

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

MABEL HORAN,	:	
On her own behalf and acting	:	
as Executrix for Frank Horan	:	
Plaintiff,	:	CIVIL ACTION NO.
v.	:	3:03-CV-353 (JCH)
	:	
PATRICIA WILSON-COKER,	:	
Commissioner, Connecticut	:	JUNE 4, 2003
Department of Social Services,	:	
Defendant.	:	

RULING ON DEFENDANT’S MOTION TO DISMISS [DKT. NO. 25]

The plaintiff, Mabel Horan, brings this action pursuant to Section 1983 of Title 42 of the United States Code, alleging that the Connecticut Department of Social Services wrongfully denied her husband, Frank Horan, Medicaid benefits, in violation of federal law. The complaint in this case was filed on February 27, 2003, by Frank Horan and Mabel Horan. At that time, Frank Horan was a resident of the Fairview Odd Fellows Home of Groton. On April 26, 2003, Frank Horan passed away. By prior Order, the court granted a Motion to Substitute Mabel Horan, Executrix of the Estate of Frank Horan, for Mr. Horan.¹

¹ The court will refer to Mrs. Horan, in both her individual and representative capacities, as the plaintiff.

The plaintiff alleges that Section 1396r-5(c)(3)(A) of Title 42 prevents the Department of Social Services from considering the resources of Mrs. Horan in determining Mr. Horan's eligibility for Medicaid. The plaintiff seeks injunctive and declaratory relief. Specifically, the plaintiff requests that the court enjoin the defendant from continuing to deny Medicaid benefits to Frank Horan on the ground that Mabel Horan has resources in excess of the statutory limits.

The defendant has moved to dismiss this action on mootness grounds, arguing that, because Mr. Horan has passed away, any injunctive relief this court awards would necessarily be retrospective in nature. The plaintiff opposes the motion, claiming that, because Mrs. Horan may still obtain benefits on her husband's behalf for expenses incurred between February 2003 and his death on April 26, 2003, the case is not moot. Plaintiff further argues that, by requiring participating states to provide eligible individuals with three months of retroactive benefits upon a finding of eligibility, Section 1396a(a)(34) of Title 42 of the United States Code creates an exception to the Eleventh Amendment's bar to retrospective relief. Because the court finds that, to the extent this court could grant the relief requested by Mrs. Horan consistent with the Eleventh Amendment, the case is now moot, the defendant's motion [Dkt. No. 25] is granted.

I. DISCUSSION

A. Retrospective v. Prospective Relief

The Eleventh Amendment bars a federal court from entering an award of money damages against a state or state officer sued in his or her official capacity. “However, under Ex parte Young, 209 U.S.123 (1908), there is a limited exception to the general principle of sovereign immunity [that] allows a suit for injunctive relief challenging the constitutionality of a state official’s actions in enforcing state law under the theory that such a suit is not one against the State, and therefore not barred by the Eleventh Amendment.” Ford v. Reynolds, 316 F.3d 351, 354-55 (2d Cir. 2003). Therefore, under this doctrine, federal courts may “enjoin state officials to conform future conduct to the requirements of federal law.” Rosie D. v. Swift, 310 F.3d 230, 234 (1st Cir. 2002) (emphasis added). Several Courts of Appeals have, under the doctrine, enjoined state officials to conform their determinations of benefit eligibility and scope to the requirements of the federal Medicaid statute. See, e.g., id.; Antrican v. Odom, 290 F.3d 178, 186 (4th Cir. 2002). Under the Ex Parte Young doctrine, however, a court may not order retrospective injunctive relief that has an effect on the state treasury. Quern v. Jordan, 440 U.S. 332, 337 (1979). Therefore, a federal court may enjoin a state official to comply with the court’s interpretation of the federal Medicaid statute only where the injunctive relief is prospective and designed to remedy an ongoing violation of federal law. Antrican, 290 F.3d at 186-87. The same

principles apply to an award of declaratory relief. Therefore, a federal court is barred from granting declaratory relief that relates only to the legality of past conduct. Green v. Mansour, 474 U.S. 64, 73 (1985).

“In determining whether the doctrine of Ex parte Young avoids an Eleventh (Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” Ford, 316 F.3d at 355 (internal citations omitted). In this case, the plaintiffs sought a declaratory judgment that the state’s Medicaid eligibility determination violated federal law and an injunction requiring the State of Connecticut to comply with the law, as interpreted by the court, in its evaluation of Frank Horan’s eligibility for Medicaid. As Mr. Horan is now deceased, he will not be eligible for Medicaid benefits in the future. Therefore, to the extent that the plaintiff requested the court to enter declaratory or injunctive relief that would require the State to adjust its future determination regarding Mr. Horan’s benefit eligibility, the case is now moot.

The plaintiff claims that, despite Mr. Horan’s death, the case, as a whole, presents a live controversy. Although Mrs. Horan correctly notes that she may be able to obtain from the State retroactive benefits on behalf of her husband for the three months prior to the date of any future-filed application, 42 U.S.C. § 1396a, this federal court may not order that those retroactive benefits be paid. Quern v. Jordan, 440 U.S. 332, 337 (1979) (citing

Edelman v. Jordan, 415 U.S. 651, 663 (1974)). Neither may this court enter a declaratory judgment that could be used for res judicata purposes in a state proceeding to obtain those retroactive benefits. Green, 474 U.S. at 73. In this circumstance, “the issuance of a declaratory judgment . . . would have much the same effect as a full-fledged award of damages or restitution by the federal court, the latter kinds of relief being of course prohibited by the Eleventh Amendment.” Id.

Because the plaintiff’s entitlement to retroactive benefits is the only matter presently before the court, the practical effect of any injunctive relief would be to require the State to compensate Mr. Horan’s estate for past violations of federal law. The court’s “straightforward inquiry” into the nature of the relief sought, therefore, demonstrates that the relief Mrs. Horan seeks is by its nature retrospective.

B. Waiver of Eleventh Amendment Immunity

Plaintiffs also claim that Section 1396a(a)(34) of Title 42 of the United States Code creates an exception to a State’s Eleventh Amendment immunity. As a result of this waiver, they argue, injunctive relief that has the effect of awarding retroactive benefits does not run afoul of that Amendment’s protections. Section 1396 requires that

A State plan for medical assistance must . . . provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf

in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished.

42 U.S.C. § 1396a.

The language of this statute cannot be construed as a waiver of a participating state's Eleventh Amendment immunity. The Supreme Court has held, "we will find waiver only where stated by the most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction." Fla. Dep't of Health and Rehabilitative Servs v. Fla. Nursing Home Ass'n, 450 U.S. 147, 150 (1981) (quoting Edelman v. Jordan, 415 U.S. 651, 673 (1974)). A state's participation in a federal program and agreement to obey federal law in connection with that participation does not constitute a waiver of its Eleventh Amendment immunity with respect to "action[s] by providers alleging a breach of these laws." Id. at 149-50. Therefore, the court does not find that the State's agreement to abide by section 1396a(a)(34) constitutes a limited waiver of its sovereign immunity.

This court's holding is consistent with that of the District Court for the Northern District of New York in Carroll v. DeBuono, 998 F.Supp. 190 (N.D.N.Y. 1998). In Carroll, the court entered an injunction prohibiting the State of New York from enforcing a regulation that required Medicaid recipients to obtain care from Medicaid-enrolled providers in order to obtain retroactive benefits under section 1396a(a)(34). Id. at 201.

The court limited its injunction to the future enforcement of the regulation, however, and noted that, because of Eleventh Amendment limitations on retrospective relief, only Medicaid services that were obtained after the injunction entered would be covered by it. Id. at 200-01. In that case, as here, the Eleventh Amendment prevented an injunction entered by the court from having any effect on the State's reimbursement for medical services obtained prior to its entry. Id. The mandate of subsection (a)(34), which provides that a State pay retroactive benefits upon a determination of eligibility, did not constitute a waiver of the State's sovereign immunity and, as a result, had no effect on the court's finding that a retroactive award was barred by the Eleventh Amendment.

C. Manipulation of Proceedings to Use Eleventh Amendment Immunity

The plaintiff also urges this court to find that the State has waived its Eleventh Amendment immunity because it has manipulated the judicial proceedings in order to use that immunity as a litigation tactic. When the plaintiff filed a motion for preliminary injunction, the State agreed that, if the plaintiff filed a notice for fair hearing in the State administrative process, the State would stay the proceeding pending the outcome of this federal action. The State agreed that, by filing a notice for fair hearing, the plaintiff preserved her right, if she prevailed in federal court, to receive benefits from the date of application. In addition, according to subsection (a)(34), if she established Mr. Horan's eligibility, she could receive three months of benefits, retroactive from the date of her

application. Because the State consented to this procedure, the plaintiff was unable to establish that she would be irreparably harmed if the court did not enter a preliminary injunction.

The plaintiff now claims that, by allowing Mr. Horan to file for a fair hearing in the administrative process and staying those proceedings, the State waived its Eleventh Amendment immunity. She alleges that she was harmed by the State's maneuver because, if a preliminary injunction had been issued, the case would not be moot. Therefore, the plaintiff argues that this case is akin to Lapides v. Board of Regents of the University System of Georgia, 535 U.S. 613 (2002), where the Supreme Court found waiver when a state voluntarily removed a state action to federal court, then attempted to have the action dismissed through assertion of its Eleventh Amendment immunity. Id. at 624. The court finds that, even if the State suggested the use of the administrative process strategically, which the court sincerely doubts, its action would not constitute a waiver. The initiation of the fair hearing process served only to preserve the plaintiff's claims to retroactive benefits, should she prevail in this action. It had absolutely no impact on the court's mootness determination.

The court acknowledges that, had the plaintiff established a likelihood of success on the merits and irreparable harm, a preliminary injunction may have provided Mr. Horan with Medicaid benefits for two or three months. However, the court does not find that the

entry of a preliminary injunction would have prevented this case from becoming moot. Whether or not a preliminary injunction previously entered, now that Mr. Horan has passed away, there remains no prospective relief to which the plaintiff is potentially entitled. Had this court entered a preliminary injunction, it would now have had to vacate that injunction, finding it did not have jurisdiction to decide the merits of the case. Therefore, the plaintiff cannot argue that the defendant's actions, which had no effect on the existence of a case or controversy, constituted a manipulation of the proceedings sufficient to waive its Eleventh Amendment immunity.

III. CONCLUSION

For the reasons set forth above, the defendant's motion to dismiss [Dkt. No. 25] is GRANTED. The clerk is ordered to close this case.

SO ORDERED

Dated at Bridgeport, Connecticut this 4th day of June, 2003.

_____/s/_____
Janet C. Hall
United States District Judge