Marquette Law Review

Volume 60
Issue 1 *Fall 1976*

Article 6

Constitutional Law: Due Process: Termination of Social Security Benefits: Prior Evidentiary Hearing Not Required (Matthews v. Eldridge)

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RECENT DECISIONS

Constitutional Law—Due Process—Termination of Social Security Disability Benefits—Prior Evidentiary Hearing Not Required—In *Matthews v. Eldridge*,[1] the United States Supreme Court was again asked to give judicial definition to the most amorphous of constitutional concepts, "due process."[2] The Court was presented with the question: does "due process" require an evidentiary hearing prior to the deprivation of a property interest in the form of Social Security disability payments?[3] Distinguishing *Goldberg v. Kelly*,[4] which established a right to an evidentiary hearing prior to termination of welfare payments, the Court, with only one dissent,[5] answered "no."

Matthews v. Eldridge arose when the plaintiff, Eldridge, challenged administrative regulations of the Department of Health, Education, and Welfare which allowed a termination of benefits in cases of disputed disability.[6] These procedures

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1. 424 U.S. 319 (1976).

2. For a discussion of due process in differing legal contexts, *see generally*, Ginger, *Due Process in Practice or Whatever's Fair*, 25 HASTINGS L.J. 897 (1974).

3. The term "evidentiary hearing" throughout this article refers to the type of hearing required by the Court in Goldberg v. Kelly, 397 U.S. 254 (1970). This type of hearing includes the following elements: (1) "timely and adequate notice detailing the reasons for the proposed termination"; (2) "an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally"; (3) retained counsel, if desired; (4) an "impartial" decisionmaker; (5) a decision resting "solely on the legal rules and evidence adduced at the hearing"; (6) a statement of reasons for the decision and the evidence relied on. 397 U.S. at 266-71. This is the definition used by the *Eldridge* Court as indicated in note 4 of that opinion. 424 U.S. at 325.

4. 397 U.S. 254 (1970). In the six years following *Goldberg* and preceding *Eldridge*, a gradual erosion of the Court's apparently absolute requirement of an evidentiary hearing prior to termination of welfare benefits has occurred. *See, e.g.*, Ortwein v. Schwab, 410 U.S. 656 (1973); Richardson v. Wright, 405 U.S. 208 (1972); Richardson v. Perales, 402 U.S. 389 (1971). Thus, the decision in *Eldridge*, while in direct conflict with at least the spirit of the *Goldberg* holding, is not surprising. Some authorities attribute this change of position to the change in composition of the Court, particularly the addition of the Nixon appointees. *See* Brudno, *Fairness and Bureaucracy: The Demise of Procedural Due Process for Welfare Claimants*, 25 HASTINGS L.J. 813 (1974).

5. Justice Stevens took no part in the decision. Justice Brennan was the sole dissenter. Interestingly, Justice Brennan was also the author of the Court's opinion in *Goldberg*.

6. Eldridge was first awarded benefits in June 1968 under the 1956 amendments to the Social Security Act, 42 U.S.C. § 433 (1965). In March 1972 he completed a detailed questionnaire for the state agency charged with monitoring his condition, indicating that he had not improved. After obtaining physical and psychiatric reports,

provided the terminated recipients with a right to seek reconsideration of this initial determination within six months. Eldridge argued that this termination with right to subsequent review violated his right to procedural due process under the fifth amendment.[7]

Reversing both the district court[8] and the court of appeals,[9] the Supreme Court, speaking through Justice Powell, concluded that "the present administrative procedures fully comport with due process."[10] The Court distinguished the situation of the disability claimant in *Eldridge* from that of the welfare claimant in *Goldberg*. First, eligibility for disability benefits, unlike eligibility for welfare benefits, is not based on financial need. Presumably, disability claimants do not rely, as do welfare claimants, on these benefits as their only source of income.[11] Secondly, an evidentiary hearing would be less effective in settling disability claims, which turn primarily on medical evidence, than in settling welfare claims which turn on the credibility of the claimant.[12] Finally, the Court reasoned that requiring a pre-termination evidentiary hearing in disability cases, unlike in welfare cases, would entail fiscal and adminis-

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the state agency determined that his disability ceased in May 1972. In a written response, Eldridge claimed to have arthritis of the spine rather than the back sprain for which he was originally awarded benefits. The Social Security Administration, however, accepted the state's determination and notified Eldridge in July 1972 that his benefits would terminate as of that month. He was also advised that he could seek reconsideration of this termination within six months.

7. Essential to the concept of procedural due process is the requirement that the hearing occur prior to the deprivation, since "[t]he purpose of the due process clause is not to restore property which has been improperly taken — there are other remedies for that — but to prevent a wrongful or mistaken taking in the first place." Rubenstein, *Procedural Due Process and the Limits of the Adversary System*, 11 HARV. CIV. RIGHTS — CIV. LIB. L. REV. 48, 52 (1976). *See also* Boddie v. Connecticut, 401 U.S. 371, 378-79 (1971).

8. 361 F. Supp. 520 (W.D. Va. 1973).

9. 493 F.2d 1230 (1974).

10. 424 U.S. at 349.

11. In his dissent, Justice Brennan pointed out that although disability benefits are not designed to be the primary source of income, in fact they often are. Moreover, the Court has repeatedly and clearly held that the due process requirement of a pre-termination hearing is not limited to situations involving the deprivation of vital necessities. *See* Fuentes v. Shevin, 407 U.S. 67, 89 (1971); Bell v. Burson, 402 U.S. 535, 539 (1971).

12. The view that medical reports are prima facie reliable because of their assumed objectivity has been seriously questioned. *See* Richardson v. Perales, 402 U.S. 389, 411 (1970) (Douglas, J. dissenting). *See also* Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing*, 88 HARV. L. REV. 1510, 1516 n. 34 (1975).

trative burdens disproportionate to any countervailing benefits.[13] Thus, the justices concluded that "[t]he judicial model of an evidentiary hearing is neither required, nor even the most effective, method of decision making in all circumstances."[14] While it is clear that an evidentiary hearing is not required in all circumstances, in light of *Eldridge* and *Goldberg*, it is unclear under what circumstances such a hearing will be required in order to satisfy the requirements of due process.

Long before *Eldridge,* due process analysis had evolved into a two-step inquiry.[15] The Court initially asks whether the due process clause applies, *i.e.*, whether the challenged governmental action infringes upon a liberty or property interest protected by due process. This step requires an examination of the nature or quality of the interest involved rather than its "weight."[16] If the interest is determined to be of constitutional significance, the Court then examines what procedural safeguards are necessary to protect that right. To determine what process is "due" within the meaning of the fifth amendment, a balancing test is used: the individual's need for procedural safeguards is weighed against the government's interest in summary or informal action.[17] Since the first step has become little more than a pro forma scrutiny of the interest involved, the balancing test

13. 424 U.S. at 349.

14. *Id.*

15. This analysis closely parallels the two-tier framework which has characterized equal protection analysis. Under equal protection analysis the Court initially inquires whether the challenged classification impinges upon a fundamental right or creates a suspect classification. If this threshold question is answered affirmatively, the Court invokes strict judicial scrutiny. The burden of proof is on the state to demonstrate, under rigorous judicial examination, that the challenged statute's classification serves a compelling state interest. Shapiro v. Thompson, 394 U.S. 618 (1969). On the other hand, if neither a fundamental right nor a suspect classification is involved, the Court applies the second-tier rational basis test. In deference to the legislative wisdom, the court requires the person challenging the classification to prove that it has no rational basis, *i.e.*, that it is not reasonably related to a permissible statutory purpose. The fifth amendment due process clause was expanded to include the concept of equal protection in Bolling v. Sharpe, 347 U.S. 497 (1954). Since that time, some authorities believe the Court has blurred the line between the due process and equal protection clauses searching rather for what is constitutionally "fair." *See generally,* Ginger, *Due Process in Practice or Whatever's Fair*, 25 HASTINGS L. REV. 897 (1974).

16. "Weight" is used in the sense of importance to the individual whereas "quality" or "nature" refers to constitutional importance. An interest may be of extreme importance to the individual and yet not be deserving of constitutional protection. *See* Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing,* 88 HARV. L. REV. 1510 (1975).

17. Frost v. Weinberger, 515 F.2d 57 (2d Cir. 1975).

has become the focal point of most due process challenges.[18] *Matthews v. Eldridge* is no exception to this rule.

Before applying due process analysis to the *Eldridge* case, the Court was confronted with a threshold issue of whether the district court had jurisdiction over the action. Relying on *Weinberger v. Salfi*,[19] the government contended that Eldridge had failed to exhaust available administrative remedies as required by 42 U.S.C. section 405(g), the only avenue for judicial review of a denial of disability benefits.[20] *Salfi* recognized that "central to the requisite grant of subject matter jurisdiction" under section 405(g) was the requirement that there be a final decision by the Secretary of Health, Education and Welfare after a hearing.[21]

The *Eldridge* Court noted, however, that this requirement was composed of two distinct elements, one waivable and one nonwaivable.[22] The waivable element is the requirement that the administrative remedies prescribed by the Secretary be exhausted. The nonwaivable element is the requirement that a claim for benefits shall have been presented to the Secretary. While Eldridge had not exhausted the available administrative procedures nor had the Secretary "waived" this element, Eldridge had fulfilled "the crucial prerequisite" of presenting his claim for benefits to the Secretary.[23] Furthermore, in the Court's words, "[C]ases may arise where a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment is inappropriate. This is such a case."[24] Since only the nonwaivable element was purely jurisdictional, the Court concluded that the district court properly entertained the suit.[25]

After discussing this preliminary issue, the majority next turned to the first step of due process analysis, the nature of the right involved. According to the Court, although in the past

18. *See* Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing*, 88 HARV. L. REV. 1510 (1975).

19. 422 U.S. 749 (1975).

20. In *Salfi*, the Court held that 42 U.S.C. § 405(h) (1970) precludes federal question jurisdiction in an action challenging denial of claimed benefits. *Id.* at 756-67.

21. *Id.* at 764.

22. The *Eldridge* Court, however, noted that these elements are "implicit" rather than expressed in *Salfi*. 424 U.S. at 328.

23. *Id.*

24. *Id.* at 330.

25. *Id.* at 332.

disability benefits may have been viewed as privileges or gratuities flowing from the government,[26] the law recognizes that modern property interests can take a variety of forms not included in common-law concepts.[27] While a comprehensive analysis of the development of legally recognized property interests is beyond the scope of this article, they include such diverse arrangements as automobile franchises, pension rights, and farm subsidies.[28] The *Goldberg* Court recognized that governmental benefits are among this group of modern property interests: "[S]uch benefits are a matter of statutory entitlement for persons qualified to receive them."[29] Realizing that by virtue of this statement the *Goldberg* Court ended debate as to whether the due process clause applies to government benefits, the Secretary in *Eldridge* did not challenge the nature of the interest involved, but rather contended that existing procedures "provide all the process that is constitutionally due before a recipient can be deprived of that interest."[30]

Essentially, the Secretary put before the Court the fundamental, but legally puzzling question of what is due process. In its attempt to answer this question, the *Eldridge* Court became entangled in the attempts of previous courts to answer the same question.[31] Whatever form these judicial answers have taken, the Court noted, the essence of due process remains the opportunity to be heard at a "meaningful time and in a meaningful manner."[32] Eldridge's challenge was based on the idea that this right had been denied him by a termination of his benefits prior to a determination of the continuance of his disability. However, the Court concluded that while due process requires a "meaningful" hearing, the procedural safeguards necessary to insure that right constitutionally may vary with the circumstances.[33]

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26. *See* Rubenstein, *Procedural Due Process and the Limits of the Adversary System*, 11 HARV. CIV. RIGHTS — CIV. LIB. L. REV. 48 (1976).

27. *See* Goldberg v. Kelly, 397 U.S. 254, 262 n. 8 (1970).

28. *Id.*

29. *Id.*

30. 424 U.S. at 332-33.

31. *Id.*

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

33. 424 U.S. at 334. The *Eldridge* case illustrates perfectly the continuing conflict between the theory that the Constitution is a living instrument adaptable to the "crises of human affairs" and the theory that constitutional cases are not decided by the "social and economic predilections" of nine old men. *See* Lochner v. New York, 198

Although due process "is not a technical conception with a fixed content unrelated to time, place and circumstances,"[34] the *Eldridge* Court noted that it is subject to a more concrete definition. Relying on prior decisions, the Court listed three considerations in determining whether the requirements of due process have been met: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.[35] The Court observed that in only one case, the termination of welfare benefits, did these considerations require an evidentiary hearing.[36] In all other cases, procedures substantially less burdensome for the state than the evidentiary hearing have been held to satisfy due process.[37] In view of the decision in *Goldberg* to require an evidentiary hearing for a denial of similar government payments, it came as a surprise that the Court did not also require an evidentiary hearing in *Eldridge*. However, after an application of the three due process considerations above, the Court instead chose to demonstrate how procedural due process requirements can vary according to the situation.

The Court began its analysis by considering the private interest to be affected by the governmental action. In *Eldridge*, the disability claimant's "sole interest is in the *uninterrupted* receipt of this income pending final administrative decision on his claim."[38] To assess the potential injury which may result from the existing procedures, the Court examined the degree and length of a possible wrongful deprivation. The Court acknowledged that the delay between the termination of benefits and final decision after a hearing may exceed a year.[39] How-

U.S. 45, 74 (1905) (Holmes, J., dissenting); McCulloch v. Maryland 17 U.S. (4 Wheat.) 316 (1819).

34. Cafeteria Workers Local 473 v. McElroy, 367 U.S. 886, 895 (1961).

35. 424 U.S. at 335. *See also* Goldberg v. Kelly, 397 U.S. 254, 263-271 (1970).

36. Goldberg v. Kelly, 397 U.S. 254 (1970).

37. The Court specifically cited Arnett v. Kennedy, 416 U.S. 134 (1974) (dismissal of federal employee); Bell v. Burson, 402 U.S. 535 (1971) (revocation of driver's license); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) (garnishment of wages).

38. 424 U.S. at 340 (emphasis added).

39. *Id.* at 342. The *Eldridge* Court commented on the "torpidity" of the present

ever, the disability recipient, unlike the welfare recipient, whose benefits are based on financial need, does not rely on his benefits as "the very means by which to live."[40] He may have access to private resources or other forms of governmental assistance.[41] Thus, the majority concluded that while "the hardship imposed upon the erroneously terminated disability recipient may be significant . . . it is less than that of the welfare recipient."[42]

Secondly, the Court considered the fairness and reliability of the existing pre-termination procedures, and the value, if any, of additional procedural safeguards. Focusing on the nature of the claim, the majority reasoned that disability disputes turn on medical assessments which are more easily documented and reduced to written presentation.[43] In contrast, welfare cases produce issues of veracity and sincerity which are more effectively decided through the cross-examination involved in an oral hearing.[44] To support their reasoning as to the objectivity of written medical reports the Court relied on *Richardson v. Perales*,[45] which upheld a finding of nondisability on the basis of a hearsay physician's report despite challenges of the denial of the right to confrontation and cross-examination.[46] In addition, the *Eldridge* Court noted that the recipient is periodically sent a detailed questionnaire, is given full access to all information, and may at all times submit new information.[47] Considering these safeguards, the Court reasoned that

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administrative review, but based its decision on the view that these benefits are not the sole source of income and therefore their termination even for the period of a year would not result in "grievous hardship" to the beneficiary.

40. 397 U.S. 254, 264 (1970).

41. Justice Brennan termed these arguments "no argument" at all. 424 U.S. at 350. *See* note 54 *infra*.

42. 424 U.S. at 342.

43. *See* note 12 *supra*.

44. Cross-examination may prove useful in exposing inaccuracies, ambiguities and faulty medical reasoning.

45. 402 U.S. 389 (1971).

46. In his dissent in *Richardson*, Justice Douglas pointed out that the only doctor who testified at the hearing stated that the claimant was permanently disabled. Five others submitted written reports challenging the disability. One of these was a medical advisor to H.E.W. who had never examined the claimant. Three others were experts retained and paid by the government. Assessing these facts, Justice Douglas stated, "Cross-examination of doctors in these physical injury cases is, I think, essential to a full and fair disclosure of the facts." 402 U.S. at 412.

47. These procedures, however, do not serve to remedy the hardship caused by a wrongful termination of benefits.

the value of an evidentiary hearing would be minimal.

The final factor examined by the Court was the public interest. The public interest is measured in terms of the administrative and fiscal burdens incurred by requiring an evidentiary hearing prior to the termination of disability benefits.[48] The fiscal cost alone resulting from the increased number of hearings and the expense of providing benefits during the pendency of a decision would not be "insubstantial."[49] Although acknowledging that the requirements of the due process clause cannot be shaped by these more practical concerns, the Court nevertheless held that "[t]he ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness."[50] After considering the procedures prior to any administrative action and "the good-faith judgments"[51] of administrators, the majority concluded that the existing procedures, with a right to subsequent judicial review, satisfied this constitutional requirement of "fairness."[52]

The soundness, both logical and constitutional, of the Supreme Court's decision rests upon its distinction between the disability recipient in *Eldridge* and the welfare recipient in *Goldberg*. Yet, upon closer examination, these distinctions are questionable. While in theory disability benefits are not based on financial need, in reality, these benefits are often the recipient's only source of income.[52] Justice Brennan pointed out in his dissent that upon termination of the benefits "there was a foreclosure upon the Eldridge home and the family's furniture was repossessed, forcing Eldridge, his wife, and children to sleep in one bed."[53] In addition, the Court's reliance on the existence of "other sources of government aid" is misplaced,

48. State interests may take two general forms: protecting substantive state objectives and minimizing adminstrative burdens. Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing*, 88 HARV. L. REV. 1510, 1515 (1975).

49. 424 U.S. at 347.

50. *Id.*

51. The Court's reliance on the "good-faith judgments" of administrators may be misplaced since the relationship between the administrator and the claimant is by nature adversarial. This would appear to intensify the need for an impartial decision maker who would not be influenced even subconsciously by considerations of bureaucratic efficiency and economy. *See* Brudno, *Fairness and Bureaucracy: The Demise of Procedural Due Process for Welfare Claimants*, 25 HASTINGS L.J. 813 (1974).

52. 424 U.S. at 341.

53. *Id.* at 350.

since these other sources often use the same definition of disability to determine eligibility that is at issue in a termination of disability benefits dispute.[54] Secondly, the Court's reasoning that the use of written medical reports is an effective method of resolving disability disputes requires "an implicit judgment that the device of cross-examination is more useful in the detection of insincerity than in the exposure of ambiguities, faulty perception, or inaccurate memory."[55] Finally, while the majority paid lip service to the doctrine that administrative cost and convenience will not shape constitutional requirements,[56] the Court found that considerations of the public fisc overshadowed Eldridge's right to be heard "at a meaningful time and in a meaningful manner."[57]

In relying on "fairness" for its "ultimate determination,"[58] the *Eldridge* Court has come full circle, returning to its initial inquiry: what is due process? But its answer to this question was merely a restatement of the words of a previous Court: [T]he essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it."[59] Justice Brennan has noted that the Court's due process analysis has increasingly focused on answering the question: "What sort of right is it which enjoys absolutely no procedural protection?"[60] In *Eldridge* the Court has moved one step closer to the answer. While the interest disputed in *Eldridge* enjoys some procedural protection, the Court's holding in this case accorded it far less than traditional definitions of due process would require.

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54. *See* 424 U.S. at 342-43 n. 27.

55. Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing.* 88 HARV. L. REV. 1510, 1516, n.34 (1975).

56. 424 U.S. at 348.

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

58. 424 U.S. at 348.

59. Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 171-72 (Frankfurter, J., concurring).

60. Cafeteria Workers Local 473 v. McElroy, 367 U.S. 886, 900 (Brennan, J., dissenting).