

A Common Denominator Governs the Medicare Fraction - SCOTUS Today

Article By:

Stuart M. Gerson

In its 2022 decision in *Becerra v. Empire Health Foundation, for Valley Hospital Medical Center*, the U.S. Supreme Court held that the phrase “entitled to [Medicare Part A] benefits” applied to “all those qualifying for the program, regardless of whether they are receiving Medicare payments for part or all of a hospital stay.” 597 U. S. 424, 445 (2022) (quoting §1395ww(d)(5)(F)(vi)(I); alteration in original).

In doing so, the Court left open the question of what it means to be “entitled to supplementary security income [SSI] benefits . . . under subchapter XVI.” §1395ww(d)(5)(F)(vi)(I).

Today, in ***Advocate Christ Medical Center v. Kennedy***, the Court, in a 7–2 decision (with Justice Barrett writing for the majority and Justice Jackson, joined by Justice Sotomayor, dissenting), held “that a person is entitled to such benefits when she is eligible to receive a cash payment during the month of her hospitalization.” Today’s decision continues the unbroken string of losses that the petitioner hospitals have suffered in this litigation at both the administrative and judicial levels.

Like *Empire Health*, *Advocate Christ Medical Center* concerns the so-called “Medicare fraction,” statutorily defined as

“the fraction (expressed as a percentage), the numerator of which is the number of such hospital’s patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to [SSI] benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital’s patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter.” §1395ww(d)(5)(F)(vi)(I).

The petitioner hospitals asserted that the “entitled to” phrase encompasses all patients enrolled in the SSI system at the time of their hospitalizations, even if those patients were not entitled to an SSI payment during that month. Unsurprisingly, the hospital’s theory would result in the inclusion of significantly more people into the numerator of the Medicare fraction, thereby increasing the amount of funding a hospital may receive. See §§1395ww(d)(5)(F)(vii)–(xiv). According to their theory concerning the potential adjustment governed by the Medicare fraction, the hospitals claim that the Department of Health and Human Services underfunded them during the fiscal years 2006–2009.

As our readers who are health care lawyers understand, the Medicare fraction concerns a reimbursement rate adjustment known as the “disproportionate share hospital adjustment,” which provides enhanced Medicare payments to hospitals that serve “an unusually high percentage of low-income patients.” The enhancement is based on the assumption that such patients are more expensive to treat than high-income patients.

Justice Barrett succinctly describes what the dispute over the Medicare fraction is about:

The numerator counts “the number of patient days attributable to Medicare patients who are poor”—i.e., those Medicare patients who are entitled to SSI benefits under subchapter XVI. *Id.*, at 430. The denominator counts “the number of patient days attributable to all Medicare patients.” *Ibid.* When the Medicare fraction is expressed as a percentage and added to the Medicaid fraction’s percentage, the sum of the two yields the “disproportionate patient percentage.” §1395ww(d)(5)(F)(vi). The resulting percentage “determines whether a hospital will receive a DSH adjustment”—and if so, how much. *Id.*, at 431. “The higher the disproportionate-patient percentage,” the more funding a hospital receives.

Barrett goes on to note that the “benefits” in question are cash benefits, a conclusion easily reached given that such benefits are to be “paid” in cash and eligibility for them is to be determined on a monthly basis. Ultimately, the Court concludes that a patient is an individual who is

“entitled to [SSI] benefits . . . under subchapter XVI” when she is eligible to receive an SSI cash payment. And because eligibility is determined on a monthly basis, an individual is considered “entitled to [SSI] benefits” for purposes of the Medicare fraction only if she is eligible for such benefits during the month of her hospitalization.

The essence of the hospital’s and the dissenters’ position is that the wording of the statute should be read as defining entitlement to SSI benefits to mean that a patient is entitled to them “even if she does not qualify for a payment during the month of hospitalization.” However, the majority quickly disposed of that view as being contradicted by *Empire Health*. Recognizing that Congress had to make a choice with respect to achieving certain economies in the provision of covered health care services, the Supreme Court affirmed the judgment of the U.S. Court of Appeals for the District of Columbia Circuit and held that “[f]or purposes of the Medicare fraction, an individual is ‘entitled to [SSI] benefits’ when she is eligible to receive an SSI cash payment during the month of her hospitalization.”

In what some might see as unusual given recent events, the Court concluded its opinion by stating that “[w]e must respect the formula that Congress prescribed.”

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National Law Review, Volume XV, Number 119

Source URL: <https://natlawreview.com/article/common-denominator-governs-medicare-fraction-scotus-today>