

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
George L. Russell, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

August 10, 2012

MEMORANDUM TO COUNSEL RE: The Sperling Law Office, P.C. v. Anderson, et al.
Civil Action No. GLR-11-2905

Dear Counsel:

Currently pending before the Court is Defendant U.S. Department of Health and Human Services' ("DHHS") Motion to Dismiss. DHHS' Motion has been fully briefed and is ripe for disposition. No hearing is necessary. See Local Rule 105.6 (D.Md. 2011). For the reasons that follow, the Motion to Dismiss is granted.

During the course of a personal injury lawsuit, Plaintiff Sperling Law Office, P.C. ("Sperling") served as counsel to Defendant Catherine Anderson ("Anderson"). Sperling negotiated a settlement of the lawsuit for an undisclosed amount of monetary compensation. Prior to the settlement's resolution, DHHS, through the Centers for Medicare & Medicaid Services ("CMS"), informed Sperling and Anderson of its entitlement to reimbursement of the conditional payments Medicare made to healthcare providers on Anderson's behalf. According to Sperling, Medicare agreed to accept \$6,000 of the settlement proceeds as full reimbursement for its conditional payments because of Anderson's indigent financial condition. Anderson, however, disputes the existence of any agreement and claims an entitlement to the entire settlement amount.

Sperling filed this interpleader action on August 24, 2011, in the District Court for Baltimore City, Maryland, seeking a declaratory judgment as to the proper distribution of the \$6,000 between DHHS and Anderson.¹ (See ECF No. 2). On October 11, 2011, DHHS filed a Notice of Removal pursuant to 28 U.S.C. §§ 1441, 1442. (ECF No. 1). Upon removal, DHHS filed a Motion to Dismiss Sperling's interpleader action for lack of subject-matter jurisdiction.

Motions to dismiss for lack of subject-matter jurisdiction are governed by Federal Rule of Civil Procedure 12(b)(1). The Plaintiff bears the burden of proving that subject-matter jurisdiction properly exists in the federal court. See Evans v. B.F. Perkins Co., a Div. of Standex Int'l Corp., 166 F.3d 642, 647 (4th Cir. 1999). In a 12(b)(1) motion, the Court "may consider evidence outside the pleadings" to help determine whether it has jurisdiction over the case before

¹ Sperling filed its initial Complaint on or about October 10, 2010, against Anderson and the CMS Administrator. The Amended Complaint, filed on August 24, 2011, converted the original Complaint into an interpleader action and added DHHS as a defendant.

it. Richmond, Fredericksburg & Potomac R.R. Co. v. U.S., 945 F.2d 765, 768 (4th Cir. 1991); see also Evans, 166 F.3d at 647. The court should grant the 12(b)(1) motion “only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” Richmond, 945 F.2d at 768.

DHHS avers that Sperling failed to exhaust administrative remedies because neither he nor Anderson secured a final determination, regarding the proper distribution of the settlement proceeds, from the Secretary of DHHS (“Secretary”).² Sperling counters that administrative exhaustion occurred because it reached a final agreement with Medicare. Moreover, Sperling contends it does not seek relief from the final agreement, but a judicial determination regarding the proper distribution of the proceeds in light of Anderson’s demand for the entire settlement. The Court, however, lacks jurisdiction to make the requested determination.

Title XVII of the Social Security Act, known as the Medicare Act (the “Act”) and codified in 42 U.S.C. § 1395 *et seq.*, is a “federally subsidized health insurance program . . . administered by the Secretary.” Heckler v. Ringer, 466 U.S. 602, 605 (1984). In 1980, Congress amended the Act to reduce healthcare costs. Brown v. Thompson, 374 F.3d 253, 257 (4th Cir. 2004). Pursuant to the amendments, Medicare is considered a secondary payer required to make conditional payments for the care of Medicare beneficiaries whenever prompt payment from a primary insurer is unavailable. 42 U.S.C. § 1395y(b)(2). Medicare’s payments are conditioned upon reimbursement within sixty days of Medicare receiving notice that payment has been, or will be, made (“MSP claim”). *Id.*; 42 C.F.R. § 411.24. Parties who fail to reimburse Medicare within the proscribed time may be subject to interest charges. *Id.* Furthermore, Medicare’s reimbursement may be withdrawn from a beneficiary’s settlement proceeds. See, e.g., Brown v. Thompson, 252 F.Supp.2d 312 (E.D.Va. 2003), *aff’d on other grounds*, 374 F.3d 253 (4th Cir. 2004). Beneficiaries who wish to challenge Medicare’s MSP claim must utilize the administrative scheme provided by the Act. Specifically, beneficiaries must present a claim to the Secretary and then, absent a waiver, proceed through the Act’s administrative appeals process. See 42 U.S.C. §§ 1395ff, 405(b); 42 C.F.R. §§ 405.701 *et seq.*, 405.801 *et seq.*

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Causes of action that arise under the Act, however, may be reviewed by the district court only after a final decision from the Secretary. 42 U.S.C. § 405(g). A decision is final “after the individual claimant has pressed his claim through all designated levels of administrative review.” Ringer, 466 U.S. at 606. Moreover, “§ 405(g), to the exclusion of 28 U.S.C. § 1331, is the sole avenue for judicial review for all ‘claim[s] arising under’ the Medicare Act.” *Id.* at 615 (citation omitted). The Supreme Court of the United States has recognized that 42 U.S.C. § 405(g) requires full exhaustion of administrative remedies prior to filing suit in the district court. Ringer, 466 U.S. 602; see also Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 5 (2000). In Buckner v. Heckler, the United States Court of Appeals for the Fourth Circuit affirmed the district court’s dismissal of the plaintiff’s civil action because she failed to present her claim to the Secretary prior to filing suit. 804 F.2d 258 (4th Cir. 1986). Similarly, other federal circuits

² DHHS also argues that Sperling lacks standing to bring this action. The Court need not address this argument because the action will be dismissed on another ground.

have affirmed dismissals of various claims arising under the Act due to a lack of full administrative exhaustion. See, e.g., Michael Reese Hosp. & Med. Ctr. v. Thompson, 427 F.3d 436 (7th Cir. 2005); Wilson ex rel. Estate of Wilson v. U.S., 405 F.3d 1002 (Fed. Cir. 2005); Cathedral Rock of North College Hill, Inc. v. Shalala, 223 F.3d 354 (6th Cir. 2000).

Sperling's claim arises under the Act because "both the standing and the substantive basis for the presentation" of the claim is the Act. Ringer, 466 U.S. at 615 (citation omitted). Namely, Sperling identified DHHS as the proper defendant and Medicare's entitlement to a portion of Anderson's settlement proceeds is governed by the Act. See Buckner, 804 F.2d at 259. According to Sperling, the \$6,000 at the center of this dispute is the result of an alleged agreement between the parties. Moreover, Sperling contends that this alleged agreement constitutes a final determination from the Secretary and, therefore, full administrative exhaustion. There is, however, no documentation to support this alleged agreement and Anderson's claim to the entire settlement amount was not presented to the Secretary prior to filing this action. The Act and applicable case law is clear that this Court does not have jurisdiction to review claims that arise under the Act without a final determination from the Secretary. Therefore, the Court lacks subject-matter jurisdiction over this matter.

For the foregoing reasons, DHHS' Motion to Dismiss (ECF No. 30) is GRANTED.

Despite the informal nature of this memorandum, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

George L. Russell, III