

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

HERBERT WILKINS,

Petitioner,

v.

KEVIN HAYDEN, Secretary of
Wis. DHFS, or, his Successor,

Respondent.

ORDER

08-cv-264-bbc

This is a proposed civil action for injunctive, declaratory and monetary relief, brought under 42 U.S.C. § 1983. Petitioner contends that he is being denied his “Constitutional right to receive just compensation” for his work. Petitioner Herbert Wilkins is a civilly committed patient at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Petitioner asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I found earlier that he has the means to prepay only \$2.17 of the \$350 fee for filing this suit. He has made that payment.

Although petitioner is not a prisoner, I cannot grant him leave to proceed in forma pauperis unless I find first that his complaint passes screening under 28 U.S.C. § 1915(e)(2).

In performing that screening, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, it must dismiss the complaint if, even under a liberal construction, it is legally frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 42 U.S.C. § 1915(e).

Petitioner's initial complaint was filed in the Eastern District of Wisconsin and his case was transferred here on May 5, 2008. Before paying the portion of the filing fee he was required to pay, petitioner filed three motions to amend and supplement his complaint. Petitioner's initial complaint contains twenty-eight numbered paragraphs. His first request to amend and supplement his complaint (dkt. #2) is supported by a document (dkt. #3) made up of petitioner's proposed paragraphs twenty-nine through forty-four. His second (dkt. #5) and third (dkt. #9) requests to amend and supplement his complaint are not accompanied by any proposed amendments but instead contain indiscriminate statements and declarations regarding his confinement at Sand Ridge.

I will treat petitioner's first request to amend and supplement as a motion to amend his complaint and will grant that motion. The document filed as docket entry #3 will be considered as an addendum to his original complaint. However, I will deny petitioner's second and third requests for leave to amend his complaint because the documents do not contain a short and plain statement of any new claims as required by Fed. R. Civ. P. 8.

In his complaint as amended by docket entry #3, petitioner alleges few facts. Instead, petitioner intersperses large discussions of case law, statutory law and the Constitution, as well as a plethora of what I understand to be rhetorical questions. The few factual allegations to be found in the complaint are as follows:

ALLEGATIONS OF FACT

Petitioner Herbert Wilkins is a civilly committed patient under Chapter 980 of the Wisconsin Statutes. He is currently confined at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Until March 27, 2008, he was confined at the Wisconsin Resource Center. Respondent Kevin Hayden is the Secretary of the Wisconsin Department of Health and Family Service.

Petitioner has been diagnosed with the mental disorder labeled “Antisocial Personality Disorder.” Petitioner participates in the patient work program run by the Wisconsin Department of Health and Family Service. Petitioner and all other Chapter 980 patients are not justly compensated for their work because they are paid less than minimum wage.

DISCUSSION

I understand petitioner to be raising three claims. First, it appears he is alleging that his constitutional right to receive just compensation for his work (at least minimum wage)

is being denied to him. Second he contends that because of his mental disorder, respondent is discriminating against him by denying him the benefits provided by the patient work program, in violation of the American with Disabilities Act. And third, respondent's failure to pay him an appropriate wage violates his rights under the Rehabilitation Act.

A. Right to Receive Just Compensation Claim

Petitioner is mistaken about having a constitutional right to receive a minimum wage or "just compensation." There is no such constitutional right. There is only a statutory right to be paid a minimum wage as provided under the Fair Labor Standards Act. Although I have previously determined that civilly committed patients are not subject to the provisions of the FLSA, Weissenberger v. Watters, No. 07-C-415-C, 2007 WL 2298220, at *2 (W.D. Wis. Aug. 3, 2007), that determination is not important here, because petitioner states expressly in his complaint the he is not pursuing an FLSA claim. Therefore, petitioner's first claim will be denied for failure to state a claim upon which relief may be granted.

B. ADA and Rehabilitation Act Claims

Petitioner couches his second claim under Title II of the ADA, which states in relevant part that

no qualified individual with a disability shall, by reason of such disability, be excluded

from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

42 U.S.C. § 12132. Petitioner alleges that his mental disorder makes him a qualified individual with a disability and for the purposes of screening his complaint I will assume he is correct. Petitioner alleges further that because of his mental disability, respondent is discriminating against him by denying him the benefits of a program. I understand petitioner to allege that respondent's failure to pay him "the value [his] work would be [given] in the community," that is, at least minimum wage, is a denial of benefits of the patient work program.

To be denied a benefit of a program, the program has to offer the benefit in the first place. That is not the case here. Petitioner alleges that all patients civilly committed under Chapter 980 are paid less than minimum wage for participation in the work program. If no Chapter 980 patient is paid minimum wage under the work program, then being paid minimum wage is not a benefit offered by the program. Petitioner cannot be denied a benefit that, according to his allegations, does not exist. In fact, although petitioner may not agree that being paid less than minimum wage is a benefit, his allegations establish that he receives the benefit respondent provides under the patient work program.

Perhaps the following two examples will explain what petitioner may find confusing.

Example 1: "Public entity" A offers chocolate ice cream as a benefit of participating in program B. Joe, who has a disability, participates in program B, but, because of his

disability, A does not provide Joe with chocolate ice cream. Joe has a claim under the ADA against A because A denied Joe a benefit of participating in its program B because of Joe's disability.

Example 2: "Public entity" A offers chocolate ice cream as a benefit of participating in program B. Joe, who has a disability, participates in program B and receives chocolate ice cream, but Joe wants vanilla ice cream. Joe requests vanilla ice cream but A does not provide Joe with vanilla ice cream. Joe does not have a claim under the ADA against A because A does not provide vanilla ice cream as a benefit and therefore, A did not deny Joe a benefit that it provides.

Petitioner's allegations fit under example 2 because respondent does not offer minimum wage payment for participating in the patient work program.

Petitioner's allegation that he is being denied the benefits of the patient work program in violation of the Rehabilitation Act, 29 U.S.C. § 794, fails for the same reason his ADA claim fails: he is not being denied a benefit provided by the program. Therefore, petitioner's ADA and Rehabilitation Act claims must be dismissed for failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that:

1. Petitioner Herbert Wilkins's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;

2. The clerk of court is directed to close the file.

Entered this 14th day of July, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge