

The Burger Court Opinion Writing Database

Schweiker v. Gray Panthers

453 U.S. 34 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

June 4, 1981

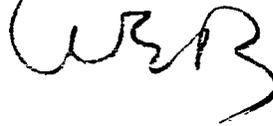
OFFICE OF
THE CHIEF JUSTICE

80-756, Schweiker v. Gray Panthers

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1981

RE: No. 80-756 Schweiker v. Gray Panthers

Dear Lewis:

I'll await the dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 19, 1981

RE: No. 80-756 Schweiker v. Gray Panthers

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1981

Re: No. 80-756, Schweiker v. Gray Panthers

Dear Lewis,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Justice Powell

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 30, 1981

Re: 80-756 - Schweiker v. Gray Panthers

Dear Lewis,

I agree.

Sincerely yours,



Justice Powell

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cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 19, 1981

Re: No. 80-756 - Schweiker v. Gray Panthers

Dear John:

Please join me in your dissent.

Sincerely,

JM.

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 5, 1981

Re: No. 80-756 - Schweiker v. Gray Panthers

Dear Lewis:

Please join me.

Sincerely,

Handwritten signature of H.A. Blackmun, consisting of the initials 'H.A.' followed by a stylized 'B' and a horizontal line underneath.

Mr. Justice Powell

cc: The Conference

0\$756G 28-MAY-81 DRB & wnjk

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAY 29 1981

Recirculated: _____

FIRST DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-756

**RICHARD SCHWEIKER, SECRETARY OF HEALTH
AND HUMAN SERVICES, ET AL., PETITIONERS, v.
GRAY PANTHERS**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The Medicaid program provides federal funds to States that pay for medical treatment for the poor. An individual's entitlement to Medicaid benefits depends on the financial resources "available" to him. Some States determine eligibility by assuming—"deeming"—that a portion of the spouse's income is "available" to the applicant. "Deeming" thus has the effect of reducing both the number of eligible individuals and the amount of assistance paid to those who qualify. The question in this case is whether the federal regulations that permit States to "deem" income in this manner are arbitrary, capricious, or otherwise unlawful.

I

The Medicaid program, established in 1965 as Title XIX of the Social Security Act (the Act), 42 U. S. C. § 1396 *et seq.*, "provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris v. McRae*, 448 U. S. —, — (1980). Each participating State develops a plan containing "reasonable standards . . . for determining eligibility for and the extent of medical assistance." 42 U. S. C. § 1396a (a) (17). An individual is entitled to Medicaid if he fulfills the criteria

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7-8, 13, 14-15

- to: The Chief Justice
- Mr. Justice Brennan
- Mr. Justice Stewart
- Mr. Justice White
- Mr. Justice Marshall ✓
- Mr. Justice Blackmun
- Mr. Justice Rehnquist
- Mr. Justice Stevens

6-22-81

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 22 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-756

Richard Schweiker, Secretary of
 Health and Human Services,
 et al., Petitioners,
 v.
 Gray Panthers.

On Writ of Certiorari to the
 United States Court of
 Appeals for the District
 of Columbia Circuit.

[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The Medicaid program provides federal funds to States that pay for medical treatment for the poor. An individual's entitlement to Medicaid benefits depends on the financial resources "available" to him. Some States determine eligibility by assuming—"deeming"—that a portion of the spouse's income is "available" to the applicant. "Deeming" thus has the effect of reducing both the number of eligible individuals and the amount of assistance paid to those who qualify. The question in this case is whether the federal regulations that permit States to "deem" income in this manner are arbitrary, capricious, or otherwise unlawful.

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LFP

June 22, 1981

MEMORANDUM TO THE CONFERENCE

Cases Held for No. 80-756, Schweiker v. Gray Panthers

Three cases were held for Gray Panthers:

1. Brown v. Stanton, 617 F.2d 1224 (CA7 1980), cert. pending, NO. 79-1690. This case is a challenge to an Indiana regulation permitting state welfare authorities to "deem" that a portion of an individual's income is "available" to his institutionalized spouse. CA7 held that the Indiana regulation was inconsistent with the "availability" requirement of the Medicaid Act because the regulation used an "arbitrary irrebuttable presumption" of availability instead of "an individualized factual determination." Id. at 1227-28. The state's proper course of action, according to the majority, was to file individual lawsuits against a noncontributing spouse under the state's "relative responsibility law." Judge Pell dissented, stating that it was "unrealistic to think that the state will engage in a multiplicity of continuing individual lawsuits to recover the money that it should not have had to pay out in the first place." Id. at 1243 (Pell, J., dissenting).

Gray Panthers governs this case. The Court opinion quoted Judge Pell's dissent and relied on 42 U.S.C. § 1396a(a)(17)(D) and its legislative history in holding that some "deeming" of income between spouses is permissible in § 209(b) states such as Indiana.

Gray Panthers reserved the question whether individual state plans may be attacked for exempting from "deeming" insufficient resources for the contributing spouse. Slip op. at 14 & n.21. But Stanton v. Brown, like Gray Panthers, is an attack on "deeming" per se, not on the set-aside amount established by Indiana law. Thus, this case presents no question not resolved by Gray Panthers.

I will vote to GV & R on Gray Panthers.

stylistic and 8, 14

Justice
Justice Brennan
Justice Stewart
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens

6-23-81

Mr. Justice Powell

Circulated
Not circulated

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-756

Richard Schweiker, Secretary of Health and Human Services, et al., Petitioners, v. Gray Panthers.	}	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.
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[June —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

The Medicaid program provides federal funds to States that pay for medical treatment for the poor. An individual's entitlement to Medicaid benefits depends on the financial resources "available" to him. Some States determine eligibility by assuming—"deeming"—that a portion of the spouse's income is "available" to the applicant. "Deeming" thus has the effect of reducing both the number of eligible individuals and the amount of assistance paid to those who qualify. The question in this case is whether the federal regulations that permit States to "deem" income in this manner are arbitrary, capricious, or otherwise unlawful.

I

The Medicaid program, established in 1965 as Title XIX of the Social Security Act (the Act), 42 U. S. C. § 1396 *et seq.*, "provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris v. McRae*, 448 U. S. —, — (1980). Each participating State develops a plan containing "reasonable standards . . . for determining eligibility for and the extent of medical assistance." 42 U. S. C. § 1396a (a)(17).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 1, 1981

Re: No. 80-756 Schweiker v. Gray Panthers

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 3, 1981

Re: 80-756 - Schweiker v. Gray Panthers

Dear Lewis:

Although I originally thought the District Court was correct, upon further study I have concluded that the Court of Appeals' analysis was the correct one. I am therefore working on a dissent taking that position. At present, however, I do not disagree with your rejection of the argument that only actually contributed income is "available" within the meaning of the statute.

Respectfully,



Justice Powell

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JUN 18 '81

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80-756 - Schweiker v. Gray Panthers

JUSTICE STEVENS, dissenting.

The scope of the issue presented in this difficult case is confined to the situation in which a married applicant for Medicaid benefits is institutionalized. I believe that issue can be best understood by focusing our attention on an institutionalized applicant who is totally dependent for financial support on a spouse who is employed and who continues to live in what had been their joint home. Arguably the relevant statutory language¹ might authorize the eligibility determination

¹ Section 1902(a) (17) of the "Social Security Amendments of 1965" provides:

"Sec. 1902. (a) A State plan for medical assistance must--

* * *

"(17) include reasonable standards (which shall be comparable for all groups) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, if he met

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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Recirculated: JUN 22 '81

Revised
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-756

Richard Schweiker, Secretary of
Health and Human Services,
et al., Petitioners,
v.
Gray Panthers. } On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[June —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

The scope of the issue presented in this difficult case is confined to the situation in which a married applicant for Medicaid benefits is institutionalized. I believe that issue can be best understood by focusing our attention on an institutionalized applicant who is totally dependent for financial support on a spouse who is employed and who continues to live in what had been their joint home. Arguably the relevant statutory language¹ might authorize the eligibility deter-

¹ Section 1902 (a) (17) of the "Social Security Amendments of 1965" provides:

"Sec. 1902. (a) A State plan for medical assistance must—

"(17) include reasonable standards (which shall be comparable for all groups) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, if he met the requirements as to need, be eligible for aid or assistance in the form of money payments under a State plan approved under title I, IV, X, XIV, or XVI) as would not be disregarded (or set aside for future needs) in determining his eligibility for and amount of such aid or assistance under such plan, (C) provide for reasonable evaluation of any such income or resources, and (D) do not

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