Fact Sheet
Exhaustion, Abstention, Preclusion: Considerations for Filing Fair Hearings[1]

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Background

Medicaid applicants and beneficiaries have a choice of forum when eligibility or services are denied, terminated, or reduced. They have the right to a state administrative hearing to challenge a denial, termination, or reduction of eligibility or services, with a right to appeal an adverse decision to state court.[2] They also may bring actions to enforce certain Medicaid provisions under 42 U.S.C. § 1983 in federal or state court. In some instances, it may make sense for a claimant to make an administrative appeal then, at some later point, file an original action in federal court. Under those circumstances, attorneys representing the Medicaid agency may raise a variety of arguments about why the federal court should not hear the suit. They may urge the federal court to abstain from hearing the case, or argue that the plaintiff may be precluded from raising issues or claims in court. Or, if a claimant has not filed an administrative appeal or has not completed the administrative process, the agency may argue that they should have exhausted the administrative process. While these arguments fail more often than not, states continue to raise them and advocates should consider them when planning strategy and be ready to address them. Moreover, the increasing tendency of courts to cut back on access to federal courts means that these arguments may eventually succeed.

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[1] Produced with a grant from the Training Advocacy Support Center (TASC), which is sponsored by the Administration on Community Living (ACL), the Substance Abuse and Mental Health Services Administration (SAMHSA), the Rehabilitation Services Administration (RSA), and the Social Security Administration (SSA). TASC is a division of the National Disabilities Rights Network (NDRN).

[2] 42 U.S.C. § 1396a(a)(3); 42 C.F.R. §§ 431.200-431.250, 438.400-438.424 (managed care).

In this Fact Sheet, we review the principles of exhaustion, abstention, and preclusion, updating previous publications on these issues, and highlight some notable cases.[3]

Exhaustion

Claimants can enforce Medicaid's statutory requirements through § 1983, which provides a private right of action against state actors whose conduct deprives a person of any "rights, privileges, or immunities secured by the Constitution and laws" of the United States.[4] 42 U.S.C. § 1983. Courts have long recognized that plaintiffs need not exhaust administrative remedies before bringing a § 1983 suit in federal or state court. *Patsy v. Bd. of Regents*, 457 U.S. 496 (1982); *see also Felder v. Casey*, 487 U.S. 131 (1988) (extending holding to suits in state court). This principle is well recognized in Medicaid cases.[5]

A recent decision from the Alabama Supreme Court, currently before the U.S. Supreme Court, threatens this settled principle. In *Johnson v. Alabama Sec'y of Labor Fitzgerald Washington,* the Supreme Court of Alabama considered a claim that the Alabama Department of Labor failed to timely and properly process applications for unemployment benefits.[6] The plaintiffs argued that the Department had violated a provision of the Social Security Act and the Due Process Clause of the U.S. Constitution, raising the claims pursuant to § 1983. The Department moved to dismiss, asserting (among other arguments) that the court lacked jurisdiction because plaintiffs did not exhaust their administrative remedies, citing a state law

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[3] *See* Sarah Somers, *Fact Sheet: Abstention Update* (May 2022); Sarah Somers & Jane Perkins, *Q&A: Abstention Update* (Aug. 2014); Sarah Somers, *Fact Sheet: Abstention Update* (Dec. 2012); and Sarah Somers & Natalie Kean, *Fact Sheet: Update on Federal Court Access – Abstention* (July 2007) (available from TASC or NHeLP).

[4] For discussion of enforcement of Medicaid provisions through § 1983, *see* Jane Perkins, *Q&A: Private Enforcement of the Medicaid Act Post* Talevski (Apr. 2024); Jane Perkins, *Pin the Tail on the Donkey: Beneficiary Enforcement of the Medicaid Act Over Time*, 9 ST. LOUIS UNIV J. OF LAW & HEALTH POL. 207 (2016).

[5] *See, e.g., Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006) (Medicaid beneficiary not required to exhaust administrative remedies before filing suit in federal court); *James v. Richman*, 547 F.3d 214, 217 (3d Cir. 2008) (same); *Romano v. Greenstein*, 721 F.3d 373, 376 (5th Cir. 2013) (same); *Planned Parenthood South Atlantic v. Baker*, 326 F. Supp. 3d 39, 46 (D.S.D. 2018) (same); *Dep't of Health and Soc. Servs. v. Alaska State Hosp. and Nursing Home Ass'n*, 856 P2d 755, 758 (Alaska 1993) (same, state court); *New York City Coal. To End Lead Poisoning v. Giuliani*, 187 Misc.2d 425, 433 (N.Y. Sup. Ct. 2000) (same, state court).

[6] __ So.3d __, 2023 WL 4281620 (Ala. 2023).

that barred state courts from exercising jurisdiction over "determinations with respect to claims for unemployment benefits."[7] The Plaintiffs countered that their claims were not related to the substance of unemployment benefits but to the procedure for determining eligibility for them. They also cited *Patsy* for the proposition that states cannot require exhaustion of administrative remedies as a prerequisite to bringing claims for benefits.[8]

The Court sided with the Department. First, it held that the plaintiffs suit fell within the category of claims that, under state law, required exhaustion of administrative remedies, as it required determinations "with respect to" claims for unemployment. The Court also construed *Patsy* narrowly, claiming that it held only that §1983 itself had no exhaustion requirement, "did not interpret the text of any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional."[9] Moreover, it reasoned, even if *Patsy* controlled regarding *federal* court jurisdiction, it said nothing about *state* court jurisdiction. Therefore, it affirmed dismissal of the case. [10]

Plaintiffs filed a petition for cert with the U.S. Supreme Court, which was granted in January.[11] Briefing is underway and oral argument has yet to be scheduled.

Preclusion

Administrative proceedings that precede federal court litigation may also implicate r*es judicata*, which precludes the relitigation of claims that were raised *or could have been raised* in a prior case. It applies when the court determines that the resolution of the earlier action is a final judgment on the merits and the causes of action and the parties are the same in the earlier and later suits.[12] *Res judicata* includes both claim preclusion and issue preclusion. Under claim preclusion, a final judgment forecloses further litigation of the same claim. Issue preclusion bars successive litigation of the same issues of fact or law that were litigated and resolved.[13] When claims or issues have been addressed in administrative proceedings, states may argue that a claimant is precluded from bringing claims or raising issues in court that the state claims were addressed in the administrative proceedings.

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[7] *Id.* at *3.
[8] *Id.* at *3-4.
[9] *Id.* at *4.
[10] *Id.*
[11] *Williams v. Washington*, 144 S. Ct. 679 (U.S. 2024).
[12] *See, e.g., Risinger v. Concannon,* 117 F. Supp. 2d 61, 66 (D. Maine 2000).
[13] *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008).

The Tenth Circuit recently addressed this issue in *Grimes v. Bimestefer*. This Colorado case arise from termination of Medicaid eligibility resulting from a personal injury award that the beneficiary placed into a trust. The beneficiary appealed through the state's administrative process and prevailed, but the agency appealed and reversed the decision. Rather than appealing to state court, the beneficiary filed a federal § 1983 action. [14] Applying Colorado law governing preclusion, the District Court held that claim preclusion barred the entire case, and the plaintiff appealed.[15]

The Tenth Circuit affirmed. It held that a state administrative decision has the same preclusive effect as a state court decision when the agency (1) "acts in a judicial capacity, (2) resolves disputed issues of fact before it, and (3) the parties have an adequate opportunity to litigate issues."[16] The Court notes that "[i]t doesn't matter that no hearing occurred, because [t]he parties agreed that the case could be decided on summary judgment, and requested [that] the Court vacate the scheduled hearing and set a briefing schedule."[17] It cited Colorado law, which provides that a decision has preclusive effect under similar circumstances: "(1) the judgment in the prior proceeding was final; (2) the prior and current proceedings involved identical subject matter; (3) the prior and current proceedings involved identical claims for relief; and (4) the parties to the proceedings were identical or in privity with one another."[18] The only dispute in this case involved whether the third criteria applied, specifically, whether both proceedings involved identical claims for relief. The plaintiff argued that the claims were not identical, but the court disagreed. The key consideration is not "the specific claim asserted or the name given to the claim" or "the legal theory on which the person asserting the claim relies," but rather "the injury for which relief is demanded."[19] The Court concluded that the plaintiff was seeking redress for the same *injuries* – denial of Medicaid eligibility - and that claim preclusion therefore applied.

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[14] *J.G. through Grimes v. Bimestefer*, Civil Action No. 19-cv-2674-WJM-STV, 2020 WL 7123181 (D. Colo. Dec. 4, 2020).
[15] *Id.* at *4.
[16] *J.G. through Grimes v. Bimestefer*, No. 21-1194, 2022 WL 2965794, *3 (10th Cir. July 27, 2022).
[17] *Id.* (internal quotation marks omitted).
[18] *Id.* (quoting *Gale v. City and Cnty. of Denver*, 500 P.3d 351, 354 (Colo. 2020)).
[19] *Id.* at *4 (quoting *Argus Real Est., Inc. v. E-470 Pub. Highway Auth.*, 109 P.3d 604, 608-09 (Colo. 2005)).

Grimes is troubling, particularly for those practicing in Colorado. However, cases in which applicants and beneficiaries defeating preclusion arguments are more common.[20]

Abstention

There are a number of varieties of abstention that parties may raise; three of the most commonly-invoked types are described below.

***Younger* abstention** requires federal courts to abstain from hearing cases when there is a parallel criminal or quasi-criminal case in state court. It also applies to certain administrative proceedings. In *Sprint Communications, Inc. v. Jacobs*, the Supreme Court reaffirmed that *Younger* only applies in "exceptional circumstances," limited 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 that are uniquely in furtherance of the state courts' ability to perform their judicial functions.[21]

The *Sprint* decision responded to increasingly expansive use of e *Younger* by the lower courts, emphasizing that "federal courts are obliged 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."[22]

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[20] *See, e.g., Mitchell through Mitchell v. Comm'ty Mental Health of Cent. Mich.*, 243 F. Supp. 3d 822 (E.D. Mich. 2017) (no preclusion where no administrative decision issued); *Walker v. Selig*, No. 2:15-CV-00166 KGB, 2015 WL 12683818 (E.D. Ark. Oct. 30, 2015) (no preclusion where administrative hearing could not have addressed the federal claims brought in the lawsuit); *Hobbs ex rel. Hobbs v. Zenderman*, 542 F. Supp. 2d 1220 (D.N.M. 2008), *aff'd by* 579 F.3d 1171 (10th Cir. 2009) (preclusion applied to issues of fact litigated at administrative hearing, but not issues of law). *But see Pumphrey v. Dep't of Children & Fams.*, 292 So.3d 1264 (Fla. Dist. Ct. App. 2020) (finding *res judicata* applied because the issues had been determined in a previous agency denial of an application). This lightly-reasoned and sparse decision seems incorrect.

[21] *Sprint Comms., Inc. v. Jacobs,* 571 U.S. 69, 81 (2013).

[22] *Id.* at 588, citing *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350, 373 (1989).

Before *Sprint*, courts generally followed the Supreme Court's decision in *Middlesex County Ethics Committee v. Garden State Bar Association* when determining whether *Younger* abstention applied.[23] That case set forth three factors to consider: is there (1) an ongoing state judicial proceeding, which (2) implicates important state interests, and (3) provides an adequate opportunity to raise federal challenges.[24] These factors are still relevant, however, the *Sprint* decision cautioned that courts may not simply apply these factors without considering whether the action was one of the three types to which *Younger* applies. Rather, courts may consider these factors only after it determines whether the case fit within the three "extraordinary circumstances."[25]

***Burford* abstention** comes into play under the "rare" circumstances when review by federal court of a complex state regulatory scheme would interfere with a state court review. "Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."[26] When determining if *Burford* applies, courts consider a number of factors that may vary slightly between circuits, including whether:

- The federal importance of a constitutional challenge
- The intricacy and importance of the state regulatory scheme
- Whether the state has created a central system of judicial review allowing its courts to develop expertise in interpreting the scheme and the industry;
- The speed and adequacy of state court review
- The likelihood of delay, misunderstanding of local law and needless federal conflict with state policy.[27]

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[23] 457 U.S. 423 (1982).
[24] *Sprint*, 571 U.S. at 81, citing *Middlesex,* 457 U.S., at 432, 102 S. Ct. 2515).
[25] *Sprint,* 571 U.S. at 81.
[26] *New Orleans Pub. Serv. Inc.*, 491 U.S. at 361.
[27] *Id.,* 491 U.S. at 360.

Colorado River **abstention** applies in the exceptional and limited circumstances where a substantially similar suit is pending in state court, in the interest of wide judicial administration when (1) concurrent state and federal suits are parallel and (2) involve substantially the same claims.[28] If so, then the court must consider a variety of factors to determine whether abstention is warranted.

In considering whether to abstain, a court should consider a number of factors, none of which are controlling.[29] Among them are:

- the inconvenience of the federal forum for defendants,
- the desirability of avoiding piecemeal litigation in the interest of judicial economy,
- the order in which the state and federal courts obtained jurisdiction measured in terms of the progress in each action, and
- whether federal or state law controls the litigation.[30]

Abstention is warranted only when the factors, taken together, constitute exceptional circumstances.[31]

The state invoked all three types of litigation in a recent West Virginia case regarding coverage of gender-affirming surgeries. A Medicaid managed care organization denied Plaintiff's request for approval of gender-affirming surgical procedures, and denied her internal appeal. She appealed to the state administrative hearing body, which overturned the denial of coverage of three out of the four surgeries requested. The state agency filed an appeal to state court. Asserting that this appeal was illegal, Plaintiff filed sued against the state agency and MCO in federal district court, seeking a preliminary injunction.[32]

Defendants argued that the court should abstain under *Younger* and *Burford*. The court disagreed. First, *Younger* did not apply because the lower court proceeding was not quasi-

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[28] *Colorado River Water Dist. v. U.S.*, 424 U.S. 800, 818-20 (1976).
[29] *Colorado River*, 424 U.S. at 818-19.
[30] *Id.*
[31] *Id.* at 820.
[32] *Forloine v. Coben*, No. 3:23-0450, 2023 WL 5944294 (S.D. W.Va. Sept. 12, 2023), *amending and superseding* 2023 WL 4921508 (Aug. 1, 2024).

criminal and did not implicate the state court's ability to perform its judicial functions.[33] Second, *Burford* did not apply because, as Medicaid is a federally approved and regulated program, exercising jurisdiction in this case did not "threaten to frustrate the purpose of a state's complex administrative system."[34] Ultimately, the court enjoined the state to issue prior approval of the surgical procedures held medically necessary by the administrative body.

After Plaintiff had the surgeries, the Medicaid MCO refused to reimburse her, so she filed an amended complaint.[35] The defendants again argued for abstention under *Younger* and *Burford*, as well as *Colorado River*. The court rejected all three arguments. First, it held that *Younger* did not apply because the case did not fit any of the three narrow categories in which it applied. *See, supra,* p. 5. Nor did *Burford* apply because the case did not present a difficult area of state law or important state policy, nor was there a uniform state enforcement mechanism to resolve the rights in question.[36] Finally, *Colorado River* was inapplicable because the "federal action is nothing like [the] state action." The federal action asks whether the agency can seek judicial review of a Medicaid eligibility determination from the state administrative body and seeks injunctive relief, while the state action determines whether the surgeries are covered. "Sure, the proceedings stem from the same factual circumstances . . . but some factual overlap does not dictate abstention."[37]

The Rooker Feldman Doctrine

Rooker-Feldman holds that federal courts cannot hear appeals of state court decisions and is often raised in circumstances similar to abstention.[38] Essentially, federal court has no jurisdiction over a matter in which a state court loser is asking the federal court to review and reverse a state court judgment that was rendered before the federal proceeding is initiated.[39]

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[33] *Forloine*, 2023 WL 5944294, *3.

[34] *Id.* at *4.

[35] *Forloine v. Persily*, No. 3:23-0450, 2024 WL 1316237 (S.D. W. Va. Mar. 27, 2024).

[36] *Id.* at *5.

[37] *Id.* at *6 (cleaned up).

[38] *Rooker v Fidelity Trust Co.,* 263 U.S. 413 (1923); *D.C. Ct. of App. v. Feldman,* 460 U.S. 462 (1983).

[39] *See, e.g., Exxon Mobile Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280, 284 (2005). Federal review of state court decisions is only available when a state supreme court renders a final judgment that implicates a conflict with federal law and a petition for a writ of certiorari is

Rooker-Feldman does not apply to state administrative decisions; it is only implicated in Medicaid cases in which an administrative hearing has been appealed to state court and that court reached a decision.[40]

Medicaid cases in which *Rooker-Feldman* applies are rare. Most courts to reach the issue have found that *Rooker-Feldman* does not apply.[41] One exception is *Mazin v. Steinberg*.[42] In that case, the agency terminated the plaintiff's benefits, who challenged the denial at an administrative hearing and lost. He appealed to state court and the case was dismissed. Subsequently, he appealed to the state supreme court, which also dismissed the appeal. He later filed *pro se* in federal court, but the court held that *Rooker-Feldman* applied. "In essence [the complaint] seeks review and rejection of the Delaware state court judgments dismissing his appeal."[43] This brings the case under the purview of *Rooker-Feldman*, so the court

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filed with the Supreme Court pursuant to 28 U.S.C. § 1257. *Feldman,* 460 U.S. at 476.

[40] *See, e.g., Sanders ex rel. Rayl v. Kansas Department of Social and Rehabilitation Services*, 317 F. Supp. 2d 1233 (D. Kan. 2004) (*Rooker-Feldman* does not apply to decisions of administrative agencies). A federal court reached a contrary decision in *Immel v. Lumpkin*, No. 2:07-CV-1214, 2009 WL 173862 (S.D. Ohio Jan. 23, 2009), holding *Rooker-Feldman* applied when a plaintiff had requested an administrative hearing. Though the plaintiff pointed out that she had not lost her administrative hearing or even appealed to state court, the court was unmoved by this fact, reasoning that the plaintiff was essentially asking for a review of the state hearing decision, so the doctrine applied. This is an incorrect application of the doctrine, however, the Sixth Circuit ultimately vacated it without an opinion because the plaintiff died pending appeal. No. 2:07-CV-1214, 2011 WL 9780584 (S.D. Ohio Jan. 3, 2011).
[41] *See, e.g., Mitchell,* 243 F. Supp. 3d at 835 (doctrine did not apply when plaintiff was not alleging injury was caused by administrative decision); *May by and through May v. Azar*, No. 2:18-CV-885-TFM-SMD, 2019 WL 5699938 (M.D. Ala. Nov. 4, 2019) (doctrine did not apply because plaintiff filed federal action while the state court action was pending); *Forloine v. Coben*, 2023 WL 4921508, *3 (doctrine did not apply because plaintiff did not lose her administrative hearing); *Forloine v. Persily*, 2024 WL 1316237. *4 (doctrine did not apply because there was no state court judgment and plaintiff was bringing "independent" federal claims); *see also Carson P. ex rel. Foreman v. Heineman,* 240 F.R.D. 456 (D. Neb. 2007) (juvenile court proceeding irrelevant not relevant to inquiry);*Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277 (N.D. Ga. 2003) (state court decision in juvenile justice case did not trigger *Rooker-Feldman*, since the plaintiff's claims were completely independent of that action).
[42] No. 07-81-SLR, 2007 WL 1202855 (D. Del. Apr. 19, 2007).
[43] *Id.* at *2.

dismissed it.[44] Another exception is *Immel v. Lumpkin*, in which the plaintiff filed a federal suit while her administrative hearing was pending. The court held that *Rooker-Feldman* barred the suit.[45] This decision is arguably incorrect,.[46]

Conclusions and Recommendations

There are good reasons to file for an administrative hearing even when you are contemplating filing a federal case. If the agency is terminating or reducing services, filing an administrative appeal to obtain benefits pending a hearing can be a quicker and easier way to preserve the status quo than requesting a preliminary injunction. Moreover, it can be help clarify an ambiguous agency position or obtain free discovery. Advocates should, however, consider the potential risks and weigh them against the possible benefit.

- To avoid potential preclusion arguments, before filing a federal suit that implicates the same issues raised in a state administrative action, advocates should carefully draft their complaint to make it clear that they are raising issues that were not or could not be raised in a state administrative proceeding (such as constitutional claims).
- The trend for federal courts to refuse to abstain in Medicaid cases continues, as is appropriate, as precedent is clear that abstention should be rare. Dismissing an administrative hearing before the agency reaches a decision reached seems to pose minimal risk. Other than a now decade-old Eighth Circuit decision,[47] courts uniformly have held that a proceeding must actually be pending to be considered "ongoing" for the purposes of abstention.
- Once an administrative agency has made a decision, plaintiffs are much more likely to draw a motion to dismiss on abstention grounds. Despite the fact that states have had little success in convincing courts to abstain, there is still a risk. Moreover, depending on the law in your state, risk of issue and claims preclusion is likely the greater threat.
- Advocates should familiarize themselves with the law governing issue and claims preclusion in their states, particularly the effect given administrative decisions.

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[44] The court noted that plaintiff asserted equal protection violations, which were not part of the state court case, suggesting they would not be barred by *Rooker-Feldman*, but were foreclosed by eleventh amendment or quasi-judicial litigation. *Id.* at *2.
[45] No. 2:07-CV-1214, 2009 WL 173862 (S.D. Ohio Jan. 23, 2009). The Sixth Circuit ultimately vacated this decision because the plaintiff died pending appeal. No. 2:07-CV-1214, 2011 WL 9780584 (S.D. Ohio Jan. 3, 2011).
[46] *Id.* at *6.
[47] *Hudson v. Campbell*, 663 F.3d 885 (8th Cir. 2011).

- Once a state court action is initiated, advocates must proceed with great caution before filing a federal action. *Rooker-Feldman* will apply if the court reaches a decision on the identical claim. Moreover, perhaps the greater concern is whether a related state action will have preclusive effect.
- Remember that the Supreme Court will hear arguments in the exhaustion case, *Williams v. Washington*, in the fall. This case does not pose a major threat because, even if the state prevails, a decision will likely only impact § 1983 suits filed in state court. Even so, advocates will want to watch this case closely for the outcome and any signals from the Court that it is interested in further limiting § 1983 enforcement.
- NHeLP has model briefing and will provide technical assistance to help respond to exhaustion, abstention, and claim preclusion arguments.