No. 23-715

# In the Supreme Court of the United States

ADVOCATE CHRIST MEDICAL CENTER, ET AL.,
PETITIONERS

*v.*

XAVIER BECERRA,
SECRETARY OF HEALTH AND HUMAN SERVICES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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## QUESTION PRESENTED

Whether the statutory reference in the Medicare Act, 42 U.S.C. 1395 *et seq*., to hospital patients who were "entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), refers to patients who, while they received hospital services, were entitled to income-supplementing payments under Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq*.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-17) is reported at 80 F.4th 346. The opinion of the district court (Pet. App. 18-45) is not published in the Federal Supplement but is available at 2022 WL 2064830. The decision of the Administrator of the Centers for Medicare & Medicaid Services (Pet. App. 46-93) and the decisions of the Provider Reimbursement Review Board (Pet. App. 94-110, 111-127) are available at 2017 WL 2812948, 2017 WL 1550303, and 2017 WL 1833478.

### JURISDICTION

The judgment of the court of appeals was entered on September 1, 2023. On November 8, 2023, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 29, 2023, and

the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. The Medicare Act, *i.e.*, Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*, provides an annual payment to certain hospitals for providing inpatient hospital care to Medicare beneficiaries. 42 U.S.C. 1395ww(d). As a general matter, "[t]he Medicare program pays a hospital a fixed rate for treating each Medicare patient, based on the patient's diagnosis," which is "designed to reflect the amount[] an efficiently run hospital, in the same region, would expend to treat a patient with the same diagnosis." *Becerra* v. *Empire Health Found.*, 597 U.S. 424, 429 (2022). That flat-rate payment is paid "regardless of the hospital's actual costs" and "thus gives hospitals an incentive to provide efficient levels of medical service." *Ibid.*

The Medicare Act also provides an additional payment to "hospitals serving an 'unusually high percentage of low-income patients'"—known as a "'disproportionate share hospital' (DSH) adjustment"—because "low-income individuals are often more expensive to treat than higher income ones, even for the same medical conditions." *Empire Health*, 597 U.S. at 429 (citation omitted); see 42 U.S.C. 1395ww(d)(5)(F)(i)(I) and (v). That payment is calculated in relevant part by adding "two statutorily described fractions, usually called the Medicare fraction and the Medicaid fraction." *Empire Health*, 597 U.S. at 429; see *id.* at 431-432; 42 U.S.C. 1395ww(d)(5)(F)(vi). Those fractions are "designed to capture two different low-income populations that a hospital serves." *Empire Health*, 597 U.S. at 429.

This case concerns the Medicare fraction, which is described in 42 U.S.C. 1395ww(d)(5)(F)(vi)(I) and which

"represents the proportion of a hospital's Medicare patients who have low incomes, as identified by their entitlement to supplementary security income (SSI) benefits." *Empire Health*, 597 U.S. at 429-430. The statute describes that fraction in "technical" language "'addressed to specialists'" familiar with the provisions of the Social Security Act, 42 U.S.C. 301 *et seq*. See *Empire Health*, 597 U.S. at 434 (citation omitted).

Two titles of the Social Security Act are relevant here.[1] First, Title XVIII (42 U.S.C. 1395 to 1395*lll*)—the Medicare Act—"provides Government-funded health insurance" to elderly and disabled Americans. *Empire Health*, 597 U.S. at 428. Part A of Title XVIII (42 U.S.C. 1395c to 1395i-6) governs such insurance for "inpatient hospital treatment" and "associated physician and skilled nursing services." *Empire Health*, 597 U.S. at 428. Second, Title XVI (42 U.S.C. 1381 to 1383f) "provide[s] supplemental security income to [financially needy] individuals" who are aged or disabled, 42 U.S.C. 1381. See 42 U.S.C. 1382(a); *Empire Health*, 597 U.S. at 430. Title XVI provides an aged or disabled individual who is "eligible on the basis of his income and resources" an "entitlement to benefits" by providing that the individual "shall * * * be paid benefits" subject to Title XVI's requirements, 42 U.S.C. 1381a (emphasis omitted), and specifies that "[t]he benefit under [Title XVI]" is a monetary payment in an amount governed by statute, 42 U.S.C. 1382(b).

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[1] The Social Security Act is codified as Chapter 7 of Title 42 of the U.S. Code, where the individual titles of the Act are designated as subchapters of Chapter 7. See Pet. App. 2. This brief refers to the titles of the Social Security Act and similarly substitutes "Title" for "subchapter" when quoting from the U.S. Code.

The Medicare Act provides that the Medicare fraction's "numerator" is "the number of [a] hospital's patient days for [the relevant time] period which were made up of patients who (for such days) were entitled to benefits under [P]art A of [Title XVIII] and were entitled to supplementary security income benefits (excluding any State supplementation) under [Title] XVI." 42 U.S.C. 1395ww(d)(5)(F)(vi)(I). The Medicare fraction focuses on the subset of a hospital's patients who are simultaneously "entitled" to Medicare insurance "benefits" under Part A of Title XVIII and "entitled" to supplemental income "benefits" under Title XVI, *ibid.*, in order to measure "the number of [a hospital's] patient days attributable to Medicare patients" who "have low incomes, as identified by their entitlement to supplementary security income" "benefits." *Empire Health*, 597 U.S. at 430.

With respect to Medicare, when an individual "turns 65 or has received federal disability benefits for 24 months, he automatically (*i.e.*, without application or other filing) becomes 'entitled' to benefits under Medicare Part A"—*i.e.*, he becomes "'entitled to hospital insurance benefits under [P]art A'" of Title XVIII. *Empire Health*, 597 U.S. at 428, 435-436 (quoting 42 U.S.C. 426(a) and (b)); citing 42 U.S.C. 1395d(a)). That "entitlement" to Part A insurance "never goes away" "(unless a disability diminishes)." *Id.* at 437. And in *Empire Health*, this Court explained that an individual's "Part A entitlement" "coexists with limitations on payment" under Part A's insurance benefits, "reflect[ing] the complexity of health insurance." *Id.* at 436-437. For instance, when an individual is entitled to Part A insurance but some or all of his hospital charges are not paid by Medicare because he "hit some limit on coverage as

to one medical service," the individual is "still insured" under Part A, such that "the stoppage of payment for any given service cannot be thought to affect the broader statutory entitlement to Part A benefits." *Id.* at 437. The Court accordingly determined that "a person is 'entitled to [Part A] benefits'" within the meaning of the Medicare-fraction provision "if he qualifies for the Medicare program," "even when Medicare is not paying for part or all of his hospital stay." *Id.* at 428 (brackets in original).

With respect to the SSI program, which "provide[s] supplemental security income to individuals," 42 U.S.C. 1381, an individual's "*entitlement*" to be "paid" a monetary sum, 42 U.S.C. 1381a—*i.e.*, to be paid "[t]he benefit under [Title XVI]," 42 U.S.C. 1382(b)—does not arise automatically and may vary from month to month. An individual must submit an "application for benefits" to receive SSI payments. 42 U.S.C. 1382(c)(2) and (7). The individual's "eligibility for [that] benefit * * * for a month" is then "determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month." 42 U.S.C. 1382(c)(1); see 42 U.S.C. 1382h(a). "[T]he amount of such benefit" likewise is "determined for such month on the basis of income and other characteristics." 42 U.S.C. 1382(c)(1); see 42 U.S.C. 1382(c)(2). Only where the individual is "determined * * * to be eligible on the basis of his income and resources" does the individual become "entitle[d]" to "be paid benefits" "in accordance with and subject to the provisions of [Title XVI]." 42 U.S.C. 1381a (emphasis omitted).

Such "benefit payments," however, are suspended in any month in which the individual "no longer meets the requirements of eligibility under [T]itle XVI." 20 C.F.R.

416.1320(a). SSI payments then may "not be resumed until the individual again meets all requirements for eligibility" (except for "the filing of a new application") as proven by the individual through the submission of "such evidence as may be necessary * * * to establish that he or she again meets all requirements for eligibility." 20 C.F.R. 416.1320(b)(1). After 12 consecutive months of suspension, an individual's eligibility is completely "terminate[d]," 20 C.F.R. 416.1335, ending any basis to be paid SSI payments unless and until the individual "reapplie[s] for," and again establishes an entitlement to, SSI benefits, 42 U.S.C. 1383(j)(1); see 42 U.S.C. 1381a.

2. Petitioners are a group of hospitals that sought administrative review of their Medicare payments for a series of years, alleging that their DSH adjustments were erroneous. Pet. App. 18, 26. Petitioners argued that the Medicare fraction's accounting of a hospital's patient days attributable to Medicare patients who are "'entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), includes not only days for which the patient is entitled to be "paid" SSI benefits but also "unpaid SSI days." Pet. App. 26; see *id.* at 107-108.

The Provider Reimbursement Review Board (Board) issued decisions (Pet. App. 94-110, 111-127) in which it concluded, as relevant here, that it lacked authority to resolve petitioners' challenge because it was bound by rulings on the subject by the relevant component of the the Department of Health and Human Services (HHS), namely, the Centers for Medicare & Medicaid Services (CMS). *Id.* at 108-110, 125-127.

The CMS Administrator granted review and modified the Board's decisions. Pet. App. 46-93. The Admin-

istrator, as relevant here, rejected petitioners' interpretation of the Medicare-fraction phrase "entitled to supplemental security income benefits * * * under [T]itle XIV," *id.* at 78 (emphasis omitted), concluding that a hospital patient is entitled to such benefits only when the patient is entitled to "receiv[e] a cash [SSI] benefit" for the period of his hospital stay, *id.* at 81. See *id.* at 78-82. The Administrator explained that the Medicare fraction's numerator counts hospital days attributable to each patient "'entitled to [Medicare] benefits under [P]art A [of Title XVIII]'" who were also "'entitled to supplementary security income benefits * * * under [T]itle XVI,'" and that an "[e]ntitlement to Medicare Part A is different from entitlement to SSI benefits." *Id.* at 80. The Administrator explained that "Medicare benefits under Part A" are "health insurance benefits," *id.* at 81, to which a patient is "entitled" based on his age or disability "status," which "does not change regardless of whether the person qualifies for particular Part A benefits" resulting in a Medicare "'payment' for the service," *id.* at 78, 80. An "entitlement to SSI benefits" is "different," the Administrator continued, because "SSI is a cash benefit" and "only a person who is actually paid these benefits can be considered 'entitled' to [them]." *Id.* at 80-81. The Administrator also noted that "[u]nlike the permanent, unchanging status of Medicare Part A entitlement, 'entitlement to receive SSI benefits is based on income and resources and, therefore[,] can vary from time to time.'" *Id.* at 80 (citation omitted). The Administrator thus concluded that a person who "is not actually receiving SSI payments" for the relevant period under Title XVIII "is not 'entitled' to SSI benefits" for that period. *Id.* at 82.

3. Petitioners sought judicial review in the district court, which granted summary judgment to the government. Pet. App. 18-45. As relevant here, the court held that the agency's interpretation of the Medicare fraction was reasonable and entitled to deference. *Id.* at 37-40.

4. The court of appeals affirmed. Pet. App. 1-17. As relevant here, the court concluded that the Medicare fraction's use of "the phrase 'entitled to supplementary security income benefits . . . under [Title] XVI' * * * cover[s] only Medicare beneficiaries who are entitled to SSI cash payments at the time of their hospitalization," not (as petitioners argued) those who are simply "enrolled in the SSI program at the time of the hospitalization" but who are not entitled to "receive a cash payment at that time," *id.* at 9 (citation omitted). See *id.* at 9-14. The court accordingly upheld the Secretary's interpretation as "correct," "without considering any question of *Chevron* deference." *Id.* at 14.

The court of appeals observed that Title XVI expressly provides that its basic "'entitlement to benefits' is that aged, blind, or disabled individuals, once determined not to have income or resources above the statutory cutoffs, 'shall, in accordance with and subject to the provisions of [Title XVI], be paid benefits.'" Pet. App. 10 (quoting 42 U.S.C. 1381a). The court also noted that Title XVI sets forth "'the benefits under this [Title]'—not simply 'a' benefit—in specific dollar amounts." *Ibid.* (quoting 42 U.S.C. 1382(b); brackets omitted). The court added that "[s]cores of later provisions elaborate on when and how this cash benefit is to be paid out," *ibid.*, and explained that Title XVI expressly provides for a "monthly cash benefit for certain individuals who qualify [for SSI payments] in some months but not oth-

ers," *id.* at 11 (citing 42 U.S.C. 1382h(a)(1)). Thus, the court concluded, "[a]t every turn, [Title] XVI is about cash payments for needy individuals who are aged, blind, or disabled." *Id.* at 9.

The court of appeals noted petitioners' argument that "the word 'benefits'" in the statutory phrase "'supplementary security income benefits . . . under [Title] XVI'" may "include cash or non-cash benefits, tangible or intangible." Pet. App. 11. But the court explained that "the question here turns on what counts as 'income' benefits 'under [Title] XVI,'" and concluded that petitioners failed to identify any such "income" benefits under Title XVI to which SSI enrollees would be entitled when they are not entitled to SSI payments. *Ibid.* The court, for instance, explained that the "'employment services, vocational rehabilitation services, [and] other support services from an employment network'" provided under the Ticket to Work Program to certain "SSI enrollees * * * after they fail to qualify for [SSI] monthly payments" are non-cash benefits "provided under [Title] XI," not Title XVI. *Id.* at 5, 12 (quoting 42 U.S.C. 1320b-19(a)). And the court explained that Congress, for purposes of that separate Title XI benefit program, specifically defined "the term 'supplemental security income benefits under [Title] XVI' [to] mean[] a cash benefit under section 1382 or 1382h(a) of [Title 42 of the U.S. Code]," thus confirming the court's understanding of the parallel phrase in the Medicare fraction. *Id.* at 11 (quoting 42 U.S.C. 1320b-19(k)(5)) (brackets omitted).

Finally, the court of appeals rejected petitioners' contention that this Court's decision in "*Empire* [*Health*] compels their construction of the phrase 'entitled to supplementary security income benefits'" as including

Medicare patients who are not entitled to an SSI cash payment during their hospital stays. Pet. App. 12-13. The court noted that Title XVIII "provides health insurance to the elderly and disabled," *id.* at 2, and explained that *Empire Health* interpreted "the phrase 'entitled to benefits under part A'" of Title XVIII to "cover[] patients who meet Part A's requirement of being elderly or disabled, even if Medicare does not pay for specific treatments because of coverage limitations, alternative insurance, or the like." *Id.* at 12-13. The court explained that that understanding of an entitlement to Medicare Part A insurance is consistent with its determination that the "phrase 'entitled to [SSI] benefits'" under Title XVI excludes patients who are not entitled to SSI payments for the time they are hospitalized and noted "key distinctions between the Part A and SSI schemes." *Id.* at 13. The court observed that the benefit of Medicare insurance, for which "individuals rarely if ever lose [their] eligibility over time," "extend[s] well beyond payment for specific services at specific times." *Ibid.* SSI benefits under Title XVI, the court explained, are different because such benefits are "only cash payments" for which an individual's eligibility will fluctuate "from one month to another" with "fluctuations in their income or wealth." *Ibid.* "Given this structure," the court concluded, "it makes little sense to say that individuals are 'entitled' to [an SSI] benefit in months when they are not even eligible for it." *Ibid.*

**ARGUMENT**

Petitioners contend (Pet. 28-35) that the court of appeals erred by interpreting the DSH statute's reference to hospital patients "entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), as including only those patients

who were actually entitled to be paid SSI cash payments during their hospital stays. Petitioners further contend (Pet. 13-28) that that interpretation conflicts with this Court's decision in *Becerra* v. *Empire Health Foundation*, 597 U.S. 424 (2022), and warrants review. The decision of the court of appeals—which sustained the interpretation of the SSI portion of the Medicare fraction that HHS has followed since the outset of the DSH program (see Pet. 9-10)—is correct and does not conflict with any decision by this Court or another court of appeals. No further review is warranted.

1. The court of appeals correctly concluded that the Medicare fraction's use of "the phrase 'entitled to supplementary security income benefits . . . under [Title] XVI' * * * cover[s] only Medicare beneficiaries who are entitled to SSI cash payments at the time of their hospitalization." Pet. App. 9 (citation omitted). An individual is "entitled" to "supplementary security income benefits" under Title XVI—*i.e.*, a monetary payment that supplements their income—only for those months in which the individual is entitled to receive such a payment, not (as petitioners argue) for months in which the individual remains enrolled in the SSI program but is not entitled to any payment.

a. The Medicare Act provides that the "numerator" of the Medicare fraction is "the number of [a] hospital's patient days for [the relevant time] period which were made up of patients who (for such days) were entitled to benefits under [P]art A of [Title XVIII] and were entitled to supplementary security income benefits (excluding any State supplementation) under [Title] XVI." 42 U.S.C. 1395ww(d)(5)(F)(vi)(I). The Act therefore requires an identification of each patient who "for such days" that the patient was hospitalized—*i.e.*, the days

that count as a subset of the "hospital's patient days"—satisfy two criteria: The patient must have been at the time "entitled to benefits under [P]art A of [Title XVIII]" and "entitled to supplementary security income benefits * * * under [Title] XVI." *Ibid.*

A patient is "entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), for those months for which the patient has a right under Title XVI to be paid SSI payments. "*The* benefit under [Title XVI]" is an individual's right to be paid a statutorily determined monetary sum. 42 U.S.C. 1382(b) (emphasis added). Indeed, the very purpose of Title XVI is to establish a federal program to "provide supplemental security *income* to [aged or disabled] individuals." 42 U.S.C. 1381 (emphasis added). Title XVI thus confers a basic "entitlement to benefits"—a right to monetary payments—by providing that an aged or disabled "individual who is determined * * * to be eligible on the basis of his income and resources *shall*, in accordance with and subject to the provisions of [Title XVI], *be paid benefits*" by the Social Security Administration (SSA). 42 U.S.C. 1381a (emphases altered). That entitlement to be "paid benefits" (*ibid.*) depends on "[a]n individual's eligibility for a benefit * * * *for a month*," which is "determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics *in such month*." 42 U.S.C 1382(c)(1) (emphases added). As a result, for any month for which the individual "no longer meets the requirements of eligibility under [T]itle XVI," SSI "benefit payments" are suspended because the individual is not entitled to those benefits. 20 C.F.R. 416.1320(a). SSI benefit payments then will not

resume "until the individual again meets all requirements for eligibility." 20 C.F.R. 416.1320(b)(1).

That method for determining an individual's entitlement to supplemental security income benefits makes good sense. Title XVI provides such supplementary income in the form of monetary payments only to an aged or disabled individual with sufficient financial need, as reflected by the individual's "income, resources, and other relevant characteristics." 42 U.S.C 1382(c)(1). But such an individual's financial situation can fluctuate over time. Title XVI accordingly evaluates need monthly by determining "eligibility" for benefit payments "for a month" based on the individual's finances "in such month." *Ibid.*

The Medicare fraction likewise uses entitlement to SSI benefits under Title XVI as a proxy to identify a hospital's low-income patients. More specifically, the Medicare fraction's "numerator" calculates "the number of [the hospital's] patient days attributable to Medicare patients" who "have low incomes, as identified by their entitlement to [SSI] benefits." *Empire Health*, 597 U.S. at 429-430. And because the fraction's "denominator is the number of patient days attributable to all Medicare patients," the overall fraction generally "represents the proportion of a hospital's Medicare patients who have low incomes." *Ibid.* To count the "hospital's patient days" attributable to those patients who are needy, the fraction requires an identification of those patients who were "entitled to supplementary security income benefits * * * under [Title] XVI" "for such days" that they were hospitalized. 42 U.S.C. 1395ww(d)(5)(F)(vi)(I). As a result, as the court of appeals correctly concluded, the fraction counts "Medi-

care beneficiaries who are entitled to SSI cash payments at the time of their hospitalization." Pet. App. 9.

b. Petitioners contend (Pet. 28-35) that, for two reasons, the court of appeals erred in interpreting "entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), to exclude a hospital's Medicare patients who were enrolled in the SSI program but were not entitled to any SSI payment for the months during which they were hospitalized. Neither of those reasons identifies any interpretive error.

i. Petitioners first contend (Pet. 29-33) that the court of appeals adopted an unduly narrow understanding of the word "entitled." Petitioners assert (Pet. 29-31) that the word "entitled" carries a "term-of-art meaning within the Medicare Act" because this Court in *Empire Health* determined that a different phrase in the Medicare fraction—"entitled to benefits under [P]art A of [Title XVIII]," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I)—refers to patients "meeting the basic statutory criteria [for Medicare Part A insurance], not actually receiving payment for a given day's treatment," *Empire Health*, 597 U.S. at 435. Petitioners are wrong because they fail to account for the statutory text identifying the type of "benefits" to which the patient must be "entitled."

The entitlement to benefits in *Empire Health* was an "entitle[ment] to hospital insurance benefits under [P]art A." *Empire Health*, 597 U.S. at 435 (quoting 42 U.S.C. 426(a) and (b)). The Court accordingly determined that the phrase "entitled to benefits under [P]art A of [Title XVIII]," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), refers to a patient "meeting the basic statutory criteria" to be entitled to Part A *insurance* coverage—an entitlement that is "'automatic'" because the relevant statu-

tory criteria are based only on an individual's "[a]ge or disability" status. *Empire Health*, 597 U.S. at 435-436 (quoting 42 U.S.C. 426). The reason why a hospital patient need "not actually [be] receiving payment for a given day's treatment" to be entitled to benefits under Part A, *id.* at 435, is because such a "payment" for any particular treatment is not the "benefit" to which the patient is "entitled" under Part A. The relevant benefit to which a patient is entitled under Part A is "'hospital insurance'" under which the Medicare Program may ultimately pay for such services. *Ibid.* (citation omitted). As the Court explained, "the Medicare statute reflects the complexity of health insurance" in that, even if a patient's Medicare Part A insurance does not result in a "payment for any given service" (because, for instance, the patient has "hit some limit on coverage"), the patient is "still insured." *Id.* at 437. For that reason, the patient's "statutory entitlement to Part A [insurance] benefits" is not "affect[ed]" by whether his Medicare insurance coverage ultimately results in an actual "payment" for a particular hospital service. *Ibid.*

A patient's "entitle[ment] to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), is different because those benefits consist of monetary payments to the beneficiary of supplemental "income." And as explained above, an individual must apply for SSI benefits and must then be eligible for each month's payment based on his income, resources, and other criteria for that month in order to be "entitled" to that payment. Thus, an individual enrolled in the program who is not entitled to an SSI payment in any given month is not "entitled to supplementary security income benefits * * * under [Title] XVI," *ibid.*, for that month. Petitioners' contrary interpreta-

tion would incorrectly allow an individual whose income dramatically increased to be deemed "entitled to supplementary security income benefits * * * under [Title] XVI," *ibid.*, based on the fact that he previously had enrolled in the SSI program when he had sufficient financial need to be entitled to SSI payments.

Petitioners also contend (Pet. 31; see Pet. 7) that, under "statutory provisions" within Title XVI, an aged or disabled individual may have "limited income and resources" but not be entitled to a "cash payment for a particular month." To the extent that petitioners suggest an "entitle[ment]" to SSI benefits for a month depends on whether an individual actually "receive[s]" an SSI payment in that month, see Pet. 2, 10-11 & n.2, 20, 26-27, that is incorrect. What matters is whether the individual was entitled to an SSI payment for the month, not the timing of the actual receipt of such payment. See Gov't C.A. Br. 41-42. Nothing in the decision of the court of appeals concludes otherwise.

To the extent that petitioners suggest (Pet. 31; see Pet. 25-26) that "statutory provisions" within Title XVI impose certain limits on an individual's entitlement to an SSI payment based on factors other than income, that suggestion is beside the point. Title XVI identifies eligible individuals based not only on "income" but also on "resources" and "other relevant characteristics," 42 U.S.C. 1382(c), and then confers a basic "entitlement to benefits" by directing that eligible individuals "shall, *in accordance with and subject to the provisions of* [*Title XVI*], be paid benefits," 42 U.S.C. 1381a (emphasis altered). If Title XVI does not permit such a payment, then the individual is not "entitled" to that SSI benefit for that month. And while the Medicare fraction utilizes Medicare patients' "entitle[ment] to supplementary se-

curity income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), as a proxy for identifying a hospital's "low-income [Medicare] patients," 42 U.S.C. 1395ww(d)(5)(F)(i)(I), nothing requires that proxy to be a perfect measure of income in every instance. Congress adopted text that expressly includes in the Medicare fraction's numerator only those days for which the patient is "entitled to [SSI] benefits."[2]

ii. Petitioners additionally contend (Pet. 33-35) that the statutory phrase "entitled to supplementary security income benefits * * * under [Title] XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I), is not limited to patients entitled to monetary payments because, petitioners argue, Title XVI also provides "non-cash" benefits like "vocational rehabilitation services" to individuals who are enrolled in the SSI program but not entitled to SSI payments in a particular month. That is incorrect for multiple reasons.

First, even if Title XVI were to provide such service-based "benefits," those services would not qualify as "*supplementary security income* benefits * * * under Title XVI," 42 U.S.C. 1395ww(d)(5)(F)(vi)(I) (emphasis added). As the court of appeals recognized, any such service-based benefit would not provide the supplemental "'income' benefits"—*i.e.*, monetary payments—necessary to be counted in the numerator of the Medicare fraction. See Pet. App. 11 (explaining that "the

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[2] Petitioners do not renew their distinct challenge to the government's method of determining whether Medicare patients were entitled to SSI benefits during their hospital stays, Pet. 21, 36 n.9, which, in any event, lies outside the interpretive question petitioners present, Pet. i. Petitioners' discussion (*e.g.*, Pet. 22) of issues involving the particular method used to calculate the Medicare fraction are therefore not properly before this Court.

question here turns on what counts as 'income' benefits").

Second, as the court of appeals also explained, individuals enrolled in the SSI program are not entitled to such non-cash "benefits * * * *under* [*Title*] *XVI*." Pet. App. 11 (emphasis added). The benefits that petitioners identify (*e.g.*, Pet. 6), including benefits under the Ticket to Work Program, are provided under statutes other than Title XVI. Pet. App. 11-12. Indeed, petitioners' own citations (Pet. 35) to 42 U.S.C. 1320b-19 (in Title XI) reflect that any entitlement to (non-income) Ticket to Work Program benefits would be under Title XI, not Title XVI. In addition, Section 1320b-19 further confirms the character of SSI benefits under Title XVI by defining the term "'supplemental security income benefit under [Title] XVI'" to mean "a cash benefit under [S]ection 1382 or 1382h(a)" of Title 42. 42 U.S.C. 1320b-19(k)(5).

Petitioners suggest (Pet. 33-35) that individuals are "entitled" to service-based "benefits" under 42 U.S.C. 1382d, which, to be sure, is part of Title XVI. But Section 1382d provides no such entitlement. Section 1382d(a) simply requires SSA to "refer[]" certain blind or disabled minors to a state agency administering a state program "under [Title] V" of the Social Security Act. 42 U.S.C. 1382d(a). The balance of Section 1382d then authorizes SSA to "reimburse" a state agency administering "a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]" for certain costs. 42 U.S.C. 1382d(d) and (e) (brackets in original). Thus, even if the services to which Section 1382d indirectly refers could qualify as relevant "income" benefits to an individual (which they are not), an individual receiving

those services under Title V or the Rehabilitation Act would not be "entitled" to those benefits "under Title XVI."

2. Petitioners contend (Pet. 24-28) that review is warranted because the D.C. Circuit's decision "flies in the face of [this Court's] analysis of the structure and purpose of the DSH statute" in *Empire Health*, Pet. 24-25. But for many of the same reasons discussed above, the court of appeals' decision here does not conflict with *Empire Health*.

This Court granted certiorari in *Empire Health* to "resolve [a] conflict" in the courts of appeals on whether the Medicare fraction's reference to hospital patients "'entitled to benefits under [P]art A of [Title XVIII]'" includes Medicare patients for whom Medicare does not "pay[]" for some or all of the patient's "hospital stay." *Empire Health*, 597 U.S. at 428, 433-434 (citation omitted); see Pet. at I, *Empire Health*, *supra* (No. 20-1312). The court answered that question affirmatively because, as noted, the benefits under Part A to which such a patient must be entitled are Part A hospital insurance coverage benefits, which need not result in the Medicare program's payment for any particular hospital services. See p. 14-15, *supra*.

The three aspects of *Empire Health* that petitioners identify (Pet. 13-15, 25-28) are fully consistent with the court of appeals' decision in this case. First, petitioners observe (Pet. 13-14, 25-26) that *Empire Health* explained that the Medicare fraction is used to identify low-income Medicare patients but that a patient's entitlement to SSI benefits under Title XVI can in certain contexts turn on factors other than income. See Pet. 25 (noting that an individual is not entitled to payment for the first month in which he is deemed eligible after ap-

plying for SSI benefits). But as discussed above (pp. 16-17, *supra*) the Medicare fraction uses "entitle[ment] to [SSI] benefits" in a month as a proxy for low income, not as a perfect measure of such income.

Second, petitioners observe (Pet. 14, 26-28) that *Empire Health* declined to adopt an interpretation that would have "result[ed] in patients ping-ponging back and forth between [the Medicare and the Medicaid] fractions based on the happenstance of actual Medicare payments" for their hospital stays. *Empire Health*, 597 U.S. at 443. That result, the Court explained, was inconsistent with the "dichotomy [reflected in those fractions] between two discrete low-income populations, each of which counts (but counts differently) towards setting a hospital's DSH rate." *Ibid.* But interpreting "entitled to [SSI] benefits" to exclude those who are not entitled to SSI payments during their hospital stay, as the court of appeals correctly did here, does not result in moving patients back and forth between the Medicare and Medicaid fractions. The Medicaid fraction counts only patients who are *not* entitled to Medicare Part A insurance, *i.e.*, those who are "not entitled to benefits under [P]art A of [Title XVIII]." 42 U.S.C. 1395ww(d)(5)(F)(vi)(II); see *Empire Health*, 597 U.S. at 430, 432-433. And whether a patient is entitled to Medicare Part A insurance does not turn on whether the patient is entitled to SSI payments. See *Empire Health*, 597 U.S. at 435-436.

Third, petitioners observe (Pet. 14-15) that *Empire Health* recognized that an individual may satisfy the "statutory eligibility criteria" to be entitled to Medicare Part A insurance benefits "even when limitations may apply for payment" of the individual's hospital services, Pet. 14. But as explained above, limitations on Medi-

care's payment for hospital services were irrelevant because the relevant "entitlement" to a "benefit" in *Empire Health* was the patient's entitlement to Part A hospital insurance, not an entitlement to payment of particular claims. See pp. 14-16, *supra*. Here, however, an entitlement to "supplementary security income benefits" is an entitlement to a monetary payment.

Petitioners appear to suggest (Pet. i, 2, 16) that review is warranted by this Court because *Empire Health* expressly left open "the question whether HHS has properly interpreted the phrase 'entitled to [SSI] benefits' in the Medicare fraction," 597 U.S. at 434 n.2. But the Court did so simply because that "case d[id] not raise th[at] question," *ibid.*, not because the Court had granted review to resolve the question but ultimately resolved the case on other grounds. Moreover, the Court in *Empire Health* simply "granted certiorari to resolve [a] conflict" among the courts of appeals on the question that it ultimately resolved. *Id.* at 433-434. By contrast, in this case, there is no circuit conflict for which this Court's review might arguably be warranted.

3. Petitioners contend (Pet. 16-24) that this Court's review is nevertheless warranted in this case because the D.C. Circuit has resolved a Medicare fraction issue that is recurring and, in petitioners' view, exceptionally important. That contention is incorrect.

Petitioners appear to assume—incorrectly—that the D.C. Circuit's decision will govern all hospital DSH payments nationwide. But the D.C. Circuit's decision constitutes binding precedent only in cases in which a hospital chooses to seek judicial review of its DSH payment (as part of its annual payment from the Medicare Program) in the District Court for the District of Columbia. A hospital also has the option to seek review "in the dis-

trict court * * * for the judicial district in which the [hospital] is located." 42 U.S.C. 1395*oo*(f)(1). Thus, other than petitioners (which will be bound under the doctrine of collateral estoppel) and hospitals located in the District of Columbia itself, other hospitals nationwide may continue to challenge their DSH payments in district courts that will not be bound by the decision in this case. Cf. Pet. 23 & n.4. Those hospitals will have ample opportunities to challenge the government's longstanding interpretation of "entitled to [SSI] benefits * * * under [Title] XVI" in district court and, then, in any of the other eleven regional courts of appeals. If a significant division of circuit authority were to arise in the future, this Court would then be able to consider afresh whether certiorari is warranted. Cf. *Empire Health*, 597 U.S. at 433-434 (granting certiorari "to resolve [a] conflict" about a different question concerning the Medicare fraction).

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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