1996

Joie D. Nelson v. Rod Betit as Executive Director of the Department of Human Services : Reply Brief

Utah Court of Appeals

Jan Graham; Attorney General of Utah; Linda Luinstra; Assistant Attorney General; Attorneys for Appellee.
Michael E. Bulson; Utah Legal Services; Attorney for Appellant.

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

REPLY BRIEF

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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The State Ignores Important Language in Section 602(a)(24)

At pages 16-18 of its brief, the State asserts that the plain language of 42 U.S.C. § 602(a)(24) supports its position. The State reaches this conclusion, however, by focusing exclusively on a dictionary definition of the words "receive" and "received" while refusing to consider the language of section 602(a)(24) in its entirety. The State ignores the fact that the section is concerned with "the period for which such benefits are received..." (Emphasis added) Thus, it does not matter that the SSI benefits were not paid until after the DIB was paid, since the SSI was for the period of time starting in July 1992 when Nelson became eligible. The period for which SSI benefits were received overlaps the time when the DIB benefits were paid, thereby excluding Nelson from the AFDC household.

By narrowing its focus to dictionary definitions, the State is able to avoid facing the unfairness of its position. In her opening brief, Nelson pointed out that the cancellation of her son's eligibility for AFDC and Medicaid was purely the result of the infortuitous arrival of Nelson's DIB check before the SSI benefit was calculated. The State does not address the fact that other similarly situated children whose mother's become disabled are allowed to continue receiving financial and health benefits, simply because the SSI check arrives first. It is this fundamental unfairness that prompted the court in Gleim v. Com. Dept. of Public Welfare, 409 A. 2d 951 (Pa. Cmwlth 1980) to reach the decision it

did, a decision which the State characterizes as employing "tortured reasoning." Brief of the Appellee, at 20. It is not tortured reasoning to recognize the illogical and inconsistent results that follow from the narrow approach taken by the State.

Nelson's Argument Does Not Conflict With Congressional and Agency Policy

Starting at page 18 of its brief, the State argues that to hold for Nelson and her son would be inconsistent with acceptable Congressional and agency objectives and policy concerns. The trouble with the State's argument is that it never points to any clear congressional or agency policy addressing the particular facts of this case. After discounting Gleim as "tortured reasoning," the State reviews Pennsylvania v. United States, 752 F.2d 795 (3d Cir. 1984), a case which addresses a distinctly different issue in the interplay between AFDC and SSI. Moreover, the State ignores the important statement by the court in Pennsylvania v. United States that the district court's interpretation of section 602(a)(24) was only one possible reading of the statute. See discussion in Brief of Appellant, at 17-18.

The State further errs in asserting that Nelson's position "carried to its logical extreme" would result in SSI applicants being declared ineligible for AFDC during the SSI determination period. The mere filing of an SSI application does not render an AFDC recipient ineligible. After all, the SSI disability claim may be denied. Once the AFDC recipient is found eligible for SSI, any AFDC benefits received during the determination period are offset against SSI benefits owed. The State's suggestion at page 22 of

its brief that a finding in Nelson's favor would mean that the State "may have to assume that an SSI applicant is also a recipient and thus ineligible for AFDC during the SSI determination period..." makes no sense. The problem posed by the State is already addressed under current law.

The concluding line at page 22 that the State's position "furthers the Congressional intent to prevent an individual from benefitting from both the SSI and AFDC programs simultaneously..." reveals the confusion in the State's argument. The line is directly contradicted by the State's explanation of DIB and SSI benefits earlier in its brief where it declares:

> If an applicant is subsequently determined eligible for SSI benefits, the SSA deducts from its initial retroactive lump-sump [sic] SSI payment an amount equal to the amount of AFDC aid received by that individual during the determination period. ... The rationale for this deduction is to prevent a public assistance recipient from benefitting from both the SSI and the AFDC program for the same period of time.

Brief of the Appellee, at 11.

The Secretary's Interpretation of Section 602(a)(24) Is Not Entitled to Deference, Since It Arose From a Different Context

In her opening brief, Nelson pointed out that the Action Transmittal relied on by the State as controlling policy did not address the peculiar facts of this case. It is an informally created policy intended to address the issue addressed in Pennsylvania v. United States, i.e., whether the federal government could recoup all AFDC payments made to someone found eligible for SSI benefits. It does not address the situation considered herein

that arises when a DIB check is arbitrarily issued before a retroactive SSI check. The State does not address that point but argues, instead, that the court should defer without further consideration to what the State regards as binding policy.

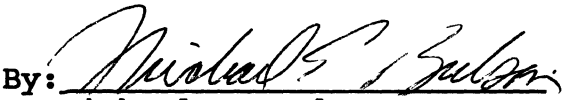
The State does acknowledge that a reviewing court need not defer to an agency interpretation it finds unreasonable. Having said that, the State then declines to grapple with whether its policy produced a reasonable result in Nelson's case. The appellant submits that it did not. While the Social Security Act may be "among the most intricate ever drafted by Congress," its complexity is not an excuse for the State to avoid the unfairness of its policy.

CONCLUSION

Nelson presents to the court a rare case where circumstances beyond her control resulted in her son losing both financial and medical benefits for a year. She does not argue with Congress over the wisdom of the lump sum policy, which often catches AFDC mothers unaware. She simply urges that the State has not offered a persuasive argument for reading 42 U.S.C. § 602(a)(24) in a way that arbitrarily places her son in a worse position than other similarly situated dependent children.

RESPECTFULLY SUBMITTED this 11th day of December, 1996.

UTAH LEGAL SERVICES, INC.

By: 
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CERTIFICATE OF MAILING

I certify that two true and correct copies of the foregoing **REPLY BRIEF** were mailed, postage prepaid, to the following on this 11 day of December, 1996.

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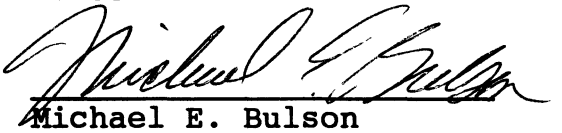

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