

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEON EDWARD MERONK,

Plaintiff,

OPINION AND ORDER

v.

02-C-410-C

JO ANNE P. BARNHART, Commissioner
of Social Security,

Defendant.

Plaintiff Leon Edward Meronk has filed a motion in which he asks the court to appoint a lawyer to represent him in his action against the Social Security Administration. Plaintiff contends that the Social Security Administration has denied him due process of law by refusing to allow him to withdraw partially from the supplemental security income program. Plaintiff's motion for the appointment of counsel is denied. Furthermore, because plaintiff's latest submissions make clear that his case is frivolous, I am prepared to dismiss it pursuant to 29 U.S.C. § 1915(e)(2)(B).

From the administrative record and plaintiff's submissions, I find the following facts:

FACTS

Plaintiff was determined to be disabled and eligible for supplemental security income payments because of Reiter's Syndrome in April 1992. On December 15, 1997, plaintiff was injured in a car accident. Plaintiff was treated by various medical providers for injuries that

plaintiff contends were caused by the car accident. Because of plaintiff's participation in the social security income program, Medicaid covered a significant portion of plaintiff's medical expenses. The amount paid by Medicaid was approximately \$15,000.

Plaintiff retained an attorney to negotiate a settlement with the insurance company that insured the other driver. The insurance company offered to settle plaintiff's claims for approximately \$25,000; however, it appears that plaintiff never signed the release. The proposed settlement included \$1,855.76 that was to be paid to Medicaid.

On September 20, 2000, plaintiff requested permission to withdraw from the supplemental security income program for the period December 1997 to June 2000. After his request was denied, plaintiff requested a hearing before an administrative law judge. A hearing was held on January 16, 2001. Plaintiff explained that the reason he wanted to withdraw from the supplemental security income program as of December 1997 was because as of that date, he was disabled from injuries he sustained in the car accident, not his Reiter's syndrome. Plaintiff stated that he wanted the insurance company, not the government, to be responsible for paying his medical expenses in full for that time period. Plaintiff testified:

I was working my way off and when I got almost off Social Security, bang, I got back-ended with a pickup truck and now the injuries I've incurred from that are keeping me on Social Security, but they should be incurred by the insurance company should be reimbursing me and I've got their offer and actually their offer to the government for their amount of damages and everything. So I'm going to try to go back and get the government their money back. I'm going to try to get their doctors paid in full. I'm going to try to get medical assistance paid back in full and I'm going to try to get an annuity for continuing disability because of the injuries that occurred because of this accident.

Transcript of Jan. 16, 2001 hearing, Administrative Record at 33. Plaintiff testified that the three-year statute of limitations for bringing a civil action against the insurance company had expired.

On January 26, 2001, the administrative law judge issued a decision in which he denied plaintiff's request for partial withdrawal. The administrative law judge found that under the Commissioner's regulations, a withdrawal request from the supplemental security income program "must be a full withdrawal from the initial date of the application." Admin. Rec., at 17.

OPINION

At the outset, I note that plaintiff did not mail a copy of his motion to the United States Attorney. In his motion, plaintiff indicated that he did not know to whom he should mail a copy because "they keep changing people." Plaintiff must mail a copy of anything he submits to this court to Assistant United States Attorney Richard Humphrey. He does not need to send copies to the "Acting Attorney General" or the Social Security Administration. This court will forward a copy of plaintiff's motion to Humphrey, but this is the last time it will take such action on plaintiff's behalf. In the future, this court will not consider any submissions by plaintiff unless he indicates that he provided a copy to Assistant United States Attorney Humphrey.

I am denying plaintiff's motion for the appointment of counsel because the presence of counsel will not make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). It is frivolous for plaintiff to argue that the Commissioner's refusal to allow him to withdraw partly from the supplemental security income program violates his rights to due process. According to plaintiff, his inability to withdraw partly from the supplemental security income program is adversely affecting the amount of money that he is able to recover in settlement for the injuries he sustained in the car accident. It appears that plaintiff's primary goal is to make the insurance company reimburse the federal government for the money it paid out through the Medicaid program towards plaintiff's medical bills, although he also seeks reimbursement for his "living expenses."

A claim "is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). In order to recover for a due process violation, plaintiff must first demonstrate that he has been deprived of a protected interest. Plaintiff cannot make this showing. First, to the extent that the government is "depriving" plaintiff of anything in this case, it is doing so only indirectly. The government has not taken anything away from plaintiff; to the contrary, it has *refused* to take away his supplemental security income benefits for the time period from December 1997 to June 2000. It appears that the only thing of which plaintiff has been deprived is the ability to dictate which party—the federal government or the insurance company—was responsible for his medical bills

and living expenses for that time period. This is not an interest that is recognized by the Constitution or any federal statute. Further, to the extent plaintiff seeks to recover funds on behalf of the government, he lacks standing to bring such an action because he is not the injured party. See United States v. Hays, 515 U.S. 737, 742-43 (1995) (to have standing plaintiff must have suffered “injury in fact”).

Second, insofar as plaintiff’s claim is based upon the effect his receipt of supplemental security income had on his settlement from the insurance company, it appears that his claim is now moot. According to plaintiff’s testimony at the administrative hearing, it has been more than three years since his accident. If this is true, it would mean that the three-year statute of limitations for filing a lawsuit to recover damages for the injuries he suffered in the car accident has expired. As a result, plaintiff has little if any chance now of recovering anything from the insurance company.

Third, plaintiff had a choice: if he really wanted to “make the insurance company pay,” he could have withdrawn his application in full, so long as he reimbursed the government for the supplemental security income it had paid him up to the time of his withdrawal. Plaintiff may contend that this was not a realistic choice because he did not have the financial ability to reimburse the government at the time he sought to withdraw his application. However, it is reasonable for the government to require a supplemental security income recipient to pay back his benefits in exchange for withdrawing his application. Given

that he had a reasonable choice, plaintiff cannot argue that he suffered harm at the hands of the federal government.

In sum, because there is no arguable basis in law or fact for plaintiff's due process claim, it is frivolous. The appointment of a lawyer will not make a difference to the outcome. The only other objection that plaintiff raises to the Commissioner's decision is that the agency ignored various issues raised by plaintiff in a letter dated December 4, 2000. (A copy of the letter is in the Administrative Record, dkt. #10, at 78.) This claim is also frivolous. Several of the issues raised in plaintiff's letter were general complaints about the government's treatment of individuals with disabilities and the health care system. For example, plaintiff complained about "a trillion dollar IOU deposited by the federal government that destabilizes the social security program," "a political agenda that uses people with disabilities to subsidize the insurance companies at the expense of the health care providers" and the fact that the Americans with Disabilities Act applies only in the employment context. It is Congress, not the Commissioner or this court, that has the power to address these issues. The other issues in plaintiff's letter consisted of complaints about the failure of various individuals to respond to his complaints about medical assistance fraud. As I found in my order of August 2, 2002, these claims are frivolous because they lack any arguable basis in law.

Pursuant to 28 U.S.C. § 1915(e)(2)(B), in an *in forma pauperis* proceeding, the court shall dismiss the case at any time if the court determines that the action is frivolous,

malicious or fails to state a claim on which relief may be granted. Because it appears that there are no non-frivolous grounds upon which plaintiff is challenging the Commissioner's refusal to grant his request for partial withdrawal, I must dismiss his case. Before doing so, however, I will give plaintiff the opportunity to advise the court whether he does have any other challenges to the Commissioner's decision. Plaintiff should provide a brief statement of those reasons to the court no later than December 23, 2002.

ORDER

IT IS ORDERED:

1. Plaintiff's motion for appointment of counsel is DENIED.
2. Plaintiff's case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2).
3. Entry of judgment dismissing the case is STAYED pending plaintiff's submission of a brief statement to the court, with a copy to Assistant United States Attorney Richard Humphrey, explaining whether there are grounds aside from those addressed in this opinion on which he is challenging the Commissioner's decision. Plaintiff shall have until December 23, 2002, to submit his statement. If plaintiff does not submit a statement, I will assume that he has no other issues he wishes to raise.

4. The briefing schedule set by the court on October 23, 2002 is STAYED pending further order of the court.

Entered this 9th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge