

Federal Court

Step-by-Step

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Steps

- 1) Verify claimant's debts
- 2) File *in forma pauperis*
- 3) Summons/service of process
- 4) Attempt to settle with US Attny
- 5) Civil cover sheet vs. E-filing
- 6) Complaint
- 7) Obtain transcript
- 8) File Brief
- 9) Object to Magistrates' R&R
- 10) Obtain attorney's fees
 - EAJA, 406(b)
- 11) Motions for reconsideration and relief from Judgment or Order
 - Time limited remand
 - Writ of mandamus
 - Exhaustion of remedies
 - Injunction/TRO

Verify Claimant's Debts

- Government debts could offset against EAJA fees
- Debts could be:
 - Child support,
 - IRS or state taxes,
 - Unemployment,
 - SSA,
 - Student loans, etc.
- Debts can be verified through
 - Treasury Offset Program (TOP)
 - Financial Management Services (FMS)
 - Debt Management Services (DMS)
- Debts can be compromised or settled – taking it out of TOP

In forma pauperis

- Allows claimant to proceed without pre-payment of \$400 filing fees
- Affidavit of assets demonstrates inability to pay fee (local districts usu. have affidavit forms)
- Complaint cannot be filed without a filing fee or *in forma pauperis* motion - approved order?? (welfare eligibility automatically qualifies the plaintiff)

Summons/service of process

- Service within 120 days of complaint on:
 - Commissioner of SSA
 - US Attorney
 - US Attorney General
- Plaintiff responsible if filing fee paid
- US Marshall responsible if filed *in forma pauperis*

Attempt to Settle

- Ask Government to remand directly
- Avoids time consuming briefs and motions
- EAJA fees can be requested

Complaint

- Should be a short and plain statement which establishes:
 - Grounds for court's jurisdiction
 - Claim showing plaintiff is entitled to relief
 - Demand for relief sought

Obtain Transcript

- Government must file certified copy of transcript with its answer
- Review transcript for accuracy and missing information
- If transcript is incomplete Government may offer remand for incomplete record
- Court may deny request to remand if plaintiff can provide missing documents

Brief

- Check local rules first
- Should include:
 - Summary of the issues,
 - Standard of review,
 - Jurisdictional, procedural, and substantive facts,
 - Statement of the argument, and
 - Conclusion
- **Standard of review is: 1) whether the decision is supported by substantial evidence; 2) whether the decision contained legal errors.** If clt moves, Smith v. Shalala 5F.3d 547 (10th Cir. 1993) applied law where clt moved to (10th) even though Ct. said better rule is to apply law where ALJ conducted the hearing (8th Cir.) as it discourages forum shopping.

Objection to Magistrate R&R

- Check local rules first
- Written objections must be filed within 14 days
- Generally cannot be filed if you consented to magistrate's jurisdiction
- Consider consenting based on your experience and knowledge of the particular judge

Obtain Attorney's Fees - 406(b)

- 406(b) fee must be approved by court
- Limited to 25% of past due benefits
- Party of interest is plaintiff's attorney
- Paid when
 - Court reverses and pays benefits without remand
 - Court reverses with remand and ALJ awards benefits
 - Court remands for good cause but retains jurisdiction

Obtain Attorney's Fees - EAJA

- Party of interest is plaintiff
- Paid when
 - Party prevails
 - U.S. position not “substantially justified”
 - Plaintiff's net worth less than \$2 million
- Need not prevail on all issues

Motion for Reconsideration and Relief from Judgment – Rule 59(e)

- Extraordinary remedy – to be used sparingly
- Must be filed within 28 days
- Stays time for appeal
- Covers:
 - Intervening change in controlling law
 - New evidence not available at trial
 - Corrects clear error of law or prevent manifest injustice
 - Evidence which was admitted or excluded improperly
 - Improper actions of counsel that have affected the outcome
- Cannot be used to relitigate old matters

Relief from Judgment or Order – Rule 60(a) and (b)

- Correct clerical mistakes; oversight mistakes; or omission in judgment, order, or other part of record
- Does not stay time for appeal, but may ask court to order a stay
- Covers:
 - Mistake, inadvertence, surprise, excusable neglect
 - Newly discovered evidence which could not have been discovered with reasonable diligence in time to move for new trial under Rule 59(b)
 - Fraud, misrepresentation, of misconduct by opposing party
 - Judgment is void; Judgment has been satisfied, released, or discharged; based on earlier judgment that was reversed or vacated; or applying it prospectively is no longer equitable

POST HOC RATIONALIZATIONS

- Sec v. Chenery Corp, 332 US 194 (1947) held “a simply fundamental rule of admin law is that a reviewing court, in dealing with a determination or judgment which an admin agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the admin action by substitution what it considers to be a more adequate or proper basis.”.... “if the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable.”

Time Limited Remand

- In unique cases the court may order deadline for ALJ to hear remanded case

Writ of Mandamus

- Federal District Courts have original jurisdiction under 28 USC 1361 (405(h) does not require 405(g) jurisdictional reliance for a mandamus action (Lopez v. Heckler, 725 F. 2d 1489 (9th Cir 1984); Heckler v. Lopez, 464 US 879 (1983). HALLEX I-4-1-35 – requires the Court Case Program Review Branch analyst to discuss it with OGC, & include a special set of responsive facts in the court declarations.
- Compels officers, employees, or agencies of the U.S. to perform their duty
- Plaintiff must demonstrate:
 - Right to have the act performed
 - Defendant has clear non-discretionary duty to perform the act
 - Plaintiff has exhausted other avenues of relief or that further avenues can be excused (or there is no other adequate remedy)

Writ of Mandamus (*cont.*)

Hinton v. Astrue, 919 F. Supp. 2d 999 (S.D. Iowa, 2013) – a mandamus case – re untimely request for hearing, where court held the “MAILBOX RULE” applied & P asked C to appoint an ALJ to conduct a hearing, C had a nondiscretionary duty to honor that right to a hearing. Court noted Mandamus is not barred by 405(h) and provides jurisdiction in cases challenging **procedures** used to administer SS benefits but unrelated to the merits of the benefits claim. Court said officers who do not follow a statute they are required to follow are not doing the sovereign’s business and those actions are ultra vires of his authority and can be the subject of specific relief thru mandamus to force the public office to perform a duty imposed on him by the sovereign. Here the court is not compelling the sovereign but rather the officer or agent to act as the sovereign has already instructed. Therefore, **Sovereign Immunity is no defense.** Mandamus is for extraordinary situations and there is no other adequate remedy. Hinton requested a hearing by placing it in a mail box since there was no evidence to rebut it, P was entitled to a presumption under the “mailbox rule”, the ALJ alleged he did not receive it timely, so he dismissed the request for hearing. AC agreed it was not timely. Therefore, mandamus was the only remedy available.

Writ of Mandamus (*cont.*)

•Side issue -- CONTEMPT MOTIONS/THREATS I-4-7-20 (not in materials for non-compliance with court order results in contempt citation, fine, jail term (or both) –even threatened contempt is liberally construed.(see F.Rul.Civ.Proc. Rule 70 & Martinez v. Bowen, 655 F. Supp.95(D.N.M. 1986) – defendants order to show cause why they should not be held in contempt, unless they submit to court a plan to implement the court order w/in 60 days. Court previously issued ORDER ENJOINING Ds from unconstitutionally terminating home health services w/o notice and a hearing.

F. Rules.Civ.Proc R 70 Enforcing a Judgment for a Specific Act. Hold in Contempt. Under 18 USCRS 401 – it can be a crime.

Also see New York City Health & Hosps. Corp. v. Perales, 833 F. Supp. 353 (S.D.N.Y. 1993) holding def. in contempt for not complying with an order to pay claims involving medicare/Medicaid.

EXHAUSTION

- Under 405(g), exhaustion may be waived if there is a constitutional issue wholly collateral to the claim of entitlement. It is only required under 405(g) that the C's decision became "sufficiently final" to warrant review BEFORE exhaustion was completed. It is not jurisdictional. Even if the 60 days appeal period ran, which is also not jurisdictional, it does not apply if there is a constitutional issue (*Lopez v. Heckler* 725 F.2d 1489 Its waives where exhaustion "would not just be future...but it would commit unnecessary administrative resources" (*Weinberg v. Salfi* , 422 US 749 (1975)). Also, where D shown policy of nonacquiescence w/re to following certain laws, it is unlikely that will be corrected. D simply just fails to follow the law & is required to do so. *Marbury v. Madison* 5 US 137 (1803). There are also cases where P's interest in having something resolved very quickly is so great, that deference to the agency is inappropriate (*Matthews v. Eldridge* 424 US at 330).

EXHAUSTION (*cont.*)

•Dunnells v. C. 2013 US Dist. Lexis 65604, M.D. Fla, 4/22/13. 2 applications (2007 & 2011). 2007 ALJ denial. AC remand order to consolidate 1st & 2nd applic. 2 days after AC remand 2nd appl approved. 2nd hearing ALJ, over objection consolidates and takes away benefits from 2nd applic. but ALJ's Notice of Hearing failed to state 2nd applic. was under consideration. Dunnells goes to Fed.Ct. bypassing the AC on due process constitutional issue and Writ of Mandamus to force Comm. to reinstitute benefits. C. files Mot. to Dismiss 12(b)(1), lack of subject matter jurisd as 405(g) requires exhaustion – AC decision -- Exhaustion is waivable if constitutional claim is wholly collateral to the substantive claim and where P suffered **irreparable injury not** recompensable thru retroactive payments of benefits – injury was she had to reimburse SS for an overpayment of benefits, and she became ineligible for Medicare. **P was deprived of a property interest in her continued benefits which were improperly denied w/o notice.**

Therefore 405(g) gave the court jurisdiction & basically an injunction issued to the extent the court order payment of benefits that put plaintiff back in the same position she was in before defendant unconstitutionally terminated her benefits w/o notice & lost her Medicare. Because P presented her claim, a decision was made by the Judge fulfilling the non-waivable jurisd. element. Decisions do not have to be final decisions when you have a collateral due process violation resulting in irreparable injury so that exhaustion is excused. Court relied on Mathews v. Eldridge, 424 US 319 (1976)

Injunctions

- Preliminary injunctions require notice (Rule 65(a)). Also, requires assertion of the usual 405(g) jurisdiction.
- Temporary Restraining Orders are w/o notice (TROs) Rule 65(b). Check local rules. In M.D. Fl we file Motion for Temp Rest. Order, with affidavit, memorandum, proposed order. Seek Waiver of the required security – purpose is prevent harm to defendant so if no proof of harm, no bond is needed – court has wide discretion re security (indigents eg., welfare recipients should not be required to post bond Rule 65(c) *Bass v. Richardson*, 338 F. Supp. 489 (S.D. N.Y. 1971)).

Injunctions (*cont.*)

- TRO w/o notice expires after 14th day, Maintains *status quo* until notice may be given and opportunity for parties to respond
- To obtain you must show facts in Affidavit or verified complaint: Substantial likelihood of prevailing on the merits (need not demonstrate he will succeed on merits, but must show there will be irreparable injury (i.e., degree of hardship worse than what defendant will have) , OR case presents serious questions of law worthy of litigation eg complex constitutional questions (see *Wong v. Astrue*, 2008 U.S. Dist. LEXIS 118698 (N.D. Cal. 5/13/08) *Topanga Press v. Los Angeles*, 989 F.2d 1524, 1534 (9th Cir. Cal. 1993))
 - Immediate & Irreparable harm in absence of injunction (e.g., loss of benefits, medicaid, dire need financial assist., loss or damage will result in absence of the injunction
 - Proof that threatened harm outweighs harm of the injunction to other party

Injunctions (*cont.*)

- Proof that injunction will not be adverse to public interest (**Brown v. Callahan, 979 F.Supp.1357 (D.Kan. 1997)**)
- **Some courts also consider whether there is an adequate remedy at law.**
- **USE IT CAUTIOUSLY FOR DISQUALIFICATION/RECUSAL OF ALJ, WHERE BENEFITS IMPROPERLY TERMINATED, INADVERTENT OVERPAYMENT (Beattie v. Barnhart, 663 F. Supp.2d 5 (D.D.C. 2009, TRO., overpayment case. Denied, didn't show imminent irreparable harm or inadequacy of legal remedies)**
- Preliminary Injunction involves the courts equitable powers, general purpose is to preserve the status quo pending final determination of the action after a full hearing. Courts have the power to reinstate benefits for preliminary relief (Lopez v. Heckler, 725 F.2d 1489 (9th Cir 1984))