10-3025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

GRETA ARLENE HUDSON,

Plaintiff-Appellant,

v.

ALYSON F. CAMPBELL, in her official capacity as Director of the Missouri Family Support Division

AND

RONALD J. LEVY, in his official capacity as Director of the Missouri Department of Social Services

Defendants-Appellees

On Appeal from the United States District Court
For the Western District of Missouri

BRIEF FOR PLAINTIFF-APPELLANT GRETA ARLENE HUDSON

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SUMMARY OF THE CASE

At eighty-eight years old, Ms. Hudson can no longer manage her day-to-day affairs and has been placed in a nursing home to assist her in her care. She filed for Medicaid in December of 2008 to cover the costs of her nursing care, but the Missouri Department of Social Services, Family Support Division, (FSD), wrongfully rejected her Medicaid application. Ms. Hudson filed a request for a fair hearing, but each time she filed a request, FSD filed a motion to withdraw the hearing. After her last request for a hearing, FSD determined that it no longer had jurisdiction and that the case was closed.

After being denied a fair hearing with FSD, Ms. Hudson tried to get her fair hearing in federal court, but the District Court wrongly denied her the fair hearing based on *Younger* abstention. The District Court's misinterpretation of *Younger* strips the federal court of its jurisdiction to oversee and interpret federally funded and regulated programs, of which Medicaid is one. This misinterpretation means the *Younger* exception swallows the rule that the federal court is to exercise jurisdiction when it is found.

In light of the significance of this case and the complexities inherent in the doctrine of *Younger* abstention, Plaintiff requests oral arguments of thirty minutes.

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JURISDICTIONAL STATEMENT

Jurisdiction of the District Court was based on 28 U.S.C. § 1331 and 28 U.S.C. § 1343 (3)-(4). The basis of this Court's jurisdiction is 28 U.S.C. § 1291. A final judgment was entered in this action on April 26, 2010. Plaintiff timely moved the court pursuant to Federal Rule of Civil Procedure 59(e) to alter or amend judgment, and that motion was granted in part and denied in part on August 2, 2010. A Notice of Appeal was timely filed in the District Court for the Western District of Missouri on August 27, 2010 and was duly served on all parties.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Under the doctrine of *Younger* abstention, should a district court decline to exercise jurisdiction when there is (1) not an ongoing judicial proceeding in state court, (2) no important state interest that deserves abstention because of principles of comity and federalism, and (3) no adequate opportunity at the state level to raise the federal questions presented? *Younger v. Harris*, 401 U.S. 37 (1971); *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982); *Alleghany Corp. v. McCartney*, 896 F.2d 1138 (8th Cir. 1990); *Brown v. Day*, 555 F.3d 882 (10th Cir. 2009).

STATEMENT OF THE CASE

1) Ms. Hudson was eligible for Medicaid benefits in December of 2008. App. 4.

2) Ms. Hudson applied for Medicaid benefits in December of 2008. App. 5. Eight months later her application was wrongfully denied. App. 10.

3) Ms. Hudson timely filed for a hearing to appeal the Eligibility Specialist's determination that she was not eligible for Medicaid benefits. App. 5. She was never given a hearing on the merits and the state closed her case. App. 10.

4) On January 13, 2010, Ms. Hudson filed her § 1983 action with the District Court seeking, among other things, a declaratory judgment that the State's actions were in violation of federal law and the Constitution of the United States.

5) The Defendants filed a motion to dismiss in February of 2010. App. 36.

6) The Court granted the Defendants' motion on April 26, 2010. App. 60.

7) Ms. Hudson timely moved the Court pursuant to Fed. R. Civ. P. 59(e) to Alter or Amend the Judgment. App. 84.

8) The Court granted the motion in part and denied the motion in part on August 2, 2010. App. 97.

9) Ms. Hudson timely filed this appeal.

STATEMENT OF THE FACTS

Ms. Hudson became eligible for Medicaid coverage in November of 2008. App. 4. And in December of 2008, she applied for Medicaid benefits, to cover the difference between her healthcare expenses and her income. App. 5. Eight months later, FSD denied Ms. Hudson's application for Medicaid benefits. App. 10. Ms. Hudson timely requested an administrative hearing to appeal the Eligibility Specialists decision to deny coverage. App. 10. After the request for a hearing to challenge this denial, FSD began sending new requests for information concerning property in which the Ms. Hudson had no property interest and into which Ms. Hudson had no authority to inquire. *Id.* FSD then used the fact that Ms. Hudson did not supply the information to justify another denial of the same Medicaid application, before a hearing over the first denial could take place. *Id.* Four days later, Ms. Hudson filed another request for an administrative hearing to challenge the second denial to the same Medicaid application. *Id.*

Ms. Hudson was finally notified on October 9, 2009, that her administrative hearings had been scheduled in order to challenge both denials of the same Medicaid application. App. 6. However, two days before the scheduled hearing, on November 2, 2009, FSD, using a form which is intended to be used by applicants for Medicaid benefits to withdraw

their hearing request, made a motion to withdraw the hearing requested by Ms. Hudson. *Id.* Ms. Hudson was not consulted in the decision to make the withdrawal nor did she consent to it. *Id.* Nonetheless, Ms. Hudson received notice on November 10, 2009, that her appeal was being withdrawn, even though she did not consent to it and, according to the form used to orchestrate the withdrawal, Greta was the only one who could withdrawal her own appeal. App. 8.

Days after FSD withdrew Ms. Hudson's appeal of her first denial of Medicaid coverage, Ms. Hudson received a third rejection to same Medicaid application. *Id.* Then, she received a fourth rejection to her Medicaid application about a month later. App. 9.

Ms. Hudson requested hearings on each of the rejections of her Medicaid application. Regarding the fourth rejection to the same Medicaid application, the withdrawal came on December 23, 2009, when Eligibility Specialist Shultz filed yet another withdrawal of request for hearing. App. 9. Shultz essentially cited FSD's inefficiency and her lack of due diligence to request the information needed in order to make Ms. Hudson's Medicaid eligibility determination. *Id.*

The administrative hearing officer granted the withdrawal, even though the essence of the hearing was to challenge the very justification cited by FSD for their withdrawal. *Id.*

Because the hearing officer granted FSD's request to withdraw the hearing, the hearing officer stated he no longer had jurisdiction over the claim and stated that Ms. Hudson would have to start her process all over, and file a new request for hearing. *Id.* Thus, the file was deemed closed, and Ms. Hudson was left with neither the right to appeal nor the opportunity to have her appeal heard.

When Ms. Hudson was denied due process, she filed an action, under 42 U.S.C. § 1983, in the United States District Court for the Western District of Missouri. App. 1. The federal court denied Ms. Hudson her day in court by granting the Defendants' motion to dismiss based on *Younger* abstention.

The court reasoned that because Ms. Hudson had tried to rectify FSD's incorrect Medicaid determination early, through an administrative hearing that was never given to her, she should not be allowed to bring an action in federal court to either obtain the determination that her Medicaid application had been wrongfully denied or obtain a declaration stating FSD could not deprive her of a fair hearing. App. 62-66.

This appeal followed.

SUMMARY OF THE ARGUMENT

The District Court refused to exercise jurisdiction over Ms. Hudson's action under 42 U.S.C. § 1983 on the basis of *Younger v. Harris*, 401 U.S. 37 (1971), opining that she had failed to exhaust the opportunity for a state judicial review of state administrative proceedings—proceedings which she initiated to contest the Defendant's denial of her Medicaid application. The District Court held that *Younger* creates an exception to the general rule that exhaustion of state administrative or judicial remedies is not required prior to bringing an action under § 1983 in federal court. In making this determination, however, the court incorrectly interpreted *Younger* to go far beyond its intended reach and inexplicably refused to apply the contemporary view of *Younger*. The majority of the circuits – including the Eighth Circuit – have held that *Younger* abstention does not apply where administrative proceedings are remedial rather than coercive. This misapplication of the law caused the District Court to err in holding that *Younger* abstention was applicable in this case. The court's dismissal of Ms. Hudson's complaint should therefore be reversed, and the case remanded for a decision on the merits.

ARGUMENT AND AUTHORITIES

A. STANDARD OF REVIEW

The District Courts abstention decision is reviewed for abuse of discretion; however, the underlying legal determinations receive plenary review. *Aaron v. Target Corp.*, 357 F.3d 768, 774 (8th Cir. 2004).

> The abuse of discretion standard means that a court has a "range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." *Verizon Communications, Inc. v. Inverizon Int'l, Inc.*, 295 F.3d 870, 873 (8th Cir. 2002) (citing *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984)). An abuse of discretion occurs if a relevant factor that should have been given significant weight is not considered, if an irrelevant or improper factor is considered and given significant weight, or if a court commits a clear error of judgment in the course of weighing proper factors.

Id.

B. Discussion

1. Exhaustion is not generally required

It is well established that a person is not generally required to exhaust state judicial or administrative remedies before bringing a § 1983 action in federal court. *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982). This doctrine recognizes the paramount role given by Congress to the federal courts to protect constitutional and federal rights. *Steffel v. Thompson*, 415 U.S. 452, 472-73 (1974). In, *Patsy*, *supra*, the Supreme Court reaffirmed that one need not exhaust state administrative remedies as a prerequisite for

bringing a § 1983 action in federal court. *Patsy* held that, in enacting § 1983, Congress intended to provide individuals who were threatened with or suffering a deprivation of constitutional or federal statutory rights with immediate access to federal courts, notwithstanding any state law to the contrary. 457 U.S. at 504. See also, *Monroe v. Pape*, 365 U.S. 167, 183 (1961). This Court, of course, adheres to this rule. See, *Murphy v. Missouri Dept. of Corrections*, 814 F.2d 1252, 1257 n.6 (8th Cir. 1987); *Walker v. Wegner*, 624 F.2d 60, 61-62 (8th Cir. 1980).

The issue, then, is whether the doctrine of *Younger* abstention creates an exception to this general principle as the District Court held here. The District Court held that, under *Younger*, if there is an available remedy at the state level, the plaintiff must exhaust all state remedies, including appeals, before bringing an action in federal court. This misreads *Younger* and makes the exception swallow the rule. Worse, it ignores settled precedent from this Court and the Supreme Court.

2. The *Younger* exception

In *Younger*, the Supreme Court held that, unless extraordinary circumstances are present, the abstention doctrine prevents a federal court from granting injunctive relief against the enforcement of a state criminal statute when state court proceedings related to that enforcement are pending.

401 U.S. at 54. The Court based this primarily upon considerations of federalism and comity, which counsel against federal intervention in the performance of legitimate state functions, such as the operation of its courts. *Id.* at 44. These considerations have led the Court to extend the protection of *Younger* beyond state criminal proceedings to include civil enforcement proceedings, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975); *Trainor v. Hernandez*, 431 U.S. 434, 444 (1977); *Moore v. Sims*, 442 U.S. 415, 423 (1979), and even to civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions, see *Juidice v. Vail*, 430 U.S. 327, 336, n. 12 (1977)(civil contempt order); *Pennzoil v. Texaco, Inc.*, 481 U.S. 1, 13 (1987)(requirement for the posting of bond pending appeal). It has also been extended to certain administrative proceedings. *Middlesex Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982); *Ohio Civ. Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

In *Middlesex*, an attorney brought an action in federal court challenging the constitutionality of certain attorney disciplinary rules to which he was being subjected in an ongoing state disciplinary proceeding. 457 U.S. at 428-29. The Court held that the federal court should abstain from hearing the case. *Id.* at 437. The issue of abstention turns on three

questions: 1) did the administrative proceedings in question constitute an ongoing state judicial proceeding; 2) Did the proceedings implicate important state interests; and 3) was there an adequate opportunity in the state proceedings to raise constitutional challenges? *Id.* at 432. If each answer is "yes", the federal court should abstain. *Id.* at 437. This three-part test has been subsequently used to determine the propriety of abstention under *Younger* in general, not just with respect to administrative proceedings, and it is the test employed by the District Court in this case.

a. The District Court's definition of "on going" sweeps too broadly.

When this case was filed, the administrative hearing Ms. Hudson had requested had been denied. She had no further recourse, short of refiling the same action in state court because the case was deemed closed and the hearings unit stated they no longer had jurisdiction to conduct a hearing on the matter. Thus, there was certainly no pending proceeding, let alone an on-going proceeding, as the term is normally understood. For example, in *Thomas v. Texas State Board of Medical Examiners*, 807 F.2d 453 (5th Cir. 1987), the Fifth Circuit held that *Younger* abstention was not required in a § 1983 action by a doctor challenging the revocation of his medical license by the state—even though he had not appealed the revocation to the state court because no state proceeding was pending when the federal action was filed.

Nevertheless, the District Court found that the administrative process was still on-going because Ms. Hudson could have filed yet another request for a fair hearing and could have then appealed that decision to the state, even though, at the time the § 1983 suit was filed, there were no pending hearings and no available state appellate remedies. This conclusion contradicts the rule articulated in *Monroe* and *Patsy* – i.e., that exhaustion of state administrative and judicial remedies is normally not necessary prior to filing a § 1983 action in federal court. What the District Court proposes is a perpetual loop in state administrative and court proceedings, which was not contemplated and cannot be tolerated by the *Younger* abstention doctrine.

The District Court misinterpreted *Alleghany Corp. v. McCartney*, 896 F.2d 1138 (8th Cir. 1990). In *Alleghany*, this Court held that § 1983 claims arising from administrative hearings in areas of the law where Congress has delegated regulation to the states by Congress are properly abstained under the *Younger* doctrine.

Alleghany, however, is inapposite to this case. Congress has not delegated the power to regulate Medicaid to the states by Congress; rather, Congress directly oversees the funding and regulation of Medicaid. See *J.P. & H.P. v. Missouri St. Fam. Support Div.*, 2010 WL 1539870, 3 (W.D. MO April 20, 2010) (stating when a state accepts federal Medicaid, it is required

to comply with federal statutes, regulations, and conditions in administering the program). Missouri is not given latitude to administer its Medicaid program, whereas the defendants in *Alleghany* were given broad latitude to regulate insurance. Rather, Missouri is required to administer its Medicaid program within the purview of the federal guidelines. Thus, this case must be distinguished from *Alleghany* and, as such, not subject to *Younger* abstention.

In reality, *Alleghany* supports this case moving forward, as it provides examples of precedent where abstention from a state administrative hearing was deemed inappropriate under *Younger*. *Alleghany Corp.*, 869 F.2d at 1145 (stating that *Ark. Power & Light Co. v. Missouri Pub. Serv. Comm'n*, 829 F.2d 1444 (8th Cir. 1987); *Southwestern Bell Tel. Co. v. Ark. Pub. Serv. Comm'n*, 824 F.2d 672 (8th Cir. 1987); and *Middle South Energy v. Ark. Pub. Serv. Comm'n*, 772 F.2d 404 (8th Cir. 1985) stand for the proposition that abstention is not appropriate where the case involves a *pervasive federal regulatory scheme* which indicates a strong federal interest, notwithstanding any state administrative process) (emphasis added). This distinction drawn by this Court supports the outcome that Medicaid is exempt from *Younger* abstention, and, instead, falls within the general rule that exhaustion of administrative remedies is not required.

Moe v. Brookings County, S. Dakota, 659 F.2d 880, 882 (8th Cir. 1981) presented this Court with an action brought by applicants for the county's "poor relief fund." 695 F.2d at 882. There, the plaintiff's application was not given proper consideration from the board responsible for considering applications, and, although the applicants were able to appeal to the state court, they chose to file a § 1983 claim in federal court. *Id.* The federal district court abstained from hearing the case, but this Court reversed, finding that abstention was improper because "abstention is not appropriate 'merely because a state could entertain [the suit].'" *Id.* at 881-82 (quoting *Alabama Pub. Serv. Comm'n v. Southern R. Co.*, 341 U.S. 341, 361(1951) (Frankfurter, J., concurring)). Like the social service in *Moe*, Medicaid is a program designed for social welfare. Although the court in *Moe* recognized the ability of the applicants to appeal through the state courts, the state's interest was outweighed by the federal court's duty to protect citizens' constitutional and federally guaranteed rights. *Moe* stands for the proposition that when a state system is so flawed that the mechanism for enforcing the program becomes the mechanism for its delay, any recognized grounds for abstention are trumped by the "virtually unflagging duty of the federal courts to ensure constitutional rights are protected." *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992).

b. This proceeding does not implicate an important state interest.

The district court erred in finding that Medicaid administration implicates an important state interest. The principle behind a federal court abstaining from exercising jurisdiction when an important state interest is involved stems from principles of comity and federalism. *Younger*, *supra* at 44. Here, we do not have those concerns. Congress has not given the states a broad power to regulate Medicaid as they gave the defendants in *Alleghany* over insurance. Rather, the states must act in accordance with the pervasive federal statutory and regulatory scheme put in place by Congress to insure federal interests in the general welfare of the needy and in the conformity between the states in their approval or denial of Medicaid benefits are protected. See *J.P. & H.P.*, 2010 WL 1539870, 3 (stating when a state accepts federal Medicaid, it is required to comply with federal statutes, regulations, and conditions in administering the program). Thus, a State's decision regarding a Medicaid application is primarily a question of federal law.

Because a state's decision regarding Medicaid is a question of federal law, that state has little interest as a quasi-sovereign entity to make its own determinations concerning Medicaid. This is especially true when those determinations are contrary to the governing federal regulations binding the

state. Certainly, no state has an interest in condoning such constitutional blunders as the deprivation of procedure due process, which the defendants in this case have sought to protect.

c. Inadequate opportunity to raise constitutional challenges in the state proceedings.

The district court erred in finding Ms. Hudson had an adequate opportunity in the state proceedings to raise constitutional challenges. As the facts show, Ms. Hudson was never afforded the fair hearing she requested to challenge, among other things, her deprivation of procedural due process. Each time she filed her request for a fair hearing to challenge the inappropriate rejection of her Medicaid application, FSD promptly filed a motion to withdraw her request. Those withdrawal motions were always incorrectly granted for FSD, thereby depriving Ms. Hudson of her fair hearing. Thus, while, in theory, the plaintiff should have been able to raise her constitutional and federal rights objections at a hearing or on appeal, the hearing was never afforded to her. Instead, she was told to restart the process over again. The perpetual loop that FSD has devised can only be broken in theory, never in practice.

It is this one of the very scenarios that § 1983 was intended to thwart. *Monroe v. Pape*, 365 U.S. 167, 173 (1961) (noting that Congress's third aim

in devising § 1983 was "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice) (overruled on other grounds by *Monell v. Dept. of Soc. Serv. of the City of New York*, 436 U.S. 658 (2000)). This case represents exactly the type of harm that § 1983 seeks to protect. Although the district court is correct that there is a statutory framework in place that should allow Ms. Hudson to file an appeal in state court, FSD has devised a mechanism that prohibits the implementation of those statutory rights. This Court should not view the statutes as determinative of giving the plaintiff a forum to raise her grievances. Instead, this Court should find that although a state remedy is available, it is only available in theory, not in practice. Thus, the plaintiff effectively has no forum in which to raise the constitutional and federal questions – except through a § 1983 action.

3. "Coercive" versus "remedial" action.

Another important defining characteristic between § 1983 actions in federal court that deserve abstention under *Younger* and those that do not is the distinction between coercive and remedial actions. The Supreme Court has never directly addressed the issue of whether a party in an administrative proceeding to which *Younger* abstention is otherwise applicable must exhaust state judicial appellate review before proceeding to federal court. In

New Orleans Public Service, Inc. v. Council of New Orleans, 491 U.S. 350 (1989), however, the Court assumed that that was the case. There, it noted that *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. at 629, held that an administrative proceeding adequately afforded a party an opportunity to raise constitutional challenges if such challenges could be raised in state court review of the administrative proceeding.

That issue only becomes pertinent, however, if the administrative proceeding is one to which *Younger* abstention applies in the first place. On that question, another footnote in *Dayton* is more illuminating:

> The application of the *Younger* principle to pending state administrative proceedings is fully consistent with *Patsy v. Florida Board of Regents*, 457 U.S. 496, 73 L. Ed. 172, 102 S.Ct. 2557 (1982), which holds that litigants need not exhaust their administrative remedies prior to bringing a § 1983 suit in federal court. *Cf. Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607-611, 43 L. Ed. 2d 482, 95 S.Ct. 1200 (1975). Unlike *Patsy, the administrative proceedings are coercive rather than remedial*, began before any substantive advancement in the federal action took place, and involve and important state interest.

Dayton. 477 U.S. at 627, n. 2 (Emphasis supplied).

After *Dayton*, the courts addressing this issue have almost uniformly restricted the application of *Younger* abstention principles in general, and the requirement of exhaustion of state appellate remedies in particular, to administrative proceedings that are coercive in nature.

One year after *Dayton*, the First Circuit decided *Kercado-Melendez v.*

Aponte-Roque, 829 F.2d 255 (1st Cir. 1987). There, Kercado was terminated from her job as a school superintendent after an informal hearing at which she was afforded an opportunity to respond to the allegations against her. *Id*. at 257. She was informed that the termination would become final in ten days unless she filed an administrative appeal. *Id*. at 258. Instead, Kercado filed a § 1983 action in federal court alleging that her termination violated the First Amendment. *Id*. The defendant argued that the court should abstain from hearing the case because Kercado had not pursued an available administrative appeal that was in turn appealable to state court. *Id.*

The First Circuit, however, rejected that argument. It noted the general rule of non-exhaustion of state administrative and judicial remedies before filing a § 1983 action in federal court, as well as the distinction between *Dayton* and *Patsy* made by Justice Rehnquist in the *Dayton* case. It described the critical distinction between these two cases:

> ... in *Patsy* the state proceeding was an option available to the federal plaintiff on her own initiative to redress a wrong inflicted by the state. In *Dayton Christian Schools* and the other abstention cases noted above, the federal plaintiffs sought to enjoin a pending state proceeding which they did not initiate, but in which their presence was mandatory. Here, unlike *Dayton Christian Schools*, the administrative proceeding is remedial rather than coercive. The administrative appeal process could be triggered only on Kercado's initiative if she wished to pursue her remedies within the Puerto Rico administrative framework. *Patsy* holds that she was not required to do so.

Kercado, 829 F.2d at 260. The First Circuit noted that a further distinction is that in *Dayton* and similar cases the § 1983 action was aimed directly at the pending state proceeding itself, which the plaintiffs alleged was in violation of their constitutional rights. Because these cases challenged the legitimacy of the state proceedings and the state statutes upon which they were based, considerations of comity and federalism were at a high level.

In cases such as *Patsy,* however, the federal plaintiffs were seeking to remedy actual injury they had experienced from action that had been undertaken and completed by the state. Since they were not attacking the legitimacy of the pending state proceedings themselves, the states interest in having the federal courts abstain was significantly diminished. *Id.* at 260-61. The *Kercado* court concluded that:

> ... there is a significant difference between a civil rights plaintiff who seeks to use the federal courts to stop or nullify an ongoing state proceeding in which she is a defendant, and a civil rights plaintiff who has an option to initiate a state proceeding to remedy a constitutional wrong perpetrated by a state actor. In the former case, abstention is appropriate; in the latter, the *Patsy* rule prevails.

Id. See also *Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27 (1st Cir. 2004).

The other circuits follow this same rational. See *Alleghany*

Corporation v. Haase, 896 F.2d 1046 (7th Cir. 1990) (vacated on other grounds, 499 U.S. 933 (1991)) (finding that *Younger* does not require the district court to abstain from hearing the plaintiff's challenge to a state agency's denial of permission to acquire shares in another company because it had not appealed the administrative decision to state court); *O'Neill v. City of Philadephia*, 32 F.3d 785 (3rd Cir. 1994) (noting that the requirement of exhaustion of state appellate remedies is only applicable where administrative proceedings are coercive in nature); *Moore v. City of Asheville*, 396 F.3d 385 (4th Cir. 2005) (noting the distinction made by the Supreme Court in *Dayton* between remedial and coercive proceedings); *Executive Art Studio, Inc. v. City of Grand Rapids*, 391 F.3d 783, 791-92 (6th Cir. 2004) (held that *Younger* abstention is generally appropriate only when the pending state proceedings arose out of state enforcement efforts and where the proceedings are coercive, not remedial, in nature); *Thomas v. Texas State Board of Medical Examiners*, 807 F.2d 453 (5th Cir. 1987) (*Younger* abstention was not required in a § 1983 action by a doctor challenging the revocation of his medical license by the state, even though he had not appealed the revocation to state court, because no state proceeding was pending when the federal action was filed).

The Tenth Circuit, in *Brown v. Day*, 555 F.3d 882 (10th Cir. 2009), also

passed on the distinction between coercive and remedial actions. In *Brown*, with facts nearly identical to the ones at hand, the plaintiff was a Medicaid recipient who had her benefits terminated. *Brown*, 555 F.3d at 884-85. Brown requested an administrative hearing, and, after receiving an unfavorable ruling, she filed a § 1983 action alleging that Day's decision violated federal Medicaid law. *Id.* Day moved to dismiss under *Younger*, and the district court granted the motion. *Id.*

Brown appealed to the Tenth Circuit, which reversed the District Court. *Id.* It found the coercive versus remedial distinction persuasive and well-fitting within the purview of *Patsy* and *Monroe*. The Tenth Circuit held that appealing from a Medicaid administrative hearing was remedial because it was initiated by the plaintiff, and the state had no punitive interest in the case. *Id.* at 894.

This Court also acknowledges the distinction between a coercive and a remedial action. In *Planned Parenthood of Greater Iowa, Inc. v. Atchison*, 126 F.3d 1042 (8th Cir. 1997), this Court noted that, although the general rule is that a plaintiff is not required to exhaust administrative remedies before filing a § 1983 action in federal court, abstention under *Younger* may be appropriate where pending administrative proceedings are coercive in nature. It declined to abstain in the case before it, finding that the

proceedings in issue were not sufficiently coercive, ongoing, and judicial in nature so as to require abstention. *Id.* at 1047-48.

4. Ms. Hudson's § 1983 claim is remedial

In its initial decision dismissing Ms. Hudson's complaint on the basis of *Younger* abstention, the district court did not consider or even acknowledge the distinction between coercive and remedial actions. After Ms. Hudson filed her Motion to Alter or Amend the Judgment asserting that the district court had misapplied the law, the district court still ignored the distinction.

The state's action in this case merely denied a benefit to Ms. Hudson for which she had applied and for which she qualified. It did not concern any wrongdoing on her part. The fact Ms. Hudson requested a fair hearing should not be held against her. She sought a quicker, less adversarial relief from the wrongdoing of the state than directly going to federal court. And resorting to federal court, after being refused a hearing, was not motivated by stalling justice, as is the case where an action is categorized as coercive. Rather, resorting to federal court here was to ensure justice.

The case law from other jurisdictions, virtually without exception, limits the application of *Younger* abstention principles and the concomitant exhaustion requirements of *Huffman* to state proceedings, whether judicial

or administrative, that are coercive and in the nature of a state enforcement action. Appellant has found no case presenting this issue for decision where the court has held that such principles should be applied to remedial proceedings.

This Court should reach a similar result here. Ms. Hudson's request for a fair hearing was not to spare her trouble, nor was the decision from which she was appealing affording her any penalty. She initiated the application to apply for benefits, and she was wrongfully denied. To characterize this as a "coercive enforcement action" would make every denial of eligibility for public benefits coercive. That would be inconsistent with the other circuits addressing this issue and would constitute an unwarranted expansion of the concept of a "coercive" action. The denial of a public assistance benefit is not the same things as the imposition of a punitive sanction for violation of a law or ordinance.

In considering this issue, it must be reiterated that abstention is the exception, not the rule. The areas in which abstention is permissible have been carefully defined, and the federal courts' obligation to hear claims within their jurisdiction is "virtually unflagging." *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. at 359 (citing *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988); *Roe #2 v. Ogden*, 253 F.3d

1225, 1232 (10th Cir. 2001) (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992). The distinction between remedial and coercive actions strikes the proper balance between the intent of Congress in enacting § 1983 to provide persons claiming a deprivation of federal rights with immediate access to federal court regardless of the availability or exhaustion of any state administrative or judicial remedies or any considerations of equity, comity, and federalism which underlie the abstention doctrine. The district court's expansive interpretation of *Younger*, however, would skew this balance too heavily in favor of abstention.

The district court opined that Ms. Hudson could have availed herself of her right to have a federal court decide her § 1983 claim either by skipping the administrative hearing process entirely and proceeding directly to federal court, or by filing her § 1983 action in federal court after exhausting her state administrative and judicial remedies. But if the defendant's action in denying Ms. Hudson's Medicaid benefits was truly a "coercive" enforcement action which determined the character of any subsequent administrative proceedings, then the first option of "preempting" the state's coercive enforcement proceeding was never open to her. Further, the second option is more appearance than reality, as such an action would in all likelihood be vulnerable to defenses of claim and issue preclusion.

The district court's decision has severely crippled, if not effectively eliminated, Ms. Hudson's right of access to the federal courts to determine her § 1983 claim. Such an action should not be taken in the absence of some overriding state interest deserving of deference from the federal courts.

The defendant's action in this case was not a "coercive" enforcement action as that term has been understood by other courts. Moreover, the considerations of comity which underlie the abstention doctrine are not compelling in this case. Medicaid is a cooperative federal-state program to enable the states to provide medical care to persons unable to afford the cost of necessary medical services. See *King v. Smith*, 392 U.S. 309, 316, 326-27 (1968). A state is not obligated to participate in the program, but if it chooses to do so, "it must comply with federal requirements." *Id.* Although the state has a legitimate interest in insuring that Medicaid funds go only to those who need them, the federal government has an equally strong interest in insuring that the state, in pursuing its own interests, does not violate governing federal statutes and regulations. When that is the issue, comity does not dictate that the federal court should defer to the states, whose interests may often conflict with those of the federal government.

5. Expanding *Younger* to these facts is poor public policy.

If the district court's dismissal is not overturned, once a Medicaid

recipient embarks upon the administrative appeal process by filing a request for a fair hearing, the district court's order would require the recipient to pursue it to the end, as well as any available state judicial appeals, before filing a § 1983 action in federal court, at which point such an action would in all likelihood be subject to the defenses of claim and issue preclusion. To preserve the right to bring a § 1983 challenge in federal court; therefore, a party would be required to forego all available state remedies.

The state is only required to notify recipients or applicants of its intended actions by mailing them written notice ten days in advance of the date the action is to become effective. This notice explains the right to request an administrative fair hearing and the circumstances under which assistance may be continued if a hearing is requested. *Id.* It does not explain other available remedies, including a possible § 1983 action. Generally, assistance will be continued pending a decision by the hearing officer if a hearing is requested before the action becomes effective. *Goldberg v. Kelly,* 397 U.S. 254, 264 (1970).

Expansion of the *Younger* exception to these facts forces persons who believe they have a viable § 1983 claim to forego either the right to have a federal court decide that claim or the opportunity to seek a quicker and simpler resolution of the dispute on other grounds through the administrative

appeals process. Compelling that choice furthers neither the purposes underlying § 1983 nor those supporting *Younger* abstention.

Public policy considerations direct that the option Dena Brown pursued should be permitted, even encouraged. See *Brown*, *supra*. It offers the possibility of resolving the dispute more quickly and inexpensively, and thereby reduces the number of § 1983 claims that would otherwise have to be adjudicated by the federal courts. There is nothing in *Patsy* that suggests that a party should not be able to choose to pursue state administrative remedies without forfeiting the right to then proceed directly to federal court. There is no basis in either law or policy for penalizing a party who elects to do so.

CONCLUSION

For all of these reasons, the district court's order granting the defendant's motion to dismiss on the grounds of *Younger* abstention was erroneous and based on a clear misapprehension of the law. Arlene Hudson, therefore, requests that this Court reverse the district court's dismissal of her complaint and remand the case for a decision on the merits.

Respectfully submitted,

/s/
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CERTIFICATE OF COMPLIANCE

1) This Brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,165 words, as counted by Microsoft Word.

2) This Brief complies with the typeface requirements of Fed. R. App. P. 38(a)(5) and the type requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared in a proportionally spaced typeface using Times New Roman 14 point font (Microsoft Word).

/s/_____
Nathan J. Forck, Esq.
Attorney for Appellant

DATED: 9/17/10

ANTI-VIRUS CERTIFICATION

I, Nathan J. Forck, certify that I have had the electronic version of Appellant's Brief, submitted in this case via CD-ROM, scanned for viruses utilizing AVG Anti-Virus Business Edition. No viruses were detected.

*/s/*_____

Nathan J. Forck, Esq.

Dated: 9/17/10

ADDENDUM