

No. 19-181

In The
Supreme Court of the United States

LANCE PATTERSON,

Petitioner,

v.

INDIANA FAMILY AND
SOCIAL SERVICES ADMINISTRATION,

Respondent.

**On Petition For A Writ Of Certiorari
To The Indiana Court Of Appeals**

REPLY BRIEF

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INTRODUCTION

Petitioner Lance Patterson addresses three incorrect arguments raised by Respondent Indiana Family and Social Services Administration (“FSSA”) in its Brief in Opposition to Petition for a Writ of Certiorari (“Opp. Br.”). First, this case unambiguously presents a question of federal law; specifically: did the Indiana Court of Appeals incorrectly apply a federal Medicaid regulation, 42 C.F.R. § 435.725? Second, the South Dakota Supreme Court’s decision analyzed and based its decision upon federal law, creating a split with another court of last resort. And third, this case presents an important issue with broad application, which this Court should decide.

REASONS FOR GRANTING THE PETITION

I. The application of 42 C.F.R. § 435.725 presents a question of federal law, which this Court should decide.

FSSA incorrectly argues that this case does not present a federal question, even though the entire case hinges on the interpretation of a federal regulation. Opp. Br. p.17-19. FSSA’s argument—that Patterson challenges the process the Indiana Court of Appeals used to interpret federal law, which process FSSA asserts is a matter of state law that this Court cannot review—is not supported by any applicable law. *Id.*, p.18. Indeed, FSSA cites no authority for this position.

FSSA's argument, if accepted, would emasculate the Supremacy Clause, Art. VI, cl. 2, of the U.S. Constitution, which provides that judges in every state are bound by the laws of the United States. The very purpose of the federal judiciary is to interpret and apply federal laws and regulations:

When federal judges exercise their federal-question jurisdiction under the "judicial Power" of Article III of the Constitution, it is "emphatically the province and duty" of those judges to "say what the law is." *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803). At the core of this power is the federal courts' independent responsibility—**independent from its coequal branches in the Federal Government, and independent from the separate authority of the several States**—to interpret federal law.

Williams v. Taylor, 529 U.S. 362, 378-79 (2000) (emphasis added).

Patterson has consistently argued at each stage of this case—from the first administrative hearing before the state Medicaid agency through his Petition for a Writ of Certiorari to this Court—that this case presents a question of federal law. Specifically, Patterson has unfailingly maintained that the state agency violated federal law when it included the garnished income he does not receive in determining how much he must pay the nursing home. While Patterson submitted that the Indiana Court of Appeals should not have deferred to the state Medicaid agency, because the

federal regulation is unambiguous, that is half of his position. The heart of his argument, upon which this entire case balances, is that the Indiana Court of Appeals made the wrong decision: it should not have included garnished income in Patterson’s “total income received,” a term extracted directly from 42 C.F.R. § 435.725. This is a question of federal law, which this Court can and should decide.

FSSA next, and again incorrectly, claims that Patterson did not preserve this federal question and did not state when he raised the federal question. Opp. Br. p.17-18. To the contrary, Patterson’s Statement of the Case explicitly itemizes each time he presented the federal question, which occurred at every stage of this case:

- At the administrative hearing (the first step to challenge FSSA’s liability calculation), Patterson argued that the state agency’s decision to base his liability on his gross, rather than his net income, violated 42 U.S.C. § 1396a(a)(17). Pet. p.8.
- At the trial court level, he asserted that the state agency’s position violated 42 U.S.C. § 1396a(a)(17) and 42 C.F.R. § 435.725. *Id.* The trial court agreed.
- Next, the Indiana Court of Appeals based its decision on its interpretation of 42 C.F.R. § 435.725. *Id.*, p.8-9.
- Finally, his Petition to Transfer to the Indiana Supreme Court challenged the

Indiana Court of Appeals' interpretation of that regulation. *Id.*, p.9.

Contrary to FSSA's claim at p.18 of its Brief in Opposition that he did not comply with Sup. Ct. R. 14.1(g)(i), Patterson stated in his Petition when the federal questions were raised, how they were raised, and how they were decided. And again here, Patterson argues in his Petition that the Indiana Court of Appeals erred in interpreting 42 C.F.R. § 435.725 when it failed to apply language that was not genuinely ambiguous. This Court need look no further than Patterson's two Questions Presented, each of which presents an issue of federal law. Pet. p.i. This case unambiguously presents a question of federal law subject to review by this Court.

II. The South Dakota Supreme Court based its decision on federal law, creating a conflict with another state court of last resort.

The Indiana Court of Appeals' decision at issue here conflicts with the decision of the South Dakota Supreme Court in *Mulder v. S.D. Dep't of Soc. Servs.*, 675 N.W.2d 212 (S.D. 2004). Pet., Section I. FSSA counters that no conflict exists because *Mulder* was decided on state law grounds, not on federal law. Opp. Br. Section I.A. A close reading of *Mulder* establishes otherwise. Although the South Dakota Supreme Court referenced the state's regulations and statutes, it based its decision on federal law.

Mulder repeatedly referred to and analyzed the federal statute. The Court began by citing language in

42 U.S.C. § 1396a(a)(17) that a state Medicaid plan must “include reasonable standards . . . for determining . . . the extent of medical assistance under the plan which . . . provide for taking into account only such income and resources as are . . . available to the applicant or recipient” and that the state must “provide for reasonable evaluation of any such income or resources.” *Id.* at 215. *Mulder* then explained that neither the South Dakota state statutes nor the South Dakota Medicaid agency’s regulations define “available income.” *Id.* *Mulder* again cited the language in 42 U.S.C. § 1396a(a)(17) that state plans only consider “available income” and that the state must provide for “reasonable evaluation of any such income.” *Id.* at 217. *Mulder* then ruled that the \$180 that *Mulder* paid in alimony was not “available” to him under federal law and that the South Dakota Medicaid agency’s interpretation of federal law did not provide a “reasonable evaluation of *Mulder*’s available income.” *Id.* at 217-18. In its concluding paragraph, *Mulder* declared the State incorrectly interpreted the federal statute: “the Department falls short of the statutory mandate that it ‘provide for reasonable evaluation of [Mulder’s] income.’ 42 U.S.C. § 1396a(a)(17)(C).” *Id.* at 218. And the dissent recognized that the majority based its decision on the federal statute and likewise focused on 42 U.S.C. § 1396a(a)(17).

Mulder analyzed and based its ruling on federal law. It reached the opposite conclusion from the Indiana Court of Appeals, creating a conflict with another state court of last resort.

III. This is an important issue for this Court to decide.

Medicaid's purpose is to provide medical assistance to needy persons. 42 U.S.C. § 1396-1 (2019). Patterson's Petition presents an important issue because basing a resident's liability on gross income, not the income received, results in Patterson and other needy residents like him being unable to pay their monthly nursing home (i.e., medical) bills. They face involuntary discharge and the possibility that no nursing home will accept them for admission, leaving them without the medical care they need. Alternatively, if the nursing home does not discharge the resident, it suffers a financial loss, which detracts from medical care of the needy. Indiana's interpretation of the applicable laws is inconsistent with Medicaid's purpose.

FSSA does not contest this argument, but instead claims that Patterson's position would require the Medicaid program to subsidize his child support payments and the unpaid debts of other residents. But FSSA's argument does not further Medicaid's stated purpose. In response to Patterson's reference to other debts, such as student loan debts, FSSA claims that applying the plain language of the regulation would discourage people from paying their debts. Opp. Br. p.12. But FSSA does not support this bare assertion with any evidence that a debtor would not pay a debt based on the remote possibility that debtor might at some unknown time in the future be in a nursing home, receiving Medicaid, and subject to garnishment. *Id.* In any event, Patterson is not asking the state

agency to pay his child support payments; his child support is being paid from his income. He is asking Medicaid to pay the costs of his medical care. The state agency is not subsidizing Patterson; it withheld funds from the nursing home that Patterson had no ability to pay.

That there are only a few cases addressing income garnished from nursing home recipients, and no decisions other than this case addressing 42 C.F.R. § 435.725, is not evidence of the number of people subject to this rule. To the contrary, because this issue involves needy individuals, who do not have the resources to pay attorneys, logic dictates there should be very few decisions on the subject. Notably, FSSA does not contest the statistics Patterson cited in Section II.B. of his Petition. This is an important issue due to the harsh consequences on those affected and due to the undisputedly large number of people who could be affected.

Finally, FSSA asserts in the concluding paragraph to its Section I that the political branches and the States should weigh the policies at stake. Opp. Br. p.12. But that has already been done. In 42 U.S.C. § 1396a(a)(17)(B), the United States Congress legislated that a state's Medicaid plan is to only consider income that is available "as determined in accordance with standards prescribed by the Secretary [of the Department of Health and Human Services]." The Secretary determined that only "income received" should be considered when determining a nursing home resident's liability. 42 C.F.R. § 435.725(e). The Indiana state Medicaid agency refused to follow this requirement of

federal law, and the Indiana Court of Appeals failed to require that the plain language of this regulation be followed.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision below.

Respectfully submitted,

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