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NOTES

Mathews v. Eldridge: Procedural Due Process Requirements in Social Security Disability Benefit Terminations

Respondent George Eldridge was awarded Social Security disability benefits beginning June 1968. Eldridge brought an action when the Social Security Agency, pursuant to the agency's procedure for termination,¹ advised him that his benefits would cease after July 1972. The district court held for respondent that the SSA's procedure was unconstitutional,² and the Fourth Circuit affirmed.³ *Held, reversed*: Lack of a pre-termination hearing does not violate constitutional due process in cases involving termination of Social Security disability benefits. *Mathews v. Eldridge*, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

I. PRIOR DUE PROCESS ARGUMENTS

The Supreme Court has defined procedural due process to include notice and "some kind of hearing."⁴ The only rigid standard followed by the Court, however, has been that the notice and hearing "be granted at a meaningful time and in a meaningful manner."⁵ Therefore, the due process problem in recent years has centered around the type of hearing required in various situations.⁶

*Goldberg v. Kelly*⁷ provided an answer to one aspect of the problem by holding that a pre-termination hearing was required before welfare benefits

1. Social Security Act, 42 U.S.C. §§ 405(b), 421, 423(a)(1)(D) (1970). In May 1972 the Virginia state agency reviewed a questionnaire completed by respondent and medical reports from his personal physician and a psychiatrist who had examined him. The Social Security Act provides for this initial determination by a state agency as to disability issues. *Id.* § 421. The agency advised respondent by letter that it had determined he was able to work, and that his disability benefits would terminate in July, two months after the determination of termination was made. *Id.* § 423(a)(1)(D). Respondent had the opportunity to respond in writing to the agency's decision, which he did, stating that the SSA had sufficient evidence to establish this disability. *Id.* §§ 405(b), 421(d). The agency upheld its temporary decision, which was accepted by the Social Security Agency. Respondent Eldridge chose not to apply for state agency reconsideration, to which he was entitled. *Id.* § 423(a)(1)(D).

2. *Eldridge v. Weinberger*, 361 F. Supp. 520 (W.D. Va. 1973).

3. *Eldridge v. Weinberger*, 493 F.2d 1230 (4th Cir. 1974).

4. *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). For a discussion of the significance of this requirement see Friendly, "Some Kind of Hearing," 123 U. PA. L. REV. 1267 (1975).

5. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

6. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Armstrong v. Manzo*, 380 U.S. 545 (1965) (child custody); *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963) (practice of law); *Greene v. McElroy*, 360 U.S. 474 (1959) (employment by government contractor); *Slochower v. Board of Educ.*, 350 U.S. 551 (1956) (public employment); *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123 (1951) (political beliefs of organization); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (trust assets).

7. 397 U.S. 254 (1970).

could be terminated.⁸ Having determined that the benefits constituted a property right,⁹ the Court in *Goldberg* ruled on the basis of various criteria that a pre-termination hearing was necessary to protect the welfare recipient's interests.¹⁰ The criteria involved included "need,"¹¹ the presence of adjudicative facts,¹² and the necessity of oral communication with recipients.¹³ The Court also examined the state's economic and administrative interests, thus applying a balancing test advocated by previous cases.¹⁴ Subsequent decisions applied this test flexibly.¹⁵ This is best demonstrated by *Fuentes v. Shevin*¹⁶ in which purchasers of household goods under conditional sales contracts challenged the constitutionality of two state statutes concerning pre-judgment replevin procedures.¹⁷ The Court, finding a pre-termination hearing requisite to the protection of the purchaser's right to procedural due process, concluded that "necessity" as discussed in the *Goldberg* decision was only a factor, not a requirement, in a determination whether a pre-termination hearing should be held.¹⁸ *Fuentes* could have been interpreted to expand *Goldberg* further to require that opportunity for a pre-termination hearing be provided in all cases involving property deprivation. A citation to *Boddie v. Connecticut*¹⁹ seems to support such a contention.²⁰ The balancing test of procedural due process was revived,

8. The reasoning of *Goldberg* has been followed in subsequent decisions. See, e.g., *Goss v. Lopez*, 419 U.S. 565 (1975); *Wolff v. McDonnell*, 418 U.S. 539 (1974); *Morrisey v. Brewer*, 408 U.S. 471 (1972); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Bell v. Burson*, 402 U.S. 535 (1971).

9. 397 U.S. at 262. The agency in *Goldberg* conceded that welfare benefits created a property right for the recipient. This struck a serious blow to the "right-privilege" doctrine which had been so prevalent in cases involving statutory entitlement. See, e.g., *Flemming v. Nestor*, 363 U.S. 603 (1960). Thus, the Court cleared the way for a more liberal application of procedural due process in such cases.

10. In addition, the Court ruled that the following elements were necessary parts of a pre-termination hearing: (1) notice of the reasons for the proposed termination, (2) right to appear personally and be represented by an attorney, (3) opportunity to present evidence and cross-examine witnesses, and (4) right to a written decision by an impartial decisionmaker based on the evidence produced at the hearing. 397 U.S. at 266-71.

11. "By hypothesis, a welfare recipient is destitute, without funds or assets . . . Suffice it to say that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it." 397 U.S. at 261, quoting *Kelly v. Wyman*, 294 F. Supp. 893, 899-900 (S.D.N.Y. 1968).

12. The Court found that the necessity of determining certain facts about the welfare recipient's need called for an oral hearing at which both sides of the issue could be presented. 397 U.S. at 269.

13. The Court noted that a welfare recipient's ability to write is often limited, and that he could more effectively discuss his problems if allowed an oral hearing. *Id.*

14. "What procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." *Id.* at 263, quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961); see *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring).

15. See note 8 *supra*.

16. 407 U.S. 67 (1972).

17. Both Florida and Pennsylvania provisions were challenged. No hearing was allowed before seizure of property. The person from whom it had been seized was required either to post a bond for double the value of the property or to participate in a repossession action.

18. 407 U.S. at 89-90.

19. 401 U.S. 371 (1971).

20. The Court commented: "[T]hat the hearing required by due process is subject

nevertheless, when the Court made an exception to a pre-termination hearing for cases involving "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event."²¹ The fact that no definite procedure was formulated for the hearing is also significant in that it demonstrates a reluctance by the Court to rigidify requirements for a pre-termination procedure.

Although the *Goldberg* requirement of a pre-termination hearing was expanded through *Fuentes* to include other situations,²² a limitation of the doctrine was noted in two cases decided in 1974.²³ *Arnett v. Kennedy*²⁴ applied the balancing test narrowly to a government employment case. The Court distinguished the *Arnett* ruling from that of *Goldberg* and *Fuentes* by noting that the earlier cases dealt with areas of the law dissimilar to the area of government employer-employee relations in *Arnett*. Procedural due process requirements under one set of interests might not be necessary under another set.²⁵ *Mitchell v. W.T. Grant Co.*²⁶ applied the same narrow application of the balancing test in a determination that a pre-termination hearing was not required in a sequestration case.²⁷

The balancing test has been applied narrowly in cases involving Social Security benefits.²⁸ The Court has often managed to avoid the due process issue in such cases.²⁹ In *Richardson v. Perales*,³⁰ however, the Court addressed an aspect of the need for procedural due process, the presence of factual controversy. A doctor's evidence was regarded in *Perales* as "substantial evidence" in Social Security eligibility cases. The decision that a determination of disability did not involve questions of fact signaled the view

to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for hearing *before* he is deprived of any significant property interest" 407 U.S. at 82, quoting *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1971).

21. *Id.* The Court quoted *Boddie* again in noting that the necessity for a pre-termination hearing depended "upon the importance of the interests involved and the nature of the subsequent proceedings [if any]. . . ." *Id.*, quoting 401 U.S. at 378.

22. See, e.g., *Goss v. Lopez*, 419 U.S. 565 (1975) (student suspended from school); *Wolff v. McDonnell*, 418 U.S. 539 (1974) (prison inmate's good time credits); *Morrisey v. Brewer*, 408 U.S. 471 (1972) (parolee's freedom).

23. *Arnett v. Kennedy*, 416 U.S. 134 (1974); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974); see Comment, *Constitutional Dimensions of the Amended Texas Sequestration Statute*, 29 Sw. L.J. 884 (1975).

24. 416 U.S. 134 (1974). This case revived the "right-privilege" doctrine thought to have been abandoned in *Goldberg*. *Id.* at 155; see *Perry v. Sindermann*, 408 U.S. 593 (1972); *Board of Regents v. Roth*, 408 U.S. 564 (1972).

25. 416 U.S. at 155.

26. 416 U.S. 600 (1974).

27. *Mitchell*, in which a post-termination hearing was held sufficient for procedural due process requirements, so narrowed *Fuentes* that the majority felt *Fuentes* had been overruled. Mr. Justice Powell thought only the opinion, rather than the holding, had been overruled. *Id.* at 623-24 (Powell, J., concurring). A more recent case has further confused the area by holding an "early" hearing to be one manner in which to satisfy procedural requirements. See *North Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975), noted in 29 Sw. L.J. 660 (1975).

28. See *Meyerhoff & Mishkin, Application of Goldberg v. Kelly Hearing Requirements to Termination of Social Security Benefits*, 26 STAN. L. REV. 549 (1974). This contention is supported by *Richardson v. Belcher*, 404 U.S. 78, 80 (1971), in which the Court questioned whether the right to Social Security benefits was a property right at all.

29. See, e.g., *California Human Resources Dept. v. Java*, 402 U.S. 121 (1971).

30. 402 U.S. 389 (1971).

that a pre-termination hearing was not required before all terminations of social security benefits.³¹

The Supreme Court's reluctance to rule directly that a pre-termination hearing would not be required in disability benefit cases is evidenced by *Richardson v. Wright*.³² In *Wright* the Court decided to allow the Social Security Agency to utilize its new procedure for termination³³ before determining the procedure's constitutionality. This was the same type of situation as was involved in *Goldberg* where the Court disregarded a new agency procedure for welfare benefit termination.³⁴ Thus, disability benefit termination was regarded differently by the Court, and, consequently, there was much speculation as to the decision which would be reached when the Court was once again faced with this issue.³⁵

II. MATHEWS V. ELDRIDGE

The opportunity to end speculation was presented by *Mathews v. Eldridge*. On appeal to the Supreme Court the Social Security Agency contended that a pre-termination hearing was not required in the termination of disability benefits.³⁶ The Court held that a post-termination hearing in the cessation of disability benefits met the requirements of procedural due process.³⁷

To reach this conclusion the Court balanced interests similar to those in *Goldberg*,³⁸ yet arrived at an opposite decision.³⁹ Since a rigid pre-termination procedure had not been consistently required in previous decisions,⁴⁰ the Court rationalized that one need not be required at all.⁴¹ Balancing the interests revealed that a *post*-termination hearing met the "some kind of hearing" requirement.

31. The same pattern was evidenced in *Frost v. Weinberger*, 515 F.2d 57 (2d Cir. 1975), a case involving the right to a pre-termination hearing before *reduction* of survivors' benefits. The Second Circuit found a post-termination hearing adequate. See Note, *Hearing Not Required Before Reduction of Social Security Benefits Where Right to Benefits Claimed by Third Party*, 89 HARV. L. REV. 610 (1976).

32. 405 U.S. 208 (1972).

33. See note 1 *supra*. The procedure had been developed subsequent to the filing of *Wright's* lawsuit.

34. The dissent in *Goldberg* commented on this disregard. 397 U.S. at 282 (Burger, C.J., dissenting).

35. Note the conclusion reached in *Meyerhoff & Mishkin*, *supra* note 28, at 575.

36. The SSA also contended that the district court lacked jurisdiction over the case because respondent had not exhausted available administrative review. Jurisdiction was questioned on the basis of *Weinberger v. Salfi*, 422 U.S. 749 (1975). *Salfi* held that district courts cannot exercise jurisdiction over an action seeking a review of a decision of the Secretary of HEW unless a "final" decision has been made by the Secretary. Petitioner argued that no final decision had been made in *Eldridge's* case, as he had not obtained full administrative review of the termination of his disability benefits. The Supreme Court concluded that as "final" a decision over a constitutional claim as the SSA could reach had been made.

37. 96 S. Ct. at 910, 47 L. Ed. 2d at 42.

38. See notes 10-14 *supra* and accompanying text.

39. *Eldridge* did rule on the "right-privilege" distinction in much the same fashion as *Goldberg*. This aspect of the decision firmly established the status of disability benefits as property. See note 28 *supra*.

40. In *Goldberg*, for example, the Court had only outlined a pre-termination procedure. See note 10 *supra*.

41. 96 S. Ct. at 902, 47 L. Ed. 2d at 32.

The Court found that balancing demonstrated the Social Security Agency's post-termination hearing to be procedurally acceptable. The process the Agency followed in the termination of disability benefits was reviewed in detail and analyzed in light of the interests involved.⁴² First, the Court examined the private interests of recipients such as Eldridge,⁴³ and noted that an *evidentiary* pre-termination hearing had been required in past cases only when "need" was involved.⁴⁴ Such a finding narrows the theory in *Fuentes* that "need" is not required for a pre-termination hearing. Second, the Court distinguished Social Security benefit recipients from welfare recipients in terms of need.⁴⁵ The deprivation here was found to be less than in *Goldberg*.⁴⁶ This finding demonstrates a heavy reliance on the need analysis in *Arnett*.⁴⁷

As in *Arnett* the Court in *Eldridge* found that private resources and other governmental assistance could compensate for the deprivation of a recipient's benefits. The dissent contended that the fundamental importance of continued receipt of benefits is not altered by the possibility that the recipient may qualify for welfare.⁴⁸ As in *Arnett*, this contention goes unanswered by the majority.⁴⁹ The fact that disability benefits continue for two months after a decision to terminate⁵⁰ could have been emphasized.

Whether additional procedural safeguards would aid the beneficiary was examined by the Court in a more persuasive manner.⁵¹ The Court relied upon *Perales* in its determination that questions of fact which would necessitate an oral pre-termination hearing were not involved in Eldridge's situation.⁵² Petitioner's argument that medical evidence was sufficient to avoid a fact controversy was accepted by the Court.⁵³ Finding that the credibility of medical evidence would be in question only in a rare number of cases, the majority assumed, with the petitioner, that procedural rules are designed for the general case and not the exception.⁵⁴

The merit of the petitioner's position that written reports were a more effective means of presentation for doctors than oral submissions was also

42. *Id.* at 903-05, 47 L. Ed. 2d at 33-36.

43. *Id.* at 905-07, 47 L. Ed. 2d at 36-38.

44. *Id.* at 905, 47 L. Ed. 2d at 36.

45. Although the Court's theory seems valid, arguments have been made to the contrary. Reports on the financial status of disability benefit recipients reveal a high percentage of poverty among those individuals. See Meyerhoff & Mishkin, *supra* note 28, at 564. The dissent pointed out that Eldridge lost his home and furniture and his family was forced to sleep in one bed due to the termination of his disability benefits. 96 S. Ct. at 910, 47 L. Ed. 2d at 42 (Brennan, J., dissenting).

46. 96 S. Ct. at 906, 47 L. Ed. 2d at 37.

47. 416 U.S. at 169 (Powell, J., concurring).

48. 96 S. Ct. at 910, 47 L. Ed. 2d at 42 (Brennan, J., dissenting).

49. 416 U.S. at 221 (Marshall, J., dissenting). See Meyerhoff & Mishkin, *supra* note 28, at 565. The recipient may not be able to qualify for welfare, he may be required to subject his home to a lien for the amount of assistance he will receive, and his privacy and dignity may be injured.

50. Social Security Act, 42 U.S.C. § 423(a) (1970).

51. 96 S. Ct. at 907-09, 47 L. Ed. 2d at 38-40.

52. *Id.* at 907, 47 L. Ed. 2d at 39. The theory that a physician's examination is a documented decision seems stronger in *Eldridge* than in *Perales*. The doctor involved in this case was chosen by the recipient himself, rather than the SSA.

53. *Id.*

54. *Id.*

acknowledged by the Court.⁵⁵ Unfortunately, the question of the recipient's ability to present written arguments was inadequately examined. At issue was not the recipient's right to the adversary process, *Goldberg* having limited that right,⁵⁶ but rather his right to effective communication with the SSA. The Court did not face the question of the recipient's actual ability to write,⁵⁷ but focused instead on his protection through various agency opportunities.⁵⁸ There was assurance of agency assistance in completing a questionnaire concerning disability, although the recipient personally filled out the form. Emphasis was directed to the recipient's ongoing right to obtain information from the SSA, the Court describing this process as one of "molding" the recipient's arguments to respond to the crucial issues at stake.⁵⁹ Specific examples of "molding" would have strengthened the Court's contention that such a process adequately protected the recipient's right to effective communication.

The most valid criticism of the Court's reasoning with respect to procedural safeguards arises from the majority's reliance on generalities. The Court held that *all* physicians' reports were credible, *all* written submissions were effective, and *all* recipients could write or receive enough assistance in writing to counter a government agency's arguments effectively. The procedure designed to protect the recipient's interest was held sufficient even though tailored only for the general case. An argument contrary to the Court's position emphasized the high reversal rate of SSA decisions as evidence of the inadequacy of the present procedure.⁶⁰ This argument deserved more discussion than a cursory reference to the SSA's "open-file" system of decision.⁶¹ The Court's position that the system's effectiveness distinguished *Eldridge* from *Goldberg* should have been supported not by generalization, but by a detailed explanation of how the system operated.

The Court also attempted to distinguish *Goldberg* by balancing the public interest against the personal interest of the recipient.⁶² As in *Goldberg* the Court examined cost and agency efficiency. In *Eldridge*, however, the burden of these factors was heavy enough to tip the scales in favor of the SSA.⁶³ The Court's reliance on *Arnett*, *Boddie*, and *Perales* was significant to the outcome of the balancing process. The *Arnett* and *Boddie* decisions support the view that a pre-termination hearing should not always be

55. *Id.* at 907-08, 47 L. Ed. 2d at 39-40.

56. 397 U.S. at 266; see text accompanying note 40 *supra*. For a discussion of the adversary system as it relates to procedural due process see Rubenstein, *Procedural Due Process and the Limits of the Adversary System*, 11 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 48 (1976).

57. The Court in *Goldberg* had faced this question. See note 13 *supra*.

58. 96 S. Ct. at 908, 47 L. Ed. 2d at 39-40.

59. *Id.*, 47 L. Ed. 2d at 40.

60. *Id.*; see Brief for AFL-CIO/Green as Amici Curiae at 7-13.

61. 96 S. Ct. at 908 & n.29, 47 L. Ed. 2d at 40 & n.29; see Supplemental and Reply Brief for Petitioner at 14. Files on recipients are not permanently closed because of the possibility of new developments in their cases. Thus, the Social Security system is an "open-file" one.

62. 96 S. Ct. at 909-10, 47 L. Ed. 2d at 40-42.

63. *Id.* For a different view see Brief for AFL-CIO/Green as Amici Curiae at 19-23, stating that the costs involved here were substantially less than those in *Goldberg*. Amici rested this contention on the possibility of recoupment under the Social Security disability program.