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ADMINISTRATIVE DELAY IN PROVIDING HEARINGS FOR SOCIAL SECURITY DISABILITY

The problems in adjudicating social security disability claims have slowed the administrative appeals process to a "glacial pace."\(^1\) Claimants whose applications have been denied or whose benefits have been terminated must often wait up to a year for a hearing before an administrative law judge.\(^2\) Particularly disturbing about this delay is that once the hearing is conducted, more than half of the claimants are found eligible for disability benefits.\(^3\) Thus, numerous claimants are subjected to prolonged deprivation of benefits to which they are legitimately entitled.

In a suit brought by disability claimants seeking to expedite the appeals process, the Supreme Court denied certiorari to a Second Circuit decision, *White v. Mathews*,\(^4\) which ordered hearings and decisions within 120 days of the date the hearing is requested.\(^5\) In this case, the plaintiffs alleged that the Secretary of Health, Education, and Welfare (the Secretary) had violated Title II of the Social Security Act,\(^6\) the Administrative Procedure Act,\(^7\) and the fifth amendment\(^8\) by subjecting disability claimants to unreasonable delays. While the district court sustained all three claims,\(^9\) the

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5. *Id.* The order provided a graduated compliance schedule in which the Secretary of Health, Education, and Welfare (the Secretary) was required to reduce the maximum delay between the filing of a petition for a hearing before an administrative law judge and the issuance of a final decision to 180 days by July 1, 1977; to 150 days by December 31, 1977; and, finally, to 120 days by July 1, 1978. This order, affirmed by the court of appeals, is explained in detail in the district court opinion, *White v. Mathews*, 434 F. Supp. 1252, 1261-62 (D. Conn. 1976), *aff'd*, 559 F.2d 852 (2d Cir. 1977), *cert. denied*, 46 U.S.L.W. 3539 (U.S. Feb. 27, 1978) (No. 77-866).
8. U.S. Const. amend. V.
court of appeals found adequate grounds for relief under the Social Security Act and declined to consider the other two claims.  

Although the Supreme Court has denied certiorari in White, the problem of administrative delay has national dimensions, as demonstrated by three other recent federal district court cases; suits are likely to result in other districts. This note demonstrates the validity of each of the three substantive claims. In addition, the note will evaluate the equitable remedies available to a court and their applicability to the situation at hand.

**WHITE V. MATHEWS**

The facts in White v. Mathews were undisputed. George White had been totally disabled by cirrhosis of the liver and acute pancreatitis and was receiving disability insurance benefits. After receiving a doctor's report and reexamining White's eligibility, the Social Security Administration (SSA) terminated his benefits as of January 31, 1974. Pursuant to the appeals process, White applied to have his case reconsidered; however, on July 11, 1974, he was informed that his application had been denied. On July 29, 1974,
White requested a hearing before an administrative law judge.\textsuperscript{16} After waiting more than five months, White filed a class action suit in federal district court, seeking declaratory and injunctive relief against the delays in scheduling and completion of hearings.\textsuperscript{17} White's hearing was not held until April 29, 1975, and the administrative law judge did not issue his final decision until May 21, 1975, more than ten months after White requested a hearing.\textsuperscript{18}

The delay at issue in \textit{White} was the time between the claimant's request for a hearing before an administrative law judge and the final decision rendered following that hearing.\textsuperscript{19} The court found this period to average 211.8 days for residents of Connecticut and 195.2 days nationally.\textsuperscript{20}

\textsuperscript{16} A claimant whose reconsideration is denied is entitled to a personal appearance and a full evidentiary hearing before an administrative law judge. 42 U.S.C. §§ 405(b), 421(d) (1970 & Supp. V 1975); 20 C.F.R. §§ 404.917-941 (1977).

\textsuperscript{17} "The class was certified as 'all potential Social Security Disability recipients, who have pending petitions for a hearing before the Administrative Law Judge and have not had a hearing scheduled promptly and the matter concluded within a reasonable time.'" \textit{White} v. Mathews, 559 F.2d 852, 855 n.2 (2d Cir. 1977), \textit{cert. denied}, 46 U.S.L.W. 3539 (U.S. Feb. 27, 1978) (No. 77-866). The class included both individuals whose initial petitions for disability had been denied and individuals who were at one time declared disabled, but whose benefits had subsequently been terminated.

\textsuperscript{18} The administrative law judge decided against White's claim. However, White appealed to the Appeals Council of the Bureau of Hearings and Appeals in the Social Security Administration and won his claim, with the result that his benefits were reinstated. \textit{See} \textit{White} v. Mathews, 434 F. Supp. 1252, 1254 n.3 (D. Conn. 1976), \textit{aff'd}, 559 F.2d 852 (2d Cir. 1977), \textit{cert. denied}, 46 U.S.L.W. 3539 (U.S. Feb. 27, 1978) (No. 77-866).


Violation of the Social Security Act

Section 205(b) of the Social Security Act provides that when the Secretary makes a decision adverse to a disability applicant, such applicant may request and the Secretary shall provide "reasonable notice and opportunity for a hearing with respect to such decision . . . ." Since the reasonable period within which the Secretary must provide a hearing is not expressly defined by section 205(b), an application of this statute requires a determination of who should decide what is reasonable, that is, justiciability, and how reasonableness should be defined.

Justiciability

The Secretary presented several arguments demonstrating why the court should not have made an independent determination of what constitutes a reasonable time in which to process hearings. First, the Secretary argued that since Congress considered the full scope of the hearing delay problem in 1975 and passed remedial legislation, the court should not interfere, but rather should permit


The problems of mootness and class certification relate to the failure of the district court to certify the class until three months after White’s hearing. The court permitted the class certification to relate back to when White moved for certification, five months before his hearing. See White v. Mathews, 434 F. Supp. 1252, 1259 (D. Conn. 1976), aff’d, 559 F.2d 852 (2d Cir. 1977), cert. denied, 46 U.S.L.W. 3539 (U.S. Feb. 27, 1978) (No. 77-866).


22. Id. More fully, this section provides:

The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Upon request by any such individual . . . who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant . . . reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision.

Id.

these corrective steps to run their full course. In addition, it was argued that since Congress had previously considered but had elected not to impose specific time limits, the court should defer to the discretion Congress left in the Secretary to define reasonableness. Moreover, the Secretary feared that if suits such as White were to succeed, the various federal district courts might each define a reasonable time differently, depending on the circumstances within their jurisdictions, thereby disrupting the uniformity of regulations in a national program. In addition, since to meet a court-imposed time limit in one district, the SSA might have to transfer personnel from another district, the Secretary contended that a delay might be created in the district from which personnel are withdrawn.

Nevertheless, the court intervened and imposed a time limit. It summarily concluded that despite the legislative history cited by the Secretary, Congress never abandoned its requirement that hearings be held within a reasonable time under section 205(b) of the Social Security Act. The court appeared to justify defining reasonable in terms of a specific time limit by citing statements of the Commissioner of the SSA. The Commissioner had reported to Congress that hearings and final decisions could be rendered within ninety days of receipt of requests for hearings by June 1977, if cer-

24. The Supreme Court took this position by deferring to Congress in Richardson v. Wright, 405 U.S. 208 (1972). In Richardson the issue was whether social security disability recipients were entitled to a pretermination hearing. Since the Secretary of HEW had just adopted new regulations concerning the termination procedure, the Court stated: "In the context of a comprehensive complex administrative program, the administrative process must have a reasonable opportunity to evolve procedures to meet needs as they arise." Id. at 209. However, the Court did consider this issue four years later in Mathews v. Eldridge, 424 U.S. 319 (1976).


27. Id.

tain remedial steps were taken. The court inferred that since Congress took these remedial steps, Congress expected hearings to be held within such time.

While the court's conclusion appears sound, it can be criticized for its logic. It can be argued persuasively that if Congress had intended a time limit to be met, it would have included such a limit in the legislation. A better way for the court to have refuted the Secretary's justiciability arguments would have been to hold that Public Law No. 94-202 had run its course without alleviating the problem of delay. The House described the legislation as the "most effective action that can be taken immediately to help reduce the enormous backlog of Social Security appeals cases new [sic] pending within the Social Security Administration." This was apparently intended as an immediate, short term remedy. In passing Public Law No. 94-202, Congress expected that the backlog of appeals would be eased by June 1977, as the Commissioner predicted. Since that time had passed and delays had persisted, it was appropriate for the court to ignore such legislative history and make an independent determination of what constituted a reasonable time period for administrative delay.

A number of unexpressed factors may have influenced the court to review the time limitation issue. First, considering the persistence of the problem of long delays and the high reversal rate on appeal, the court may have viewed the SSA as generally inefficient. Consequently, the court may have been reluctant to rely on the internal plans of the Agency to alleviate the long delays. Second, recognizing its function of resolving questions of law, the court could appropriately have exercised unlimited review of the administrative Agency's decision when faced with the issue of statutory construction presented in White. In addition, given the court's concern for separation of powers, it may have preferred to stretch its interpretation of congressional intent regarding a statutory

29. See Delays in Appeals Hearings, supra note 25, at 74 (statement of James B. Cardwell, Commissioner, Social Security Administration).
31. Id.
33. The Supreme Court has stated that courts may exercise unlimited review of an administrative agency's decision when presented with an issue of statutory construction. NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944) (review of statutory term "employees"); Gray v. Powell, 314 U.S. 402 (1941) (review of statutory term "producer"). See also Dunlop v. Carriage Carpet Co., 548 F.2d 139 (6th Cir. 1977) (review of statutory term "employees").
claim, rather than overturn the act on constitutional grounds. In addition, while uniformity is an important concern, it is outweighed by the court’s obligation to grant relief when rights have been violated. Moreover, the court may have recognized the possibility of either an appeal to the Supreme Court or congressional action to create a national time limit for hearings. When these inarticulated factors are considered, there is ample justification for the court’s decision to intervene.

**Defining “Reasonable”**

The Secretary asserted that while the delays suffered by the claimants may be unreasonable in the abstract, they are not grievous in light of the burdensome circumstances causing the delays. These causes were the size and complexity of the program, the huge backlog of pending hearings created by the time demands on Social Security administrative law judges when hearing appeals in other programs, and the problems of recruiting and maintaining administrative law judges.

While the court apparently recognized the difficulties inherent in the administration of a massive government program such as the SSA, it rejected the notion that inadequate resources can justify...
what would otherwise constitute violation of a federal statute.\textsuperscript{37} Although the court stated that "what is reasonable depends upon a variety of circumstances,"\textsuperscript{38} it failed to explain why staffing and funding problems are inadequate justification. That Judge Feinberg noted the "severe hardships that result from a wage-earner's disability"\textsuperscript{39} and the high reversal rate on appeal suggests that he employed a balancing test.\textsuperscript{40} Apparently, the court believed that the administrative problems causing delays were insufficient justification when weighed against the severe hardship to disability applicants.

Courts have intervened in response to administrative delay under circumstances that demonstrate that administrative problems become a less valid reason for delay as the claimant's interests approach matters of basic human needs. Courts have required prompt agency action regardless of administrative difficulties in suits involving disability benefits under Supplemental Security Income,\textsuperscript{41} essential services under Aid to Families with Dependent Children,\textsuperscript{42} the issuance of emergency welfare checks,\textsuperscript{43} and the safety of using a drug.\textsuperscript{44} In a commercial setting, when a corporation seeks to expedite an administrative proceeding, the courts have shown more tolerance for administrative problems.\textsuperscript{45} In such cases, the courts have excused long delays when there did not appear to be any dilatory attitude on the part of the Agency\textsuperscript{46} and where the Agency was overburdened with a large caseload.\textsuperscript{47} Accepting the proposition that "what is reasonable depends upon a variety of circumstances,"\textsuperscript{48} such a balancing test offers a method of

\begin{itemize}
\item 38. Id. at 858.
\item 39. Id.
\item 40. Id.
\item 45. Chromcraft Corp. v. EEOC, 465 F.2d 745 (5th Cir. 1972); FTC v. J. Weingarten, Inc., 336 F.2d 687 (5th Cir. 1964). However, this does not indicate that all delays in a commercial setting are necessarily reasonable. Compare Nader v. FCC, 520 F.2d 182 (D.C. Cir. 1975) with Templeton v. Dixie Color Printing Co., 313 F. Supp. 105 (N.D. Ala. 1970).
\item 46. FTC v. J. Weingarten, Inc., 336 F.2d 687 (5th Cir. 1964).
\item 47. Chromcraft Corp. v. EEOC, 465 F.2d 745 (5th Cir. 1972).
\end{itemize}
evaluating whether particular circumstances confronting an administrative agency justify such delays.\textsuperscript{49}

In concluding that the delays in \textit{White} were unreasonable, the court appeared to be influenced by a presumption that the hearings process can in fact be expedited. The Commissioner's statement that hearing decisions could be provided within ninety days by June 1977 is quoted at length in the decision.\textsuperscript{50}

Ultimately, the court held that 120 days between the request for a hearing and the final decision was a reasonable time and that the average delays in Connecticut of 211.8 days violated the Social Security Act.\textsuperscript{51} In an apparent concession to the SSA for imposing a rigid time limit, the court allowed thirty days more than the Administration's own projection. The court may also have been influenced by other federal district courts which, considering the same issue, have required the hearing, not the final decision, to be held within ninety days of request.\textsuperscript{52}

The standard imposed by the court is a lenient one. At the very least, the SSA should be compelled to meet the ninety day standard it set for itself. In the welfare area, the Supreme Court found a statute permitting a twelve-day period between requests and hearings to be unreasonable, and required a hearing prior to termination of benefits.\textsuperscript{53} The Court has not extended the requirement of pretermination hearings to disability recipients; it drew a distinction between the degree of need of welfare recipients and that of disability recipients.\textsuperscript{54} This distinction is insignificant. At the very least, the SSA should be required to process posttermination hearings within ninety days.

\textsuperscript{49} This balancing test also resembles the balancing of interests to determine due process requirements. See text accompanying notes 79-94 \textit{infra}. In \textit{Dandridge v. Williams}, 397 U.S. 471 (1970), the Supreme Court recognized the factual difference between business and welfare situations but did not apply differing constitutional standards on that basis. \textit{Id.} at 485. However, in \textit{Barnett v. Mathews}, No. 74-270 (D. Vt. Feb. 22, 1977), the court applied this distinction to a statutory standard of reasonableness in providing hearings for Supplemental Security Income disability benefits. \textit{Id.}, slip op. at 12 n.10.


\textsuperscript{51} \textit{Id.} at 852.


\textsuperscript{54} \textit{Mathews v. Eldridge}, 424 U.S. 319 (1976). For a discussion of this distinction, see note 69 \textit{infra}.
Violation of the Administrative Procedure Act

In finding a violation of the Social Security Act, the Second Circuit in White found it unnecessary to consider whether the Secretary had violated the Administrative Procedure Act (the APA), as held by the district court. While the Supreme Court has never explicitly held the APA applicable to the SSA, federal courts of appeals have applied the APA frequently to determine if the Secretary of Health, Education, and Welfare has abused his discretion with regard to social security disability determinations.

The provisions of the APA pertaining to hearing delays provide in pertinent part: “With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.” The APA also provides: “The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.”

In addition to the district court in White, two other federal district courts have held that delays in disability hearings violate these provisions of the APA. The APA standard compelling agency action “within a reasonable time” is essentially the same as the “reasonable notice and opportunity for a hearing” requirement found in the Social Security Act. Consequently, the analysis and conclusions in applying this standard to delays in disability hearings are identical to those previously discussed with regard to the Social Security Act.

58. See Ruiz-Olan v. HEW, 511 F.2d 1056, 1058 (1st Cir. 1975); Woods v. Richardson, 465 F.2d 739, 741 (6th Cir. 1972); Maddox v. Richardson, 464 F.2d 617, 619-22 (6th Cir. 1972); Davis v. Richardson, 460 F.2d 772, 775 (3d Cir. 1972).
60. Id. § 706(1).
Violation of Due Process

As it did with the APA claim, the Second Circuit in White refused to consider plaintiff's constitutional claim, and instead based its holding on the Social Security Act violation.\(^6\) This approach is consistent with the courts' policy of maintaining separation of powers by not overturning legislation as unconstitutional when a claimant's interests may be adequately protected by a statutory claim.\(^6\) However, should the statutory claim fail, the current delays in processing disability hearings appear to deny claimants due process of law as protected by the fifth amendment. To date, such a claim has been sustained by two federal district courts, one of which is the district court in White.\(^6\)

To analyze due process claims in this area, an understanding of the Supreme Court's recent decision in Mathews v. Eldridge\(^6\) is necessary. At issue in Eldridge was whether due process entitled a Social Security disability recipient to a hearing prior to termination of benefits. The Supreme Court held that a disability recipient's due process rights were adequately protected by existing pretermination procedures and the availability of a posttermination hearing.\(^6\) But, as the district court in White concluded: "The Court in

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provides: "The Secretary of . . . Health, Education, and Welfare . . . shall make and publish such rules and regulations . . . as may be necessary to the efficient administration of the functions with which [he] is charged . . . ." The court concluded that the Secretary had violated his duty to establish regulations and procedures to enforce a standard of promptness. Because the only notable difference between this case and White is the OASDI benefits applied for, it is likely White could have succeeded with a similar claim.

69. In so holding, the Court made factual distinctions between social security disability recipients and welfare recipients: The latter group had previously been found entitled to a pretermination hearing. See Goldberg v. Kelly, 397 U.S. 254 (1970). The Court in Eldridge concluded that a disability determination, unlike a welfare determination, could normally be made through an examination of medical data without requiring a face-to-face hearing. Mathews v. Eldridge, 424 U.S. 319, 343-44 (1976). In addition, the Court concluded that the degree of deprivation suffered by disability recipients was not as great as that of welfare recipients. Id. at 340-43. The validity of these distinctions, as well as of the Court's holding in general, has been criticized. See Mashaw, The Supreme Court's Due Process Calculus
Eldridge did not rule . . . that termination of a disability recipients benefits is altogether without constitutional significance; indeed, the very opposite was held.” 70 Delays in posttermination hearings, while mentioned by the Court, 71 were not at issue in Eldridge. The Court reasoned that delays in posttermination hearings, as well as many other factors, do not create hardship sufficient to require the addition of an expensive and elaborate pretermination hearing procedure. 72 Yet the Court was disturbed by the hardship caused by delays in processing disability appeals. It described the administrative review process as “torpid” 73 and noted that “the possible length of wrongful deprivation of . . . benefits [also] is an important factor in assessing the impact of official action on the private interests.” 74 These comments suggest that were the issue of the constitutionality of delays in the posttermination hearing procedure before the Court in Eldridge, it might have found such delays to be a violation of due process.

The Supreme Court has stated that social security disability benefits are property entitlements subject to due process protection. 75 Moreover, some form of hearing is required before an individual may finally be deprived of such a property interest. 76 The Court has maintained that the fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner,” 77 since “[p]roperty may be as effectively taken by long-continued and unreasonable delay [as by affirmative action by

72. Id. at 349.
73. See id. at 342.
74. Id. at 341 (quoting Fusari v. Steinberg, 419 U.S. 379, 389 (1975)) (brackets in original).
the Agency]."  

_Eldridge_ is the Court’s most recent standard for determining if an administrative procedure assures due process. Balancing three distinct factors constitutes the test:

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 requirement would entail.

Both federal district courts that found disability hearing delays to violate due process guarantees applied this standard. As will be demonstrated, the significant factual distinctions between the issue posed in _Eldridge_ and that posed in _White_ make _White_ a more compelling case for due process protection.

**Private Interests Affected**

The Court in _Eldridge_ recognized that in light of the typically modest resources of the family of a physically disabled worker, those recipients whose benefits are erroneously terminated suffer a significant hardship by long delays prior to a hearing. But since the Court was focusing on the entire procedural system, it gave consideration to the 3.3% reversal rate of all disability determinations. By contrast, plaintiff’s class in _White_ constituted only disability claimants who requested a hearing before an administrative law judge; among them, the reversal rate was 51.6%. Stating this...
distinction another way, more than half of the plaintiffs in White were totally disabled while their appeals were pending six to seven months, yet they received no benefits. The significance of this error rate is crucial in that it illustrates the considerable number of persons erroneously deprived of benefits and magnifies the need for speedier review to prevent prolonged deprivation. While claimants are entitled to retroactive payments if they are ultimately found eligible, this does not relieve the burdens suffered while awaiting a hearing. It is little consolation to know that one might be paid in seven months when he is in need today.

The Court in Eldridge suggested that those workers who are actually disabled may seek support from various welfare programs during the interim period. However, eligibility under other programs is not assured. The physical disability standard for Supplemental Security Income is identical to that for social security disability. Assuming that other forms of general relief are available to the disability claimant, he may receive less than he is entitled to under the social security plan. Finally, this alternative exposes the applicant to the kind of humiliation and public scorn of “asking for a handout” that the SSA, as an insurance program, was designed to prevent.

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85. Plaintiff White was forced to seek local relief while awaiting his hearing. See White v. Mathews, 559 F.2d 852, 860 (2d Cir. 1977), cert. denied, 46 U.S.L.W. 3539 (U.S. Feb. 27, 1978) (No. 77-866).


89. In support of H.R. 7225, 84th Cong., 2d Sess. (1956), which Congress ultimately passed to create the disability insurance program, the Senate Finance Committee Minority Report stated:

Under a sound social-insurance program, Americans should be protected against the fundamental hazards which would otherwise destroy their earning power and reduce them to beggary. Granted that some form of income is necessary to provide for those who are unable to provide for themselves, it
Erroneous Deprivation and Value of New Procedures

While the risk of erroneous deprivation to plaintiff's class exceeds fifty percent under current procedures, it appears unlikely that expedition of the hearing process will substantially increase or decrease the error rate. It may be argued that such expedition may foster incorrect judgments in the interest of timeliness. Such concern is unfounded. The courts will not subordinate accuracy to speed by defining due process as requiring a hearing within an impossibly short time. A recent study of the delays in New York concluded that such delays are largely attributable to nonproductive waiting time.\textsuperscript{90} Surely such processes may be accelerated while providing sufficient time for a just and accurate determination.

The Government's Interest

The government's interest is divided. On the one hand, the government has an interest in properly serving its citizens by providing prompt adjudication. On the other hand, the government must preserve its finite resources. While recognizing cost as a legitimate government concern, the Supreme Court has frequently held it not to justify denial of a constitutional right.\textsuperscript{91}

Without question, expediting the hearing process will increase government costs. But the expenses would be significantly less than those feared in \textit{Eldridge}. Plaintiffs in \textit{Eldridge} sought the addition of a pretermination hearing procedure to existing procedures. Hence, the government would bear the expense of continued benefits until a hearing decision. In addition, the Court feared an increased demand for hearings merely to extend benefits temporarily.\textsuperscript{92}

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\textsuperscript{90} See P. Weitzman, M. Griffing, & A. Pitts, Delays in the Social Security Disability Claims Hearings Process in New York (Feb. 17, 1977) (unpublished report on file at Legal Action Support Project, Bureau of Social Science Research, Inc., Washington, D.C.). This report cites unnecessarily long periods to perform relatively simple processing tasks: 11 days to send the hearing request to the hearing office; 32 days for the hearing office to assemble the claimant's file; 44 days simply to assign the case to an administrative law judge. \textit{Id.}


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By contrast, plaintiffs in White did not seek any supplemental procedures; rather, they sought to have existing procedures provided promptly. Moreover, the claimants in White did not request that their benefits be paid continuously, but only that an appeal be afforded within a reasonable time.

It is unlikely that a prompt hearing will induce a significant increase in appeals. Considering the importance of disability benefits, most persons who feel they have a legitimate claim probably appeal under the present system despite the hardship of delay. Should the current delays in fact discourage claimants from exercising their right to appeal, this consequence hardly represents a proper government interest. Since the SSA has cited ninety days as a realistic limit within which to hold and complete hearings, it appears entirely within the government's capabilities to do so. As the district court in White stated, the question of expense is not whether there shall be costs incurred, but who shall bear them while the governmental machinery responsible for providing appeals puts itself in order.

When the government does not act with reasonable promptness, those claiming total disability are required to bear an unreasonable delay and suffer unwarranted deprivation of that which is lawfully theirs.

**Remedies**

Finding both statutory and constitutional violations, the district court in White established 120 days as a reasonable time within which the SSA must hold a hearing and reach a decision. The court sought to enforce this standard in a manner which takes into account administrative difficulties, yet assures compliance. The lower court's order, which was approved by the Second Circuit, provided: a graduated compliance schedule allowing the SSA nearly two years to reduce delays to 120 days; exception to the deadline when the delay is caused by the disability claimant; payment of prospective benefits as if the claimant were eligible when hearing delays exceed time limits; and the right of the Secretary to recoup such prospective benefits should the claimant be found in-

93. See Delays in Appeals Hearings, supra note 25.
95. See id.
eligible at his hearing.  

The federal courts are authorized to issue such an order pursuant either to their general equity powers or to the Administrative Procedure Act.  Case law provides many examples where federal courts have intervened and fashioned equitable remedies to prevent harm to a claimant resulting from administrative delay.  Where delays are interpreted to be constitutional violations, the Supreme Court has inserted time limitations into statutory procedures to avoid striking down the legislation.

In White the granting of prospective benefits after the time limit elapses assuages compliance, while at the same time the order meets objections to excessive exercise of remedial power. The Secretary argued that two sections of the Social Security Act prohibit the court from ordering such payments. The Secretary maintained that 42 U.S.C. § 405(q) allows expedited payments only under specified circumstances, not including this situation, and that 42 U.S.C. § 405(i) allows actual payments only upon a final determination that the person is entitled to the payments. The court correctly rejected these provisions as a bar to remedial action.

Any act providing benefits must contain sections which confine payments only to eligible persons. These sections apply only to situations where payments are due after an applicant has been determined eligible. The Social Security Act does not address the issue of payments which are withheld by means of an unreasonable delay in such a determination. In the absence of any such statutory remedy, fairness requires that the courts have the flexibility to fashion an equitable solution.

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96. Id. at 1261-62.
103. The Supreme Court has stated: "Once a right and violation have been
While there is no evidence that the SSA has acted in a dilatory manner, its performance record has been unsatisfactory. Despite its assurances to Congress that the delays could be corrected by June 1977, delays persist, suggesting the need for a remedy that will either assure compliance with specific time limits or prevent continued deprivation if such limits are not met. Prospective benefits have been granted in the analogous situation involving delays in hearings following initial denial of welfare benefits. Considering the graduated compliance schedule, the exceptions to the time limits, and the right of recoupment, the order is neither rigid nor harsh, but rather represents a fair balance of interests.

As alternatives to granting prospective payments, there are at least two remedies to assure compliance with the court-ordered deadlines. A less extreme measure was selected by two district courts which considered essentially the same issue as was presented in White. It required the Secretary to provide the courts with periodic status reports detailing progress toward compliance with the time limits. However, this solution appears ineffective as a means to assure compliance. That the Secretary would be more inclined to meet the deadlines because he is compelled to report to the court is questionable. The reports merely inform the court of the Secretary's compliance. Even in the absence of such reports, the court probably would be informed of the Secretary's inaction by the initiation of other suits for relief. In such a situation, the court would likely resort to granting prospective payments anyway. It would appear senseless to wait until additional claimants are wrongfully deprived to issue such an order. Courts should bear in mind that prospective benefits have only the potential of being paid. If the Secretary complies with the time limits, none will be issued.


104. See Delays in Appeals Hearings, supra note 25.
proper grant of equitable relief order auxiliary relief which has the potential for requiring the disposition of sovereign property, despite the traditional immunity from relief which ‘would expend itself on the public treasury or domain’ . . . ?”

While the court in Barnett concluded that such relief is proper, it stayed its order pending appeal. The court reasoned that potential payment of nonrefundable benefits is no more onerous than mandating expedited hearings, since speeding up the process will presumably require expenditure of public funds. Moreover, the court noted that the disability claimants bringing the suit are not attacking the public treasury; they seek only to have the appeals system proceed with reasonable promptness. The nonrefundable benefits order is intended only to assure compliance with the hearing time schedule.

The major significance of nonrefundable prospective payments is an acknowledgment that the Secretary’s authority to recoup wrongfully paid benefits is virtually meaningless. In most cases, the

108. Barnett v. Califano, No. 74-270, slip op. at 7 (D. Vt. July 11, 1977) (quoting Dugan v. Rank, 372 U.S. 609, 620 (1963)) (citing Land v. Dollar, 330 U.S. 731, 738 (1947)). The court noted a split among the courts of appeals regarding the scope of an exception to the doctrine of sovereign immunity. The exception, as stated in Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682 (1949), provides: “[W]here the [federal] officer’s powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions.” Id. at 689. However, the Court limited this exception, stating that sovereign immunity would still be a bar “if the relief requested can not be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property.” Id. at 691 n.11 (citation omitted). The court in Barnett noted that the Seventh Circuit has held relief not to be barred by Larson’s footnote limitation unless it would work an intolerable burden on governmental functions, outweighing any private harm. Barnett v. Califano, No. 74-270, slip op. at 6 (D. Vt. July 11, 1977) (citing Schlafly v. Volpe, 495 F.2d 273, 277-80 (7th Cir. 1974)). The Second Circuit, however, adheres to a literal reading of the limitation. Id. (citing Knight v. New York, 443 F.2d 415, 419-21 (2d Cir. 1971)). The court in Barnett also noted that if an action is brought under the APA for nonmonetary relief, sovereign immunity is waived as a bar to equitable relief by the 1976 amendment to the APA, Act of Oct. 21, 1976, Pub. L. No. 94-574, § 1, 90 Stat. 2721 (codified at 5 U.S.C. §§ 702, 703 (1976)).


110. Id., slip op. at 7 (citing Shannon v. HUD, 387 F. Supp. 5, 8 (E.D. Pa. 1974)). Shannon involved a suit by residents of an urban renewal area. The Department of Housing and Urban Development was accused of improperly approving construction of an apartment complex. The court rejected arguments that it may be barred from granting equitable relief because it may require the expenditure of funds. Sovereign immunity was held inapplicable when acts of a federal officer are challenged as beyond statutory authority and when plaintiffs do not seek damages. Shannon v. HUD, 387 F. Supp. 5, 7-8 (E.D. Pa. 1974).
claimant receiving the interim benefits would be indigent and would spend the payments, making recovery impossible. In addition, since in most instances the hearing is conducted not long after the deadline has run, the amount paid would not be large. Consequently, the administrative and legal costs of attempting recovery would probably exceed the amount sought.

CONCLUSION

One of Congress’ primary objectives in delegating the power of administrative adjudication to the various agencies was to mitigate the burdensome time obstacles usually present in litigation in the courts. This objective is not achieved by the SSA hearings procedures. The damage caused by such delays transcends the deprivation suffered by individual claimants. A general loss of confidence in the integrity and reliability of administrative procedures results, expressing itself in the form of public cynicism regarding the effectiveness of government. Ultimately, the culpability may rest squarely on Congress, for it has the power to appropriate sufficient funds and personnel to accomplish prompt administrative adjudication. In some circumstances, it may be preferable for the courts to defer and permit Congress to find solutions for administrative problems. But the delays in the administrative determination of eligibility for social security disability payments is a situation uniquely suited for judicial intervention. The deprivation suffered by claimants is of an unusually severe nature requiring prompt relief through an equitable judicial solution. The granting of prospective benefits serves both as an incentive to assure compliance with time limits for hearings as well as a grant of relief to claimants should the time limits be violated.

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