

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Basem Abdulla Attum v. Xavier Becerra

Case No. 2:22-cv-04044-ODW (JCx), Document 23 (C.D. Cal. Mar. 8, 2023) · No. 2:22-cv-04044-ODW (JCx) ·
Decided March 8, 2023

SUMMARY

The United States District Court for the Central District of California denied Defendant Xavier Becerra’s Rule 12(b)(1) motion to dismiss claims concerning the denial of Basem Abdulla Attum’s Medicare supplier enrollment and placement on the Medicare Preclusion List. The court held that the claims arose under the Medicare Act and that Attum had not fully exhausted the administrative appeals process, but it judicially waived the exhaustion requirement because the claims were collateral, irreparable harm was alleged, and further exhaustion would be futile.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Otis D. Wright, II
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 8, 2023
DOCKET	2:22-cv-04044-ODW (JCx)
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(1) to dismiss the First Amended Complaint for lack of subject matter jurisdiction based on failure to exhaust the Medicare Act’s administrative appeals process.
STANDARD OF REVIEW	The court reviewed the Rule 12(b)(1) jurisdictional challenge, recognizing that a jurisdictional attack may be facial or factual and that the party invoking federal jurisdiction bears the burden of proof.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Basem Abdulla Attum, M.D. v. Xavier Becerra

TOPICS

medicare medicaid

exhaustion of remedies

judicial review of agency action

subject matter jurisdiction

administrative law

PRACTICE AREAS

health law

administrative law

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Attum's constitutional and mandamus claims arose under the Medicare Act even though he sought declaratory and injunctive relief rather than Medicare benefits.
2. Whether Attum failed to exhaust the Medicare Act's administrative appeals process by not seeking Departmental Appeals Board review of the ALJ decision.
3. Whether the court should waive the exhaustion requirement because Attum satisfied the presentment, collaterality, irreparability, and futility requirements.

HOLDINGS

1. Attum's claims arose under the Medicare Act because their standing and substantive bases depended on HHS policies implementing the Medicare Act and processing Medicare enrollment applications, notwithstanding their constitutional framing and request for declaratory and injunctive relief.
2. Attum did not fully exhaust the Medicare Act's administrative appeals process because he failed to allege that he sought Departmental Appeals Board review of the ALJ's decision.
3. Attum satisfied the nonwaivable presentment requirement by presenting to the agency his claim that his enrollment should not be denied and that he should not be placed on the Preclusion List based on the subsequently withdrawn plea agreement.
4. The court waived the requirement that Attum fully pursue the prescribed administrative remedies because his claims were collateral to entitlement, he showed a colorable risk of irreparable harm, and exhaustion would be futile.

KEY QUOTATIONS

““[A]ll aspects’ of any [claim arising under the Medicare Act] must be ‘channeled’ through the administrative process” before obtaining review in federal court.” (6)

“Attum’s “attack is essentially to the policy itself, not to its application to [him], nor to the ultimate substantive determination of [his enrollment].”” (9)

“Because Attum satisfies the requirements for judicial waiver of the exhaustion requirement, Attum’s claims may proceed in this Court despite his failure to exhaust the administrative appeals process.” (11)

FACTUAL BACKGROUND

Attum, a licensed orthopedic surgeon, pleaded guilty in Kentucky in 2015 to insurance fraud, identity theft, and obtaining controlled substances by fraud or deceit, then completed a pretrial diversion program. The Kentucky

court dismissed the criminal case with prejudice, expunged the record, and later retroactively set aside and withdrew the guilty plea. CMS nevertheless denied Attum's 2021 application to enroll as a Medicare supplier under 42 C.F.R. § 424.530(a)(3) and placed him on the Medicare Preclusion List. CMS's reconsideration decision and an ALJ decision upheld those actions, after which Attum filed this federal action without seeking Departmental Appeals Board review.

PROCEDURAL HISTORY

Attum challenged the denial of his Medicare supplier enrollment application and his placement on the Medicare Preclusion List. CMS denied enrollment and upheld the decision on reconsideration; an administrative law judge affirmed, but Attum did not allege that he sought review by the HHS Departmental Appeals Board. He then filed this federal action asserting substantive due process, Tenth Amendment, and mandamus claims. The district court found that the claims arose under the Medicare Act, that Attum had not fully exhausted administrative remedies, but waived the exhaustion requirement and denied the motion to dismiss.

DISPOSITION

other

CASES CITED

- United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)
- Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)
- Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014)
- Sopcak v. N. Mountain Helicopter Serv., 52 F.3d 817, 818 (9th Cir. 1995)
- Heckler v. Ringer, 466 U.S. 602, 605 (1984)
- Kaiser v. Blue Cross of Cal., 347 F.3d 1107, 1112 (9th Cir. 2003)
- Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 12-14 (2000)
- Arriva Med. LLC v. U.S. Dep't of Health & Human Servs., 239 F. Supp. 3d 266, 278 (D.D.C. 2017)
- Johnson v. Shalala, 2 F.3d 918, 921-22 (9th Cir. 1993)
- Star Fabrics, Inc. v. Ross Stores, Inc., No. 17-cv-5877-PA (PLAx), 2017 WL 10439691, at *3 (C.D. Cal. Nov. 20, 2017)
- Mathews v. Eldridge, 424 U.S. 319, 329 (1976)
- Haro v. Sebelius, 747 F.3d 1099, 1113 (9th Cir. 2014)
- Briggs v. Sullivan, 886 F.2d 1132, 1140 (9th Cir. 1989)
- Davis v. Astrue, 513 F. Supp. 2d 1137, 1146 (N.D. Cal. 2007)
- Kildare v. Saenz, 325 F.3d 1078, 1083 (9th Cir. 2003)
- Cassim v. Bowen, 824 F.2d 791, 795 (9th Cir. 1987)
- Bowen v. City of New York, 476 U.S. 467, 485 (1986)
- Koerpel v. Heckler, 797 F.2d 858, 862 (10th Cir. 1986)

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