

B. *Other Motions*

The Mutis' May 31, 2021 Amended Complaint is thus the operative pleading. It supersedes the original complaint. Its filing made CPUC's motion to dismiss the original complaint obsolete. "As the amended complaint supersedes the original complaint no motion of any kind can now be addressed to the original complaint as it performs no function in the action . . ." United States v. Shofner Iron & Steel Works, 71 F. Supp. 161, 162 (D. Or. 1947), *rev'd on other grounds*, 168 F.2d 286 (9th Cir. 1948). The court will thus make no ruling on the merits of the motion to dismiss the original complaint.

Since the Mutis' May 31, 2021 Amended Complaint is the operative pleading, the Mutis' motion to strike Chuuk's answer to the original complaint and to file their amended complaint are now both nullities.

C. *Scheduling Order*

Since the Mutis' May 31, 2021 Amended Complaint is now the operative pleading, the court hereby gives the defendants, CPUC and Chuuk, until September 2, 2021, to answer or otherwise defend against the Mutis' amended complaint.

III. CONCLUSION

CPUC's motion to strike the plaintiffs' amended complaint is denied, and the defendants are given to September 2, 2021, to answer or otherwise defend against the amended complaint.

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FSM SUPREME COURT APPELLATE DIVISION

GAY JEAN MIGUEL, a minor through Mikehla Miguel, next of kin,)	APPEAL CASE NO. P13-2016
)	(Civil Action No. 2013-008)
Appellant,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA SOCIAL SECURITY ADMINISTRATION,)	
)	
Appellant.)	
_____)	

OPINION

Oral Argument: October 16, 21, 2020
Decided: August 19, 2021

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Larry Wentworth, Associate Justice, FSM Supreme Court
Hon. Mayceleen JD. Anson, Specially Assigned Justice, FSM Supreme Court*

*Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

For the Appellant: Vincent Kallop, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
Kolonia, Pohnpei FM 96941

For the Appellee: Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonia, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Standard of Review – Civil Cases

An issue raised for the first time during oral argument was never properly raised on appeal, and will not be entertained. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 382 n.1 (App. 2021).

Administrative Law – Judicial Review; Social Security

The FSM Supreme Court is authorized to review appeals from the Social Security Board's findings or final decision, and, under the Administrative Procedure Act, on an appeal from a FSM administrative agency, the court must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This provision applies to Social Security appeals because no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 382 (App. 2021).

Administrative Law – Judicial Review; Social Security

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence, and, depending on the nature of the agency's decision making responsibility as well as the formality of the procedure, some administrative decisions are worthy of more deference than others. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 382 (App. 2021).

Administrative Law – Judicial Review; Social Security

Generally, the three standards of review for administrative decisions are: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and de novo, or agreement. These different standards are triggered by express statutory "word formulas" found in the language of the statute, and Title 53, which codifies social security law, expressly uses the words "reasonableness" and "substantial" thus triggering the intermediate standard. Thus, the Social Security Board's decisions are reviewed to determine whether the findings were supported by substantial evidence. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 382 (App. 2021).

Appellate Review – Standard of Review – Civil Cases – Factual Findings

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. The appellate court can only affirm if an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 382 (App. 2021).

Administrative Law – Judicial Review; Administrative Law – Rules and Regulations; Social Security

When a party contends that a Social Security regulation is too restrictive or that it exceeds Social Security's statutory authority, the court limits its review to determine only whether the promulgated regulation exceeds such authority since 53 F.S.M.C. 703 expressly grants Social Security rule-making power. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 383 (App. 2021).

Administrative Law – Rules and Regulations; Social Security

The delegation of rule-making authority to Social Security recognizes the relative competence and expertise of Social Security to ensure an efficient and equitable means to evaluate whether a claimant qualifies for benefits. Since Congress has given Social Security full power and authority to promulgate regulations necessary or appropriate to carry out the agency's function, any claim that the regulations are *ultra vires* will be rejected. Social Security regulations are entitled to great deference. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 383 (App. 2021).

Social Security; Statutes – Construction

Since Title 53 of the FSM Code (Social Security) is patterned after United States statutes, Title 53 is presumed to have been adopted as construed by United States courts. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 383 n.2 (App. 2021).

Social Security – Claims and Benefits

Social security benefits are only dispersed to a surviving child who meets the requirements set forth under Title 53 and the Social Security regulations – a dependent's benefits are only extended to a surviving child who was dependent upon an individual who died fully insured or currently insured and who has filed a complete survivor's insurance application with the agency. A surviving child is deemed to have been dependent upon his parent or adopting parent unless that parent or adopting parent was not living in the same household with or contributing to the support of such child prior to his death. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 384 (App. 2021).

Social Security – Claims and Benefits

Actual dependency upon the adoptive parent is a prerequisite for the adopted minor to receive surviving social security benefits after the adoptive parent's death, and when evidence is needed to prove the entitlement to receive or to continue to receive benefits, the applicant is responsible for obtaining and providing the evidence to Social Security, which may request evidence that the child was the insured person's dependent. Such requested evidence depends on the how the claimant is related to the insured. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 384 (App. 2021).

Social Security – Claims and Benefits

The contention that Social Security's preferred evidence to show dependency is too restrictive is misguided because "preferred" does not connote exclusive and because an applicant is allowed to adduce supplementary evidence. Also, the list of preferred evidence in the Social Security regulations streamlines the decision-making process by providing a means to efficiently and equitably evaluate dependency and it makes it easier for applicants to know what evidence they need to produce for a successful application. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 385 (App. 2021).

Social Security – Claims and Benefits

When an applicant has failed to present to the Social Security Board evidence showing that her deceased grandfather (adoptive father) was responsible for her care, custody, and support, and, by implication, that she was actually dependent on her grandfather; and when she did not apply to the court for leave to adduce additional material and show reasonable grounds for failure to provide evidence before the Board, the trial court's determination, that the Board's dismissal of her claim based on lack of evidence of actual dependency, was proper. Miguel v. FSM Social Sec. Admin., 23 FSM R. 378, 385 (App. 2021).

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

Gay Jean Miguel (“Miguel”), a minor through her next of kin, Mikehla Miguel, appeals the FSM Supreme Court trial division June 27, 2016 order granting summary judgment in favor of the Federated States of Micronesia Social Security Administration (the “FSMSSA”). The FSMSSA Board confirmed a decision to deny her claim for surviving adopted child benefits based on a failure to provide adequate evidence of dependency. Miguel appealed that decision by filing a Petition to Appeal Final Decision of Board. Miguel claims that, in granting summary judgment in favor of FSMSSA, the trial court erred in law and in fact since there were triable issues remaining because dependency cannot be limited to conventional “preferred evidence,” as set forth in the FSMSSA regulations. For the following reasons, we hereby affirm the trial court’s decision.

I. BACKGROUND

Gay Jean Miguel was born on December 8, 2000 to Jaysleen Hadley and Karvin Mikel. It is alleged that Miguel’s paternal grandparents, Thomas and Mikehla Miguel, customarily adopted Miguel, and a decree confirming that adoption was issued on October 23, 2002 by the Pohnpei State Supreme Court. Thomas Miguel was 66 years old when the adoption decree was rendered and Miguel was 2 years old. Thomas Miguel passed away on December 1, 2010.

On January 13, 2011, Mikehla Miguel filed a claim for surviving adopted child benefits for Miguel. On October 4, 2011, a notice from FSMSSA Administrator Alexander Narruhn denying the claim was issued based on a failure to submit adequate evidence of dependency. Miguel appealed the decision to deny the claim through her attorney by sending a Notice of Appeal to the FSMSSA’s Board on March 1, 2012. A fact-finding committee was appointed to determine the merits of Miguel’s appeal and to make recommendation to the full Board. The committee then conducted a hearing on August 23, 2012, and during the meeting Miguel presented no additional evidence showing dependency. The committee’s findings were then presented to the Board.

On December 18, 2012, the Board adopted the committee’s findings confirming the decision to deny benefits. This decision was transmitted by letter to Miguel on January 15, 2013. Miguel then filed a complaint on March 11, 2013, which appealed the FSMSSA Board’s decision to deny benefits and further alleged due process and civil rights violations and sought declaratory and injunctive relief.

On April 21, 2015, the FSMSSA filed a Motion for Summary Judgment. A hearing on the motion for summary judgment was held on July 22, 2015. On June 27, 2016, the trial court entered an order granting summary judgment in favor of FSMSSA. [*Miguel v. FSM Social Sec. Admin.*, 20 FSM R. 475 (Pon. 2016).] The trial court concluded that there was no abuse of discretion by the FSMSSA in denying benefits because Miguel failed to proffer sufficient evidence to demonstrate economic dependency. [*Id.* at 480-82.] On August 11, 2016, Miguel appealed the trial court’s order granting summary judgment in favor of FSMSSA.

II. ISSUE ON APPEAL

Miguel contends that the trial court erred in granting summary judgment because establishing dependency cannot be limited to conventional “preferred evidence” as set forth in the FSMSSA’s regulations. According to Miguel, in light of the lawful decree of adoption issued by the Pohnpei State Supreme Court, a genuine issue of material fact exists relative to actual dependency, thus granting the summary judgment

in favor of FSMSSA was improper.¹

III. STANDARD OF REVIEW

Miguel submits that the trial court erred in law and in fact in granting summary judgment favoring FSMSSA because there are triable issues of material fact concerning actual dependency.

The FSM Supreme Court is authorized to review appeals from the FSMSSA Board's findings or final decision under 53 F.S.M.C. 708. In addition, under the Administrative Procedure Act (APA), on an appeal from a FSM administrative agency, the court must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. 17 F.S.M.C. 111(3)(b). These provisions apply to appeals from FSMSSA because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009) (the provisions of the Administrative Procedures Act apply to all agency action unless Congress shall by law provide otherwise); Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 415 (App. 2018) (the Administrative Procedures Act applies to the Social Security Administration because no part of the Social Security Act provides otherwise).

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. *Id.* at 416. Furthermore, depending on the nature of the agency's decision making responsibility as well as the formality of the procedure, some administrative decisions are worthy of more deference than others.

Generally, the three standards of review for administrative decisions are: 1) arbitrary and capricious, or abuse of discretion; 2) reasonableness, or substantial evidence; and de novo, or agreement. These different standards are triggered by express statutory "word formulas" found in the language of the statute. *Id.* (citing GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 n.2 (Pon. 2014)). Title 53, which codifies social security law cases, expressly uses the words "reasonableness" and "substantial" thus triggering the intermediate standard. *Id.*

Accordingly, we examine the trial court's review of the FSMSSA Board's decision to determine whether the court's findings were supported by substantial evidence. Eliam, 21 FSM R. at 416 ("Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion."); George v. Albert, 17 FSM R. 25, 33 n.3 (App. 2010). The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Only findings that are clearly erroneous can be set aside on appeal. Worswick v. FSM Telecomm. Corp., 9 FSM R. 460, 462 (App. 2000). The Court in Worswick further explained that:

If an appellant alleging clear error fails to show that the trial court's factual finding was not supported by substantial evidence in the record, or if the factual finding was the result of an erroneous conception of the applicable law, or that, if after consideration of the entire record, the appellate court is not left with a definite and firm conviction that a mistake has been made, the appellate court can only affirm.

Id. at 463.

¹ During oral argument Miguel raised for the first time the issue with the fact-finding committee. This issue was never properly raised on appeal; neither was it raised in the Appellant's brief. In addition, the trial court had already ruled on that issue stating that it was allowed under the law. Accordingly, we will not entertain such contention.

Miguel also argues that the trial court erred in law because, she contends, that the FSMSSA's regulations requiring evidence of dependency were too restrictive or that it exceeded the statutory authority. We limit our review to determine only whether the promulgated regulations exceeded such authority since 53 F.S.M.C. 703 expressly grants the FSMSSA rulemaking power. Harden v. Continental Airlines, 18 FSM R. 141, 146 n.2 (Pon. 2012) (regulation can neither contradict nor exceed statutory law's reach). Issues of law are reviewed *de novo* on appeal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012); Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

IV. ANALYSIS

A. *The FSMSSA's Regulations*

We first address the validity of the FSMSSA's regulations. More specifically, we must first determine whether the challenged regulations pertaining to surviving adopted child benefits are valid and within the authority of the FSMSSA. In other words, we first address the issue of whether Miguel's claim that the regulations are *ultra vires* has merit.

The trial court discounted Miguel's claim by adopting the holding in Neth v. FSM Social Security Administration, 20 FSM R. 362 (Pon. 2016), which held:

1) that a valid claim for benefits as an adopted child requires proof of adoption and dependency of the adopted child on the wage earner, 2) the regulations are promulgated to [ensure] efficiency, accuracy and proficiency and prevent abuse and to regulate violations in order to protect the Social Security System, 3) the statutory scheme of the FSMSSA is not unconstitutional, and 4) the exercise of the FSMSSA's investigatory functions, which would include the request for evidence of dependency in the currently matter, is lawful as long as it is authorized by law. Therefore, as ruled in Neth, the FSMSSA's regulations are not *ultra vires*.

Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

This Court also explained in Eliam v. FSM Social Security Administration, that the authority to promulgate regulations is delegated to the FSMSSA's Board under 53 F.S.M.C. 703, which states in pertinent parts that "[t]he Board may adopt, amend or rescind regulations for the administration of this subtitle pursuant to chapter 1 of title 17 of this code." This delegation of authority "recognizes the relative competence and expertise of the FSMSSA to ensure an efficient and equitable means to evaluate whether a claimant qualifies for benefits." Eliam, 21 FSM R. at 416. The Eliam Court further held "that Congress has given the FSMSSA full power and authority to promulgate regulations necessary or appropriate to carry out the function of this agency and therefore rejects [the appellant's] claim that the regulations at issue are *ultra vires*."² Thus, social security regulations are entitled to great deference. *Id.* at 417. We hold the same in this matter.

B. *Requirements for Benefits*

Citing the Neth case once again the court below ruled that, "FSM Social Security benefits are not a property right which automatically vests upon the death of the wage earner and upon filing of a claim. The proper procedure under Title 53 and the [FSMSSA] regulations must be adhered to before a claimant may

² The court reasoned that since Title 53 of the FSM Code is patterned after United States statutes, Title 53 is presumed to have been adopted as construed by the courts of the United States. As such, the Court adopted a holding in Chevron U.S.A. v. National Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), which held that the U.S. Social Security Administration's regulations were consistent with the statutory scheme.

be deemed eligible for benefits.” Miguel, 20 FSM R. at 479. Thus, social security benefits are only dispersed to a surviving child who meets the requirements set forth under Title 53 and the FSMSSA regulations.

Under Title 53, dependent’s benefits is only extended to a surviving child who was dependent upon an individual who died fully insured or currently insured and who has filed a complete survivor’s insurance application with the FSMSSA. 53 F.S.M.C. 803(1). The statute also states that “[a] surviving child shall be deemed to have been dependent upon his parent or adopting parent unless that parent or adopting parent was not living in the same household with or contributing to the support of such child prior to his Gdeath.” 53 F.S.M.C. 803(3).

Section 100.21 of the Social Security Regulations provides “[a] child who is dependent upon a person entitled to old age benefits or who was dependent upon an individual who died fully insured or currently insured, shall be entitled, upon filing an application, to a child’s insurance benefit.” In addition, section 100.22 states that, “[a] child shall be deemed dependent upon his proven natural parent or adoptive parent unless such parent was not leaving in the same household with or contributing to the support of such child.” Moreover, under the holding of the Eliam Court, “[a]ctual dependency upon the adoptive parent is a prerequisite for the adopted minor to receive surviving social security benefits after the adoptive parent’s death.” Eliam, 21 FSM R. at 417 (citing Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 n.2 (Kos. 2009)) (emphasis added).

Section 100.5 of the regulations states in pertinent parts that “[w]hen evidence is needed to prove your entitlement to receive or to continue to receive benefits, you will be responsible for obtaining and providing the evidence to us.” That section also states that the FSMSSA will, upon a claimant’s request, advise on the kinds of convincing evidence and will consider any relevant evidence. Section 100.22(a) further provides that when applying for surviving child benefit, FSMSSA may request evidence that the child was the insured person’s dependent. Such requested evidence depends on the how the claimant is related to the insured.

Here, as the trial court noted, a letter from FSMSSA Administrator dated October 4, 2011, was issued notifying Miguel that application for surviving adopted child benefits was denied because of a lack of providing sufficient evidence showing actual economic dependency on her deceased adopted father, Thomas Miguel. At the August 23, 2012 hearing before the fact-finding committee, with the exception of the adoption decree, there were no evidence showing actual dependency. Even though the Board allowed her some time after the hearing to present supporting evidence for her claim, Miguel still failed to provide additional proof of dependency.³

Miguel contends that her failure to proffer sufficient evidence is because the “preferred evidence” of

³ FSM Social Security Regulation § 100.6 Failure to provide requested evidence.

Generally, you will be asked to provide us by a certain date specific kinds of evidence to prove you are entitled to benefits. If we do not receive the evidence by that date, we may decide to close your claim at that time. If you are already receiving benefits, you may be asked to provide us by a certain date evidence needed to determine whether you [will] continue to be entitled to benefits or whether your benefits should be terminated or reduced. If you do not provide us the requested evidence by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be terminated or reduced. You may let us know if you are unable to provide us the requested evidence within the specified time, explain why there will be a delay and request additional time. If this delay is due to illness, inability to receive timely evidence you have requested from another source or similar circumstance, you will be given additional time to provide us the evidence.

dependency listed under section 100.22(b) of the regulations is too restrictive. FSM Social Security Regulations 100.22(b) sets forth:

§ 100.22(b) Preferred Evidence – at least two types of preferred evidence shall be required.

- (1) Evidence that the insured person and child were or are living together in one household;
- (2) Evidence that the insured person was/is contributing to the support of the child;
- (3) The child is listed as a child beneficiary on the insured person's life insurance policy, if the insured person has or had insured his life;
- (4) Official school records showing the insured person as provider for the child; or
- (5) At the discretion of the FSMSSA Administrator, any other documents or evidence that will prove dependency of the child on the insured person.

The contention that section 100.22(b) is too restrictive is misguided because “‘preferred’ does not connote exclusive and because of the allowance provided an applicant to adduce supplementary evidence, as set forth in § 100.22(b)(5). Eliam, 21 FSM R. at 419. See also Social Sec. Regs. § 100.22(a). In addition, as the Eliam Court has held, “the list of preferred evidence set forth within the FSMSSA’s regulations streamlines the decision-making process by providing a means to efficiently and equitably evaluate dependency and makes it easier for applicants to know what evidence they need to produce for a successful application.” Eliam, 21 FSM R. at 419. Furthermore, the FSMSSA, pursuant to the statutory authority to implement social security programs, has promulgated regulations that are consistent with the intent of Congress. *Id.*

The court below concluded that, due to Miguel’s failure to produce sufficient evidence of actual economic dependency, the Board’s dismissal of her claim was not erroneous. The trial court correctly found Miguel had failed to present to the Board evidence showing that her deceased grandfather (adoptive father) was responsible for her care, custody, and support, and, by implication, that Miguel was actually dependent on her grandfather. Furthermore, Miguel also failed to avail herself of 53 F.S.M.C. 708, which allows the trial court to order additional evidence to be taken by the Board if either party applies to the court for leave to adduce additional material and show reasonable grounds for failure to provide evidence before the Board. Accordingly, similar to the holding in Eliam, we find the trial court’s determination – that the Board’s dismissal of Miguel’s claim based on lack of evidence of actual dependency – to be proper.

V. CONCLUSION

The trial court’s grant of summary judgment in favor of the FSMSSA was proper, since Miguel failed to provide sufficient evidence of economic dependency as required by Title 53 and the FSMSSA regulations. Further, Congress has expressly delegated to the Board full power and authority to promulgate regulations necessary or appropriate to carry out the functions of the agency; therefore, the Board may set forth the nature and extent of proof to establish dependency. Thus, the FSMSSA’s regulations relating to submission of preferred evidence conform and are consistent with the statutory authority delegated to it pursuant Title 53 and Congressional intent.

ACCORDINGLY, we hereby affirm the trial court’s June 27, 2016 Order Granting Defendant’s Motion for Summary Judgment.

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