

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TERRIA MCKNIGHT,

Plaintiff,

Case No. 3:17-CV-00483-MMD-CBC

v.

NEVADA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF WELFARE AND
SUPPORTIVE SERVICES, *et al.*,

Defendants.

ORDER

Before the Court is Terria McKnight's ("McKnight") Second Amended Complaint ("SAC"). (ECF No. 15.) For the reasons discussed below, Count I and II in plaintiff's second amended complaint shall be permitted to proceed.

I. BACKGROUND AND PROCEDURAL HISTORY

McKnight is a disabled individual who resides in Lyon County, Nevada. (ECF No. 10.) Her claims for relief arise from her application for redetermination of eligibility for Supplemental Nutritional Assistance Program ("SNAP") benefits. (See ECF No. 1-1, 7.)

On August 15, 2017, McKnight submitted a first amended civil rights complaint ("FAC") under 42 U.S.C. § 1983 against Centralized Hearings Representative Team ("CHRT") member Sarah Polier, Hearing Officer Lori Kreck, and Hearing Officer Kari Yelenich (collectively referred to as "Defendants"). (ECF No. 1, at Ex. 1.) On the same date, McKnight filed an application to proceed *in forma pauperis*. (ECF No. 1.) On September 25, 2018, the Court accepted a Report and Recommendation granting McKnight's application to proceed *in forma pauperis*. (ECF No. 3.) In addition, the Court screened McKnight's FAC and determined that Count I should be dismissed without prejudice and with leave to amend because McKnight did not provide enough factual detail about Defendants' alleged due process violations, Count II should proceed, and Count III should be dismissed with prejudice. (ECF No. 14.) McKnight has submitted a SAC in

1 if the claim "lacks an arguable basis in either law or fact." *Id.* This includes claims based
2 on untenable legal conclusions (e.g., claims against defendants who are immune from suit
3 or claims of infringement of a legal interest which clearly does not exist) or fanciful factual
4 allegations (e.g., fantastic or delusional scenarios).

5 **III. ANALYSIS**

6 McKnight's SAC has sufficiently corrected the defects previously identified in the
7 Court's prior screening order. (ECF No. 10.) The Court dismissed Count I because
8 McKnight did not provide the named agency officers notice of the factual grounds upon
9 which her procedural due process claim rests. (ECF No. 10.) However, in the SAC,
10 McKnight provides more details about the named agency officers and their alleged due
11 process violations. (ECF No. 15.)

12 Regarding Polier, McKnight states that Polier did not ask for relevant medical
13 documentation prior to the hearing and did not consult evidence aside from her own. (*Id.*,
14 at 7 – 9.) Regarding Kreck and Yelenich, McKnight states that they "did not make rules on
15 evidence exchange prior to [the] hearing." (*Id.*, at 7.) Finally, McKnight states that she
16 "expressed to the two hearing officers [Kreck and Yelenich] that she felt the way the
17 hearing was being held violated her rights to due process, because the notices given to
18 [her] was [sic] unclear." (*Id.*)

19 McKnight has provided additional details which identify the individuals involved with
20 the hearing at issue, what those individuals did at the hearing, and why McKnight believes
21 those individuals' actions deprived her of due process. (*Id.*, at 7 – 13.) As previously stated,
22 the Court dismissed Count I because McKnight did not describe Defendants' respective
23 roles in allegedly depriving her of due process. (ECF No. 10.) Since McKnight is a pro se
24 litigant, her pleadings are reviewed with a more forgiving standard than formal pleadings
25 drafted by lawyers. *See Nordstrom*, 762 F.3d at 908 (9th Cir. 2014). As such, the
26 information McKnight provided in the SAC is sufficient to provide the named agency
27 officers notice of the factual grounds upon which her procedural due process claim rests.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, **IT IS HEREBY ORDERED** Count I shall be permitted to
3 proceed against Defendants Sarah Pollier, Lori Kreck, and Kari Yelenich, and Count II
4 shall be permitted to proceed against Defendants Nevada Department of Health and
5 Human Services Division of Welfare and Supportive Services ("DWSS") and the DWSS
6 Administrative Adjudication Office ("AAO").

7 The Clerk shall **ISSUE** summonses for the **Nevada Department of Health and**
8 **Human Services Division of Welfare and Supportive Services ("DWSS")**, the **DWSS**
9 **Administrative Adjudication Office ("AWO")**, **Sarah Pollier, Lori Kreck, and Kari**
10 **Yelenich** and send the same to the U.S. Marshal. The Clerk shall also **SEND** sufficient
11 copies of the second amended complaint (ECF No. 15), and this order to the U.S. Marshal
12 for service on the defendants. The Clerk shall **SEND** to plaintiff sufficient USM-285 forms.
13 Plaintiff shall have until **Friday, March 15, 2019**, to complete the USM-285 service forms
14 and return them to the U.S. Marshal, 400 South Virginia Street, 2nd Floor, Reno, Nevada
15 89501.

16 If plaintiff fails to follow this order, the above-named defendants will be dismissed
17 for failure to complete service of process pursuant to Fed.R.Civ.P. 4(m).

18 DATED THIS 25th day of February 2019.

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22 **UNITED STATES MAGISTRATE JUDGE**
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