

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAULA SMITH, individually and on behalf
of similarly situated persons,

Plaintiff,

v.

DEPARTMENT OF PUBLIC WELFARE
OF THE COMMONWEALTH OF
PENNSYLVANIA; BEVERLY
MACKERETH, in her official capacity as
Secretary of the Department of Public
Welfare of the Commonwealth of
Pennsylvania

Civil Action No. 2:13-cv-5670-AB

MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and this Court’s Preferred Procedure for such Motions, Defendants Department of Public Welfare of the Commonwealth of Pennsylvania (“DPW”) and Beverly Mackereth in her official capacity as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania (collectively with DPW, “Defendants”) respectfully move this Court for an Order granting partial summary judgment.

Pursuant to this Court’s Preferred Procedure, Defendants state as follows:

(1) This Motion is directed to Plaintiff’s burden to demonstrate that under the Americans With Disabilities Act (“ADA”) and the Rehabilitation Act – the claims asserted in Counts I and II of Plaintiff’s Second Amended Complaint (“SAC”) – there are reasonable modifications available to DPW in order to accommodate Plaintiff’s demand for state-funded services. In particular, the Motion challenges Plaintiff’s theory that the Court can require DPW to alter its financial eligibility standards for Medicaid when Congress has expressly granted

DPW the discretion to adopt or not adopt the programs in question. The Motion raises two primary arguments:

(a) Because Plaintiff's case focuses exclusively on DPW's administration of a state-funded program called "Act 150," possible modifications to the joint federal/state Medicaid program are irrelevant; and

(b) Basic principles of statutory interpretation demonstrate that Congress did not intend the ADA or the Rehabilitation Act to constrain the discretion that Congress granted to the states to adopt or not to adopt the policies in question.

(2) There is no legally sufficient evidentiary basis to support the issues identified above.

(3) Defendants hereby request that the Court enter partial summary judgment pursuant to Fed. R. Civ. P. 56(c).

WHEREFORE, for the reasons stated herein, and in the accompanying Memorandum of Law, which is incorporated herein by reference, Defendants request that the Court grant this Motion and enter partial summary judgment.

Respectfully submitted,

/s/ Joshua D. Wolson

Gregory F. Cirillo (PA ID No. 46878)

John J. Higson (PA ID No. 80720)

Joshua D. Wolson (PA ID No. 84988)

DILWORTH PAXSON LLP
1500 Market St., Suite 3500E

Philadelphia, PA 19102

(215) 575-7000 (telephone)

(215) 575-7200 (facsimile)

Counsel for Defendant

Dated: March 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2014, I caused the foregoing Motion For Partial Summary Judgment to be filed via the Court's ECF system, which provided notice and access to the following:

Stephen F. Gold
1709 Benjamin Franklin Parkway
Second Floor
Philadelphia, PA 19103

Robin Resnick
Disability Rights Network of PA
1315 Walnut Street, Suite 500
Philadelphia, PA 19107

Dynah Haubert
Disability Rights Network of PA
1414 North Cameron Street
Harrisburg, PA 17103

Counsel for Plaintiff

/s/ Joshua D. Wolson