22-5585

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

ORIGINAL

MARK MARVIN, Petitioner, Pro se

Against

MARTHA PELDUNAS,
DARCIE M. MILLER,
COUNTY OF ORANGE, N.Y. Respondents

PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner, pro se

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QUESTION PRESENTED

WHETHER THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE STATE AGENCY CAN REQUIRE THAT FUTURE SOCIAL SECURITY RECIPIENTS PREMATURELY APPLY FOR REDUCED BENEFITS IN CLEAR CONTRADICTION TO UNITED STATES STATUTE WHICH PROHIBITS SUCH PRACTICE?

JURISDICTION

The Court of Appeals denied my appeal on June 14, 2022 and rehearing was denied August 05, 2022. This Court has jurisdiction under 28 U.S.C. 1254. This Court has supervisory authority over courts below.

CONSTITUTIONAL PROVISIONS

Petitioner cites violations of the Fifth Amendment as applied under the Fourteenth Amendment, and the Supremacy Clause.

APPENDIX

The appendix contains the decision of the District Court and the decisions of the Court of Appeals.

A, District Court decision.

B, Court of Appeals Decision.

C, Court of Appeals denied re-hearing.

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TABLE OF AUTHORITIES

N.Y. CASES:

LIST OF PARTIES

All parties appear in the caption of the case on the cover page and respondents are represented by the Orange County Attorney.

STATEMENT OF THE CASE

During follow up surgical eye care, defendants terminated Medicaid payment to the eye surgeon, jeopardizing plaintiff's vision because he did not prematurely apply for Social Security benefits. This termination of Medicaid was based on Social Services policy to compel the Medicaid recipient to apply for premature Social Security benefits (which had lower long term payments). United States law provides that a person is not eligible for social security unless or until that person intentionally and voluntarily applies for Social Security. Petitioner believes that the legislative intent was to insulate the person from obligatory application for premature benefits, which would jeopardize that person's livelihood with reduced long term benefits. The district court did find that "Individuals may **elect** to receive Social Security retirement benefits as early as age 62, in which case benefits are 'reduced'. Individuals may elect to 'delay' Social Security retirement benefits up to age 70, in which case benefits are 'increased'." (Fn. 1 Court's Order 09/16/20) Nevertheless, the court dismissed his petition. Appeal to the Second Circuit followed and was denied. Re-argument based on this Court's decisions this recent term, was denied. This petition follows for certiorari.

From the U.S. District Court, before Hon. Nelson S. Roman, Opinion and Order (16-cv-01456 -NSR, filed 07/02/21)

(New York State DSS: Re: Fair Hearing Number: 7161524Y, Hearing Date: November 24, 2015)

MARK MARVIN, your petitioner had applied for renewal of Medicaid coverage, dated: July 15, 2015 and received a denial letter, dated: October 20, 2015 which stated: "We have denied your application for Medicaid dated July 15, 2015 for: Name MARK C. MARVIN ... Client I.D. CP84459D -- This is because a person must apply for benefits which can reduce or end the person's need for Medicaid. You appear to be eligible for Social Security benefits, and we told you to apply for them, and you failed to apply for these benefits at the Social Service office. This decision is based on Section 367-a of the Social Services Law". On Friday, October 30, he spoke to Ms. Keane from the Fair Hearing Unit. She stated that your petitioner must apply for Medicare and for Social Security to be eligible for Medicaid coverage. He had, about a week ago stated in letter form that he did not consider Social Security available because he would in the future be dependent on Social Security benefits and that if he applied for and began receiving Social Security benefits, those benefits would be substantially less than if he waited until he were 70 years old. (He is presently 66) He simply cannot afford to receive the discounted Social Security benefits. Ms. Rourke called to say that they could not consider this letter. He had previously explained that he could not afford to apply for Medicare (B? general medical benefits) because that required a periodic fee. He only finds $5-10 per week in deposit cans and cannot afford Medicare (medical). He did apply for the Medicare hospitalization benefits and has a card saying

he is participating. He was told that Medicaid would pay the difference required by Medicare. They have not, and have stalled and been resistant. He has received Medicaid for years despite becoming eligible for Social Security at age 62 (assuming this age is the first available age to begin receiving SS benefits) when he was unable to pay for Medicare medical benefits.

Ms. Keane told him that the relevant law was 18 N.Y.C.R.R. 360 - 2.3(c)(1) which states in part: "Evaluation of financial circumstances. In determining whether an applicant/recipient is financially eligible for MA under section 360-3.3(b) or 360 -3(c) of this Part, the social services district must review all sources of income and resources available or potentially available to the applicant/participant.... The district must consider only available income and resources as defined in Subpart 360-4 of this Part. . To be eligible for MA the applicant must pursue any potential income and resources that may be available. As soon as income or resources become available, the applicant must report them to the district. ..."
(4) If any income or resources are unavailable, the applicant must submit documentation establishing the unavailability. This statute appears facially illogical and unworkable. ("He must pursue any potential income resources that may be available.")

He cannot afford to take the reduced amount of Social Security now. Further, he believes that Social Security payments are not available since he had not voluntarily applied making him not eligible as a matter of law.

ARGUMENT

THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE STATE AGENCY CAN REQUIRE THAT FUTURE SOCIAL SECURITY RECIPIENTS PREMATURELY APPLY FOR REDUCED BENEFITS, IN CLEAR CONTRADICTION TO UNITED STATES STATUTE WHICH PROHIBITS SUCH PRACTICE.

The Court of Appeals held for the state agency.

This case involves a simple question of whether a state agency can require a possible Social Security recipient to apply for benefits when this practice is precluded by the statute which specifically declares that a person is not eligible for Social Security benefits unless and until that person, of free will, applies for those benefits. The legislative intent seems to clearly protect the potential Social Security recipient from coercive efforts by over-reaching agencies, which would have crushing long-term effects on the SS recipients survivability.

In its Summary Order, (June 14, 2022) this Panel found:
(Numbers taken from motion for reargument for consistency)

1, **"... Marvin had not sought Social Security retirement benefits for which he was eligible." (p. 3) The question of "eligible" is pivotal.**

2, As a matter of law, under Title 42 Section 1002 (note supra) **Qualified individuals;** Except as otherwise provided in this subchapter, and individual -- (5) who has filed an application for benefits under this

subchapter; and ....shall be a qualified individual for purposes of this subchapter." Qualification for Social Security is defined by federal law by the voluntary act of filing an application, and absent that voluntary application, the individual remains "unqualified." (immunity to state coercion by state regulation appears to be the legislative intent) If he is not "qualified" one must assume he is not "eligible" and SS is not available.

3, "... but he still retained the right, if he so chose to delay receipt of those benefits. But Medicaid benefits are not available to persons who have access to Social Security benefits... but chose not to take advantage of those benefits." (pp. 4-5) If he is not qualified, he does not have "access."

4, "...the denial of his Medicaid benefits was based on the application of a state regulation (not an enacted law) that required Medicaid applicants to pursue all potentially available resources...and ("... Marvin had not sought Social Security retirement benefits for which he was eligible." (p. 3)) If he is not qualified and he does not have access; he is not "eligible." Therefore, SS is not "available." It is a matter of individual choice.

5, "(T)he judgment of the district court is AFFIRMED." (p. 2)
The District Court found (cited in Appellant's brief):

2. Here the (District) court affirms that:

"Individuals may **elect** to receive Social Security retirement benefits as early as age 62, in which case benefits are 'reduced'. Individuals may elect to 'delay' Social Security retirement benefits up to age 70, in which case

benefits are 'increased'." (footnote 1) (United States Law)

6, As a matter of law, under Title 42 Section 1002 (Social Security) **Qualified individuals;** Except as otherwise provided in this subchapter, and individual -- (5) who has filed an application for benefits under this subchapter; and ....shall be a qualified individual for purposes of this subchapter." Qualification for Social Security is defined by federal law by the voluntary act of filing an application, and absent that voluntary application, the individual remains "unqualified." (immunity to state coercion by state regulation appears to be the legislative intent)

7, The Supremacy Clause of the United States Constitution states: "The laws of the United States ...shall be the supreme law of the land... any Thing in the Constitution or Laws (or regulations) of any State to the Contrary notwithstanding." (Article VI[2])

8, This Court finds that plaintiff was eligible under "state regulation" for Social Security benefits even though under United States law, he was not qualified for Social Security benefits, but that state actors could overrule federal law status of "not qualified" and declare him to be "eligible".

9, This Court of Appeals finds that state *regulation* finding of "eligible" is superior law to and overrules federal law which defines "qualified" only for those who apply when it is financially their choice, the Congressional intent plainly manifest in the statute.

10, As Social Security benefits provide funds below the poverty level, this Court might refer to *Adkins v. E.I. DuPont*, (1948) 335 U.S. 331, 69 S.Ct. 65 [7,8] in that individuals long term financial needs are an individual autonomous right superior government mandates which by definition violate prohibitions on government seizure of individual property.

11, The Supreme Court (*West Virginia v. E.P.A,* No. 20-1530) held that questions "under the major questions doctrine" (p. 3, 4, 4(b),) would require that the Department of Health, our Defendants bore a heavy burden of proof that Congress authorized the agency to disregard the clear statutory intent that a person becomes Social Security eligible only when they have applied for benefits, not when the state agency decides that they are eligible. ("Precedent teaches that there are 'extraordinary cases' in which the 'history and breadth of the authority [the agency] has asserted ,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority.... Under this body of law, known as the major questions doctrine, given both separation of powers principles and practical understanding of legislative intent, the agency must point to 'clear congressional authorization' for the authority it claims.") (Id. p. 4)

12, Similarly to *West Virginia v. E.P.A.* , the Supreme Court found in *Ruan v. U.S.* (20-1410) that the administrative agency "does not provide a basis for inferring that Congress intended to do away with, or weaken, ordinary and longstanding scienter requirements." (p. 3) The Supreme Court does

not countenance the lower agency's inventing exceptions to federal law, which certainly condemns these instant defendants for inventing a new meaning for Social Security's eligibility definition.

13, The state agency presumptively assumed it could overrule the plain language of the United States statute, and did so erroneously without pointing to clear congressional authorization for the authority it claims.

THE SECOND CIRCUIT IS OUT OF STEP WITH OTHER JURISDICTIONS AS WELL.

The United States District Court, N.D. California held: "The social security statute compels contributions to the system by way of taxes, it does not compel any one to accept benefits." (*Crouch v. United States*, 665 F. Supp. 813, 815; citing *United States v. Lee,* 1982, 455 U.S. 252, 258-59, 102 S.Ct. 1051, 1055-56)

The United States District Court held: "Section 207(b) was passed to prohibit assignment of these (Social Security and SSI) benefits (and) does not permit cross-program recovery." (*Ellender v. Schweike,* 1983, 575 F.Supp. 590, 598-99, [4,5,6,]) with attendant due process requirements. (Id. 600, [8])

"Where a Federal statute facially clashes with a State statute, the Federal statute must triumph." (*Rose obo Clancy v. Moody,* 83 N.Y.2d 65, 67; 629 N.Y.S.2d 906, 907)

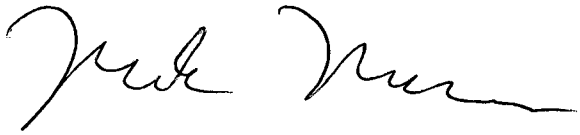
The Supreme Court, Appellate Division, Second Department, New York has held: "Only those resources Actually (sic) available to a Medicaid applicant can be considered in determining the applicant's eligibility for assistance (see *Matter of Dumbleton v. Reed*, 40 N.Y. 586; 388 N.Y.S.2d 893, 357 N.E.2d 363; Social Services Law, S. 366, subd. 2, par. (b)" (*Moffett v. Blum,* 1980, 74 A.D. 2d 625, 626,; 424 N.Y.S.2d 923, 925, [2,3], The Supreme Court, Kings County, N.Y. , Special Term, Part I, held "It is the opinion of the court that the respondents acted arbitrarily and contrary to the intent of s. 366 in using prospective annual income rather than actual annual income in determining petitioner's eligibility for medical assistance." (*Tai v. Lavine*, 79 Misc.2d 927, 928, 361 N.Y.S.2d 486, 488).

REASONS FOR GRANTING THE WRIT

The Second Circuit erred in finding that the state agency could overrule the clear legislative intent of the social security eligibility that was defined by United States statute. This created confusion and undermined the clear federal limitations of the state agency authority as defined by the U.S. statute, the constitutional federal supremacy clause and Due Process and violated the federal system generally.

CONCLUSION

The Court of Appeals erred, as the state agency has no superior authority to re-define a federal statute or Constitutional law.



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