# SUPREME COURT OF THE UNITED STATES

No. 98–9537

JUATASSA SIMS, PETITIONER *v.* KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 5, 2000]

JUSTICE THOMAS announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II–A, and an opinion with respect to Part II–B, in which JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join.

A person whose claim for Social Security benefits is denied by an administrative law judge (ALJ) must in most cases, before seeking judicial review of that denial, request that the Social Security Appeals Council review his claim. The question is whether a claimant pursuing judicial review has waived any issues that he did not include in that request. We hold that he has not.

## I

In 1994, petitioner Juatassa Sims filed applications for disability benefits under Title II of the Social Security Act, 49 Stat. 622, 42 U. S. C. §401 *et seq*., and for supplemental security income benefits under Title XVI of that Act, 86 Stat. 1465, 42 U. S. C. §1381 *et seq*. She alleged disability from a variety of ailments, including degenerative joint

diseases and carpal tunnel syndrome. After a state agency denied her claims, she obtained a hearing before a Social Security ALJ. See generally *Heckler* v. *Day*, 467 U. S. 104, 106–107 (1984) (describing stages of review of claims for Social Security benefits). The ALJ, in 1996, also denied her claims, concluding that, although she did have some medical impairments, she had not been and was not under a "disability," as defined in the Act. See 42 U. S. C. §§423(d) (1994 ed. and Supp. III) and 1382c(a)(3) (Supp. III); *Sullivan* v. *Zebley*, 493 U. S. 521, 524–526 (1990).

Petitioner then requested that the Social Security Appeals Council review her claims. A claimant may request such review by completing a one-page form provided by the Social Security Administration (SSA)– Form HA–520– or "by any other writing specifically requesting review." 20 CFR §422.205(a) (1999). Petitioner, through counsel, chose the latter option, submitting to the Council a letter arguing that the ALJ had erred in several ways in analyzing the evidence. The Council denied review.

Next, petitioner filed suit in the District Court for the Northern District of Mississippi. She contended that (1) the ALJ had made selective use of the record; (2) the questions the ALJ had posed to a vocational expert to determine petitioner's ability to work were defective because they omitted several of petitioner's ailments; and (3) in light of certain peculiarities in the medical evidence, the ALJ should have ordered a consultative examination. The District Court rejected all of these contentions. App. 74–84.

The Court of Appeals for the Fifth Circuit affirmed in an unpublished opinion. 162 F. 3d 1160 (1998). That court affirmed on the merits with regard to petitioner's first contention. With regard to the second and third contentions, it concluded that, under its decision in *Paul* v. *Shalala*, 29 F. 3d 208, 210 (1994), it lacked jurisdiction because petitioner had not raised those contentions in her

request for review by the Appeals Council. We granted certiorari, 528 U. S. 1018 (1999), to resolve a conflict among the Courts of Appeals over whether a Social Security claimant waives judicial review of an issue if he fails to exhaust that issue by presenting it to the Appeals Council in his request for review. Compare *Paul*, *supra*, at 210; *James* v. *Chater*, 96 F. 3d 1341, 1343–1344 (CA10 1996), with *Harwood* v. *Apfel*, 186 F. 3d 1039, 1042–1043 (CA8 1999); *Johnson* v. *Apfel*, 189 F. 3d 561, 563–564 (CA7 1999).[1]

II

A

The Social Security Act provides that "[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, . . . may obtain a review of such decision by a civil action" in federal district court. 42 U. S. C. §405(g). But the Act does not define "final decision," instead leaving it to the SSA to give meaning to that term through regulations. See §405(a); *Weinberger* v. *Salfi*, 422 U. S. 749, 766 (1975). SSA regulations provide that, if the Appeals Council grants review of a claim, then the decision that the Council issues is the Commissioner's final decision. But if, as here, the Council denies the request for review, the ALJ's opinion becomes the final decision. See 20 CFR §§404.900(a)(4)–(5), 404.955, 404.981, 422.210(a) (1999).[2] If a claimant fails to request review from the Council,

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[1]We agree with the parties that, even were a court-imposed issue-exhaustion requirement proper, the Fifth Circuit erred in treating it as jurisdictional. Cf. *Mathews* v. *Eldridge*, 424 U. S. 319, 328 (1976).

[2]Part 404 of 20 CFR (1999) applies to Title II of the Act. The regulations governing Title XVI, which can be found at 20 CFR pt. 416 (1999), are, as relevant here, not materially different. We will therefore omit references to the latter regulations.

there is no final decision and, as a result, no judicial review in most cases. See §404.900(b); *Bowen* v. *City of New York,* 476 U. S. 467, 482–483 (1986). In administrative-law parlance, such a claimant may not obtain judicial review because he has failed to exhaust administrative remedies. See *Salfi, supra,* at 765–766.

The Commissioner rightly concedes that petitioner exhausted administrative remedies by requesting review by the Council. Petitioner thus obtained a final decision, and nothing in §405(g) or the regulations implementing it bars judicial review of her claims.

Nevertheless, the Commissioner contends that we should require issue exhaustion in addition to exhaustion of remedies. That is, he contends that a Social Security claimant, to obtain judicial review of an issue, not only must obtain a final decision on his claim for benefits, but also must specify that issue in his request for review by the Council. (Whether a claimant must exhaust issues before the ALJ is not before us.) The Commissioner argues, in particular, that an issue-exhaustion requirement is "an important corollary" of any requirement of exhaustion of remedies. Brief for Respondent 13. We think that this is not necessarily so and that the corollary is particularly unwarranted in this case.

Initially, we note that requirements of administrative issue exhaustion are largely creatures of statute. *Marine Mammal Conservancy, Inc.* v. *Department of Agriculture,* 134 F. 3d 409, 412 (CADC 1998). Our cases addressing issue exhaustion reflect this fact. For example, in *Woelke & Romero Framing, Inc.* v. *NLRB,* 456 U. S. 645 (1982), we held that the Court of Appeals lacked jurisdiction to review objections not raised before the National Labor Relations Board. We so held because a statute provided that "[n]o objection that has not been urged before the Board . . . shall be considered by the court.'" *Id.*, at 665 (quoting 29 U. S. C. §160(e) (1982 ed.)). Our decision in *FPC* v. *Colorado Inter-*

*state Gas Co.*, 348 U. S. 492, 497–498 (1955), followed similar reasoning. See also *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 36, n. 6 (1952) (collecting statutes); *Washington Assn. for Television and Children* v. *FCC*, 712 F. 2d 677, 681–682, and n. 6 (CADC 1983) (interpreting issue-exhaustion requirement in 47 U. S. C. §405 (1982 ed.) and collecting statutes). Here, the Commissioner does not contend that any statute requires issue exhaustion in the request for review.

Similarly, it is common for an agency's regulations to require issue exhaustion in administrative appeals. See, *e.g.*, 20 CFR §802.211(a) (1999) (petition for review to Benefits Review Board must "lis[t] the specific issues to be considered on appeal"). And when regulations do so, courts reviewing agency action regularly ensure against the bypassing of that requirement by refusing to consider unexhausted issues. See, *e.g.*, *South Carolina* v. *United States Dept. of Labor*, 795 F. 2d 375, 378 (CA4 1986); *Sears, Roebuck and Co.* v. *FTC*, 676 F. 2d 385, 398, n. 26 (CA9 1982). Yet, SSA regulations do not require issue exhaustion. (Although the question is not before us, we think it likely that the Commissioner could adopt a regulation that did require issue exhaustion.)

It is true that we have imposed an issue-exhaustion requirement even in the absence of a statute or regulation. But the reason we have done so does not apply here. The basis for a judicially imposed issue-exhaustion requirement is an analogy to the rule that appellate courts will not consider arguments not raised before trial courts. As the Court explained in *Hormel* v. *Helvering*, 312 U. S. 552 (1941):

> "Ordinarily an appellate court does not give consideration to issues not raised below. For our procedural scheme contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is essential in order that par-

> ties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide; it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence. And the basic reasons which support this general principle applicable to trial courts make it equally desirable that parties should have an opportunity to offer evidence on the general issues involved in the less formal proceedings before administrative agencies entrusted with the responsibility of fact finding." *Id*., at 556.

As we further explained in *L. A. Tucker Truck Lines*, courts require administrative issue exhaustion "as a general rule" because it is usually "appropriate under [an agency's] practice" for "contestants in an adversary proceeding" before it to develop fully all issues there. 344 U. S., at 36–37. (We also spoke favorably of issue exhaustion in *Unemployment Compensation Comm'n of Alaska* v. *Aragon*, 329 U. S. 143, 154–155 (1946), without relying on any statute or regulation, but in that case the waived issue had not been raised before the District Court, see *id*., at 149, 155.)

But, as *Hormel* and *L. A. Tucker Truck Lines* suggest, the desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding. Cf. *McKart* v. *United States*, 395 U. S. 185, 193 (1969) (application of doctrine of exhaustion of administrative remedies "requires an understanding of its purposes and of the particular administrative scheme involved"); *Salfi*, 422 U. S., at 765 (same). Where the parties are expected to develop the issues in an adversarial administrative proceeding, it seems to us that the rationale for requiring issue exhaustion is at its greatest. *Hormel*, *L. A.*

*Tucker Truck Lines*, and *Aragon* each involved an adversarial proceeding. See *Hormel*, *supra*, at 554, 556; *L. A. Tucker Truck Lines*, *supra*, at 36; *Aragon* v. *Unemployment Comm'n of Alaska*, 149 F. 2d 447, 449–452 (CA9 1945), aff'd in part and rev'd in part, 329 U. S. 143 (1946). (In *Hormel*, we allowed an exception to the issue-exhaustion requirement. 312 U. S., at 560.) Where, by contrast, an administrative proceeding is not adversarial, we think the reasons for a court to require issue exhaustion are much weaker. More generally, we have observed that "it is well settled that there are wide differences between administrative agencies and courts," *Shepard* v. *NLRB*, 459 U. S. 344, 351 (1983), and we have thus warned against reflexively "assimilat[ing] the relation of . . . administrative bodies and the courts to the relationship between lower and upper courts," *FCC* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 144 (1940).

B

The differences between courts and agencies are nowhere more pronounced than in Social Security proceedings. Although "[m]any agency systems of adjudication are based to a significant extent on the judicial model of decisionmaking," 2 K. Davis & R. Pierce, Administrative Law Treatise §9.10, p. 103 (3d ed. 1994), the SSA is "[p]erhaps the best example of an agency" that is not, B. Schwartz, Administrative Law 469–470 (4th ed. 1994). See *id.*, at 470 ("The most important of [the SSA's modifications of the judicial model] is the replacement of normal adversary procedure by . . . the 'investigatory model'" (quoting Friendly, Some Kind of Hearing, 123 U. Pa. L. Rev. 1267, 1290 (1975))). Social Security proceedings are inquisitorial rather than adversarial. It is the ALJ's duty to investigate the facts and develop the arguments both for and against granting benefits, see *Richardson* v. *Perales*, 402 U. S. 389, 400–401 (1971), and the Council's

review is similarly broad. The Commissioner has no representative before the ALJ to oppose the claim for benefits, and we have found no indication that he opposes claimants before the Council. See generally Dubin, Torquemada Meets Kafka: The Misapplication of the Issue Exhaustion Doctrine to Inquisitorial Administrative Proceedings, 97 Colum. L. Rev. 1289, 1301–1305, 1325–1329 (1997).

The regulations make this nature of SSA proceedings quite clear. They expressly provide that the SSA "conduct[s] the administrative review process in an informal, nonadversary manner." 20 CFR §404.900(b) (1999). They permit– but do not require– the filing of a brief with the Council (even when the Council grants review), §404.975, and the Council's review is plenary unless it states otherwise, §404.976(a). See also §404.900(b) ("[W]e will consider at each step of the review process any information you present as well as all the information in our records"). The Commissioner's involvement in the Appeals Council's decision whether to grant review appears to be not as a litigant opposing the claimant, but rather just as an advisor to the Council regarding which cases are good candidates for the Council to review pursuant to its authority to review a case *sua sponte*. See §§404.969(b)–(c); *Perales*, *supra*, at 403. The regulations further make clear that the Council will "evaluate the entire record," including "new and material evidence," in determining whether to grant review. §404.970(b). Similarly, the notice of decision that ALJ's provide unsuccessful claimants informs them that if they request review, the Council will "consider all of [the ALJ's] decision, even the parts with which you may agree" and that the Council might review the decision "even if you do not ask it to do so." App. 25–27. Finally, Form HA–520, which the Commissioner considers adequate for the Council's purposes in determining whether to review a case, see §422.205(a), provides only three lines for the

request for review, and a notice accompanying the form estimates that it will take only 10 minutes to "read the instructions, gather the necessary facts and fill out the form." The form therefore strongly suggests that the Council does not depend much, if at all, on claimants to identify issues for review. Given that a large portion of Social Security claimants either have no representation at all or are represented by non-attorneys, see Dubin, *supra*, at 1294, n. 29, the lack of such dependence is entirely understandable.

Thus, the *Hormel* analogy to judicial proceedings is at its weakest in this area. The adversarial development of issues by the parties– the "com[ing] to issue," 312 U. S., at 556– on which that analogy depends simply does not exist. The Council, not the claimant, has primary responsibility for identifying and developing the issues. We therefore agree with the Eighth Circuit that "the general rule [of issue exhaustion] makes little sense in this particular context." *Harwood*, 186 F. 3d, at 1042.

Accordingly, we hold that a judicially created issue-exhaustion requirement is inappropriate. Claimants who exhaust administrative remedies need not also exhaust issues in a request for review by the Appeals Council in order to preserve judicial review of those issues. The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*