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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF CAMDEN

ALMA GALLETTA, individually and on behalf of herself and all others similarly situated, Plaintiffs, v. JENNIFER VELEZ, COMMISSIONER, NEW JERSEY DEPARTMENT OF HUMAN SERVICES; VALERIE HARR, DIRECTOR, NEW JERSEY DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES; and BERGEN COUNTY BOARD OF SOCIAL SERVICES, Defendants.	DOCUMENT ELECTRONICALLY FILED Hon. Robert B. Kugler, U.S.D.J. Hon. Ann Marie Donio, U.S.M.J. Civil Action Docket No. 1:13-cv-00532 MOTION DATE: DECEMBER 16, 2013 NOTICE OF MOTION FOR RECONSIDERATION

TO: CLERK OF THE COURT

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
VICINAGE OF CAMDEN

ALMA GALLETTA, individually and on behalf of herself and all others similarly situated, Plaintiffs, vs. JENNIFER VELEZ, Commissioner, New Jersey Department of Human Services; VALERIE HARR, Director, New Jersey Division of Medical Assistance & Health Services; and BERGEN COUNTY BOARD OF SOCIAL SERVICES, Defendants,	DOCUMENT ELECTRONICALLY FILED CIVIL ACTION HONORABLE ROBERT B. KUGLER, U.S.D.J. HONORABLE ANN MARIE DONIO, U.S.M.J. Docket No.: 1:13-CV-00532

BRIEF ON BEHALF OF DEFENDANTS VELEZ AND HARR IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE DENIAL OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT PURSUANT TO R. 12(b)(1)

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PRELMINARY STATEMENT

Defendants Jennifer Velez and Valerie Harr (the "State Defendants") seek reconsideration of the decision and Order issued in this matter on November 10, 2013, that denied the State defendants' motion to dismiss Plaintiff Galletta's complaint as moot. (ECF 25 and 26). Based on the court's misapprehension of a factual conclusion that Plaintiff will still receive undefined Veterans Administration Improved Pension ("VAIP") payments, including Aid & Attendance, it has erroneously concluded that she retains a concrete interest in this action due to the risk of repetition of denial of her Global Options benefits by virtue of the Division of Medical Assistance and Health Services (DMAHS)'s annual reconsideration of her income eligibility. However, Plaintiff will no longer be eligible for a VAIP as her income exceeds the low federal maximum income threshold. Consequently, the State Medicaid program Global Options will provide for many of her currently unreimbursed medical expenses rather than the federal government's A & A benefits program. State defendants therefore seek reconsideration by the Court of its decision that the matter is not moot.

PROCEDURAL HISTORY AND STATEMENT OF MATERIAL FACTS[1]

For purposes of this brief, DHS, DMAHS and Defendants Velez and Harr (hereinafter "State defendants") will rely upon the facts and procedural history presented in their brief in support of their motion to dismiss. (CM/ECF 15-1 pp 1-12).

A. Standard of Review

While the Federal Rules of Civil Procedure do not expressly recognize motions for "reconsideration," United States v. Compaction Sys. Corp., 88 F.Supp. 2d 339, 345 (D.N.J. 1999), the Local Civil Rules governing the District of New Jersey do provide for such review. See Dunn v. Reed Group, 2010 U.S. District LEXIS 2438 (D.N.J. Jan 13, 2010)(citing Lite, N.J. Federal Practice Rules, Comment 6 to L.Civ.R. 7.1 (Gann 2008)). Local Civil Rule 7.1(i) allows a party to seek reconsideration of a court's decision if there are "matters or controlling decisions which counsel believes the Judge ... has overlooked." L. Civ. R. 7.1(i); see also Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 215 F. Supp. 2d 482, 507 n.12 (D.N.J. 2002). A motion for such reconsideration must be filed "within 14 days after the entry of the order or judgment on the original motion." L. Civ. R. 7.1(i).

[1] The procedural and factual histories are interrelated and have therefore been combined to avoid repetition and for the court's convenience.

Relief by way of a motion for reconsideration is "an extraordinary remedy" that is to be granted "very sparingly." Interfaith Cmty. Org., supra, 215 F. Supp. 2d at 507. A timely motion for reconsideration may only be granted upon a finding of at least one of the following grounds: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . .; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.'" Max's Seafood Cafe v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Indeed, a "party seeking reconsideration must show more than a disagreement with the court's decision," Panna v. Firstrust Sav. Bank, 760 F. Supp. 432, 435 (D.N.J. 1991), and will fail to meet its burden if it merely presents "a recapitulation of the cases and arguments considered by the Court before rendering its original decision." Elizabethtown Water Co. v. Hartford Casualty Ins. Co., 18 F. Supp. 2d 464, 466 (D.N.J. 1998) (quoting Carteret Sav. Bank, F.A. v. Shushan, 721 F. Supp. 705, 706 (D.N.J. 1989)). The Court will only grant such a motion if the matters overlooked might reasonably have resulted in a different conclusion. Bowers v. Nat'l Collegiate Athletic Assoc., 130 F. Supp. 2d 610, 613 (D.N.J. 2001).

II. Discussion

State defendants seek reconsideration by the Court of its November 12, 2013 decision to deny Defendants' Motion to Dismiss on the grounds of mootness, based on the "need to correct a clear error of fact." Max's Seafood Cafe v. Quinteros, supra, 176 F.3d at 677. Now that Plaintiff is Medicaid waiver eligible for the Global Options program, she will no longer be eligible for a VAIP as her income greatly exceeds the low federal maximum income threshold. The State Medicaid waiver program Global Options will provide for many of her currently unreimbursed medical expenses rather than the federal government's A & A benefits program.

In its decision, this court concluded that the issue before the court was not moot, even though Plaintiff had received the remedy she sought, specifically, acceptance on March 13, 2013 to the Global Options program. The Court concluded that "because Plaintiff seeks to enjoin Defendants from treating her VAIP payments as income and no such injunction has been handed down, Plaintiff has not been afforded "complete relief" and thus her claim is not moot." (ECF 25 p. 10 (citing Weiss, 385 F.3d at 340.) The Decision continued,

> [i]ndeed, it seems based on their papers filed in connection with this motion that Defendants would continue to treat VAIP payments as income should they

> be labeled as "pension" by the VAIP, and not as "aid and attendance" even if the VAIP pension was awarded as a result of UMEs zeroing out the applicant's income.
>
> There is no apparent reason to suspect that Plaintiff will not continue to collect VAIP benefits, some of which may be allocated at a future time as income by some of the Defendants for the purpose of Medicaid eligibility calculations. Ibid.

However, Plaintiff does not appear to be entitled to continue receiving VAIP benefits now that DMAHS has determined that she is eligible for Global Options. VAIP benefits are provided on a financial needs basis. (ECF 20-1 p. 11). In its February 14, 2013 certification of benefits letter issued to Ms. Galletta, the VA noted that "because her death pension award would not be payable but for the entitlement to the A & A allowance, because her income is in excess of the limit, the entire amount of her VAIP was classified as Aid and Attendance." (ECF 20-1 p.27). That is, if she did not require the A & A benefits to cover her unreimbursed medical expenses, she would not financially qualify for a pension award. In its calculation, the VA used Ms. Galletta's self-reported medical expenses of $43,039.00, which includes her payments for Medicare (Part B and D) premiums, private medical insurance, payment to the assisted living facility which includes her room and board costs and caregiver fees. (ECF 20-1 pp. 15-21). However, now that she has acquired Medicaid eligibility under Global Options, Plaintiff's

unreimbursed medical expenses should decrease to close to zero, thus disqualifying her from the VAIP pension, which she received only because of her unreimbursed medical expenses. Given that the Veteran Administration eventually classified her VAIP benefits as "all aid and attendance," she will not receive the additional VAIP income in any form, either as A & A or pension, and therefor the issue will be moot. Plaintiff's remaining annual income of social security benefits, annual IRA, her private pension and accrued interest, totaling $18,926 per year, or income of $1577.17 per month, will not result in a disqualification from Global Options eligibility. (ECF 30-1 p.17). Unless Plaintiff's income increases drastically, i.e. by greater than $500 per month she will not be subject to a denial of Global Options eligibility.

Plaintiff bears the burden of demonstrating need annually for any benefits - federal or state. As noted in the VA correspondence granting her benefits, Ms. Galletta must inform the VA of any changes in her income or net worth. (ECF 20-1 p.17, 20). Indeed, if she fails to inform the VA that she is no longer paying the medical expenses she reported or if the amount she pays for medical expenses changes, she may receive too much money. As a consequence for receiving too much money, she would be obligated to pay back the VA. Ibid.

Pursuant to 20 C.F.R. § 416.1103 and DMAHS Medicaid Communication No. 87-22, ECF 15-2 p.2, Plaintiff's aid and attendance pension benefits were excluded from the financial eligibility determination because aid and attendance benefits are cash assistance for medical care. Ms. Galletta does not financially qualify for the VAIP, except for her unreimbursed medical expenses. Under Global Options, the assisted living facility will be reimbursed by Medicaid for the medical support she needs. Likewise, the room and board costs will be drastically reduced due to her eligibility, i.e. if she previously paid $5000 per month for assisted living facility monthly fees, now she only needs to pay $700 for her room and board fees, with Global Options program paying the difference.[2] Thus, her income may be used to pay for her other non-medical expenses at the assisted living facility or in the community.

When Plaintiff originally sought Global Options benefits, the survivors' pension was counted as income because, as stated above, it is a pension that is provided to financially needy surviving spouses. Thus, DMAHS considered the survivors' pension cash assistance that was available to meet plaintiff's basic needs, such as food and shelter, thereby making it income under 20 C.F.R. § 416.1102, while the aid and attendance

[2] Room and board costs at an assisted living facility are not medical expenses.

benefits was excluded under 20 C.F.R. § 416.1103. Because Plaintiff's total monthly income exceeded the $2,094 per month income limit as set for in N.J.A.C. 10:71-5.6, her Medicaid application was properly denied.

Contrary to Plaintiff's argument, there is no reasonable expectation that Ms. Galletta will be subjected to a second denial of benefits because of this issue. The VAIP exists to support the most financially needy veterans' families, and Ms. Galletta's income exceeds that definition. See 38 C.F.R. 3.3(a)(3)(v). By acquiring State medical assistance benefits for her medical expenses, Plaintiff is obliged to notify the Veterans Administration of that assistance and will no longer be eligible for federal benefits in the form of either Aid and Attendance income or the survivor's pension, thus rendering Plaintiff's Complaint moot. In summary, the federal programs for medical assistance have been structured to ensure that taxpayers only subsidize Ms. Galletta's unreimbursed medical expenses once- either by the VA's A & A benefit or by the Global Options waiver program.

Commissioner Velez and Director Harr respectfully request that the Court reconsider its prior decision and dismiss the instant action, pursuant to Fed. R. Civ. P. 12(b)(1), on the basis that because Plaintiff has been found eligible for Global Options, this court can grant no effective relief. This court

lacks subject matter jurisdiction over this matter as Plaintiff's claims are now moot.

CONCLUSION

Because Plaintiff's claims for relief are moot and class certification has not been granted for this matter, we respectfully request that Plaintiff's complaint be dismissed with prejudice.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: s/ Kay R. Ehrenkrantz
Kay R. Ehrenkrantz
Deputy Attorney General

Dated: November 25, 2013

Donald D. Vanarelli, Esq.
242 St. Paul Street
Westfield, NJ 07090

PLEASE TAKE NOTICE that by way of motion the undersigned attorney for the State Defendants Commissioner Velez and Director Harr will apply to the United States District Court for the District of New Jersey for an Order dismissing Plaintiff's Complaint with prejudice; and

PLEASE TAKE FURTHER NOTICE that the undersigned will rely upon the attached brief in support of the Motion for Reconsideration.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Kay R. Ehrenkrantz

Kay R. Ehrenkrantz
Deputy Attorney General

DATED: November 25,2013

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UNITED STATES DISTRICT COURT
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ALMA GALLETTA, individually and on behalf of herself and all others similarly situated, Plaintiffs, vs. JENNIFER VELEZ, Commissioner, New Jersey Department of Human Services; VALERIE HARR, Director, New Jersey Division of Medical Assistance & Health Services; and BERGEN COUNTY BOARD OF SOCIAL SERVICES, Defendants,	DOCUMENT ELECTRONICALLY FILED HON. ROBERT B. KUGLER, U.S.D.J. HON. ANN MARIE DONIO, U.S.M.J. CIVIL ACTION Docket No.: 1:13-CV-00532 CERTIFICATION OF SERVICE

I, Kay R. Ehrenkrantz of full age, according to law, upon her oath deposes and says:

1. I am a Deputy Attorney General in the Division of Law, Department of Law and Public Safety, State of New Jersey,

25 Market Street, PO Box 112, Richard J. Hughes Justice Complex, Trenton, New Jersey, 08625.

2. On November 25, 2013, at my direction Carol Evans, a Division of Law legal secretary, forwarded a courtesy copy of Defendants Brief, and a Certification of Service, which was filed today electronically, via regular mail to:

Hon. Robert B. Kugler, U.S.D.J.
Mitchell H. Cohen Building
US Courthouse
I John F. Gerry Plaza, Room 6040
Camden, NJ 08101

Also upon

Hon. Ann Marie Donio, U.S.M.J.
Mitchell H. Cohen Building
US Courthouse
I John F. Gerry Plaza, Room 2010
Camden, NJ 08101

3. Also, on the same date at my direction Ms. Evans served a courtesy copy of same via regular mail upon:

Alan Sklarsky, Esq.
Williams, Cuker Berezofsky
210 Lake Drive East, Suite 101
Cherry Hill, NJ 08002

Donald D. Vanarelli, Esq.
242 St. Paul Street
Westfield, NJ 07090

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

s/ Kay R. Ehrenkrantz
Kay R. Ehrenkrantz

Dated: November 25, 2013

State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

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November 25, 2013

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Mitchell H. Cohen Building & US Courthouse
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Camden, NJ 08101

RE: Galletta v. Velez et al
Civil Action No. 1:13-CV-00532(RBK)

Dear Judge Kugler:

Enclosed please find a courtesy copy of Defendants NJDHS, DMHAS, Commissioner Velez and Director Harr's Notice of Motion for Reconsideration, Motion Brief and Certification of Service in regards to the above referenced matter.

Thank you for your consideration in this matter.

Sincerely yours,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: s/Kay R. Ehrenkrantz
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Deputy Attorney General

c: Hon. Anne Marie Donio, U.S.M.J.. (w/encls.)
Alan Sklarsky, Esq. (w/encls.)
Donald D. Vanarelli, Esq. (w/encls.)