Judicial Deference to SSA Rulemaking

Paul Eaglin, Esq.
Judicial Deference to SSA Rulemaking

Paul Eaglin, Esq.

The general idea of judicial deference to agency regulatory authority has been of interest to me for decades. But the focus narrowed to judicial deference to the SSA's rulemaking with the 2016 changes relating to assessment of medical opinions, claimant credibility assessment, conduct of representatives including pre-hearing preparation, and so forth.

The objective of this workshop is general: to review judicial precedents relating to judicial deference to SSA rulemaking. From that review, the objective is to learn principles that courts follow in adjudicating such cases. The hope is to gain better understanding of courts' approaches rather than to expect to achieve any predictive clarity about how future cases might resolve.

The precedents below will form the basis for comments that will range across the years but will focus principally on U. S. Supreme Court decisions relating to SSA rulemaking in the disability context, adult and child's disability, but the Medicare context as well. The breadth of deference is apparent from the review, but limits on that deference come through as well.

To put in context the matter of deference to SSA rulemaking, other precedents will be highlighted that set the framework for judicial deference in agency rulemaking more generally, and that discuss limits on deference.

SSA Rulemaking

U. S. Supreme Court precedents (SSA rulemaking)

Sebelius v Auburn Regional Medical Center

- 133 S. Ct. 817, 568 US __, 184 L. Ed. 2d 627 (2013)
- https://scholar.google.com/scholar_case?case=2228152672755693003&q=sebelius+v+auburn+regional+medical+center&hl=en&as_sdt=4,60

Astrue v Capato

- https://scholar.google.com/scholar_case?case=6577565239241615023&q=astrue+v+capato&hl=en&as_sdt=4,60

Barnhart v Walton

- https://scholar.google.com/scholar_case?case=17981729066831527493&q=barnhart+v+walton&hl=en&as_sdt=4,60
Washington State Dept of Social & Health Svcs v Guardianship of the Estate of Kefferer

- https://scholar.google.com/scholar_case?case=4070613219085446585&q=kefferer&hl=en&as_sdt=4,60

Shalala, Secy HHS v Illinois Council on Long Term Care Inc

- 529 US 1, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2000)
- https://scholar.google.com/scholar_case?case=8758587004507645933&q=shalala+illinois+council&hl=en&as_sdt=4,60

Good Samaritan Hospital v Shalala, Secy HHS

- https://scholar.google.com/scholar_case?case=10982280190740304523&q=shalala+samaritan&hl=en&as_sdt=4,60

Sullivan v Zebley

- 493 US 521, 110 S. Ct. 885, 107 L. Ed. 2d 967 (1990)
- https://scholar.google.com/scholar_case?case=14854442216257291427&q=zebley+sullivan&hl=en&as_sdt=4,60

Bowen v Georgetown University Hospital

- https://scholar.google.com/scholar_case?case=1142871642776890979&q=bowen+georgetown&hl=en&as_sdt=4,60

Schweiker v Chilicky

- https://scholar.google.com/scholar_case?case=14560801973060254477&q=chilicky&hl=en&as_sdt=4,60

Bowen v Yuckert

- https://scholar.google.com/scholar_case?case=4503651684013538360&q=yuckert&hl=en&as_sdt=4,60

1104
Heckler v Chaney

- 470 US 821, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985)
- https://scholar.google.com/scholar_case?case=7080789915693710984&q=chaney&hl=en&as_sdt=4,60

Heckler v Ringer

- https://scholar.google.com/scholar_case?case=3710311065179893275&q=ring+heckler&hl=en&as_sdt=4,60

Heckler v Campbell

- https://scholar.google.com/scholar_case?case=14722136364052379086&q=campbell+heckler&hl=en&as_sdt=4,60

Schweiker v Hansen

- https://scholar.google.com/scholar_case?case=13346243393970524809&q=hansen+schweiker&hl=en&as_sdt=4,60

Batterton, Secy Dept Human Resources of Maryland v Francis

- 432 US 416, 97 S. Ct. 2399, 53 L. Ed. 2d 448 (1977)
- https://scholar.google.com/scholar_case?case=6497148171949497114&q=batterton+v+francis&hl=en&as_sdt=4,60

Mathews, Secy HEW v Eldridge

- 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)
- https://scholar.google.com/scholar_case?case=10296811528183203766&q=eldridge&hl=en&as_sdt=4,60

Weinberger v Salfi

- 422 US 749, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975)
- https://scholar.google.com/scholar_case?case=12559409966950141262&q=salfi&hl=en&as_sdt=4,60
Richardson v Perales

- 402 US 389, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971)
- https://scholar.google.com/scholar_case?case=10758399444677950472&q=perales&hl=en&as_sdt=4,60

Social Security Board v Nierotko

- 327 US 358, 66 S. Ct. 637, 90 L. Ed. 718 (1946)
- https://scholar.google.com/scholar_case?case=2248411758501265257&q=nierotko+v+social+security+board&hl=en&as_sdt=4,60

Circuit Court precedents (SSA rulemaking)

Hagans v Commr SSA, 694 F. 3d 287 (3rd Cir. 2012)


Beeler v Astrue, 651 F.3d 954 (8th Cir. 2011)

- https://scholar.google.com/scholar_case?case=13044520796767146366&q=beeler+v+astrue&hl=en&as_sdt=4,113,128

Schafer v Astrue, 641 F.3d 49 (4th Cir. 2011)

- https://scholar.google.com/scholar_case?case=595757857293342176&q=schafer+v+astrue&hl=en&as_sdt=4,109,124

Vernoff v Astrue, 568 F.3d 1102 (9th Cir. 2009)


Bartlett Memorial Medical Center Inc v Thompson,

- 347 F.3d 828 (10th Cir. 2003)
- https://scholar.google.com/scholar_case?case=3603174636138867333&q=bartlett+memorial+medical+center+inc+v+thompson&hl=en&as_sdt=4,106,120

McNabb v Barnhart, 340 F.3d 943 (9th Cir. 2003)

Judicial Deference to SSA Rulemaking

Johnson v Apfel, 191 F.3d 770 (7th Cir. 1999)

Chavez v Dept HHS, 103 F.3d 849 (9th Cir. 1996)

Gordon v Shalala, 55 F.3d 101 (2nd Cir. 1995)
  - https://scholar.google.com/scholar_case?case=9201010387068702334&q=gordon+v+shalala&hl=en&as_sdt=4,107,122

White v Shalala, 7 F.3d 296 (2nd Cir. 1993)
  - https://scholar.google.com/scholar_case?case=4095498020910432519&q=white+v+shalala&hl=en&as_sdt=4,107,122

Walker v Sec’y HHS, 943 F.2d 1257 (10th Cir. 1991)
  - https://scholar.google.com/scholar_case?case=15198474992956494577&q=walker+v+secretary+of+health+and+human+services&hl=en&as_sdt=4,106,120

Difford v Sec’y HHS, 910 F.2d 1316 (6th Cir. 1990)
  - https://scholar.google.com/scholar_case?case=10276180775586049606&q=difford+v+secretary+of+health%26human+services&hl=en&as_sdt=4,111,126

Butterworth v Bowen, 796 F.2d 1379 (11th Cir. 1986)
  - https://scholar.google.com/scholar_case?case=9918580431260458177&q=butterworth+bowen&hl=en&as_sdt=4,121

Martinez v Heckler, 735 F.2d 795 (5th Cir. 1984)
  - https://scholar.google.com/scholar_case?case=6741385680299765480&q=martinez+heckler&hl=en&as_sdt=4,110,125
Non-SSA Rulemaking

U. S. Supreme Court precedents (non-SSA rulemaking)

*City of Arlington, Texas v FCC,*

- 133 S. Ct. 1863, 569 US __, 185 L. Ed. 2d 941 (2013)
- https://scholar.google.com/scholar_case?case=8614546201508695232&q=city+of+arlington+v+fcc&hl=en&as_sdt=4,60

*National Cable & Telecommunications Assoc v Brand X Internet Svcs*

- 545 US 967, 125 S. Ct. 2688, 162 L. Ed. 2d 820 (2005)
- https://scholar.google.com/scholar_case?case=9224020825253625133&q=brand+x&hl=en&as_sdt=4,60

*United States v. Mead Corp.*

- 533 US 218, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001)
- https://scholar.google.com/scholar_case?case=6553117666921312576&q=us+v+mead+corp&hl=en&as_sdt=4,60

*Auer v. Robbins*

- 519 US 452, 117 S. Ct. 905, 137 L. Ed. 2d 79 (1997)
- https://scholar.google.com/scholar_case?case=10703230932343258283&q=auer+deference&hl=en&as_sdt=4,60

*Rust v Sullivan*

- https://scholar.google.com/scholar_case?case=17204544980901899735&q=rust+sullivan&hl=en&as_sdt=4,60

*Chevron USA Inc. v. Natural Resources Defense Council, Inc.*

- https://scholar.google.com/scholar_case?case=14437597860792759765&q=chevron+deference&hl=en&as_sdt=4,60


- 325 US 410, 65 S. Ct. 1215, 89 L. Ed. 1700 (1945)
- https://scholar.google.com/scholar_case?case=7050770903127516716&q=bowles+seminole+rock&hl=en&as_sdt=4,60
Skidmore v. Swift & Co.

- 323 US 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944)
- https://scholar.google.com/scholar_case?case=3762971005508365670&q=skidmore+swift+co&hl=en&as_sdt=4,60

Circuit Court precedents (non-SSA rulemaking)

Mesa Verde Const. Co. v Northern Calif. Dist. Council Laborers

- 861 F.2d 1124 (9th Cir. 1988)
- https://scholar.google.com/scholar_case?case=17834715367951141526&q=mesa+verde+construction+co+v+northern+california+district+council+of+laborers&hl=en&as_sdt=4,114,129