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

William JONES, et al., Plaintiffs,
v.
Louis SULLIVAN, M.D., Secretary of Health and Human Services, Defendant.

No. 87 C 7419. | Aug. 14, 1990.

Opinion

MEMORANDUM OPINION AND ORDER

CONLON, District Judge.

***1** Defendant Louis Sullivan, Secretary of Health and Human Services ("the Secretary"), moves for a stay pending appeal of this court's final judgment order of January 31, 1990, obligating the Social Security Administration to substantially revise its "no process" practices in denying requests for social security numbers, for replacement of lost or stolen social security cards, and for new numbers to unscramble accounts containing earning records of persons other than the number holder. The January 31st order set forth a reasonable timetable for the Secretary's compliance. The court docket reflects that the January 31st order was mailed to the Secretary's local counsel, the United States Attorney. However, the final judgment order apparently did not come to the Secretary's attention until April 1990. The Secretary's motion for a stay was not filed until plaintiffs served notice of a motion for a rule to show cause why the Secretary should not be held in contempt for failing to comply with the final judgment order. The contempt motion was denied without prejudice, pending consideration of the Secretary's motion to stay.

Preliminarily, it must be observed that the Secretary has obtained a *de facto* stay by his unilateral decision not to obey the January 31st order. The Social Security Administration is no stranger to nonacquiescence, a term applied to an administrative agency's selective refusal to conduct its internal proceedings consistent with adverse judicial rulings. The Federal Courts Study Committee, in its report to Congress on April 2, 1990, recommended that legislation be enacted to require the Secretary to abide by the holdings of courts of appeals with respect to disability claims in the circuits where the claims are filed; *Report of the Federal Courts Study Committee,* Chapt. 3, § 2 (1990). Certainly the unfair and unwarranted burden on disability claimants caused by the Secretary's nonacquiescence policy (described as "lawless" by a former Solicitor General, according to the Committee's report), with its attendant delays and costs, should also be a concern with respect to the claims raised in this litigation. Nevertheless, the Committee also recommended that Congress exempt compliance "... in any case that the Solicitor General has determined is appropriate to use as a test of the existing law. The exemption should apply only to the case so designated and should expire when the judgment in that case (by the court of appeals) becomes final." *Id.* Thus, there are limited circumstances in which a far-reaching judgment should not be enforced until appeals are exhausted.

A stay is warranted in this case. In reaching this difficult decision, the court has considered whether the Secretary has made a showing of likelihood of success on appeal, whether the Secretary has demonstrated a likelihood of irreparable injury absent a stay, whether a stay would substantially harm other parties to the litigation, and the public interest. *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987); *Glick v. Koenig,* 766 F.2d 265, 269 (7th Cir.1985).

***2** (1) Prevailing on the Merits

The Secretary repeats his unsuccessful arguments concerning plaintiff's lack of standing and the mootness of plaintiffs' claims. These arguments have been addressed at length in several prior opinions, and shall not be discussed yet again now. One contention does warrant comment, however. The Secretary asserts that the injunctive relief set forth in the final judgment order is overbroad, intrusive and costly. Secretary's memo. at 25–27.

From the initial pretrial conference held in this case on August 30, 1988, the court sought the Secretary's cooperation in formulating standard and fair procedures that would address the plaintiffs' concerns, without imposing undue costs or burdens on the Social Security Administration and minimizing any judicial intrusion into administrative functions. The Secretary failed to come forward with constructive suggestions before final judgment was entered a year and a half later. Only when plaintiffs served notice of their contempt motion did the Secretary undertake several remedial measures.[1]

This case raises issues of first impression. The relief ordered represents a substantial change in Social Security Administration procedures in this region. The court of appeals may not perceive and analyze these issues in the same manner as this court. Although this court does not find a substantial likelihood that the Secretary will prevail on the merits, it recognizes that there is a distinct

possibility its final judgment order may be reversed or modified on appeal.

(2) Irreparable Injury

The remedial measures recently taken by the Secretary may attenuate the likelihood of irreparable harm to plaintiffs, although they do not comply with statutory requirements. The Secretary asserts that enforcement of the final judgment order pending appeal would irreparably harm the government (which he equates with the public interest) because of multimillion dollar implementation costs and potential administrative burdens and confusion should this court's order be reversed. The Secretary assumes that the costs and complexity of processing disability claims are comparable to the far more straightforward and limited issues in disputes involving Social Security numbers and accounts. Based upon this faulty premise, the Secretary greatly exaggerates the potential costs and burdens of compliance with this court's final judgment order and the dictates of § 405(g). However, publishing and disseminating new regulations before this court's rulings are tested on appeal is likely to cause substantial unrecoverable costs and administrative confusion should this court's final judgment order ultimately be reversed or modified. Plaintiffs have the option of seeking an expedited appeal. Accordingly, the court finds that the balance of relative harm to the parties, and the public interest, tips in the Secretary's favor.

CONCLUSION

For the reasons set forth above, the Secretary's motion for a stay pending appeal of this court's final judgment order of January 31, 1990 is granted.

[1] On May 21, 1990, the Secretary instructed Social Security offices in this region by teletype that written notice be given to rejected applicants, explaining the reason for rejection and stating that applications may be resubmitted or reviewed by another SSA employee. *Id.* at 6–7. The court finds that these measures, though an improvement over the past "no process" practices, satisfy neither the court's final judgment order nor the explicit requirements of a hearing and final decision mandated by 42 U.S.C. § 405(g).