

9-9-1980

## 09-09-1980 Preliminary Memorandum

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### Recommended Citation

Sexton, J.E. Preliminary Memorandum, Beltran V. Myers, 451 U.S. 625 (1981). Box 367, Harry A. Blackmun Papers, Manuscript Division, Library of Congress, Washington, D.C.

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PRELIMINARY MEMORANDUM

October 31, 1980 Conference  
List 1, Sheet 1

No. 80-5303

Cert to CA9 (Wright, Anderson  
and Solomon [DJ])

ANTONIA BELTRAN ET AL

v

BEVERLEE MYERS (DIRECTOR,  
CALIFORNIA DEPARTMENT  
OF HEALTH) ET AL

Federal/Civil

Timely

SUMMARY: This class action challenges the validity under federal law of California's "transfer-of-assets" rule governing eligibility for Medi-Cal benefits. It is straight-lined with Barbara Blum v Ethel Caldwell, #79-2034, which involves the New York "transfer-of-assets" rule.

FACTS: Title XIX of the Social Security Act established the Medicaid program, a cooperative federal-state program to provide medical assistance to certain classes of people who are in need of assistance. Though the states are not required to participate, if they choose to do so they must develop a plan that conforms to federal guidelines. Despite extensive federal standards, 42 U.S.C. § 1396a, the individual states are given wide discretion in the administration of local programs. The states may decide whether or not to aid all "medically needy" individuals. But participating states must provide assistance to "categorically needy" individuals -- that is, persons now receiving (or eligible to receive) certain enumerated kinds of assistance (such as AFDC).

The chief distinction between the "medically needy" and the "categorically needy" categories is that persons in the latter category have generally lower incomes. This is not to say that some states do not build an economic factor into the standards for determining who is "medically needy." California, for one, limits the assets owned by a medically needy individual. As part of this scheme, the legislature adopted the "transfer of assets" (TOA) rule. This rule can operate to prevent a person from qualifying as "medically needy" if, in order to qualify for aid under the relevant financial eligibility rules, he has transferred assets for less than fair consideration within the two years prior to his application.

The TOA <sup>rule</sup> exempts some assets from the limitation - homes and income-producing real property, for example. But this exempt

property remains subject to a recovery provision. That is, after the person dies, California may recover the cost of aid provided from the estate (including exempt assets).

What makes the TOA rule especially interesting is that under federal law a person remains eligible for SSI payments even if he has become eligible by transferring assets to others for less than adequate consideration. Thus, California must allow transfers by the "categorically needy," but it does not allow transfers by the "medically needy."

The petitioners in this class action were "medically needy" and otherwise eligible for benefits, but were denied benefits because they had transferred assets for less than fair value prior to applying for aid. They were not able to overcome the "rebuttable" presumption the TOA erects in such cases. They sought declaratory and injunctive relief invalidating and/or enjoining the use of the TOA rule. The district court granted a motion for summary judgment in favor of California. It also entered findings of fact that the TOA rule did not conflict with federal regulations.

HOLDING BELOW: While recognizing that "the majority of the courts which have been faced with similar challenges have reached the opposite conclusion," CA9 upheld California's TOA rule.

The court began by asking whether the California rule was consistent with federal law. 42 U.S.C. § 1396a (a) (10) (C), as administratively interpreted, permits the transfer of assets for less than adequate consideration in order to become eligible

for SSI benefits. But the provisions defining the "medically needy" do not extend all of the SSI eligibility requirements to the "medically needy" classification. If they did, there would be no difference between the two classifications, "medically needy" and "categorically needy." Insofar as the statute requires analogous standards for the two classifications (as it does), it requires comparable, not identical, factors. This means only that there must be enough similar characteristics or qualities to make comparison appropriate. California's rules meet that test.

The court next turned to 42 U.S.C. § 1396a (a) (17) (B), which requires that, in determining eligibility, states only consider income and resources which are "available" to the applicant. CA refused to take an "overly rigid and literal" reading of the word "available." The court emphasized the overall approach of the statute's eligibility provisions was one of flexibility. The California rule presumes that the asset is "available" in some way to the applicant, even after he has given it away. That is not an unreasonable approach.

This brought the court to 42 C.F.R. § 435.401, which says that a state may not use criteria for determining eligibility in the "medically needy" classification <sup>that</sup> which are more stringent than those used in the "categorically needy" classification. CA held that this regulation had no bearing on the TOA rule. By definition, different financial criteria apply to the more affluent group, the "medically needy." Only when the regulation is read as addressing non-financial requirements does it make

sense. This is clear because the regulation comes in the "General Eligibility Requirements" section of the rules, not in one of the three sections dealing with financial factors.

Finally, CA9 turned to the constitutional challenges to the TOA rule. The rule creates only a rebuttable presumption, and is therefore acceptable under the Due Process Clause. And, it is rationally based (Congress, after all, differentiated between the two classifications), and hence it is acceptable under the Equal Protection Clause.

CONTENTIONS: The petitioner reiterates the arguments <sup>she</sup> he made before CA9. <sup>she</sup> He notes that states cannot penalize otherwise eligible SSI applicants for transferring assets. To permit them to penalize those who are otherwise "medically needy" is to frustrate the statute, because the statute indicates that a state may not apply to the "medically needy" criteria more stringent than those used to judge the "categorically needy." The only permissible difference between the two categories is that the latter is judged by more liberal resource conditions. The responsible federal agency has informed state Medicaid directors that the relationship between the "medically needy" and the "categorically needy" requires that states not apply TOA rules to the "medically needy."

The petitioner also argues that the TOA is an irrebuttable presumption which denies her due process. <sup>she</sup> He alleges that the TOA presumes that a transfer for less than adequate value was effected to create eligibility, and that it precludes evidence of "subjective intent." Often such transfers are made for estate tax reasons.

Finally, the petitioner reasserts <sup>her</sup> his Equal Protection argument by saying that the TOA rule irrationally differentiates between the "medically needy" and the "categorically needy."

The respondent claims that the TOA rule is not designed to penalize individuals, but rather to preserve state funds for the truly needy. This comports with the purpose of the federal law and with the decisions of this Court. No contrary federal statutes or regulations exist. There is no prohibition of TOA rules in Title XIX, and the only reasonable reading of that statute would allow different treatment of the two categories of recipients. Since the courts should not presume that the Congress intended to preempt the exercise of a valid state power unless the Congress has clearly and unambiguously expressed that intent, the courts should not circumscribe California's exercise of power here.

On all other issues, the respondent tracks the opinion of CA9 in this case.

DISCUSSION: There is a stark conflict among the circuits as to the interpretation of this important statute. Caldwell v Blum, 621 F2d 491 (CA2); Fabula v Buck, 598 F2d 869 (CA4). This case has been straight-lined with CA2's opinion on the matter, Blum v Caldwell, #79-2034. This is the superior case because it is a final judgment. Blum involved a preliminary injunction.

The petitioner's arguments that the California TOA rule creates an irrebuttable presumption, which denies her due process, and that the rule violates the Equal Protection Clause are less

persuasive. CA9 properly found that the presumption created was rebuttable and that the differentiation was built into the statute itself.

I recommend a grant on the statutory question. I would not grant on the petitioner's second question.

There is a response.

9/9/80

Sexton

Opinion in Petition

This is the Dawson case discussed in Blum (Dawson, a named plaintiff, died during the proceedings). I recommend a grant to ensure uniformity and because it seems that the CA9 was wrong.

The Blum memo is attached, and the briefs have been consolidated.

SL  
10/16/80