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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TERRIA MCKNIGHT,

Plaintiff,

v.

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

Defendants.

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

ORDER

I. SUMMARY

Plaintiff Terria McKnight brings this action pro se based on events that occurred during a state administrative hearing (“Hearing”) to determine her eligibility for Supplemental Nutritional Assistance Program (“SNAP”) benefits. Before the Court are two motions to dismiss (ECF Nos. 25, 30) filed by Defendant State of Nevada ex rel. Nevada Department of Health and Human Services, Division of Welfare and Supportive Services (“DWSS”). The first motion relates to claims made against DWSS. (ECF No. 25.) The second motion relates to claims made against individuals who participated in the Hearing: Sarah Polier, Lori Kreck, and Kari Yelenich. (ECF No. 30.) The Court has reviewed Plaintiff’s consolidated response (ECF No. 32) as well as Defendant’s consolidated reply (ECF No. 33). For the following reasons, the Court denies the first motion to dismiss and grants the second motion to dismiss.

II. BACKGROUND

The following facts are taken from Plaintiff’s Second Amended Complaint (“SAC”) (ECF No. 15) unless otherwise indicated.

Plaintiff is a disabled individual who resides in Lyon County, Nevada. (Id. at 2.) Plaintiff submitted a SNAP redetermination application requesting SNAP benefits in

1 March 2017. (Id. at 4.) Plaintiff attended an in-person interview with DWSS in Yerington.
2 (Id. at 5.) When the interviewer entered expenses into the computer, the interviewer
3 refused to enter medical and shelter costs even though Plaintiff pays \$275 for mortgage,
4 \$320 for lot rent, yearly property taxes of \$108, gas heating in the amount of \$214, electric
5 in the amount of \$284, and out-of-pocket medical expenses of \$160. (Id.) DWSS sent
6 Plaintiff an insufficient information request on March 29, 2017, showing that her shelter
7 expenses were never considered. (Id.)

8 Plaintiff filed an appeal and participated in the Hearing by telephone. (Id.) The
9 Hearing was adversarial in nature but did not incorporate rules of evidence. (ECF No. 30
10 at 6.) Defendant Yelenich presided over the Hearing as the "Hearing Officer." (See ECF
11 No. 15 at 7; see also ECF No. 30 at 6.) Defendant Polier argued DWSS's position as a
12 representative of DWSS's Centralized Hearing Representative Team. (ECF No. 30 at 6.)
13 Defendant Kreck attended the Hearing only to provide support to Yelenich if she needed
14 it. (Id.) Kreck was an experienced Hearing Officer, and Yelenich was new to the role. (Id.)

15 Plaintiff alleges the following events occurred during the Hearing. Someone asked
16 Plaintiff if she had "receive[d] the information from the DSS agency." (ECF No. 15 at 5.)
17 Plaintiff indicated that she had not. (Id.) Plaintiff did not receive the documents until 30
18 minutes into the hearing. (Id. at 7.) Someone faxed about 53 pages of documents and
19 exhibits to DWSS workers in the Yerington office that Polier read aloud very fast. (See id.
20 at 5, 7.) Polier "was reading very fast and referring to documents [that were illegible]."
21 (See id.) When Plaintiff tried to explain that she was confused and having trouble following
22 along and that she did not receive the documents early enough to review them, someone
23 said: "Don't worry. This is the way we always do this." (Id. at 5.) Yelenich said she would
24 note this in her decision. (See id. at 7.) Polier read all 53 pages and afterward someone
25 asked Plaintiff very sarcastically: "Now how may I help you?" (Id. at 5-6.) No one asked
26 Plaintiff for medical documentation even though DWSS was supposed to consider
27 medical expenses. (Id. at 7.) Neither Kreck nor Yelenich made rules about exchanging
28 evidence prior to the hearing. (Id.) Plaintiff told Kreck and Yelenich that she felt the

1 hearing violated her due process rights because the notices she received were unclear.
2 (Id.)

3 DWSS notified Plaintiff on July 10, 2017, that it affirmed DWSS's earlier decision.
4 (Id. at 6.)

5 Plaintiff alleges that she is a qualified individual with a disability under the ADA.
6 (Id. at 10.) She alleges that she was denied the benefit of full participation in DWSS's
7 program when Polier read quickly during the hearing and when she did not receive
8 documents until 30 minutes into the hearing. (Id.) Plaintiff alleges that DWSS was aware
9 of her disability and that the way the hearing was held affected her ability to think clearly,
10 read and concentrate. (Id. at 11.)

11 United States Magistrate Judge Carla B. Carry permitted Plaintiff to proceed with
12 the following claims: (1) violation of procedural due process under 42 U.S.C. § 1983
13 against Polier, Kreck, and Yelenich; and (2) violation of the Americans with Disabilities
14 Act, 42 U.S.C. § 12101 et seq., against DWSS and the DWSS Administrative Adjudication
15 Office ("AAO"). (ECF No. 17 at 3.) Plaintiff seeks injunctive relief, punitive damages,
16 emotional distress damages, a declaratory judgment that Defendants violated Plaintiff's
17 rights, and monetary damages in the amount of \$2,000,000. (ECF No. 15 at 12.)

18 **III. LEGAL STANDARD**

19 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
20 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide
21 "a short and plain statement of the claim showing that the pleader is entitled to relief."
22 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While
23 Rule 8 does not require detailed factual allegations, it demands more than "labels and
24 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations
26 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to
27 survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a

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1 claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550
2 U.S. at 570).

3 In Iqbal, the Supreme Court clarified the two-step approach district courts are to
4 apply when considering motions to dismiss. First, a district court must accept as true all
5 well-pleaded factual allegations in the complaint; however, legal conclusions are not
6 entitled to the assumption of truth. Id. at 678. Mere recitals of the elements of a cause of
7 action, supported only by conclusory statements, do not suffice. Id. at 678. Second, a
8 district court must consider whether the factual allegations in the complaint allege a
9 plausible claim for relief. Id. at 679. A claim is facially plausible when the plaintiff’s
10 complaint alleges facts that allow a court to draw a reasonable inference that the
11 defendant is liable for the alleged misconduct. Id. at 678. Where the complaint does not
12 permit the court to infer more than the mere possibility of misconduct, the complaint has
13 “alleged—but it has not show[n]—that the pleader is entitled to relief.” Id. at 679 (alteration
14 in original) (internal quotation marks omitted). When the claims in a complaint have not
15 crossed the line from conceivable to plausible, the complaint must be dismissed. See
16 Twombly, 550 U.S. at 570.

17 **IV. FIRST MOTION TO DISMISS (ECF NO. 25)**

18 In its first motion to dismiss, Defendant State of Nevada argues that Plaintiff’s SAC
19 should be dismissed based on Burford¹ abstention. (ECF No. 25 at 4.) The Court already
20 rejected Defendant’s argument regarding Burford abstention. (ECF No. 5 at 5-8.) The
21 Court rejects Defendant’s argument now for the same reasons.

22 Defendant also asks the Court to dismiss Plaintiff’s §1983 claim to the extent that
23 it is made against Defendant State of Nevada. (ECF No. 25 at 6-8.) The Court denies the
24 motion in this regard because Plaintiff was not allowed to proceed with a § 1983 claim
25 against Defendant State of Nevada. (See ECF No. 17 at 3.)

26 Accordingly, the Court denies Defendant State of Nevada’s first motion to dismiss.

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¹Burford v. Sun Oil Co., 319 U.S. 315 (1943).

1 **V. SECOND MOTION TO DISMISS (ECF NO. 30)**

2 In its second motion to dismiss, Defendant State of Nevada primarily asks the
3 Court to dismiss Plaintiff's § 1983 claim against Polier, Kreck, and Yelenich based on
4 qualified immunity. (ECF No. 30 at 9-13.) The Court agrees with Defendant that Plaintiff's
5 § 1983 claim is barred by the doctrine of qualified immunity.²

6 The doctrine of qualified immunity protects government officials "from liability for
7 civil damages insofar as their conduct does not violate clearly established statutory or
8 constitutional rights of which a reasonable person would have known." Harlow v.
9 Fitzgerald, 457 U.S. 800, 818 (1982). Generally, courts apply a two-step analysis to
10 determine whether qualified immunity applies to bar certain claims. First, a court decides
11 whether the facts as alleged by the plaintiff make out a violation of a constitutional right.
12 See Saucier v. Katz, 533 U.S. 194, 201 (2001) (emphasis added), holding modified by
13 Pearson v. Callahan, 555 U.S. 223 (2009). Second, the court decides whether the right
14 at issue was "clearly established" at the time of the defendant's alleged misconduct. Id.
15 Courts may "exercise their sound discretion in deciding which of the two prongs of the
16 qualified immunity analysis should be addressed first in light of the circumstances in the
17 particular case at hand." Pearson, 555 U.S. at 236. The burden to establish that a right
18 was "clearly established" at the time of the alleged misconduct rests with the plaintiff. See
19 Green v. Camreta, 588 F.3d 1011, 1031 (9th Cir. 2009), vacated on other grounds as
20 noted in Greene v. Camreta, 661 F.3d 1201 (9th Cir. 2011). If there is no constitutional
21 violation, the inquiry ends and the officer is entitled to qualified immunity. See Saucier,
22 533 U.S. at 201.

23 The Court addresses the second Saucier inquiry first because Plaintiff has not
24 carried her burden of showing that the rights allegedly violated were clearly established.
25 Plaintiff cited no case law in her response to show that she had a clearly established right
26 to have evidence presented in a certain way at the Hearing. (See ECF No. 5 at 1-2.) Nor
27 has Plaintiff cited case law showing that she had a clearly established right to receive any

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²Accordingly, the Court declines to address Defendant's remaining arguments.

1 evidence at all before the Hearing. (See *id.*) Plaintiff asserts that the Court has found
2 immunity does not apply to Yelenich, Polier, and Kreck (*id.* at 2), but the Court has not
3 considered whether they were entitled to qualified immunity until now (see ECF Nos. 3,
4 5, 10, 14, 17). The Court only considered the issue of sovereign immunity with respect to
5 DWSS. (See ECF No. 10 at 4.)

6 Accordingly, the Court finds that Plaintiff's claims against Yelenich, Polier, and
7 Kreck are barred by the doctrine of qualified immunity.


8 **VI. CONCLUSION**

9 The Court notes that the parties made several arguments and cited to several
10 cases not discussed above. The Court has reviewed these arguments and cases and
11 determines that they do not warrant discussion as they do not affect the outcome of the
12 motions before the Court.

13 It is therefore ordered that Defendant's first motion to dismiss (ECF No. 25) is
14 denied.

15 It is further ordered that Defendant's second motion to dismiss (ECF No. 30) is
16 granted. Plaintiff's claims against Yelenich, Polier, and Kreck are dismissed.

17 DATED THIS 21st day of October 2019.

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21 MIRANDA M. DU
22 CHIEF UNITED STATES DISTRICT JUDGE
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