

broaden constitutional protections to “. . . the process afforded to respondents in civil commitment proceedings,” which are “the subject of a ‘considered legislative response’” (*In re S.M.*, 403 P.3d 324 (Mont. 2017), p 327 n.1). As the Supreme Court of Iowa noted in *Matter of V.H.*, individuals facing commitment require safeguards from unfair treatment in legal proceedings, but such protections do not extend to waiver of statutorily mandated counsel.

Social Security Administration Disability Listings and Role of the Treating Physician Rule

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Application of Updated Social Security Administration Listings to Pending Disability Claims Is Not Impermissibly Retroactive

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In *Cox v. Kijakazi*, 77 F.4th 983 (D.C. 7th Cir. 2023), Angela Cox and the Social Security Administration (SSA) cross-appealed matters related to retroactivity of updated SSA listings applied to pending benefits claims and the evidentiary weight given under the treating physician rule of the Social Security Act, 42 U.S.C. §301, *et seq* (1981). Ms. Cox’s supplemental security income (SSI) claim denial by an administrative law judge (ALJ) due to updated SSA listings was overturned by a federal court finding impermissible retroactivity. The Seventh Circuit Court of Appeals held that the application of updated SSA listings to pending

claims for supplemental security income (SSI) benefits is not formally retroactive, but the ALJ’s failure to give controlling weight to a treating physician’s opinion constituted reversible error.

Facts of the Case

Ms. Angela Cox, a claimant with cognitive and mental health disorders, sought supplemental security income (SSI) benefits over the course of nearly a decade. Her initial application in May 2014 was rejected, echoed in subsequent administrative denials, leading to an ALJ hearing in January 2018. Contemporaneously, new Social Security Administration (SSA) listings were published in 2017.

Ms. Cox’s claims of disability were rooted in several impairments, including learning, intellectual, depressive, and anxiety disorders. Ms. Cox’s treating physician provided a nuanced assessment of her condition, highlighting significant cognitive limitations and mental health problems limiting her ability to work. Despite this clinical assessment, the ALJ only gave “partial weight” to the physician’s opinion, choosing instead to rely on parts of the record that seemed to contradict the comprehensive assessment provided by the treating physician. Ultimately, the ALJ denied her request for benefits based on incomplete deference to the treating physician’s medical opinion and finding that Ms. Cox’s impairments did not align with the newer 2017 SSA listings.

On appeal, the U.S. District Court for the District of Columbia overturned on grounds that the application of new SSA listing criteria was impermissibly retroactive. The district court ordered the Social Security Administration to reconsider Ms. Cox’s case under the 2014 listings in effect at the time of her “initial application” per 20 C.F.R. § 404.614 (2017) while rejecting her other challenges to the agency’s decision. Ms. Cox appealed the district court’s finding that the ALJ correctly applied the treating physician rule, whereas the Social Security Administration appealed the district court’s ruling on retroactivity.

Ruling and Reasoning

The District of Columbia Circuit Court of Appeals reversed the lower court’s decision in part, holding that application of new SSA listing criteria was not retroactive. This conclusion was supported by *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988) and *Vartelas v. Holder*, 566 U.S. 257 (2012), each holding that laws and regulations are presumed

to apply prospectively absent express legislative authorization. Moreover, the court relied on *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), which ruled that statutes and agency rules are considered retroactive when they impair the rights a party possessed when acting, increase a party's liability for past conduct, or impose new duties with respect to completed transactions.

The D.C. Circuit clarified that the SSA's adoption of the 2017 listings did not retroactively impair Ms. Cox's rights, increase her liability, or impose new duties on past actions, drawing on reasoning from *National Mining Ass'n v. Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) and *Association of Accredited Cosmetology Schools v. Alexander*, 979 F.2d 859 (D.C. Cir. 1992). It emphasized that the existence of prior SSA listings merely provides anticipated benefits without conferring rights to those benefits. Thus, application of the newer 2017 listings to Ms. Cox's unresolved claim, without invoking retroactivity, mirrored analysis in *McCavitt v. Kijakazi*, 6 F.4th 692 (7th Cir. 2021), which identified a judicial determination as the dividing line between anticipated benefits and the vesting of a right to those benefits.

The D.C. Circuit expanded its analysis, premising retroactivity analysis specific to SSA listings as inconsistent with the fact that listings are regularly updated to reflect medical advancements, and are not meant to be static. Indeed, Judge Millet wrote that claimants "who would benefit from medical updates to the regulatory regime would be harmed if the agency were required to apply outdated modes of analysis simply because of the date a claim was submitted" (*Cox*, p 992). The court found such updates did not impose any new obligations or duties on Ms. Cox, nor did they affect her legal obligations or economic liabilities. Furthermore, they did not deprive her of the opportunity to prove her disability in subsequent steps of the evaluation process.

In *Flemming v. Nestor*, 363 U.S. 603 (1960), the Supreme Court found the Social Security Administration possesses a grant of "flexibility and boldness in adjustment to ever-changing conditions which it demands" (p 610–611) that would be significantly constrained if the process for evaluating disabilities were locked in the moment a claim was filed, no matter how long it took to adjudicate in the face of evolving medical standards.

Next, the court found error in the ALJ's weighing of evidence from Ms. Cox's treating physician,

underscoring the importance of the treating physician rule. That rule, which requires deference to the clinical opinions of treating physicians because of their unique perspective on the claimant's condition, was not adequately applied by the ALJ. The appeals court mandated that the ALJ must either give controlling deference to the treating physician's opinion or provide a substantively reasonable explanation for not doing so. The ALJ's selective consideration of evidence and failure to provide a comprehensive rationale for discounting the assessment was noted as a significant error, meriting remand for further consideration.

Discussion

Cox v. Kijakazi exemplifies how courts balance the necessity of updating agency regulations with procedural protections. Here, the court clarified the balance between updated SSA listings reflecting current medical understanding and claimant rights, outlining the technical requirements for impermissible retroactivity. This case highlights further the difference between loss of entitlement or a "settled expectation" of resources and denial of unadjudicated applications (*Cox*, p 993). Retroactivity applied to expectations must be based on what a party might reasonably rely on, with the D.C. Circuit further deeming it unreasonable to expect regulations to remain unchanged.

Of equal importance, the treating physician rule in effect when this case was originally heard no longer applies for claims on or after March 17, 2017, per 20 C.F.R. §§ 416.920(c), 416.927 (2016). Complete deference to clinicians was replaced with considering factors such as the supportability of the opinion with medical signs and laboratory findings, consistency with the totality of the record, and the specialization of the source offering the opinion.

Forensic and general psychiatrists should be aware of these procedural holdings, which significantly affect patient access to future resources. These potential impacts on patient access to care and healthier living environments are likely to be especially concentrated in socioeconomically marginalized groups reliant on supplemental security income and other government benefit programs.

Group Homes and Zoning Laws

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