

19-5935

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Rachel C. Brown, and All Others Similarly
Situated
(Your Name) — PETITIONER

vs.

MI Civil Service Commission RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



MI Supreme Court - 30th Judicial Circuit Court (MI)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

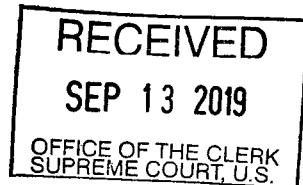
PETITION FOR WRIT OF CERTIORARI

Rachel C. Brown
(Your Name)

533 W. Hodge Ave.
(Address)

Lansing, MI 48910
(City, State, Zip Code)

517-899-3424
(Phone Number)



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QUESTION(S) PRESENTED

- 1)** Is Petitioner, and All Others Similarly Situated, entitled to a hearing and due process in long-term disability (LTD) appeals? Subsidiary Questions: Is there a protected property interest in continued receipt of LTD benefits? Is a hearing required in LTD appeals?
- 2)** Do the Michigan Civil Service Commission's (MCSC's) procedures in denial, discontinuation, and appeals of LTD benefits comport with state and federal due process requirements?
- 3)** Was Petitioner afforded due process in this case?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

U.S. Const. amend. V.
U.S. Const. amend. XIV.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ~~D & E~~ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

1.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 6/12/2019. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) US Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2) US Const. amend. XIV.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Introduction

Petitioner, Rachel C. Brown, a previous employee of the State of Michigan, is currently ill and has been substantially disabled from gainful employment since December 1, 2014. The Michigan Civil Service Commission (MCSC) originally approved Brown's long-term disability (LTD) benefits as of the date of disability and officially issued its decision on February 25, 2015, approving benefits through February 28, 2015. (CCSR 000093). MCSC extended benefits for one month to accommodate an independent medical evaluation (IME), then terminated Brown's LTD benefits based on the IME retroactively on April 22, 2015, effective April 1, 2015, without provision of a hearing. Extensive and mandatory internal MCSC appeals procedures ensued and were exhausted for over 20 months leading up to final administrative decision by the MCSC on December 12, 2016. Brown then was able to and sought judicial review in the 30th Judicial Circuit Court of Ingham County, Michigan. The 30th Judicial Circuit Court determined that MCSC did provide ample due process to Petitioner despite the lack of analysis of administrative procedures employed, provision of a hearing or hearing-like procedure at any point therein, and excused prejudicial procedural failures by the MCSC in appellate procedures. The 30th Circuit Court decisions in how principles have been applied are in direct conflict with US Supreme Court precedent and are thus in error.

MCSC Administrative Appeal Process

A. Initial Discontinuation/Denial

On April 22, 2015, MCSC sent official correspondence to Petitioner of discontinuation of approved LTD benefits effective April 1, 2015. (Certified Civil Service Record (CCSR),

CCSR is the Certified Civil Service Record on which the appeal to the 30th Circuit Court was conducted.

000079). This notice cited: "Not totally disabled per the Independent Medical Evaluation [IME] with Dr Miller. Your benefits were paid through March 31, 2015."

B. Level 1 Appeal

Prior to and following the initial discontinuation decision (per contact on 4/3/2015, CCSR 000139), Petitioner submitted an appeal letter and separate complaint letter per the instructions of the third-party administrator. (CCSR 000075-000078). These letters detailed request for reconsideration of the LTD benefits denial as well as administrative investigation of the IME with second opinion. Petitioner was not provided access to the adversary information on which the decision was based with which to respond/appeal in a meaningful way. On June 9, 2015, Petitioner's first level appeal was denied by MCSC through its TPA. (CCSR 000072).

C. Level 2 Appeal

Petitioner was late filing the level two appeal (CCSR 000057-000068) with special extenuating circumstances as permitted by MCSC rules and regulations. A separate letter did not accompany this appeal and no deficiency notice was sent by MCSC as required by its own rules. The appeal was denied solely based on its timeliness. (CCSR 000052).

D. Level 3 Appeal

Petitioner again appealed and was denied due to timeliness of the level two appeal. The denial noted that even if it were timely, there was an absence of treatment records or medical evidence that would contradict the IME findings. (CCSR 000013-14). The file contained nothing but findings contradictory to the IME report.

E. Level 4 Appeal

Petitioner sent a thorough appeal refuting the information within the denials. (CCSR 000003-000012). MCSC again denied. (CCSR Tab 7).

F. Level 5 Appeal

Petitioner proceeded with the fifth and final level of MCSC appellate process. (CCSR Tab 6). Recommendation was made to deny leave to appeal which the MCSC adopted in its final order denying LTD benefits on December 12, 2016. (CCSR Tabs 2-4). No hearing of any kind was afforded at any level of the extensive administrative appellate process.

MI Courts Appeals Process

30th Judicial Circuit Court Decisions

In its first final order issued on August 3, 2017, the 30th Judicial Circuit Court acknowledged that there was no case that answers the question of whether due process requires an evidentiary hearing before a state employee's LTD benefits can be discontinued. (Order, 3). It went on to apply the three-factor analysis from *Mathews v Eldridge* and determined that due process does not require a hearing to terminate LTD benefits. (~~Order, 4~~^(Appendix E, 360)). Therefore, the Court limited its review to the "authorized by law" standard and ruled in favor of MCSC. This represents a misapplication of principles from *Mathews* as that case contained, among other things missing in this case, thorough examination of Social Security Administration (SSA) procedures, prospective discontinuation of benefits, and the provision of a hearing, albeit after the termination occurred. In *Mathews*, all these elements were examined to find that due process was provided. Here, there was a failure to do so causing substantial, material, and prejudicial bias to Petitioner. The 30th Circuit cited the case but failed to apply the legal principles within appropriately to the case at hand.

Petitioner next filed a motion for reconsideration. The Court's second final ruling was issued on August 31, 2017. This order states, "the administrative decision to discontinue Appellant's LTD benefits need only reflect an "adequate determining principle.""^(Order, 2) ^(Appendix E, 37). This statement cited a similar case, *Wescott v Civil Serv Comm'n*, in which that circuit court actually raised due process concerns specifically related to the MCSC's failure to provide a hearing. The 30th Circuit Court also stated, "Appellant received adequate due process in this matter. Appellant was afforded the opportunity to substantiate her medical condition and inability to perform her job duties by submitting documentary evidence in the first three levels of ^(Appendix D, 28) appeal."^(Order, 3) This satisfied the Court that Petitioner was afforded a meaningful opportunity to be heard, as it cited *York v Civil Serv Comm'n*. The *York* decision is inapplicable to this case.

MI Higher Court Decisions

Following the final decisions of the 30th Circuit, both the MI Court of Appeals and Supreme Court denied discretionary review.

Conclusion

Petitioner, Rachel C. Brown, was denied continued receipt of her long-term disability (LTD) benefits retroactively and without provision of a hearing or hearing-like opportunity to be heard at any stage of the extensive LTD appeal process mandated by the MI Civil Service Commission (MCSC). These benefits were insurance benefits, for which Petitioner paid significant premiums, and which represented the financial means with which to live during her covered period of loss. Due process was not afforded by the MCSC which is a quasi-judicial governmental body lacking effective oversight in the state of MI. All past, present, and future

state employees remain at risk for the abuse of power flaunted by the MCSC with the assistance of the state's Office of Attorney General. A court order is required to elicit MCSC's compliance with constitutional due process provisions.

Following the extensive mandatory administrative appeal process within the MCSC, (five levels of review spanning nearly two years), appeal continued to the 30th Judicial Circuit Court in Ingham County, MI. Two orders were issued by this Court deciding the merits of the case. These decisions failed to apply the *Mathews* decision in a fair manner. In addition to many other errors, the Court found that adequate due process was provided despite the lack of a hearing of any kind at any stage; the basis was that MCSC has a five level review process whereby an Appellate is allowed to submit written documentary evidence during the first three levels. MCSC does not provide advance notice, or access to adversary evidence or the claimant's file, without specific procedures not communicated at any point to the employee. Michigan's higher courts have not specifically ruled to date on whether there is a protected property interest in a state employee's LTD benefits, nor whether a hearing is required in LTD appeals. Despite the constitutional question raised and its significance to the jurisprudence of our state and nation, the MI Court of Appeals and Supreme Court denied discretionary review. Appeal to the US Supreme Court represents Petitioner's last hope to obtain justice for herself in this matter and all others similarly situated.

REASONS FOR GRANTING THE PETITION

Introduction

Pursuant to Rule 10(c), a state court (the MI 30th Circuit) has decided on an important question in a way that conflicts with relevant decisions of this Court; the question here is on the constitutional right to due process and the adequacy of administrative procedures in state of Michigan LTD appeals. Additionally, the MI court has decided an important question of federal law that has not been, but should be, decided by this Court. Available similar decisions involve federal Social Security disability cases, cases involving private insurers subject to ERISA legislation, and public welfare benefits cases, but none involving a state which is a public/governmental disability insurer and benefits administrator, where conflict of interest and bias is evident.

Procedural due process imposes constraints on government decisions which deprive individuals of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. First and foremost, “the interest of an individual in continued receipt of these “[LTD] benefits is a statutorily created “property” interest protected by the Fifth Amendment.” (*Cf. Arnett v. Kennedy*, 416 U. S. 134, 416 U. S. 166, (1974); *Board of Regents v. Roth* 408 U. S. 564, 408 U. S. 576-578 (1972); *Bell v. Burson*, 402 U. S. at 402 U. S. 539; *Goldberg v. Kelly*, 397 U.S. at 397 U.S. 261-262.) MCSC stated it best to the 30th Circuit Court: “while Michigan courts have not directly determined whether the Commission’s LTD appeal procedures comport with due process, the Court of Appeals has stated that the technical complaint process, which does not offer a hearing to employees challenging their classification, does satisfy due process.” (Late Amended Brief of Appellee Civil Service Commission, 22). It is notable that this reference did not even involve a protected

property interest and the Court found it unnecessary to determine whether due process even attached to a classification determination, which varies greatly in constitutional weight and MCSC procedures from that of LTD benefits appeals involved in this case.

MCSC's entire defense on the constitutional question relied on cases that are inapplicable in the context provided and quotes from within taken grossly out of context. This late submission and the arguments therein were accepted by the 30th Circuit Court despite objection from Appellant.

The *Mathews* decision weighed heavily in the state court which seemingly applied the three-factor analysis set out. However, the court erred in its application to this case. The decision reflects the court's acceptance of MCSC's assertion, (in its late Brief and Amended Brief of Appellee Civil Service Commission), that its LTD appeal procedures comport with due process despite the lack of documentation or analysis thereof, and particularly not in relation to this case. In fact, procedural error was acknowledged and forgiven by the court when the MCSC failed to provide a required deficiency notice dealing with the primary prejudicing issue of the timeliness (*Appendix E, 38*). of the second appeal. (~~Order, 10~~). This decision is even in conflict with the MCSC defense which states, “[the Commission’s decision] was not an analysis of the merits of Brown’s underlying claim of eligibility for LTD benefits. It was not an analysis of the validity of Brown’s independent medical examination, or the sufficiency of her medical records, or the substance of her attending provider’s diagnoses... None of those underlying decisions reviewed the merits of her claim.” (Late Amended Brief of Appellee Civil Service Commission, 17). Here, MCSC concedes that no de novo review occurred at any point. In its pleadings, MCSC also acknowledges that no hearing or hearing-like proceeding was provided to Appellant at any stage of extensive internal review.

Elements in *Mathews* Not Present

Several considerations derived directly from the pleadings and SSA policy were considered in *Mathews*. Though cited by both MCSC and the 30th Circuit Court, elements weighed in *Mathews* are absent in this case and the resultant decisions pertinent to due process. In *Mathews*, the US Supreme Court states, “We turn first to a description of the procedures for the termination of Social Security disability benefits, and thereafter consider the factors bearing upon the constitutional adequacy of these procedures.”

A. “Team”

In Social Security disability cases (ie. *Mathews*), a “team” consisting of a physician and non-medical person trained in disability evaluation is involved. The disabled worker is sent a detailed questionnaire by mail or telephone regarding information about current medical condition, restrictions, sources of treatment, and any additional information relevant to the case. In fact, *Mathews* cites an SSA procedural safeguard of policy that allows the worker/representative full access to all information *prior* to cutoff of financial benefits.

MCSC contracts a third-party administrator to handle the initial approval and first two appeal levels (as of the time of Petitioner’s case). Here, there is no evidence of this “team” factor or questionnaire soliciting input directly from Petitioner in this case. (CCSR Tab 34). In fact, the disabling diagnosis here is Major Depressive Disorder, recurrent, severe and the initial contact was “intestinal complications” as noted on initial contact of December 2, 2014. (CCSR, 000130). No information regarding co-morbidities was ever solicited by MCSC. It is notable that Petitioner has finally received an explanatory diagnosis for her prolonged disability (9/6/2019) of

significant mold toxicosis (three mycotoxins) affecting liver, kidneys, digestive, immune, respiratory, and neurological systems causing diffuse and chronic pain consistent with fibromyalgia above and below the waist, on both sides of the body, confusion, inability to concentrate/focus, loss of balance, discoordination, memory loss (short and long term), symptoms consistent with autoimmune disorder/disease, stunted detoxification pathway function, inflammatory bowel syndrome or disease, and related exacerbation of mental health conditions (e.g. depression, MDD, anxiety, PTSD), among other elements. LTD was initially approved on the diagnosis of major depressive disorder awaiting known pending results of consultations with gastroenterology, neurology, and rheumatology. No follow up documentation of status was ever requested from Petitioner or the medical specialists disclosed and involved in direct care of these known comorbidities. Furthermore, no access to adversary information on which the discontinuation was based on was offered or provided by policy with which to appeal at the first level in a meaningful manner. Discontinuation of LTD benefits was detrimental to Petitioner's single parent household and personal financial status; this cannot be recompensed with full retroactive payment of benefits, nor could the situation have ever afforded Appellant the means to secure legal representation in this matter.

B. Conflicting Information/Independent Medical Review

Per *Mathews*, in SS disability cases, only when there is conflicting information from that which is solicited from the claimant and his/her sources of medical treatment may the SSA arrange for an independent medical evaluation (IME). When the result of this IME indicates the claimant is no longer disabled, the worker is notified in writing of a tentative decision to terminate benefits prospectively, provided a summary of evidence upon which the proposed

decision is based, afforded an opportunity to review medical reports and evidence in the case file, and an opportunity to respond in writing and submit additional evidence.

Here, there was no conflict of information. The only information solicited by MCSC was its Attending Provider Statement from the disabling provider, Melinda Simon, Psy-D, (and one from an ineligible family practice physician, unable to provide acceptable disabling information per MCSC LTD policy). No formal information was solicited by Petitioner at any stage prior to the initial and concurrent approval/“discontinuation” of LTD benefits on 2/25/2015 to 2/28/2015. (CCSR 000093).

Although Petitioner was afforded three days from issuance (not delivery from the postal service), to submit additional documentation, which was moot given the delay in procedural nuances, to submit “updated” information for continued disability, a subsequent letter approved LTD through March 31, 2015 with the MCSC scheduling of an IME. This IME is noted internally as planned with the initial approval on February 25, 2015 without any conflict of information, or input from known multidisciplinary providers. (CCSR 000135).

Furthermore, MCSC’s required Attending Provider Statement (APS) solicits significantly different information from that solicited from the IME provider. (000095-97 & 000086-87 respectively).

C. State Agency to SSA

In *Mathews*, the state agency’s determination to discontinue disability benefits is reviewed by an SSA officer by policy. When accepted, the worker is notified in writing, including the reasons for the decision and his/her right to de novo review by the state agency;

benefits are terminated two months after the month in which medical recovery is found to have occurred.

Here, benefits were approved and discontinued by a MCSC third-party administrator, with “supervisor review”, in the same notification to Petitioner. Subsequent extension was merely procedural in that three days was insufficient to schedule, conduct, and deny based on an IME which was not indicated. The IME was scheduled by MCSC five days prior to its updated preemptive denial of March 31, 2015. Updated documentation from the disabling provider was faxed to the IME provider and the third-party administrator on March 26 and 27, 2015, prior to preemptive discontinuation/denial; the additional diagnosis of PTSD was included with an anticipated six-month disability extension.

Petitioner was then notified via telephone of the pending retroactive discontinuation/denial of her LTD benefits, at which time she communicated her concerns about the IME, which were extensive. (CCSR 000139). The agent who denied the benefits then empathized with Petitioner, acknowledged the incompatibility of the IME verbal recommendation for inpatient alcohol treatment and concurrent return to work, verbalized the deviation from norm with a 15-20 minute evaluation, eluded to the positive probability of a second opinion IME, and instructed Petitioner to file a separate appeal letter and IME complaint letter as soon as possible. Petitioner did as instructed and faxed these documents originally on April 4, 2015 (officially received after re-faxing on April 27, 2015). Neither the results of the IME nor any other documentation in the file were offered or provided as means for Petitioner to effectively and meaningfully meet her case and dispute the evidence against her. Official discontinuation notification was issued on April 22, 2015 citing “Not totally disabled per the Independent Medical Evaluation with Dr Miller.” (CCSR 000079). Petitioner’s right to de novo

review was not provided, and benefits did not continue for any period of time from the decision, but were instead discontinued retroactively despite comparable documentation (with added diagnoses) from the original disabling provider on which benefits were initially approved. No opportunity was provided to review and respond to the evidence against her. Rather, multiple requests and and “official written submission” was required leading to gross delay in obtaining adequate documentation to voice the second appeal.

D. SSA Evidentiary Hearing

The SSA recipient has a right to an evidentiary hearing before an SSA administrative law judge following adverse action by the state agency. Here, no hearing or hearing-like procedure is ever afforded an MCSC LTD appellant. In fact, the fifth and final mandatory administrative appeal level, prior to obtaining the right to judicial review, is in the form of leave to appeal (and therefore not appealable by right according to accepted judicial process). Petitioner, though grounds were presented and acceptable, was denied the final level of appeal despite unanswered, inappropriately presented grounds and points of contention presented by the same MCSC officer who denied at the previous (Level Four) appeal.

E. Discretionary Review

Per *Mathews*, if the SSA evidentiary hearing result is adverse, the worker is entitled to request discretionary review by the SSA Appeals Counsel, and may afterward seek judicial review. Here, discretionary review was declined by the MCSC without provision of a hearing of any kind at any stage of the “elaborate” administrative procedures it claims to have, which issued the first final decision allowing Petitioner to pursue judicial review after over 20 months of

mandatory, internal MCSC review, and deprivation of documented and substantiated disability benefits representing the financial means with which to live.

Conclusion

The MCSC show a relentless history of capitalizing on the vulnerability in the population seeking and/or receiving LTD benefits. Those medically unable to work and deprived of income replacement benefits representing means to live are inherently disadvantaged in terms of meeting foreign submission requirements and deadlines as well as in affording legal assistance to navigate the rigorous requirements of the judicial process. The MCSC also historically capitalizes on deficiencies in MI law and higher court rulings. In fact, the MCSC asserts exemption from the dictates of the MI Administrative Procedures Act (APA). (Late Amended Brief of Appellee Civil Service Commission, 9).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JCS". It is written in a cursive, flowing style with a horizontal line underneath it.

Date: 9/10/2019