

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
A.L., <i>et al.</i> ,)	
)	No. 06 C 3520
Plaintiffs,)	
v.)	Judge Guzmán
)	
MICHAEL O. LEAVITT, Secretary of)	Magistrate Judge Mason
Health and Human Services,)	
)	
Defendant.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT’S MOTION TO DISMISS PLAINTIFF A.L.’S REMAINING APA CLAIM**

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PRELIMINARY STATEMENT

On September 14, this Court dismissed all of the named plaintiffs in this action except one, A.L., who is a recipient of adoption assistance under Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., as well as Medicaid benefits under Title XIX of that Act, 42 U.S.C. § 1396 et seq. A.L. challenges the requirement of Section 6036 of the Deficit Reduction Act of 2006, 42 U.S.C. § 1396b(x), as embodied in an Interim Final Rule issued by defendant the Secretary of Health and Human Services (“the Secretary”) that A.L. provide certain documentation to prove that she is a citizen or national of the United States. In particular, A.L. argues the new documentation requirements of section 6036 do not apply to beneficiaries of Title IV-E assistance and, therefore, the Secretary’s application of section 6036 to such beneficiaries is contrary to law in violation of the Administrative Procedure Act.

Without reaching the merits of A.L.’s claim, this Court should find it lacks subject matter jurisdiction to consider it because A.L. has failed to establish she has standing to sue. A.L.’s assertions of injury are premised on pure conjecture that satisfying section 6036 will require her to invest additional time and resources, but A.L. has not even alleged that she does not have in her possession the documents necessary to satisfy the requirements of the Interim Final Rule. She certainly has not shown she could not meet those requirements with the assistance of the State of Illinois, which the Secretary requires the State to provide. Moreover, A.L. has not demonstrated that her speculative injury is imminent, or that her claim is ripe for adjudication under the law of this Circuit.

Even if this Court reaches A.L.’s claim, it fails as a matter of law. The Secretary’s application of section 6036 to Title IV-E beneficiaries such as A.L. is entirely consistent with the intent of Congress, as expressed in the language and structure of the statute, as to the provision’s reach. Because the Secretary’s interpretation of a statute Congress has directed him to administer is due deference, this Court should uphold his reasonable construction, in accord with the intent

of Congress, and dismiss plaintiffs' sole remaining claim.

PROCEDURAL BACKGROUND

In a Memorandum Opinion and Order dated September 14, 2006, this Court dismissed all of the plaintiffs' challenges to the July 6, 2006, Interim Final Rule issued by the Secretary of Health and Human Services ("the Secretary" or "HHS") for lack of subject matter jurisdiction except for plaintiff A.L.'s Administrative Procedure Act ("APA") claim that the Secretary's application of the Rule's documentation requirements to Title IV-E adoptees is arbitrary and capricious. In dismissing the majority of the plaintiffs' claims, the Court found that the plaintiffs had failed to allege that they were unable to comply with the requirements of the Rule and that any alleged threat to their benefits was therefore speculative. Mem. Op. at 10-11. The Court also noted that any such allegation at this point, prior to any actual attempt to comply with the Rule, would be "nothing more than conjecture." Id. at 11.

As to the plaintiffs' additional allegation that they would be required to expend time and resources to satisfy the requirements of the Rule, the Court found that the allegation was "sufficient to support . . . standing" for certain claims. Id. However, the Court held that even this alleged injury would not be redressable with respect to the majority of the claims because any such injury would be a product of section 6036 rather than the Rule. Id. at 12. The only distinction that the Court found between the Rule and section 6036 related to A.L.'s APA challenge to the Rule's application to Title IV-E adoptees. Id. at 14. Assuming without deciding that the regulation "appears" to contradict the statute in this regard, the Court allowed A.L. to proceed with her claim as a representative of a class of Title IV-E beneficiaries. Id. at 14-15. The Court then referred the motion for preliminary injunction, as it applies to the sole remaining claim, to a magistrate judge.

STATUTORY BACKGROUND

Much of the pertinent background to this Motion is set forth in Defendants' Memorandum in Opposition to Plaintiffs' Amended Motion for TRO and Preliminary Injunction (Docket Entry No. 52), which we incorporate here by reference pursuant to FED R. CIV. P. 10(c). Accordingly, here we present only additional background relevant to plaintiffs' sole remaining claim concerning A.L. and the class of plaintiffs she purports to represent who receive foster care and/or adoption assistance benefits under Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq. See Am. Compl. ¶ 62.

Title IV-E, enacted in 1980, provides federal financial assistance to state foster care programs and programs for assisting the adoption of children with special needs. It replaced the foster care assistance formerly provided under the Aid to Families with Dependent Children ("AFDC") program. Title IV-E provides federal matching funds for foster care maintenance payments and adoption assistance payments, 42 U.S.C. §§ 674(a)(1) & (2), and for administrative costs "found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan." 42 U.S.C. § 674(a)(3).

Title IV-E also establishes a set of requirements governing a child's eligibility for foster care and adoption assistance. In sections sometimes referred to as the "AFDC linkage" provisions, the statute requires that the child must have actually received or been eligible for AFDC benefits in the home from which the child is removed at or near the time of formal proceedings leading to the foster placement. See 42 U.S.C. § 672(a) (foster care assistance AFDC linkage); id. § 673(a) (adoption assistance AFDC linkage). The AFDC program was repealed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and, along with certain other federal welfare programs, replaced with a single program of block grants to the states. See Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2112 (1996). The Title IV-E foster care and adoption assistance program, however, still links eligibility for foster care benefits to the

AFDC eligibility provisions that were in effect as of July 16, 1996. See 42 U.S.C. §§ 672(a)(3), 673(a)(2)(A). Receipt of benefits pursuant to Title IV-E also permits IV-E beneficiaries to avoid an additional application for Medicaid. See 42 U.S.C. § 1396a(a)(10)(A)(i)(I) (state must make “medical assistance available” to Title IV-E beneficiaries); see also 45 C.F.R. § 1356.40(b)(3).

ARGUMENT

I. Standard of Review

The Secretary moves to dismiss the remaining claim of plaintiffs’ complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and, in the alternative, for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

Under Rule 12(b)(1), the Court may consider the motion based on the complaint along with “whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.” Ezekiel v. Michel, 66 F.3d 894, 897 (7th Cir. 1995). If plaintiff fails to establish she has standing to sue, this Court lacks subject matter jurisdiction over her claim. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). Moreover, “[j]urisdiction is the ‘power to declare law,’ and without it the federal courts cannot proceed.” Hay v. Ind. State Bd. of Tax Comm’rs, 312 F.3d 876, 879 (7th Cir. 2002) (quoting Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999)). As explained infra, plaintiff A.L. has not met her burden to establish standing, so the remaining claim of plaintiffs’ complaint should be dismissed pursuant to Rule 12(b)(1).

In evaluating a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court must “take the allegations in the complaint to be true and view them, along with the reasonable inferences to be drawn from them, in the light most favorable to the plaintiffs.” Ellsworth v. City of Racine, 774 F. 2d 182, 184 (7th Cir. 1985). The Court should dismiss a claim under Rule 12(b)(6) where “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41,

45-46 (1957). As explained infra, plaintiffs' claim fails as a matter of law and should be dismissed pursuant to Rule 12(b)(6).

II. A.L. Lacks Standing to Challenge the Secretary's Application of Section 6036 to Title IV-E Beneficiaries

As explained in the defendants' Memorandum of Law in Opposition to Plaintiffs' Amended Motion for TRO and Preliminary Injunction, A.L., the sole remaining plaintiff, "must establish that [he has] standing to sue" in order to satisfy the "case or controversy" requirement of Article III. McConnell v. FEC, 540 U.S. 93, 225 (2003). There are three core requirements that must be demonstrated to establish standing: (1) "injury in fact, which is concrete, distinct and palpable, and actual or imminent"; (2) "a causal connection between the injury and the conduct complained of—the injury has to be fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court"; and (3) "a substantial likelihood that the requested relief will remedy the alleged injury in fact." McConnell, 540 U.S. at 225-26 (internal quotations and citations omitted).

The burden is on the plaintiff to establish her standing. Warth v. Seldin, 422 U.S. 490, 501 (1975). And A.L., as the sole remaining named plaintiff, must satisfy these requirements herself; she may not satisfy Article III by "piggy-back[ing] on the injuries of the unnamed class members." See Payton v. County of Kane, 308 F.3d 673, 682 (7th Cir. 2002) ("That, of course, would be impermissible 'Standing cannot be acquired through the back door of a class action.'") (quoting Allee v. Medrano, 416 U.S. 802, 828-29 (1974) (Burger, C.J., dissenting)).

In order to demonstrate an injury in fact, the plaintiff must prove that has suffered an injury that is actual and imminent, as opposed to hypothetical or conjectural. Lujan, 504 U.S. at 560-61. This requirement prevents the standing inquiry from devolving into "an ingenious academic exercise in the conceivable." Warth, 422 U.S. at 509 (quoting United States v. SCRAP, 412 U.S. 669, 688 (1973)). Accordingly, an allegation of "possible" future injury does

not demonstrate injury in fact; the injury must be “certainly impending” to satisfy the requirements of Article III. Whitmore v. Arkansas, 495 U.S. 149, 158 (1990).

In an order dated September 14, 2006, the Court dismissed all of the plaintiffs’ claims for lack of subject matter jurisdiction, with the exception of plaintiff A.L.’s APA claim challenging the application of the Interim Final Rule to “Title IV-E adoptees.” Although A.L.’s mother had not alleged that she is “unable to obtain *any* of the necessary [documentary] proof” to satisfy the documentation requirements of the Rule for A.L., thus rendering the alleged threat to A.L.’s benefits and the associated stress entirely “hypothetical,” the Court held that A.L. had demonstrated injury-in-fact from the possibility that “the regulations will require [A.L.] to invest time and resources, or more time and resources” to comply with the documentation requirements. September 14, 2006, Mem. Op. at 10-11. However, the allegations in the affidavit submitted by A.L.’s mother do not demonstrate that an expenditure of “more time and resources” would be an injury that is either likely or imminent. See, e.g., McConnell, 540 U.S. at 225.

In describing the allegations of injury contained in the affidavit of A.L.’s mother, the Court gave an explicit and comprehensive description of the affidavit’s deficiencies that render the loss of benefits entirely speculative. As the Court noted, “A.L.’s mother says that she does not have a birth certificate¹, final adoption decree, passport, driver’s license or any other form of picture identification of A.L., but she does not assert that she: (1) cannot obtain ‘a statement from a State approved adoption agency that shows [A.L.’s] name and U.S. place of birth’; (2) *does not have* or cannot obtain insurance, medical or census records or records from any of the facilities in which A.L. has resided that show her birthplace; or (3) cannot obtain any of the acceptable identity evidence. September 14, 2006, Mem. Op. at 10 (emphasis added, internal

¹ It is important to note that A.L.’s mother does not declare that she does not currently have a birth certificate, or at least a copy of the certificate. In fact, she acknowledges in her affidavit that she once had a copy of the certificate but that she simply does “not know” whether she still has it. See App. in Supp. of Pls.’ First Am. Compl. at Tab 7.

citation omitted). As the Court's discussion demonstrates, the affidavit of A.L.'s mother does not demonstrate that she cannot obtain or *does not currently possess* many of the documents listed in the Rule that would provide alternative means of establishing citizenship or identity. Without some indication that such documents are not readily available to A.L. and her mother, it is impossible to determine whether they would be faced with *any* increased burden from compliance with the Rule, let alone one that satisfies the requirements of Article III. Cf. Ctr. for Law and Educ. v. Dep't of Educ., 396 F.3d 1152, 1159-61 (D.C. Cir. 2005) (holding parent of allegedly injured child lacked standing where "the agency action and the alleged injury stand at opposite ends of a long chain," and that organizational plaintiff's increased advocacy expenses resulting from challenged law cannot constitute injury in fact, even though organization alleged that it would not have been required to expend such resources in the absence of the law).

Nor is A.L.'s speculative injury imminent. Even if A.L. does not have the documents readily available, there is no indication that A.L. has already been ordered to provide the documentation to her state agency in order to demonstrate citizenship pursuant to the Interim Final Rule. Accordingly, there is no indication that A.L., a current recipient of Medicaid, is presently (or imminently) under the strain of some increased burden or effort to comply with the obligations of the Rule. And when the time comes to document citizenship pursuant to the Rule, whenever that may be, A.L. has not provided any concrete indication of whether the state agency would be unable to assist her in locating documentation such that any potential added burden would be eliminated or significantly diminished by state assistance. See Interim Final Rule, 71 Fed. Reg. at 39216 (requiring states to "assist the individual in securing evidence of citizenship" in the event that documents are unavailable); see also Texas v. United States, 523 U.S. 296, 300 (1998) (holding that claim is not fit for adjudication when possibility of injury is contingent upon future events that may not occur as anticipated); Ctr. for Law and Educ., 396 F.3d at 1161 (same; also noting that "were all purely speculative 'increased risks' deemed injurious, the entire

requirement of ‘actual or imminent injury’ would be rendered moot, because all hypothesized, non-imminent ‘injuries’ could be dressed up as ‘increased risk of future injury.’”).

However, even if A.L.’s mother is required to search her home for acceptable records demonstrating citizenship or to call state agencies to obtain such records if they are not readily available, it is not at all apparent that such effort constitutes immediate hardship rendering the matter fit for judicial resolution. As explained in the government’s Memorandum of Law in Opposition to Plaintiffs’ Amended Motion for TRO and Preliminary Injunction, “courts traditionally have been reluctant to apply [the injunctive and declaratory judgment remedies] to administrative determinations unless these arise in the context of a controversy ‘ripe’ for judicial resolution.” Abbott Labs. v. Gardner, 387 U.S. 136, 148 (1967), abrogated on other grounds, Califano v. Sanders, 430 U.S. 99 (1977). Whether preenforcement review is justified in a particular case depends on the fitness of the issues for judicial resolution and the hardship to the plaintiff from withholding decision. Id. at 149.

As discussed, there is considerable uncertainty concerning the method in which the state will assist A.L. in complying with the Interim Final Rule, whether A.L. is already able to meet the requirements of the Rule with little or no additional effort, or whether the state will fund A.L.’s benefits independent of the Rule. See September 14, 2006, Mem. Op. at 10-11. That uncertainty will be alleviated only when A.L. is required to present documentation or risk the loss of benefits. The only hardship that A.L. has demonstrated to justify the uncertainties presented by preenforcement review is the effort required simply to *attempt* to comply with the Rule. However, the additional time and effort required of an applicant to complete an administrative process, even one that holds little hope of ultimate success, is insufficient by itself to render a case fit for judicial resolution. See Hinrichs v. Whitburn, 975 F.2d 1329, 1334 (7th Cir. 1992) (rejecting plaintiff’s argument that “she has shown hardship because . . . she will have to change her behavior in a significant manner in order to comply with the . . . program” and

requiring plaintiff to attempt to comply with administrative process for AFDC benefits); Texaco, Inc. v. DOE, 490 F. Supp. 874, 889 (D. Del. 1980) (“If steps taken, amounts expended, or other burdens shouldered by regulated companies because of anticipated future agency action justified judicial review, the objectives of the ripeness doctrine would again be frustrated.”); cf. Reno v. Catholic Soc. Serv., Inc., 509 U.S. 43, 58-59 (1993) (holding that statute’s imposition of “further affirmative steps” and the obligation “to satisfy criteria beyond those addressed by the disputed regulations” did not create ripe controversy until plaintiff attempted to satisfy statutory requirements and was prevented from doing so by challenged regulations). Pursuant to Article III, this Court should decline plaintiff’s invitation to “entangl[e]” itself “in abstract disagreements over administrative policies” while the burden on A.L. remains a matter of conjecture. Abbott Labs., 387 U.S. at 148.

Moreover, the degree of hardship on A.L. is lessened by the fact that citizenship documents are already a necessary part of the adoption or foster care process. For example, A.L.’s mother states in her affidavit that A.L. was adopted “pursuant to a Title IV-E adoption agreement.” App. in Supp. of Pls.’ First Am. Compl. at Tab 7, ¶ 4. Such agreements are entered into as part of the adoption of a special needs child prior to the entry of a final decree of adoption. See 42 U.S.C. § 673. Accordingly, even if an individual such as A.L. cannot locate a form of primary documentary evidence under the Rule, that individual could use the final adoption decree or, subject to certain conditions in the absence of a final decree, a statement from a State approved adoption agency to demonstrate citizenship.² See 71 Fed. Reg. at 39223. Thus,

² Although the cause is unspecified, A.L.’s mother indicates that she does not have a final adoption decree for A.L. However, she does have certain unspecified “adoption papers.” App. in Supp. of Pls.’ First Am. Compl. at Tab 7, ¶ 9. A.L.’s mother concedes that she cannot determine whether these “papers” will satisfy her state’s interpretation of the documentation requirements contained within the Interim Final Rule. Id. This admitted uncertainty renders any hardship from compliance with the Rule entirely speculative.

acceptable proof of citizenship should necessarily be created in the process of demonstrating eligibility for adoption assistance benefits. The individual therefore faces little burden beyond that already imposed by the Title IV-E application process.

III. The Language and Structure of Section 6036 Foreclose A.L.'s APA Challenge to the Secretary's Application of the Statutory Documentation Requirements to Title IV-E Beneficiaries

Review of agency action under the APA is “highly deferential.” Israel v. U.S. Dept. of Agriculture, 282 F.3d 521, 526 (7th Cir. 2002); see also Ambach v. Bell, 686 F.2d 974, 981 (D.C. Cir. 1982) (APA review is “highly deferential . . . [and] presumes the agency’s action to be valid.” (citations omitted)). As even plaintiffs admit, see Mem. in Supp. of Pls.’ Am. Mot. for TRO and Prelim. Inj. at 18 (stating that the Interim Final Rule is due Chevron deference), the Secretary’s interpretation of section 6036, embodied in the Interim Final Rule, is entitled to great deference, as it represents the agency’s interpretation of a statute it administers. See Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-843 & n.11 (1984) (court must uphold agency’s interpretation if construction is permissible under the statute; court need not conclude that agency construction was the only one it permissibly could have adopted or even the reading the court would have reached); United States v. Mead Corp., 533 U.S. 218, 229 (2001) (Chevron deference applies where “Congress delegated authority to the agency generally to make rules carrying the force of law”); Krzalic v. Republic Title Co., 314 F.3d 875, 879 (7th Cir. 2002) (“legislative rules and formal adjudications are always entitled to Chevron deference”) (quoting Richard J. Pierce, Jr., ADMINISTRATIVE LAW TREATISE § 3.5 at 6-7 (4th ed. Supp. 2003)); see also Wisconsin Dep’t of Health & Family Servs. v. Blumer, 534 U.S. 473, 497 & n.13 (2002) (“We have long noted Congress’ delegation of extremely broad regulatory authority to the Secretary in the Medicaid area.”); Aluminum Co. of America v. Central Lincoln People’s Util. Dist., 467 U.S. 380, 389 (1984) (giving “substantial deference” to administrative

construction where, as here, the “subject under regulation is technical and complex”). By authorizing the Secretary to issue regulations under section 6036, Congress made “an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.” Chevron, 467 U.S. at 843-44. Accordingly, the Secretary’s “regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.” Id. at 844.

Plaintiffs argue that the Secretary’s interpretation of Section 6036 as it applies to Title IV-E beneficiaries is, in fact, contrary to the statute. Specifically, they take issue with the application of the documentation requirements contained within the Interim Final Rule to Title IV-E beneficiaries. They specifically allege that the application of the Rule to such individuals is arbitrary and capricious because the “plain language” of section 6036 “applies to people who establish their citizenship for Medicaid purposes by declaration under 42 U.S.C. § 1320b-7,” rather than to Title IV-E beneficiaries. Am. Compl. ¶ 62. However, the plain language and purpose of Section 6036 belie plaintiffs’ argument.

By its plain language, the documentation requirements of section 6036 apply to those Medicaid applicants or beneficiaries who are required to declare their citizenship pursuant to section 1137(d)(1)(A) of the Social Security Act. See 42 U.S.C. § 1396b(i)(22). Section 1137(d)(1)(A) of the Social Security Act, codified at 42 U.S.C. § 1320b-7, establishes an income and eligibility verification system, including a citizenship verification requirement, that applies as a condition of “eligibility for benefits under a program listed in subsection (b) of this section.” 42 U.S.C. § 1320b-7(d)(1)(A). Among the programs listed in subsection (b) is “the medicaid program under subchapter XIX of this chapter.” Id. § 1320b-7(b)(2). Thus, the verification requirement established by section 1137 applies to *all* individuals who apply for or receive Medicaid, including dual recipients of Title IV-E and Medicaid benefits; the application of

section 1137's requirements to the Medicaid program in subsection (b) makes no distinction between people who separately apply for Medicaid or gain benefits by virtue of an application for Title IV-E benefits.

Simply put, nothing in the statute exempts Title IV-E beneficiaries whose eligibility for Medicaid is derivative; section 1137(d)(1)(A) of the Social Security Act, 42 U.S.C. § 1320b-7, still directs states to subject such individuals to those verification requirements. While Congress has required states to make "medical assistance" available to Title IV-E beneficiaries, see 42 U.S.C. § 1396a(a)(10)(A)(i)(I), that provision does not conflict with the conclusion that section 1137 applies to Title IV-E recipients of Medicaid. While section 1396a might remove the need for an individual to file a separate eligibility application for Medicaid (or to independently demonstrate income eligibility under another subpart of the section), nothing in section 1396a contradicts the express requirement that the verification obligations of section 1137 apply to all recipients of Medicaid. Moreover, as we discuss below, a contrary conclusion would violate the purpose of Congress as expressed in the structure of section 6036. See Smith v. Doe, 538 U.S. 84, 92 (2003) ("We consider the statute's text and its structure to determine the legislative objective.").

As the plaintiffs recognized in their Memorandum in Support of their Amended Motion for TRO and Preliminary Injunction, individuals receiving Supplemental Security Income ("SSI") benefits are also individuals who must have "medical assistance" made available to them pursuant to 42 U.S.C. § 1396a(a)(10)(A)(i). See Mem. in Supp. at 31 n.18. Accordingly, both SSI and Title IV-E recipients establish section 1396a eligibility in the same manner. See id. However, recipients of SSI benefits are expressly exempted from the documentation requirements of section 6036, even though SSI (like Title IV-E assistance) is not separately listed in section 1137(b) as one of the programs to which the verification requirement of the section

applies.³ See 42 U.S.C. §§ 1320b-7(b), 1396(x)(2)(B). Accordingly, because Congress deemed it necessary to exempt SSI recipients from the requirements of section 6036, it is clear Congress understood the existing verification requirements of section 1137 apply to such individuals despite their “derivative” or “automatic” eligibility for Medicaid benefits. See Hohn v. United States, 524 U.S. 236, 249 (1998) (“We are reluctant to adopt a construction making another statutory provision superfluous.”); Kawauhau v. Geiger, 523 U.S. 57, 62 (1998) (“[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”) (quoting Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 837 (1988)). Since (as plaintiffs concede) SSI and Title IV-E beneficiaries stand in an otherwise identical posture, Congress’ differing treatment of them is meaningful. Id. Thus, Congress’ express exemption of certain “automatic” eligibles from the reach of section 6036 is a dispositive indication that Congress did not intend to exempt other such individuals from the reach of the statute.

Plaintiffs’ contrary view would render Congress’s exemption for SSI beneficiaries both redundant and superfluous. Accordingly, plaintiffs’ interpretation must be rejected, since this Court should read the statute “with the assumption that Congress intended each of its terms to have meaning,” Bailey v. United States, 516 U.S. 137, 145 (1995), and “avoid[] interpreting [it] in a way that ‘renders some words altogether redundant.’” South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 347 (1998) (quoting Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995)). Rather, the Court should affirm the Secretary’s interpretation under Chevron and its progeny. Moreover,

³ 42 U.S.C. § 1320b-7(b)(5) does include a reference to any “State program” under subchapter XVI. This reference does not apply to SSI, however, since SSI is a purely federal program. The reference is, instead, to the program of Grants to States for Aid to the Aged, Blind, or Disabled which prior to January 1, 1974 existed in all states. This program was replaced by the SSI program in all states except in Puerto Rico, Guam, and the Virgin Islands, where it continues to exist. See 42 U.S.C. §§ 1381 Note - 1385 Note.

the Secretary's reasonable interpretation of the reach of section 6036 is the only construction that gives effect to the entire statute. See Chevron, 467 U.S. at 842-843 & n.11.

Finally, Congress' application of the new documentation requirements to Title IV-E beneficiaries makes sense as a matter of policy, since Title IV-E beneficiaries have long been allowed to provide sworn self-attestation as the sole means of verifying their citizenship for Title IV-E purposes, and that is precisely the mechanism section 6036 is intended to supplant. The legislative history supporting section 6036 makes no distinction between recipients of both Medicaid and Title IV-E or solely Medicaid. Indeed, all federal Medicaid reimbursements to states were intended by Congress to be subject to the requirements of the law as a program-wide protection against fraud. See H.R. CONF. REP. NO. 109-362, at 341 (2005) ("Under the House bill, states would be prohibited from receiving federal reimbursement for medical assistance provided under Medicaid to an individual who has not provided satisfactory documentary evidence of citizenship or nationality."); H.R. REP. NO. 109-276, at 553 (2005) ("In order to reduce the number of individuals receiving Medicaid benefits who are not lawfully in the United States, section 3145 adds a new subsection (a)(22) to Section 1903 of the Social Security Act to prohibit states from receiving Federal reimbursement for medical assistance provided under Medicaid to an individual who has not met the documentary requirements of a new subsection (y), as described below.").

Because the Secretary's interpretation of the reach of section 6036 accords with Congressional intent, and given the special deference due the Secretary's determination expressed in the Interim Final Rule, this Court should find that interpretation reasonable under Chevron, not arbitrary and capricious.

CONCLUSION

Accordingly, for all the foregoing reasons, the Court should dismiss the sole remaining claim of plaintiffs' Amended Complaint.

Dated October 20, 2006

Respectfully Submitted,

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