No. 23-715

In The
Supreme Court of the United States

ADVOCATE CHRIST MEDICAL CENTER, ET AL.,
Petitioners,

v.

XAVIER BECERRA,
SECRETARY OF HEALTH & HUMAN SERVICES,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

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INTRODUCTION

The government's brief elides what this case is about. It is not about whether and when Congress wanted individuals to get a cash SSI payment. It is about reimbursing hospitals under the DSH provision. The question before the Court is how Congress chose to identify the population of patients who are low-income and costlier to treat, as reflected by their status as "entitled to [SSI] benefits."

In answering that question, the Court is not writing on a blank slate. It has already held that "entitled to [Medicare part A] benefits," in the same sentence, counts "all those qualifying for the [Medicare part A] program, regardless of whether they are receiving Medicare payments." *Becerra v. Empire Health Found.*, 597 U.S. 424, 445 (2022). The same goes for those "eligible for" Medicaid in the neighboring Medicaid fraction. The third and final DSH component, "entitled to [SSI] benefits," should be read the same: all those qualifying for the SSI program, regardless whether they are receiving SSI payments.

The SSI statute provides no reason to flout this Court's nascent holding in *Empire*. Yes, the SSI statute contains payment limitations. So do Medicare part A and Medicaid. But a patient qualifies for the SSI program when she is deemed eligible and remains qualified until that eligibility has been terminated. And just as payment limits did not disqualify patients from counting as entitled to Medicare part A benefits in *Empire*, they do not disqualify a patient from counting as entitled to SSI benefits here.

That is enough to resolve this case. Petitioners do not need to be right about title XVI's non-cash benefits to prevail; the *government* does. But petitioners are right: title XVI non-cash benefits exist. And those benefits further confirm that SSI is an overarching program.

One thing is clear: the government's payment-due test does not count scores of low-income patients that the DSH provision was designed to capture. That is consistent with the government's historical approach of paying as little as possible to hospitals serving a disproportionate share of low-income patients. But it is wholly *in*consistent with Congress's intent. No court should defer to that.

ARGUMENT

A. Patients Who Qualify for the SSI Program Are "Entitled to [SSI] Benefits" Under the DSH Provision

Statutory analysis "begin[s] with the statutory text most directly at issue" and interprets "'the relevant words . . . with reference to the statutory context.'" *Torres v. Lynch*, 578 U.S. 452, 458-59 (2016) (citation omitted). The "statutory text most directly at issue" is the DSH provision. *Id.* at 458. And *its* text and context, especially after *Empire*, show that "entitled to [SSI] benefits," 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I), means "qualifying for the [SSI] program," 597 U.S. at 445. That gives the key language here the same meaning that identical and similar words carry throughout the DSH provision. None of the government's arguments can justify its inconsistent and opportunistic approach to the DSH components.

1. The government gets the wrong answer largely because it starts in the wrong place. Citing *Empire*, the government claims (at 35) that the analysis should start with "the statute creating the relevant entitlement—[t]itle XVI." That does not track.

To start, the Court is not writing on a blank slate here. Even when interpreting statutes that are merely "similar," the Court "do[es] not write on a clean slate." *Hillman v. Marietta*, 569 U.S. 483, 492 (2013). Here, "similar" is an understatement. The "entitled to . . . benefits" construct is used three times *within* the DSH Medicare fraction. And it stands alongside similar language in the Medicaid fraction. All of which are designed to serve the same purpose: counting the low-income population for DSH purposes. *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi).

The government presses a payment-due interpretation that mirrors the *Empire* dissent. *See* 597 U.S. at 447 (Kavanaugh, J., dissenting). But the majority disagreed and definitively construed the meaning of "entitled to benefits" in DSH. "[E]ntitled to [SSI] benefits" should have the same meaning—"qualifying for the program"—that the Court gave "entitled to [Medicare part A] benefits" and that courts of appeals gave the parallel language in the Medicaid fraction. *Empire*, 597 U.S. at 445; *see, e.g.*, *Cabell Huntington Hosp., Inc. v. Shalala*, 101 F.3d 984, 989 (4th Cir. 1996). That is the only interpretation that respects the "vigorous" presumption that a term "mean[s] the same thing" when "repeated within a given sentence." *Brown v. Gardner*, 513 U.S. 115, 118 (1994); *cf. Clark v. Martinez*, 543 U.S. 371, 378 (2005) (identical statutory language "cannot . . . be interpreted to do [two things] at the same time").

In *Empire*, the Court looked to the Medicare statute because it was interpreting the DSH provision *in* the Medicare statute, and because the phrase "'entitled to [Medicare part A] benefits'" is "used over and over" in that statute as "essentially a term of art." 597 U.S. at 435. The government does not argue "entitled to [SSI] benefits" has a comparable term-of-art meaning, and it does not. So starting with title XVI is of little use.

2. The government accepts and asserts (at 19-20) the same-meaning presumption. The government cannot rebut that presumption as to *Empire*.

a. The government first contends (at 35) that the Medicare fraction uses "two distinct phrases," not the same phrase, because it refers to Medicare part A and SSI when repeating "entitled to." But each phrase refers to patients "entitled to . . . benefits," differing only in the name of the program. The "entitled to . . . benefits" construct is the same, so the same-meaning presumption applies. And the government all but ignores the Medicaid fraction—which uses the phrase "eligible for medical assistance under a State [Medicaid] plan" just like the Medicare fraction uses "entitled to [Medicare part A] benefits." 42 U.S.C. § 1395ww(d)(5)(F)(vi); *Empire*, 597 U.S. at 436 n.3.

b. The government next asserts that two differences between SSI and Medicare part A justify a departure from *Empire*. Not so.

First, the government contends that Medicare part A's benefit is an "ongoing insured status" that protects against certain "'costs,'" whereas SSI's benefit is only monthly cash payments. Resp. Br. 36 (citation omitted). The government overstates the distinction. SSI may not be called "insurance," but it functions like unemployment or disability insurance

by helping "to cover basic necessities," *Atkins v. Rivera*, 477 U.S. 154, 157 (1986), during periods when beneficiaries "cannot work," *Schweiker v. Wilson*, 450 U.S. 221, 223 (1981) (citation omitted). Like Medicare part A, SSI is an ongoing program that adjusts benefits and limits payments to fit changing circumstances. *See infra* at 7-10. That SSI isn't labeled "insurance" is immaterial.

What *is* material is that SSI beneficiaries maintain their status as qualified for the SSI program even when they are not due a cash payment for a month. Qualifying for SSI, like Medicare part A, confers "an entitlement to payment under specified conditions." *Empire*, 597 U.S. at 436 (emphasis omitted); *see* Pet. Br. 24-25. *Compare* 42 U.S.C. § 426(c)(1) (those qualified for Medicare part A are "entitle[d] to have payment made under, and subject to the limitations in, part A"), *with id.* § 1381a (those qualified for SSI "shall, in accordance with and subject to the provisions of [title XVI], be paid benefits"). And qualifying for SSI, also like Medicare part A, unlocks other benefits, including Medicaid continuation, vocational rehabilitation, and Medicare part D subsidies. *See Empire*, 597 U.S. at 428-29; Am. Hosp. Ass'n et al. Amici Br. (AHA Br.) 17-18; *infra* at 10-16. In both the Medicare part A and SSI programs, someone can "meet the basic statutory criteria" even when not due a payment. *Empire*, 597 U.S. at 435.

Second, the government says that Medicare part A eligibility is "'automatic'" and "essentially" never-ending, while SSI eligibility requires an application and varies over time. Resp. Br. 36-37 (citation omitted). Hard to know why this should matter for DSH purposes. But in any event, the government exaggerates these distinctions too.

For starters, the government overstates SSI's variability and understates Medicare part A's. On the *program*-eligibility measure that matters, SSI eligibility is quite stable. The government says (at 40) that 354,770 individuals earned enough income over 12 months to have to reapply for SSI. But even that represents *less than 5%* of federal SSI beneficiaries. *See* Soc. Sec. Admin., *SSI Annual Statistical Report, 2009*, at 18 (Sept. 2010), https://tinyurl.com/2s4dyf9s ("*2009 Report*"); *cf.* Pet. Br. 43-44. Even for *payment* eligibility, only about 10% of SSI beneficiaries became payment-ineligible due to excess income in any given month. *See 2009 Report*, *supra*, at 18; Resp. Br. 39. Medicare part A is not all that different. As the government's "essentially" hedge reveals (at 36), *program* eligibility is not always "never-ending"—disabled beneficiaries can lose it. And there is considerable variability in Medicare part A *payment* eligibility. *Empire*, 597 U.S. at 432.

Nor is Medicare part A eligibility always automatic. Take the not-uncommon example of someone who is still working at age 67, and so is not yet receiving monthly Social Security benefits. That person has to apply for Medicare part A. Ctrs. For Medicare & Medicaid Servs., *Original Medicare (Part A and B) Eligibility and Enrollment*, https://tinyurl.com/972s4jvy (last modified Oct. 10, 2024).

But even if these distinctions between SSI and Medicare part A held up, the third DSH component—Medicaid—shows they are irrelevant. Medicaid, like SSI, requires an application. 42 U.S.C. § 1396a(a)(8). And Medicaid program eligibility, like SSI program eligibility, is not permanent; enrollment in SSI overlaps almost entirely with Medicaid. *See id.* § 1396a(a)(10)(A)(i)(II). Yet all agree the numerator of

the Medicaid fraction turns on program eligibility, not payment status. *See id.* § 1395ww(d)(5)(F)(vi)(II); *Empire*, 597 U.S. at 441 n.4. Whatever differences may exist among the three entitlement programs cannot support making SSI the lone DSH outlier dependent on payment status.

B. A Patient Qualifies for SSI Benefits When Deemed Eligible for the SSI Program and Until Termination

The government does not dispute that, if program eligibility is the correct DSH measure, then petitioners' test—counting those deemed eligible for the SSI program until their eligibility is terminated—is the right one. The government instead denies there is an SSI program *at all*. That is wrong.

1. Petitioners did not invent the "so-called SSI 'program.'" Resp. Br. 21. *Congress* did, by "establishing a national program" for SSI. 42 U.S.C. § 1381. Following that cue, this Court has repeatedly called SSI a "program." *E.g.*, *Empire*, 597 U.S. at 430; *Atkins*, 477 U.S. at 157; *Wilson*, 450 U.S. at 223. And so has the government—including in its brief here (at 42).

Petitioners also did not make up the notion that "entitled to . . . benefits" in the DSH provision means program eligibility. That is what this Court held in *Empire*: for the Medicare part A component, what matters is whether someone "qualifies for the Medicare program." 597 U.S. at 428.

2. The government spills a lot of ink on the "[s]cores of" provisions describing how Social Security should calculate and make SSI cash payments, and legislative history indicating that SSI sets a federal "guaranteed minimum income level." Resp. Br. 17, 43 (citations omitted). But petitioners agree that SSI is

largely a cash-benefit statute. Pet. Br. 34. It does not follow that someone is "entitled to [SSI] benefits" only if she is due a cash payment for a month. Even focusing solely on cash benefits, SSI provides a right to be "paid benefits" "*in accordance with and subject to* the provisions of" title XVI. 42 U.S.C. § 1381a (emphasis added); *see supra* at 5. That means that, after someone is deemed eligible for SSI benefits, she remains "eligible" in the relevant sense (and so "entitled to [SSI] benefits") even in months when "the provisions of" title XVI preclude payment.

3. The rest of the SSI statute confirms the existence of a longer-term SSI program.

a. Section 1382(c)(7) requires an individual to apply for SSI, at which point Social Security must determine whether she is an "eligible individual" with "basic eligibility for benefits"—based on her income "for the calendar year" (and other characteristics). *Id.* § 1382(a)(1); Social Security Amendments of 1972, Pub. L. No. 92-603, § 301, 86 Stat. 1329, 1465 (capitalization normalized). By statute, this threshold eligibility determination is based on *annual*, not monthly, income. 42 U.S.C. § 1382(a)(1).

The government repeatedly says (at 5, 16-17, 23) that this eligibility determination is based on a single month's income. But in support, it cites only regulatory provisions, not the relevant statutes. Whatever Social Security might do in practice, *Congress* defined low-income status using annual—not monthly—income. So that annual-income test is what matters.

The government emphasizes that the income limit is a "*rate* . . . for the calendar year." Resp. Br. 22 (quoting 42 U.S.C. § 1382(a)(1)(A)). But italicizing "rate" does not negate the statutory annual-income

test. "Rate" commonly means an "amount . . . of something measured per unit of something else (as time)." *Webster's Third New International Dictionary* 1884 (1971). "[R]ate" here simply refers to the total amount of income over the calendar year. And other annual criteria bolster the point. *See, e.g.*, 42 U.S.C. § 1382(b)(1) (maximum payment amount "for [a] calendar year"); *id.* § 1382a(b)(2)(A), (4) (excluding certain income "per year").

b. Once someone is deemed eligible, the SSI statute presumes she maintains eligibility even when ineligible for a monthly payment.

For example, as petitioners explained (at 26), authorizations for Social Security to access financial records "remain effective until . . . the cessation of the recipient's eligibility for benefits under [title XVI]"—meaning termination of SSI program eligibility. *Id.* § 1383(e)(1)(B)(ii)(II)(bb). The government has no answer except to say (at 24-25) that this requirement "makes sense." Of course it does. But what it shows is that someone remains eligible for SSI benefits even when she is not due a cash payment.

And once someone qualifies for the SSI program, Congress provided for periodic payment-eligibility redeterminations, which need not be monthly, and special payment-calculation rules following months when no payment is due. *Id.* § 1382(c)(1)-(2). Congress also distinguished between "suspension" and "termination," *id.* § 1383(e)(1)(A), which would be nonsensical if SSI beneficiaries had no program status when payments are suspended. Collectively, these provisions show there is an overarching SSI program, and that beneficiaries remain part of that program even during non-payment months.

The government claims (at 23) that 42 U.S.C. § 1383(j)(1) is to the contrary because it "presupposes" an SSI beneficiary loses "'eligibility'" in "the first month" she is not due a cash payment. Not so. Section 1383(j)(1) applies to anyone "eligible for benefits under or pursuant to section 1382h," which includes those who are not due cash payments for a month but who are eligible for Medicaid continuation under section 1382h(b). When section 1383(j)(1) provides that someone need not reapply for SSI unless she has been "ineligible for benefits . . . for a period of 12 consecutive months," it means ineligible for *any* benefits—cash or non-cash. *See* 20 C.F.R. § 416.1335. That is why Social Security explains that "[e]ligibility for SSI is terminated only if people medically improve or have been ineligible for any SSI benefit (including [under section 1382h(b)]) for 12 consecutive months." POMS SI 02302.006(B)(2)(f).

* * *

The existence of a broad SSI program refutes the government's position. *Empire* establishes program eligibility as the default DSH metric, and a person qualifies for the SSI program when she is deemed eligible and until termination. Until then, that person should be counted in the Medicare-fraction numerator even if a monthly cash payment is not due.

C. Title XVI's Non-Cash Benefits Further Confirm the Program-Eligibility Metric

The government argues (at 12, 26-34) petitioners' position "depends" on there being non-cash title XVI benefits and that no such benefits exist. It is wrong on both fronts. Petitioners' position does not depend on non-cash benefits; the *government's* does. If there are non-cash title XVI benefits, the government cannot

prevail because many patients are "entitled to" those SSI "benefits" even without a monthly payment, and would have to be counted. The reverse is not true: the existence of a long-term SSI program, even for cash benefits, is dispositive for petitioners. *See supra* at 10. But there *are* non-cash SSI benefits. Which both defeats the government's interpretation and underscores that SSI is a *program* that provides benefits that would not otherwise be available.

1. The government says non-cash benefits do not count because the DSH provision uses the phrase "supplementary security *income* benefits" and "income" requires an exclusive cash focus. Resp. Br. 28-29 (quoting 42 U.S.C. § 1395ww(d)(5)(F)(vi)). But "supplemental security income" is the name of the program established in title XVI. 42 U.S.C. § 1381. It "hangs together as a unified whole." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 440 (2018). The word "income" cannot be plucked out and examined in isolation to limit the program to cash. *See id.*; AHA Br. 16-17.

Regardless, the word "income" does not support the government's only-cash-counts theory. Even under the government's preferred definition, income is "usually"—not always—"measured in money." Resp. Br. 15 (citation omitted). And the IRS would be surprised to learn that "income" is limited to cash. *See* Pet. Br. 38. In statutory context, things only get worse. The SSI statute defines income to include "support . . . furnished in cash or kind." 42 U.S.C. § 1382a(a)(2)(A). And Social Security excludes vocational-rehabilitation services from countable SSI income, 20 C.F.R. § 416.1103(b)(1)—hardly necessary if "'income'" were limited to "recurring monetary payments," as the government supposes (at 28).

2. The government next argues (at 28) that "benefits 'under [t]itle [XVI]'" exclude benefits that also depend on authority outside title XVI. So understood, benefits like Medicaid continuation and vocational rehabilitation are not provided "under" title XVI. That cramped reading does not hold up.

a. The government's interpretation creates a glaring superfluity problem. The issue arises from state supplementation. 42 U.S.C. § 1382e(a). Because these payments "are made with state funds pursuant to state law," the government argues (at 32) that "they are not SSI benefits 'under [t]itle XVI.'" Yet the DSH provision expressly "exclud[es] any State supplementation" from "[SSI] benefits . . . under [title] XVI." 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I). On the government's view, this exclusion is total surplusage. If state-supplementation benefits were not provided "under [title] XVI," there would be no reason to "exclud[e]" them. The government (at 32) admits as much; it just asks the Court to look past this problem. That is not how this Court usually approaches statutory interpretation. *See, e.g.*, *Fischer v. United States*, 144 S. Ct. 2176, 2189 (2024).

Once it is clear that Congress understood state-supplementation benefits to be "[SSI] benefits . . . under [title] XVI," then benefits like Medicaid continuation and vocational rehabilitation are too. All are available to SSI beneficiaries by virtue of authority that is, in part, outside title XVI—state plans for state supplementation and vocational rehabilitation, and title XIX for Medicaid continuation. So that cannot be the distinction. And while state supplementation is a cash benefit, Resp. Br. 32, that matters only if the "income" argument had legs, and, as shown above (at 11), it does not.

b. Regardless, as a matter of ordinary meaning, these non-cash benefits *are* conferred "under" title XVI. Title XVI is what makes a person eligible for these benefits, so they are conferred "by reason of" and "subject . . . to" title XVI. *National Ass'n of Mfrs. v. Department of Def.*, 583 U.S. 109, 124 (2018) (citation omitted); *see* AHA Br. 17-18.

i. Starting with Medicaid continuation, only title XVI authorizes certain SSI beneficiaries in non-payment status to continue receiving Medicaid benefits. 42 U.S.C. § 1382h(b). That makes Medicaid continuation a benefit "under" title XVI: the benefit is provided by reason of title XVI and is subject to the criteria in section 1382h(b), which is in title XVI.

Resisting that conclusion, the government places (at 29-31) dispositive weight on *how* title XVI confers Medicaid continuation. Section 1382h(b) specifies that Medicaid-continuation beneficiaries are considered to "be receiving [SSI] benefits" for "purposes of [title] XIX [Medicaid]." But that framing does not limit the provision's "operation to Medicaid." Resp. Br. 30. It recognizes that receipt of SSI cash payments usually makes someone Medicaid-eligible, and deems SSI cash payments to be "received" in order to trigger Medicaid coverage even when they are not actually received. Pet. Br. 11, 34-35. That fiction *is* the Medicaid-continuation benefit, and it is conferred by title XVI. That is enough for DSH.

The government also attempts to discount the places where title XVI includes Medicaid continuation within the "benefits" or "assistance" provided "under" title XVI. *See* 42 U.S.C. §§ 1382d(e)(1)(B), 1383(j)(1)-(2). But the government has no real answer to Medicaid continuation being termed a "benefit[]" by section 1383(j)(2). And attempting to distinguish

"assistance" from "benefits" is unavailing. Resp. Br. 31. Assistance is a form of "benefit," *see Fischer v. United States*, 529 U.S. 667, 677-78 (2000), and the SSI statute itself uses "assistance" interchangeably with "benefits," *see* 42 U.S.C. § 1383(e)(1)(A); *see also* H.R. Rep. No. 99-893, at 14 (1986) (describing Medicaid continuation as "among the various categories of benefits" within the SSI program).[1]

ii. Vocational-rehabilitation services are likewise benefits under title XVI. Title XVI contains far more than an "indirect" reference to services "approved under the Rehabilitation Act." Resp. Br. 28. SSI's payment for those services, on SSI beneficiaries' behalf, *is* the benefit. 42 U.S.C. § 1382d(d). When SSI was enacted (as now), states could obtain federal grants to support vocational-rehabilitation services, and could require individuals receiving those services to pay part of the cost. *See* Vocational Rehabilitation Amendments of 1954, Pub. L. No. 83-565, § 5(a)(3)-(4), 68 Stat. 652, 657; 45 C.F.R. § 1361.47 (1978). Without title XVI, SSI beneficiaries might have been able to access such services, but not on the federal government's dime. Paying for those services is an SSI benefit, just as paying for hospital services on Medicare beneficiaries' behalf is a Medicare part A benefit. Calling it "reimbursement" doesn't change that. Resp. Br. 31.

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[1] The government also points (at 29-30) to a provision describing the Medicaid-continuation population as "ineligible for benefits . . . because of . . . income." 42 U.S.C. § 1382h(b). This phrasing uses "eligibility" to refer to *payment* eligibility. *See* H.R. Rep. No. 99-893, at 15 (describing the Medicaid-continuation group as "ineligible" only "for any further *cash* benefits" (emphasis added)).

All of that is true whether or not Ticket to Work is involved. Without title XVI, Ticket to Work would not function. *See* 42 U.S.C. § 1320b-19(j)(1)(B), (k)(4). Regardless, the government does not dispute that nearly all vocational-rehabilitation programs are provided under the pre–Ticket to Work model located *entirely* in title XVI. *See* Pet. Br. 35-37. This was the only model that existed when DSH was enacted, *id.*, so the Congress enacting DSH would have understood vocational rehabilitation as a benefit under title XVI.

3. Finally, the government claims (at 19-20) that two provisions outside of both DSH and title XVI confirm that cash is the only SSI benefit. Not at all.

The government first points (at 19) to a statute describing the Medicaid-eligible population as including those "to whom [SSI] benefits are being paid under [title] XVI." 42 U.S.C. § 1396a(a)(10)(A)(i)(II)(aa). The government insists that this reference implies the *only* SSI benefits are cash. But the fact that Medicaid eligibility is tied to "paid" benefits does not mean there are no other title XVI benefits.

The government also highlights (at 19-20) Ticket to Work's definition of SSI benefits. But, as explained, that definition supports petitioners. Pet. Br. 15-16. Ticket to Work defines "[SSI] benefit" (in the singular) "under [title] XVI" to mean "a cash benefit under section 1382 or 1382h(a)." 42 U.S.C. § 1320b-19(k)(5). Under the government's reading, this definition creates more surplusage. Why define "[SSI] benefit" to mean "a cash benefit" if cash is the only SSI benefit? Rather than supposing Congress littered the U.S. Code with unnecessary definitions, the more natural reading is that SSI benefits include any benefit conferred as part of the SSI program, unless otherwise specified.

* * *

With or without non-cash benefits, SSI eligibility goes beyond receipt of a monthly payment. *Supra* at 7-10. But these non-cash SSI benefits mean the government cannot prevail—and further confirm SSI is a multifaceted program that does not turn on or off with monthly payment eligibility.[2]

D. Only Petitioners' Interpretation Furthers the Structure and Purpose of the DSH Provision

Petitioners' position also wins on statutory structure and purpose by capturing individuals with the kind of long-term financial need that leads to higher healthcare costs. *See, e.g.*, Pet. Br. 27-29. The government's payment-due test does not. *See id.* at 44-49. The government's meager attempt to defend its non-proxy proxy fails at every step.

1. The government begins with, and often returns to, the wrong place to justify its *DSH* calculation: *SSI's* purpose. For example, the government notes (at 40) that Congress "chose not to extend SSI benefits to some people who may have low incomes"—like prison inmates—but never explains why those individuals should not count as low-income in the DSH calculation if hospitalized. The purpose of DSH, not SSI, is what should drive the analysis.

2. When the government turns to the DSH provision, it misses the mark. It claims (at 40) the payment-due test serves DSH's purpose because it is

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[2] There may be other title XVI non-cash benefits beyond Medicaid continuation and vocational rehabilitation, *see* AHA Br. 14-18, but the existence of even one is enough to defeat the government's interpretation.

"sensitive to . . . the patient's low-income status when hospitalized." But that test often has nothing to do with a patient's income when hospitalized. Even for those who achieve intermittently higher income, the government never explains why DSH reimbursement should hinge on such fleeting changes.

a. The government defends (at 38) its payment-due test as turning on a patient's income "during the month of [her] hospitalization." But it does not. The government's test does not count scores of patients who are indisputably low-income *during their hospitalization month*, including: (i) those in the first month of the SSI program; (ii) those with higher income the month(s) before hospitalization; (iii) those in Medicaid-paid facilities before or during hospitalization; and (iv) those whose payments are suspended for administrative reasons.

i. A person is not entitled to a cash SSI payment until the month *after* she qualifies for SSI. *See* 42 U.S.C. § 1382(c)(7); AHA Br. 10. So if a patient (Beth) becomes eligible for SSI benefits in January, and is hospitalized in January, she is low-income during the hospitalization month but is not treated as SSI-entitled for DSH purposes. Beth is coded "E02," which CMS does not count. 75 Fed. Reg. 50042, 50281 (Aug. 16, 2010); *see* POMS SI 00601.0009(C)(2)(b).

ii. The same is true for Mary, a patient who is low-income during her hospitalization month but had a (slightly) higher income in a prior month. This is because of how the payment-eligibility rules interact with the payment-amount rules. All agree that SSI payment "eligibility" in a month depends on income in that month, whereas the payment "amount" turns on a prior month's income. 42 U.S.C. § 1382(c)(1). Suppose Mary earned $1,000 in February but then

had a multiple sclerosis flare-up that made it impossible to work in March and put her in the hospital in April. She earned $0 in March and April. Mary is *eligible* for a cash SSI payment for April, but the *amount* of her April payment is zero because of her February earnings. *See id.* § 1382(b)-(c)(1); Pet. Br. 6-7 & n.1. Mary *is* a low-income SSI patient in her hospitalization month (April), but the government's payment-due test does not count her as such.

Instead of grappling with this common problem, the government denies it exists. The government implies that payment amount is irrelevant, so (it says) Mary would be counted as low-income for April. Resp. Br. 38. But it cites only the court of appeals' decision, which cites only the SSI statute, which has nothing to do with the DSH calculation. *Id.* (citing Pet. App. 14-15, in turn citing 42 U.S.C. § 1382(c)(1)). And the available evidence is to the contrary. According to Social Security, Mary would be coded "E01"—"eligible based on income in the [Computation Month of April] but not payable based on income in the [Budget Month of February]"—a code CMS *does not count in DSH*. POMS SI 02005.001(E)(3)(a); *see* 75 Fed. Reg. at 50281-82. That the government thinks patients like Mary should be counted (of course they should), but does not count them, is emblematic of the problem with its interpretation.

iii. Then come the poorest and costliest-to-treat patients—dual-eligible patients in Medicaid-paid facilities like nursing homes. These patients are excluded from both the Medicare and the Medicaid fractions' low-income count. Pet. Br. 9, 28, 45.

Imagine Lily, a 64-year-old SSI-eligible patient in a Medicaid-paid nursing home with countable monthly income of $100. She is hospitalized after

suffering a hip fracture. Lily initially counts as low-income in the Medicaid fraction. But she turns 65 during her hospital stay, so she becomes eligible for Medicare part A and is no longer counted in the Medicaid fraction. Because Lily is not due an SSI check (coded "E01"), she counts in the Medicare fraction denominator but *not* the numerator. POMS SI 02005.001(E)(3)(a); *see* Pet. Br. 45. The upshot is that Lily now *drags down* the hospital's DSH percentage—even though she is just "as . . . low income as [s]he ever was." *Empire*, 597 U.S. at 444.

The government rationalizes this anomaly by insisting (at 40) that "Congress chose not to extend SSI benefits" to patients like Lily. Even within the four corners of title XVI, that is wrong. Congress subjected these patients to a low payment limit because Medicaid covers their living costs, but they are still classified as "eligible individual[s]" for SSI. 42 U.S.C. § 1382(e)(1)(B). More fundamentally, though, the question is not whether Congress wanted people like Lily to receive an SSI check for any given month. It is whether Congress intended to count them, for DSH purposes, as low-income Medicare patients who are costlier to treat.

iv. The government's test also excludes patients who meet all "requirements of eligibility" but whose payments have been suspended for administrative reasons. 20 C.F.R. § 416.1320(a). The government admits this flaw (at 40-41), but posits that such suspensions might sometimes align with disqualifying events. The government never explains why minutiae like the search for a representative payee or direct-deposit issues have anything to do with measuring the low-income population.

The bottom-line is that the government's Swiss-cheese approach does *not* count the low-income population it is supposed to count. *See Empire*, 597 U.S. at 443 ("All low-income people fit [in the Medicare or Medicaid fraction], leaving no one out.").

b. The government also contends (at 38-39) that its approach serves DSH's purpose by excluding SSI beneficiaries with months of higher income. But as petitioners explained (at 48), whether a patient has an intermittent month or two of higher income is divorced from the core DSH inquiry—whether patients have a long-term, low-income status *that makes them costlier to treat*. The government's wealthier-for-a-month patient is not suddenly more healthy or less costly for that month.

And long-term poverty is overwhelmingly the norm among the SSI-eligible population. It is rare—even by the government's count—for SSI beneficiaries to achieve a secure annual income that terminates SSI eligibility. *Supra* at 6; Pet. Br. 43-44. And for the few individuals who do defy the odds, all agree they would no longer be counted as entitled to SSI benefits.

3. Finally, the government suggests (at 48) that petitioners' test might be hard to administer and "error prone," because it would require adding "74 new codes" to the government's DSH calculation. The government's concern about complexity is misplaced given that its existing process is already plagued with errors. Pet. Br. 47-48. In any event, petitioners' rule would simplify things. There is no need to count 74 payment codes; the government need only exclude patients whose SSI eligibility has terminated.

E. The Government's Interpretation Deserves No Deference

The government ends (at 44-46) with a remarkable plea for deference to CMS's supposedly "unwavering" interpretation of the DSH provision. No deference is warranted for at least four reasons.

First, the government's defense of CMS's rule relies (at 14-34) almost entirely on its interpretation of the SSI statute. But CMS does not administer the SSI program, so its views merit no special solicitude. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262 (2024). Nor does it matter that the government purports (at 46) to "incorporate [Social Security's] expertise on SSI." Deferring to the government's "'litigating position' is 'entirely inappropriate.'" *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570, 1579 (2024) (citation omitted).

Second, it is irrelevant that the DSH provision is, in some sense, "technical." Resp. Br. 44. "Congress expects courts to handle technical statutory questions." *Loper Bright*, 144 S. Ct. at 2267. While an agency's interpretation of a statute may be "informative" when it "'rests on factual premises within [the agency's] expertise,'" *id.* (alteration in original) (citation omitted), this is not that case.

Third, the government is claiming deference to a rule that CMS does not apply. CMS does not count patients who are "entitled to receive a payment" for their hospitalization month; it counts patients who have been paid for that month. The government acknowledges (at 41, 46) that CMS counts patients only after Social Security lifts administrative suspensions and authorizes payment, yet it refuses to

accept what that means: CMS applies an actual-receipt test, not a payment-due test.

To illustrate: suspension of payments pending search for a representative payee admittedly "does not alter the basic nature of the entitlement." Resp. Br. 25-26. If CMS applied the government's payment-due test, it would count those patients based on a code ("S08") reflecting that they are due a check. But CMS does not count that code. 75 Fed. Reg. at 50281-82. That means CMS does *not* apply a payment-due test. *See* State & Reg'l Hosp. Amici Br. 12-13.

Fourth, it is nonsense to call CMS's interpretation of the DSH provision "unwavering" or "longstanding." Resp. Br. 44. The statutory DSH formula exists only because the government "chose not to" formulate a DSH adjustment for years after Congress directed it to do so. *Cabell*, 101 F.3d at 986; *see* AHA Br. 19-20. When Congress finally put its foot down and codified the DSH formula, the government's regulation largely parroted the statutory language. *See* 42 C.F.R. § 412.106(a)(i) (1986). At that time, the agency interpreted all three DSH components—consistently, but incorrectly—as counting only *paid* days. *Empire*, 597 U.S. at 441 n.4. CMS did not separately consider the meaning of SSI entitlement until 2010, after (i) multiple courts had rebuffed CMS's payment-reducing interpretation of the Medicaid component and (ii) CMS had flip-flopped on its interpretation of the Medicare part A component, bringing DSH payments down again. *See id.* at 441 n.4, 444. And when CMS finally did address SSI, it took an approach *inconsistent* with its treatment of Medicare part A and Medicaid by counting only paid days. *See* 75 Fed. Reg. at 50280-81.

Over the last four decades, the government's only consistency has been to "squelch the DSH program" through cramped interpretations minimizing its payment obligations. AHA Br. 19; *see Northeast Hosp. Corp. v. Sebelius*, 657 F.3d 1, 20 n.1 (D.C. Cir. 2011) (Kavanaugh, J., concurring in the judgment) ("The only thing that unifies the Government's inconsistent definitions of ['entitled'] is its apparent policy of paying out as little money as possible."). CMS's views are not a reliable aid to interpret the DSH provision.

CONCLUSION

The judgment of the court of appeals should be reversed.

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