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**Bernice INMAN, on behalf of herself
and all others similarly situated,
Plaintiff-Appellee,**

v.

**Donna E. SHALALA, Secretary of
Health and Human Services,
Defendant-Appellant.**

Nos. 93-2305, 93-2941.

United States Court of Appeals,
Seventh Circuit.

Argued March 9, 1994.

Decided July 19, 1994.

Kenneth J. Falk, Legal Services Organiza-
tion of Indiana, Inc., Indianapolis, IN, Jamie
Andree, Legal Services Organization of
Indiana, Inc., Bloomington, IN (argued), Gil
Deford, Kim Savage, Nat. Sr. Citizens Law
Center, Los Angeles, CA, for plaintiff-appel-
lee.

Jeffrey L. Hunter, Asst. U.S. Atty., India-
napolis, IN, William Kanter, Jennifer H.
Zacks (argued), Dept. of Justice, Civ. Div.,
Appellate Section, Washington, DC, John M.
Sacchetti, Claire S. Hoffman, Dept. of Health
& Human Services, Office of Gen. Counsel,
Baltimore, MD, for defendant-appellant.

Before PELL, MANION, and KANNE,
Circuit Judges.

MANION, Circuit Judge.

Bernice Inman is a veteran's wife whose
Supplemental Security Income (SSI) benefits
were reduced because of Social Security Rul-

ing 82-31. That ruling deemed the portions
of veterans' benefits earmarked for depen-
dents to be their unearned Income for the
purpose of calculating SSI benefits. Inman
filed a class action lawsuit on behalf of her-
self and all similarly situated dependents
against the Secretary of the Department of
Health and Human Services, challenging 82-
31. The district court granted summary
judgment for Inman, determining that 62-31
was not a valid interpretation of 42 U.S.C.
§ 1382a(a)(2)(B). We reverse.

I. Background

This case concerns the interrelationship
between veterans' benefits and SSI benefits.
To understand the current dispute, it would
be helpful to first review a brief history of
the broader conflict.

[1] In 1972, Congress created the SSI
program to guarantee a minimum subsis-
tence income level for aged, blind, and dis-
abled persons. 42 U.S.C. §§ 1381-1383d;
Schwieker v. Wilson, 450 U.S. 221, 223, 101
S.Ct. 1674, 1077, 67 L.Ed.2d 186 (1981). As
the name (Supplemental Security Income)
implies, SSI benefits are meant to supple-
ment other sources of income. Congress
designates a minimum subsistence income
level, and a qualifying person whose income
falls below that level can receive checks from
the federal government to make up the dif-
ference. See *Kennedy v. Shalala*, 995 F.2d
28, 29 (4th Cir.1993) ("[g]enerally, the
amount of SSI benefits paid equals a periodi-
cally determined subsistence level of income,
less a recipient's income from source other
than SSI.").

A person's income, therefore, is the essen-
tial variable in determining whether he is
entitled to SSI benefits, and if so, how much.
See 20 C.F.R. § 416.1166 ("the amount of
income you have is a major factor in deciding
whether you are eligible for SSI benefits and
the amount of your benefit"). The regula-
tions generally define income as "anything
you can use to meet your needs for food,
clothing, or shelter." 26 C.F.R. § 416.1162.
The statute separates income into two cate-
gories: "earned income," which includes
wages and the like, 42 U.S.C. § 1382a(a)(1);

and "unearned income," which includes "any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions. . . ." 42 U.S.C. § 1382a(a)(2)(B).

Veterans' benefits received by a veteran for his benefit are clearly considered unearned income under the statute. But a problem arises when a veteran receives increased veterans' benefits to support dependents. 'See 38 U.S.C. § 1521. Originally, the Social Security Administration considered these increased benefits as the veteran's unearned income for the purpose of calculating SSI. But *in Whaley v. Schweiker*, 663 F.2d 871 (9th Cir.1981), the Ninth Circuit concluded that this interpretation was contrary to the legislative purpose underlying SSI, which the court broadly construed as "the intent to help families like Whaley's to maintain minimally adequate income levels." 663 F.2d at 874. The court was not persuaded by the facts that "the personal veterans' benefit . . . and the children's benefits were both delivered to Whaley in one check payable to him" and "Whaley was not legally required to expend the children's benefits for the purpose for which they were given." *Id.* The court simply found it fundamentally unfair to count the portion of the check earmarked for dependents as Whaley's unearned income. F.3d 944 (10th Cir.1994).

In response to *Whaley*, the Secretary promulgated a new interpretation: if the dependent portion could not be counted as unearned income for the veteran, then it should be counted against the dependent. See *Title XVI: SSI Treatments of Veterans Administration Payments to SSI Eligibles/Fiduciaries*, 82-31 S.S.R. 291 (Cum.Ed.1982) (previously and hereafter referred to as Social Security ruling 82-31 or just 82-31). So, for instance, if a veteran was receiving veterans' benefits, a portion of which were earmarked for his wife, who was receiving SSI benefits, then the Social Security Administration would count the earmarked portion as unearned income for the wife, thereby reducing her SSI benefits. Those are exactly the facts the Ninth Circuit faced in *Paxton v. Secretary*, 856 F.2d 1352 (9th Cir.1988). But the court determined that 82-31, like its predecessor, violated the statutory scheme, ruling

that the veterans' benefits could not be counted as unearned income for the wife under 42 U.S.C. § 1382a(a)(2)(B). This, combined with the court's previous decision *in Whaley*, meant that the veterans' payments, which were going to the veteran or his dependent, could not be assessed against either. The court explained away this oddity: "The calculation of income for SSI purposes is not a zero-sum mathematical problem in which all forms of public assistance must be used to reduce some family member's SSI benefits." *Paxton*, 856 F.2d at 1357.

The Social Security Administration disagreed and did not change its interpretation in response to the court's decision. In various jurisdictions the Secretary has been litigating the issue addressed in *Paxton*. So far, in addition to the Ninth Circuit, three circuits have determined whether veterans' benefits earmarked for dependents can be counted as the dependent's unearned income when calculating SSI. The Fourth Circuit, the Second Circuit, and the Tenth Circuit have all deferred to the Secretary's interpretation in 82-31, and in doing so, have sharply disagreed with *Paxton*. *Kennedy v. Shalala*, 995 F.2d 28 (4th Cir.1993); *White v. Shalala*, 7 F.3d 296 (2d Cir.1993); *Ryder v. Shalala*, 25 F.3d 944 (10th Cir.1994).

The case now before us is very similar to *Paxton*, *Kennedy*, *White*, and *Ryder*. Bernice Inman has received SSI benefits since July, 1986. Her husband receives veterans' benefits, a portion of which are supposed to be used for Bernice's support. Bernice filed a class-action lawsuit challenging the Secretary's interpretation contained in 82-31. Generally, Bernice asserted that the portion of her husband's veterans' benefits intended for her support should not be counted as her unearned income when calculating SSI. The district court, ruling without the benefit of *Kennedy*, *White*, and *Ryder*—which had not yet been decided—applied *Paxton*, and determined 8231 to be invalid. The Secretary has appealed.

II. Analysis

[2] Essentially, 8231 is a Social Security Administration ruling which interprets how

veterans' benefits intended for dependents determine whether 82-31 is a permissible should be appraised under 42 U.S.C. interpretation of the statute.

§ 1382a(a)(2)(B). A court reviewing an agency's interpretation of a statute must first look to the statute in question: if the statute addresses the precise question at issue and its meaning is clear, the text controls. *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984). But if "the court determines Congress has not directly addressed the precise question at issue," then "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843, 104 S.Ct. at 2781-82. This analytic framework raises two questions in this case. First, does 42 U.S.C. § 1382a(a)(2)(B) specifically address whether portions of veterans' benefits earmarked for dependents should be counted as their "unearned income" for SSI purposes? And second, if a statute does not specifically address the issue, then is 8231 a permissible interpretation of the statute?

[3, 4] 42 U.S.C. § 1382a(a)(2)(B) defines unearned income for SSI purposes as "any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and benefits. . ." This definition addresses veterans' benefits, but only in the most general terms. It does not specifically address how these benefits should be regarded when they are apportioned between the veteran and his dependents. All circuits which have considered this issue so far have determined, either explicitly or implicitly, that § 1382a(a)(2)(B) does not specifically address this issue; indeed no circuit has purported to apply the plain meaning of § 1382a(a)(2)(B) to resolve this question. See *Ryder*, 25 F.3d at 946; *White*, 7 F.3d at 302; *Kennedy*, 995 F.2d at 29-30; *Paxton*, 856 F.2d at 1358; see also *Whaley*, 663 F.2d at 874. We agree that the statute does not specifically address the precise question of how to ascribe the dependent's portion. And because the Social Security Administration has interpreted the statute in 82-31, we cannot "simply impose our own construction on the statute, as would be necessary in the absence of administrative interpretation." *Chevron*, 467 U.S. at 843, 104 S.Ct. at 2782. We are left, therefore, to

[5] *Bernice* argues that 82-31 is not a permissible interpretation of the statute, at least as applied to her and the other class members. The statute states "any payments received . . ." and because class members do not directly receive the designated portion of the veteran's benefit, they claim they should not be debited as if they did. This argument would hate appeal if we were simply engaging in statutory interpretation; but we are beyond that point because the statute is not specific. At this juncture we are not permitted to "impose our own construction on the statute. . . ." *Id.* The law gives the task of statutory interpretation to the agency administering the statute, at least when the statute does not address the specific question. We agree with the Second, Fourth, and Tenth Circuits, that 8231 is a permissible interpretation. The Veterans Administration intends the earmarked portion to be for the benefit of the dependent, and because of this, it is permissible to consider that portion to be unearned income constructively received by the dependent. See *Kennedy*, 995 F.2d at 29-30 ("as a general matter, 'receipt' can reasonably be understood to include not only actual, but constructive receipt."); see also *White*, 7 F.3d at 302, and *Ryder*, 25 F.3d at 946.

Moreover, in a related decision, we have previously ruled that the term "received" does not require actual receipt when calculating "unearned income" under 42 U.S.C. § 1382a(a)(2)(B). *Healea v. Bowen*, 871 F.2d 48, 51 (7th Cir.1988). The highly technical question presented in *Healea* was whether payments withheld from a widow's insurance benefits to compensate for previous overpayment could be counted as her "unearned income" for SSI purposes, even though the widow obviously did not receive the withheld amounts. The Secretary contended that actual receipt of the widow's benefits was not necessary under § 1382a(a)(2)(B), but we did not defer to that interpretation. Instead, we independently reached the same conclusion, that "Congress did not intend 'receive' to mean actual receipt" in § 1382a(a)(2)(B).

Given our conclusion in *Healea*—that constructive receipt is enough under § 1382a(a)(2)(B)—we would be hard-pressed to say the same conclusion, which the Secretary reached in a different context in this case, is not a permissible interpretation.

[6] **Bernice** urges us not to defer to the Secretary in this case, for the same reason that we did not defer to the Secretary in *Healea*: that the ruling under consideration conflicts with an earlier ruling by the Secretary. See *Healea*, 871 F.2d at SO. True, 82-31 conflicts with the Secretary's pre-*Whaley* interpretation. But, as the Supreme Court has held, deference is still appropriate if the agency had good reason to change its interpretation. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 355-56, 109 S.Ct. 1836, 1848-49, 104 L.Ed.2d 351 (1989). Unlike the situation in *Healea*, the record in this case presents a very good reason for the changed interpretation. The Secretary changed the interpretation in response to *Whaley*, which deemed the first interpretation to be invalid. As in *Methow Valley*, the change "came after the prior regulation had been subjected to considerable criticism. . . ." 490 US. at 366, 109 S.Ct. at 1849. Therefore, even though it represents a change, we nevertheless give 82-31 deference. See also *White*, 7 F.3d at 300.

[7] **Bernice** gives one other reason that we should not defer to the interpretation contained in 82-31. She argues that it concerns a veterans' benefit program, which is not in the Secretary's area of expertise. But that simply is not the case. Ruling 82-31 interprets the meaning of "unearned income" for the purposes of 42 U.S.C. § 1382a(a)(2)(B), which concerns SSI benefits. Therefore, 82-31 involves an area over which the Secretary has authority. *Accord*, *White*, 7 F.3d 296; *Kennedy*, 995 F.2d 28; *Ryder*, 25 F.3d 944.

III. Conclusion

The district court erred in granting summary judgment for the plaintiff class. The weight of authority compels the conclusion

1. To the extent any issues remain regarding the propriety of the district court's class certification, this decision moots those issues. Whether or not

that 82-31 was a permissible interpretation of 42 U.S.C. § 1382a(a)(2)(B). Therefore, we defer to the Secretary's interpretation found in 82-31. We reverse the grant of summary judgment, and remand to the district court with instructions to grant summary judgment for the Secretary.'

REVERSED AND REMANDED with instructions to grant summary judgment.

a class exists is no longer important. The plaintiffs, whoever they are, can recover nothing by this action.