

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 09–cv–00275-ZLW-KMT

MARY L. MONTALVO,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant.

ORDER

This matter is before the court on the “Plaintiff’s Motion for Declaratory Judgment or Appointment of Counsel” (Doc. No. 19, filed March 23, 2009). The plaintiff seeks appointment of counsel to represent her in this matter or, in the alternative, declaratory judgment in her favor.

The plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915. Counsel cannot be appointed and paid pursuant to 28 U.S.C. § 1915(e)(1) for this type of case. This court, however, has broad discretion to direct the Clerk of Court to attempt to obtain volunteer counsel for a plaintiff in a civil case. *See DiCesare v. Stuart*, 12 F.3d 973, 979 (10th Cir. 1993). In making this decision, the court considers the following factors: (1) the merits of the litigant’s claims, (2) the nature of the factual issues raised in the claims, (3) the litigant’s ability to present her claims, and (4) the complexity of legal issues raised by the claims. *See Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995).

Here, without prejudging in any way the merits of Plaintiff's complaint, the court notes that plaintiff offers no evidence of her efforts to secure counsel. Moreover, Plaintiff's pleadings and communications demonstrate an ability to prepare and present her claims without the aid of counsel. In addition, the factual and legal issues raised by the plaintiff's claims are not complex. Plaintiff's motion for appointment of counsel is denied.

Plaintiff also petitions the court for declaratory judgment in her favor. Plaintiff fails to set forth any legal or factual basis for the court to grant declaratory judgment. This request is denied.

Finally, Plaintiff requests an extension of time to prepare the proposed scheduling order. The scheduling conference is set for May 28, 2009. (*See* Doc. No. 13.) The court set the deadline for submission of the proposed scheduling order at May 21, 2009. (*Id.*) Plaintiff has nearly two months to prepare and submit a proposed scheduling order. This is a more than sufficient amount of time. This request is denied.

Accordingly, it is

ORDERED that the Plaintiff's motion (Doc. No. 19) is DENIED without prejudice.

Dated this 24th day of March, 2009.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge