

From: ACLU of Pennsylvania
Re: Application of the Social Security Act’s Anti-Attachment Provision to State Attempts to Collect Fines and Costs from Social Security Recipients
Date: March 16, 2018 (updated November 202, 2024)

MEMORANDUM

This memorandum outlines the legal arguments for why Pennsylvania cannot lawfully collect fines, costs, and/or restitution (collectively “legal financial obligations” or “LFOs”) from defendants who receive benefits under the Social Security Act based on the anti-attachment provision of that Act.¹

In addition, under U.S. Supreme Court precedent, Fourteenth Amendment equal protection requires that criminal debtors not be treated differently from civil debtors. Accordingly, state law that prohibits payment of Social Security funds for civil debt also applies to criminal debt.

A. The Social Security Act protects any “moneys paid or payable” from any “legal process.”

The Social Security Act provides that “none of the moneys paid or payable” under the Social Security Act “shall be subject to execution, levy, attachment, garnishment, or *other legal process*, or to the operation of any bankruptcy or insolvency law.” 42 U.S.C. § 407(a) (emphasis added).² The United States Supreme Court has explained that § 407(a) “imposes a broad bar against the use of any legal process to reach all social security benefits.” *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 416 (1973). Even when money has been deposited in a bank account, it still “retained the quality of ‘moneys’ within the purview of § 407.” *Id.* In that case, a unanimous Supreme Court ruled for a Social Security beneficiary who was sued by a state to compel him to use his Social Security funds to repay state welfare benefits. *Id.* at 414-15. As the Court noted, it saw “no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor,” and the broad prohibition against using “any legal process”—in that case a lawsuit—to reach benefits was “broad enough to include all claimants, including a State.” *Id.* at 416-17.

The Supreme Court later defined the phrase “other legal process” as involving “some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability.” *Washington State Dep’t of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 385 (2003). There, the state made itself representative payee for Social Security benefits paid to foster children without any judicial involvement; the Court ruled that the state did not use a “legal process” because the procedure to

¹ These benefits include both Title II (Old Age Survivors and Disability Insurance) and Title XVI (SSI) benefits.

² Section 407 is incorporated into SSI benefits. See 42 U.S.C. § 1383(d)(1) (“The provisions of section 407 of this title . . . shall apply with respect to this part to the same extent as they apply in the case of subchapter II”); *Moore v. Colautti*, 483 F.Supp. 357, 363 (E.D. Pa. 1979); *Washington State Dep’t of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 382 (2003) (“Section 407(a) protects SSI and [Old Age Survivors and Disability Insurance] benefits”).

become representative payee was simply administrative, as set forth by statute, and did not involve any judicial or quasi-judicial mechanism that would implicate § 407(a). *Id.* at 386.³

B. A court order requiring payment of LFOs constitutes a “legal process.”

Philpott and *Keffeler*, which are the touchstone Supreme Court cases interpreting § 407(a), show that a state cannot use a judicial process to reach money paid through Social Security benefits. This includes LFOs. In *City of Richland v. Wakefield*, 380 P.3d 459, 465 (Wash. 2016), the Supreme Court of Washington held that a court could not order a person to make monthly payments relating to criminal fines when the person’s only income came from Social Security benefits. Citing *Philpott*, the court explained that the Supreme Court “has already rejected prior state attempts to recoup money from social security disability recipients, even after the money has been deposited in a bank.” *Id.* An order to pay from Social Security benefits constituted “other legal process” within the definition of § 407(a), and that “federal law prohibits courts from ordering defendants to pay LFOs if the person's only source of income is social security disability.” *Id.* at 466. The defendant, who had been ordered to pay \$15 per month, was therefore relieved of that obligation as long as Social Security was her only source of income.

Courts in Michigan, Montana, and Alabama have reached similar decisions. In *In re Lampart*, a Michigan court found that assets of a mother, who was ordered to pay restitution on behalf of her juvenile son and whose sole income came from Social Security benefits, could not be reached through enforcement of the restitution order under the court’s contempt powers without violating the Social Security Act’s anti-attachment provision. 856 N.W.2d 192 (Mich. 2014). The court held that a contempt order against the mother “would be the functional equivalent of an order directly reaching the funds, such that labeling the order as one of ‘contempt’ rather than ‘garnishment’ would exalt form over substance and ignore the reality of the circumstances.” *Id.* at 201. *See State v. Eaton*, 99 P.3d 661, 666 (Mont. 2004) (defendant’s Social Security benefits could not be included in a person’s total income for the purpose of calculating the amount of monthly restitution payments because it would “improperly burden[] his social security benefits”). Similarly, an Alabama appeals court has held in the child support context that “requiring payment of a recipient’s SSI benefits under pain of contempt have been construed as ‘other legal process.’” *J.W.J. III v. Alabama Department of Human Resources*, 218 So.3d 355, 358 (Ala. App. Ct. 2016). As a result, an order requiring payment “under threat of contempt violates § 407(a).”

C. Pennsylvania cases support the argument that a defendant cannot be compelled to use Social Security benefits to pay LFOs.

The specific issue of using Social Security benefits to pay LFOs has not arisen in Pennsylvania or the Third Circuit. And although there are only a handful of cases in Pennsylvania that address § 407(a) generally, they tend to support our position. *See Good v. Wohlgemuth*, 327 A.2d 397,

³ While there is language in *Keffeler* suggesting that the “legal process” at issue needs to be akin to garnishment, the case is better understood as explaining that following a procedure set forth by statute is not itself a “legal process” unless it involves a judicial or quasi-judicial mechanism. In *Keffeler*, a state agency designated itself as representative payee for Social Security benefits, pursuant to statute. 537 U.S. at 379. The Court was simply explaining that absent some judicial process, that type of action is not a “legal process” prohibited by § 407(a).

399 (Pa. Commw. Ct. 1974) (citing *Philpott* and finding it “unremarkable that the Commonwealth, as any other creditor, would be subject to the strictures of” § 407(a)); *In re Christinis’ Estate*, 18 Pa. D. & C. 3d 138, 142 (1981) (decedent’s social security benefits remained protected under § 407 from payment to the Commonwealth when placed in a guardianship account “since they were being held for the benefit of the recipient”).

Even one potentially problematic Pennsylvania Supreme Court is easily addressed. In *In re McGreevy’s Estate*, 286 A.2d 355, 356-57 (Pa. 1971), the Pennsylvania Supreme Court suggested that benefits from the United States Civil Service Commission—which are exempted from any “execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws”—may not be protected once deposited. While that statutory language is strikingly similar to § 407(a), the statute lacks the qualifier found in § 407(a) that applies it to all “moneys paid or payable.” See *Miller v. Commonwealth Dep’t of Public Welfare*, 418 A.2d 814, 816 n.5 (Pa. Commw. Ct. 1980) (unlike the Civil Service Commission statute, § 407 prohibits attaching any moneys “paid or payable,” and that language includes money already deposited in a bank account).

The case law also supports finding that a court order to pay constitutes a “legal process.” In another case involving reimbursement of state welfare benefits, a federal district court held in *Moore v. Colautti* that any “implied or express threats of formal sanctions, as well as the sanctions themselves or formal legal machinery” constitute “other legal process.” 483 F. Supp. 357, 368 (E.D. Pa. 1979). That court invalidated a practice where Social Security recipients were told by caseworkers not to deposit their checks, which “generate[d] the impression that the SSI proceeds are not protected funds and that legal sanctions may ensue if the recipient fails to make reimbursement from that particular check.” *Id.* at 369-70. Similarly, the Commonwealth Court has said that a state social worker does not engage in any “legal process” by informing Social Security recipients that the state is entitled to part of their benefits, as there is no indication that the petitioner was “intimidated or coerced into reimbursing the Department or that formal or quasi-formal legal action was threatened by the Department. While petitioner believed that she was under an enforceable legal duty to reimburse the Department, the Department’s collection method was ‘not so intrinsically coercive as to constitute “legal process” within the meaning of section 407.’” *Wyatt v. Commonwealth, Dep’t of Public Welfare*, 463 A.2d 64, 67 (Pa. Commw. Ct. 1983) (en banc) (quoting *Moore*).⁴

D. The only way around the § 407(a) protections is through statutory amendment.

As described above, the protections provided by § 407(a) have been interpreted broadly by the courts. The only way to bypass these protections is by statutory amendment, which has happened in the child support context. The Child Support Enforcement Act of 1975 specifically allows money from the United States to be withheld under state law and subject to “any other legal process” to provide child support or alimony. See *Whitmore v. Kenney*, 626 A.2d 1180, 1184 (Pa. Super. Ct. 1993) (ruling that courts can compel child support payments from Social Security

⁴ In another case, *Tunnickliff v. Dep’t of Public Welfare*, 396 A.2d 1168, 1170 (Pa. 1978), the Pennsylvania Supreme Court found there was no violation of § 407(a) when welfare recipients voluntarily repaid some state welfare benefits from their Social Security funds without being told of their rights. The state did not use any threat of legal sanction or involve any judicial process.

benefits). The Superior Court later explained that the child support carve-out, in 42 U.S.C. § 659(a), “provides an exception to the general prohibitions contained in Section 407, and allows otherwise protected funds to be reached through legal process to enforce ‘the legal obligation of the individual to provide child support.’” *Silver v. Pinskey*, 981 A.2d 284, 296 (Pa. Super. Ct. 2009) (en banc). But no such exemption exists for LFOs.

While defendants will remain liable for their LFOs, courts will not be able to use a legal process to collect from their Social Security benefits. *Tunncliff v. Dep’t of Public Welfare*, 396 A.2d 1168, 1171 (Pa. 1978); *Moore*, 483 F. Supp. at 368 (“*Philpott* did not eliminate this underlying debt; the decision merely precluded states from enforcing the obligation against protected SSI funds.”).⁵

E. U.S. Supreme Court precedent and state law prohibit requiring that individuals who owe criminal debt be treated differently from civil debtors, who cannot be required to use Social Security funds to pay that debt.

Independently, precedent that requires criminal and civil debtors be treated equally precludes collection on debts—including criminal court debts—that would require payment from Social Security funds. The U.S. Supreme Court has held that the same protections for civil debtors must apply equally to those who owe criminal debt, because a state may not “impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.” *James v. Strange*, 407 U.S. 128, 138 (1972). Accordingly, the Court’s collections efforts would violate the Equal Protection Clause of the Fourteenth Amendment if “[t]he convicted person from whom recoupment is sought” does not “retain[] all the exemptions accorded other judgment debtors.” *Fuller v. Oregon*, 417 U.S. 40, 47 (1974). The result is that the civil debtors’ exemptions—including Social Security funds—must apply equally to defendants’ criminal debt.

State law prohibits courts from requiring that individuals use Social Security funds to pay debts. Pa.R.C.P. 3123.1 lists a number of exemptions of types of property that are exempt from execution to satisfy debts, including “2. Social Security benefits, 42 U.S.C. § 407.”⁶ Pursuant to *James* and *Fuller*, these civil protections apply equally to criminal debt. For example, in *State v. Williams*, 343 So. 2d 35 (Fla. 1977), the Florida Supreme Court struck down a provision of a state statute that eliminated the statute of limitations for certain criminal debtors, as such a provision was “on its face . . . a violation of the Equal Protection Clause” because it treated certain debtors differently than other debtors. *Id.* at 37-38. Compare *Smith v. Whatcom Cnty. Dist. Ct.*, 52 P.3d 485, 490-92 (Wash. 2002) (applying civil statute of limitations to criminal debt collection where no such limitation was specified). Otherwise, criminal defendants who are money are not subject to the same exemptions as similarly-situated civil debtors, which would violate the Equal Protection Clause.

⁵ *Tunncliff* is problematic only insofar as it holds that the state has no obligation to affirmatively inform individuals of their rights under § 407(a).

⁶ Unlike the restriction on any “legal process” under the Social Security Act discussed above, this is a matter of restrictions on debt collection under Pennsylvania state law, but the outcome is the same.