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Journal of the National Association of Administrative Law Judiciary

Volume 19 | Issue 2 Article 10

10-15-1999

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Recommended Citation

Daniel T. Vaughan, *Ford v. Shalala: Applying Mathews v. Eldridge to SSI Benefits*, 19 J. Nat'l Ass'n Admin. L. Judges. (1999)
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Ford v. Shalala

Applying *Mathews v. Eldridge* to SSI Benefits

By: Daniel T. Vaughan*

On October 12, 1999 in *Ford v. Shalala,* [1] the Eastern District Court of New York held that the written notices of changes in benefits given to beneficiaries of Supplemental Security Income Program (SSI) violated the due process clause of the Constitution.[2] Judge Sifton found that the Department of Health and Human Services failed to provide SSI beneficiaries with adequate notice of the basis of the agency determination.[3]

The SSI program was created by Congress in 1971 in order to provide additional benefits to senior citizens who are blind or disabled.[4] SSI recipients are "among the most vulnerable Americans... SSI is truly the program of last resort and the safety net that protects them from complete improvishment."[5]The SSI program was designed to create a national program of assistance, replacing any existing state systems. To qualify for benefits, an applicant must show (1)categorical eligibility, i.e., that they are either 65 years old, blind, or disabled and (2) that they meet financial eligibility requirements.[6]

The financial requirements are exceedingly strict. Testimony at trial established that in order to qualify for SSI, an applicant cannot possess resources[7] in excess of $2000 dollars. A couple is limited to 3000 dollars of combined resources.[8] In 1997 40,500 applicants were denied and 35, 500 claimants were suspended from further aid due to excess resources.[9]

By its regulations,[10] the SSA (Social Security Administration) is required to provide reasonable notice of any determination regarding

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[1]Ford v. Shalala, *as reported in* New York Law Journal, October 12, 1999 pg. 36.

[2]*Id.*

[3]*Id.*

[4]*See* 42 U.S.C. §1381.

[5]Ford , *as reported in* New York Law Journal, October 12, 1999 pg. 39.

[6]42 U.S.C. §1382 , 1382a, 1382b, 1382c; 20 C.F.R. 416.202 Subpart B.

[7]A resource is defined as cash, other liquid assets or any real or personal property that claimants or their spouses own or can convert to cash. *See* 42 U.S.C. §1382 (a),(b), (j).

[8]*Ford, reported at* New York Law Journal Oct. 12, 1999, pg. 38.

[9]*Id.*

[10]20 C.F.R. sec 416.1402.

the claimants eligibility for, or the amount of, benefits.[11] The existing notices do not inform the claimant of the specific cause of the benefit adjustment. Rather, the notice only states the reason for the adjustment in terms of broad categories, such as a change in resources owned.[12] For instance, the notices do not specify the claimant's exact living arrangement classification, but state that benefits are being reduced because of a change in living arrangements.[13] Nor do notices pinpoint the applicable law or regulation that was the basis for the determination.[14]

A claimant is directed to call a toll free phone number with any questions.[15] However, due to lengthy waiting periods, in 1997 26% of phone calls are terminated before a conversation is conducted with a representative.[16] Even if they do connect, the operator will not have access to the files of the claimant, which are kept in the field or central offices.[17]

Files are often not available at the field office either. Records are kept at the field office for a year, then shipped to a central depository.[18] Due to difficulty in file retrieval, the record is often not there when the claimant arrives and it often takes up to two weeks to locate a file.[19] Only 20% of SSI recipients have their eligibility information stored on the agency computer system.[20]

Procedural History

Plaintiff, Robert Ford, initiated this action on his own behalf as well as on behalf of similarly situated individuals in the Federal District Court of Eastern New York on June 8, 1994.[21] Plaintiffs' alleged both due process and equal protection violations. The Court subsequently certified a class that included all SSI applicants and recipients who did not receive written notice from the Social Security Administration that

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[11]Ford, *reported at* New York Law Journal Oct. 12, 1999, pg. 39.

[12]*Id.* at 43.

[13]*Id.*

[14]*Id.*

[15]*Id.*

[16]*Id.* at 44 this actually represents a substantial improvement. In 1995 64.7% were terminated before contact with a operator.

[17]*Id.* at 41.

[18]*Id.*

[19]*Id.*

[20]*Id.* at 42.

[21]*Id* at 47.

includes: (a) an explanation of how the SSI application date and period of retroactive eligibility were determined, and/or (b) identification of the specific types and values of resources which render them ineligible; and/or (C) a description of the SSI benefit rate, including an explanation of living arrangement classification, and/or (d) SSI budget computations[22] and /or (e)citation to the specific laws or regulations upon which the SSI determination is made and/or (f) the right to review and obtain free copies of the SSA records on the SSI claimant, as well as specific policy materials used to support the SSI determination. [23] The Court conducted a five day bench trial.[24]

The Decision
A. The Equal Protection Claim

Plaintiffs claimed a violation of their right to equal protection because of the disparity of information provided to SSI recipients as opposed to TANF and AABD claimants.[25] The court found that claimant's are not a protected class and thus the challenged regulation must only have a have rational relation to a legitimate government purpose.[26]

The government justified the distinction by noting the differing federal role in the programs. The AFDC and AABD programs are administered by states, requiring more federal supervision.[27] The SSI is administered by a federal agency. [28]The court noted that there is no requirement that a federal agency must impose upon itself the same requirements that it imposes upon a state agency.[29] Plaintiffs did not respond to the defendant's justification, thus the court found that the equal protection claim must fail.[30]

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[22]*Id.* the notice should show the SSI payment rate, amounts and types of gross income and/or resources, the deductions and disregards from gross income and the income or benefit months.

[23]*Id.*

[24]*Id.*

[25]*Id.* at 58.

[26]*Id.*

[27]*Id.* at 59.

[28]*Id.*

[29]*Id. citing* Frederick v. Shalala, 862 F. Supp. 38, 42 (W.D.N.Y. 1994).

[30]*Id.*

B. The Equal Protection Claim

1. Do the claimants have a property interest in SSI benefits?

At the outset, the Court recognized that there is a significant property interest in the fair adjudication of a claimant's eligibility to receive disability benefits.[31] The court then proceeded to analyze the property interest at stake in light of *Board of Regents v Roth.*[32] Under *Roth*, a claimant must show a legitimate entitlement to a benefit rooted in state or federal law.

Ford satisfied these requirements. There is a statutory mandate that aged, blind, or disabled claimants who posses less then the threshold resources, shall receive benefits.[33] The government did not dispute that claimants met the categorical and financial eligibility requirements.[34] Thus, Judge Sifton found that plaintiff's presently enjoyed a "legitimate claim of entitlement" to SSI benefits that was firmly rooted in Federal law.[35] The Court then proceeded to analyze whether the government provided plaintiffs with "a notice reasonably calculated to appraise interested parties of the pendency of the action and afforded them an opportunity to present their objections."[36]

2. The *Mathews v. Eldridge* Standard

To determine whether the SSA procedure satisfied the constitutional guarantee of due process, the Shalala Court applied the test [37]set forth in *Mathews v. Eldridge.*[38] First, the private interest must be affected by the official action. Second, the risk of erroneous deprivation through the procedures used and the probative value of additional procedures.[39] These factors must be weighed against the governments burden in additional administrative process.[40]

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[31]*Id.*at 48, *quoting* Rooney v. Shalala, 879 F. Supp. 252, 255 (E.D. NY. 1995).

[32]Board of Regents v. Roth 408 U.S. 564 (1972).

[33]42 U.S.C. sec 1382(a)(1), 42 U.S.C. sec 1383(a)(1).

[34]Ford, *as reported in* New York Law Journal, October 12, 1999 pg. 48.

[35]*Id.*

[36]*Id.* quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

[37]*Id.*

[38]Mathews v. Eldridge, 424 U.S. 319 (1976).

[39]*Id* at 335.

[40]*Id.*

A. The private interest in the potential deprivation

The *Ford* court examined the plaintiff's property interest in light of the Supreme Court's holding in *Goldberg v. Kelly.*[41] Judge Sifton found that the nature of the deprivations caused by SSA actions were "quite obviously equal to" or exceeded[42] the grievous loss that the Supreme Court required in *Goldberg v. Kelly.* [43] The Court noted that, like the public assistance recipients in *Goldberg,* SSI claimants must meet eligibility requirements that place them substantially below the federal poverty line.[44] In addition SSI recipients are faced with the substantial handicaps of disabling illness, blindness or advanced age.[45] Besides the physical handicaps faced by claimants, they were often unable physiologically to deal with a notice from the government. [46] Loss of SSI benefits also endangers the recipients Medicaid coverage.[47]

The *Ford* court then examined the likely duration an improper termination of SSI benefits.[48] In *Mathews,* a one year period to contest termination of benefits was considered a significant hardship.[49] SSI claimants face an even more drawn out process.[50] In 1998, the defendant required an average of 850 days to complete a review of an administrative hearing.[51]

Due to the economic and emotional impact caused by a wrongful termination of SSI, and the time for which it was likely to continue, Judge Sifton found claimants established a substantial private interest in adequate SSI notices.[52]

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[41]Ford, *as reported in* New York Law Journal, October 12, 1999 pg. 49, *citing* Goldberg v. Kelly, 397 U.S. 254 (1970).

[42]*Id.*

[43]Goldberg, 397 U.S. 254, 262.

[44]Ford, *as reported in* New York Law Journal, October 12, 1999 pg. 49, noting that the SSI benefit rate for an individual was 494 per month, 73.6% of the federal poverty line.

[45]*Id.*

[46]*Id.* stating that governmental notices created, "confusion, coupled with fear and trepidation.. that on occasion leads to thoughts of suicide."

[47]42 U.S.C. 1396(a)(10)(A)(i)(II).

[48]Ford v. Shalala, *as reported in* New York Law Journal, October 12, 1999 pg. 50.

[49]Mathews, 424 U.S. at 342.

[50]20 C.F.R. sec 416.1429.

[51]Ford, New York Law Journal, October 12, 1999 pg. 50.

[52]*Id.*

2. The Risk of Erroneous Deprivation

Due process requires that a notice must detail the reasons for the proposed termination so the recipient can determine whether the underlying factual information is correct.[53] Plaintiffs contended that the SSI notices prevented claimants from checking the factual accuracy of the information relied by the SSA.[54]

Judge Sifton found that the agencies notices did not provide individualized calculations. A notice of a change or termination of benefits because of a change in "rent, interest, dividends, or royalties" will not indicate in which category the change occurred.[55] Nor is specific information provided on which income from family members is considered "deemed" and thus reduces benefits.[56] Similarly, claimants are not informed which of their resources are considered to have exceeded statutory limitations.[57]

The Court also found that claimants were not provided with adequate alternatives to discover the basis of the SSA's determination.[58] To obtain information by telephone a claimant must have their file on computer, and as noted above, only 20% of claimants do.[59] The notice also fails to inform the claimant that he can examine his or her file at the SSA office. However there is no guarantee that the file, if it still exists, will be at the field office.[60] Nor are claimants notified that they are entitled to a copy of their records.[61]

The court also pointed to the high rate of reversal of initial determinations as a basis for its' finding of a significant risk of erroneous deprivation.[62] No records are kept of the initial review.[63]At the second and third level of review, claimants are "chillingly

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[53]Goldberg, 397 U.S. at 267.

[54]Ford, *as reported in* New York Law Journal, October 12, 1999 pg. 51.

[55]*Id.*

[56]*Id.* noting, "the notices do not state what income was allocated to other family members, and how much income was deemed ... Looking at the notice, one can't tell how much the child is ineligible by...There is no way to for a parent to plan the direct impact of earnings on a child's benefits."

[57]*Id.*

[58]*Id.* at 52.

[59]*Id.*

[60]*Id.*

[61]*Id.* at 53.

[62]*Id.* at 54.

[63]*Id.*

successful."[64] Between 1994 and 1998 the claimants success rate at the second level of review has varied between 49.8 % and 66.8%[65] At the third level, claimants success rate has varied between 17% and 24%.[66] Despite the high level of claimants success, only 2.8% of 20 million claimants asked for reconsideration of their determinations.[67] The Court found that these statistics made it apparent that "many, many, erroneous determinations are simply not appealed."[68] The court concluded that the substantive defects of the notices, coupled with evidence of claimants' vulnerability, created an extraordinary high risk of error.[69]

To determine the benefit of additional administrative procedures, the Court examined the 1992 Office of Inspector General (OIG) of the SSA recommendations.[70] The OIG recommended that defendant include a worksheet[71] with all awards and post entitlement notices.[72] The SSI did not implement these suggestions. [73]Absent a worksheet, the court found that claimants have no meaningful way to ascertain whether defendant's calculations as to the grant amounts are correct.[74]

3.The Public Interest at Stake

The final factor considered by the court is the public interest at stake.[75] Since the Court found that plaintiff had demonstrated that the challenged procedures pose an unreasonable risk of erroneous deprivation of a significant private interest, the burden shifted to the government to prove that the additional safeguards are not in the public interest.[76] Before reaching the defendant's argument, the Court stated that the government interest in preserving the public fisc and

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[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id* at 55 citing OIG report of September 1992, "Clarity of Supplemental Security Income Notices."

[71] Id at "The worksheet should itemize the gross payment, all deductions, the net payment amount, and the payment date."

[72] *Id.*

[73] *Id.* at.

[74] *Id.* at *quoting* Schroeder v. Hegstrom, 590 F. Supp. 121, 127 (D. Or. 1984).

[75] *Id.*

[76] *Id. citing* Mathews, 424 U.S. at 345.

conserving administrative resources is "not overriding in the welfare context."[77]

The defense testified that the Administration would be placed under substantial fiscal and administrative burdens if required to adopt the relief sought.[78] The defense did not dispute the feasibility of the proposed changes.[79] Testimony established that a team of computer programmers could implement a program resembling plaintiff's worksheet in six months.[80] Testimony further established that it would take approximately two years to meet all of plaintiff's proposals.[81]

The agency testified it has directed its' computer programmers to concentrate on (1) making sure the system is Y2K compliant, and (2) implementing changes in benefits as required by the 1996 welfare reform bill. The agency also was attempting to prioritize a slew of "back burner" projects. [82] While recognizing deference to an agency's own prioritizing among projects,[83] the court compared the importance of the issue to plaintiffs and defendant respectively.[84]

The Court noted the similarity to *Schroeder*,[85] in which the AFDC recipients were found to be entitled to more detailed information in their notices. "While making changes will require the agency to postpone other improvements in its systems, the improvements do not appear to be of the same crucial significance as those which plaintiffs seek."[86]

Judge Sifton also discounted the claimed financial burden the detailed notices would put upon the defendant. The court noted that claimants often cannot understand their notices and then either bring them to field offices or call the agency telesystem for clarification .[87] Defendants own study estimated that 100,000 dollars could be saved for every 1% reduction notice related inquires[88]. Besides the fiscal benefits

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[77] *Id. citing* Philadelphia Welfare Rights Org. v. O'Bannon, 525 F.Supp 1055, 1060 (E.D. Pa. 1981).

[78] *Id.*

[79] *Id.*

[80] *Id.* at 56.

[81] *Id* at "including the budget worksheet, the living arrangement fact sheet, and the notice textual revisions."

[82] *Id.*

[83] *Id* at 57 *citing* Assoc. Gas Distributors v. F.E.R.C., 824 F.2d 981 (D.C. Cir. 1987).

[84] *Id. citing* Schroeder v. Hegestrom, 590 F. Supp. 121, 128 (D. Or. 1984).

[85] *Id.*

[86] *Id.*

[87] *Id.* at 58.

[88] *Id.*

of additional notice, the court found that the agency would benefit both in reputation and in the public's good will.[89]

Thus, the Court concluded that the relief sought by plaintiffs was not unduly burdensome. Rather, by providing more detailed information the government would be acting as the representative of public interest.[90] The Court then concluded that the SSI notices are constitutionally defective.[91] The Court ordered the parties to discuss the content of the new notices and a time frame for their implementation. If they could not reach agreement, plaintiff's were directed to submit a proposed judgement on notice within 30 days.[92]

Conclusion

Ford v. Shalala recognizes the substantial property interest welfare recipients have in their benefits. Though applying the more burdensome Mathews standard, the Court found that the property interest first articulated in Goldberg outweighs the arguments of administrative burden set forth by the government. In mandating additonal detailed notices, the decision recognizes the capacity of a computerized society to provide more detailed notices. It reflects, in a more recent context, the exchange Professor Davis had with INS decades ago. Professor Davis suggested INS could provide more detailed reasons when visas were denied. At first INS said that was impossible. Within a couple of months INS developed a checklist with the most common reasons for denials. Little time was required to put a check mark on the list, yet an applicant was able to tell if there was something that could be done to change the result.

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[89] *Id.*
[90] *Id.* at quoting Eilender v. Schweiker, 575 F. Supp. 590, 602 (S.D.N.Y. 1983).
[91] *Id.*
[92] *Id.* at 60.