

2002

Illinois Appellate Court Bars Child Support Ordered from Supplemental Security Income

Jeremy Nix

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Courts Commons](#), [Family Law Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Jeremy Nix, *Illinois Appellate Court Bars Child Support Ordered from Supplemental Security Income*, 7 Pub. Interest L. Rptr. 26 (2002).
Available at: <http://lawcommons.luc.edu/pilr/vol7/iss1/10>

This News is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

ILLINOIS APPELLATE COURT BARS CHILD SUPPORT ORDERED FROM SUPPLEMENTAL SECURITY INCOME

By Jeremy Nix

The Illinois Appellate Court for the Second District vacated an order of the Circuit Court of DuPage County that ordered child support payments to be made by a parent whose sole source of income was Supplemental Security Income benefits. *The Dep't of Pub. Aid ex rel. Lozada v. Rivera*, 755 N.E.2d 548 (Ill. App. Ct. 2001).

Whether a child support order could require Supplemental Security Income (SSI) benefits to be paid to the custodial parent has not been consistently decided. Only a handful of other states have decided the issue, which involved two different areas of law, and their reasoning was not universal. Brenda Carroll of the DuPage County Bar Association Legal Aid Service is the attorney for the defendant, Felicita Lozada, in the Illinois child support case. According to Carroll, one difficulty was that "a lot of child support attorneys don't have to do disability work, so there was nothing as far as precedent [in Illinois]."

To allow SSI benefits to be used to satisfy child support obligations would frustrate Congress's intention to provide a minimally adequate income for disabled indigents.
--Rivera, 755 N.E.2d at 554 (Ill. App. Ct. 2001)

The result of the Illinois Appellate Court decision was the same as

that found in many of the state courts that have decided the issue. The court's opinion cited approvingly the results reached in Arkansas, Minnesota, Tennessee, and Kentucky, although it did not endorse all of their reasoning. Those state courts have held that section 407 of the Social Security Act prevents state courts from ordering child support to be paid from SSI benefits. *Rivera*, 755 N.E.2d at 550. Such state courts based their decisions on the preemptive nature of section 407.

The Connecticut Supreme Court in April 2001 also ruled that child support could not be ordered from SSI benefits. *Marrocco v. Giardino*, 767 A.2d 720 (Conn. 2001). However, the Connecticut court based its decision solely on state law and not on the preemptive effect of section 407.

A Pennsylvania court has held, alternatively, that child support can be ordered from a parent whose sole source of income is from SSI. *Whitmore v. Kenny*, 626 A.2d 1180 (Pa. Super. Ct. 1993). Analogizing SSI to Veterans' Disability benefits, the Pennsylvania court determined that section 407 only prevents the state from ordering the government to pay future SSI benefits to a custodial parent. The court determined that, as long as the order only affects benefits already paid, it does not violate the Social Security Act. The court did not find that the different intentions of Congress--providing SSI only to support individuals and Veter-

ans' Disability benefits to support veterans' families--altered the ability of the state to reach the benefits once paid.

The Illinois Appellate Court distinguished Veterans' Disability benefits from SSI based on Congress' intent in providing each type of benefit. In the case of veterans' benefits, Congress clearly intended the benefits to provide for the disabled veteran and their family. *Rivera*, 755 N.E.2d at 553. On the other hand, Congress intended SSI benefits to be used only for the subsistence of the recipient, as a last resort. *Rivera*, 755 N.E.2d at 554. "This is the amount that should be sacred," stated Carroll. "These are the people that are so disabled they have never had a job." The Illinois Appellate Court agreed, stating that to allow SSI benefits to be used to satisfy child support obligations would frustrate Congress's intention to provide a minimally adequate income for disabled indigents. *Rivera*, 755 N.E.2d at 554.

The Social Security Act provides for different types of benefits. The more commonly encountered benefits are Social Security Disability (SSD) benefits. SSD benefits are financed from payroll deductions to insure workers against future disabilities. However, SSI benefits are financed from general revenues and are provided to qualified disabled indigents. SSI offers the recipient a minimally adequate income, although still short of the poverty line.