

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EARLANDO SAMUEL, :
 :
 Plaintiff, :
 :
 v. :
 :
 DR. MARIBEL GARCIA, of/and :
 WESTSIDE HEALTH SERVICES and :
 OLGA RAMIREZ, SHARON PERETZ :
 of/and COMMUNITY LEGAL AID and :Civil Action No. 98-298-JJF
 WILLIAM PARKER, ALICE SKINNER, :
 DOLLY BROWN, NELISA SOTO, :
 RAQUEL KELSON of/and THE :
 DIVISION OF SOCIAL SERVICES and :
 CARMEN NAZARIO, SEC. of/and :
 DELAWARE HEALTH AND HUMAN :
 SERVICES and THOMAS PARVIS of/ :
 and the DEPARTMENT OF LABOR - :
 THE DIVISION OF VOCATIONAL :
 REHABILITATION and SELMA :
 HAYMAN, ESQ. and THE STATE OF :
 DELAWARE, :
 :
 Defendants. :

Earlando Samuel, Chester, Pennsylvania.
Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, of Delaware
Department of Justice, Wilmington, Delaware.
Attorney for State Defendants.

MEMORANDUM OPINION

March 20, 2001
Wilmington, Delaware

Farnan, District Judge.

Presently pending before the Court in this action alleging violations of 42 U.S.C. § 1983 is a Motion for Summary Judgment (D.I. 46) filed by Defendants State of Delaware Division of Health and Human Services, Division of Social Services, Department of Labor Division of Vocational Rehabilitation, Willie Parker, Alice Skinner, Dolly Brown, Nelisa Soto, Racquel Kelson and Thomas Parvis (collectively "State Defendants"). Initially, Plaintiff filed suit pursuant to 42 U.S.C. §§ 1983 and 1985(3) alleging violations of civil rights under color of state law, conspiracy to violate civil rights and supplemental state claims. State Defendants have moved for summary judgment on numerous grounds including the applicable statute of limitations and failure to properly plead Section 1983 claims. For the reasons stated below, the Court will grant Defendant's Motion For Summary Judgment (D.I. 46).

BACKGROUND

Plaintiff filed a pro se lawsuit against two Delaware executive departments, a division of each of them and several of their employees ("State Defendants") and certain other Defendants. Plaintiff filed his Complaint (D.I. 3) along with a petition to proceed in forma pauperis under 28 U.S.C. § 1915 ib September 17, 1997. The Court granted the petition June 3, 1998 (D.I. 1). The suit was placed on the docket by the Clerk of the Court the following day (D.I. 3).

According to the Complaint, Plaintiff applied and qualified for medical and financial assistance from the State of Delaware Health and Social Services Department in March 1991. (D.I. 3, at 5). Continuing eligibility for assistance is predicated on an evaluation given by the client's social worker every six months. (D.I. 47, Exh. A, Affidavit of Willie Parker). Plaintiff alleged at the six month evaluation that he had a medical disability and was unable to work. Id. Plaintiff's social worker, Defendant Willie Parker, was not in agreement with Plaintiff and informed Plaintiff that he would need to obtain a medical form from a doctor supporting his claim of a medical disability. Id. Plaintiff was provided the name of a doctor and the medical form. Plaintiff, however, never returned the form evidencing his disability which resulted in Plaintiff's general assistance being terminated. Id.

As a result, Plaintiff asserts that State Defendants violated his civil rights on various occasions when he attempted to retain Social Security disability benefits and when he attempted to obtain vocational training through the Department of Labor's Division of Vocational Rehabilitation and Delaware Department of Health and Social Services' Division of Social Services' job training programs. (D.I. 3, at 5).

Pursuant to an Order entered on August 26, 1999 (D.I. 43), the Court dismissed Plaintiff's claims against certain other Defendants and dismissed the § 1985(3) conspiracy claims (Count

VI) with regard to all Defendants, leaving only the § 1983 claims against State Defendants (Counts I, II and IV) and a supplemental state claim for intentional infliction of emotional distress against State Defendants (Count IX).

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment where "the pleadings depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party always bears the initial responsibility of informing the Court of the basis for its motion, and identifying those portions of the materials, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553 (1986). The moving party is not required to negate the nonmovant's claim, but is only required to point out the lack of evidence supporting the nonmovant's claim. Country Floors, Inc. v. Partnership Composed of Gepner & Ford, 930 F.2d 1056, 1061 (3d Cir. 1991). Once the moving party meets his or her burden, the burden shifts to the nonmovant to go beyond the mere allegations or denials of the pleadings and designate "specific facts showing that there is a genuine issue for trial." Id.; Celotex, 477 U.S. at 324, 106 S. Ct. at 2553. In determining whether there is a triable dispute of material

fact, the Court must construe all inferences from the underlying facts in the light most favorable to the nonmovant. See Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976) (footnote omitted), cert. denied, 429 U.S. 1038, 97 S. Ct. 732 (1977).

However, the mere existence of some evidence in support of the nonmovant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the nonmovant on that issue.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2510 (1986).

DISCUSSION

State Defendants have moved for summary judgment on all relevant counts of Plaintiff's Complaint (D.I. 3) alleging that Plaintiff's claim is barred by the applicable statute of limitations.

In Wilson v. Garcia, 471 U.S. 261 (1985), the United States Supreme Court held that actions pursuant to 42 U.S.C. § 1983 should be characterized as personal injury actions, and therefore, the statute of limitations for such actions should be determined by each state. It is well-established in Delaware that the statute of limitations for Section 1983 actions is the two-year limitations period set forth in 10 Del. C. § 8119. McDowell v. Delaware State Police, 88 F.3d 188, 190 (3d Cir. 1996); Carr v. Town of Dewey Beach, 730 F. Supp. 591 (D. Del. 1990).

In pertinent part, 10 Del. C. § 8119 provides:

No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained . . .

Applying the two-year limitations period to Section 1983 claims, this Court has further recognized that a Section 1983 claim accrues when the Plaintiff knows or has reason to know of the injury that forms the basis of his or her complaint. Johnson v. Cullen, 925 F. Supp. 244, 248 (D. Del. 1996).

State Defendants assert that the date Plaintiff's lawsuit was docketed by the Clerk of the Court, June 4, 1998, is the date which determines whether an action was timely filed. However, in a case where the Plaintiff seeks to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, "a complaint is constructively filed the date the clerk received the complaint - as long as . . . the district court grants the plaintiff's request to proceed in forma pauperis." McDowell, 88 F.3d at 191. Thus, the Court concludes that Plaintiff's Complaint was constructively filed on September 17, 1997, the day Plaintiff filed his Complaint along with a petition to proceed in forma pauperis under 28 U.S.C. § 1915.

In this case, Plaintiff acknowledges that his first contact with Defendant Department of Labor - Division of Vocational Rehabilitation and Thomas Parvis occurred in October, 1993. (D.I. 3, at 8). According to the Complaint, Plaintiff's last alleged contact with Defendants Parvis and Department of Labor

Division of Vocational Rehabilitation occurred in July of 1995. (D.I. 3, at 9). In addition, Plaintiff's claims with respect to Defendants State of Delaware Health and Social Services Department ("DHSS"), Willie Parker, Alice Skinner, Nelisa Soto and Dolly Brown relate to the time period between 1991 to September 1994, or at the latest July 1995. (D.I. 3, at 5, 6). Plaintiff's claims against the above-listed State Defendants evolve from alleged actions or inactions during that time period. Plaintiff has not offered any evidence of any action or inaction by the above-listed State Defendants after that time period. Thus, the Court concludes that Plaintiff knew or had reason to know of the alleged violations by the above-named State Defendants by July 1995. Thus, the two-year statute of limitations on these claims expired in July 1997. Because the Court has determined that Plaintiff's Complaint was constructively filed on September 17, 1997, Plaintiff's claims against State Defendants Delaware Health and Social Services Department ("DHSS"), Willie Parker, Alice Skinner, Nelisa Soto and Dolly Brown are time-barred by the applicable statute of limitations.

There is evidence in the record to support involvement by Defendant Raquel Kelson after the 1991 to July 1995 time period. Attached to his Complaint, Plaintiff submitted "Client Appointment" and "Request For Verification" forms signed by Defendant Kelson in June 1996. (D.I. 3, Exh. 1). Thus,

Plaintiff's claim against Defendant Kelson is not time-barred by the applicable statute of limitations.

To hold a defendant personally liable under 42 U.S.C. § 1983, a plaintiff must show that the defendant participated in violating his rights, that he directed other to violate them or that he had knowledge of and acquiesced in the violation by his subordinates. Baker v. Monroe Township, 50 F.3d 1186, 1190-91 (3d Cir. 1995). There must be personal involvement by the defendant before he can be found liable. Gay v. Petsock, 917 F.2d 768, 771 (3d Cir. 1990).

In this case, Plaintiff fails to identify in the Complaint and fails to offer any additional evidence to demonstrate any conduct on the part of Defendant Kelson that deprived him of any Constitutional or statutorily-protected rights. Thus, the Court concludes that Plaintiff fails to state a claim against Defendant Kelson, making summary judgment appropriate.

CONCLUSION

For the reasons discussed, State Defendants' Motion For Summary Judgment (D.I. 46) will be granted.

An appropriate Order will be entered.