

In the

Supreme Court of the United States

ANTONIA BELTRAN, ETC.,

PETITIONER,

V.

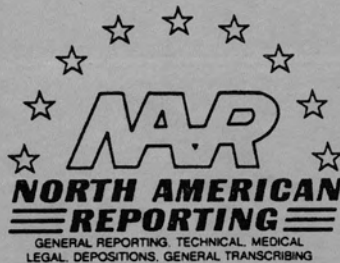
BEVERLEE A. MYERS, INDIVIDUALLY
AND AS DIRECTOR, CALIFORNIA
STATE DEPARTMENT OF HEALTH,
ET AL.

No. 80-5303

Washington, D.C.
March 24, 1981

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ORIGINAL



202/544-1144

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STATE DEPARTMENT OF HEALTH,
ET AL.

Washington, D. C.

Tuesday, March 24, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:15 o'clock a.m.

APPEARANCES:

GILL DEFORD, ESQ., National Senior Citizens Law Center, 1636 West 8th Street, Suite 201, Los Angeles, California 90017; on behalf of the Petitioner.

RICHARD J. MAGASIN, ESQ., Deputy Attorney General, State of California, 3580 Wilshire Boulevard, Suite 800, Los Angeles, California 90010; on behalf of the Respondents.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Beltran v. Myers.

Mr. Deford, I think you may proceed when you are ready.

ORAL ARGUMENT OF GILL DEFORD, ESQ.,

ON BEHALF OF THE PETITIONER

MR. DEFORD: Mr. Chief Justice, and may it please the Court:

The issue of this case is the disparate treatment of a discrete class of Medicaid recipients by the State of California. California's decision to participate in the federal Medicaid system guarantees that it will be reimbursed 50 percent of its cost by the Federal Government. However, at the same time California is obligated to comply with controlling federal law.

QUESTION: How do you have your federal jurisdiction here?

MR. DEFORD: In the District Court?

QUESTION: Yes.

MR. DEFORD: We had it -- we alleged jurisdiction under both 1331 and under 1343. The federal District Court found jurisdiction under both of those grants. The Court of Appeals decided not to look at 1343, but did find jurisdiction under 1331. Either of them are cause of actions 1983.

1 QUESTION: 1331 requires \$10,000?

2 MR. DEFORD: At the time this case was brought it
3 did. The federal District Court and the Court of Appeals
4 both found there was \$10,000 in controversy. Since then, of
5 course, the statute has been amended to eliminate the \$10,000.

6 QUESTION: Just nitpicking. It's in excess of
7 \$10,000.

8 MR. DEFORD: Yes.

9 QUESTION: Yes, but where did they find the \$10,000?

10 MR. DEFORD: For instance, the main plaintiff, Your
11 Honor, has bills to the nursing home in excess of \$14,000
12 because of unpaid nursing home bills.

13 QUESTION: In other words, what you're saying is
14 they found it prospectively?

15 MR. DEFORD: At the time the case was brought she
16 would not have had bills in the amount of \$10,000.

17 QUESTION: Therefore is there 1331 jurisdiction?

18 MR. DEFORD: Well, since the case was still going
19 on at the time that the statute was changed, I would think
20 that even if there was less than \$10,000 in controversy when
21 it was brought, she would have had jurisdiction under 1331
22 in any event.

23 QUESTION: Do you think we should treat it as if
24 it had been filed after the amendment eliminated it?

25 MR. DEFORD: I believe the amendment allowed for

1 jurisdiction in the federal district courts for any case then
2 pending. In any event, as I've said, there was also jurisdic-
3 tion in the District Court found under 1343, which does not
4 require an amount in controversy.

5 QUESTION: But then you run into a question, do you
6 not, as to whether this is a proper 1343 jurisdiction case
7 under the Houston Welfare Rights v. Chapman decision of this
8 Court?

9 MR. DEFORD: That was what the 9th Circuit was
10 concerned about. However, Your Honor, I think under this
11 Court's decision of last summer in State of Maine v. Thiboutot
12 there is definitely a 1983 cause of action.

13 QUESTION: Well, there is no doubt there's a 1983
14 cause of action but Thiboutot came from a state court --

15 MR. DEFORD: That's correct.

16 QUESTION: Which is a court, presumably a court of
17 general jurisdiction. We affirmed the state court. Here
18 the federal courts are of limited jurisdiction and Section
19 1343 is more limited, we held in Houston, than is 1983.

20 MR. DEFORD: Yes, Your Honor, but we did allege
21 both constitutional and statutory claims under 1983, and I
22 think under this Court's decision in Hagans v. Lavine,
23 Chapman did not alter the Hagans v. Lavine decision, so there
24 is pendent jurisdiction over the statutory claims which we
25 raised in the District Court and which are now before

1 this Court. The specific concern here is with the state's
2 application of what is commonly known as a transfer of assets or
3 divestment rule against one group of Medicaid recipients known
4 as the medically needy while a corresponding group of Medicaid
5 recipients known as the categorically needy are not subject
6 to such a rule and as even California admits cannot be sub-
7 ject to such a rule under federal law.

8 QUESTION: Now, what's the underlying policy purpose
9 behind that kind of a statute?

10 MR. DEFORD: The transfer of assets statute? My
11 assumption is, based on the briefs filed by the State of
12 California that the purpose is to avoid individuals who have
13 sufficient wealth to take care of themselves from forcing
14 themselves onto the public welfare rolls.

15 QUESTION: That sort of pattern has permeated the
16 statutes right back to the original welfare cases 30 or
17 40 years ago, has it not?

18 MR. DEFORD: I believe that's true; yes, sir.

19 QUESTION: Parents can't give their home or their
20 bank account or their stocks and bonds to their children and
21 then go on relief or -- ?

22 MR. DEFORD: Well, that was exactly what Congress
23 has said can be done, both with respect to the Federal
24 Government's supplemental security income program, which
25 provides cash assistance and with respect to the categorically

1 needy who are those Medicaid recipients, especially the aged,
2 blind, and disabled, who are eligible for SSI supplemental
3 security income, and are then automatically eligible for
4 Medicaid as categorically needy. The medically needy, by
5 contrast, although they are also aged, blind, and disabled,
6 are not eligible for SSI cash benefits, but Congress has
7 determined that they should be eligible for Medicaid once
8 they have spent down their income to the level of impoverish-
9 ment determined by Congress and by the federal agency.

10 As far as Congress is concerned, once a medically
11 needy individual, when his income is over the categorical
12 eligibility levels, spends down, that person is to be treated
13 the same as if he or she had originally been found eligible
14 for Medicaid automatically as categorically needy.

15 The state has argued throughout that its transfer
16 rule applied only to the medically needy does not violate the
17 federal Medicaid statute. It is our feeling, however, that
18 the statute is supported by its legislative history and
19 by the repeated statements of the responsible federal agency,
20 the Department of Health and Human Services, does not permit
21 more restrictive treatment against the medically needy than
22 against the categorically needy. The 9th Circuit to a great
23 extent agreed with us on that point, that there was a general
24 requirement of comparability between the medically and cate-
25 gorically needy. Where the 9th Circuit disagreed, however,

1 was in determining that the transfer rule was not necessarily
2 a violation of the comparability requirement, as there were
3 other rules which were the same between the categorically and
4 medically needy. Therefore, the 9th Circuit determined that
5 one different rule wouldn't necessarily violate a compara-
6 bility requirement.

7 This interpretation, however, directly contradicts
8 the longstanding decisions, the consistent and longstanding
9 interpretations of the responsible federal agency, HHS, and
10 its predecessor, the Department of Health, Education, and
11 Welfare.

12 QUESTION: At what level were these decisions ren-
13 dered?

14 MR. DEFORD: These decisions were rendered from the
15 main offices in Washington, sent out to the regional offices
16 throughout the country, which then have notified the various
17 state administrators on various occasions.

18 QUESTION: Can you -- are they in the record?

19 MR. DEFORD: The only -- we do not have in the
20 record the original statement which is known as a PIQ. PIQ
21 No. 77 was sent out in, I believe, in 1977, to the various
22 regional administrators informing them specifically that
23 transfer of assets rules could not be applied only to the
24 medically needy. What is in the record, however, is a letter
25 that the regional administrator for the region which

1 California is in, sent to Defendant Myers informing her that
2 the California rule was violative of the federal law.

3 QUESTION: Now, what is a PIQ? Is that issued by
4 a regulation?

5 MR. DEFORD: It's not a regulation. It is a speci-
6 fic guideline establishing how HEW and now HHS interprets
7 the way the statutes and regulations of the Federal Govern-
8 ment should work together.

9 QUESTION: Can we find it in CFR or -- ?

10 MR. DEFORD: No, it's not in the Code of Federal
11 Regulations.

12 QUESTION: Where would one look for it?

13 MR. DEFORD: Presumably -- it's not published,
14 Your Honor. One has to be a regional administrator or to
15 have received a copy from HHS in Washington. On the other
16 hand, there have been other published documents from the
17 Department of Health and Human Services which have appeared
18 in various other publications which indicate specifically on
19 this point, and then again on the general point of compara-
20 bility between the medically needy and the categorically
21 needy, that this treatment is impermissible.

22 QUESTION: Which of those most strongly supports
23 your position?

24 MR. DEFORD: All of the documents which I'm refer-
25 ring to now state both the general rule and a specific rule.

1 QUESTION: And where are they? I mean, what cita-
2 tions? Where would one look for them?

3 MR. DEFORD: Well, as I said, none of them are
4 Code of Federal Regulations documents. One of the publica-
5 tions that we have cited is published in the CCH Medicare and
6 Medicaid Guide. It is cited in our briefs, and it is a docu-
7 ment which HHS says, "we have been besieged with a number of
8 questions as to whether or not one can apply the transfer rule
9 only to the medically needy." The question is very specifi-
10 cally answered with specific references to the regulations
11 and to the statute.

12 QUESTION: And that's in your blue brief?

13 MR. DEFORD: There is a citation to that in the
14 brief, Your Honor.

15 QUESTION: At what page? If you don't have it
16 right off hand, just go on, if it's in the brief.

17 MR. DEFORD: I don't have it but it is in there.

18 QUESTION: What did you say PIQ stands for?

19 MR. DEFORD: Your Honor, I'm afraid I don't know.

20 QUESTION: Mr. Deford, somewhere, at your leisure,
21 will you be sure to comment on the Boren/Long Amendment?

22 MR. DEFORD: Yes, definitely, Your Honor. The in-
23 terpretation which plaintiffs are offering of the statute and of
24 the regulations is not one which we have invented off the
25 top of our heads. It is one which the Department of Health,

1 Education, and Welfare and then the Department of Health and
2 Human Services, its predecessor, have repeatedly and consis-
3 tently announced. In evaluating that reasonable and consis-
4 tent interpretation of the statute, the 2nd Circuit, the 4th
5 Circuit, a federal judge in Boston, and a New York State
6 appellate court have all agreed that it is a reasonable
7 determination of the responsible federal agency.

8 Mr. Justice Marshall last summer in denying New
9 York's request for a stay in the Caldwell v. Blum case, also
10 noted that it was a reasonable interpretation of the Social
11 Security Act.

12 I'd like to briefly go through the facts of this
13 case because I do think they provide an important lesson in
14 how California applies its transfer of assets rule. For the
15 most part the facts are not in dispute. This case was re-
16 solved in the District Court on cross-motions for summary
17 judgment. The two major important facts undisputed are these,
18 that Antonia Beltran did transfer property for less than fair
19 market value, and secondly, that but for that transfer and
20 the application of California's transfer of assets rule, she
21 would have been eligible at all relevant times for medically
22 needy Medicaid coverage.

23 Specifically, in February, 1977, she and her husband
24 gave their property to their three adult children. At that
25 time Mrs. Beltran was not on Medi-Cal. As far as the record

1 shows she was not even aware that Medi-Cal existed. I should
2 note that Medi-Cal was California's name for the federal
3 Medicaid program. Three months later, at the insistence of
4 her doctor, she applied for and received categorical coverage
5 in the form of a Homemaker Chore Services individual who is
6 paid by the state to come in and help people who are unable
7 to cook and take care of themselves. At the same time the
8 social worker determined that she was eligible for Medicaid.
9 As near as we can determine, it's never been specifically
10 cleared up if that was categorically needy Medicaid coverage
11 that she was found eligible for. So that within three months
12 of the transfer she was found eligible for Medicaid.

13 About ten months later she was forced to go into the
14 nursing home. At that time, of course, her homemaker chore
15 services were cut off. For reasons which have never been
16 clarified, she remained eligible for Medi-Cal until August of
17 1978. She was then found ineligible and she reapplied two
18 months later. At that time she was forced to apply as a
19 medically needy individual, not a categorically needy individ-
20 ual. Several months after that the state for the first time
21 found her ineligible for Medicaid, based on the transfer of
22 assets which had taken place in February, 1977.

23 Thus, in the course of two years, she was first --
24 after the transfer, she was first found eligible for Medicaid
25 as categorically needy, and then found ineligible for

1 Medicaid as medically needy. After being denied eligibility
2 she filed a motion to intervene in the then-pending Dawson v.
3 Beach case, which was on the verge of being resolved by
4 summary judgment motions. The defendants did not oppose that
5 motion, and she was permitted to intervene.

6 I should also add, it's not on the record, but I
7 think it would be helpful for the Court to know that after the
8 9th Circuit's decision in May, 1980, Mrs. Beltran reapplied
9 for medically needy eligibility on the premise that the period
10 of ineligibility which the state had previously determined
11 was too long. She was found eligible at that time, retroac-
12 tive to March 1, 1980. As a result, Mrs. Beltran's period of
13 ineligibility ran for 16 months, from September, 1978, to
14 February, 1980. During that period, as I've noted, she ran
15 up nursing home bills of just under \$15,000 and those bills
16 remain unpaid.

17 QUESTION: Mr. Deford, can I ask you a question?
18 As I understand your statement of the facts, she was eligible
19 for SSI benefits?

20 MR. DEFORD: I don't think she ever received SSI
21 benefits because I don't think she applied for SSI benefits.

22 QUESTION: She was eligible for it?

23 MR. DEFORD: She was eligible for SSI benefits
24 and I believe that because the state has admitted she was --

25 QUESTION: Oh, but she was not actually receiving

1 them? She couldn't claim under subparagraph (a) then? See,
2 I thought --

3 MR. DEFORD: I believe subparagraph (b) allows an indi-
4 vidual to claim whether or not they are receiving the bene-
5 fits.

6 QUESTION: Well, then, it seems to me, if your
7 facts are right, she's eligible under (a) and you don't even
8 have to reach the comparability clause.

9 MR. DEFORD: The difference, Your Honor, is that
10 when she went into the nursing home she could no longer apply
11 or be eligible for SSI benefits. She had to apply as medi-
12 cally needy at that point, and so that changed the whole
13 process.

14 The basis of our argument, and that on which the
15 Department of Health and Human Services has rested its inter-
16 pretation, is 42 USC -- I'm sorry to give this lengthy cite,
17 but it's the only one we have -- Section 1396a(a)(10)(C)(i),
18 which is as far down as the Medicaid statute goes.

19 QUESTION: Wait till next year.

20 MR. DEFORD: That statute defines the medically
21 needy and it defines them as identical to the categorically
22 needy in every respect save one, and that is that they have
23 greater income or resources, greater gross income or resources
24 before the cost of medical care is taken into consideration.

25 QUESTION: Is that cited in your brief?

1 MR. DEFORD: Yes, Your Honor, it is. I believe it
2 is. Congress concluded that the medically needy, once their
3 medical costs were taken into consideration, were virtually
4 identical with the categorically needy. They were equally
5 impoverished and therefore equally deserving of Medicaid
6 coverage. That statute essentially says that except for
7 income and resources, this individual is identical with an
8 SSI recipient, is identical with someone eligible for cate-
9 gorical coverage.

10 The statute essentially asks the state to make this
11 inquiry: but for this individual's income and resources,
12 which are over the categorical levels, would this individual
13 be eligible for SSI? If the answer is "yes," then the indi-
14 vidual is to be treated the same as an SSI recipient, the
15 same is a categorically needy individual.

16 Consequently, HHS has determined regularly and
17 repeatedly that on the basis of this statute a state cannot
18 apply more restrictive rules to the medically needy than
19 to the categorically needy. As a result of that the state is
20 not permitted to apply transfer rules only to the medically
21 needy and to disenfranchise them from eligibility when the
22 identically situated categorically needy individual who re-
23 mains eligible for benefits regardless of any transfers
24 that that person may have undertaken.

25 QUESTION: Now, when you say HHS, you're referring

1 to the PIQ that you referred to?

2 MR. DEFORD: HHS is the Department of Health and
3 Human Services --

4 QUESTION: I realize that.

5 MR. DEFORD: At the time the PIQ came out it was
6 the Department of Health, Education, and Welfare.

7 QUESTION: Yes, but when you say it is determined
8 that this is in doubt, you're referring to the PIQ that you --

9 MR. DEFORD: The PIQ and other publications which
10 HHS and its predecessor, HEW, have put out at various times in
11 the last few years.

12 QUESTION: But can you identify them any further
13 than saying that they're in the CCH? They're not in the
14 federal -- .

15 MR. DEFORD: Well, there is a -- the guideline which
16 I was referring to earlier, Your Honor, is known as the HCFA --
17 which stands for Health Care Financing Administration, which
18 is the part of HHS which is in charge of Medicaid rules --
19 Regional Office Manual Part 6, Medicaid Guideline and Trans-
20 mittal No. 31. It is that which is reprinted in CCH Medicare-
21 Medicaid Guide, and which we have cited in the brief. And
22 that it bases its decision on the regulations and on the
23 statute to determine that they cannot treat the medically
24 needy differently from the categorically needy, and therefore
25 cannot apply the transfer rule. That is the official

1 guideline issued by HHS.

2 QUESTION: It may be official but doesn't the state
3 have to submit a plan?

4 MR. DEFORD: The state does have to submit a plan.

5 QUESTION: And doesn't it, before it gets federal
6 funds, it has to have it approved?

7 MR. DEFORD: That's correct. It has to have a
8 state plan approved --

9 QUESTION: And the plan has retained approval?

10 MR. DEFORD: The plan has retained approval.

11 QUESTION: No move has been made by the Department
12 to --

13 MR. DEFORD: No, that's not true, Your Honor. The
14 Department of Health and Human Services has moved against the
15 State of California --

16 QUESTION: When?

17 MR. DEFORD: Well, it began, I believe, in the spring
18 and summer of this --

19 QUESTION: For this reason?

20 MR. DEFORD: Yes. It's specifically on this issue.
21 HHS has informed California that it is out of compliance with
22 federal law --

23 QUESTION: Is that in the record?

24 MR. DEFORD: Yes, it is. A letter that was sent to
25 Defendant Myers --

1 QUESTION: Where is that? Is that in --

2 MR. DEFORD: Yes, it's attached --

3 QUESTION: It's in the Appendix?

4 MR. DEFORD: No, it's not in the Appendix. It's
5 attached, I believe, to our summary judgment motion or to our
6 reply and therefore is in the record.

7 QUESTION: And there was no counteraffidavit sub-
8 mitted to it, I don't suppose?

9 MR. DEFORD: As far as I know, California does not
10 dispute that it is applying the transfer of assets rule to
11 the medically needy --

12 QUESTION: Who signed that letter, the Secretary?

13 MR. DEFORD: No, it was signed by the Regional
14 Director of the region in which California is.

15 QUESTION: So that is probably the most official --

16 MR. DEFORD: Yes, but that letter is based on what
17 HHS as an entity in Washington has said is the proper author-
18 ity. And the Regional Director speaks for the Secretary,
19 he's not speaking on his own authority.

20 QUESTION: Well, the Regional Director may have
21 made a mistaken interpretation of the Secretary's views, though.

22 MR. DEFORD: Your Honor, I don't think, given
23 what the PIQ says and given what other guidelines
24 say, that the Regional Director could have made a mistake on
25 this point.

1 QUESTION: Well, I agree, but with not having the
2 PIQ in front of me I'm unable to form a judgment.

3 MR. DEFORD: I think the publication which I have
4 mentioned which we have cited sets this out quite explicitly
5 and it was a publication, it has been a publication available
6 to all the states.

7 QUESTION: Is that kind of a letter within the discretion
8 discretion of the regional director, if he's going to start
9 proceedings or threaten to cut off funds? Doesn't he have
10 to have approval from someone before he writes a letter
11 like that or not? Or do you know?

12 MR. DEFORD: I'm not aware, Your Honor, of what
13 the rule is on that. I should point out that, as I noted
14 before, HHS has developed this policy with respect to trans-
15 fer of assets rules based on explicit regulations.
16 42 CFR Section 435.401(c)(2) implements the statute by stat-
17 ing with no exception that a state cannot apply more restric-
18 tive rules to the medically needy than to the categorically
19 needy. That is the general rule and it is set out quite
20 explicitly in the regulation. Specifically, HHS has imple-
21 mented this policy in 435.840(a) and .841(a) by saying that a
22 state must use the most liberal resource standards in determin-
23 ing medically needy eligibility which are used in the cate-
24 gorical programs of AFDC or SSI.

25 Obviously, if there's no transfer rule applicable

1 to SSI recipients, the most liberal resource standard would
2 be no transfer rule for medically needy applicants. Further-
3 more, in 435.845(b), the regulation specifically requires
4 that in determining available income and resources a state
5 can only look to those resources which the individual has at
6 present or up to six months in the future. It forbids a
7 state implicitly to look at any resource which the indi-
8 vidual had in the past, regardless of why the individual no
9 longer has that resource.

10 QUESTION: In your point that the regulation per-
11 mits differential only on the basis of resources. In effect,
12 the transfer of assets rule could and partially was held
13 by the 9th Circuit to be just that, pertinent based on
14 differential resources, was it not?

15 MR. DEFORD: I'm not sure I understand, Your Honor.
16 The 9th Circuit held that the transfer of assets rule was a
17 financial condition of eligibility. It was quite explicit
18 on that.

19 QUESTION: Well, but, could it not just as easily
20 have held that it was a treatment differential -- agreed -- but
21 based on difference in resources which is permitted under
22 regulations?

23 MR. DEFORD: I'm not familiar with that aspect of
24 the opinion, Your Honor. I guess I'm not following the
25 questioning.

1 QUESTION: Well, look at your brief on page 22 and
2 the two regulations you've just cited, which say that the
3 two categories must be treated identically except for income
4 and resources.

5 MR. DEFORD: Regular or reply brief, Your Honor?

6 QUESTION: Your blue brief.

7 MR. DEFORD: Right. The except-for-income-and-
8 resources clause means that -- it does not mean that we elimi-
9 nate financial conditions of eligibility from this general
10 standard. That language is taken directly, quoted from the
11 statute itself. All that means is that when evaluating
12 who we have here, you determine through the except-for-income-
13 and-resources clause whether we have a medically needy person
14 or a categorically needy person. That language is directly
15 out of the statute except for income and resources. And it
16 means that a state determines an individual should be eligible
17 for medically needy as if they were an SSI person, because we
18 don't look at income and resources, we look only at their
19 categorical status.

20 I'd like to reserve the rest of my time for rebut-
21 tal, if I could.

22 QUESTION: Well, do you want to make any comment
23 on these amendments?

24 MR. DEFORD: Your Honor, I was going to save that
25 for rebuttal but I'll speak now to that. The Public Law

1 96-611, Section 5, which was passed by Congress in December
2 of 1980 does modify the congressional policy towards transfer
3 of assets. It allows a state to implement a rule which
4 denies eligibility to a Medicaid recipient who has transfer-
5 red assets in the past with the intent of attaining eligi-
6 bility for Medicaid. I think it is very important to recog-
7 nize, however, that that statute continues the general con-
8 gressional policy that the medically need should be treated
9 no more restrictively than the categorically needy. Congress
10 still requires that both the medically needy and categori-
11 cally needy be treated the same. A state would not be able
12 to apply that transfer rule to only one group or the other.
13 QUESTION: Well, my question is, in the light of
14 the amendment to the statute, what continuing general impor-
15 tance does this case have?

16 MR. DEFORD: The amendment to the statute does not
17 go into effect for Medicaid reasons until July 1, 1981.
18 Consequently, the present law, whatever that is, will be in
19 effect until that date. So there are people now in Califor-
20 nia who have been and will continue to be denied eligibility
21 based on the present California transfer of assets rule.

22 QUESTION: Well, it'll be important, as all these
23 cases are, to the litigants all right. I wondered what -- isn't
24 the general importance of the issue on which the courts of
25 appeal have divided, much less as a result of the

1 Boren-Long Amendment?

2 MR. DEFORD: The general importance in terms of the
3 amount of money involved both to the state and federal
4 governments is obviously reduced because states will now be
5 able to deny eligibility. On the other hand, the general
6 rule of the importance of comparability between the medically
7 needy and the categorically needy remains an important issue
8 in a number of other areas. Moreover, there are thousands
9 of Californians who have been affected by this transfer rule
10 who are presumably members of this class, and who now owe
11 nursing homes many thousands of dollars. So it remains
12 significant in that respect.

13 I admit that, obviously, since this law will change
14 on July 1, it does not have the same significance it had when
15 this Court granted cert. in November. I would just remind
16 the Court that we did make a motion summarily to reverse this
17 case after the new statute came down and the Court denied
18 that motion. We felt that the new statute, and still do,
19 explicitly suggests, at least in the legislative history, that
20 the entire focus of the new legislation is to replace a
21 vacuum, that prior to the new legislation a state could not
22 utilize a transfer of assets rule but now under the new
23 legislation effective July 1 it can utilize a transfer rule.
24 And to corroborate that entire impression, the present
25 California law violates controlling federal law.

1 QUESTION: What is the consequence of the 9th
2 Circuit opinion? Is it anything more than that the children
3 or the other transferees who receive the parents' money,
4 bank accounts, stocks, or whatever, must disgorge and use
5 that money to pay?

6 MR. DEFORD: In many instances the children don't
7 have the money. They've already used it. In any event I
8 don't think that's the issue here, Your Honor. There's no
9 dispute that all these transfers were legal and binding
10 transfers. What California is doing is that if anyone is at
11 fault it is probably the person who received the property.
12 But the burden is placed on the individual who needs the
13 Medicaid coverage, who needs the health care coverage. And
14 that individual is left holding the bill.

15 QUESTION: Of course, there's some importance as
16 to the motive of the person who made the transfer.

17 MR. DEFORD: I believe there is some importance and
18 Congress has recognized that in new legislation, but the
19 motive as it's described in the new legislation is not nearly
20 as restrictive as is described in the present California law,
21 especially as the present California law is implemented.

22 I'd like to reserve the rest of my time if I could.

23 MR. CHIEF JUSTICE BURGER: Mr. Magasin,

24 ORAL ARGUMENT OF RICHARD J. MAGASIN, ESQ.,

25 ON BEHALF OF THE RESPONDENTS

1 MR. MAGASIN: Mr. Chief Justice, and may it please
2 the Court:

3 The issue involved in this case is whether Califor-
4 nia's transfer of assets rule conflicts with the federal
5 Medicaid statute.

6 The transfer of assets rule denies benefits to a
7 medically needy individual who has transferred his assets
8 so as to qualify for medical assistance. It is apparent
9 that the Federal Supremacy Clause should not be employed to
10 void provisions of a state program unless there is clear
11 congressional intent to do so.

12 The transfer of assets rule is designed to effec-
13 tuate the purposes of the Medicaid program by protecting the
14 public treasury and insuring that benefits are paid to those
15 truly in need. It denies eligibility to those individuals
16 who manufacture eligibility by transferring their assets to
17 relatives in order to qualify for medical assistance.

18 QUESTION: Mr. Magasin, is it limited to relatives?

19 MR. MAGASIN: No, it would be --

20 QUESTION: Any third person?

21 MR. MAGASIN: Correct. The most common situation
22 would be a transfer to relatives.

23 QUESTION: To children.

24 MR. MAGASIN: Children; yes.

25 QUESTION: Mr. Magasin, before you get into your

1 argument, can I just ask you a question about that. Suppos-
2 ing the transfer is of sufficient assets to bring the
3 transferor down into an income level that will make him or
4 her eligible for SSI benefits, would he not then be eligible
5 under Subparagraph (a)?

6 MR. MAGASIN: To the extent that there would be a
7 transfer.

8 QUESTION: And it was deliberate and all the rest.
9 But as I understand it, we're really only dealing with the
10 transfers that are not quite as large as they might have been
11 and even under your view they could transfer some more assets
12 in order to get down under the SSI level and then become
13 eligible. Is that right?

14 MR. MAGASIN: Well, to the extent they transferred
15 all of their assets and also with the income and resource lev-
16 el requirements of SSI, conceivably they could qualify for
17 SSI and be eligible --

18 QUESTION: And then if they're qualified for SSI,
19 they automatically get the Medicaid too, even if they got to
20 be qualified by reason of a transfer of assets?

21 MR. MAGASIN: Yes. The reason for this is because
22 under the SSI program we're obligated to follow the SSI
23 standard, so under the SSI program, at least prior to the
24 Boren/Long Amendment, a transfer of assets even for a valuable
25 consideration to a relative or to a friend would make him

1 eligible.

2 QUESTION: Right.

3 MR. MAGASIN: The striking down of the transfer of
4 assets rule will in effect serve to benefit the inheritance
5 of relatives and this will clearly be at the expense of the
6 taxpayers. Of course these policy considerations would carry
7 little weight in the face of explicit federal statutes pro-
8 hibiting a state's transfer of assets rule. However, this is
9 not the case. The petitioner cannot point to a single statute
10 which specifically precludes a state from employing this rule.
11 This is even more apparent when one reviews the facts in this
12 case in the overall administration of the Medicaid and
13 Medi-Cal programs and the specific statutes and regulations
14 under consideration.

15 The Medicaid program was established by Title XIX
16 of the Social Security Act. It is a cooperative federal-state
17 program. Its purpose is to provide medical assistance to
18 needy individuals. To participate states must comply with
19 certain requirements. First, they must adopt a state plan
20 which meets the approval of the Secretary of Health and Human
21 Services. I may comment that the Secretary of Health and
22 Human Services as well as the Secretary of HEW has consistently
23 approved California's state plan and in fact we've been receiving
24 billions of dollars in federal aid.

25 In addition, the states must --

1 QUESTION: Well, didn't your brother tell us that
2 recently a regional director, I think, has advised California
3 that it's not in compliance?

4 MR. MAGASIN: In 1978 we received a letter from a
5 regional director advising California that it was in noncom-
6 pliance. However, no formal noncompliance hearings have been
7 held, which is the prerogative of the Secretary of Health and
8 Human Services pursuant to Title XIX.

9 QUESTION: How long has this case been going on?

10 MR. MAGASIN: Well, this lawsuit was commenced in
11 1978.

12 QUESTION: Before or after the letter?

13 MR. MAGASIN: After the letter.

14 QUESTION: Usually, they wait till they see the
15 outcome of litigation.

16 QUESTION: Well, before you leave that, counsel,
17 the letter doesn't constitute a determination of noncompliance,
18 does it?

19 MR. MAGASIN: That is correct, Your Honor.

20 QUESTION: The letter merely raises an issue and
21 there must be a proceeding of some kind to determine whether
22 that suggestion is correct.

23 MR. MAGASIN: Precisely. There's a special adminis-
24 trative proceeding whereby the Secretary of Health and Human
25 Services affords notice and there's a hearing and the

1 Secretary has the option of cutting off funds. This has not
2 been the case in this lawsuit.

3 QUESTION: So you're telling us, in effect, that
4 whatever the position was of the regional director or Washing-
5 ton on this subject, it was never pursued, never carried out?

6 MR. MAGASIN: Correct.

7 QUESTION: And meanwhile California has been admin-
8 istering its transfer of assets rule?

9 MR. MAGASIN: The state must provide medical assist-
10 ance to a statutorily defined group of needy persons. This
11 group is called the categorically needy. Now, to qualify as
12 categorically needy, two criteria must be satisfied. First,
13 the individual must be aged, blind, or disabled, and secondly
14 he must qualify for financial assistance under either one of
15 two welfare programs. This includes the SSI program, the
16 supplemental security income for aged, blind, and disabled
17 under Title XVI; or the Aid to Families with Dependent Chil-
18 dren under Title IV(a).

19 Now, it should be noted here that the categorically
20 needy are eligible for financial assistance under these pro-
21 grams because they do not have the wherewithal to pay for
22 their own essentials. Of necessity it makes sense that
23 states be required to provide medical assistance to these
24 individuals. Now, there is another group of individuals,
25 and this is what this lawsuit is all about, the medically

1 needy. Now, states have the option of covering the medically
2 needy. We should emphasize that states have the option of
3 participating in the Medicaid program. So, arguably it was
4 never the intent of Congress that the medically needy get
5 benefits automatically. States would have to participate
6 in the program first, and then the states would have to opt
7 to serve this group.

8 Now, the medically needy consists of all the indi-
9 viduals who would qualify for SSI or AFDC except they have
10 sufficient income and resources to cover their essentials
11 apart from their medical expenses. So, conceivably, anyone
12 can be considered a potentially medically needy person,
13 anyone with substantial assets facing potentially substantial
14 medical expenses could fall into this class so long as they
15 are aged, blind, or disabled.

16 Now, they begin to receive medical assistance after
17 they incur medical expenses which reduce their income and
18 assets below a prescribed level. So the medically needy must
19 incur medical expenses before they become eligible. That's
20 a very important difference, and the reason for that is be-
21 cause they have sufficient income and resources or, arguably,
22 they have sufficient income and resources which will be
23 applied toward their medical expenses.

24 Now, California has obviously chosen to participate
25 in the Medi-Cal program, and as I indicated, the state plan

1 has been approved. And California has opted to provide this
2 coverage to this medically needy group. Many states don't
3 even get into coverage to medically needy individuals.

4 As part of its plan California has adopted the transfer of
5 assets rule. Now, what is this rule?

6 The transfer of assets rule creates a rebuttable
7 presumption that any transfer of assets for less than adequate
8 consideration within two years prior to applying was made with
9 the intent to qualify for medical assistance. Now, to rebut
10 the presumption, the applicant may produce evidence that
11 adequate resources were available at the time of the transfer
12 for their support and medical care considering such things as
13 the applicant's competency and life expectancy and health at
14 the time.

15 If the applicant fails to rebut the presumption,
16 then the states can deny benefits.

17 QUESTION: How long may benefits be denied?

18 MR. MAGASIN: Benefits are denied for a period of
19 time in which the value of the asset would have sustained
20 their needs including their medical expenses. That's why
21 Mrs. Beltran ultimately attained eligibility.

22 QUESTION: In other words, the value had been eaten
23 up by the -- ?

24 MR. MAGASIN: Exactly.

25 QUESTION: I see. Was that for a long period, in

1 her case?

2 MR. MAGASIN: Well, it was very interesting. Her
3 eligibility was estimated as a great period of time but as it
4 turned out it was only for a couple of years. Now, the facts
5 in this case are that Mrs. Beltran had sufficient assets that
6 could have been used to support her present need, medical
7 needs. She had them. However, she transferred her assets for
8 less than adequate consideration with the intent to qualify
9 for assistance and this transfer was made to her children.
10 Now what's very important here is that she never bothered to
11 request a fair hearing to produce evidence to rebut the pre-
12 sumption. In fact, the facts here are a bit confusing. We
13 don't know what -- arguably Mrs. Beltran could have rebutted
14 the presumption if she could have shown at the time that she
15 had sufficient assets to meet her present needs considering
16 such things as her health and life expectancy. So she didn't
17 even bother to request a fair hearing.

18 Now, she was disqualified for medical assistance
19 under the medically needy program. We submit that the purpose
20 of the transfer of assets rule is consistent with the Medi-
21 caid program. As I indicated, it's to protect the public
22 treasury and to insure the benefits of aid to those truly in
23 need.

24 Now, it should be noted here that without the
25 transfer of assets rule aged, blind, and disabled individuals

1 would be able to transfer their assets and not use them to
2 defray the cost of their medical expenses, thus encumbering
3 the program with substantial expense. Now, it should be noted
4 that nationwide, aged, blind, and disabled individuals
5 become most likely to require hospital, skilled nursing
6 and intermediate care facility services, which are the most
7 costly under the program. Individuals who in addition,
8 elderly individuals who enter nursing homes, may remain there
9 for a long period of time or, unfortunately, permanently.

10 In New York, for example, it is estimated that a
11 single month of nursing care was as much as \$2,000 per year.
12 So this is really a very significant group of benefits
13 we're talking about here.

14 Now, the transfer of assets rule also has another
15 purpose that discourages the intentional divestment of assets.
16 That is, it prevents individuals with substantial assets from
17 transferring their property.

18 Now, the Senate Finance Committee, interestingly
19 enough, noted that the transfer of assets in good faith --
20 you know, you didn't know about Medi-Cal, you didn't know
21 about benefits -- is really very rare. It's rare, and --
22 as the Senate Finance Committee found out, also, the transfer
23 of assets rule by some courts has been found to implement
24 another important policy procedure under the Social Security
25 Act. That procedure is a fraud preventive measure.

1 Now, arguably, the transfer of assets rule is not
2 in the type of fraud that we normally think of. However, an
3 application for medical assistance made after a transfer of
4 assets is a type of misrepresentation as to the applicant's
5 available resources. On the one hand he comes in and he says
6 I don't have any resources; yet, before, he did. And this
7 misrepresentation is made at the expense of the public trea-
8 sury.

9 QUESTION: Incidentally, weren't these assets
10 houses that she -- that they turned over?

11 MR. MAGASIN: Yes, yes. In Beltran the house was
12 transferred to the children.

13 QUESTION: Was it one house or two houses?

14 MR. MAGASIN: I believe --

15 QUESTION: I thought there were two houses.

16 MR. MAGASIN: There may have been two parcels of
17 property.

18 QUESTION: Yes, and then one -- the elderly couple,
19 they're in their late 80s, aren't they?

20 MR. MAGASIN: I believe so.

21 QUESTION: 88 or something? I thought they con-
22 tinued to live there?

23 MR. MAGASIN: Well, to be quite candid with the
24 Court, there was never a fair hearing so these facts never
25 came out. Those are the facts that petitioner represents

1 to us and to the extent those are true, that clearly is --

2 QUESTION: Well, how do you go about evaluating
3 under the transfer of assets rule what's been transferred?

4 MR. MAGASIN: Well, the first thing we look at is
5 to determine whether or -- we look at the asset being trans-
6 ferred. Not all assets -- for example, some assets
7 are excluded. For example --

8 QUESTION: A homestead, for example, might be if
9 it's the only place an elderly couple like this can live?

10 MR. MAGASIN: Yes. A home is not, for example,
11 considered for purposes of establishing eligibility under
12 the Medi-Cal program. A car; certain income-producing real
13 property; they are personal effects. All of these types
14 of factors are not really considered.

15 QUESTION: Was this valuation arrived at at some
16 kind of formal hearing or what?

17 MR. MAGASIN: Well, essentially, what happens is
18 an applicant goes into the office and presents certain factors.
19 Now, in this situation, when it was disclosed that in fact
20 there was a transfer of assets, then all of a sudden the
21 presumption arose and the petitioner had the ability to re-
22 quest a fair hearing to be able to show that she could rebut
23 the presumption.

24 QUESTION: Yes, but since suspension of assistance
25 is only for so long as it takes to exhaust the value of the

1 transferred asset, there must be some proceeding by which
2 the value is put on those transferred assets, isn't there?

3 MR. MAGASIN: Yes. For example, if the home is
4 valued, say, at \$20,000 and it is transferred, then if it's
5 determined that that \$20,000 was --

6 QUESTION: Who makes that determination? That's what
7 I'm trying to get at.

8 MR. MAGASIN: That would be the local welfare of-
9 fice.

10 QUESTION: And is there a hearing that -- ?

11 MR. MAGASIN: Well, they can request a hearing.
12 Normally, what happens is there's a notice of action which
13 goes out saying, you are being denied benefits. Then, that --

14 QUESTION: And we put a value on your transfer
15 of \$50,000 and until that's eaten up you are no longer enti-
16 tled to assistance.

17 MR. MAGASIN: Exactly. In addition, the notice says,
18 you may request a fair hearing to produce evidence to rebut
19 the presumption.

20 QUESTION: You mean there was no request here?

21 MR. MAGASIN: There was no request here; yes.
22 The transferred assets --

23 QUESTION: Is there anything in the regulation or
24 the statute which has the presumption reach the level of an ir-
25 rebuttable presumption after a lapse of time? Or is there

1 no time factor?

2 MR. MAGASIN: You mean with respect to the period
3 of eligibility?

4 QUESTION: No, the period -- they could have had a
5 hearing; they didn't ask for one. They didn't pursue any
6 such remedy. At some point that presumption must achieve a
7 greater status by the failure to challenge it, does it not?

8 MR. MAGASIN: Well, to the extent that it's not
9 rebutted, yes, to that extent the presumption would hold up
10 and then my answer is, yes.

11 It also should be noted that the transfer of assets
12 rule embodies a well-recognized prohibition known to the law
13 for many years against fraudulent transfers to defraud credi-
14 tors. This is known in bankruptcy law and in other areas of
15 the law.

16 Finally, turning to the specific statutes at issue
17 in this matter, it should be emphasized that there is no
18 statute under Title XIX which specifically prohibits a trans-
19 fer of assets rule. And it should also be noted that states
20 have considerable flexibility in the administration of the
21 program. This is a cooperative federal-state program which
22 gives the states a certain amount of flexibility in con-
23 sidering various eligibility requirements.

24 Now, turning now to Section -- now, to repeat that
25 long Section 1396a(a)(10)(C)(i), a look at that statute,

1 which is the guiding principle here, there is no statement about
2 a transfer of assets. The plain language of the statute
3 doesn't say you can't impose a transfer of assets rule.
4 In addition, the only -- and we look at the other portions
5 of the statute, now, it may be read as requiring that the
6 evaluation of the applicant's income and resources be deter-
7 mined by using comparable standards. So then one wonders,
8 what is comparable standards? And the 9th Circuit found that
9 comparable standards by virtue of Webster's is not identical
10 standards. Comparable standards are similar standards, and
11 clearly California applies similar standards to its --

12 MR. CHIEF JUSTICE BURGER: We'll resume there at
13 1 o'clock.

14 (Recess)

15 MR. CHIEF JUSTICE BURGER: You may continue,
16 Mr. Magasin.

17 MR. MAGASIN: As I have previously indicated, there
18 is no statute under Title XIX which specifically prohibits
19 a transfer of assets rule. A transfer of assets rule is,
20 first of all, consistent with 42 USC 1396a(a)(10)(C), and as
21 I indicated, the plain language of the section does not pre-
22 clude such a rule. The first part of the statute provides
23 that the medically needy group includes all individuals who
24 would, except for income and resources, be eligible for SSI.

25 Now this section may be read as specifically

1 excluding income and resources and it equates the SSI eligi-
2 bility to the medically needy eligibility requirement.

3 Now the transfer of assets rule can clearly be construed as a
4 financial eligibility requirement which pertains to the
5 applicant's income and resources, and therefore clearly comes
6 within the exception to the first clause of the statute.

7 Now, the second part of the statute, the gist of
8 which provides that the medically needy group includes all of
9 those individuals who have insufficient income and resources
10 as determined under comparable standards to pay for their own
11 medical care. Now, this section may be read as requiring
12 that the evaluation of the applicant's income and resources
13 be determined by using comparable standards. And as I indi-
14 cated, comparable does not necessarily mean identical; only
15 similar.

16 QUESTION: What do you think the comparable refers
17 to? Comparable to what, in your view of the statute?

18 MR. MAGASIN: Well, the 9th Circuit found that the
19 comparability in this clause referred to -- they didn't speci-
20 fically say it, but they read it that it might require
21 comparability between the categorically needy and the medi-
22 cally needy. On the other hand, there is legislative intent
23 which suggests that comparability between these groups was
24 never intended by the second part of the statute.

25 QUESTION: My question is, how do you read it?

1 MR. MAGASIN: Well, I would submit that the legis-
2 lative intent seems to be clear in this regard. However, I
3 would give more credibility to the 9th Circuit's opinion
4 in this matter.

5 QUESTION: I still don't understand how you read it.

6 MR. MAGASIN: I would submit that there would be
7 comparability between the medically needy and the categori-
8 cally needy. As I said, there is a conflicting interpreta-
9 tion of those words.

10 QUESTION: In other words, that the standards for
11 determining SSI eligibility must be comparable to the stan-
12 dards for determining Medicaid eligibility?

13 MR. MAGASIN: Yes, this reading.

14 QUESTION: And in SSI eligibility, it does prohibit
15 the transfer of assets rule?

16 MR. MAGASIN: That's correct.

17 QUESTION: So if the comparability concept includes
18 it, you'd say the the same rule would apply?

19 MR. MAGASIN: No, I would submit that this excepts
20 our income and resource standards, that they don't have to
21 be the same, that you could have a transfer of assets re-
22 striction and this would be similar, but not necessarily
23 identical.

24 Now, the transfer of assets rule is also consistent
25 with 42 USC Section 1396a(a)(17)(B). Now, this section

1 requires that only available income and resources con-
2 sidered in making eligibility determinations be considered
3 under the Medicaid program.

4 Now, when you look at this statute, which is also
5 supposed to conflict with the transfer of assets provision,
6 we notice that there is no plain preclusion of the transfer
7 of assets rule in this section either. Now, there is nothing
8 in the legislative history which prevents the consideration
9 of a transferred asset as available. In fact, the purpose of
10 the availability rule prevents the counting of assets of a relative
11 as available to the applicant. Transfer of assets rule -- this
12 section is not meant to apply to a person who manufactures eli-
13 gibility by giving away assets that could be used for medical
14 expenses.

15 Now, the transfer of assets rule is also consistent
16 with a federal regulation which the petitioners cite. This
17 is 42 CFR, Section 435.401(c). Now this section in effect
18 provides that states not use requirements for determining
19 eligibility for the medically needy which are more restric-
20 tive than those used for the categorically needy.

21 Now, we submit that this section does not apply to
22 a financial eligibility requirement such as the transfer of
23 assets rules. We base this opinion as follows.

24 The section was found under the general heading
25 and title, "Subpart (e), General Eligibility Requirements."

1 Now Subpart (e) does not apply to financial eligibility con-
2 ditions. It applies to citizenship, alienage, or state
3 residents. Now, further support for this interpretation is
4 found in a prior wording of that section. The prior wording
5 specifically states that it is meant to refer to nonfinancial
6 eligibility requirements.

7 Now, it's very interesting to note is that within
8 Part 435 of the CFRs, Subpart (i) specifically covers finan-
9 cial eligibility requirements for the medically needy. In
10 this section it would be logical you would see a transfer of
11 assets restriction. There is no such restriction in Subpart
12 (i) which specifically deals with income and resource require-
13 ments for the medically needy.

14 I would like to also discuss the Boren/Long
15 Amendment. Now, it has been argued that the Boren/Long
16 Amendment precludes the imposition of a transfer of assets rule
17 prior to the enactment of the law. Now, the law itself was
18 signed into effect on December 28, 1980, and has been desig-
19 nated Public Law 96-611, Section 5. It's interesting to note
20 that it not only permits transfer of assets rules in a Title
21 XIX program but it also permits them in a Title XVI program,
22 the SSI-SSP programs.

23 Now, it's also very interesting to note is that
24 Congress in these provisions of the Boren/Long Amendment,
25 these provisions are very similar to California's transfer

1 of assets restriction. There are some differences but they
2 are very similar. Congress's intent in enacting this
3 Boren/Long Amendment was to correct an abusive practice
4 whereby individuals transfer substantial assets to relatives
5 to qualify for medical assistance. So Congress recognized
6 the problem that California had noted all along.

7 Now, it should be noted that not every amendment
8 of a statute demonstrates legislative intent to make a change
9 in the substance of a preexisting law. We would submit that
10 the Boren/Long Amendment constitutes an exclusive permission
11 to the states to impose a transfer of assets rule, and this
12 is further buttressed by the fact that certain reports of
13 the Senate Finance Committee suggest that the Amendment was
14 the result of congressional desire to remedy the effect of
15 erroneous court decisions striking down the rule, so
16 apparently Congress was aware at this time of these deci-
17 sions perhaps in the 2nd and 4th Circuits striking down the
18 rule and said, we don't want to give credibility to those
19 decisions, we are enacting this provision, and we want to
20 make sure that it is not intended to show that we agree with
21 those decisions striking down the rule.

22 Based on the foregoing, the 9th Circuit
23 opinion should be affirmed. If there are no more questions,
24 this concludes our presentation.

25 MR. CHIEF JUSTICE BURGER: Very well. Do you have

1 anything further?

2 MR. DEFORD: Yes, Mr. Chief Justice.

3 MR. CHIEF JUSTICE BURGER: You have two minutes
4 remaining.

5 ORAL ARGUMENT OF GILL DEFORD, ESQ.,

6 ON BEHALF OF THE PETITIONER -- REBUTTAL

7 QUESTION: Mr. Deford, before you commence, may I
8 ask what relief you now think would be appropriate in light
9 of the amendment to the statute?

10 MR. DEFORD: The appropriate relief now would be
11 for the District Court to notify the members of the class
12 of the decision of this Court, if it reverses, and to allow
13 those individuals to apply for the state administrative
14 processes to obtain the amount of benefits which they have
15 been denied by the illegal transfer of assets rule in the past.

16 QUESTION: Would you have any problem under the
17 Eleventh Amendment?

18 MR. DEFORD: No, Your Honor, I think the Quern v. Jordan
19 specifically deals with that issue in which this Court determined
20 that notification does not violate the Eleventh Amendment, where
21 a federal court ordered payment -- in that calendar --

22 in that case. QUESTION: Is that California --

23 QUESTION: The state could turn them down, I take
24 it, then?

25 MR. DEFORD: The state could turn them down?

1 I believe the state would have to notify them.

2 QUESTION: It could notify them to apply, but it
3 could turn them down.

4 MR. DEFORD: Not on the basis of the transfer of
5 assets rule, Your Honor. It would have to notify them that
6 if they had otherwise been eligible except for this rule,
7 which has since been declared invalid, they would have the
8 opportunity of recovering the amount of benefits which they
9 had lost or had otherwise to pay out.

10 QUESTION: But it would be determined as a state
11 proceeding?

12 MR. DEFORD: It would be for the state proceedings
13 in compliance with Quern v. Jordan theory.

14 QUESTION: You also requested declaratory and in-
15 junctive relief. Would either of those give you anything
16 that -- in light of the statutory change?

17 MR. DEFORD: Probably, in light of the fact that
18 this Court could not rule until nearly the time in which the
19 Boren/Long Amendment goes into effect for Medicaid appli-
20 cants, injunctive relief would only affect a very few number
21 of applicants in the future.

22 QUESTION: So your principal reliance would be on
23 reimbursement.

24 MR. DEFORD: Reimbursement, I think, we would need an
25 injunctive relief order to get reimbursement for the members

1 of the class, Your Honor.

2 QUESTION: Would you have to say anything about the
3 failure to ask for a hearing for a determination to change the
4 presumption?

5 MR. DEFORD: I think the reason we didn't ask for
6 determination is two-fold. First, it was faster to go through
7 a federal court. This case was already pending, all
8 Mrs. Beltran had to do was to intervene. The administrative
9 process in California takes six to ten months. This process
10 only took three months to get a decision in the District
11 Court. More important, a decision of the other main plain-
12 tiff, Mr. Manahan, should be read by this Court to indicate
13 the unlikelihood that an individual will succeed in an
14 administrative hearing. That person actually won his fair
15 hearing and then was reversed by the Director, by the defen-
16 dant in this case without any opportunity to explain his
17 situation.

18 QUESTION: Are civil cases tried that fast?

19 MR. DEFORD: Well, it's just that this case was
20 about to go off on cross-motions for summary judgment. We
21 had virtually completed discovery, so the case was in its
22 final stages and Mrs. Beltran's initial decision was --

23 QUESTION: Well, it's too bad that three months
24 isn't the rule, isn't it?

25 MR. DEFORD: As far as I'm concerned, it is.

1 MR. CHIEF JUSTICE BURGER: The more of those cases
2 we get, the greater will be the span of time.

3 MR. DEFORD: Thank you.

4 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
5 The case is submitted.

6 (Whereupon, at 1:11 o'clock p.m. the case in the
7 above-entitled matter was submitted.)
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CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 80-5303

ANTONIA BELTRAN, ETC.

V.

BEVERLEE A. MYERS, INDIVIDUALLY AND AS DIRECTOR,
CALIFORNIA STATE DEPARTMENT OF HEALTH, ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: Ed J. Olson

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