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United States District Court, N.D. Illinois, Eastern
Division.

William JONES, et al., Plaintiffs,
v.
Louis W. SULLIVAN, M.D., Defendant.

No. 87 C 7419. | Jan. 25, 1990.

Opinion

MEMORANDUM OPINION AND ORDER

CONLON, District Judge.

*1 Defendant Louis W. Sullivan, M.D., the Secretary of Health and Human Services (“the Secretary”) moves for reconsideration of this court’s order of August 7, 1989, denying his motion for summary judgment and granting plaintiffs’ cross-motion for summary judgment. The issues raised in the motion for reconsideration have been thoroughly briefed. While the motion has been pending, the court unsuccessfully attempted to resolve this dispute by an agreed final order. For the reasons that follow, the Secretary’s motion is denied.

I. PLAINTIFFS’ STANDING TO SUE

During this litigation, the Secretary has steadfastly maintained that the named plaintiffs lack standing to sue. Plaintiffs in this class action are midwest applicants (Region V) for Social Security numbers (“SSN”), and their dependents and survivors, who are denied initial SSNs, duplicate social security cards, or different SSNs to correct a scrambled account. The named plaintiffs were issued new or duplicate cards after this action was brought but before the class was certified. The Secretary maintains that the claims of the named plaintiffs are thereby moot.

The Secretary continues to confuse plaintiffs’ entitlement to SSNs—which was not the basis of the court’s determination of plaintiffs’ standing—with the Secretary’s acknowledged failure to provide notice and an opportunity to contest SSN denials, regardless of the merits or non-merits of the underlying SSN application. *See* Memorandum Opinion and Order of July 21, 1988 at 10; *Jones v. Bowen*, 692 F.Supp. 997, 891 (N.D.Ill.1988);

Memorandum Opinion and Order of August 7, 1989 at 5–6. The court found that these fundamental shortcomings violated the Secretary’s statutory duties. The court did not reach plaintiff’s constitutional due process claim.

The Secretary reasserts his contention that material issues of fact exist with respect to plaintiff German Poe’s identity because of discrepancies in his SSA records. However, Poe complained that his SSN account earnings were “scrambled” or confused with someone else’s SSN earnings. As a result, Poe received a notice from the Internal Revenue Service (“IRS”) for alleged underpayment of taxes. The Social Security Administration (“SSA”) investigated Poe’s complaint and corrected his SSN earnings records for the years 1978, 1980, 1981 and 1982, by deleting earnings of another person who apparently used Poe’s SSN without his knowledge or authorization. Poe then requested a different SSN to obviate reoccurrence of the problem; this request was orally denied by an SSA office worker. Thereafter, Poe received an IRS deficiency notice for his 1984 taxes. In addition, Poe lost food stamps and medical cards for his family based upon the earning records of another person scrambled in Poe’s SSN account. Poe’s unemployment compensation benefits were delayed until an investigation by the Illinois Department of Employment Security determined that someone else’s earnings were mistakenly being recorded in Poe’s SSN account.

*2 Poe received a second SSN in 1987, effective for wages earned after its issuance. *See* 20 C.F.R. §§ 422.103, 422.115. However, Poe is still unable to unscramble his SSN account for erroneous wage reports prior to issuance of his second SSN in September 1987. Poe demonstrated that he continues to sustain an injury sufficient to confer standing. The fact that erroneous personal data obviously exists in Poe’s SSA records supports Poe’s claim that he has been injured by erroneous information in his original SSN account. This misinformation does not raise a material issue of fact concerning Poe’s statutory right to written notice and an opportunity to challenge the Secretary’s unexplained refusal to issue him a new SSN for several years. Poe has demonstrated that the collateral injuries from the Secretary’s denial of a new SSN over a significant period of time still exist and his claim therefore is not moot. Furthermore, Poe did not receive his new SSN until a month after this action was filed in August 1987.

The Secretary also argues that the claim of the other named plaintiff, Gloria Coe, is moot because she received a duplicate card in October 1987, after the complaint in this action was filed. Coe was denied a duplicate card before this action was filed; she was not given written notice of the reasons for the denial, nor was she provided

an opportunity to contest the decision. Therefore, Coe had standing to sue when the complaint was filed in August 1987.

II. PLAINTIFFS' CLAIMS ARE CAPABLE OF REPETITION

The Secretary contends that the court erred in finding that plaintiffs' claims present a continuing controversy that would evade review if the claims of the named plaintiffs became moot before the class was certified on October 3, 1988. Generally, a named plaintiff must have a justiciable claim at the time the class action is certified, as well as when the complaint was filed. *Sosna v. Iowa*, 419 U.S. 393, 402 (1974); *Davis v. Ball Memorial Hospital Ass'n, Inc.*, 753 F.2d 1410, 1420 (7th Cir.1985). When a continuing controversy may become moot as to the representative plaintiffs before the class is certified and thereby evade review, certification may be deemed to relate back to the filing of the complaint. *Sosna*, 419 U.S. at 402 n. 11.

The Secretary contends that certification may relate back to the filing of the complaint only when the challenged action is so short in duration that it cannot be fully litigated and there is a reasonable expectation that the complaining party will be subjected to the challenged action again. However, the transitory nature of a claim is not the only basis for application of the relation back doctrine. The Secretary openly acknowledges that he is not discontinuing the challenged practice. Under the Secretary's analysis, it would be within his control to moot the claim of any named plaintiff simply by granting his or her application. By voluntarily acquiescing in the SSN applications of named plaintiffs, the Secretary may evade review of the conduct challenged in this litigation. Federal jurisdiction should not be susceptible to manipulation. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 288-89 (1982) (revision of challenged licensing ordinance while case on appeal did not moot claim of vagueness; city could reenact challenged ordinance after district court's judgment vacated). Under the facts presented by this case, it is essential to determine the named plaintiffs' standing as of the date the complaint was filed or the Secretary's challenged procedures will evade review. *DeBrown v. Trainor*, 598 F.2d 1069, 1070-73 (7th Cir.1979).

III. THE SECRETARY'S PROCEDURES VIOLATE THE SOCIAL SECURITY ACT

*3 The Social Security Act ("the Act") provides for the

assignment of SSNs to maintain accurate wage earning records for the administration of various social security programs. 42 U.S.C. § 405(c)(2-5). The Act directs the Secretary to establish and maintain records of wages and to assign social security numbers and corresponding account cards to all eligible workers. 42 U.S.C. § 405(c) 2(B)(i) and (D). Section 405(c) requires that the Secretary establish and maintain wage records, that he take affirmative measures to assure that SSNs are appropriately assigned, and that he require applicants to produce evidence of identification. The Act further provides:

Decisions of the Secretary under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g) of this section.

42 U.S.C. § 405(c)(8). Subsection (g) provides for judicial review of "any final decision of the Secretary made after a hearing...." 42 U.S.C. § 405(g). Decisions to assign or not to assign SSNs are decisions of the Secretary under Section 405(c) and are consequently reviewable in district court. The Act requires that the Secretary issue decisions after a hearing. 42 U.S.C. § 405(g). The Secretary's procedures with respect to denials of SSNs therefore violate 42 U.S.C. §§ 405(c)(8) and (g).

The Secretary urges that the court construe the term "decisions" in Section 405(c)(8) to be merely a word of art with a more limited meaning when referring to "measures" taken to assign SSNs and to issue social security cards. The court cannot accept the Secretary's strained distinction. The plain language of Section 405(c)(8) expressly incorporates all determinations by the Secretary under Section 405(c).

The Secretary also contends that his informal procedures satisfy the Act. Although the Secretary acknowledges that SSA employees do not follow a uniform procedure, he asserts that SSN applicants are frequently told the reason for the denial of their applications. A rejected applicant may then resubmit his or her application to another SSA employee in hope of receiving a different decision correcting any error. This court has repeatedly addressed the inadequacy of the Secretary's existing procedures that substitute subjective standards and impliedly inconsistent practices by SSA employees for written notice and a hearing subject to review. Memorandum Opinion and Order of August 7, 1989 at 13. In order to resolve these inadequacies, the court encouraged the parties to propose voluntary changes in the Secretary's procedures to minimize the court's intrusion. These efforts were unproductive. Accordingly, the court has no alternative but to enter final judgment requiring strict conformity with the Secretary's obligations under the Act.

CONCLUSION

The Secretary's motion for reconsideration is denied.