No. 11-667

# In the Supreme Court of the United States

PATTI BEELER, AS PARENT AND NATURAL GUARDIAN OF HER MINOR CHILD, PETITIONER

*v.*

MICHAEL J. ASTRUE, COMMISSIONER OF SOCIAL SECURITY

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

## BRIEF FOR THE RESPONDENT


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## QUESTIONS PRESENTED

1. Whether a child who was conceived after the death of a biological parent, and who cannot inherit personal property from that parent under applicable state intestacy law, is eligible for child survivor benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, based on his or her biological relationship to the deceased parent.

2. Whether a child who was conceived after the death of a biological parent may, in the alternative, establish eligibility for child survivor benefits under Section 416(h)(3)(C) of the Act, which provides that an applicant shall be deemed a child of a deceased wage earner for the purposes of the Act if the applicant "is the son or daughter" of the wage earner and the wage earner "acknowledged in writing that the applicant is his or her son or daughter * * * before [the wage earner's] death." 42 U.S.C. 416(h)(3)(C).

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 651 F.3d 954. The opinion of the district court (Pet. App. 27a-53a) is unreported. The decision of the Social Security Administration's Appeals Council (Pet. App. 56a-68a) is unreported. The decision of the administrative law judge (Pet. App. 69a-93a) is unreported.

## JURISDICTION

The judgment of the court of appeals was entered on August 29, 2011. The petition for a writ of certiorari was filed on November 23, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. Title II of the Social Security Act (the Act), 42 U.S.C. 401 *et seq.*, provides retirement and disability benefits to insured wage earners. In 1939, Congress amended Title II to provide benefits to a deceased wage earner's surviving family members, including minor children, who were dependent on the wage earner before his or her death. Social Security Act Amendments of 1939, ch. 666, Tit. II, 53 Stat. 1362.

As relevant here, four statutory provisions now govern the availability of child survivor benefits. First, under 42 U.S.C. 402(d)(1), benefits are available to "[e]very child (as defined in section 416(e) of this title) of * * * an individual who dies a fully or currently insured individual," provided that the individual has made an application for benefits, is a minor or is disabled, and was dependent on the deceased wage earner at the time of death. 42 U.S.C. 402(d)(1).

Second, Section 416(e) provides that "[t]he term 'child' means * * * the child or legally adopted child of an individual," and further provides that "child" means a "stepchild," "grandchild," or "step-grandchild," so long as certain conditions are met. 42 U.S.C. 416(e)(1)-(3).

Third, Section 416(h)(2)(A) directs that "[i]n determining whether an applicant is the child" of a deceased wage earner, "the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which" the wage earner "was domiciled at the time of his death." 42 U.S.C. 416(h)(2)(A).

Fourth, Section 416(h)(3)(C) provides that when an applicant "is the son or daughter" of a deceased wage earner but cannot inherit as the wage earner's child under applicable state intestacy law, that applicant may

still be "deemed to be" the wage earner's child if the wage earner had, before his or her death, (1) "acknowledged in writing that the applicant is his or her son or daughter," (2) "been decreed by a court to be the mother or father of the applicant," or (3) "been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter." 42 U.S.C. 416(h)(3)(C).

2. In November 2000, Bruce Beeler deposited sperm at a fertility clinic. He died in May 2001, and petitioner, his widow, subsequently underwent artificial insemination using the frozen sperm. In April 2003, she gave birth to a daughter, B.E.B. Pet. App. 2a-4a.

Petitioner applied for Social Security benefits on behalf of B.E.B. as the survivor of Mr. Beeler, a deceased wage earner. The Social Security Administration (SSA) denied the claim, and petitioner requested a hearing before an Administrative Law Judge (ALJ). Pet. App. 4a. Following the hearing, the ALJ sent the case to the SSA's Appeals Council with a recommended decision concluding that B.E.B. was not entitled to benefits. *Id.* at 69a-93a; see 20 C.F.R. 404.953(c). The Appeals Council agreed with the ALJ's conclusion, explaining that B.E.B. "is not the child of the wage earner *within the meaning of the Social Security Act* (Act)." Pet. App. 57a. In particular, it determined that B.E.B. could not demonstrate a child-parent relationship under Section 416(h)(2)(A) of the Act because she did not have intestacy rights under the law of Iowa, the State in which Mr. Beeler had been domiciled at the time of his death. *Id.* at 61a-67a. It also noted that B.E.B. could not satisfy any of Section 416(h)(3)(C)'s alternative mechanisms for establishing a legal child-parent relationship with a biological parent. *Id.* at 60a-61a.

3. Respondent sought judicial review in the United States District Court for the Northern District of Iowa, and the district court reversed SSA's determination. Pet. App. 27a-55a. The court held that an applicant who is the undisputed biological child of a deceased wage earner need not demonstrate a child-parent relationship with the wage earner under Section 416(h) in order to be eligible for survivor benefits. *Id.* at 40a. The court held in the alternative that B.E.B. did establish a child-parent relationship with Mr. Beeler under Section 416(h), because she could, in fact, inherit as Mr. Beeler's child under Iowa intestacy law. *Id.* at 41a-47a. It also found that Mr. Beeler had "acknowledged in writing" that B.E.B. is his child for the purposes of Section 416(h)(3)(C), based on documents Mr. Beeler signed agreeing to accept and acknowledge paternity of any child created with his frozen sperm. *Id.* at 50a-51a.

4. The court of appeals reversed. Pet. App. 1a-26a. The court upheld SSA's interpretation of Section 416(h) as applying to all applicants seeking survivor benefits as the "child" of a deceased wage earner, not just those whose biological parentage is disputed. *Id.* at 16a-20a. The court also upheld the agency's determination that B.E.B. cannot inherit as Mr. Beeler's child under Iowa intestacy law, as well as its determination that Mr. Beeler could not have acknowledged paternity of B.E.B. because she was not yet conceived when he died. *Id.* at 22a-23a.

**DISCUSSION**

1. Petitioner contends (Pet. 9-27) that the court of appeals erred in affirming SSA's determination that B.E.B. is ineligible for survivor benefits because she cannot inherit as the child of Bruce Beeler under appli-

cable state intestacy law. Her petition presents the question (Pet. i) whether B.E.B.'s biological relationship to Mr. Beeler is sufficient to establish that B.E.B. has a legal child-parent relationship with Mr. Beeler within the meaning of Title II of the Social Security Act. This Court is considering the same question in *Astrue* v. *Capato*, No. 11-159 (oral argument scheduled for Mar. 19, 2012). The Court should therefore hold the petition in this case pending the resolution of *Capato*, and then dispose of the petition accordingly.

Petitioner urges (Pet. 13-14) this Court to grant plenary review in this case in addition to *Capato*. That course would be unworkable because briefing in this case could not be completed in time for it to be argued concurrently with *Capato* on March 19. In any event, there is no reason to grant review in this case. Petitioner suggests (Pet. 14) that this case is a better vehicle than *Capato*, apparently because, even if the children in the *Capato* case can establish a child-parent relationship with the deceased wage earner under Section 416, they may not have been "dependent" on him at the time of his death, as required by Section 402(d)(1)(C) for an award of benefits. But that is equally true in this case. Although the court of appeals relied on the agreement of the parties that if an applicant "qualifies as a 'child' under any provision of § 416(h), then she will automatically satisfy the Act's dependency requirement," Pet. App. 8a, it gave no indication of how it would evaluate dependency if—as urged by petitioner—an applicant could qualify as a "child" under Section 416(e) without satisfying Section 416(h). Accordingly, granting the petition for a writ of certiorari in this case, in addition to *Capato*, would not facilitate the Court's consideration of the issues. The Court should instead hold the petition in this

case until *Capato* is decided and then dispose of it as appropriate in light of that decision.

2. Separately, petitioner challenges (Pet. 27-29) SSA's determination that B.E.B. failed to demonstrate that she should be "deemed" Mr. Beeler's child under 42 U.S.C. 416(h)(3)(C)(i)(I). That factbound claim does not warrant this Court's review, and it lacks merit in any event.

Section 416(h)(3)(C)(i)(I) provides that an applicant who is the son or daughter of a deceased wage earner but cannot inherit from the wage earner under state intestacy law "shall nevertheless be deemed to be the child" of the wage earner for the purpose of obtaining survivor benefits if the wage earner "had acknowledged in writing that the applicant is his or her son or daughter * * * before the [wage earner's] death." 42 U.S.C. 416(h)(3)(C)(i)(I). Petitioner argues that B.E.B. should be "deemed" Mr. Beeler's child under that provision because, before Mr. Beeler's death, he signed a form stating that "he desires the female partner * * * to be artificially inseminated * * * for the purpose of conceiving a child," and "hereby agrees to accept and acknowledge paternity and child support responsibility of any resulting child or children" created by using his stored semen. Pet. 27-28 (emphasis and internal quotation marks omitted). Petitioner also asserts (Pet. 28) that Mr. Beeler told his mother that if he died, he hoped petitioner would "go ahead and have their baby."

The court of appeals correctly affirmed the agency's determination that Mr. Beeler's statements are insufficient to satisfy Section 416(h)(3)(C)(i)(I). Although Mr. Beeler agreed that in the future he would acknowledge any children resulting from the frozen sperm, actual acknowledgment of paternity cannot occur until there is

a child in existence for the father to recognize as his own. As the court of appeals explained, "the statute's use of the definite article—requiring an 'acknowledg-[ment] in writing that *the* applicant is his * * * son or daughter'—indicates that the insured must acknowledge a particular child" in order for that child to satisfy the provision. Pet. App. 23a. The SSA has reasonably interpreted Section 416(h)(3)(C) to require actual, post-conception acknowledgment of paternity of a specific child. Under that standard, Mr. Beeler could not have acknowledged B.E.B. as his child because she was not yet conceived when he died.

**CONCLUSION**

The petition for a writ of certiorari should be held pending the Court's decision in *Astrue* v. *Capato*, No. 11-159 (oral argument scheduled for Mar. 19, 2012), and then disposed of accordingly.

Respectfully submitted.

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