

[Cite as *Rodefer v. McCarthy*, 2015-Ohio-3052.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
DARKE COUNTY

VELMA RODEFER	:	
	:	
Plaintiff-Appellant	:	C.A. CASE NO. 2015-CA-1
	:	
v.	:	T.C. NO. 14CV389
	:	
JOHN B. McCARTHY, DIRECTOR, et	:	(Civil Appeal from
al.	:	Common Pleas Court)
	:	
Defendants-Appellees	:	
	:	
	:	

OPINION

Rendered on the 31st day of July, 2015.

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FROELICH, P.J.

{¶ 1} The estate of Velma Rodefer¹ appeals from a judgment of the Darke County

¹ Velma Rodefer died on January 25, 2015, two days after the trial court’s judgment. On March 23, 2015, the executor of her estate, Kenneth J. Rodefer, filed a motion to substitute her estate as the plaintiff-appellant. The motion to substitute parties is hereby

Court of Common Pleas, which dismissed, pursuant to Civ.R. 12(B), her action under 42 U.S.C. 1983 against the Ohio Department of Medicaid (“ODM”), and its director, John B. McCarthy, in his official capacity. Rodefer does not challenge the dismissal of ODM, but claims that the trial court erred in dismissing her claims against McCarthy. For the following reasons, the trial court’s judgment will be affirmed.

{¶ 2} Rodefer’s complaint alleged the following facts.

{¶ 3} When Rodefer was diagnosed with Alzheimer’s disease, her only son, Kenneth, brought her into his home. Kenneth and his family cared for Rodefer for more than 3½ years. As her physical and cognitive abilities decreased, she spent more and more time at The Brethren Retirement Community, where other relatives resided.

{¶ 4} With her liquid resources being exhausted, Rodefer looked to sell her life estate interest in farmland. Counsel was consulted, and calculations of the value of her life estate for Medicaid purposes were performed according to Ohio Adm.Code 5101:1-39-32, which was attached to the complaint as Exhibit A. According to the provision, the value of Rodefer’s life estate was less than \$22,000; Kenneth paid her that amount, and she transferred title to the life estate to him in return. The \$22,000 was used to pay for Rodefer’s care.

{¶ 5} As her condition continued to deteriorate, Rodefer moved into assisted living and then to the nursing facility of The Brethren Retirement Community. On November 29, 2012, after Rodefer’s assets were exhausted, Kenneth applied for Medicaid assistance for his mother. The Darke County Department of Job and Family Services (“DJFS”) determined that the sale of the life estate involved an “improper

sustained. For purposes of our analysis, however, we will continue to refer to Velma Rodefer as if she remained a party.

transfer,” contending that Rodefer did not receive fair market value in the sale. DJFS concluded that the value of the life estate was \$117,012, which was determined by multiplying \$434,100 (the value of the farmland) by 0.26955. When this determination was questioned, the caseworker cited and sent a copy of Medicaid Eligibility Procedure Letter No. 68 (“MEPL 68”), issued by McCarthy on November 1, 2012. MEPL 68 provided the life estate multiplier of 0.26955 that was used by DJFS. A copy of MEPL 68 was attached to the complaint as Exhibit B.

{¶ 6} Rodefer was invited to respond to the DJFS determination, and she provided DJFS with reasons that its determination was incorrect. The administrator of DJFS “rebuffed” her response by letter on January 14, 2013.

{¶ 7} On January 23, 2013, she requested an in-person state hearing before the Ohio Department of Job and Family Services (“ODJFS”). See R.C. 5101.35. A request for hardship waiver was submitted to DJFS on February 19 and summarily denied; a state hearing request was submitted on this denial, as well. Counsel for Rodefer requested that the state hearings on the hardship waiver and the underlying decision be coordinated, but no response to this request was received.

{¶ 8} A state hearing was scheduled for March 18, 2013. When Kenneth and counsel arrived, they were informed that the hearing would be conducted by telephone. Counsel objected and asked for an in-person hearing. The hearing officer indicated that such may not be granted, but submitted the request. The state hearing was rescheduled for April 9.

{¶ 9} At the beginning of the April 9 hearing, which was held by video conference, the hearing officer ruled that the January 23 hearing had been dismissed and that only

testimony regarding the hardship waiver would be accepted. As an attachment to ODJFS's appeal summary, Kenneth and counsel were presented with a notice stating that a state hearing request had been denied, since no written authorization had accompanied the request. Rodefer alleges that this action violated DJFS regulations, and that the notice was served only on DJFS, not Kenneth or counsel.

{¶ 10} The adverse decisions were appealed administratively. The ODJFS hearing authority, A. Ruben Lopez, contacted Rodefer's counsel and stated that, due to ODJFS's "numerous mistakes," a state hearing based on the original January 23, 2013 hearing request would be held. That hearing was held on May 21, 2013. Kenneth and counsel raised various grounds for reversing the DJFS's actions. On June 24, 2013, the ODJFS hearing officer upheld DJFS's prior decision, based on MEPL 68, that the life estate was properly valued at \$117,012. Rodefer states that the decision did not address any of her arguments to the contrary. Rodefer attached the decision to the complaint as Exhibit C.

{¶ 11} The June 24 state hearing decision was appealed to ODJFS, Administrative Appeal Section. The appeal was denied on July 18, 2013. The July 18 decision was attached to the complaint as Exhibit D.

{¶ 12} With respect to McCarthy specifically, Rodefer alleged that McCarthy "is responsible for the actions taken by the Ohio Department of Job and Family Services, to whom Medicaid decision-making authority has been delegated, and the County Departments of Job and Family Services ('CDJFS'), to whom day-to-day operations have been delegated." Rodefer further alleges that, "[a]s the chief executive of ODM, Defendant McCarthy is responsible for the supervision and operation of the Medicaid

Program in Ohio in accordance with federal and state statutes and rules.” The only additional specific reference to McCarthy in the complaint appears in paragraph 11, in which Rodefer alleges that when the DJFS determination was questioned, “the caseworker cited and sent a copy of Medicaid Eligibility Procedure Letter No. 68 (‘MEPL 68’), issued by Defendant McCarthy on November 1, 2012. See Exhibit B.”

{¶ 13} On August 8, 2014, Rodefer brought suit under 42 U.S.C. 1983 against the Ohio Department of Medicaid and its director, McCarthy, in his official capacity. Rodefer stated in the introduction portion of her complaint that the action was brought “to address past denials, declare Defendants’ actions void, and enjoin the continuing denial of Medicaid benefits to Velma Rodefer. Defendants refuse to pay for her assisted living/nursing home care, contending she sold her life estate in real estate to her son for less than fair market value. * * *.”

{¶ 14} In Count One, Rodefer claims that defendants’ actions “in seeking to rescind and replace an enacted rule by a letter, and apply such retroactively, violated the Ohio Administrative Procedure Act, and Plaintiff’s rights under the Ohio and United States Constitutions.” Count Two claims that the denial of Medicaid benefits and ability to obtain Medicaid benefits violate her rights under Title XIX of the Social Security Act and her rights to medical assistance under Ohio law. Count Three alleges that the denial of Medicaid benefits violates her rights under the Ohio and United States Constitutions. Count Four alleges that defendants violated state and federal law by refusing to follow its own rules and seeking to replace such rules by “administrative fiat.” Finally, Rodefer alleged in Count Five that she was denied her right to substantive and procedural due process by defendants’ attempts to avoid and deny her meaningful hearings and to

address grounds raised by her.

{¶ 15} Rodefer requested as relief that defendants' prior decision on her eligibility for benefits be reversed, that the court issue a judgment declaring that MEPL 68 has no force and effect and that Ohio Admin Code 5101:1-39-32 applies, that defendants be "permanently enjoined from denying Plaintiff's benefits," and that she (Rodefer) be awarded attorney fees and costs.

{¶ 16} On September 5, 2014, ODM and McCarthy moved to dismiss the action, pursuant to Civ.R. 12(B)(1) and 12(B)(6), raising several grounds. First, they claimed that Rodefer's action was barred by res judicata, because she had previously challenged the administrative decision approving her application for Medicaid benefits but imposing a period of "restricted coverage." They noted that the Darke County Court of Common Pleas had already determined that DJFS properly valued Rodefer's life estate and that DJFS's decision regarding Rodefer's Medicaid application was "in accordance with law."² Second, ODM and McCarthy argued that, even if Rodefer's claims were not barred by res judicata, the trial court lacked jurisdiction to hear her challenge to the agency action, except as provided by statute; they stated that the only statutes authorizing review of DJFS's Medicaid-eligibility decisions are R.C. 119.12 and R.C 5160.31. Third, ODM and

² At the time of ODM and McCarthy's motion, Rodefer had apparently appealed the ODJFS decision to the court of common pleas, and an appeal from the court of common pleas decision was pending in this court. On May 22, 2015, we affirmed the judgment of the court of common pleas, concluding that "the trial court's judgment upholding the ODJFS decision to delay Rodefer's Medicaid benefits is in accordance with law. ODJFS was not required to follow its administrative regulation regarding calculation of life estates for Medicaid purposes when the regulation could not be applied as written. It had discretion to follow the State Medicaid Manual on this point." *Rodefer v. Colbert*, 2d Dist. Darke No. 2014-CA-3, 2015-Ohio-1982, ¶ 2. However, as discussed infra, Rodefer's complaint in this case does not reference that appeal of the ODJFS decision to the court of common pleas, and we cannot consider the record of that case in ruling on a Civ.R. 12(B)(6) motion.

McCarthy asserted that Rodefer's claims for declaratory relief were improper, because another remedy was available to her. Finally, they claimed that Rodefer failed to state a claim upon which relief could be granted and requested impermissible relief to the extent that she sought a permanent injunction prohibiting a future denial of benefits.

{¶ 17} ODM and McCarthy attached 13 exhibits to their motion, including Medicaid regulations and a copy of Rodefer's complaint against DJFS and its director in her administrative appeal of that agency's decision to the Darke County Court of Common Pleas.

{¶ 18} On December 30, 2014, the trial court granted the motion to dismiss. The court found that the action was barred by res judicata, that the exclusive method of challenging the decision denying her Medicaid benefits was through the statutory framework for administrative appeals, that the procedural due process claims must fail because "the county decision and the state appeal decision satisfied due process requirements and were not arbitrary denials of benefits or substantive rights," that ODM was not a "person" within the meaning of 42 U.S.C. 1983, and that the complaint was "void of any description of egregious conduct or nefarious actions by the Director himself that would qualify as actionable under federal law."

{¶ 19} Rodefer appeals from the trial court's dismissal of her action against McCarthy. She does not challenge the dismissal of ODM.

I. Standards of Review and 42 U.S.C. 1983

{¶ 20} "A motion to dismiss a complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R.12(B)(6), tests the sufficiency of a complaint." *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, 866 N.E.2d 547, ¶ 16 (2d

Dist.). The court must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint as true, and make all reasonable inferences in favor of the plaintiff. *Id.*, citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). A motion to dismiss under Civ.R. 12(B)(6) should be granted only where the complaint, so construed, demonstrates that plaintiff can prove no set of facts entitling him to relief. *Id.*

{¶ 21} Similar principles control a Civ.R. 12(B)(1) motion; the court must determine whether the plaintiff has alleged any cause of action cognizable by the forum. See *Blankenship v. Cincinnati Milacron Chemicals, Inc.*, 69 Ohio St.2d 608, 611, 433 N.E.2d 572 (1982) (overruled on other grounds). However, a trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction under Civ.R. 12(B)(1), and it may consider pertinent material without converting the motion into one for summary judgment. *Southgate Dev. Corp. v. Columbia Gas Transmission Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus; *Smith v. White*, 2014-Ohio-130, 7 N.E.3d 552, ¶ 23 (2d Dist.).

{¶ 22} Section 1983 provides a remedy to persons whose *federal* rights have been violated by state governmental officials. *Shirokey v. Marth*, 63 Ohio St.3d 113, 116, 585 N.E.2d 407 (1992). Although 42 U.S.C. 1983 does not remedy alleged violations of the plaintiff's rights under *state* law, state courts have concurrent jurisdiction over § 1983 claims. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994), fn. 2; *Gibney v. Toledo Bd. Of Educ.*, 40 Ohio St.3d 152, 154, 532 N.E.2d 1300 (1988).

{¶ 23} The trial court found that it lacked subject matter jurisdiction over the § 1983 action, because Ohio's administrative procedures provided the exclusive avenue for

Rodefer to appeal the DJFS determination. The remaining bases for dismissing Rodefer's complaint did not implicate subject matter jurisdiction. We will address the trial court's bases for dismissing Rodefer's complaint in turn.

II. Res Judicata

{¶ 24} The trial court held that Rodefer's § 1983 action against McCarthy was barred by res judicata. In their motion to dismiss, ODM and McCarthy stated that Rodefer filed a prior action in the trial court, which challenged DJFS's decision regarding the valuation of her life estate and the resultant restriction of Medicaid benefits for her nursing home care. McCarthy stated that the trial court upheld DJFS's decision, and that the trial court's decision was pending on appeal at the time Rodefer filed her § 1983 action. In finding that Rodefer's action in this case was barred by res judicata, the trial court presumably took judicial notice of her prior action against the DJFS and its director, *Rodefer v. Colbert*, Darke C.P. No. 13-CV-387.

{¶ 25} The doctrine of res judicata encompasses the two related concepts of claim preclusion (estoppel by judgment) and issue preclusion (collateral estoppel). *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995). "Under the doctrine of res judicata, '[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.'" *Kelm v. Kelm*, 92 Ohio St.3d 223, 227, 749 N.E.2d 299 (2001), quoting *Grava* at syllabus. Furthermore, "[r]es judicata operates to bar litigation of 'all claims which were or might have been litigated in a first lawsuit.'" (Emphasis omitted.) *Grava*, 73 Ohio St.3d at 382, quoting *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62, 558 N.E.2d 1178 (1990).

{¶ 26} “Proper application of the doctrine of res judicata requires that the identical cause of action shall have been previously adjudicated in a proceeding with the same parties, in which the party against whom the doctrine is sought to be imposed shall have had a full and fair opportunity to litigate the claim.” *SunTrust Bank v. Wagshul*, 2d Dist. Montgomery No. 25567, 2013-Ohio-3931, ¶ 8, quoting *Brown v. Vaniman*, 2d Dist. Montgomery No. 17503, 1999 WL 957721, *4 (Aug. 20, 1999).

{¶ 27} Rodefer’s complaint in this case does not mention *Rodefer v. Colbert*, Darke C.P. No. 13-CV-387, nor does she allege that she had appealed the administrative determination by ODJFS to the trial court and, after an adverse ruling in the trial court, to the court of appeals.

{¶ 28} McCarthy and ODM attached to their motion to dismiss unauthenticated copies of Rodefer’s complaint and two of the trial court’s decisions in *Rodefer v. Colbert*, Darke C.P. No. 13-CV-387 (Ex. 5, 6 & 7), as well as a decision from this court denying a motion to dismiss the appeal from Case No. 13-CV-387, *Rodefer v. Colbert*, 2d Dist. Darke No. 2014-CA-3, Decision and Entry (July 28, 2014) (Ex. 8). In response, Rodefer disagreed that her action against McCarthy and ODM was barred by res judicata, noting DJFS had argued that the § 1983 claims could not be raised as part of the administrative appeal and that the § 1983 claims had been dismissed from her first action; a copy of that dismissal decision is not part of the record. Rodefer further argued that res judicata is not properly addressed in a Civ.R. 12(B)(6) motion.

{¶ 29} On appeal, Rodefer argues that the trial court’s ruling was incorrect, because she has sued different parties in the two actions, that the claims could not have been litigated in the prior action, and that because the trial court’s decision in her prior

litigation was pending appeal (which was true at the time Rodefer's response to the motion to dismiss was filed), there was no final judgment in the prior litigation. We need not reach any of these specific arguments, because the record before us does not establish that res judicata applies.

{¶ 30} Res judicata is an affirmative defense, and it does not affect a court's jurisdiction over an action. *E.g.*, *Jefferson v. Bunting*, 140 Ohio St.3d 62, 2014-Ohio-3074, 14 N.E.3d 1036, ¶ 10; *State ex rel. Vanni v. McMonagle*, 137 Ohio St.3d 568, 2013-Ohio-5187, 2 N.E.3d 243, ¶ 12 ("res judicata is not a basis for [a writ of] prohibition because it does not divest a trial court of jurisdiction to decide its applicability."). Since res judicata is not jurisdictional, Civ.R. 12(B)(1) is inapplicable to this argument.

{¶ 31} Further, "[w]hen a defense of res judicata requires consideration of materials outside the record, the defense may not be determined on a Civ.R. 12(B)(6) motion to dismiss. *State ex rel. Freeman v. Morris*, 62 Ohio St.3d 107, 109, 579 N.E.2d 702 (1991). The procedural method to rule on the res judicata defense was either to convert the Civ.R. 12(B)(6) motion to a motion for summary judgment (as permitted by the rule) or to conduct a trial on the issue." *Folck v. Khanzada*, 2d Dist. Clark No. 2012-CA-18, 2012-Ohio-4971, ¶ 8. A trial court is not permitted to take judicial notice of the record in other litigation, even when that action was before the same court. *E.g.*, *MacConnell v. Dayton*, 2d Dist. Montgomery No. 25536, 2013-Ohio-3651, ¶ 14, fn.2; *Davis v. Haas*, 2d Dist. Montgomery No. 24506, 2011-Ohio-5201, ¶ 19.

{¶ 32} As stated above, Rodefer's complaint in this action does not mention any prior court case related to her Medicaid claim, and she did not attach any documentation

from *Rodefer v. Colbert*, Darke C.P. No. 13-CV-387. In the absence of any allegations in the complaint establishing that res judicata barred her claim, the trial court erred in dismissing Rodefer's complaint, pursuant to Civ.R. 12(B)(6), based on res judicata.

III. Effect of Administrative Appeal Procedures

{¶ 33} Rodefer claims that the existence of an administrative appeals system does not preclude her ability to bring her § 1983 claim in state court. McCarthy responds that the only means by which Rodefer could challenge the agency determination was through an administrative appeal.

{¶ 34} "Medicaid is a federally-established program developed by Congress to provide state and federal funding to those individuals who cannot afford their medical care. See Title XIX of the Social Security Act, 79 Stat. 286 (1965). The state of Ohio, as a participant in the Medicaid program, develops its own rules for implementing the program, which must be consistent with the federal Medicaid statutes." *Koenig v. Dungey*, 2014-Ohio-4646, 19 N.E.3d 1006, ¶ 3 (1st Dist.). At the time Rodefer filed her application for Medicaid benefits in November 2012, ODJFS was designated as the single state agency to supervise the administration of Ohio's Medicaid program. Former R.C. 5111.01.³ Former R.C. Chapter 5111 governed participation in Medicaid.

{¶ 35} R.C. 5101.35 authorizes an administrative appeal from the DJFS decision. An appellant is first entitled to a state hearing by the ODJFS. R.C. 5101.35 (B). That decision may be appealed to the director of the ODJFS. R.C. 5101.35(C). An appellant who disagrees with the administrative appeal decision of the director (or the director's designee) may appeal the decision to the court of common pleas, pursuant to R.C.

³ In September 2013, the provisions of R.C. Chapter 5111 were substantially amended and relocated to R.C. Chapter 5162.

119.12. R.C. 5101.35(E).

{¶ 36} McCarthy argues on appeal that Rodefer has failed to exhaust her administrative remedies. He states that she appealed the administrative denial to the court of common pleas, and that her appeal from the common pleas court's decision against her to the court of appeals is pending. He further argues that Rodefer cannot circumvent the appeals process by filing a civil action under 42 U.S.C. 1983, and that the administrative appeals process provides the exclusive means to seek review of the DJFS decision.

{¶ 37} The Ohio Supreme Court has explained the principle of exhaustion of administrative remedies, saying:

It is a well-established principle of Ohio law that a party seeking relief from an administrative decision must pursue available administrative remedies before pursuing action in a court. We have stated, "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.' The purpose of the doctrine ' * * is to permit an administrative agency to apply its special expertise * * * in developing a factual record without premature judicial intervention.' The judicial deference afforded administrative agencies is to ' * * * "prepare the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court * * * ." ' ["]

The exhaustion doctrine is not without exception. For instance, when there is a judicial remedy that is intended to be separate from the administrative remedy, the requirement of exhaustion of administrative remedies does not apply.

The failure to exhaust administrative remedies is not a jurisdictional defect but is rather an affirmative defense, if timely asserted and maintained. * * *

(Citations omitted.) *Dworning v. Euclid*, 119 Ohio St.3d 83, 2008-Ohio-3318, 892 N.E.2d 420, ¶ 9-11.

{¶ 38} The Ohio Supreme Court has recognized that “[a] Section 1983 action provides a supplement to any state remedy, and there is no general requirement that state judicial or administrative remedies be exhausted in order to commence a Section 1983 action.” (Citations omitted.) *Schotten*, 70 Ohio St.3d at 91, 637 N.E.2d 306 (1994). Moreover, after considering the legislative histories of 42 U.S.C. 1983 and 42 U.S.C. 1997e (which created “a specific, limited exhaustion requirement for adult prisoners bringing actions pursuant to § 1983”), the United States Supreme Court has expressly held that exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983. *Patsy v. Bd. Of Regents of State of Fla.*, 457 U.S. 496, 516, 102 S.Ct. 2557, 73 L.3d.2d 172 (1982).

{¶ 39} We recognize that the Ohio Supreme Court has held that, “to assert a claim under Section 1983, Title 42, U.S.Code and the Fourteenth Amendment for deprivation without due process of a purely economic interest, a plaintiff must allege and prove the inadequacy of state remedies.” *1946 St. Clair Corp. v. Cleveland*, 49 Ohio

St.3d 33, 550 N.E.2d 456 (1990). However, *1946 St. Clair Corp.* is directed to the adequacy of the plaintiff's pleading, not whether a trial court has jurisdiction over the matter. Moreover, Rodefer's claims, on their face, raise more than just a procedural due process claim related to the deprivation of a property right.

{¶ 40} Rodefer's complaint establishes that she pursued administrative appeals through ODJFS, but it does not indicate that she appealed the denial by ODJFS to the court of common pleas; Rodefer also does not allege in her complaint that she exhausted her administrative remedies. (Again, the record of her case against ODJFS and its director is not properly before us and cannot be considered.) Regardless, in light of the foregoing authority, we find that Rodefer's action was not precluded by the existence of state administrative appeal procedures and by Rodefer's alleged failure to exhaust her administrative remedies. The trial court erred in dismissing Rodefer's action on the ground that the exclusive method of challenging the decision denying her Medicaid benefits was through the statutory framework for administrative appeals.

IV. Failure to State a Claim Upon Which Relief May be Granted

{¶ 41} To establish a claim under § 1983, a plaintiff must establish that (1) the conduct complained of was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of a federally-protected right, either constitutional or statutory. *E.g., Shirokey v. Marth*, 63 Ohio St.3d 113, 116, 585 N.E.2d 407 (1992); *Granato v. Davis*, 2d Dist. Montgomery No. 26171, 2014-Ohio-5572, ¶ 36.

{¶ 42} In Count One of her complaint, Rodefer alleges that McCarthy's and ODM's actions "in seeking to rescind and replace an enacted rule by a letter, and apply such retroactively, violate the Ohio Administrative Procedure Act, and Plaintiff's rights

under the Ohio and United States Constitutions.” Count Four similarly alleges that “Defendants’ actions in refusing to follow its own rules, and in seeking to replace such rules by administrative fiat, are in violation of federal and state law, and the Ohio and United States Constitutions.”

{¶ 43} Counts Two and Three allege that Defendants denied and continue to deny both Medicaid benefits and the ability to obtain Medicaid benefits. Count Two states that these actions violate her rights under Title XIX of the Social Security Act and her right to medical assistance under Ohio law. Count Three states that these actions violate “her rights under the Ohio and United States Constitutions.”

{¶ 44} Count Five alleges that Rodefer was denied her right to substantive and procedural due process under the Ohio and United States Constitutions by Defendants’ attempts to deny her a “meaningful hearing” and “continued refusal to address grounds raised.”

{¶ 45} Section 1983 applies only to violations of federal rights. *Shirokey* at 116. Consequently, Rodefer cannot challenge McCarthy’s failure to comply with Ohio’s Administrative Procedure Act, the Ohio Constitution, or any other Ohio law by way of an action under § 1983. All of Rodefer’s claims under Ohio law were properly dismissed pursuant to Civ.R. 12(B)(6).

{¶ 46} In addition, Rodefer’s general references to violations of “federal law” and the United States Constitution, without some specificity as to the provision that was allegedly violated, were insufficient to state a claim upon which relief may be granted. Accordingly, Counts One, Three, and Four were properly dismissed in their entirety under Civ.R. 12(B)(6).

{¶ 47} McCarthy asserts that Rodefer’s reference in Count Two to Title XIX of the Social Security Act was also too vague to state a claim upon which relief may be granted. We agree. Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq., provides grants to the states for medical assistance programs. “Title XIX established a federal-state cooperative cost-sharing program to provide necessary medical assistance to families and individuals with insufficient income and resources.” *Pike ex rel. Estate of Pike v. Sebelius*, D.R.I. No. CA 13-392S, 2013 WL 6991481 (Nov. 13, 2013), adopted in relevant part by *Pike ex rel. Estate of Pike v. Sebelius*, D.R.I. No. CA 13-392S, 2014 WL 172508 (Jan. 13, 2014), citing *Wilder v. Va. Hosp. Assn.*, 496 U.S. 498, 501, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990). As noted by McCarthy, Title XIX of the Social Security Act contains over 40 sections. Rodefer does not cite to a specific section of Title XIX, and she does not identify what federal right under Title XIX was allegedly violated by the denial of her claim for Medicaid benefits. In response to McCarthy’s motion to dismiss, Rodefer could have moved to amend the complaint to allege specific violations, but she did not. The trial court properly dismissed Count Two in its entirety pursuant to Civ.R. 12(B)(6).

{¶ 48} In Count Five, Rodefer claims violations of her right to substantive and procedural due process related to the administrative review process. Rodefer does not identify the substantive due process right of which she was allegedly denied. The trial court did not err in dismissing the claim based on a violation of substantive due process.

{¶ 49} With respect to her procedural due process claim, Rodefer’s allegations also are not sufficient to state a claim.

{¶ 50} The Due Process Clause of the Fourteenth Amendment states that no state shall “deprive any person of life, liberty, or property without due process of law.” In

order to state a claim under 42 U.S.C. 1983 for a procedural due process violation, a plaintiff must allege that (1) he or she has a right or interest that is entitled to due process protection, and (2) that he or she was deprived of that right without a meaningful opportunity to be heard. *E.g., Ohio Academy of Nursing Homes, Inc. v. Barry*, 56 Ohio St.3d 120, 125, 564 N.E.2d 686 (1990).

{¶ 51} “[T]he determination of the existence of a property right protected by due process is controlled by the statute creating and defining that right.” *Hamby v. Neel*, 368 F.3d 549, 558 (6th Cir.2004). “To have a property interest in a benefit, a person must ‘have a legitimate claim of entitlement to it,’ not just ‘an abstract need or desire for it.’” *K.W. ex rel. D.W. v. Armstrong*, 9th Cir. No. 14-35296, ___ F.3d. ___, 2015 WL 3529727 (June 5, 2015), quoting *Bd. of Regents of State Colleges. v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). The Sixth Circuit has held that a Social Security claimant, including a claimant for Medicaid benefits, has a property interest in benefits for which he or she hopes to qualify. *Hamby* at 559.

{¶ 52} Assuming, for sake of argument, that Rodefer has a protected interest in the Medicaid benefits for which she applied, Rodefer must also allege that she was deprived of a meaningful opportunity to be heard regarding the DJFS determination providing restricted coverage. As stated by the United States Supreme Court:

* * * A § 1983 action may be brought for a violation of procedural due process, but here the existence of state remedies is relevant in a special sense. In procedural due process claims, the deprivation by state action of a constitutionally protected interest in “life, liberty, or property” is not in itself unconstitutional; what is unconstitutional is the deprivation of such an

interest *without due process of law*. The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate. * * *

(Footnotes and citations omitted and emphasis sic.) *Zinerman v. Burch*, 494 U.S. 113, 125, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). See also *Shirokey*, 63 Ohio St.3d 113, 585 N.E.2d 407 (1992).

{¶ 53} Rodefer’s complaint alleges that she requested a state hearing on January 23, 2013. When a video-conference was held on April 9, 2013, Kenneth and Rodefer’s counsel were informed that the State hearing requested on January 23 “had been dismissed” and that the hearing would address only the hardship waiver. Nevertheless, Rodefer further alleged that her counsel later was contacted by Hearing Authority A. Ruben Lopez, who stated that due to the Department’s “numerous mistakes” he was granting a state hearing based on the original January 23, 2013 state hearing request. The complaint indicates that, at this hearing, Rodefer raised the reasons set forth in her complaint as reasons to reverse the actions of DJFS.

{¶ 54} In the June 24, 2013 decision, which was attached to the complaint, the hearing officer noted that Rodefer’s attorney did not dispute the value of the transferred property, that Rodefer’s son had bought the life estate for \$22,000 upon the advice of Rodefer’s attorney, and that the agency had valued the life estate at \$117,012 using the multiplier of .29655. The hearing officer cited Ohio Adm.Code 5101:1-39-32(F) and (H),

MEPL 68, and Ohio Adm.Code 5101:1-39-07(B)(5) and concluded as follows:

Here, the Agency [DJFS] referred to the chart in MEPL 68 to determine the product of .26955 for the Appellant's age of 91. The Agency multiplied the value of the life [sic] estate of \$434,100 by .26955 for a total life estate value of \$117,012. The Agency subtracted the purchase price of \$22,000 from the value of \$117,012 for a total improper transfer of \$95,012. The Appellant's attorney argued that the Agency was incorrect to use the table set forth in MEPL 68 in its calculation. Because the Department of Job and Family Services has issued supplemental guidance for the calculation of life estate values, this hearing officer is persuaded that the Agency was correct to use MEPL 68 in its calculation. The Agency's determination of the life estate value is correct.

The hearing officer's decision was adopted by Lopez, the ODJFS state hearing authority. An appendix to the decision indicated that the Agency had presented sixteen exhibits and Rodefer had presented one. The decision stated that "[a]ll papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record." Rodefer appealed the June 24 decision to ODJFS, Administrative Appeal Section, and it was denied on July 18, 2013.

{¶ 55} In the July 18 decision, which was attached to the complaint as Exhibit D, the administrative appeal officer stated, in part: "Appellant's attorney argues that the Agency used the incorrect table. However, the Ohio Department of Job and Family Services has spoken through its regulations and policy issuances, which in this case, supersede the rule regarding this particular point. The rule refers to a table found in 26

CFR 20.2031-7 which does not have the correct table.” The decision informed Rodefer that “[a]n Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code.”

{¶ 56} Rodefer’s complaint itself indicates that she was presented an opportunity to challenge the DJFS decision (albeit after bureaucratic “mistakes”) before a state hearing officer, at which time she was permitted to present evidence and argue why MEPL 68 was inapplicable. She was also given the right to appeal that decision to an administrative appeal officer and, when that appeal was unsuccessful, to the court of common pleas. Although the hearing officers might not have addressed her specific arguments in its decisions, the complaint reflects that Rodefer was provided adequate notices and opportunities to be heard. Based on the allegations in the complaint, including the administrative decisions of ODJFS, we agree with the trial court that the complaint does not state a claim for a violation of Rodefer’s right to due process.

{¶ 57} The trial court did not err in dismissing Count Five pursuant to Civ.R. 12(B)(6). Having determined that each of Rodefer’s claims was properly dismissed, we need not address the trial court’s additional bases for dismissing Rodefer’s action.

V. Conclusion

{¶ 58} The trial court’s judgment will be affirmed.

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FAIN, J. and WELBAUM, J., concur.

Copies mailed to:

Jesse B. Beasley
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Hon. Jonathan P. Hein