

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

ROBERT J. MARX,

Plaintiff,

v.

RICHLAND COUNTY, WI, et al.

Defendants.

OPINION and ORDER

Case No. 15-cv-764-wmc

Plaintiff Robert J. Marx filed a proposed civil complaint. (Dkt. #1.) Because Marx is proceeding without prepayment of the filing fee, the court is required to screen his complaint under 28 U.S.C. § 1915. Because he is acting *pro se*, Marx is held to a “less stringent standard” in crafting pleadings. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Giving Marx the benefit of this relaxed standard, he will be permitted to proceed, but only against Richland County.

ALLEGATIONS OF FACT¹

Marx is a disabled veteran who suffers from Post Traumatic Stress Disorder (“PTSD”). The defendants include Richland County, Wisconsin, and Karen Knock, the Richland County Veterans Service Officer (“RCVSO”) for Richland County Veterans Services (“RCVS”).

Marx alleges that various PTSD symptoms limit his ability to participate in society. On February 6, 2015, Marx had an in-person meeting with an RCVSO, but because of an anxiety attack could not complete the visit. Apparently, Marx’s failure to complete an in-person interview prevented him from receiving veterans’ services from that office. Indeed, on July 15, 2015, TCVSO Karen Knock contacted Marx via email to advise that she could only help him if he appeared again in person.

¹ For purposes of this order, the court assumes the facts above based on the allegations in Marx’s complaint.

OPINION

Plaintiff claims that Knock's interaction with him constituted a violation of the Americans with Disabilities Act ("ADA"). The ADA, 42 U.S.C. §§ 12131-12134, prohibits discrimination against qualified persons with disabilities. To establish a violation of Title II of the ADA, a plaintiff "must prove that he is a 'qualified individual with a disability,' that he was denied 'the benefits of the services, programs, or activities of a public entity' or otherwise subjected to discrimination by such an entity, and that the denial or discrimination was 'by reason of' his disability." *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015) (citing *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 560 (7th Cir. 1996) (citing 42 U.S.C. § 12132)). While Congress has abrogated states' Eleventh Amendment sovereign immunity for ADA violations that also constitute federal constitutional violations, this Circuit has yet to address definitively whether ADA violations that do not implicate constitutional rights may be brought in federal court. *Norfleet v. Walker*, 684 F.3d 688, 690 (7th Cir. 2012). Under circumstances where an ADA claim is questionable and a *pro se* plaintiff has failed to invoke the roughly parallel provisions of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, the Seventh Circuit has suggested reading in a claim under the Rehabilitation Act to avoid any tricky abrogation question, and so that is what this court will do here. *Id.*

The Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). A claim under § 504 of the Act has four elements: (1) an individual with a disability; (2) who was otherwise qualified to participate; (3)

but who was denied access solely by reason of disability; (4) in a program or activity receiving federal financial assistance. *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 671 (7th Cir. 2012).

The proper defendant for claims under the ADA and Rehabilitation Act is generally the relevant state agency or its director in his official capacity. *See* 42 U.S.C. § 12131(1)(b); *Jaros v. Ill. Dep't of Corr.*, 684 F.3d 667, 670 n.2 (7th Cir. 2012) (noting that because individual capacity claims are not available, the proper defendant is the agency or its director in his official capacity). Reading plaintiff's allegations generously, it appears that he may have a claim under the Rehabilitation Act. His description of the symptoms he experiences, and the fact that those symptoms create a barrier to his ability to leave the house, all suggest that he may qualify as disabled. 42 U.S.C. § 12102(1) (defining "disability," in part, as a physical or mental impairment that substantially limits one or more major life activities). Additionally, his allegations suggest that he was denied the benefits of the RCVS, which includes federal, state and local veterans benefits, *because* he could not appear in person at the meeting due to his PTSD.

Accordingly, Richland County may be a proper defendant because it appears that the county operates the RCVS and the county is an agency of the State of Wisconsin. Because Karen Knock is an individual, who does not appear to hold the title of director (and Marx has not named her in her official capacity as the director of the RCVSO), plaintiff may proceed under the Act against Richland County, but may not proceed against Knock, who will be dismissed.

ORDER

IT IS ORDERED that:

1. Plaintiff is GRANTED leave to proceed on his ADA/Rehabilitation Act claim against Richland County.
2. Plaintiff is DENIED leave to proceed on his ADA claim against Karen Knock, who is DISMISSED from this action.
3. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to the defendants' attorney.
4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
5. The clerk's office will prepare summons and the U.S. Marshal Service shall affect service upon the defendant.
6. If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 4th day of April, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge