UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SEAN A. CLARK,

Plaintiff,

-against-

DMV; COMMISSIONER OF OTDA/HRA SOCIAL SERVICES; COMMISSIONER OF SSA; U.S. DEPARTMENT OF EDUCATION; NYCHA,

Defendants.

22-cv-3086 (JGK)

ORDER OF DISMISSAL

JOHN G. KOELTL, District Judge:

The plaintiff, Sean A. Clark, who appears pro se, brings this action asserting claims for violations of his federal constitutional and statutory rights, as well as claims under New York State law. The plaintiff appears to be asserting claims against each of the following defendants: (1) the New York State Department of Motor Vehicles ("DMV"); (2) the Commissioner of the New York State Office of Temporary and Disability Assistance ("OTDA"); (3) the Commissioner of the New York City Department of Social Services ("NYCDSS");[1] (4) the Commissioner of the Social Security Administration ("SSA"); (5) the United States Department of Education ("USDOE"); and (6) the New York City Housing Authority ("NYCHA").[2] The plaintiff paid the fees to

[1] The New York City Human Resources Administration ("HRA") is a subdivision of the NYCDSS.

[2] Because the plaintiff alleges no facts showing the personal involvement of any of the commissioners named as defendants, the Court understands the plaintiff's claims against these defendants as raised in the commissioners'

bring this action.

For the following reasons, the Court dismisses this action, but grants the plaintiff 30 days' leave to replead his claims against NYCHA in an amended complaint.

I. BACKGROUND

The Court has the authority to dismiss a complaint, even when the plaintiff has paid the fees to bring a civil action, if the Court determines that the action is frivolous, see Fitzgerald v. First E. Seventh Tenants Corp., 221 F.3d 362, 363-64 (2d Cir. 2000),[3] or that the Court lacks subject matter jurisdiction, see Fed. R. Civ. P. 12(h)(3); Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999). Leave to amend need not be granted if amendment would be futile. Hill v. Curcione, 657 F.3d 116, 123-24 (2d Cir. 2011). "Futility is a determination, as a matter of law, that proposed amendments would fail to cure prior deficiencies or to state a claim . . . ." Panther Partners Inc. v. Ikanos Commc'ns, Inc., 681 F.3d 114, 119 (2d Cir. 2012).

The Court is obliged to construe pro se pleadings liberally, Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they

official capacities.

[3] Unless otherwise noted, this Memorandum Opinion and Order omits all alterations, citations, footnotes, emphases, and internal quotation marks in quoted text.

suggest," Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006).

II. STANDARD

A. The Plaintiff's Litigation History

In asserting his claims, the plaintiff refers to many of the federal civil actions that he previously filed in this court. The plaintiff has an extensive litigation history in this court; with the exception of NYCHA, the plaintiff has previously brought actions in this court against the agencies named as defendants in this action, their subdivisions, or against the heads of those agencies or subdivisions. It appears that, in this action, the plaintiff is relitigating claims and/or issues that he previously raised (or could have raised) in those actions, and that the court has previously adjudicated. The doctrine of claim preclusion or issue preclusion prevents the plaintiff from relitigating these claims anew. To demonstrate why the plaintiff cannot proceed with many of his claims, the Court recounts the plaintiff's relevant litigation history before describing the allegations in the present complaint.

1. DMV

On December 14, 2015, the plaintiff, appearing pro se, brought an in forma pauperis ("IFP") action in this court against the Commissioner of the New York City Police Department; he later filed a second amended complaint against, among other

named defendants, the DMV. See Clark v. NYPD (New York Police Department) Commissioner (DMV I), No. 15-cv-9836 (S.D.N.Y. filed Dec. 14, 2015), ECF No. 6. The plaintiff stated that his "case [was] about the inaccurate information that [was] obtained on [his] current drivers license number." Id. at 3. He asserted claims under federal law, including claims for constitutional violations, claims under the Americans with Disabilities Act ("ADA"), as well as claims for libel and defamation. Id. at 2. By order dated February 10, 2017, Judge Colleen McMahon dismissed DMV I sua sponte for failure to state a claim on which relief could be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). DMV I, No. 15-cv-9836, 2017 WL 5508456 (S.D.N.Y. Feb. 10, 2017). As relevant here, Judge McMahon dismissed the plaintiff's claims against the DMV as barred by the Eleventh Amendment; his claims regarding his driver license number as "lack[ing] an arguable basis either in law or in fact"; and his claims for libel and defamation because there is no federal cause of action for such claims, and supplemental jurisdiction over these state-law claims was inappropriate. Id. at *2-3. The plaintiff appealed. DMV I, No. 15-cv-9836, ECF No. 10. On June 28, 2017, the Second Circuit Court of Appeals dismissed the appeal as frivolous. DMV I, No. 17-659 (2d Cir. June 28, 2017).

On September 28, 2020, the plaintiff filed a fee-paid pro

se action against the current Commissioner of the DMV, Mark Schroeder. Clark v. Schroeder (DMV II), No. 20-cv-8000 (S.D.N.Y. filed Sept. 28, 2020), ECF No. 1. The plaintiff asserted claims under federal law against Commissioner Schroeder

> pertain[ing] to the leakage of [the plaintiff's] drivers license [number] by HRA for Social Services . . . on [July 11, 2014,] and by [the SSA] benefit entitlement after the [administrative law judge issued a] favorable decision on [July 10, 2012,] and also by [the USDOE which] falsified [an] amount of $14,399.29 and [the] Student Loan Finance Corporation [which] falsified [an] amount of $7,120.22.

Id. at 5. By order dated October 20, 2020, Judge Vernon S. Broderick directed the plaintiff to show cause why DMV II should not be dismissed as barred by the Eleventh Amendment. DMV II, No. 20-cv-8000, ECF No. 5. After the plaintiff responded to the order to show cause, Judge Broderick dismissed DMV II sua sponte as frivolous. DMV II, No. 20-cv-8000, 2020 WL 6525467 (S.D.N.Y. Nov. 5, 2020). On May 14, 2021, the Second Circuit Court of Appeals affirmed the dismissal. DMV II, 847 F. App'x 92 (2d Cir. 2021) (summary order), cert. denied, 142 S. Ct. 341 (2021).

2. **HRA**

On August 15, 2013, the plaintiff, appearing pro se and proceeding IFP, brought an action against the HRA and then-HRA Commissioner Robert Doar. Clark v. Human Res. Admin. (HRA I), No. 13-cv-5757 (S.D.N.Y. filed Aug. 15, 2013), ECF No. 2. In his HRA I complaint, the plaintiff asserted claims under federal law

arising from the 2013 denial of his application for public benefits, including "food stamps." Id. at 3. Almost one month later, on September 11, 2013, the plaintiff filed another pro se action IFP against then-HRA Commissioner Doar. Clark v. Doar (HRA II), No. 13-cv-6460 (S.D.N.Y. filed Sept. 11, 2013), ECF No. 2. In his HRA II complaint, the plaintiff asserted claims relating to the amount of public benefits he had received. Id. at 3. By order dated September 30, 2013, Judge Loretta A. Preska consolidated HRA I and HRA II, and dismissed the actions sua sponte for failure to state a claim on which relief could be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). HRA I, No. 13-cv-5757, ECF No. 4; HRA II, No. 13-cv-6460, ECF No. 4. Judge Preska dismissed the plaintiff's procedural due process claims under 42 U.S.C § 1983 because the plaintiff did not allege that he had taken advantage of all the available state remedies or show that those remedies were inadequate or inappropriate, and she dismissed the plaintiff's claims under Title II of the ADA because he did not allege facts showing that he had been discriminated against because of his disability. Id. The plaintiff appealed, and on January 23, 2014, the Second Circuit Court of Appeals dismissed the appeal as frivolous. Clark v.

Human Res. Admin., Nos. 13-3882, 13-3973 (2d Cir. Jan. 23, 2014), cert. denied, No. 13-8865 (May 5, 2014).

On January 13, 2014, the plaintiff brought another pro se action against the HRA, proceeding IFP. Clark v. Human Res. Admin. (HRA III), No. 14-cv-0321 (S.D.N.Y. filed Jan. 13, 2014), ECF No. 2. In HRA III, the plaintiff again asserted claims under federal law arising from the denial of public benefits or of the full amount of those benefits to which he believed he was entitled. Id. at 3-4. By order dated April 1, 2014, Judge Preska dismissed HRA III sua sponte for failure to state a claim on which relief could be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). HRA III, No. 14-cv-0321, ECF No. 4. Judge Preska again dismissed the plaintiff's procedural due process claims under 42 U.S.C § 1983 because the plaintiff did not allege any facts showing that he had fully exhausted state remedies or that those remedies were inadequate or inappropriate, and again dismissed the plaintiff's claims under Title II of the ADA because he did not allege any facts showing that he had been discriminated against because of his disability. Id. Judge Preska also dismissed the plaintiff's claims that he had previously raised under the doctrine of claim preclusion (also known as res judicata) or issue preclusion (also known as collateral estoppel). Id. The plaintiff appealed, and on August 6, 2014, the Second Circuit Court of Appeals

dismissed the appeal as frivolous, and warned the plaintiff as to the consequences of his "continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers," including a possible leave-to-file sanction imposed on his future appeals. HRA III, No. 14-1390 (2d Cir. Aug. 6, 2014), cert. denied. No. 14-5858 (Oct. 6, 2014), reh'g denied (Feb. 29, 2016).

The plaintiff sued the HRA yet again on January 21, 2014, appearing pro se and proceeding IFP. Clark v. Human Res. Admin. (HRA IV), No. 14-cv-0447 (S.D.N.Y. filed Jan. 21, 2014), ECF No. 2. In HRA IV, the plaintiff again asserted claims under federal law arising from the denial of his public benefits or the denial of the full amount of public benefits to which he believed he was entitled. Id. at 3. By order dated February 14, 2014, Judge Preska dismissed HRA IV sua sponte for failure to state a claim on which relief could be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). HRA IV, No. 14-cv-0447, ECF No. 3. Judge Preska dismissed the plaintiff's procedural due process claims under 42 U.S.C § 1983, and his claims under Title II of the ADA, for the same reasons that she had dismissed those claims or similar claims in the plaintiff's previous actions. Id. Judge Preska warned the plaintiff that "further duplicative litigation in this Court may result in an order barring Plaintiff from filing new actions [IFP] without prior permission." Id. at 4.

The plaintiff appealed. On May 30, 2014, the Second Circuit Court of Appeals dismissed the appeal as frivolous. HRA IV, No. 14-659 (2d Cir. May 30, 2014), cert. denied, No. 14-5568 (Oct. 6, 2014), reh'g denied (Feb. 29, 2016).

On February 7, 2014, the plaintiff filed a pro se action against the HRA Commissioner, proceeding IFP. Clark v. Comm'r HRA (HRA V), No. 14-cv-0831 (S.D.N.Y. filed Feb. 7, 2014), ECF No. 2. The plaintiff asserted claims under federal law in HRA V arising from the discontinuation of his public benefits. Id. at 3. By order dated April 23, 2014, Judge Preska dismissed HRA V for failure to state a claim on which relief could be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). HRA V, No. 14-cv-0831, ECF No. 4. The order recounted the plaintiff's litigation history and dismissed the plaintiff's claims under 42 U.S.C § 1983, Title II of the ADA, and the Rehabilitation Act for the same reasons she had dismissed those claims or similar claims in the plaintiff's previous actions. Id. Judge Preska reiterated her previous warning that "duplicative litigation in this Court may result in an order barring Plaintiff from filing new actions [IFP] without prior permission." Id. at 5-6. The plaintiff appealed. On July 17, 2014, the Second Circuit Court of Appeals dismissed the appeal as frivolous. HRA V, No. 14-1636 (2d Cir. July 17, 2014), cert. denied, No. 14-5566 (Oct. 6, 2014), reh'g denied (Feb. 29, 2016).

3. **USDOE**

On July 24, 2015, the plaintiff, proceeding IFP, brought a pro se action against the USDOE. Clark v. USDOE (USDOE I), No. 15-cv-5863 (S.D.N.Y. filed July 24, 2015), ECF No. 2. The plaintiff's amended complaint named the USDOE, Allied Interstate, and the Student Loan Finance Corporation as defendants, and asserted claims for violations of the plaintiff's federal constitutional rights and violations of the ADA. USDOE I, No. 15-cv-5863, ECF No. 5. The plaintiff's claims against the USDOE arose from a dispute regarding the payment of student loans; the plaintiff claimed that he had been the victim of identity theft. See id. at 3. After USDOE I was reassigned to Judge McMahon, the Government filed a motion to remand the matter to the USDOE for further administrative proceedings. USDOE I, No. 15-cv-5863, ECF No. 30. By order dated May 11, 2016, Judge McMahon granted the Government's motion. USDOE I, No. 15-cv-5863, ECF No. 45. Judge McMahon noted that the Government had "confessed error - that is, it ha[d] admitted that its examiner made an error of law when considering the plaintiff's application - and ha[d] asked that the case be remanded so that it [could] be reconsidered under the appropriate legal standard." Id. Judge McMahon also noted that "[t]he case may be reopened following receipt of a new agency decision on plaintiff's request for discharge." Id. The

plaintiff appealed. On July 27, 2016, the Second Circuit Court of Appeals dismissed the appeal for lack of jurisdiction because a final order had not been issued by the district court. USDOE I, No. 16-1535 (2d Cir. July 27, 2016). On January 9, 2017, the Supreme Court of the United States dismissed the plaintiff's petition for a writ of certiorari. USDOE I, 137 S. Ct. 639 (2017). Finding that the plaintiff had "repeatedly abused this Court's process," the Supreme Court directed the Clerk "not to accept any further petitions in noncriminal matters from [the plaintiff] unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1." Id.

On October 12, 2018, the plaintiff filed a fee-paid pro se action against the Student Loan Finance Corporation ("SLFC"). Clark v. Student Loan Fin. Corp. (USDOE II), No. 18-cv-9354 (S.D.N.Y. filed Oct. 12, 2018), ECF No. 1. He later amended his complaint to name both the SLFC and the USDOE as defendants. USDOE II, 18-cv-9354, ECF No. 4. The plaintiff again asserted claims of identity theft and claims arising from a student loan debt dispute. See id. at 5-6. The Government filed a motion to dismiss the plaintiff's claims against the USDOE under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. USDOE II, No. 18-cv-9354, ECF No. 39. In an opinion and order dated September 16, 2019, Judge J. Paul Oetken granted the Government's motion to dismiss, but granted the plaintiff leave

to amend his complaint to assert claims against the USDOE under the Administrative Procedure Act ("APA"). USDOE II, No. 18-cv-9354, 2019 WL 4412571 (S.D.N.Y. Sept. 16, 2019). As relevant here, Judge Oetken granted the Government's motion to dismiss for failure to state a claim as to the plaintiff's claims against the USDOE under Title II of the ADA and the Rehabilitation Act because the plaintiff did not allege any facts showing that he was discriminated against because of his disability and because, with respect to the plaintiff's claims under Title II of the ADA, the USDOE is not a public entity for the purpose of liability under that provision. See id. at *3. Judge Oetken understood the plaintiff's constitutional claim against the USDOE as being "a due process claim under the Fifth Amendment . . . that the [USDOE] garnished his Social Security disability payments . . . without due process." Id. at *4. Judge Oetken dismissed those claims because the plaintiff did not show "that he was not provided with adequate written notice of garnishment," and because "the statutory scheme . . . requires only certification to the Department of Treasury that the debt is eligible for collection and all due process protections have been met." Id. Judge Oetken found that "the allegations establish[ed] that Plaintiff was given adequate process." Id. However, in light of the plaintiff's pro se status, and because any claims the plaintiff could have had under the APA would not

have been ripe at the time that he filed the amended complaint, Judge Oetken granted the plaintiff leave to amend his complaint to assert claims under the APA. Id. at *5. The plaintiff appealed. On February 7, 2020, the Second Circuit Court of Appeals dismissed the appeal as frivolous. USDOE II, No. 19-3263, 2020 WL 1683441 (2d Cir. Feb. 7, 2020). By order dated September 18, 2020, Judge Oetken dismissed USDOE II with prejudice because the plaintiff had not filed an amended complaint. USDOE II, No. 18-cv-9354, ECF No. 53.

4. **OTDA**

On October 31, 2018, the plaintiff filed a fee-paid pro se action against the "State Commissioner of Social Service Department." Clark v. State Comm'r of Soc. Serv. Dep't (OTDA I), No. 18-cv-10038 (S.D.N.Y. filed Oct. 31, 2018), ECF No. 1. He asserted claims arising from the discontinuance of his public benefits. See id. at 5-10. The "Commissioner" filed a motion under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. OTDA I, No. 18-cv-10038, ECF No. 17. By order dated April 23, 2019, Judge Preska construed OTDA I as brought against the OTDA and, among other things, granted the OTDA's motion to dismiss. OTDA I, No. 18-cv-10038, 2019 WL 11637254 (S.D.N.Y. Apr. 23, 2019). In particular, Judge Preska dismissed OTDA I for lack of subject matter jurisdiction as barred by the Eleventh Amendment, and, to the extent that the plaintiff was attempting

to appeal final state-court decisions, dismissed such claims under the Rooker-Feldman doctrine. Id. at *2. The plaintiff appealed. On October 23, 2019, the Second Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. OTDA I, No. 19-1823, 2019 WL 11718840 (2d Cir. Oct. 23, 2019), cert. denied, 140 S. Ct. 2513 (2020).

5. **SSA**

On October 2, 2008, the plaintiff, proceeding IFP, brought a pro se action against the SSA Commissioner. Clark v. Comm'r of Soc. Sec. (SSA I), No. 08-cv-8443 (S.D.N.Y. filed Oct. 2, 2008), ECF No. 2. The plaintiff sought judicial review of the SSA Commissioner's final administrative decisions denying him disability benefits. Id. The Government moved for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure, asking the court to affirm the Commissioner's final administrative decisions and to dismiss the action. SSA I, No. 08-cv-8443, ECF No. 10. By order dated May 11, 2009, Judge Alvin K. Hellerstein granted the Government's motion. SSA I, No. 08-cv-8443, 2009 WL 1309094 (S.D.N.Y. May 11, 2009). The plaintiff appealed. On May 19, 2010, the Second Circuit Court of Appeals vacated the May 11, 2009 dismissal and instructed the district court to remand the matter to the SSA Commissioner. SSA I, No. 09-2974 (2d Cir. May 19, 2010). In a letter filed by the Government on September 6, 2019, the Government updated the

court "that a final judgment remanding the case to the Commissioner should have been entered but was not. However, because the matter has since been finally resolved in Plaintiff's favor, this case is now moot." SSA I, No. 08-cv-8443, ECF No. 24. The Government noted that, upon remand to the SSA Commissioner, an administrative law judge issued "a fully favorable decision" as to the plaintiff's application for Social Security benefits. Id. The Government advocated for no further action in the matter. Id. By order dated September 10, 2019, Judge Hellerstein ordered SSA I closed for the reasons discussed in the Government's letter. SSA I, No. 08-cv-8443, ECF No. 25. The plaintiff appealed. On January 15, 2020, the Second Circuit Court of Appeals dismissed the appeal as frivolous. SSA I, No. 19-2966 (2d Cir. Jan. 15, 2020).

On December 19, 2012, the plaintiff filed a pro se action IFP against the SSA. Clark v. Soc. Sec. Admin. (SSA II), No. 12-cv-9274 (S.D.N.Y. filed Dec. 19, 2012), ECF No. 2. By order dated February 21, 2013, Judge Preska dismissed SSA II sua sponte because the SSA decision for which the plaintiff was seeking judicial review was not a final administrative decision. SSA II, No. 12-cv-9274, ECF No. 5. The plaintiff appealed. On May 9, 2013, the Second Circuit Court of Appeals vacated the dismissal and remanded the action to the district court to determine (1) whether the district court remanded SSA I to the

SSA Commissioner, (2) what agency activity had taken place since the Second Circuit Court of Appeals had ordered remand in SSA I, and (3) whether letters submitted by the plaintiff constituted the Commissioner's final administrative decision. SSA II, No. 13-866 (2d Cir. May 9, 2013). Upon remand, SSA II was reassigned to Judge Hellerstein as related to SSA I. The plaintiff then filed an amended complaint in which he requested Social Security disability benefits. SSA II, No. 12-cv-9274, ECF No. 12. The Government filed a motion to dismiss SSA II under Rules 12(b)(1), 12(b)(6), and 56(a) of the Federal Rules of Civil Procedure, for lack of jurisdiction, failure to state a claim, and alternatively, for summary judgment. SSA II, No. 12-cv-9274, ECF No. 25. By order dated September 3, 2014, Judge Hellerstein granted the Government's motion. SSA II, No. 12-cv-9274, ECF No. 33. Judge Hellerstein found that some of the plaintiff's claims against the SSA were untimely and lacked merit because the plaintiff had received favorable determinations from the SSA, and dismissed other claims for lack of jurisdiction because the plaintiff had not exhausted available administrative remedies. Id. Judge Hellerstein also dismissed the plaintiff's claims under Title II of the ADA and the Rehabilitation Act, because the SSA is not a public entity under the ADA and is therefore not liable under that statute, and because a private right of action for damages was not authorized under the Rehabilitation

Act. Id. Judge Hellerstein also dismissed the plaintiff's equal protection claims for failure to state a claim because the plaintiff did not allege that he was "a victim of selective enforcement or application of the law, or that he was treated differently from others similarly situated on account of an impermissible ground." Id. The plaintiff appealed. On December 29, 2014, the Second Circuit Court of Appeals dismissed the appeal as frivolous. SSA II, No. 14-3500 (2d Cir. Dec. 29, 2014), cert. dismissed, No. 14-8118 (Mar. 23, 2015), reconsideration denied, (Apr. 27, 2015).

B. The Present Complaint

The Court understands the plaintiff's present complaint as asserting (1) claims for federal constitutional violations under 42 U.S.C. § 1983; (2) claims for disability discrimination under the Fair Housing Act ("FHA"), Title II of the ADA, and the Rehabilitation Act; (3) claims under the APA, the Federal Tort Claims Act ("FTCA"), and the Social Security Act; and (4) claims under state law.

1. **DMV**

As to the DMV, the plaintiff alleges that he "was never given any kind of notice or hearing as to why [his drivers'] license [was] damaged or leaked upon by another party by adding

another line to [his drivers'] license." ECF No. 1-1, at 13-14.[4] The plaintiff alleges that "[t]he previous judge did not give the previous defendant time to file an answer and dismissed the case before the previous defendant could answer[,] which violates" Rule 4(m) of the Federal Rules of Civil Procedure. Id. at 14. The plaintiff asserts that under Ex Parte Young, 209 U.S. 123 (1908), "[t]here is an exception to [Eleventh Amendment] immunity," and that "[t]he exception is [his] gold bars from [his] estate account [he is] the only legal heir of the estate." Id. He further alleges that "[e]ven if [Eleventh Amendment] immunity was implemented[,] the local agency for [the DMV] has to give [him] notice or hearing stating why [his drivers'] license is damaged without any restrictions labeled on [his] current license." Id.

2. **OTDA Commissioner, HRA, and SSA Commissioner**

The plaintiff makes the following allegations as to the OTDA, the HRA, and the SSA:

> The Commissioner of OTDA/HRA for social services discontinued [the plaintiff's] benefits knowing that [the plaintiff] had an entitled physical disability. [The plaintiff] won [his] hearing for [Supplemental Security Income/Social Security Disability Insurance ("SSI" and "SSD")] on [July 10, 2012,] which is before [his] appointment from HRA for social services work requirements and before the OTDA hearing so there should not have been any discussion regarding employment qualifications. [The plaintiff does not] know the exact day the embezzlement started for [his] SSD benefits

[4] The Court uses the pagination from ECF when citing to the present complaint.

> because the benefits should have started after [he] won [his] hearing but there are two different dates. One is the inappropriate date of [October 27, 2006,] in which [the plaintiff] did not apply on and another date is [his] [M]edicare care start date which states [October 1, 2008,] which is incorrect. The date should be the date of [his] hearing[,] which is [July 10, 2012].

Id.

3. **USDOE**

The plaintiff alleges that the USDOE "confessed to an error and never corrected the error. As you can see from the student loan interest calculator that the total amount was incorrect but all debts were paid in 2013[,] a total of **$50,354.90.**" Id. at 14-15 (emphasis in original).

4. **NYCHA**

As to NYCHA, the plaintiff alleges that he "was given assigned case numbers from NYCHA for over fifteen years without appropriate housing. [The plaintiff is] undomiciled which violates" Title II of the ADA. Id. at 15 (emphasis in original).

III. DISCUSSION

The Court will address the plaintiff's claims against each named defendant separately.

A. NYCHA

The Court understands the plaintiff's complaint as asserting claims against NYCHA under the FHA, Title II of the ADA, the Rehabilitation Act, and 42 U.S.C. § 1983. For the reasons discussed below, the Court dismisses the plaintiff's

complaint against NYCHA in its entirety, but grants the plaintiff leave to replead those claims.

1. **FHA**

The FHA "broadly prohibits discrimination in housing." Gladstone, Realtors v. Vill. of Bellwood, 441 U.S. 91, 93 (1979). As relevant here, the FHA makes it unlawful to "discriminate in the . . . rental [of], or to otherwise make unavailable or deny, a dwelling to any . . . renter because of" the individual's disability. 42 U.S.C. § 3604(f)(1). The FHA also prohibits discrimination against "any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of a [disability]." 42 U.S.C. § 3604(f)(2).

"To demonstrate a disability under the FHA, a plaintiff must show: (1) 'a physical or mental impairment which substantially limits one or more . . . major life activities'; (2) 'a record of having such an impairment'; or (3) that he or she is 'regarded as having such an impairment.'" Rodriguez v. Vill. Green Realty, Inc., 788 F.3d 31, 40 (2d Cir. 2015) (quoting 42 U.S.C. § 3602(h)). Generally, to state a claim for intentional discrimination under the FHA, a plaintiff must plausibly allege that he (1) was a member of a protected class, (2) suffered an adverse action, and (3) "has at least minimal support for the proposition that the housing provider was

motivated by discriminatory intent." Francis v. Kings Park Manor, Inc., 992 F.3d 67, 73 (2d Cir. 2021).

Even assuming that the plaintiff has a disability within the meaning of the FHA,[5] the plaintiff does not allege facts sufficient to state a claim under the FHA that NYCHA has intentionally discriminated against him because of his disability. The plaintiff does not provide any facts showing that his disability has been a motivating factor with respect to any adverse action NYCHA has taken against him. He merely alleges that he is disabled and that he has been waiting for NYCHA housing for over 15 years. The claim must therefore be dismissed. However, in light of the plaintiff's pro se status, the Court grants the plaintiff leave to amend his complaint to allege facts sufficient to state a claim under the FHA for disability discrimination. The plaintiff is advised that he must allege facts showing that he is disabled, and that his disability was a motivating factor with respect to an adverse action that NYCHA has taken against him.

2. **Title II of the ADA and the Rehabilitation Act**

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the

[5] The plaintiff claims to be disabled due to degenerating discs in his spine. ECF No. 1, at 42-49.

services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[6] 42 U.S.C. § 12132. Under the Rehabilitation Act,

> no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a). The definition of "disability" under the ADA and the definition of an individual with a disability under the Rehabilitation Act are nearly identical to the definition of disability under the FHA. See 42 U.S.C. §§ 3602(h) (FHA, referred to as "handicap"), 12102(1) (ADA); 29 U.S.C. § 705(20)(B) (Rehabilitation Act). Because the standards under Title II of the ADA and the Rehabilitation Act "are generally the same and the subtle distinctions between the statutes are not implicated in this case, [the Court will] treat claims under the two statutes identically" for the purposes of this order, except where otherwise noted. See Wright v. N.Y. State Dep't of Corr., 831 F.3d 64, 72 (2d Cir. 2016).

To state a claim under Title II of the ADA or under the Rehabilitation Act, the plaintiff must allege that (1) the

[6] NYCHA is a public entity for the purpose of Title II of the ADA. See, e.g., Sykes v. N.Y.C. Hous. Auth., No. 22-cv-2127, 2022 WL 875902, at *4 n.2 (S.D.N.Y. Mar. 24, 2022).

plaintiff is a qualified individual with a disability; (2) the defendant is subject to the ADA or the Rehabilitation Act; and (3) the plaintiff was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities, or was otherwise discriminated against by the defendant, by reason of the plaintiff's disability. Shomo v. City of New York, 579 F.3d 176, 185 (2d Cir. 2009). To establish that discrimination occurred "by reason of" the plaintiff's disability, a plaintiff "must demonstrate that disability discrimination was a 'but-for cause of any adverse' action."[7] Watley v. Dep't of Child. & Fams., No. 3:13-cv-1858, 2019 WL 7067043, at *8 & n.13 (D. Conn. Dec. 23, 2019) (citing Natofsky v. City of New York, 921 F.3d 337, 348 (2d Cir. 2019)), aff'd, 991 F.3d 418 (2d Cir. 2021). Additionally, to establish a violation under the Rehabilitation Act, a plaintiff must show that the defendant is either a federal executive agency, the United States Postal Service, or receives federal funding.[8] Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d Cir. 2003); 29 U.S.C. § 794(a).

[7] The Second Circuit Court of Appeals has found that but-for causation is required in employment discrimination cases under Title VII of the ADA and the Rehabilitation Act, Natofsky v. City of New York, 921 F.3d 337, 345, 348 (2d Cir. 2019), and there is no statutory language that would apply a lesser causation standard in other ADA and Rehabilitation Act contexts. In any event, however, the plaintiff has not stated a claim even under a lesser causation standard.

[8] NYCHA receives federal funding. Sykes, 2022 WL 875902, at *4 n.4.

As with the plaintiff's claims under the FHA, even assuming that the plaintiff is a qualified individual with a disability for the purpose of Title II of the ADA or the Rehabilitation Act and is therefore subject to the protections of either of those statutes, the plaintiff has alleged no facts showing that he was denied the opportunity to participate in or benefit from NYCHA's services, programs, or activities, or was otherwise discriminated against by NYCHA, by reason of his disability. His claims must therefore be dismissed.

The Court grants the plaintiff leave to amend his complaint to allege facts to state a claim against NYCHA under Title II of the ADA or the Rehabilitation Act. In order to do so, the plaintiff must allege facts showing that he is disabled and that NYCHA discriminated against him by reason of his disability.

3. 42 U.S.C. § 1983

To state a claim under 42 U.S.C. § 1983 against a municipality or other local government entity, the plaintiff must allege facts showing (1) the existence of a municipal or local government entity policy, custom, or practice; and (2) that the policy, custom, or practice caused the violation of the plaintiff's constitutional rights. Jones v. Town of East Haven, 691 F.3d 72, 80 (2d Cir. 2012). It is not enough for the plaintiff to allege that an employee or agent of the municipality or other local government entity engaged in some

wrongdoing; the plaintiff must show that the municipality or other local government entity itself caused the violation of the plaintiff's rights. Cash v. Cnty. of Erie, 654 F.3d 324, 333 (2d Cir. 2011).

In this case, the plaintiff alleges no facts showing that a policy, custom, or practice of NYCHA has caused a violation of his federal constitutional rights. The plaintiff has therefore failed to plead a violation under 42 U.S.C. § 1983. However, the Court grants the plaintiff leave to amend his complaint to state a claim under 42 U.S.C. § 1983 against NYCHA.

B. DMV

The plaintiff's claims against the DMV are dismissed in their entirety.

1. Claim Preclusion

Before proceeding to the merits of the plaintiff's claims against the DMV, the Court dismisses any of the plaintiff's claims that the plaintiff has either brought, or could have brought, in DMV I. Under the doctrine of claim preclusion, also known as res judicata, a litigant may not bring a claim in a new civil action that was raised, or could have been raised, in an earlier civil action in which the same parties or their privies were involved, if the original claim resulted in a judgment on the merits. Brown v. Felsen, 442 U.S. 127, 131 (1979). Claim preclusion "prevents parties from raising [claims] that could

have been raised and decided in a prior action - even if they were not actually litigated." Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 140 S. Ct. 1589, 1594 (2020). If a litigant files a new civil action and "advances the same claim as an earlier suit between the same parties [or their privies], the earlier suit's judgment prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties [or their privies], regardless of whether they were asserted or determined in the prior proceeding." Id. Claims are treated as the same if they "arise from the same transaction, or involve a common nucleus of operative facts." Cayuga Nation v. Tanner, 6 F.4th 361, 375 (2d Cir. 2021), cert. denied, 142 S. Ct. 775 (2022).

Claim preclusion generally applies if "(1) the prior decision was a final judgment on the merits, (2) the litigants were the same parties [or their privies], (3) the prior court was of competent jurisdiction, and (4) the causes of action were the same." In re Motors Liquidation Co., 943 F.3d 125, 130 (2d Cir. 2019). A "dismissal for failure to state a claim operates as a final judgment on the merits and thus has [claim preclusion] effects." Garcia v. Superintendent of Great Meadow Corr. Facility, 841 F.3d 581, 583 (2d Cir. 2016). The granting of summary judgment is also an adjudication on the merits for the purpose of claim preclusion. Miller v. Austin, No. 20-cv-

1958, 2021 WL 1226770, at *5 (S.D.N.Y. Mar. 31, 2021).

Although claim preclusion is an affirmative defense to be pleaded in a defendant's answer, see Fed. R. Civ. P. 8(c), "courts may consider certain affirmative defenses, such as res judicata . . . sua sponte," see Thai-Lao Lignite (Thailand) Co., Ltd. v. Gov't of the Lao People's Democratic Republic, 864 F.3d 172, 191 (2d Cir. 2017).

The plaintiff's claims against the DMV in DMV I arose from the dissemination of alleged inaccurate information with respect to the plaintiff's drivers' license. On February 10, 2017, Judge McMahon dismissed DMV I for failure to state a claim on which relief could be granted under 28 U.S.C. 1915(e)(2)(B)(ii). DMV I, 2017 WL 5508456. The Second Circuit Court of Appeals dismissed the plaintiff's appeal of that dismissal as frivolous. Because DMV I was adjudicated on the merits, and because the plaintiff appears to raise in this action at least some claims against the DMV that he raised or could have raised in DMV I, those claims are dismissed under the doctrine of claim preclusion.

2. **Issue Preclusion**

The Court also dismisses the plaintiff's claims against the DMV under the doctrine of issue preclusion. This doctrine, also known as collateral estoppel, bars relitigation of a specific legal or factual issue in a subsequent proceeding,

> where (1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and actually decided, (3) there was [a] full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits.

Grieve v. Tamerin, 269 F.3d 149, 153 (2d Cir. 2001). This doctrine "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." Marcel Fashions Grp., Inc. v. Lucky Brand Dungarees, Inc., 779 F.3d 102, 108 (2d Cir. 2015); see also Fresh Del Monte Produce Inc., No. 13-cv-8997, 2016 WL 236249, at *5 (S.D.N.Y. Jan. 20, 2016) ("It is issue preclusion, not claim preclusion, which permits an issue of fact or law actually litigated and determined by a valid and final judgment, and essential to the judgment to be conclusive in a subsequent action between the parties, whether on the same or a different claim."). "A previous dismissal for failure to state a claim is a decision made on the merits for the purpose of future applications of issue preclusion." Curcio v. Grossman, No. 22-cv-1648, 2022 WL 767167, at *4 (S.D.N.Y. Mar. 14, 2022). In addition, "[c]laims adjudicated through summary judgment are regarded as final judgments on the merits" for the purpose of issue preclusion, Manbeck v. Micka, 640 F. Supp. 2d 351, 364 (S.D.N.Y. 2009), and a previous dismissal of claims because of

an immunity defense can be the basis for a subsequent dismissal of claims under the doctrine of issue preclusion, Mir v. Kirchmeyer, No. 20-1659, 2021 WL 4484916, at *2 (2d Cir. Oct. 1, 2021). As with claim preclusion, the Court may raise the defense of issue preclusion sua sponte. See Thai-Lao, 864 F.3d at 191.

In DMV I, Judge McMahon dismissed the plaintiff's clams against the DMV as barred under the Eleventh Amendment. DMV I, 2017 WL 5508456, at *2. The Second Circuit Court of Appeals dismissed the plaintiff's appeal of that dismissal as frivolous. In DMV II, Judge Broderick also dismissed the plaintiff's claims against the DMV Commissioner, a privy to the DMV, under the doctrine of Eleventh Amendment immunity. DMV II, 2020 WL 6525467, at *1. The Second Circuit Court of Appeals affirmed that dismissal. In the present complaint, the plaintiff again asserts claims against the DMV. Because the DMV's immunity from suit under the Eleventh Amendment has already been adjudicated by this court, the Court additionally dismisses the plaintiff's claims against the DMV under the doctrine of issue preclusion.[9]

[9] To the extent that any of the plaintiff's claims against the DMV remain, these claims must be dismissed as independently barred under the Eleventh Amendment. Moreover, the plaintiff's claims under Title II of the ADA or the Rehabilitation Act must be dismissed for the additional reason that the plaintiff has not alleged any facts showing that the DMV discriminated against him because of his disability.

C. Commissioner of the OTDA

The Court must also dismiss the plaintiff's claims against the Commissioner of the OTDA under the doctrine of issue preclusion. In OTDA I, Judge Preska granted the OTDA's motion to dismiss because, among other things, the plaintiff's claims were barred under the Eleventh Amendment. OTDA I, 2019 WL 11637254, at *2. The Second Circuit Court of Appeals dismissed the plaintiff's appeal of that dismissal. The plaintiff cannot now seek relief against the Commissioner of the OTDA, a privy of the OTDA, in his or her official capacity, after Judge Preska determined that the plaintiff could not seek relief from the OTDA because of Eleventh Amendment immunity.[10]

D. USDOE

Because the plaintiff asserts claims and issues against the USDOE in this action that he asserted, or could have asserted, in USDOE II, the Court dismisses those claims under the doctrine of claim preclusion or issue preclusion. Judge Oetken previously

[10] Moreover, the plaintiff's claims against the Commissioner in his official capacity must be dismissed as independently barred under the Eleventh Amendment. And because the plaintiff seeks damages, not injunctive relief, from the Commissioner, he may not seek relief against the Commissioner under Ex Parte Young. See Exxon Mobil Corp. v. Healy, 28 F.4th 383, 392 (2d Cir. 2022). To the extent that the plaintiff asserts claims for damages under Title II of the ADA or the Rehabilitation Act against the OTDA itself — as opposed to claims against the Commissioner of the OTDA — he has not stated a claim under either statute, because he has not shown that the OTDA discriminated against him because of his disability.

adjudicated the plaintiff's dispute with the USDOE on the merits in USDOE II. See USDOE II, 2019 WL 4412571.[11]

E. Commissioner of the SSA

The plaintiff asserts claims and issues against the Commissioner of the SSA in the Commissioner's official capacity that the plaintiff asserted, or could have asserted, in SSA II. The Court therefore dismisses these claims under the doctrine of claim preclusion or issue preclusion, because Judge Hellerstein previously adjudicated the plaintiff's dispute with the SSA on

[11] Moreover, the plaintiff's claims for damages against the USDOE, a federal agency, must be dismissed under the doctrine of sovereign immunity. This doctrine bars federal courts from hearing all suits against the federal government, including suits against federal agencies, except where sovereign immunity has been waived. Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 510 (2d Cir. 1994). The APA provides a limited waiver of sovereign immunity, allowing for judicial review of an agency's final administrative action. But the plaintiff cannot seek relief under the APA because that statute does not allow for damages. See 5 U.S.C. §§ 702, 704; Cnty. of Suffolk v. Sebelius, 605 F.3d 135, 140-41 (2d Cir. 2010). The Rehabilitation Act provides a waiver of sovereign immunity as to claims against a federal executive agency for damages, but this waiver is limited to claims against an agency that is considered a federal provider of financial assistance and is therefore inapplicable. Lane v. Pena, 518 U.S. 187, 193 (1996). The FTCA provides another waiver of sovereign immunity for certain claims for damages arising from the tortious conduct of federal officers or employees acting within the scope of their office or employment. See 28 U.S.C. § 1346(b)(1). However, its waiver of sovereign immunity does not include claims for libel or slander against the federal government for damages. 28 U.S.C. § 2680(h).

To the extent that the plaintiff asserts claims against the USDOE under the Rehabilitation Act that are not precluded by the doctrines of claim preclusion, issue preclusion, or sovereign immunity, those claims must be dismissed. The plaintiff has failed to state a claim against the USDOE under the Rehabilitation Act because he has not alleged any facts showing that the USDOE discriminated against him because of his disability. To the extent that any claims under the FTCA remain, these claims are dismissed for failure to exhaust administrative remedies. A claimant must first exhaust his administrative remedies before bringing an FTCA claim. See 28 U.S.C. § 2675(a). This exhaustion requirement is jurisdictional and cannot be waived. Celestine v. Mount Vernon Neighborhood Health Ctr., 403 F.3d 76, 82 (2d Cir. 2005).

the merits in SSA II. SSA II, No. 12-cv-9274, ECF No. 33, appeal dismissed as frivolous, No. 14-3500 (2d Cir. Dec. 29, 2014), cert. dismissed under S.Ct. R. 39.8, No. 14-8118 (Mar. 23, 2015), reconsideration denied, (Apr. 27, 2015).[12]

F. Commissioner of the NYCDSS

Finally, because the plaintiff asserts claims against the Commissioner of the NYCDSS in his or her official capacity that were adjudicated, or could have been adjudicated, in HRA I through HRA V, the Court dismisses the plaintiff's claims against the Commissioner of the NYCDSS under the doctrine of claim preclusion or issue preclusion.[13]

CONCLUSION

The Court dismisses this action for the reasons discussed above, but grants the plaintiff 30 days' leave to replead his claims against NYCHA in an amended complaint.

If the plaintiff does not file an amended complaint within the time allowed, the Court will dismiss this action; the Court

[12] Moreover, the plaintiff's discrimination claims against the Commissioner fail to state a claim because the plaintiff has not alleged any facts showing that the SSA discriminated against him because of his disability. The Court also dismisses any claims that the plaintiff asserts against the Commissioner of the SSA under the waiver of sovereign immunity in the Social Security Act, 42 U.S.C. § 405(g), (h), in which the plaintiff seeks judicial review of any decision that was not "fully favorable," because the plaintiff has alleged no facts showing that he exhausted the available administrative remedies or that this requirement has been waived. See Haddock v. Comm'r of Soc. Sec., No. 20-cv-1064, 2020 WL 3104051, at *1-2 (E.D.N.Y. June 11, 2020). The Court additionally dismisses the plaintiff's claims against the Commissioner of the SSA under the APA and the FTCA for the same reasons that the Court dismissed the plaintiff's claims against the USDOE under those statutes.

[13] Additionally, the Commissioner of the NYCDSS, when sued in his or her

will dismiss the plaintiff's claims under federal law for the reasons discussed in this Order, and the Court will decline to exercise its supplemental jurisdiction over the plaintiff's claims under state law. See 28 U.S.C. § 1367(c)(3).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: May 9, 2022
New York, New York

JOHN G. KOELTL
United States District Judge

official capacity, is not a suable defendant; the proper defendant is the City of New York. See Coon v. Town of Springfield, Vt., 404 F.3d 683, 687 (2d Cir. 2005) ("[A] § 1983 suit against a municipal officer in his official capacity is treated as an action against the municipality itself."). With respect to any claims under 42 U.S.C. § 1983 that the plaintiff asserts against the City of New York that are not precluded by the doctrine of claim preclusion or issue preclusion, the plaintiff alleges no facts showing that a policy, custom, or practice of the City of New York caused a violation of his federal constitutional rights. And to the extent that the plaintiff asserts claims under Title II of the ADA or the Rehabilitation Act that are not precluded by his previous litigations, he alleges no facts showing that the City of New York discriminated against him because of his disability.