

To: Health Advocates
From: Jane Perkins, National Health Law Program
Date: Sept. 27, 2002

Question and Answer RE: Deference Owed to State Medicaid Manual and Federal Letters

Question : Our office is involved in ~~State Medicaid Manual and its interpretation~~ ~~State Medicaid Manual and its interpretation~~

Answer : The court should give these guidance documents some deference, depending

Discussion: The Supreme Court has ~~struggled~~ ~~struggled~~ to clarify the ~~standards~~ ~~standards~~ ~~for~~ ~~deference~~

[\[1\]](#)

[\[2\]](#)

In recent years, the Court ~~has taken~~ ~~has taken~~ steps to narrow application. In *Christensen v. Harris County*

[\[3\]](#)

[\[4\]](#)

[\[5\]](#)

[\[6\]](#)

[\[7\]](#)

In *U.S. v. Mead Corporation* [\[8\]](#) the Court discussed the ~~One~~

We hold that administrative implementation of a ~~preference~~ ~~preference~~ ~~when~~ ~~when~~ ~~appears~~ ~~appears~~ ~~that~~ ~~that~~ ~~the~~ ~~the~~ ~~agency~~ ~~agency~~ ~~has~~ ~~has~~ ~~delegated~~ ~~delegated~~ ~~authority~~ ~~authority~~

In other words, *Chevron* deference is limited to ~~agency~~ ~~agency~~ ~~action~~ ~~action~~ ~~that~~ ~~that~~ ~~is~~ ~~is~~ ~~within~~ ~~within~~ ~~the~~ ~~the~~ ~~agency's~~ ~~agency's~~ ~~discretion~~ ~~discretion~~ ~~and~~ ~~and~~ ~~the~~ ~~the~~ ~~agency~~ ~~agency~~ ~~has~~ ~~has~~ ~~delegated~~ ~~delegated~~ ~~authority~~ ~~authority~~

[11]

The Court then looked to *Skidmore* whether the tariff ruling was entitled to “some deference” under the *Chenery* test.^[12] *Skidmore* ^[13]

Chevron did nothing to eliminate *Skidmore*’s holding.^[14]

Not surprisingly, courts already are applying the deference standard to administrative actions.^[15] The Supreme Court is off to the races.^[16]
^[17]

The Tenth Circuit recently *State Medicaid Manual* about must give deference to *Skidmore* does not conflict with the *Skidmore*.^[18]
^[19]
^[20]
^[21]

[1] 467 U.S. 837 (1984).

[2] 467 U.S. at 844-45.

[3] 529 U.S. 576, 587 (2000).

[4] *Id.* at 587.

[5] *Id.* (quoting *Skidmore v. Swift*, 323 U.S. 134, 140 (1944)).

[6] 323 U.S. 134 (1944).

[7] *Id.* at 140.

[8] 121 S.Ct. 2164 (2001).

[9] *Id.* . at 2171.

[10] *Id.*

[11] *Id.* . at 2173-2176.

[12] *Id.* . at 2175.

[13] *Id.* at 2177-89.

[14] *Id.* . at 2175-76. For an interesting post-case, see *Ba*

[15] Numerous cases, pre-*Mead*, accord deference to the federal Medicaid agency.

[16] *Brumer v. Wisconsin Dept. of Social Services*, 122 U.S. 962 (2001).

[17] 286 F.3d 476 (7th Cir. 2002).

[18] See *Ramey v. Reinertson*, 268 F.3d 955 (10th Cir. 2001).

[19] 648 N.W.2d 95 (Iowa 2002).

[20] 166 F. Supp. 2d 42 (D.N.J. 2001) (citations omitted).

[21] *Grey Bear v. N.D. Dep't of Human Services*, 2002 N.D. 389, 648 N.W.2d __, 2002 WL 1941356 (N.D. Aug. 23, 2002).