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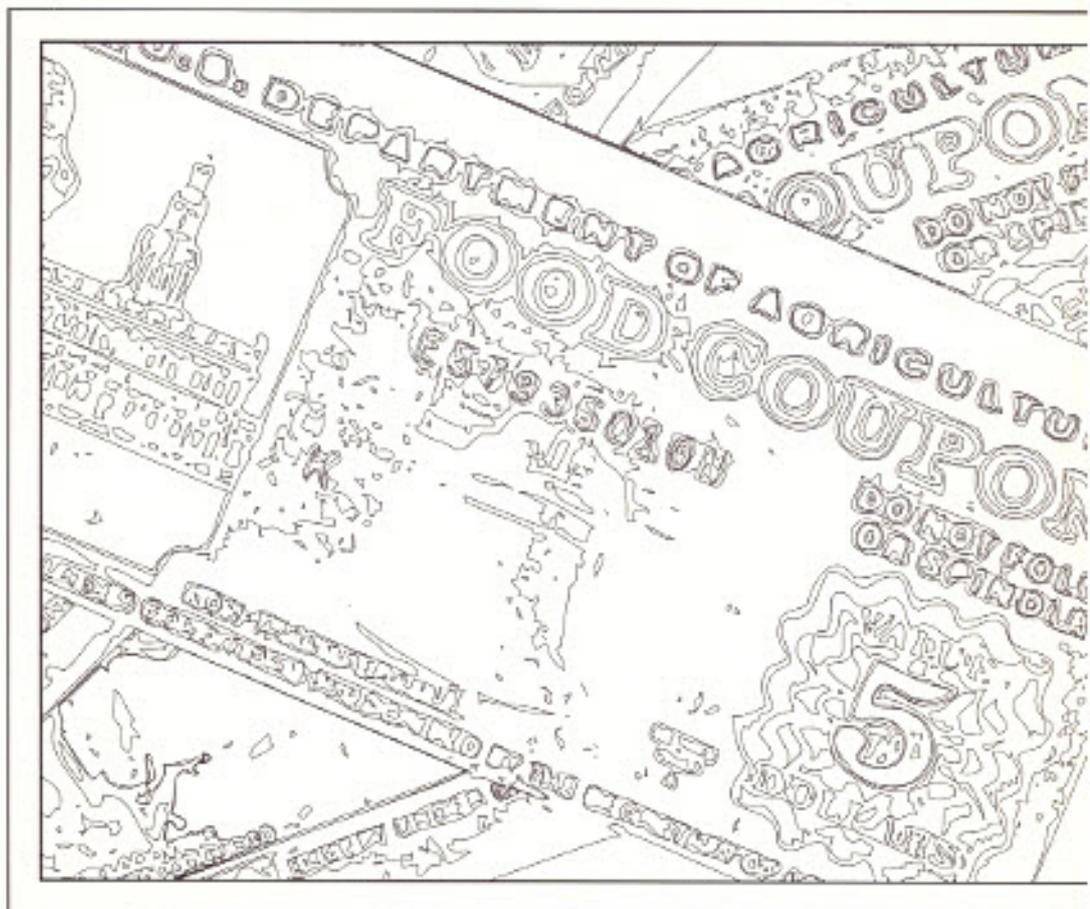
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Categorical Medicaid Eligibility for Recipients of Disabled Adult Child Social Security Disability Benefits

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I. Introduction

A little-known 1987 federal law provides categorical Medicaid eligibility for thousands of adults with disabilities whose income would otherwise preclude full Medicaid coverage. /1/ The statute, 42 U.S.C. Sec. 1383c(c), an amendment to the Social Security Act, was enacted as part of the Employment Opportunities for Disabled Americans Act of 1986. /2/ It creates a new category of Medicaid eligibility for former supplemental security income (SSI) recipients who lost their SSI eligibility after July 1, 1987, due to receipt of child's insurance benefits, otherwise known as disabled adult child social security disability benefits (DAC benefits). /3/ Prior to the enactment of this statute, SSI recipients were faced with the loss of Medicaid coverage (or payment of a spend-down to retain coverage) if they became entitled to DAC benefits in amounts that exceeded the SSI income limitations and thus became ineligible for SSI. The statute mitigates this harsh result.

II. The Statute

The wording of the 1987 statutory provision is quite straightforward, particularly compared to most other provisions relating to Medicaid. As discussed below, however, the statute's implementation has proved remarkably problematic. The provision reads:

If any individual who has attained the age of 18 and is receiving [SSI benefits] on the basis of blindness or a disability which began before he or she attained the age of 22 --

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under [42 U.S.C. Sec. 402(d)] on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for [SSI benefits] because of such child's insurance benefits or because of the increase in such child's insurance benefits, such individual shall be treated for purposes of title

XIX [42 U.S.C. Secs. 1396 et seq., the provision regarding categorical Medicaid for SSI recipients] as receiving [SSI benefits] so long as he or she would be eligible for [SSI benefits] in the absence of such child's insurance benefits or such increase. /4/

This statute, like the Pickle Amendment /5/ and 42 U.S.C. Sec. 1383c(d), which provides Medicaid to widows and widowers who are former SSI recipients and are awaiting Medicare eligibility, /6/ reflects a recognition of the overriding importance of Medicaid coverage for people with disabilities. In most states, SSI recipients are automatically eligible for full Medicaid coverage. /7/ For many individuals with disabilities, Medicaid coverage is at least as important as the financial assistance that monthly SSI benefits provide. This is true, for example, for people who need expensive daily medication for seizures or mental illness or for people who receive regular home health care or personal care services funded by Medicaid.

With the retirement, disability, or death of a parent, however, some SSI recipients become eligible for social security disability benefits as disabled adult children. /8/ Depending on the amount of the DAC benefits and the amount of any other income, earned or unearned, the receipt of DAC benefits may render a recipient no longer eligible for SSI. This in turn means the loss of the categorical Medicaid coverage available to SSI recipients in most states. /9/ Although the receipt of DAC benefits may mean an increase in the amount of the monthly benefit check for these former SSI recipients, for many that increase is more than offset by the costs associated with the loss of full Medicaid coverage. The effect of 42 U.S.C. Sec. 1383c(c) is to prevent this harsh result by preserving the Medicaid eligibility of those SSI recipients who become DAC recipients and who lose their SSI as a result. /10/

The following examples illustrate the significance of the statute for people with disabilities:

Example 1: A 40-year-old woman with quadriplegia began receiving SSI after an accidental injury at age 19. She had full Medicaid as an SSI recipient, and Medicaid paid for eight hours a day of personal care services and home health care. When her father died in 1988, she began receiving DAC benefits of more than \$700 per month. Her SSI benefits were terminated because her income exceeded the SSI income limitations. Prior to the effective date of 42 U.S.C. Sec. 1383c(c), in order to keep her Medicaid coverage, she would have had to pay a substantial spend-down. /11/ If 42 U.S.C. Sec. 1383c(c) were correctly implemented, however, she would be eligible for full categorical Medicaid coverage just as though she were still receiving SSI. She would not have to pay any spend-down, and her Medicare premiums would be paid by Medicaid. /12/

Example 2: A 32-year-old man with mental retardation worked in a sheltered workshop. His mother was retired, and he received \$400 per month in DAC benefits and an additional amount in SSI benefits, which varied with his earnings. When his mother died, his DAC benefit increased to \$600. /13/ His SSI benefits will be terminated due to his receipt of increased DAC benefits. However, if 42 U.S.C. Sec. 1383c(c) were properly implemented, he would continue to have full categorical Medicaid coverage as though he were still an SSI recipient, as long as he remained eligible for SSI when the increase in the DAC benefit was disregarded. /14/

These two examples illustrate the importance of the provision. In both cases, people whose incomes would ordinarily allow them to obtain Medicaid coverage only with a significant monthly spend-down are categorically eligible for Medicaid and their monthly income is effectively increased.

III. Implementation of the Statute

Due in part to its obscurity, the implementation of this relatively straightforward statute has been both incomplete and problematic. Nearly eight years after its July 1, 1987, effective date, the statute is not well known even among advocates regularly involved in Medicaid issues. The statute does not appear in the Medicaid law at all but is part of the Social Security Act relating to the SSI program. Implementation has also been complicated by its requirement of coordinated federal, state, and local efforts. Medicaid is administered by both state and local agencies under the supervision of the federal Health Care Financing Administration (HCFA). State and local agencies, however, necessarily depend on the Social Security Administration (SSA) for information regarding the SSI and social security disability eligibility of state residents and their benefit amounts. As discussed below, implementation problems and lapses appear to have occurred at all levels -- federal, state, and local.

Federal implementation efforts have been both delayed and limited. There is no federal regulation regarding 42 U.S.C. Sec. 1383c(c). A Medicaid operations letter, issued in December 1989, informed state Medicaid agencies about the statute and the way in which DAC benefit recipients eligible for continued Medicaid under section 1383(c)c would be identified in computerized data transmissions from SSA to the states. /15/ A Program Operations Manual System provision was added in 1988. /16/ In connection with the settlement of a recent New York case /17/ the Department of Health and Human Services has agreed to issue state Medicaid manual instructions for the implementation of the statute.

Implementation has been incomplete at the state level as well. Only a handful of states have regulations or administrative directives regarding 42 U.S.C. Sec. 1383c(c). /18/ At the local level, Medicaid workers are unlikely to be familiar with the statute and unlikely to recognize as categorically eligible a former SSI recipient who appears to have income that exceeds the Medicaid income limits.

Lawsuits on behalf of former SSI recipients receiving DAC benefits and denied continued Medicaid coverage have been successful in both West Virginia and New York. /19/ In response to the New York litigation, a statewide class action, SSA has modified the way in which information regarding eligibility for continued Medicaid under 42 U.S.C. Sec. 1383c(c) is transmitted to state agencies by making the identifying code a permanent part of the computerized record for eligible DAC recipients. /20/ SSA has also compiled and transmitted to all state Medicaid agencies a list of people eligible for continued Medicaid under 42 U.S.C. Sec. 1383c(c). As mentioned above, HCFA has agreed to issue state Medicaid manual instructions regarding section 1383c(c) cases.

As a result of the settlement decree in the New York case, New York has revised its Medicaid regulations to provide explicitly for the categorical eligibility of individuals entitled to continued Medicaid under 42 U.S.C. Sec. 1383c(c) and has issued administrative directives to local Medicaid

agencies with detailed instructions regarding the handling of these cases. Individuals wrongfully terminated from Medicaid coverage will be reinstated and reimbursed for medical expenses incurred while they were improperly denied coverage, including payments for Medicare premiums and spend-down amounts. /21/

In the West Virginia case, *Carter v. Willis-Miller*, the state Medicaid agency has agreed to determine eligibility for Medicaid under section 1383c(c) for any SSI recipient whose SSI is terminated. /22/

SSA appears to have corrected most of the problems with the implementation of 42 U.S.C. Sec. 1383c(c); however, difficulties remain for the group of DAC benefit recipients known as "dual eligibles," who receive their social security disability benefits on more than one earnings record. Workers in sheltered workshops, for example, often fall in this category; they receive a small social security disability benefit based on their own earnings record and an additional amount, though usually in the same check, based on the earnings of a parent. It appears that, even with the changes in SSA computer methodology, dual eligibles are not consistently identified as eligible for continued Medicaid in the transmissions of information to state Medicaid agencies. SSA is continuing to work on this problem.

IV. The Statute in Practice

While SSA is of the opinion that, on its part at least, virtually all of the problems with the implementation of 42 U.S.C. Sec. 1383c(c) have been solved, it is clear that past implementation efforts were neither completely effective nor completely accurate. Medicaid advocates are therefore very likely to encounter people eligible for Medicaid under 42 U.S.C. Sec. 1383c(c) whose benefits have been terminated or who have been paying a spend-down in order to receive Medicaid.

Recipients of DAC benefits who are not receiving full Medicaid coverage should be screened for eligibility under section 1383c(c). They must meet these five criteria: (1) must be at least 18 years old; (2) must have been receiving SSI benefits on the basis of blindness or disability; (3) must have become disabled or blind before the age of 22; (4) must have stopped getting SSI benefits on or after July 1, 1987, either because of entitlement to DAC benefits or because of an increase in the amount of DAC benefits; (5) would be eligible for SSI benefits without counting the DAC benefit amount or the increase in the DAC benefit amount as income.

The last of these criteria requires that, to be eligible, individuals must meet both the income and resource restrictions imposed by the SSI regulations. /23/ Two examples illustrate the income computations necessary to determine eligibility. /24/

Example 1: An SSI recipient receives \$200 in wages each month. Her SSI is terminated because she begins receiving DAC benefits of \$600 per month. In order to determine her eligibility for continued Medicaid under section 1383c(c), one must determine whether she would be eligible for SSI but for her receipt of DAC benefits:

1.

Unearned income

\$600.00

-- DAC benefit
(600.00)

Countable unearned income
0

2.
Earned income
\$200.00

-- general income disregard
(20.00)

-- earned income disregard
(65.00)

-- 1/2 remaining earned income
(57.50)

Countable earned income
\$57.50

Total Countable Income
\$57.50

Since the total countable income is less than the individual's SSI rate, /25/ she is eligible for SSI when her DAC benefits are disregarded and is thus eligible for continued Medicaid.

Example 2: An SSI recipient receives \$300 in DAC benefits. Her father dies, and her DAC benefits increase to \$609. Her SSI benefits are terminated as a result. To determine her eligibility for continued Medicaid, this computation is required:

1.
Unearned income
\$609.00

-- increase in DAC benefit

(309.00)

-- general income disregard
(20.00)

Countable unearned income
\$280.00

2.
Earned income
0

Total Countable Income
\$280.00

Again, since this individual's total countable income is less than her SSI rate, she is eligible for SSI when her increase in DAC benefits is disregarded and is thus eligible for continued Medicaid.

If individuals entitled to Medicaid under 42 U.S.C. Sec. 1383c(c) have had their Medicaid improperly terminated, they should be entitled to have their Medicaid eligibility reinstated and to be reimbursed for any medical expenses incurred during the period from their improper termination until their reinstatement, including out-of-pocket medical expenses, spend-down amounts paid, and Medicare premiums paid. /26/

In addition to advocating on behalf of individual clients to establish their eligibility for Medicaid and to obtain reimbursement, practitioners may need to educate workers in state and local Medicaid agencies regarding 42 U.S.C. Sec. 1383c(c). While workers should consider all possible bases for Medicaid eligibility before terminating a former SSI recipient from Medicaid, /27/ the experience in both New York and West Virginia suggests that state and local Medicaid agencies are not familiar with the provisions of section 1383c(c).

Outreach efforts to agencies providing services to people with developmental disabilities are also important to locate individuals eligible for continued Medicaid as DAC benefit recipients who were not so identified in the past. With education and outreach, litigation to compel implementation of section 1383c(c), such as in the New York and West Virginia cases, can perhaps be avoided.

V. Conclusion

Section 1383c(c) provides for continued categorical Medicaid eligibility for thousands of former SSI recipients who are receiving disabled adult child social security disability benefits. Despite the clear importance of this statute for people with disabilities, more than seven years after its enactment it still has not been implemented in most states. As a result, many people with

disabilities are not receiving the full Medicaid coverage to which they are entitled. It is important for attorneys and advocates who work with people with disabilities to be aware of this relatively little known statute and to ensure its full implementation in their states.

/1/ While Medicaid eligibility is generally tied to strict income limitations, individuals in certain categories, such as supplemental security income (SSI) recipients, are eligible for Medicaid solely because of their membership in that category and without regard to their income. See 42 U.S.C. Sec. 1396a(a)(10)(A)(i)(II); 42 C.F.R. Sec. 435.120. A minority of states -- the so-called 209(b) states -- do not provide categorical eligibility for SSI recipients and instead apply Medicaid eligibility standards for aged, blind, or disabled individuals that are more restrictive than those of the SSI program. See 42 U.S.C. Sec. 1396a(f); 42 C.F.R. Sec. 435.121.

/2/ Employment Opportunities for Disabled Americans Act of 1986, Pub. L. No. 99-643, Sec. 10(b)(1), 100 Stat. 3580.

/3/ Under 42 U.S.C. Sec. 402(d), disabled adult child social security disability benefits (DAC benefits) are available to individuals over 18 years old whose disability began before age 22 and one of whose parents is receiving social security disability or retirement benefits or is deceased and had insured status under the social security program.

/4/ 42 U.S.C. Sec. 1383c(c).

/5/ The Pickle Amendment, 42 U.S.C. Sec. 1396a, provides continued Medicaid eligibility to individuals who received both SSI and social security disability benefits but who became ineligible for SSI (and thus Medicaid) due to a cost-of-living adjustment in their social security disability benefits. See Gordon Bonnyman, Medicaid Eligibility in a Time Warp, 22 Clearinghouse Rev. 120 (June 1988), and A Quick and Easy Method of Screening for Medicaid Eligibility Under the Pickle Amendment, 28 Clearinghouse Rev. 1182 (Feb. 1995).

/6/ 42 U.S.C. Sec. 1383c(d) provides continued categorical Medicaid eligibility for widows and widowers who lose SSI benefits due to their eligibility for social security widow's or widower's benefits. Section 1383c(d), unlike section 1383c(c), provides that the categorical Medicaid eligibility continues only until the widow or widower becomes eligible for Medicare, generally 24 months from the date of eligibility for the social security benefits. Categorical Medicaid eligibility under section 1383c(c) continues even after the individual becomes eligible for Medicare, subject to the income and resource restrictions discussed infra.

/7/ See note 1, supra.

/8/ See note 3, supra.

/9/ See note 1, supra. Social security law and regulations require SSI recipients to apply for other benefits, such as social security disability benefits, for which they are eligible. See 42 U.S.C. Sec. 1382a(a)(2)(B) and 20 C.F.R. Sec. 416.210.

/10/ The effect of 42 U.S.C. Sec. 1383c(c) in those states in which SSI recipients are not automatically eligible for Medicaid, the so-called 209(b) states, is unclear. The State Medicaid Manual instructions issued by the Health Care Financing Administration regarding 42 U.S.C. Sec. 1383c(c) in effect make the implementation of the statute optional in those states, permitting them to disregard any amount of the DAC benefits or none at all. Recent litigation seeking to implement analogous statutes in the 209(b) states has met with mixed results. In *Darling v. Bowen*, 878 F.2d 1069 (8th Cir. 1989), cert. denied sub nom. *Stangler v. Bowen*, 494 U.S. 1066 (1990), the Eighth Circuit held that 209(b) states must implement 42 U.S.C. Sec. 1383c(b) by continuing Medicaid for certain disabled widows and widowers whose SSI was terminated because of increases in their social security disability benefits. In contrast, the D.C. Circuit upheld a federal regulation implementing the Pickle Amendment, 42 U.S.C. Sec. 1396a, which gave 209(b) states discretion to choose whether to disregard social security cost-of-living adjustments in determining Medicaid eligibility and spend-down amounts. See *Noland v. Shalala*, 12 F.3d 258 (D.C. Cir. 1994).

/11/ Under 42 U.S.C. Sec. 1396a(a)(17), states may provide Medicaid coverage to the "medically needy" -- persons who meet the nonfinancial requirements for SSI eligibility but whose income exceeds the financial eligibility limits. Such persons can qualify for Medicaid if their medical expenses effectively reduce their income to the Medicaid eligibility level. They "spend down" their income to the Medicaid eligibility level by paying for some portion of their medical expenses and are then eligible for Medicaid coverage for their remaining medical expenses. In the example, assuming the woman lives in the state of New York, where the 1996 income limit for the medically needy program is \$559, her monthly spend-down amount would be over \$100.

/12/ Under 42 U.S.C. Secs. 1396a(a)(10)(E)(iii), 1905(p), Specified Low-Income Medicare Beneficiaries, i.e., Medicare beneficiaries whose income is 120 percent of the poverty level or less, are entitled to have their Medicare part B premiums paid for by their state. Under 42 U.S.C. Sec. 1396a(a)(10)(E)(i), 1396d(p)(1), Medicare beneficiaries whose income is below the national poverty line -- Qualified Medicare Beneficiaries -- can have their deductibles and coinsurance expenses paid for as well. In some states, Medicare premiums are also paid by the state for other categories of Medicaid recipients.

/13/ With the death of the insured individual, the social security benefits of others collecting benefits on the insured's work record are increased, typically doubled. See 42 U.S.C. Sec. 402(d)(2).

/14/ 42 U.S.C. Sec. 1383c(c) provides that the DAC benefit recipient is entitled to continued Medicaid coverage as long as he or she would be entitled to SSI in the absence of the DAC benefit or the increase in the DAC benefit. The "otherwise eligible" requirement means that the DAC recipient must continue to meet SSI resource limitations (20 C.F.R. Secs. 416.1201 et seq.) and that the recipient must have countable income from sources other than the DAC benefits or the increase in DAC benefits that are within SSI limitations. The budgeting methodology for these cases is discussed *infra* at footnote 23 and accompanying text.

/15/ Department of Health and Human Services Medicaid Operations Letter 89-55 informed state Medicaid agencies that persons eligible for continued Medicaid under 42 U.S.C. Sec. 1383c(c)

would be identified by a special code in the data transmission from Social Security Administration (SSA) to the state agencies. No earlier directives were given by the Health Care Financing Administration (HCFA) in response to a Freedom of Information Act request made by the author.

/16/ Program Operations Manual System SI 0715.003B.4 (1988).

/17/ *McMahon v. Dowling*, No.91-621C (W.D.N.Y. Feb. 1, 1995) (Clearinghouse No. 47,556). See note19 and accompanying text, *infra*.

/18/ The following states have regulations or administrative directives: Arkansas, Kansas, Montana, Rhode Island, and Washington.

/19/ *McMahon*, No. 91-621 C; and *Carter v. Willis-Miller*, No.1:91-1240 (S.D. W. Va. June 1, 1993) (Clearinghouse No. 47,721). A packet of materials regarding 42 U.S.C. Sec. 1383c(c) is available from the Clearinghouse, No. 51,235. The packet includes the amended class action complaint in *McMahon*, the stipulation and order in *McMahon*, the order of dismissal in *Carter*, proposed state regulations for the State of New York, an administrative directive and local commissioners' memorandum for the State of New York, an informational flyer, and a newsletter article for attorneys and advocates.

/20/ Using a system called the state data exchange (SDX), SSA regularly transmits computerized data regarding individuals' SSI, social security disability, Medicaid, and Medicare status to state Medicaid agencies. State Medicaid agencies can then transmit the information to local Medicaid agencies. The SDX record includes a code for Medicaid eligibility. A "D" code in the Medicaid eligibility field indicates potential categorical eligibility for Medicaid under section 1383c(c), despite the termination of SSI payments. For an individual's Medicaid benefits to continue, this "D" code must be recognized and correctly interpreted by state and local Medicaid workers. Medicaid State Operations Letter No. 89-55 briefly summarizes the statute and describes the use of the "D" code.

/21/ The New York State Department of Social Services has estimated the cost of reimbursement for those wrongfully terminated from Medicaid during the years 1987 -- 92 at \$6.2 million. Regulatory Impact Statement, XVII New York State Reg. Issue 18 at 8 (May 3, 1995). The federal estimate prior to passage was that 5,000 people per year would be affected by section 1383c(c), at an estimated cost for the year 1991 of \$12 million. S. Rep. No. 99-466, 99th Cong., 2d Sess. (1986), reprinted in 1986 U.S.C.C.A.N. 6087, 6099.

/22/ *Carter*, No. 1:91-1240.

/23/ 20 C.F.R. Secs. 416.1100 et seq., 416.1201 et seq.

/24/ These two examples assume that the SSI rate is the 1996 federal benefit rate, \$470 for people living alone.

/25/ See 20 C.F.R. Secs. 416.410 et seq. The federal benefit rate for 1995 for someone living alone is \$458, which some states supplement. In New York, e.g., the "living alone" rate for 1995 is \$544, the federal benefit rate of \$458 plus a state supplementary payment of \$86.

/26/ Advocates should find out from their state Medicaid agency what is being done with the list of individuals potentially eligible for DAC Medicaid that was provided to each state agency by HCFA in late 1992. See text accompanying note 20, *supra*.

/27/ See *Stenson v. Blum*, 476 F. Supp. 1331 (S.D.N.Y. 1979), *aff'd*, 628 F.2d 1345 (2d Cir. 1980), *cert. denied*, 449 U.S. 885 (1980) (Clearinghouse No. 27,808); *Crippen v. Kheder*, 741 F.2d 102 (6th Cir. 1984) (Clearinghouse No. 37,196); *Massachusetts Ass'n of Older Ams. v. Sharp*, 700 F.2d 749 (1st Cir. 1983) (Clearinghouse No. 25,666).