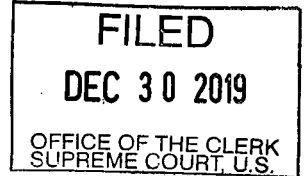


19-7296

ORIGINAL

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543



Docket No: _____

IN RE GILBERT M. MARTINEZ,
Petitioner

On Petition for a Writ of Mandamus and Prohibition To The Social Security
Administration, The Department of Human Services and The Tax Claims Bureau

**PETITION FOR WRIT OF
MANDAMUS AND PROHIBITION**

Pro Se
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Reading PA 19606
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QUESTIONS PRESENTED

Did the Social Security Administration abuse its discretion holding that plaintiff is ineligible for Social Security disability benefits after claimant provided sufficient evidence proving that he is disabled with Rheumatoid Arthritis and Gerd ?

Suggested Answer: Yes

Did the Department of Human Services abuse its discretion by arbitrarily denying petitioner interim cash assistance pending Social Security disability review?

Suggested Answer: Yes

Did The Commonwealth Court make a clear error of law holding that Article VIII Section II (b)(ii) of the Pennsylvania Constitution does not provide residents with property tax exemption that have a disability and or are economically burdened by poverty ?

Suggested Answer: Yes

Did the Common Wealth Court abuse its discretion by not finding that the trial court judge failed to Test the sufficiency of the cause for action for defendants motion of a demurrer which is confined to whether the complaint as alleged fails to state a cause of action?

Suggested Answer: Yes

Did the Berks County Pleas court abuse its discretion by denying plaintiffs motion to recuse where plaintiff averred a clear violation of his due process right which deprived plaintiff of being heard on the merits of the case?

Suggested Answer: Yes

Did the Eastern district court judge abuse his discretion by not affording petitioner a evidentiary hearing seeking an Order to show cause for property tax exemption before dismissing Plaintiffs lawsuit with prejudice?

Suggested Answer: Yes

Did the district court judge in a abuse of his discretion commit a clear error of law holding that res judicata bars petitioners property tax clams in federal court whereas I was deprived of being heard on the merits in the state courts and such State remedy was therefore not plain, speedy and efficient ?

Suggested Answer : Yes

CERTIFICATE OF INTEREST FOR GILBERT M. MARTINEZ

Pursuant to Federal Circuit Rule 47.4(a) and Federal Rule of Appellate Procedure 26.1, Petitioner Gilbert Martinez certifies the following identification of corporate parents, subsidiaries and affiliates: NONE

The names of all law firms and defendants that have an interest in these cases but have not yet appeared are listed below:

Tax Claims Bureau
Deasey, Mahoney & Valentini LTD.
Christopher C. Negrete
103 Chesley drive. Suite 101
Media , PA 19063

Department of Human Service
Office of General Counsel
West Health & Welfare Bldg.
P.O. Box 2675 3rd fl.
Harrisburg, PA 17120

United States Attorney
Social Security Administration
Region II
P.O. Box 4177
Philadelphia, PA 19101
(215)597-1838

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STATEMENT OF RELATED CASES

Petitioner was granted IFP status to all of the following cases listed.

In the Berks county pleas court on 4/10/2018 I filed a civil action (case no. 18-3619) dismissed on 11/1/2018 against The tax claims bureau, Director Stacy Phile, Treasurer Denis Adams and the Berks County Assesment Office. On appeal to the Commonwealth Court the trial courts decision was affirmed on August 13 2019 under (docket no.1615 cd 2018). A petiton for writ of Mandamus was taken

to the Third Circuit court for relief and denied under (dkt. No 19-3086). A petition for Mandamus was denied in the PA Supreme court under (dkt. no. 102 MM2019). In the Pennsylvania Supreme Court I filed a petition for allowance of an appeal is pending under (dkt # 493 MT 2019). In the U.S. eastern district court of Pennsylvania I filed civil action against the Tax Claims Bureau and the department of Human Services under (docket no. 19-cv-4087) dismissed on September 17, 2019 on Appeal under docket no. 19-3258. In the Commonwealth court under docket no. 1563 CD 2019 I filed my petition for the The Department of Human services from a final order Docket No. 060423074-006) which was dismissed on December 14, 2019.

On or about April 19, 2014 I filed civil action in the Eastern district court of Pennsylvania against Carolyn W. Colvin acting Commissioner of Social Security Administration, Docketed under case no. 14-1860. My appeal to the Third Circuit was docketed under case no. 16-1956 and was denied on 10/26/2016. On or about 8/14 /2019 I filed civil action in relation to my Social Security claims under docket no.19-cv-3708 in the Eastern district court of Pennsylvania which is pending. On November 1, 2019 a hearing was held by ALJ Paul Parker which was denied on November 13,2019. The Publishing for these cases is unknown.

STATEMENT OF JURISDICTION

The Supreme Court for the United States has jurisdiction to issue a writ of mandamus and Prohibition pursuant to 28 USC 1361. This writ will be in Aide of its appellate court jurisdiction because of the state cases which present exceptional circumstances of fraud that are of public interest, and the relief as shown could not be obtained from any other court or government agency.

RELIEF SOUGHT

1. Petitioner Gilbert M. Martinez respectfully requests that the Court grant this emergency petition for a writ of mandamus to The Department of Human Services directing them to comply with Sections 442.1 of the Public welfare Code which entitles plaintiff to interim cash assistance pending SSI Review.
2. Petitioner respectfully requests this court direct The Property Tax Claims Bureau to comply with Article VIII Section II (b) (ii) of the Pennsylvania

Constitution exempting me from property taxes because of my economic hardship and disability and a refund for property taxes.

3. Petitioner respectfully requests this court direct The Social Security Administration to comply with Section. 1614(a)(3)(A) of the Social Security Act awarding petitioner benefits retroactive from August 31,2011.

FACTS NECESSARY TO UNDERSTAND PETITION

Gilbert M. Martinez proceeding prose in the matter, files this Petition For Writ of Mandamus, and prohibition pursuant 28 U.S.C. § 1361. For The Social Security Administration in order to compel compliance with Section. 1614(a)(3)(A) of the Social Security Act. For the Department of Human Services to compel compliance with section 442.1 of the Public welfare code, and for The Tax Claims Bureau to compel compliance with Article VIII Section II (b)(ii) of the Pennsylvania constitution, and in support thereof, avers as follows:

A. PETITIONER HAS A CLEAR RIGHT TO BE AWARDED SOCIAL SECURITY BENEFITS

1. The First issue to the United States Supreme Court is whether plaintiff is disabled under section 1614(a)(3)(A) of the Social Security Act.

Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

2. Disability Evaluation under Social Security Section 14.00 clearly denotes the function of the administration is to evaluate immune systems disorders that cause dysfunction in one or more components of the immune system.

3. Rheumatoid Arthritis is a immune deficiency disorder enumerated by the Social Security administration qualifying applicants to receive SSI benefits, which is characterized by recurrent or unusual in infections that respond poorly to treatment.(See Section. 14.09 inflammatory arthritis).

4. Appropriate acceptable medical evidence needed to show that claimant has an immune system disorder is medical history, reports of physical examination, laboratory test, x-ray imaging ,Cat scan or magnetic resonance imaging(MRI), with or without contrast material, myelography,and radionuclear bone scans. “Appropriate “ means that the technique used is the proper one to support the evaluation and diagnosis of the impairment.

5. The appended medical evidence in support of this petition for Writ of Mandamus will show that Petitioners Laboratory blood results indicate a Rheumatoid factor to be 71 units high, the normal level is under 23 units. Subsequently, Dr. Robert Rudin while employed at the Berks Community Health Center noted in petitioners medical records that repeat Lab results were positive for CCP test with a very High Level which is rather specific for Rheumatoid Arthritis which satisfies the criteria for classification of a immune disorder. The medical evidence will further show MRI & X-rays which both indicate bone

narrowing and multilevel chronic discogenic and degenerative joint disease, "severe arthritis".

6. A combination of Medical disorders included are Gerd (See. Section. 5.00 Digestive Systems Disability Evaluation under Social Security). The medical evidence shows claimant to have a history of treatment for disorder in the digestive system which is classified as gastrointestinal hemorrhage, and include **inflammatory** bowel disease.

7. Doctor Etkins Medical disability report diagnosing claimant with Rheumatoid Arthritis and Gerd corroborates the attached medical records which renders claimant disabled. Moreover, doctor Alexandria Eckart having reviewed claimants medical records and conducted a physical examination concluded that claimant is unable to maintain employment.

8. The Pennsylvania courts have determined unambiguously that if a claimant can prove with evidence that they have a disability classified under the Social Security act they are **statutorily disabled** entitling him or her to Social Security disability benefits . See 'Castile v. Astrue, 2011 WL 4102539, at *9 (W.D. Pa. Sept. 14, 2011) (quoting Ambrosini v.Astrue, 727 F. Supp. 2d 414, 432 (W.D. Pa. 2010) an immediate award of benefits is justifiable since claimant is deemed to be statutorily disabled.

9. According to the five-step sequential evaluation, if a claimant meets a listings criteria, the evaluation ends at step three because the claimant is considered to be

per se disabled and benefits are awarded. See Santise v. Schweiker, 676 F.2d 925, 927 (3d Cir. 1992).

10. If a claimant's condition meets or equals an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1, that impairment is presumed disabling. See 20 C.F.R. § 404.1520(a)(4)(iii).

11. The procedural history to my Social Security Hearings, and determinations that are relevant to my claims were taken in bad faith based upon fraudulent misrepresentation of the evidence, facts and use of intrinsic fraud to hinder my right to sue in court which stems as far back as August of 2011 continuing until present whereas on November 13, 2019 ALJ Paul D. Parker Jr. Entered a final order denying my Social Security disability claims.

12. In chronological order plaintiff originally filed the first application for disability review on August 31, 2011 and was denied on January 5, 2012 by the Social Security Administration. On March 2, 2012 plaintiff filed a request for hearing with the Reading Social Security Administration. On or about May 2012 plaintiff applied for per diem need to expedite a hearing and was denied. ALJ Jack Penca held hearing on July 22, 2013 and denied my claims on August 15, 2013.

13. During the hearing I was deprived of the right to cross examine the states witness (Dr. Brian Richard) which was not a treating physician and did not conduct a physical examination on me prior to the hearing. ALJ Penca fraudulently concluded that he gave me plenty opportunity during the hearing to cross-examine doctor Richard and I declined his offers.

14. This is preposterous because Dr. Richard under oath blatantly lied about my conditions undermining the medical evidence. Consequently, when I began to cross examine Dr. Richard Alj Jack Penca purposely interrupted me and stated he wanted to get the vocational experts testimony in first and would give me a opportunity to cross-examine Dr. Richard at the end of the hearing. At the end of the hearing when I asked about him about the time he was required by law to afford me for my cross examination he concluded the hearing saying were out time. The transcripts thereof were edited making it appear as if this actually played out the way Alj Jack Penca explained it happened in his opinion.

15. The Appeals Council thereof denied my request for review, and I, proceeded by filing a Social Security civil action on or about April 19, 2014 in the Eastern district court of Pennsylvania against Carolyn W. Colvin Acting Commissioner of Social Security Administration, Docketed under case no. 14-1860.

16. On December 3, 2015, ALJ Jacob P. Hart recommended affirming the Commissioner's final decision. On December 22, 2015, Judge Knoll Gardner on his own motion recused himself from the case, and judge Paul S. Diamond was reassigned on December 24, 2015.

17. On March 16, 2016 Judge Paul S. Diamond arbitrarily dismissed and closed the case refusing to consider the Medical evidence I submitted to the district court. My appeal to the Third Circuit was docketed under case no. 16-1956.

18. The Third Circuit court judges VANASKIE, SCIRICA and FUENTES thereof denied my appeal in bad faith entering a non Precedential decision on 10/26/2016

which stated, "The evidence that Martinez says that the ALJ should have considered was not part of the administrative record. Martinez attached two documents to his brief before the District Court that purport to show a diagnosis of Rheumatoid arthritis from two of his treating physicians. Martinez did not present those documents as part of his case before the ALJ, even though the ALJ invited Martinez to provide additional documentation following the hearing. Consequently, we may not consider that documentation in our evaluation of whether substantial evidence supported the ALJ's decision." Merriam-webster's dictionary of law defines Non Precedential as not having affect in this jurisdiction.

19. The Third Circuit Court judges fraudulently determined that the medical exhibits I submitted to the district court post-dated the ALJ's decision, and stated Martinez does not explain why he did not provide it earlier. Consequently, Martinez could not have satisfied the materiality and good-cause requirements to justify a remand to the ALJ to consider that new evidence.

20. The fraud which the Circuit courts imposed on me here is quite the sham and a complete muck of the judicial system as the Alj's hearing took place on July 22, 2013 and my disability report was not written by Dr.Eckart until October 4 2013, months after the hearing which does not post date the ALJ'S decision as disingenuously applied by them. Furthermore, I made it a point to stress these facts in my appeal which was fraudulently disregarded by the circuit judges that lied in order to keep me financially suppressed.

21. On or about March 2017 I filed a new disability application to the Social Security Administration for the same exact claims of Rheumatoid Arthritis and Gerd. There was a delay in the refiling of my application because I was told by the Social Security Administration I had to wait at least 60 days to refile. On 7/10/2017 the Social Security Administration denied my claims.

22. On November 1 2019 ALJ Paul D. Parker jr. held hearing and fraudulently denied my SSI claims on November 1, 2019. In his prejudicial decision he undermined my testimony and my objections of the Administrations evidence that were put into the record in bad faith whereas they purposely sought out medical records from doctors that have deliberately denied me medical care and falsified my doctors reports.

23. For example, in his decision he stated that the basis for my overarching objections were that the exhibits were inconsistent with my testimony and therefore do not accurately portray my medical conditions.

24. This is a canard as he deliberately waters down my objections which stressed that the medical records submitted by the Administration were taken in bad faith by them and doctors acting in concert with the federal government falsifying my doctors reports. That these were doctors which refused to review my medical records to diagnose my conditions and have maliciously denied me medications.

25. Moreover, he deliberately disregarded that the bad faith intentions I pointed out to him that can easily be seen by the fact that these were the only medical records that the Social Security Administration obtained prior to the hearing after

they were given release forms and they were instructed which doctors would have the most substantial evidence to my claims.

26. Alj Paul Parker denied my written objections stating the proceedings is not bound by the Federal rules of evidence which is another fraud because they are a federal agency for the Federal government and are not exempt from reviewing each objection in accordance with the rules of Federal evidence. Even if his findings weren't a flat out lie as I perceived to be, he did not bother to properly provide me with a statute, rule, or an act showing the exception for him disregarding the federal rules of procedure so that I may quarrel his opinion.

27. Administrative Law judge Paul Parker conceded in his decision that I am disabled under the Social Security Act as he stated in his decision, "The claimant has the following severe impairments: degenerative disc disease, status post gunshot wound to the right hand and Rheumatoid arthritis (20 CER 416.920(c))."

28. Rather than awarding me the benefits for my (RA) condition which is enumerated in The Social Security act under Section 14.09 he denied my claims contradicting himself stating, "The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926)."

29. The Social Security administration did not even present not one doctors testimony to rebuttal my testimony for which I exerted how my mobility was restricted because of the flare ups in my joints and severe pain in my body.

30. Furthermore, the Social Security Administrations only witness which is a vocational expert contracted by the Social Security Administration to testify at SSI hearings stated that she was in her professional opinion a person with my condition could perform certain jobs but would not be able to maintain employment having to take off more than one day every month for a flare up. This omission was induced by the Administrative law judges own questions of the witness after he asked her what she thought was the tolerance level of employers absences.

31. Wherefore, I have proven to this court a clear right to Social Security disability benefits establishing that the corresponding agency has the duty to award me those benefits because I am **statutorily disabled**, and the circumstances presented here demonstrating the long history of deceptive practices shows that there is no other legal remedy available to me. This court is therefore bound to issue a writ of Mandamus ordering the Social Security administration to award me the denied disability benefits retroactive from August 31 2011 of the original filing date in accordance with the Social Security act..

B. PETITIONER HAS A CLEAR RIGHT TO INTERIM CASH ASSISTANCE PENDING SOCIAL SECURITY DISABILITY REVIEW

32. Effective July 30 2019 the Department of Human Services cut me off General cash assistance and I was deprived of the clear right to collect interim cash assistance pending SSI review for my Rheumatoid Arthritis.

33. On 7/11/2018 I had a hearing before ALJ Shaub which fraudulently denied my

claims. On 7/10/2019 I had a hearing before AIJ Candelaria under docket no.060423074-105M appeal# 105, which also denied my claims in the same manner, both reviews were a remand from the Commonwealth court of Pennsylvania and were taken in bad faith.

34. This was the second appeal I brought to the Commonwealth court for the same issues of fraud for which they passed on deciding the merits to keep me financially suppressed.

35. The Department of Human services Administrative law judges fraudulently misconstrued the Pennsylvania Welfare code stating interim cash assistance did not exist and then ultimately used the poor excuse to deprive me the state benefits stating that I am being denied because I am not state blind which is not in accordance with their policies or the Public Welfare code.

See The PUBLIC WELFARE CODE - OMNIBUS AMENDMENTS Act of Jun. 30, 2012, P.L. 668, No. 80 states:

Section 403.2. General Assistance-Related Categorically Needy and Medically Needy Only Medical Assistance Programs.-(a) Subject to subsection (b) and notwithstanding any other provision of law, the general assistance cash assistance program shall cease August 1, 2012.

(b) The general assistance-related categorically needy medical assistance program shall continue, including, but not limited to, the eligibility and work and work-related requirements under this article. The general assistance-related medical assistance program for the **medically needy only shall continue.**

See Section 442.1. The Medically Needy; Determination of Eligibility.--(a) A person shall be considered medically needy if that person meets the requirements of clauses (1), (2) and (3):

(3) Complies with [either] subclause (i) or (ii):

(i) Receives general assistance in the form of cash.

(ii) Is not eligible for cash assistance but is:

(A) a child under twenty-one years of age;

(B) a custodial parent of a dependent child under twenty-one years of age[,] who verifies employment of at least one hundred hours per month earning at least the minimum wage;

(C) a person fifty-nine years of age or older;

(D) a refugee for whom Federal financial participation is available;

(E) a pregnant woman;

(F) a person with a disability who is receiving Social Security disability benefits, who has been referred to the Social Security Administration for a determination of eligibility for Supplemental Security Income or who is under review for a disability by the department based upon Social Security disability criteria; or

(G) a person who verifies employment of at least one hundred hours per month earning at least the minimum wage.

See: PUBLIC WELFARE CODE - OMNIBUS AMENDMENTS Act of Jun. 16, 1994, P.L. 319, No. 49 Cl. 67

Section 5. Section 432(3)(i)(c) of the act, amended April 8, 1982 (P.L.231, No.75), is amended and the section is amended by adding a clause to read:

(i) Chronically needy persons are those persons chronically in need who may be eligible for an indeterminate period as a result of medical, social or related circumstances and shall be limited to:

(C) A person who has a serious physical or mental handicap which prevents him or her from working in any substantial gainful activity as determined in accordance with standards established by the department. The department may require that documentation of disability be submitted from a physician or psychologist. The department may also require further medical documentation of disability and may also order at the department's expense a person to submit to an independent examination as a condition of receiving assistance under this clause. The department shall determine eligibility within thirty days from the date of application. Persons discharged from mental institutions shall be classified as chronically needy in accordance with department regulations.

36. WHEREFORE, I have established a clear right to relief and the duty of the corresponding defendant which is to provide me with interim cash assistance which is for individuals with a disability and or pending Social Security review.

37. There is no other remedy of law available to me because I have exhausted all my state remedies and have been arbitrarily denied. I have also filed Petitions for a writ of Mandamus to the Supreme court of Pennsylvania and a petition for writ of Mandamus to the third circuit Appeals Court on September 12, 2019 which was

denied September 26,2019 (docket no.19-3086) without meaningful review. I also brought three petitions for review to the Commonwealth court on this very same issue. Two of which were remanded back to the department of Human Services to avoid the merits and the third was dismissed on December 18,2019 under the same use of intrinsic fraud in order to keep me financially suppressed. Here the Commonwealth court fraudulently stated I failed to comply with a defect notice that was taken in bad faith by the court employees harassing me over the Appellate rules that they deliberately lied to me about in a attempt to force me to re-serve the defendant by certified mail after I had already served defendant in person at the county office in accordance with the Appellate rules. The President judge Mary Hannah Leavitt endorsed this fraud and it can be seen as such by the fact she did not specify in her ORDER what Appellate rule I failed to comply with.

38. Under the circumstances of this case, I have established a clear and indisputable right to have my petition expeditiously heard and decided, and there is no alternative remedy because the commonwealth arbitrarily passed on the merits three times. Furthermore, I filed civil action suit and a order to show cause on September 6, 2019 in the Eastern district court docketed under case no. 19-cv-4087 which the district court judge has not moved to answer my motion in order to deprive me of the relief. see Jones v. Shell, 572 F.2d at 1280 In order to avoid the further prejudice Plaintiff would suffer if the writ of Mandamus is not issued plaintiff seeks relief from this Court.

C. PETITIONER HAS A CLEAR RIGHT TO PROPERTY TAX EXEMPTION AND A PROPERTY TAX REFUND

39. On 4/10 2018 Plaintiff a Prose Litigant collectively filed a Civil suit action and a Motion for preliminary injunction in the Berks County Pleas Court.

40. This civil action case was filed by Plaintiff under 42 USC 1983 against defendants for violating Plaintiffs 14th Amendment right, and the due process clause acting under color of state and federal law through fraudulent misrepresentation of tax laws, in violation of plaintiffs Rights to petition and appeal for a tax exemption prescribed under the Tax Payers Bill of Rights sections 8430,8434, and thereof depriving me of a tax exemption prescribed for people of poverty and or a disability in accordance with Article VIII Section 11(b) (ii). of the Pennsylvania Constitution and Title 72 P.S. Taxation and Fiscal Affairs § 7304 (a)(b)(c).

41. On 8/23/2018 I appeared before Judge Jefferey K.Sprecher with a motion for a Order to show cause seeking a stay of auction and a tax refund because the trial court did not move to give me a hearing for my motion preliminary injunction.

42. Rather than signing off on my motion for an order to show cause and scheduling a evidentiary hearing judge Sprecher called the Tax Claims Bureau by phone and asked them to come before his court.

43. The Treasurer's solicitor Mr Socratis Georgeadis and Director Stacy Phile appeared on behalf of the Property Tax claims Bureau and suggested to the court for a stay of auction to avoid a hearing on the merits and also to evade from having

the court grant me a tax refund for which I am entitled to receive and I requested as part of my relief.

44. Judge Sprecher stayed the property tax auction and scheduled a evidentiary hearing for 10/26/2018 at 1:30 pm after several continuances.

45. On 10/26/2019 Judge Sprecher acting in concert with defendants attorney refused to hear the merits for my Order to show cause. Instead he turned my evidentiary hearing into oral argument for defendants preliminary objection motion to dismiss for a demurrer, and thereof dismissed my lawsuit with prejudice.

46. On 10/29/2019 I filed my motion to recuse Judge Sprecher from the case for being bias to the matter and he denied my motion to recuse on 11/1/20 18.

47. Defendants response to my motion to recuse was filed on 11/7/2018 after the court entered his decision. Therefore, he never heard opposing argument to warrant denying my motion to recuse and he should have reassigned the case to a impartial judge to decide defendants motion before dismissing the case with prejudice.

48. On 10/18/2018 I also filed a motion for summary judgment which entitled me to judgment procedurally because defendant did not respond to my motion and the court left it undetermined.

49. Defendants never entered a defense to my complaint so the facts remain undisputed. Moreover, defendant's motion for a demurrer is baseless as counsel did not quarrel any grounds demonstrating to the court that my complaint failed to state a cause for action.

50. The trial court should have dismissed defendants motion since the crux of counsels arguments were based upon arguing conclusions of law. The trial courts opinion thereof dismissing my lawsuit stated " I sustained defendants preliminary objection because Plaintiffs lawsuit lacked any legal basis."

51. This was sufficient information for the Commonwealth court to conclude that judge Jeffrey Sprecher failed to test the sufficiency of the cause of action. The Commonwealths bias decision entered August 13, 2019 which fails to address the legal standards of a motion for a demurrer also disregards the Pennsylvania Constitution which entitles petitioner to property tax exemption and a refund of property taxes that were levied contrary of the law.

52. Furthermore, 42 USC 1983, Article VIII Section II(b)(ii) of the Pennsylvania Constitution, Title 72 P.S. Taxation and Fiscal Affairs § 7304 (a)(b)(c)., and the Tax payers bill of rights Sections. 8430, 8434 all provide a cause of action. Inasmuch the facts correlate with my property tax claims which sets forth a prima facie case. See Miller v. United States, 388 F.2d 973 *708 at 976 (9th Cir. 1967)

53. The Commonwealth courts bias decision falsely implies that Article VIII Section II (b)(ii) does not provide a property tax exemption.

See Article VIII section II(b)(ii)of the Pennsylvania Constitution which in relevant part reads: The General Assembly may by law:

Establish as a class or classes of subjects of taxation the "property" or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, and for

any such class or classes and standards and qualifications, and except as herein provided may impose taxes, grant exemptions, or make special tax provisions in accordance therewith.

Pennsylvania Statutes Title 72 P.S. Taxation and Fiscal Affairs § 7304. Special tax provisions states:

(a) The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article VIII of the Constitution of the Commonwealth of Pennsylvania which provides therein for the establishing as a class or classes of subjects of taxation the "property" or privileges of persons who, because of poverty are determined to be in need of special tax provisions hereby declares as its legislative intent and purpose to implement such power under such constitutional provision by establishing special tax provisions as hereinafter provided in this act.

(b) The General Assembly having determined that there are persons within this Commonwealth whose incomes are such that imposition of a tax thereon would deprive them and their dependents of the bare necessities of life and having further determined that poverty is a relative concept inextricably joined with actual income and the number of people dependent upon such income deems it to be a matter of public policy to provide special tax provisions for that class of persons hereinafter designated to relieve their economic burden.

(c) For the taxable year 1974 and each year thereafter any claimant who

meets the following standards of eligibility established by this act as the test for poverty shall be deemed a separate class of subject of taxation, and, as such, shall be entitled to the benefit of the special provisions of this act.

72 P.S.4751-102 states: **This act shall be construed to further authorize local taxing authorities to provide special tax provisions for the benefit of persons who have disabilities or other infirmities and to establish minimum uniform design standards as authorized under section 2(b)(ii) of Article VIII. ***

Title 72 P.S.5020-103 states:

This act does not include any provisions, and shall not be construed to repeal:

(1) The act approved the seventeenth day of June, one thousand nine hundred and thirteen (Pamphlet Laws, five hundred seven), 1 entitled "An act to provide revenue for State and county purposes, and, in cities co-extensive with counties, for city and county purposes; imposing taxes upon certain classes of personal Property; providing for the assessment and collection of the same; providing for the duties and compensation of prothonotaries and recorders in connection therewith; and modifying existing legislation which provided for raising revenue for State purposes," or any of its amendments;

(2) Except where specifically referred to in this act, the laws relating to boards of revision of taxes, or boards for the assessment and revision of taxes, in counties of the first, second and third classes;

(3) Except where specifically referred to in this act, the laws relating to cities, boroughs, towns, townships, school districts and poor districts.

72 P.S.5020-104 states: **Except as otherwise in this act specifically limited, this act shall apply in all of the counties of the Commonwealth.**

Tax Payers Bill of rights § 8430. Administrative appeals reads:

A political subdivision levying an eligible tax shall establish an administrative process to receive and make determinations on petitions from taxpayers relating to the assessment, determination or refund of an eligible tax. The administrative process shall consist of any one of the following:

(1) Review and decision or hearing and decision by a local tax appeals board appointed by the governing body. The board shall consist of at least three but not more than seven members. Qualifications for service on the board and compensation, if any, of the members shall be determined by the governing body. The governing body may enter into agreements with other political subdivisions to establish a joint local tax appeals board.

§8434. Appeals reads:

Any person aggrieved by a decision under this chapter who has a direct interest in the decision shall have the right to appeal to the court vested with the jurisdiction of local tax appeals by or pursuant to 42 Pa.C.S. (relating to judiciary and judicial procedure).

54. I have proven to this court a clear right to tax exemption and that the defendants is the local taxing authority which has the corresponding duty to issue the property tax exemption for which they did ask judge Sprecher to issue a order

staying the property tax auction on 8/23/2018.

55. There is no other legal remedy available to me because I have exhausted all my state court remedies by mailing my petition for reconsideration to the Commonwealth court on 8/24/2018 which was denied and a application for relief to the Supreme court on 9/3/2019.

56. The property tax claims bureau for the City of Reading send me a notice of their deliberate intentions to auction my property on 9/20/2019 with out authority of legislation and knowing that I am incapable of paying them any money due to the circumstances. Ultimately, they have put off taking action until a unspecified date in March of 2020.

57. I have demanded multiple times to defendants prior to filing a 1983 civil action complaint in state court to grant me a tax exemption in accordance with the law due to my economic hardship caused by governmental action suppressing my employment rights (case no. 17-cv-3264) and my right to collect disability benefits for my Rheumatoid Arthritis which was their duty to perform and have refused to do so.

58. I filed a writ of Mandamus and Prohibition to the United States Third Circuit court under (docket no. 19-3086) in this very same matter which was dismissed the very next day after I mailed out my reply brief to them which was timely, therefore the third circuit judges purposely undermined the courts federal jurisdiction for issuing writs of Mandamus to avoid considering my response of the jurisdictional issue brought up by defendant.

59. Furthermore, I filed for the same relief in the Pennsylvania Supreme court which was also denied whereas defendants did not even bother to defend to the case and the writ for Mandamus should have issued.(Docket no. 102 MM 2019). The Department of Human services were also a defendant to these cases as explained above.

D. REASONS FOR GRANTING THE WRIT

Section 3 of the Mandamus Act provides: "The writ of mandamus may issue upon the application of any person beneficially interested." (Emphasis supplied.)

Section 4, Act of June 8, 1893, P. L. 345, 4, 12 Pa.C.S.A. 1914, then states: "When the writ is sought to procure the enforcement of a public duty, the proceedings shall be prosecuted in the name of the commonwealth on the relation of the attorney general: . . . " Two of our early cases, both decided prior to the adoption of

the **Mandamus Act of 1893, tell us that a private litigant may maintain a mandamus action to enforce a public duty when that plaintiff has an individual and beneficial interest in the litigation independent of that which is held by the public at large.** Commonwealth ex rel. Snyder v. Mitchell, 82 Pa. 343

(1876); Heffner v. Commonwealth ex rel. Kline, 28 Pa. 108 (1857). see the definition of mandamus in Black's Law Dictionary Id. at 206-207 (italics added). Black's Law Dictionary (9th ed. 2009) defines "mandamus" as: "A writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usu[ally] to correct a prior action or failure to act."

Id. at 1046-47 (emphasis added) Mandamus lies to compel a ministerial act but not to review discretion, **except where it is arbitrarily or *568 fraudulently exercised or where it is based upon a mistaken view of the law:** Garratt v. Philadelphia, 387 Pa. 442, 448, 127 A.2d 738; Travis v. Teter, 370 Pa. 326, 330, 87 A.2d 177; Maxwell v. Farrell School District Board of Directors, 381 Pa. 561, 566, 112 A.2d 192. A writ of mandamus is available only to compel the performance of a ministerial act or mandatory duty where there exists no other adequate and appropriate remedy. Jackson v. Vaughn, 777 A.2d 436, 438 (Pa. 2001). **Mandamus lies where there is a clear legal right in the plaintiff and a corresponding duty in the defendant.** Porter v. Bloomsburg State College, 301 A.2d 621, 622 (Pa. 1973). **The purpose of mandamus is not to establish legal rights, but to enforce those rights which are already established.** Clark v. Beard, 918 A.2d 155, 159 (Pa. Cmwlth. 2007).

See Murray v. Vaughn analysis, 300 F. Supp. 688 (D.R.I. 1969)

The questions of jurisdiction, and the failure to state a claim, which are typically distinct in a civil action, are merged in a mandamus action. **Jurisdiction exists if there is a duty; if there is a duty, then the demand that the duty be fulfilled adequately states a claim for relief.** Even if discretion exists, there may be regulatory, statutory, or constitutional standards within which discretion must be exercised. If those standards have been ignored or violated mandamus will issue.' peoples v. Department of Agriculture 427 F.2d 561 (D.C. Cir. 1970). (class action challenge to administratively determined price of food stamps) (1976). See Elliott

v. Weinberger, 564 F.2d 1219 (9th Cir. 1977), *aff'd in part* sub nom. Califano v. Yamaski, 442 U.S. 682 (1979) (1361 an appropriate means of compelling Secretary to grant a hearing before attempting to recoup excess social security payments); K. DAVIS, *supra* note 10, at 546. "Davis Assocs. v. HUD, 498 F.2d 385, 388 (1st Cir. 1974)

In *Adams v. Richardson*" the plaintiffs brought suit against the Secretary of Health, Education and Welfare (hereinafter HEW) rather than local school boards. 243 HEW had notified school districts that they were not in compliance with Title VI of the 1964 Civil Rights Act,¹⁴ 4 but had failed to withhold federal funds from these schools as Congress had directed in 1964. In response, the Secretary argued that he had non-reviewable discretion to enforce Title VI and that the courts traditionally had not interfered with this discretion. The court concluded that HEW's discretion under Title VI was not so broad as to bar judicial review completely. While HEW did have some discretion in trying to achieve voluntary compliance through negotiation and conciliation, the passage of time had negated that discretion. Discretion had become duty.

SUMMARY OF ARGUMENT

"[The] right to maintain & control over [one's] health and well being , without being suppressed by governmental interference, is a private and public interest of continuing importance." In blatant violation to Federal and state laws and my constitutional rights the Federal Government directs state officials, government

agencies, my doctors and Medical facilities to act in concert to defraud me on Welfare and SSI benefits , while forcing me to remain unemployed without income, subjecting me to live without running water through fraud with threat to auction my home as averred in my complaint filed in the district court. This petition is in consideration of the public's interests because it is revealing or substantiating that these governmental agencies have engaged in unlawful misconduct, depriving me of Federal and state benefits through fraud. Thus it would promote responsible and effective government to ensure individual rights, judicial processes and natural justice. Petitioners right to "secure the just, unbiased, and inexpensive determination" of its actions and his due process right in the 14th Amendment of the U.S. constitution has been denied by defendants, the State and Federal courts. The Fourteenth Amendment provides, "No State shall deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The state constitutional provisions and the state statutes provided in this petition for writ of Mandamus also form the background for considering a federal due process issue here.

CONCLUSION


For all the reasons stated above a writ of Mandamus and Prohibition should issue ordering the Social Security administration to comply with the Social Security Act 1614(a)(3)(A) awarding petitioner benefits retroactive from August 31, 2011.

(2) Ordering the Department of Human Services to comply with 442.1 of the Public welfare code awarding petitioner benefits retroactive from August 1, 2019.

(3) Ordering The Tax Claims bureau to comply with Article VIII Section (II)(b)(ii)

of the Pennsylvania Constitution tax exempting petitioner from property taxes and issuing a tax refund for three years prior of the last payment received by the Tax claims bureau. (4) Petitioner, asks this court to implement Supervision over plaintiffs civil actions in the district court to ensure a fair unbiased outcome of the cases.

Dated: December 24, 2019


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CERTIFICATE OF SERVICE

Plaintiff Certifies under the penalty of perjury that a copy of petitioners petition for writ of Mandamus & Prohibition was served on the defendants attorneys on December 24, 2019 and on 1/6/2020 I served pages 5, 6, 30 of my petition which were edited to conform to the courts rules as instructed by Lisa Nesbitt by letter on 12/30/2019, by first class mail whose address is :

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