 (1980) (Rehnquist, J., dissenting from denial of certiorari) (''Particularly when the only [California] appellate court to consider the question has concluded that there is no protected property interest under state law, this extension of *Goldberg* v. *Kelly* * * * should receive plenary consideration by this Court''). The Rotunda and Nowak treatise comments that ''[a]lthough the Court has not resolved this issue, under the 'entitlement' principle it would appear that a person has no property interest in a benefit unless he has previously been granted it by the government.'' 2 Rotunda & Nowak, *supra* § 17.5, at 629.

This court was presented with an opportunity to adopt *Griffeth's* ''mandatory language'' rationale in *Baker* v. *Cincinnati Metropolitan Housing Authority*, 675 F.2d 836 (6th Cir.1982). There the plaintiffs sought changes in procedures followed by a housing authority in determining eligibility for a new Housing and Urban Development program. The district court relied partially on Griffeth in determining that persons who could show they met the criteria for the program were entitled to due process protection. *Baker* v. *Cincinnati Metropolitan Housing Authority*, 490 F.Supp. 520, 532 (S.D. Ohio 1980). We decided on appeal that the procedures satisfied due process, but we did not specifically address the question whether due process was constitutionally required.

In the case at bar we find it unnecessary to decide whether Ms. Harper had a ''property'' interest of which she could not be deprived without due process. Whether or not there was a property interest, Ms. Harper received all the process that would have been due under any hypothesis.

The regulations promulgated by the Secretary make it clear that an unappealed denial upon reconsideration is a final decision. 20 C.F.R. § 404.921 provides as follows:

''The reconsidered determination is binding unless—

(a) You or any other party to the reconsideration requests a hearing before an administrative law judge within the stated time period and a decision is made;

(b) The expedited appeals process is used; or

(c) The reconsidered determination is revised.''

Because the denial of Ms. Harper's fourth claim upon reconsideration was not appealed or revised, and because the denial was not followed by a timely request for a hearing before an ALJ, the denial was a final decision of the Secretary that was, according to the regulation, ''binding.'' The ALJ who heard Ms. Harper's fifth claim was aware of this problem, yet he offered no explanation of his failure to give the reconsidered denial of the fourth claim the binding effect prescribed by the regulation. The ALJ's decision to treat the earlier determination as non-binding appears to have been erroneous, and we know of no reason why it was not within the province of the Appeals Council to correct the error.

In *Mullen* v. *Bowen*, 800 F.2d 535 (6th Cir.1986) (*en banc*), this court noted that the Appeals Council may review *any* determination by an ALJ that it chooses to review, whether or not there has been an application for such review.[1] See *id.* at 545, 554 (Nelson, J., concurring). The Appeals Council is empowered to consider all aspects of a decision, even if the claimant seeks review of a portion only—and the council need not give notice to the claimant of its intent to review the entire decision. *Gronda* v. *Secretary of Health & Human Services*, 856 F.2d 36, 38–39 (6th Cir.1988), cert. denied, 489 U.S. 1052, 109 S.Ct. 1312, 103 L.Ed.2d 581 (1989).[2]

Notwithstanding *Mullen*, Ms. Harper maintains that the ALJ's decision to grant a hearing was not subject to review by the Appeals Council. Even if the grant of a hearing was improvident, she suggests, the council could not set the grant aside and invoke the doctrine of *res judicata* after the ALJ had heard the claim on the merits. In cases that are almost exactly parallel to this one, however, the Courts of Appeals for the Fifth and Seventh Circuits have held that the council can reopen a decision by an ALJ to grant a hearing, and—even if a hearing has actually been held—can dismiss on *res judicata* grounds. *Ellis* v. *Schweiker*, 662 F.2d 419 (5th Cir.1981); *Johnson* v. *Sullivan*, 936 F.2d 974 (7th Cir.1991). See also *Taylor* v. *Heckler*, 765 F.2d 872, 874–77 (9th Cir.1985) (upon second application, ALJ reopened first application and found claimant disabled; Appeals Council vacated ALJ's decision and dismissed on *res judicata* grounds). We agree with these decisions, and we adopt their reasoning.

[1] Since *Mullen* was decided, the Seventh Circuit, sitting *en banc*, has reversed an earlier panel decision and come down on *Mullen's* side. See *Bauzo* v. *Bowen*, 803 F.2d 917, 921 (7th Cir.1986) (*en banc*), overruling *Scott* v. *Heckler*, 768 F.2d 172 (7th Cir.1985). Seven circuits now adhere to *Mullen's* view; only the Third Circuit remains on the other side. See *Mullen*, 800 F.2d at 539 n. 4 (citing cases, including *Powell* v. *Heckler*, 783 F.2d 396 (3rd Cir.1986)).

[2] *Gronda* forecloses any argument that the council should not have been able to bar Ms. Harper's claim on *res judicata* grounds because she had no notice that *res judicata* might be used against her. The point is moot, however, in light of the council's letter of March 12, 1990, warning Ms. Harper of its intention to dismiss her claim on the basis of *res judicata* and inviting her arguments against such action.