

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Zita L. Weinshienk

Civil Action No. 09-cv-00275-ZLW-KMT

MARY L. MONTALVO,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant.

ORDER OF DISMISSAL WITHOUT PREJUDICE

The matter before the Court is Plaintiff's Motion To Senior Judge Weinshienk For Volunteer Counsel Otherwise Notice Of Withdrawal (Doc. No. 27).

When ruling on a *pro se* litigant's motion for volunteer counsel, the court should consider "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims."¹ This is a medical malpractice case in which Plaintiff claims that she was injured by an allergic reaction to a dental filling. The factual and legal issues do not appear to be complex, and Plaintiff does not assert in her motion that they are. Instead, Plaintiff argues, in essence, that she is at a disadvantage in this case because she is not a trained lawyer. However, the same could be said for any *pro se* litigant. Plaintiff thus far has been able to accomplish Court filings and present her claims

¹Rucks v. Boergemann, 57 F.3d 978, 979 (10th Cir. 1995).

without the aid of counsel. Further, while the Court cannot opine on the merits of Plaintiff's claims at this early stage in the proceedings, the Court questions whether the U.S. Department of Health and Human Services (which has not yet filed a responsive pleading) is a proper Defendant. For these reasons, Plaintiff's request for volunteer counsel will be denied.

Plaintiff states that if the Court will not seek volunteer counsel for her, she wishes to dismiss this case with the opportunity to "re-open" it in the future if she is able to obtain counsel. The Court will grant Plaintiff's request for voluntary dismissal of this case without prejudice pursuant to Fed. R. Civ. P. 41(a)(1). If Plaintiff wishes to re-file her claims, she will need to file a new case, subject to applicable statutes of limitations; this case will not be "re-opened."

Accordingly, it is

ORDERED that Plaintiff's Motion To Senior Judge Weinshienk For Volunteer Counsel Otherwise Notice Of Withdrawal (Doc. No. 27) is denied. It is

FURTHER ORDERED that the Amended Complaint and cause of action are voluntarily dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

DATED at Denver, Colorado this 30th day of April, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court