

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DAISY JEANNE PRALL, individually and on :
Behalf of a class of all persons similarly situated :

Plaintiff, :

v. :

JENNIFER VELEZ, Commissioner, New Jersey :
Department of Human Services; and JOHN R. :
GUHL, Director, New Jersey Department of :
Human Services, Division of Medical Assistance :
and Health Services, :

Defendants. :

Civil Action No. 09-04205 (JAP)

ORDER

Plaintiff Daisy Prall brings this action for violation of the federal Medicaid Act. *See* 42 U.S.C. § 1396 et seq. Plaintiff challenges the methodology of the Commissioner of New Jersey’s Department of Human Services utilized in calculating resource eligibility of Medicaid applicants—specifically the inclusion of a community spouse’s annuity among her assets. Presently before the Court is Plaintiff’s Motion for a Preliminary Injunction (Dkt. # 6) seeking to prevent the Commissioner from treating an annuity owned by Prall’s husband as an available resource in determining Prall’s Medicaid eligibility. Additionally, Defendant has submitted a Cross-Motion to Dismiss (Dkt. #7) based largely on the premise that Plaintiff’s claim is not ripe as the Commissioner has yet to deny or approve Plaintiff’s application. The Court held oral argument on the motions on October 15, 2009.

The Court recognizes the likelihood of Plaintiff’s success on the merits. *See Weatherbee v. Richman*, 595 F.Supp.2d 607 (W.D. Pa. 2009). However, the Court reserves the decision on

the Preliminary Injunction until such time as the Commissioner makes a final decision either granting or denying Prall's Medicaid coverage.

With this said, the Court seeks to enforce Plaintiff's right to prompt review of her medical assistance application pursuant to 42 U.S.C. § 1396a(a)(8). The Third Circuit has held that Congress unambiguously and explicitly through the language of 42 U.S.C. § 1396a(a)(8) created rights for plaintiffs to bring individual claims under 42 U.S.C. § 1983. *Sabree v. Richman*, 367 F.3d 180, 193-94 (3d Cir. 2004). Additionally, such § 1983 claims are not precluded simply because other administrative mechanisms are available. *Id.* (citing *Blessing v. Freestone*, 520 U.S. 329, 347 (1997)). According to Medicaid regulations, agencies are required to establish time standards for determining eligibility that may not exceed forty-five days. 42 C.F.R. 435.911(a)(2). Under New Jersey's Medicaid application procedures, the maximum period of time to process an application is thirty days. N.J.A.C. 10:71-2.3(a).

Here, Plaintiff filed her original application for medical assistance with the Commissioner on June 17, 2009. On September 4, 2009, the Board requested additional information and documentation on the value of remaining assets. The Plaintiff submitted all requested information on September 9, 2009. The Board has exceeded New Jersey's thirty-day maximum response time both from the original submission date and the supplemental documentation submission date. As such, Plaintiff has a right to bring a § 1983 claim to enforce the mandated time restrictions and prompt review of her application pursuant to 42 U.S.C. § 1396a(a)(8). Therefore,

IT IS on this 16th day of October 2009,

ORDERED that the Commissioner of the New Jersey Department of Human Services make a final decision as to Plaintiff's Medicaid application within twenty days from the date of this order,

ORDERED that counsel for both parties will advise the Court as to the Commissioner's decision so the Court can act accordingly.

/s/ Joel A. Pisano
JOEL A. PISANO, U.S.D.J.