Q & A
Abstention Update[1]

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Q: I am representing a client who has filed for a Medicaid fair hearing. We are also considering filing a federal court action on her behalf. If our state files a motion to dismiss based on the *Younger* abstention doctrine, is the court likely to grant it?

A: A unanimous U.S. Supreme Court decision recently clarified that *Younger* abstention is available only in specific and limited circumstances. Therefore, it is likely that courts will be unwilling to abstain in Medicaid suits based on *Younger.* This should be particularly helpful to advocates in the First, Third, Fourth, Eighth, and Tenth Circuits, where courts have recognized an exhaustion requirement for certain types of administrative proceedings.

Background

Medicaid beneficiaries have the right to contest state denials of eligibility and services at administrative hearings.[2] They may also bring claims for violations of Medicaid requirements in state or federal court. When advocates file cases in federal district court, however, attorneys representing the state have increasingly argued that the court should abstain from hearing the case—particularly when the beneficiary has also requested an administrative hearing.

It is true that, under some circumstances, federal courts should decline to decide unsettled issues of state law to avoid interfering in ongoing state court or administrative proceedings. However, this practice, known as abstention, is "the exception and not the

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[2] 42 U.S.C. § 1396a(a)(3); 42 C.F.R. §§ 431.200-431.250; *see also* 42 C.F.R. subpart F (managed care grievance procedures)

rule."[3] Consistent with that principle, courts have traditionally not abstained from hearing Medicaid cases.

Over the past several years, however, there have been several disturbing decisions in which federal courts abstained from hearing Medicaid claims. In particular, in 2011, the Eighth Circuit upheld a district court's decision to abstain from hearing a suit brought by a Medicaid beneficiary based on *Younger v. Harris*.[4]

Earlier this year, however, the Supreme Court issued a unanimous decision making it clear that *Younger* abstention is appropriate only in very limited circumstances. If advocates become familiar with this decision and make use of it, it should put an end to states' attempts to use *Younger* to block Medicaid beneficiaries' and applicants' access to federal court.[5]

Younger Abstention

Younger abstention, named for the Supreme Court case *Younger v. Harris*, is used to prevent interference by a federal court in ongoing state judicial or administrative proceedings.[6] It is appropriate when such proceedings involve important state interests traditionally addressed under state law, as long as the state proceedings could afford adequate relief for the plaintiff.[7] The doctrine was originally applied only to ongoing state criminal court proceedings, but the grounds for *Younger* abstention have since been expanded. In recent years, it has been applied in certain civil cases and administrative proceedings.[8]

Some courts have held that *Younger* should only be invoked when proceedings are "coercive" (not initiated by potential plaintiffs but in which they must participate) and not "remedial" (voluntarily initiated by a plaintiff to redress a wrong by the state).[9] This distinction was mentioned in the Supreme Court's decision in *Ohio Civil Rights Comm'n*

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[3] *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992).
[4] *Hudson v. Campbell,* 663 F.3d 985 (8th Cir. 2011), *aff'g* , No. 09-4271-CV-C-NKL, 2010 WL 1657989 (W.D. Mo. Apr. 26, 2010).
[5] States also argue that federal courts should abstain based on other doctrines, including *Burford* abstention, *Colorado River* abstention, and *Pullman* abstention. These types of abstention are discussed at length in another NHeLP Q&A. *See* Sarah Somers, National Health Law Program, *Fact Sheet: Abstention Update* (Dec. 2012), available from NHeLP or TASC.
[6] *Younger v. Harris,* 401 U.S. 37 (1971); *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986).
[7] *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10-17 (1987).
[8] *Ohio Civil Rights Comm'n*, 477 U.S. at 627; *see also Middlesex County Ethics Com. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982).
[9] *See, e.g., Kercado-Melendez v. Aponte-Roque,* 829 F.2d 255 (1st Cir. 1987).

v. Dayton Christian Schools.[10] In that case, a state civil rights commission initiated an administrative proceeding against a private school, which then filed an action in federal court under 42 U.S.C. § 1983, alleging that the proceedings would violate the First Amendment.[11] The Supreme Court held that abstention was appropriate. It also held that its decision was consistent with *Patsy v. Board of Regents of the State of Florida*, which holds that a plaintiff is *not* required to exhaust administrative remedies before filing a claim under § 1983.[12] The Court distinguished the situation in *Patsy,* noting that the Ohio Civil Rights Commission proceedings were well underway before the federal action was filed, finding an important state interest was involved, and referring to the proceedings as "coercive" – that is, the plaintiff did not initiate the administrative action and had no choice but to participate – rather than "remedial."[13]

Courts have generally found Medicaid administrative proceedings challenging denials or terminations to be "remedial" and, therefore, not to justify federal court abstention.[14] In 2012, however, the Eighth Circuit affirmed a startling district court decision in *Hudson v. Campbell.*[15] In *Hudson,* the plaintiff struggled to have her Medicaid claim addressed by the state administrative body. The state Medicaid agency denied her application for eligibility and she requested a fair hearing to challenge the denial. The agency requested a continuance and then issued another notice changing the reason for the denial. The hearing officer instructed the plaintiff to request another hearing to contest the second notice of denial. Instead, she filed under § 1983 in the Federal District Court for Western Missouri. The defendant filed a motion to dismiss, arguing, among other things, that the court should abstain from hearing the case based on *Younger*.

The district court agreed. It found that there was an ongoing state proceeding, despite the fact that no administrative hearing was pending. Because state law provided for administrative hearings and appeal to state court, the court concluded that, "until these statutory avenues have been *exhausted*, [it] is an ongoing state proceeding."[16] It held that the proceeding implicated the important state interest of

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[10] 477 U.S. 619 (1986).
[11] *Id.* at 625.
[12] 457 U.S. 496 (1982); *see also Monroe v. Pape,* 365 U.S. 167 (1961).
[13] 477 U.S. at 627, n. 2.
[14] *See, e.g., Brown v. Day,* No. CIVA 06-2212 KHV, 2006 WL 3087111, *2 (D. Kan. Oct. 27, 2006), *motion to amend den.* 477 F. Supp. 2d 1110 (D. Kan. 2007), *see also* Sarah Somers, National Health Law Program, *Fact Sheet: Abstention Update* at 2 (Dec. 2012) (collecting cases), available from NHeLP or TASC.
[15] *Hudson,* 663 F.3d 985 (8th Cir. 2011), *aff'g* , No. 09-4271-CV-C-NKL, 2010 WL 1657989 (W.D. Mo. Apr. 26, 2010).
[16] *Hudson,* 2010 WL 1657989, *2 (emphasis added).

allowing state agencies to administer their own matters without federal interference.[17] Third, it found that the issues could be addressed through the state forum.[18]

The district court noted the distinction between remedial and coercive proceedings, citing an Eighth Circuit case applying *Younger* to a remedial administrative proceeding. [19] The court acknowledged that its conclusion effectively imposed an exhaustion requirement on the Medicaid applicants, which conflicts with the Supreme Court's decision in *Patsy v. Board of Regents*.[20] It did not explain, however, why it found that it was not necessary to conform to *Patsy's* rule.

The Eighth Circuit Court of Appeals affirmed in a brief decision.[21] In response to the plaintiff-appellant's argument that the Medicaid hearing was not coercive, the court stated only that the remedial/coercive distinction was not outcome determinative in the Eighth Circuit. Because the court found the plaintiff's fact situation "procedurally identical" to an Eighth Circuit case in which *Younger* abstention applied, it found that abstention was proper.[22] It also held that the proceeding was ongoing because the plaintiff had not exhausted administrative remedies. Like the district court, the circuit court failed to explain how its holding did not conflict with *Patsy.*

The Supreme Court: *Sprint Telecomm. v. Jacobs*

Despite advocates' fears, *Hudson* did not appear to gain much traction. Few citations to the decision could be found even two years later. Then, in one of the most important cases of this Supreme Court term, the Court clarified abstention doctrine in a way that should reduce the frequency of these sorts of motions to dismiss.

Seeking to overturn a decision by the Iowa Utilities Board (IUB), Sprint Communications filed a state court petition for review of the IUB decision and a federal case based on the Telecommunications Act. The Eighth Circuit affirmed the district court's decision to abstain in light of the state court suit, citing *Younger*.[23] The court read Supreme Court precedent to require *Younger* abstention whenever "an ongoing state judicial proceeding … implicates important state interests, and … the state proceedings provide adequate opportunity to raise [federal] challenges."[24] The court

[17] *Id.* at *3.
[18] *Id.*
[19] *Id.*, citing *Alleghany Corp. v. McCartney,* 896 F.2d 1138 (8th Cir. 1990).
[20] 457 U.S. 496 (1982).
[21] *Hudson v. Campbell,* 663 F.3d 985 (8th Cir. 2011).
[22] The Court noted that the First, Third, Fourth, and Tenth Circuits require exhaustion when "coercive" proceedings are underway. *See Hudson,* 653 F.3d at 987 (citing cases).
[23] *See Sprint Communications, Inc. v. Jacobs*, 690 F.3d 864 (8th Cir. 2012) (citing *Younger v. Harris*, 401 U.S. 37 (1971)), *rev'd*, 134 S. Ct. 584 (2013).
[24] *Id*. at 867 (citation omitted).

concluded that the state's interests in regulating and enforcing state utility rates met that test.[25]

In *Sprint Communications, Inc. v. Jacobs*, the Court unanimously rejected the Eighth Circuit's formulation of *Younger* abstention because it could apply to "virtually all parallel state and federal proceedings, at least where a party could identify a plausible important state action."[26] Justice Ginsburg's opinion sets clear boundaries for *Younger* abstention. As an initial matter, she re-iterates the principle that federal courts have a "virtually unflagging" duty to hear cases: "In the main, federal courts are obligated to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter."[27]

The Court acknowledges that *Younger* requires abstention when there is a parallel criminal or quasi-criminal case pending in state court. However, the Court reminds us that *Younger* demands "exceptional" circumstances and thereafter limits these to three situations:

- ongoing state criminal proceedings,
- civil enforcement proceedings where the state has filed a formal complaint against the federal plaintiff for wrongdoing (commonly following a state investigation), and
- civil proceedings involving orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.[28]

Sprint Communication's state court case involved none of these exceptions; rather, the IUB's adjudicative authority was invoked to settle a civil dispute between two parties and not to sanction Sprint for commission of a wrongful act.[29] In another clarification, the Court discarded the "coercive-remedial" inquiry being used by some courts of appeals to decide abstention requests: "Though we referenced this dichotomy once in a footnote … we do not find the inquiry necessary or inevitably helpful, given the susceptibility of the designations to manipulation."[30]

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[25] *Id*. at 868.
[26] *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584, 593 (2013).
[27] *Id*. at 591, 588 (citations omitted).
[28] *Id*. at 588 (citing *Colo. River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976)).
[29] *Id*. at 593.
[30] *Id*. at 593 n.6 (citing *Ohio Civil Rights*, 477 U.S. at 627, n.2).

Conclusion and Recommendations

The decision in *Sprint* is welcome news. In general, Medicaid cases challenging eligibility or service denials or terminations do not typically fit within any of the "exceptional circumstances" articulated by the *Sprint* decision. This decision is, of course, great news for Medicaid advocates in the Eighth Circuit. Moreover, the Court's unanimous rejection of the remedial-coercive distinction should be particularly helpful to advocates in the First, Third, Fourth, and Tenth Circuits, where courts have recognized an exhaustion requirement when the proceeding was deemed "coercive."[31]

The decision has, however, received little attention in advocacy circles thus far. It is important that advocates be aware of it, cite it, and discuss it when the state invokes the *Younger* exception.

Of course, the *Sprint* decision does not affect any of the other abstention doctrines that are invoked by states in Medicaid cases. Fortunately, states have had little success invoking these other abstention doctrines in Medicaid cases.[32]

[31] *See Hudson,* 653 F.3d at 987 (citing cases).
[32] *See* Somers, Fact Sheet: Abstention Update at 3, 5, 8.