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DISTRICT OF MARYLAND
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JASON JAKUBOWSKI	*	
	*	
v.	*	Civil No. – JFM-17-1505
	*	
FAMILY SERVICE	*	
FOUNDATION, INC., ET AL	*	
	******	

MEMORANDUM

Plaintiff has filed this action, alleging that defendants violated his constitutional rights by failing to prevent him from engaging in rectal digging. He also asserts claims under the Maryland constitution, the Rehabilitation Act and the common law torts of negligent hiring, supervision, and retention. Defendants have filed motions to dismiss.

Plaintiff's claims under 42 U.S.C. §1983 are founded upon the facts that defendants are funded by the State of Maryland and the federal government and that they must comply with extensive state and federal regulations. These facts are insufficient to establish that defendants acted under color of state law. *See Woods v. Lake Drive Nursing Home, Inc.*, 503 F. Supp. 183, 186 (D. Md. 1980); *Rendell-Baker v. Kohn*, 457 U.S. 830, 840-41 (1982). Plaintiff relies on a case in the United States District Court for the Eastern District of Pennsylvania, *Fialkowski v. Greenwich Home for Children, Inc.*, 683 F. Supp. 103 (E.D. Pa. 1987), which has not been followed even in the Eastern District of Pennsylvania. *See Zarebicki v. Devereux Found.*, 2011 WL 2582140, at *4 (E.D. Pa. June 11, 2011). *Cf. Crissman v. Dover Downs Entm't, Inc.*, 289 F.3d 231, 244 (3rd Cir. 2002).

Plaintiff's claims under the Rehabilitation Act fail because he has not been discriminated against because of his disability. The most that can be said for plaintiff's claim is that defendants

are guilty of malpractice, which is not actionable under the Americans With Disabilities Act, and, by implication, under the Rehabilitation Act. *See Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996).

There is no diversity of citizenship between the parties. Therefore, this case will be dismissed for lack of subject matter jurisdiction.

Date: October 4, 2011

J. Frederick Motz
United States District Judge

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