

1996

# Joie D. Nelson v. Rpd Betit, as Executive Director of the Department of Human Services : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 960489-CA

JOIE D. NELSON,  
Plaintiff and Appellant,

v.

ROD BETIT, In his capacity as  
Executive Director of the  
DEPARTMENT OF HUMAN SERVICES,  
Defendant and Appellee.

Case No. 960489-CA

Category No. 15

BRIEF OF APPELLANT

This is an appeal from a final order of the Second District Court of Weber County, The Honorable Michael D. Lyon presiding, granting appellee's motion for summary judgment and denying appellant's motion for summary judgment.

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Marilyn M. Branch  
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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JOIE D. NELSON,	)	
	)	
Plaintiff and Appellant,	)	
	)	
v.	)	Case No. 960489-CA
	)	
ROD BETIT, In his capacity as	)	Category No. 15
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DEPARTMENT OF HUMAN SERVICES,	)	
	)	
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## **JURISDICTION OF THE COURT OF APPEALS**

This is an appeal from a final order of the District Court of the Second Judicial District granting the motion for summary judgment of the defendant Department of Human Services (hereinafter "DHS") and denying plaintiff Joie D. Nelson's (hereinafter "Nelson") motion for summary judgment. Appeal was taken to the Utah Supreme Court which had jurisdiction under section 78-2-2(3)(j) of the Utah Code. The Supreme Court subsequently transferred the case to the Court of Appeals.

### **STATEMENT OF THE ISSUE**

Whether the lower court erred in not concluding that Nelson was excluded from the Aid to Families with Dependent Children (AFDC) household pursuant to 42 U.S.C. §602(a)(24).

### **STANDARD OF REVIEW**

In reviewing an appeal from a grant of summary judgment, the appellate court views the facts in a light most favorable to the losing party below. In determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below, the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989). The issue was preserved in appellant's motion for summary judgment. R-24.

### **DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES**

42 U.S.C. §602(a)(7) & (24)

45 C.F.R. §233.20(a)(ii)

## STATEMENT OF THE CASE

### A. Nature Of The Case

This case arose in October 1992, when a processing delay by the Social Security Administration (SSA) caused Nelson's son to be declared ineligible for AFDC and Medicaid benefits for one year. In that month, Nelson was found eligible for both Social Security Disability Insurance Benefits (SSDI) and Supplemental Security Income (SSI). However, the SSA processing delay resulted in a retroactive SSDI check arriving before a retroactive SSI check. Nelson had no control over which check SSA processed and issued first. Whether SSA issues the SSDI or SSI check first is completely arbitrary. Had the SSI check arrived first, Nelson would have been excluded from the AFDC household, her SSDI would not have been considered and this case would not have arisen. DHS, however, interpreted an AFDC statute--42 U.S.C. § 602(a)(24)--as meaning that the delay in receiving the SSI check precluded Nelson from being an SSI recipient. Applying AFDC lump sum rules that apply to SSDI--but not SSI--DHS declared Nelson's son ineligible.

Nelson did everything required of her under the law: she reported her disability determination, and her SSI retroactive award was offset by the AFDC benefits she received during the time her disability application was pending. She received nothing to which she was not entitled by law. But for the SSA processing delay, the lump sum rule would not have been applied and Nelson's son, like many other children of disabled mothers, would have continued to receive benefits.



B. Course Of The Proceedings

Nelson requested a hearing to contest the denial of benefits to her son. After receiving no relief through the administrative system, Nelson filed this action pursuant to 42 U.S.C. §1983. Both parties filed motions for summary judgment and the issues were fully briefed. The lower court found as a matter of law that deference was owed to a federal policy offered by DHS in support of its action and granted summary judgment to defendant. This appeal followed.

C. Disposition At Trial Court Or Agency

The motion for summary judgment filed by DHS was granted. Nelson's motion for summary judgment was denied.

D. Relevant Facts With Citations To The Record

Nelson and her son were receiving AFDC and Medicaid in July 1992. Record (hereinafter "R"), at 46. On July 28, 1992, Nelson applied for disability under two related federal programs: SSDI and SSI. R-42, 66. On October 17, 1992, Nelson received notice from SSA that she had been found disabled and was eligible for SSDI benefits starting in August 1991. R-8. On October 22, 1992, Nelson received further notice from SSA that she would soon be receiving a check in the amount of \$4918.00, representing retroactive SSDI benefits accrued during the time period from August 1991 through September 1992; she was further advised that her monthly SSDI check would be \$335.00. R-11. On October 27, 1992, Nelson delivered copies of the notices to her caseworker in the Ogden office. R-67.

On October 28, 1992, Nelson was notified by her caseworker that her case would be closed and, as a result, her son would be ineligible for AFDC and Medicaid benefits from November 1992 through October 1993. R-43. The disqualification resulted from AFDC policy which disqualified for a period of time those households which received lump sums. R-46.

On November 5, 1992, Nelson delivered to her caseworker a computer printout from SSA showing that she had also been found eligible for SSI benefits from the date of her application in July 1992, with development pending. R-42, 67. SSA did not process Nelson's SSI benefits until December 1992, when a retroactive SSI check was sent to Nelson. R-54. Her retroactive SSDI check was received in October 1992; DHS treated \$4,487.00 of that check as a lump sum. R-43.

Nelson delivered to her caseworker an updated computer printout from SSA, dated December 10, 1992, confirming that she had been eligible for SSI since July 1992, and that she would receive a retroactive SSI benefit check, together with recurring monthly benefits. R-44. Nelson asked that the decision denying her son AFDC and Medicaid be reversed, since she had been an SSI recipient at the time her son's eligibility was reviewed. R-68.

Nelson requested and appeared at a hearing where she argued that under federal law, the SSDI she received should have been excluded from household income when her son's eligibility was determined, because she had been an SSI recipient. At the hearing, additional facts were developed, including: (1) if the SSI payment

had been received prior to the SSDI payment, the lump sum rule would not have been applied (R-50); (2) the delay in processing Nelson's SSI claim from application to recipient status was the fault of the Social Security Administration (R-51); and (3) it was the delay in processing by SSA that caused Nelson to be included in the household and her son declared ineligible for one year's benefits (R-51). The hearing officer rejected Nelson's arguments, however, and refused to reinstate her son for benefits.

#### **SUMMARY OF THE ARGUMENT**

Under the plain language of section 602(a)(24), Nelson should have been treated as an SSI recipient at the time her SSDI check arrived. At least one other case that reviewed similar facts supports this argument. In the alternative, the court should find that the federal policy offered by DHS does not apply to the facts of this case and is not controlling. Nelson urges the court to adopt a more reasonable interpretation of the statute, thereby avoiding an unreasonable result which would deny a dependent, needy child AFDC and Medicaid benefits, because of a delay in processing over which he and his mother had no control.

#### **ARGUMENT**

##### **I. INTRODUCTION**

Nelson asks this court to reverse a lower court decision which approved her son's loss of a year's financial assistance and Medicaid, simply because of a processing delay by the Social Security Administration. Before considering the arguments for granting Nelson the relief she seeks, it is important to understand

what caused this unfair result.

A. The Interrelationship of SSDI and SSI

Typically, a person claiming disability applies for federal benefits under both the SSDI and SSI programs, which are fully funded and administered by the federal government. The two programs share a common definition of disability and the same sequential evaluation process is followed in making the determination. 20 C.F.R. §§ 404.1505, .1520; 416.905, .920. The main difference between the two is the source of funding: SSDI is an insurance program funded by joint worker/employee contributions while the worker is employed. To qualify for SSDI, the applicant must have the requisite quarters of coverage and be insured at the time disability began. SSI is an income maintenance program and is available to any blind, disabled or elderly person, regardless of work history.

The monthly benefit amount for SSDI purposes varies, depending upon the amount paid into the Social Security system while the person was working. The amount of SSI to which a person may be eligible is reduced by earned and unearned income, including SSDI benefits. Currently, a single SSI recipient with no other income is entitled to a maximum benefit of \$470.00 per month.

The process for determining eligibility under either program begins with the filing of a joint application at the Social Security district office. The disability decision is made by the Disability Determination Service in Salt Lake City which contracts with Social Security to perform this function. Once determined

disabled for SSDI purposes, an applicant may be paid retroactive benefits up to twelve months before the date of application. In contrast, SSI benefits for a successful applicant start with the date of application. Since a disability determination can often take months, the successful disability applicant is usually entitled to a retroactive payment of benefits covering the months the claim was pending.

The actual processing of SSDI and SSI benefits takes place outside of Utah, usually in Baltimore, Maryland. Whether SSA processes the SSDI application first or the SSI application is completely arbitrary. Usually, the SSI award is paid first and the calculation of SSDI occurs subsequently. However, in some cases, and for unexplained reasons, the SSDI award is calculated and paid first. While in most cases this arbitrary event makes no difference to the SSDI/SSI recipient, in Nelson's case it had serious consequences, because she and her son were AFDC recipients at the time her SSDI retroactive benefits were paid.

B. The AFDC Program<sup>1</sup>

The AFDC program was based on a scheme of cooperative federalism designed to provide financial assistance to needy, dependent children and the parents or relatives who lived with and cared for them. King v. Smith, 392 U.S. 309, 316, 20 L.Ed.2d 1118

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<sup>1</sup>On August 22, 1996, the President signed into law the Welfare Reform Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996), effectively abolishing the AFDC program and replacing it with the Temporary Assistance to Needy Families program. The discussion of the AFDC program herein is based upon the law as it existed at the time these issues arose.

(1968). A state participating in the program was reimbursed by the federal government for a portion of the funds it spent on benefits. 42 U.S.C. §603 (1991). In return for receiving federal financial participation, the state was required to administer its AFDC program pursuant to a state plan conforming to applicable federal statutes and regulations. 42 U.S.C. §602 (1991). Children found eligible for AFDC were automatically eligible for health benefits under Medicaid. 42 U.S.C. §1396(a)(10)(A)(1991). States were required to consider a family's income and resources when determining eligibility; benefits were not allowed once income exceeded a prescribed amount. 42 U.S.C. §602(a)(7)(A)(1991).

In 1981, legislation was adopted which added the "lump sum rule" to the AFDC system. 42 U.S.C. §602(a)(17)(1991). Under this provision, a family that received in a month a lump sum of nonrecurring income which, when added to the family's other income, exceeded the standard of need for that household would be ineligible for a certain number of months from receiving AFDC. This rule applied to the lump sum of SSDI benefits which Nelson received in November 1992. When the amount of the lump sum was divided by her household's standard of need, it resulted in twelve months of ineligibility.

There is a second AFDC rule which is at the heart of this appeal. The statute excludes from the AFDC eligibility calculation any recipient of SSI benefits. Because of its centrality to Nelson's argument, the relevant section is quoted in its entirety:

A State plan for aid and services to needy families with children must--

....

(24) provide that if an individual is receiving benefits under subchapter XVI<sup>2</sup> of this chapter ... then, for the period for which such benefits are received ... such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;

42 U.S.C. §602(a)(24) (emphasis added).

II. UNDER THE PLAIN MEANING OF THE STATUTE, NELSON'S SSDI BENEFITS SHOULD HAVE BEEN EXCLUDED FROM CONSIDERATION

Nelson has argued since the inception of her case that under the AFDC statute and regulations she should have been excluded from the AFDC household because she was an SSI recipient, which would have left her son eligible for benefits. The federal regulation which implements the statute provides that a state AFDC plan must:

(ii) Provide that the needs, income, and resources of individuals receiving SSI benefits under Title XVI ... for the period for which such benefits are received, shall not be included in determining the need and the amount of the assistance payment of an AFDC assistance unit.

45 C.F.R. §233.20(a)(ii). See Addendum. The Utah Office of Family Support (OFS), the DHS branch administering AFDC, recognized that SSI recipients were excluded, for its policy at the time provided, in relevant part:

SSI recipients in an AFDC household must be excluded from the household grant. Do not use

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<sup>2</sup>Subchapter XVI is that portion of the Social Security Act containing the eligibility requirements for SSI. 42 U.S.C. §§ 1382 et. seq.

the income and assets of SSI recipients to determine eligibility or to calculate the grant for the household.

UTAH-DHS-OFS Vol. II §212-1. See Addendum.

Nelson's argument made at her initial administrative hearing remains valid: the statute and regulations can be read to exclude her as an SSI recipient from the AFDC household and it is fundamentally unfair to base her son's eligibility on an arbitrary event over which he had no control. At least one state court in reviewing identical facts agreed with this argument. In Gleim v. Com. Dept. of Public Welfare, 409 A.2d 951 (Pa. Cmwlth. 1980), Eldora Gleim had applied for AFDC on May 8, 1978. Her husband, James E. Gleim, had applied for SSI benefits one month earlier on April 8, 1978. Owing to SSA's delay in processing the SSI claim, James Gleim did not receive a retroactive SSI payment until August 9, 1978. The Pennsylvania Department of Public Welfare (DPW) included James in Eldora Gleim's AFDC household, maintaining that he was not an SSI recipient until he actually received his benefit check, even though he had been accruing benefits from the date of his application. The Pennsylvania court found that the plain meaning of 602(a)(24) required a finding that James was an SSI recipient. It concluded:

Gleim received SSI benefits for the entire period between April 8, 1978, and August 9, 1978, although official notice was not received and payments were not paid until August 9, 1978. Therefore, under the plain language of the statute, Gleim became a recipient at that date which SSA found him to be eligible, April 8, 1978, and his inclusion within the family unit for AFDC grant purposes beyond that date was improper.



Id., at 952. The Gleim court observed that DPW's reading of the statute led to illogical and inconsistent results, since two individuals declared eligible for SSI on April 8, 1978, might become "recipients" on widely varying dates, solely because of processing delays at the SSA level.

This court has the authority to determine whether the plain language of 602(a)(24) is clear and unambiguous. The plain language itself is ordinarily regarded as conclusive, absent some expression of legislative intent to the contrary. North Dakota v. United States, 460 U.S. 300, 312, 75 L.Ed.2d 77, 103 S.Ct. 1095 (1983). The court should follow the example of the Gleim court and find that the plain language of the statute excluded Nelson from the AFDC household. Nelson began receiving SSI benefits from her first day of eligibility, even though a check for those accrued benefits was not sent to her by SSA until several months later. The statute does not require that a disabled person eligible for SSI benefits actually have the benefits in hand in order to be excluded from AFDC consideration. It excludes the SSI recipient from the AFDC household "for the period for which such benefits are received..." The period for which Nelson received SSI benefits dated from July 1992, when she applied for SSI. Therefore, Nelson should have been excluded from the AFDC household and her son allowed to continue receiving financial and medical benefits.

III. THE LOWER COURT ERRED IN GIVING DEFERENCE TO A FEDERAL POLICY THAT DID NOT APPLY TO THE FACTS OF THIS CASE.

When the case was argued on summary judgment at the lower court, DHS produced and entered in the record Action Transmittal

No. ACF-AT-93-20 prepared by Diann Dawson, Acting Director of the Office of Family Assistance at the U.S. Department of Health and Human Services. R-124. See Addendum. This document purports to set forth federal policy addressing the issue raised in this appeal. The lower court accepted the document as federal policy, to which deference must be given, and it held:

The Court rules that the meaning of 42 U.S.C. §602(a)(24) is susceptible to two reasonable interpretations. However, the Court agrees with defendant and accords substantial deference to the interpretation espoused by the Secretary of Health and Human Services who is charged by Congress with implementing and enforcing this statute. The Secretary reconciles the overlap between the AFDC and SSI benefit programs by a policy that funds are not received until the recipient actually receives them. This policy is congruent with the operative language of the statute.

R-131-32. A careful review of the alleged policy shows that it was not addressed to the specific facts of this case and, even if it could be so construed, is not a permissible policy interpretation to which deference is owed.

A. The Policy Articulated in the Action Transmittal Was Not Based on The Facts of This Case

The Action Transmittal relied on by DHS to support its denial of benefits to Nelson's son is actually addressed to three separate issues that may arise when an AFDC recipient receives retroactive SSI. However, the issue raised by this appeal is not one of them. It addresses: (1) "whether or not States must recompute AFDC to adjust for any overpayments or underpayments created during the SSI retroactive period"; (2) "the treatment of SSI retroactive payments to or on behalf of individuals without continuing SSI eligibility";

and (3) "whether child support payments collected during the SSI retroactive period must be redistributed to the AFDC family." R-125.

DHS ignored the fact that the transmittal was not addressed to the issue raised by Nelson's case, and then compounded its error by extracting isolated language from one portion of the document, which it construed as binding federal policy applicable to this case. That portion of the instruction states:

AFDC Payments Made During the SSI Retroactive Period

AFDC benefits for the SSI retroactive period will not be recomputed because they are correct payments. Section 402(a)(24)<sup>3</sup> of the Act, which prohibits counting the income and resources of an SSI recipient for AFDC purposes, is applicable beginning on the date SSI payments are actually received. Therefore, since ineligibility does not begin prior to the receipt of the SSI payment, AFDC payments issued during the SSI application period and prior to actual receipt of SSI are correct payments.

R-125. From this segment, DHS inferred that in all cases it would be reasonable to apply section 602(a)(24) in all situations "beginning on the date SSI payments are actually received." While this may be an easy way to solve the problem raised by Nelson's case, it is not fair and reasonable, nor is it clearly federal policy. There is no evidence that the federal agency ever addressed the facts presented by this case. At oral argument, DHS' counsel produced the Declaration of Diann Dawson, dated March 13,

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<sup>3</sup>Section 402(a)(24) is the official designation in the Social Security Act of the statute at issue. It corresponds to 42 U.S.C. § 602(a)(24).

1996, which purports to be policy applicable to this case. R-129. See Addendum. However, the declaration is no more than a summary of the language quoted above from Action Transmittal No. ACF-AT-93-20. It does not address the unique facts presented by this appeal. It is aimed at an unrelated issue: the offsetting of SSI benefits by any AFDC benefits received. As will be argued below, the transmittal is not entitled to deference and produces an unreasonable result in this case.

B. An Informal Statement of Policy By a Federal Agency Is Not Entitled to Deference

Assuming for the sake of argument that the plain language of the statute does not resolve the issue raised by this appeal, then the court must ascertain the intent of Congress and give effect to that intent. Tello v. McMahon, 677 F. Supp. 1436, 1440 (E.D. Cal. 1988). In making that determination the court must decide what deference, if any, should be given to an interpretation made by a federal agency responsible for implementing the statute. As will be seen, not every federal agency pronouncement is entitled to controlling weight.

The courts which have considered the issue recognize that a policy which a federal agency has formally adopted is entitled to more weight than one reflecting merely the agency's informal interpretation. The former are sometimes referred to as "legislative rules" and the latter as "interpretative rules." Doe v. Reivitz, 830 F.2d 1441, 1446 (7th Cir. 1987). The decision in Chevron USA v. Natural Resources Defense Council, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d. 694 (1984) is an example of a case wherein

formal, legislative rules were reviewed. The Court had before it EPA regulations formally promulgated in the Federal Register as required by the Administrative Procedures Act. These "legislative regulations," the Court found, were entitled to controlling weight, since the construction given the statute by the federal agency was a permissible one.

The policy offered by DHS as controlling in this case is not a legislative rule, since it was never formally promulgated. It is more akin to the agency interpretation reviewed in Doe v. Reivitz, 830 F.2d at 1446, wherein AFDC policy was expressed in a letter issued by an HHS regional administrator. Concerning the deference owed such interpretations, the court observed:

The documents at issue in this case are interpretative rather than legislative in nature, and under longstanding principles, agency interpretations are not entitled to the same degree of deference commanded by the high-powered regulations reviewed in Chevron. See 2 K. Davis, Administrative Law Treatise § 7:8 (1979). The Court in Chevron did not purport to alter the scope of review traditionally accorded interpretative documents. See American Federation of Labor v. Donovan, 757 F.2d 330, 340-41 & n. 7 (D.C. Cir. 1985). There are good reasons why the HHS statements in question here should be viewed as interpretative and accorded less deference than force-of-law regulations.

The court went on to explain why an interpretative rule is not entitled to the same weight as a legislative rule: interpretative rules do not go through the notice-and-comment rule-making procedure followed when force-of-law rules are promulgated under the Administrative Procedures Act. 5 U.S.C. §553 (1982). Interpretative rules are not widely disseminated; frequently, a

state may not even know of the interpretative rule until a specific issue arises. Quoting K. Davis, the Doe v. Reivitz court concluded that agency interpretative rules, unlike legislative rules, are not binding on the courts:

The courts may find [such documents] persuasive and may treat them as if they were binding, but the courts have the reserve of power to substitute their own judgment on all questions of statutory interpretation. The preliminary power of interpretation is in the agency, but the final power of interpretation is in the courts.

2 K. Davis, Administrative Law Treatise §7:11, at 55 (1979) as quoted in, Doe v. Reivitz, 830 F.2d at 1447. Finally, the court noted that the weight to be given an agency interpretative rule depends on many factors, including:

1. the validity of its reasoning;
2. its consistency with earlier and later agency pronouncements; and
3. whether the administrative document was issued contemporaneously with passage of the statute being interpreted.

Doe v. Reivitz, 830 F.2d at 1447.

The Action Transmittal relied on by DHS as federal policy can best be characterized as an interpretative rule. It is not a legislative, or force-of-law, rule, since it was never subjected to notice-and-comment rulemaking. Further, it appears that the policy has not been widely disseminated. The Action Transmittal never surfaced until the case was being briefed for summary judgment and was never even mentioned in the Gleim case. There is no evidence that the policy is being uniformly applied in other states. The policy was not developed and issued contemporaneously with the

statute in question, since the SSI program began in 1972 and the policy statement relied on by DHS was not issued until November 2, 1993. R-124; 42 U.S.C. §1381. Therefore, given the interpretative nature of Action Transmittal No. ACF-AT-93-20, the policy statement relied on by DHS is not entitled to much weight and the court may make its own assessment of what the law means in this case.

IV. IT IS REASONABLE TO INTERPRET THE STATUTE AS APPLYING TO NELSON DURING THE RETROACTIVE PERIOD

The case law reveals that the federal interpretation of 602(a)(24) came not from a formal review but from litigation focused on an unrelated AFDC issue. In Commonwealth of Pennsylvania v. United States, 752 F.2d 795 (3rd Cir. 1984), the state of Pennsylvania brought litigation to challenge SSA's practice of deducting from initial retroactive SSI benefits the total amount of AFDC paid to the SSI recipient during the period of time the SSI application was pending. Since AFDC is a cooperative federal-state program, with each participating state paying a portion of the AFDC benefit, Pennsylvania argued it was entitled to a reimbursement of the portion of AFDC it had paid. Using section 602(a)(24), Pennsylvania reasoned that since an SSI recipient is not eligible for AFDC, the portion of benefits it had paid during the SSI determination period was subject to recovery by the state. The district court agreed with SSA that 602(a)(24) did not apply to persons who received SSI benefits paid retroactively. The appellate court approved the lower court's decision but went on to observe:

Notwithstanding the district court's analysis,

it is not altogether clear whether section 602(a)(24) applies only to the time period during which an individual is actually receiving SSI benefit payments. For example, the language of the provision directs that a person may not be considered a part of an AFDC family 'for the period for which such [SSI] benefits are received.' Because an eligible SSI recipient begins to accrue benefits at the time he or she applies for benefits and because he or she is paid SSI benefits retroactively for the period between application and determination of eligibility, it would be reasonable to conclude that the SSI determination period is one for which SSI benefits are received. (Emphasis added).

Another case which reached the same conclusion is Fitzgerald v. Schweiker, 538 F.Supp. 992 (D. Md. 1982). In that case, the court was asked to decide whether SSA's policy of applying a "per capita" rather than an "incremental" method of calculating AFDC benefits to be deducted from an SSI applicant's retroactive benefits was valid. The court concluded that section 602(a)(24) could be applied retroactively:

[T]he intent of the statute is readily applied to the retroactive period. The statute covers 'the period for which such [SSI] benefits are received' and therefore governs the payment of all SSI benefits, both prospective and retroactive.

Fitzgerald v. Schweiker, 538 F. Supp. at 1002.

It is clear from the case law that a reasonable interpretation of section 602(a)(24) is that it applies to SSI recipients who are found eligible but who, because of an SSA processing delay, receive part of their benefits in the form of a retroactive check. Nelson is one of those recipients. She was found eligible for SSI in July 1992 and SSA properly deducted the AFDC she received during the SSI



determination period, thus preventing any double-dipping of AFDC and SSI benefits. The policy expressed in the Action Transmittal is reasonable, when applied under those circumstances. It becomes unreasonable when applied to a set of facts for which it was not intended. The court may, in that case, conclude properly that the more reasonable interpretation is that found in the Gleim and Fitzgerald decisions.

To find that 602(a)(24) applies retroactively avoids an unreasonable result, something which the law pertaining to statutory interpretation urges. It is considered a "golden rule" of statutory interpretation that a possible interpretation of a statute that produces an unreasonable result should be rejected. U.S. v. Meyers, 808 F.2d 912, 919 (1st Cir. 1987); U.S. v. Bayko, 774 F.2d 516, 522 (1st Cir. 1985). As one authority has stated:

It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation...."  
2A Sands, Sutherland Statutory Construction § 45.12 at 54 (4th ed. 1984).

United States v. Meyer, 808 F.2d at 919.

The result urged by DHS in this case is especially unreasonable, since it denies benefits to a dependent child whom the Social Security Act was designed to benefit. The interpretation urged by DHS ignores what has been termed "a kind of common law of the AFDC statute" that the sins of the mother should not be visited on her children. Rush v. Smith, 573 F.2d 110, 118 (2nd Cir. 1978). Another court, after reviewing a long line of

case law, starting with King v. Smith, 392 U.S. 309, 325 (1968), characterized the law as having erected "a fundamental principle of AFDC jurisprudence: that the Social Security Act will not countenance the depriving of needy children benefits because of factors beyond their control and unrelated to need." Simpson v. Miller, 535 F. Supp. 1041, 1050 (N.D. Ill. 1982).


In this case, it was not the sins of the mother that caused her dependent child to lose benefits but, rather, a processing delay by a federal agency. The processing of Nelson's SSI check was beyond the control of mother, child and state agency. Given that absence of control, it is unreasonable to interpret section 602(a)(24) in a way that harms Nelson's son, when a more reasonable alternative exists which will better achieve the purpose of the Social Security Act. Such an approach is consistent with the well-established principle that the Social Security Act must be construed liberally to achieve its remedial purpose. Doran v. Schweiker, 681 F.2d 605, 607 (9th Cir. 1982); Keef v. Weinberger, 404 F.Supp. 1193, 1195 (D.Kan. 1975)(The purpose of the Social Security Act "is to ameliorate some of the rigors of life for those who are disabled or impoverished..." and "must be construed liberally").

#### CONCLUSION

Nelson asks the court to reverse the lower court decision and remand the case for entry of an order granting her summary judgment. She asks that a judgment be entered declaring that she was an SSI recipient under 42 U.S.C. §602(a)(24) at the time she

received the SSDI lump sum, that her income was excluded for AFDC purposes and that her son continued to be eligible for AFDC and Medicaid benefits.


DATED this 8<sup>th</sup> day of October, 1996.

  
Michael E. Bulson  
Attorney for Appellant

**CERTIFICATE OF MAILING**

I certify that two true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, postage prepaid, to the following on this 8<sup>th</sup> day of October, 1996:

Linda Luinstra  
Assistant Attorney General  
P.O. Box 140835  
Salt Lake City, Utah 84114-0835

  
Michael E. Bulson

## **ADDENDUM**

SECOND DISTRICT COURT

IN THE SECOND JUDICIAL DISTRICT COURT

WEBER COUNTY, STATE OF UTAH

JOIE D. NELSON,

Plaintiff,

vs.

ROD BETIT, Executive Director  
of the Utah Department of  
Human Services,

Defendant.

RULING

7 5 3 1996

Case No. 950900381

The parties in this action agree on the material facts and both parties move for summary judgment. Plaintiff seeks declaratory relief that defendant misapplied 42 U.S.C. § 602(a)(24) by including her in the household even though she had been determined eligible for Supplemental Security Income ("SSI") benefits, which resulted in her son being ineligible for Aid to Families with Dependent Children ("AFDC") and Medicaid for nearly a year. Defendant counters that the state's application of the statute is based on established federal and state policies, which should be given deference by the courts. Defendant's cross-motion for summary judgment is granted.

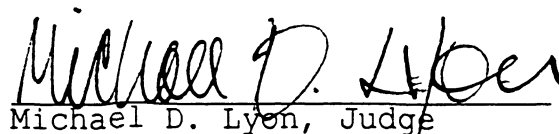
The Court rules that the meaning of 42 U.S.C. § 602(a)(24) is susceptible to two reasonable interpretations. However, the Court agrees with defendant and accords substantial deference to the interpretation espoused by the Secretary of Health and Human Services who is charged by Congress with implementing and enforcing this statute. The Secretary reconciles the overlap between the AFDC

and SSI benefit programs by a policy that funds are not received until the recipient actually receives them. This policy is congruent with the operative language of the statute.

The Court apologizes for the delay in rendering this decision. The undersigned's trial calendar has been onerous the past few months. Both counsel wrote excellent, persuasive memoranda.

Ms. Jackson will prepare, please, an appropriate order.

Dated this 7 day of May, 1996.

  
Michael D. Lyon, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of May, 1996, I sent a true and correct copy of the foregoing ruling to counsel as follows:

Douglas W. Springmeyer  
Amy A. Jackson  
Assistants Attorney General  
P.O. Box 140835  
Salt Lake City, Utah 84118-0835

Utah Legal Services  
Michael E. Bulson  
550 24th Street, Suite 300  
Ogden, Utah 84401

  
Deputy Court Clerk

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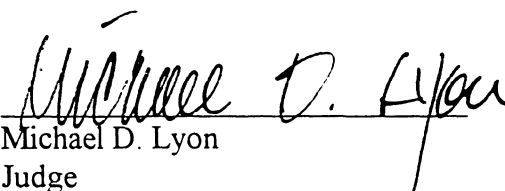
(801) 366-0266

## 133

602(a)(24) and accords substantial deference to the interpretation espoused by the Secretary of Health and Human Services who is charged by Congress with implementing and enforcing this statute. The Secretary reconciles the overlap between the AFDC and SSI benefit programs by a policy that funds are not received until the recipient actually receives them. This policy is congruent with the operative language of the statute.

Defendant's Motion for Summary Judgment is granted and Defendant's Motion for Summary Judgment is denied.

Dated this 14 day of June, 1996.

  
Michael D. Lyon  
Judge

#### CERTIFICATE OF MAILING

I hereby certify that on the 10<sup>th</sup> day of June, 1996, I sent a true and correct copy of the foregoing Order to Michael E. Bulson, Utah Legal Services, 550 24th Street, Suite 300, Ogden, UT 84401.





18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available in assistance payments made for the entire month in accordance with the State plan if the individual was eligible for a portion of the month, provided that the individual was eligible on the date that the payment was made; except that where it has been determined that the State agency had previously denied assistance to which the individual was entitled, Federal financial participation will be provided in any corrective payment regardless of whether the individual is eligible on the date that the corrective payment is made.

(4) Federal financial participation is available in assistance payments which are continued in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a principal earner in AFDC.

(5) Where changed circumstances or a hearing decision makes the individual ineligible for any assistance, or eligible for a smaller amount of assistance than was actually paid, Federal financial participation is available in excess payments to such individuals, for not more than one month following the month in which the circumstances changed or the hearing decision was rendered. Federal financial participation is available where assistance is required to be continued unadjusted because a hearing has been requested.

[36 FR 3866, Feb. 27, 1971, as amended at 38 FR 8744, Apr. 6, 1973; 39 FR 26912, July 24, 1974; 40 FR 32958, Aug. 5, 1975; 47 FR 5674, Feb. 5, 1982; 47 FR 47828, Oct. 28, 1982; 51 FR 9204, Mar. 18, 1986; 57 FR 30158, July 8, 1992]

**§ 233.20 Need and amount of assistance.**

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the

same way except where otherwise specifically authorized by Federal statute and

(ii) Provide that the needs, income, and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be included in determining the need and the amount of the assistance payment of an AFDC assistance unit; except that the needs, income, and resources of an individual with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made are included in determining the need and the amount of the assistance payment for an AFDC assistance unit of which the individual would otherwise be regarded as a member where the amount of the assistance payment that the unit would receive would not be reduced by including the needs, income, and resources of such individual. Under this requirement, "individuals receiving SSI benefits under title XVI" include individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93-66, and "individuals with respect to whom Federal foster care payments are made" means a child with respect to whom Federal foster care maintenance payments under section 472(b) and defined in section 475(4)(A) of title IV-E of the Social Security Act are made, and a child whose costs in a foster family home or child care institution are covered by the Federal foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of title IV-E. "Individuals with respect to whom Federal adoption assistance payments are made" means a child who receives payments made under an approved title IV-E plan based on an adoption assistance agree-

ment between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

(iii) For AFDC, when an individual who is required to be included in the assistance unit pursuant to § 206.10(a)(1)(vii) is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(iv) For AFDC, when a State learns of an individual who is required to be included in the assistance unit after the date he or she is required to be included in the unit, the State must redetermine the assistance unit's eligibility and payment amount, including the need, income, and resources of the individual. This redetermination must be retroactive to the date that the individual was required to be in the assistance unit either through birth/adoption or by becoming a member of the household. Any resulting overpayment must be recovered or corrective payment made pursuant to § 233.20(a)(13).

(v) In determining need and the amount of payment for AFDC, all income and resources of an individual required to be in the assistance unit, but subject to sanction under § 250.34 or because of an intentional program violation under the optional fraud control program implementing section 416 of the Social Security Act, are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction. However, the needs of the sanctioned individual(s) are not considered. In accord with § 250.34(c), if a parent in an AFDC-UP case is sanctioned pursuant to § 233.100(a)(5), the needs of the second parent are not taken into account in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program. An individual required to be in an assistance unit pursuant to § 206.10(a)(1)(vii) but who fails to cooperate in meeting a condition of his or her eligibility for assistance is a sanctioned individual whose needs, income,

PROGRAM STANDARDS - PROGRAM STANDARDS FOR UNCOMMON  
SITUATIONS

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212 Program Standards for Uncommon Situations

212-1 Supplemental Security Income Recipients in AFDC Household

1. SSI recipients in an AFDC household must be excluded from the household grant. Do not use the income and assets of SSI recipients to determine eligibility or to calculate the grant for the household. Use participation code "SS" on the SEPA screen for these clients.

When the assets of an SSI recipient are combined with those of an AFDC family unit, such as in a checking or savings account, follow these rules to determine the portion of the resource available to the household:

- A. If the resource is jointly owned, divide the value equally among the owners.
  - B. If the exempt funds can be identified, such as a lump sum SSI benefit, those funds remain exempt indefinitely.
2. If the only dependent child is an SSI recipient, the caretaker relative(s) may receive an AFDC payment, provided he or she meets all other eligibility requirements. Base this payment on the need and countable income of the caretaker's relative only. On the SEPA screen, the participation code of the dependent child who receives SSI must be "SS". This will ensure that the child is not included in the payment.

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**Aid To Families..**  
**with Dependent Children (AFDC)**  
**Action Transmittal**

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U.S. Department of  
Health and Human Services  
Administration for Children & Families  
Office of Family Assistance  
Washington, D.C. 20447

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Transmittal No. ACF-AT-93-20

Date November 2, 1993

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**TO:** STATE ADMINISTRATORS AND OTHER INTERESTED  
ORGANIZATIONS AND AGENCIES

**SUBJECT:** Treatment of Retroactive SSI and Child Support  
Collected During the SSI Retroactive Period

**RELATED  
REFERENCES:** Section 402(a)(24) of the Social Security Act  
45 CFR 233.20(a)(1)(ii) and (3)(x)  
45 CFR 233.20(a)(13)(ii)  
Zeblev v. Sullivan, 110 S. Ct. 885 (1990)

**PURPOSE:** To clarify Federal AFDC policy with respect to  
treatment of retroactive SSI payments and child  
support payments collected during the SSI  
retroactive period.

**INTRODUCTION:** Section 402(a)(24) of the Social Security Act (the  
Act) provides "that if an individual is receiving  
benefits under title XVI ... then, for the period  
for which such benefits are received ... such  
individual shall not be regarded as a member of a  
family for purposes of determining the amount of  
benefits of the family under this title [IV-A] and  
his income and resources shall not be counted as  
income and resources..." for AFDC purposes.

The Social Security Administration (SSA) considers  
an individual eligible for SSI benefits beginning  
with the date of application and pays  
retroactively to that date. The retroactive  
period is the SSI application processing or  
determination period, which varies depending on  
the time it takes to develop a claim. In  
calculating the retroactive SSI payment, income  
which the individual received during the  
retroactive period reduces the amount of the  
retroactive SSI payment. AFDC payments received  
during the retroactive period are treated as  
income.

## Page 2 ~ SSI Retroactive Payments

We have received inquiries from States on three issues related to the SSI retroactive period. The first issue pertains to whether or not States must recompute AFDC to adjust for any overpayments or underpayments created during the SSI retroactive period. The second issue involves the treatment of SSI retroactive payments to or on behalf of individuals without continuing SSI eligibility. The third issue relates to whether child support payments collected during the SSI retroactive period must be redistributed to the AFDC family.

Because of the number of inquiries received, we are issuing this Transmittal to clarify Federal policy with respect to these concerns.

INSTRUCTION: AFDC Payments Made During the SSI Retroactive Period

AFDC benefits for the SSI retroactive period will not be recomputed because they are correct payments. Section 402(a)(24) of the Act, which prohibits counting the income and resources of an SSI recipient for AFDC purposes, is applicable beginning on the date SSI payments are actually received. Therefore, since ineligibility does not begin prior to the receipt of the SSI payment, AFDC payments issued during the SSI application processing period and prior to actual receipt of SSI are correct payments.

Treatment of Retroactive SSI Payments to Individuals Without Continuing SSI Eligibility

In some cases, an individual no longer eligible for SSI may receive a lump sum retroactive SSI payment, e.g., the SSI retroactive lump sum payments resulting from the Zebley v. Sullivan Supreme Court decision. In that case, the United States Supreme Court declared invalid the Secretary's criteria for denying SSI claims for disabled children. Under the new standard, an individual no longer eligible for SSI, but eligible for a prior period on the basis of the new standard, may receive a retroactive payment. In addition, a SSI retroactive payment could be made to an assistance unit for a deceased child, or to stepparents and other individuals who are not included in the AFDC assistance unit, but whose income is deemed to it.

## Page 3 - SSI Retroactive Payments

Recognizing that SSI, like AFDC, is a basic needs program, and that the payments at issue are for a period when the individual was both eligible and needy, and that the AFDC family may have incurred debts for care of the disabled individual during the SSI retroactive period, we have decided to treat SSI retroactive payments in the same manner as AFDC retroactive corrective payments, pursuant to 45 CFR 233.20(a)(13)(ii). This approach provides a reasonable period for the family to use the money before it must be counted.

Accordingly, a non-recurring lump sum SSI retroactive payment, made to an AFDC recipient, shall not be counted as income or a resource for AFDC purposes in the month paid and the next following month.

In those cases where a stepparent or other individual who is not included in the AFDC assistance unit, but whose income is deemed to it, receives a non-recurring lump sum SSI payment, it shall be deemed to the assistance unit, after applying disregards where appropriate. This approach recognizes that these individuals are no longer needy in the eyes of the law and, therefore, the current AFDC policy deeming their income to meet the needs of the AFDC family is applicable. It should be noted that the lump sum rule in §402(a)(17) is not applied to income received by deemers, and that a retroactive SSI payment to a deemer would become a resource after the month it is received. The retroactive SSI payment to the deemer would therefore only be counted in determining the eligibility and amount of payment to the AFDC unit in the month it is received.

Child Support Collected During the SSI Retroactive Period

Child support payments collected during the SSI retroactive period will not be redistributed because the AFDC benefits paid to a family, while one of the family member's application for SSI is pending, are correct payments. Until there is a determination of SSI eligibility, the family is eligible to receive AFDC benefits and is required

## Page 4 - SSI Retroactive Payments

to assign all rights to support to the State in accordance with section 402(a)(26). Therefore, child support payments received by the title IV-D agency and retained pursuant to section 457(b)(2) and (b)(4) of the Act and the regulations at 45 CFR 302.51(b)(2) and (b)(4) as reimbursement for any past AFDC payments are correct distributions.

AFDC trust Policy

States may wish to inform individuals that receive a SSI retroactive payment of the AFDC trust policy. The trust policy provides that in the absence of a contrary State policy regarding transfer of assets, funds in excess of the \$1,000 resource limit can be preserved while a family receives AFDC, if they are placed in an irrevocable trust. The AFDC trust policy is enunciated in AT-93-2 dated January 19, 1993.

## EFFECTIVE

DATE: January 1, 1994.

INQUIRIES TO: ACF Regional Administrators



Diann Dawson  
Acting Director  
Office of Family Assistance

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
WEBER COUNTY, STATE OF UTAH

MAY 7 4 51 PM '96

JOIE D. NELSON,

Plaintiff,

v.

Civil No. 950900381CV

ROD BETIT, in his capacity  
as Executive Director  
of the Utah Department  
of Human Services,

Defendant.

Declaration of Diann Dawson

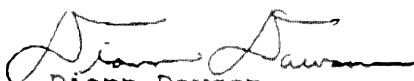
1. I am presently employed in the capacity of Deputy Director of the Office of Family Assistance (OFA) in the Administration for Children and Families.

2. OFA has overall responsibility for the administration of the Federal Aid to Families with Dependent Children (AFDC) program under title IV-A of the Social Security Act and provides policy guidance to States and others regarding implementation of the AFDC program.

3. OFA's operative policy is that section 402(a)(24) of the Social Security Act (the Act) is applicable beginning on the date that Supplemental Security Income (SSI) payments under title XVI of the Act are actually received, and not on the date SSI eligibility begins.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of March, 1996.



Diann Dawson  
Deputy Director  
Office of Family Assistance  
Administration for  
Children and Families  
Department of Health and Human Services