

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

DEVON ANTHONY BROWN, )  
 )  
 Plaintiff, )  
 )  
 v. ) C.A. No. 09M-01-046 MMJ  
 )  
 DELAWARE DIVISION OF SOCIAL )  
 SERVICES, DEPARTMENT OF )  
 HEALTH AND SOCIAL SERVICES, )  
 )  
 Defendants. )

Submitted: April 27, 2009  
Decided: July 24, 2009

On Delaware Division of Social Services' Motion for Summary Judgment.  
**GRANTED.**  
On Devon Anthony Brown's Continuance Request. **DENIED.**

**MEMORANDUM OPINION**

Devon Anthony Brown, *pro se*

A. Ann Woolfolk, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for Delaware Division of Social Services,  
Department of Health and Social Services.

**JOHNSTON, J.**

## **FACTUAL BACKGROUND**

In November of 2007, Devon Anthony Brown applied for food stamps with the Delaware Division of Social Services, Department of Health and Social Services (“DSS”). DSS denied Brown’s request. DSS based its denial on the belief that Brown had a felony conviction for the sale of controlled substances. Brown requested and received a hearing to contest the denial.

At the hearing, Brown produced evidence that he did not have a felony conviction for selling controlled substances. Brown explained that that charge had been dropped and that he had instead pled guilty to a felony charge of Possession of a Controlled Substance Within 1000 Feet of a School. DSS asserted that even that charge would render Brown ineligible for benefits under the DSS’s interpretation of the eligibility requirements.

On January 23, 2008, the DSS hearing officer issued an order finding that DSS had wrongfully withheld benefits from Brown. The order required DSS to provide Brown with the benefits he previously should have received. Inadvertently, DSS did not implement the order until February 6, 2009. At that time, DSS issued Brown three months worth of food stamps.

## **PROCEDURAL CONTEXT**

On January 13, 2009, Brown filed a civil action against DSS for allegedly failing to comply with the January 23, 2008 order. In Brown’s complaint, he

“demands” three things: (1) that all food stamp benefits be provided since his May 2007 request; (2) that he be reimbursed for his cell phone expenses, which exceed the amount of his food stamp benefits that he allegedly should have received; and (3) that the individuals responsible for “road blocking” his food stamp benefits be “held accountable” and/or terminated from their positions.

On February 25, 2009, DSS filed a Motion for Summary Judgment. DSS contends that Brown is not entitled to relief on any of his demands. DSS asserts that Brown was provided with all of the benefits to which he was entitled in accordance with his eligibility and the January 23, 2008 order. DSS explains that Brown, who was and is an able-bodied employable adult with no children, is only eligible to receive three months of food stamp benefits within any twelve month period. DSS asserts that Brown received the three months to which he was entitled.

Additionally, DSS asserts that there are no legal theories under which Brown would be entitled to reimbursement of his cell phone charges. DSS states that even if there were a theory of law under which he could recover, there are no records or other evidence to show that Brown had indeed incurred any expenses calling DSS. DSS explains that it has no records of Brown calling to inquire about his food stamp benefits.

Also, DSS asserts that Brown has failed to cite any law to support his demand that certain employees must be “held accountable” or terminated from their jobs. DSS argues that this Court does not have jurisdiction over DSS’s personnel decisions.

Finally, DSS contends that it is immune from liability under the doctrine of sovereign immunity. DSS asserts that neither the State nor its agencies may be sued without their consent or legislative waiver. DSS states that Brown has failed to cite any legislative waiver. Thus, DSS contends that it is immune from suit and the motion for summary judgment should be granted.

To support its positions, DSS provides an affidavit of Barbra H. Hanson, the Deputy Director of DSS. Hanson avers that Brown was not entitled to benefits due to his criminal record, but acknowledges that the hearing officer issued a decision saying otherwise. Hanson asserts that Brown received all of the food stamp benefits he was entitled to under the order based on his eligibility. Hanson explains that as an able-bodied employable adult without children, Brown was and is only eligible for three months of food stamp benefits during any twelve month period. Hanson asserts that Brown failed to provide the necessary documentation to meet the exception for medically disabled individuals, and as such, could not receive additional benefits. Hanson states that Brown requested a hearing to challenge the DSS’s determination of ineligibility for additional benefits; but,

Hanson claims that Brown failed to appear at the hearing. Thus, Hanson explains that Brown's request for a hearing was deemed abandoned.

On March 17, 2009, Brown filed a response to DSS's Motion for Summary Judgment. Brown's response consists entirely of a continuance request. Brown asserts that a continuance is necessary because the United States Department of Agriculture ("USDA") is carrying out an "investigation into this matter." Brown claims that "[t]he outcome of this inquiry by the Department of Agriculture is very much pertinent to this Civil Action." Brown does not address DSS's motion; and he does not provide any supporting facts or arguments to support his complaint.

On April 28, 2009, DSS filed a response to Brown's submission. DSS asserts that the Office of Civil Rights of the USDA is an investigative body that reviews complaints of civil rights violations in connection with the distribution of food stamps by DSS. DSS explains that an investigation typically commences with a telephone inquiry by the USDA to the supervisor of the worker in question. DSS asserts that the USDA has not been in contact with anyone at DSS regarding plaintiff.

Additionally, DSS contends that the outcome of any USDA investigation is irrelevant to this case. DSS asserts that Brown's complaint is not about a civil rights violation, but rather, concerns DSS's alleged failure to comply with the

hearing officer's order. Therefore, DSS believes that the Court should rule upon its Motion for Summary Judgment and deny Brown's continuance request.

## **DISCUSSION**

### ***Brown's Continuance Request***

The Court will not grant Brown's continuance request because any results reached by the USDA are irrelevant to the issues presently before the Court. If the USDA is investigating a DSS employee's treatment of Brown, it will be inquiring into potential civil rights violations. Brown has not complained of any civil rights violations within his complaint or additional submissions. Thus, any report of civil rights violations will have no bearing on this case.

**THEREFORE**, Brown's continuance request, to wait until the alleged USDA investigation is completed, is hereby **DENIED**.

### ***Summary Judgment Standard***

This Court will grant summary judgment only when no material issues of fact exist. The moving party bears the burden of establishing the nonexistence of material issues of fact.<sup>1</sup> Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>2</sup>

Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the

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<sup>1</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>2</sup> *Id.*

non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.<sup>3</sup> If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, summary judgment must be granted.<sup>4</sup>

A court deciding a summary judgment motion must identify disputed factual issues whose resolution is necessary to decide the case, but the court must not decide those issues.<sup>5</sup> The court must evaluate the facts in the light most favorable to the non-moving party.<sup>6</sup> Summary judgment will not be granted under circumstances where the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.<sup>7</sup>

### ***DSS's Motion for Summary Judgment***

DSS is immune from suit. Courts are prohibited from hearing actions against a state under the 11<sup>th</sup> Amendment of the Federal Constitution.<sup>8</sup> This immunity extends to agencies exercising the authority of a state.<sup>9</sup> States can

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<sup>3</sup> Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

<sup>4</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp.*, 477 U.S. at 322-23.

<sup>5</sup> *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

<sup>8</sup> *Murphy v. Corr. Med. Serv.*, 2005 WL 2155226, at \*2 (Del. Super.).

<sup>9</sup> *Id.*

choose to waive this immunity.<sup>10</sup> However, absent a clear legislative expression of waiver, a state and its agencies are immune from suit.<sup>11</sup>

The DSS clearly is a state agency. It was created by an enabling statute, is supported by state tax dollars, and exists to promote the welfare of Delaware citizens. As such, it cannot be sued unless the State has waived its sovereign immunity. Brown has failed to provide any evidence that the legislature has explicitly waived sovereign immunity for DSS. Further, an examination of DSS's enabling statute<sup>12</sup> and the Food Stamp Program statute<sup>13</sup> shows that the legislature did not waive DSS's immunity. Therefore, Brown cannot pursue a claim against DSS.

Further, even if DSS were not immune from suit, Brown has failed to state a claim upon which relief can be granted or that involves the Court's jurisdiction. After a review of the record and the applicable rules and procedures, it is clear that Brown received all of the benefits to which he was entitled. Pursuant to the Delaware Social Services Manual ("DSS Manual"), able-bodied employable adults with no children only are entitled to three months of food stamps in any twelve month period.<sup>14</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *See id.* at \*4.

<sup>12</sup> 16 *Del. C.* § 101-137

<sup>13</sup> 31 *Del. C.* § 601-613

<sup>14</sup> 16 *Del. Admin. C.* § 9018.2.



An exception exists for individuals who are medically or physically unable to work.<sup>15</sup> However, it is the sole obligation of the benefit recipient to provide verification of such disabilities.<sup>16</sup> DSS provided Brown with three months of food stamps. Brown never provided DSS with any evidence of a disability or illness. Therefore, this Court finds that Brown received all of the benefits he was entitled too.

Additionally, Brown's request to have his cell phone bill paid and for the Court to "hold accountable and/or terminate" DSS employees are without merit. Brown provides no legal theory under which he would be entitled to either remedy. Additionally, the Court has no jurisdiction to supercede DSS's personnel decisions.

Finally, Brown has not supported his claims by sworn testimony. When an adverse party rests upon mere allegations or denials and does not "set forth specific facts," the party opposing summary judgment has failed to demonstrate genuine issues of material fact for trial.<sup>17</sup>

## **CONCLUSION**

The Court finds that any USDA investigation into DSS's handling of Brown's food stamp request has no bearing on the case presently before this Court. Additionally, the Court finds that DSS is immune from suit. Further, Brown has failed to provide any evidence or affidavits to show that he has a claim upon which

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<sup>15</sup> *Id.*

<sup>16</sup> 16 Del. Admin. C. § 9035.1.

<sup>17</sup> Super. Ct. Civ. R. 56(e).

relief can be granted. When viewing the facts in the light most favorable to the plaintiff, the Court finds that summary judgment is appropriate.

**THEREFORE**, Brown's Motion for a Continuance is hereby **DENIED**.  
DSS's Motion for Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston