

*Smith v. Berryhill*, No. 17-1606, 2019 WL 2257159  
(May 28, 2019)

### **United States Supreme Court Limits Scope of *Chevron* Deference**

In *Smith v. Berryhill*, the United States Supreme Court has again limited the scope of *Chevron* deference. *Chevron* deference is the highest level of deference a court uses to defer to an agency's interpretation of the agency's own statutes. This level of deference exists when the agency's statute is ambiguous and the agency's interpretation is reasonable. In its [opinion](#), the Court held that *Chevron* deference does not apply to limit the scope of judicial review of an agency decision. *Chevron U.S.A. Inc. v. Nat'l Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

Section 405(g) of the Social Security Act ("the Act") states that judicial review is available upon "any final decision of the Commissioner of Social Security made after a hearing." The Claimant was denied disability benefits before an administrative law judge and appealed to the Social Security Appeals Council, who dismissed the request for review of benefits as untimely. When the Claimant appealed the dismissal, the Federal District Court and the Sixth Circuit found they lacked jurisdiction because there was not a final decision in the lower tribunals. The Social Security Administration's longstanding interpretation of Section 405(g) was that a dismissal for untimeliness was not a final decision for purposes of allowing judicial review under Section 405(g).

On review, the Court explained it would not defer to the Social Security Administration's interpretation of the Act. The Court reasoned that Congress could not have implicitly delegated the authority to determine the scope of judicial review of an agency action to the agency itself. The Court distinguished agency decisions within the scope of its delegated authority and agency decisions in areas where it has no jurisdiction, such as judicial review.

Moving forward, if an agency's own interpretation of its statutory procedures involves judicial review, the agency will not have the ability to say when or if its decisions will be subject to judicial review. According to the Supreme Court, Congress could not have intended to delegate that self-serving determination to the agency itself.