UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

SARAH JACKSON on her own behalf and on behalf of a class of those similarly situated,	)	
Plaintiff,	)	1:15-cv-01874-SEB-MPB
vs.	)	
SECRETARY OF THE INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION in his official capacity,	)	
Defendant.	)	

ORDER DENYING MOTION TO DISMISS

This matter comes before us the Motion to Dismiss filed by Defendant Secretary of the Indiana Family and Social Services Administration in his official capacity on January 15, 2016, pursuant to Federal Rule of Civil Procedure 12(b)(6). [Dkt. No. 20.] For the following reasons and in the manner explained below, Defendant's Motion to Dismiss is DENIED.

Background

This dispute involves the access of Medicaid recipients to a Hepatitis C drug called Harvoni. Harvoni has been on the market since October 2014 and, if taken daily for 12 weeks, completely cures Hepatitis C in 94% to 99% of patients; however, Harvoni cannot reverse the effects of Hepatitis C. When left untreated, Hepatitis C can result in significant fibrosis and scarring to the liver (cirrhosis). Plaintiff Sarah Jackson is a Medicaid recipient

diagnosed with Hepatitis C. She claims that Harvoni is medically necessary to prevent liver damage, cancer, and other serious conditions, and to protect her newborn child as well as future children to whom she might give birth.

In October 2015 and through her physician, Ms. Jackson sought approval from the Indiana Family and Social Services Administration to receive a course of Harvoni medication. That request was denied on the following grounds:

> The [Medicaid] plan requires that the member have a diagnosis of chronic hepatitis C genotype 1 with >stage 2 fibrosis, co-infection with HIV or AIDS, or post liver transplant. Based on the information provided, this requirement was not met.

[Compl. ¶ 32.][1] Ms. Jackson attaches to her Complaint a November 5, 2015 notice from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as well as two bulletins issued by Defendant which she contends establish the above-referenced prerequisites before Medicaid recipients can receive Harvoni. On behalf of herself and a putative class, Ms. Jackson alleges that "[D]efendant [is refusing] to provide Harvoni to Medicaid recipients even when that drug is 'medically necessary,' and it is therefore acting in violation of federal Medicaid law." [*Id.* ¶ 36.]

On February 5, 2016, the Magistrate Judge granted a Motion to Stay the Proceedings filed by Defendant [Dkt. No. 27] to which Plaintiff filed a Federal Rule of Civil Procedure 72(a) objection on the same day [Dkt. No. 28]. The stay of pre-trial proceedings approved

[1] The Complaint explains that the progression of Hepatitis C is measured by the patient's fibrosis level, with F0 indicating no fibrosis through F4 indicating cirrhosis of the liver. [Compl. ¶ 1.]

by the Magistrate Judge expires upon the resolution of Defendant's Motion to Dismiss. [Dkt. No. 27.] Our Order herein resolves Defendant's Motion to Dismiss and, as a result, the stay is lifted and Plaintiff's Objections to the Magistrate Judge's Order are overruled as moot.

Analysis

In the procedural context of a motion based on Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true all well-pled factual allegations in the complaint and draw all ensuing inferences in favor of the non-movant. *Lake v. Neal*, 585 F.3d 1059, 1060 (7th Cir. 2009). Nevertheless, the complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests," and its "[f]actual allegations must . . . raise a right to relief above the speculative level." *Pisciotta v. Old Nat'l Bancorp*, 499 F.3d 629, 633 (7th Cir. 2007) (citations omitted). The complaint must therefore include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see* Fed. R. Civ. P. 8(a)(2). Stated otherwise, a facially plausible complaint is one which permits "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Defendant originally sought the dismissal of Plaintiff's Complaint on the ground that it "does not provide any specification as to what portion of federal Medicaid law is violated by the Bulletin and Defendant's policies." [Dkt. No. 21 at 1.] In its Reply, Defendant recasts its motion as one seeking a more definite statement of Plaintiff's claim. [Dkt. No. 31 at 3 (describing Plaintiff's preliminary injunction briefing as providing "more

clarity" and agreeing that it would be appropriate and reasonable to treat its motion to dismiss as a motion for more definite statement).] According to Defendant, because "Medicaid is an intricate program," to state a claim upon which relief can be granted, Plaintiff must identify which portion(s) of the Medicaid law are being violated by the policy she describes. [Dkt. No. 21 at 3-4.][2]

Plaintiff's rejoinder is two-fold. First, she focuses our attention on what Defendant does not argue, to wit, that Plaintiff's Complaint lacks sufficient *factual* particularity. According to Plaintiff, Defendant is seeking to compel her to plead a legal theory, which neither the Rules of Procedure nor Seventh Circuit jurisprudence requires. In light of Defendant's lack of an argument otherwise, we find no difficulty concluding that Plaintiff's Complaint includes sufficient *facts* to put Defendant on notice of her claims.

Second, Plaintiff argues that it is not enough to dismiss her Complaint (or require a more definite statement) based solely on Plaintiff's failure to supply statutory citations in her pleading. Federal Rule 8's notice pleading requirements demand that a complaint contain sufficient *factual* detail (which is not in dispute here) and do not require a complaint to include legal theories or point to specific statutory provisions.

Even in the wake of *Iqbal* and *Twombly*, the federal rules are devoid of any requirement that a complaint set forth a legal theory or cite to a specific statute in order to

[2] According to the Complaint, "[t]he Indiana Family and Social Services Administration . . . is responsible for operating the Medicaid program in Indiana." [Compl. ¶ 24.] As a result, we do not find persuasive Defendant's argument that it "is unable to adequately evaluate the Plaintiff's claims" without a citation to the specific portion of the Medicaid law at issue. [Dkt. No. 31 at 1-2.] Defendant should have a greater than average understanding of the Medicaid law and should possess the ability to navigate its complexities.

put the Defendant on notice of the claims against it. *See Killingsworth v. HSBC Bank Nevada, N.A.*, 507 F.3d 614, 618 (7th Cir. 2007) (cited by Defendant) (citing to *Twombly* and stating that "the factual allegations in the complaint 'must be enough to raise a right to relief above the speculative level'"). Defendant concedes that under Seventh Circuit precedent, "Plaintiff is not required to plead their [sic] legal theory," but argues that Plaintiff should be required to identify which of the "complex series of statutes and regulations" under the Medicaid law are at issue. [*See* Dkt. No. 21 at 4, 2-3 (relying on *Iqbal*, 129 S.Ct. at 1948; *Twombly*, 550 U.S. at 554-55 which point to the requirement of sufficient *factual* content and not a *legal theory* requirement).] The Seventh Circuit in *B. Sanfield, Inc. v. Finlay Fine Jewelry Corp.* held:

> Federal Rule of Civil Procedure 8(a) requires "a short and plain statement of the claim"; it does not require the plaintiff to plead legal theories. *E.g., Goren v. New Vision Int'l, Inc.*, 156 F.3d 721, 730 n. 8 (7th Cir.1998). It is of no moment, consequently, that the complaint did not identify either of the two regulations on which [Plaintiff] stakes its case. *See id.* (complaint's citation of single statutory subsection did not preclude reliance upon another subsection that was not cited), citing *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073, 1078 (7th Cir.1992) (complaint need not cite statute on which claim is based).

168 F.3d 967, 973 (7th Cir. 1999).

We reach the same conclusion here. Plaintiff is not required to identify the specific provision of the Medicaid statute[s] that Defendant allegedly violated to avoid dismissal. *See Cook v. Winfrey*, 141 F.3d 322, 328 (7th Cir. 1998) ("A Rule 12(b)(6) motion cannot be used to dismiss a complaint on the ground that it does not include information that Rule 8 does not require it to contain."); *Darnell v. Hoelscher, Inc.*, No. 09-CV-204-JPG, 2009 WL 1768655, at *2 (S.D. Ill. June 23, 2009) (citing *Shah v. Inter–Continental Hotel*

Chicago Operating Corp., 314 F.3d 278, 282 (7th Cir. 2002) ("The plaintiff is not required to plead facts or legal theories or cases or statutes, but merely to describe his claim briefly and simply.")). Plaintiff has sufficiently placed Defendant on notice of her claims.

Defendant has not established that Plaintiff's Complaint fails to state a claim upon which relief can be granted, nor has it demonstrated a need to compel Plaintiff to file a more definite statement under Federal Rule of Civil Procedure 12(e). Accordingly, we DENY Defendant's Motion to Dismiss [Dkt. No. 20] and OVERRULE Plaintiff's Objections to Magistrate Judge's Order Staying Proceedings [Dkt. No. 28] as MOOT. The stay imposed by Docket Number 27 is lifted. We instruct the Magistrate Judge to hold a status conference as soon as possible to establish a briefing schedule for the motions currently pending on the docket.

Date: 4/12/2016

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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