

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PATRICIA KAY CHAPMAN

VS.

CIVIL ACTION NO. 3:15CV251TSL-RHW

DODGE COUNTY HUMAN SERVICES

ORDER

This case is before the court on the report and recommendation of United States Magistrate Judge Robert H. Walker entered on May 29, 2015, recommending dismissal based on plaintiff's failure to state a claim upon which relief may be granted and/or for lack of subject matter jurisdiction. Pro se plaintiff Patricia Kay Chapman has failed to file an objection and the time for doing so has since expired. Having considered the report and recommendation and the complaint, the court concludes that the report and recommendation is adopted insofar as it recommends dismissal of the putative federal claims for failure to state a claim upon which relief may be granted.¹

¹ As stated above, the report and recommendation also recommended that the complaint be dismissed for lack of subject matter jurisdiction. While the court agrees that the complaint is not a model of clarity, it is clear that by it, Chapman does seek recovery either under the constitution or other, unspecified federal statutes. In federal question cases under § 1331, "where the complaint . . . is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions . . . must entertain the suit". Bell v. Hood, 327 U.S. 678, 681-82, 66 S. Ct. 773, 776, 90 L. Ed. 939 (1946). The two exceptions are where the federal question

It is therefore ordered that the report and recommendation of Magistrate Judge Robert H. Walker entered May 29, 2015, is adopted as the opinion of this court to the extent as set forth above. Based on the foregoing, it is ordered that plaintiff' putative federal claims are dismissed with prejudice.² As the court declines to exercise supplemental jurisdiction over plaintiff's putative state law claims, these claims are dismissed without prejudice.

A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 17th day of June, 2015.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE

"clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." The court is not persuaded that either exception applies in this instance.

² The court is, of course, cognizant that "[g]enerally a district court errs in dismissing a pro se complaint for failure to state a claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend." Bazrowx v. Scott, 136 F.3d 1053, 1054 (5th Cir. 1998). Here, given that plaintiff had a right to file an objection to the report and recommendation and thereby either seek leave to amend her complaint or explain why it was sufficient as filed, the court is convinced that plaintiff had notice of the court's intention to dismiss the claims and a fair opportunity to respond. See Bazrowx v. Scott, 136 F.3d 1053, 1054 fn. 5 (5th Cir. 1998).