

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BRIAN HALL)
2481 Tenerife Road)
Catlett, VA 20119)

LEWIS RANDALL)
5147 S. Bercot Road)
Freeland, WA 98249)

NORMAN ROGERS)
2627 S. Bayshore Drive, Apt. 1204)
Miami, FL 33133)

JOHN J. KRAUS)
10 Traverse Drive)
Plymouth Meeting, PA 19462-2534)

CIVIL ACTION
NO. 1:08-cv-01715-RMC

DECLARATION OF
BRIAN HALL

and)

RICHARD K. ARMEY)
915 Dove Creek road)
Bartonville, TX 76226)

Plaintiffs)

v.)

MICHAEL LEAVITT, SECRETARY of)
the UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN SERVICES)
615F Hubert H. Humphrey Building)
200 Independence Avenue, S.W.)
Washington, DC 20201)

and)

MICHAEL J. ASTRUE, COMMISSIONER of)
the SOCIAL SECURITY ADMINISTRATION)
6401 Security Boulevard)
Baltimore, MD 21235-7703)

Defendants.)

NOW COMES BRIAN HALL, and hereby declares that:

1. My name is BRIAN HALL and I am a Plaintiff in the above-entitled cause. I am now and have been, throughout the period of time referenced in the above-entitled cause, a citizen of the Commonwealth of Virginia with my residence located at 2481 Tenerife Road, Catlett, Virginia 20119.
2. I was formerly an employee in the United States Department of Housing and Urban Development in Washington, DC and am now retired, having enrolled in the Social Security program and having received monthly benefits therefrom since 2006.
3. When I retired from federal employment, I obtained health insurance under the Federal Employee Health Benefit Program. I selected the “Mail Handlers Benefit Plan – Consumer Option,” a high-deductible health insurance plan that included a Health Savings Account (“HSA”), and I am now covered under that plan. One may access that plan on the web at <http://www.mhbp.com/web/groups/public/documents/webcontent/a034028.pdf>.
4. Under the above-referenced program that I selected, the insurer deposits a portion of my premium each month into the HSA. I am allowed to make deposits of my own funds to the HSA, and my contributions – and those made by my insurer - are deductible for purposes of my federal and state income taxes. The Internal Revenue Service limits the amount of annual contributions which are deductible; in 2008 it is \$3,800.00 for me, but the limit increases each year. In 2009 it will be \$3,900.00. The HSA earns interest which is also tax-deductible.
5. I am permitted to use my HSA to pay all of the health care expenses not covered by my health insurance plan, including any and all health care expenses incurred prior to reaching the annual deductible of \$2,000.00, as well as any and all co-insurance and co-

payments.

6. The Internal Revenue Service rules set forth in IRS Publication 969 make individuals enrolled in Medicare ineligible to contribute to an HSA.
7. I have chosen my own health care providers and physicians and pay them from the funds in my HSA to the extent the amounts are not covered by my health insurance plan; I have enjoyed the complete freedom to utilize whatever health care services I deem best for myself and to contract with providers and physicians as I deem appropriate for my own welfare.
8. I entered into the Federal Employee Health Benefits Program plan aforementioned that included an HSA because I wanted to have the maximum control over my own health care decisions and the maximum privacy with respect to my health care decisions and the records generated thereby. I selected a plan that enabled me to afford the very best health care services I could obtain under terms satisfactory to me and my providers and physicians. The carrier I selected informed me, in writing, that it would provide primary insurance coverage if I did not become a Medicare beneficiary. I determined not to enroll in Medicare, Part A or B, under any circumstances. I firmly believed then, and I firmly believe now, that enrollment in Medicare is entirely voluntary.
9. Over twelve (12) months preceding the filing of this civil action, I contacted representatives of the Defendants in order to ascertain the process I might use to avoid enrollment in Medicare. An agent, servant, and employee of the Defendant, MICHAEL J. ASTRUE, Commissioner of the Social Security Administration, informed me, by telephone, that I would be **automatically** enrolled in Medicare, Part A, when I reached age 65 on January 3, 2009, and that I could not disenroll. (Technically, the Defendant will enroll me in Medicare, Part A, on January 1, 2009.) If I disenrolled, I was told by

that employee that I would have to also disenroll from and forfeit my monthly Social Security benefits. I would also have to repay all the monthly Social Security benefits I have received since 2006.

10. An agent, servant, employee, and counsel of the Defendant, MICHAEL LEAVITT, Secretary of the United States Department of Health and Human Services, and of the Centers for Medicare and Medicaid Services (“CMS”), also informed me, by telephone, that I was **automatically** enrolled in Part A of Medicare and that I could not disenroll.
11. An agent, servant, employee, and counsel of the Defendant, MICHAEL J. ASTRUE, Commissioner of the Social Security Administration, from the General Counsel’s Office, similarly informed me, by telephone, that I could not disenroll from Medicare, Part A, unless I agreed at the same time to surrender all of my monthly Social Security benefits and repay those benefits I have received since 2006.
12. Both the representatives of the Social Security Administration and CMS aforesaid informed me that if I was dissatisfied my only remedy was to notify my congressman.
13. I discovered that the foregoing agents, servants, employees and counsel of the Defendants based their aforesaid statements to me upon *POMS* (‘*Program Operations Manual System*’) *HI* (‘*Hospital Insurance*’) 00801.002, *Waiver of HI Entitlement by Monthly Beneficiary*, *POMS HI 00801.034, Withdrawal Considerations*, and *POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved*.
14. Because of the aforesaid *POMS* (‘*Program Operations Manual System*’) *HI* (‘*Hospital Insurance*’) 00801.002, *Waiver of HI Entitlement by Monthly Beneficiary*, *POMS HI 00801.034, Withdrawal Considerations*, and *POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved*, the Defendants provide absolutely no mechanism for me, or any other individual, to not enroll in, or to disenroll

from, Medicare, Part A, and also remain enrolled in Social Security.

15. I received in the mail, within the past two (2) months, a booklet from CMS entitled “Welcome to Medicare,” a true and correct copy of which may be found online at: <http://www.medicare.gov/Publications/Pubs/pdf/11095.pdf>. That booklet, at paragraph 1, page 1, reads as follows:

You are getting this package because you are now covered by Medicare. **Because you are entitled to Social Security retirement or disability benefits, you are automatically enrolled in Medicare, Part A** (Hospital Insurance), which is premium free, and Medicare, Part B (Medical Insurance), for which you pay a premium. (Emphasis added)

That booklet, on page 2, reads as follows: “Decision 1: Decide if you want to keep Medicare, Part B.” There is no option in the booklet for me, or any other individual, to disenroll from Medicare, Part A.

16. With the aforementioned booklet, CMS forwarded to me my Medicare Card and a form, a sample and copy of which may be found at http://www.caproducer.com/Med_Enroll_Card.pdf. That form provides the means by which I, or any other individual, may disenroll from Medicare, Part B. There was no similar form provided to me by CMS, allowing me to disenroll from Medicare, Part A.
17. Thus, there exists no means by which I can inform the Defendants of my determination to disenroll from Medicare, Part A, in order to even obtain a decision that can be reviewed by a court of competent jurisdiction.
18. If I were to write a letter to the Defendants seeking to disenroll from Medicare, Part A, the Defendants would not respond to it; it would be futile. As noted in the Amended and Substituted Complaint for Declaratory Judgment and Preliminary and Permanent Injunctive Relief filed herein, my fellow Plaintiff, JOHN J. KRAUS, of Plymouth Meeting, Pennsylvania, and David Nelson of Junction City, Oregon, tried to disenroll

from Medicare, Part A, and keep their monthly Social Security benefits in 2006 and 1997, respectively, by notifying the Defendants, in writing, of their determination; neither have ever received a response from the Defendants.

19. All of the foregoing communications and forms I received from CMS are based upon *POMS ('Program Operations Manual System') HI ('Hospital Insurance') 00801.002, Waiver of HI Entitlement by Monthly Beneficiary, POMS HI 00801.034, Withdrawal Considerations, and POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved.*
20. I completed the aforesaid form disenrolling from Medicare, Part B, and forwarded it to CMS, but I have no other means of disenrolling from Medicare, Part A, and remaining enrolled in Social Security, other than appealing to this Court.
21. Without a preliminary injunction enjoining the enforcement of *POMS ('Program Operations Manual System') HI ('Hospital Insurance') 00801.002, Waiver of HI Entitlement by Monthly Beneficiary, POMS HI 00801.034, Withdrawal Considerations, and POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved,* I will be prohibited from continuing my Federal Employee Health Benefit Program plan that includes the HSA; I will further be barred from contributing any more funds to my HSA.
22. Without a preliminary injunction enjoining the enforcement of *POMS ('Program Operations Manual System') HI ('Hospital Insurance') 00801.002, Waiver of HI Entitlement by Monthly Beneficiary, POMS HI 00801.034, Withdrawal Considerations, and POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved,* I will be automatically enrolled in Medicare, Part A, and, as a “Medicare beneficiary,” will be prohibited from using my own money to pay for the

otherwise covered health care services I deem most appropriate for myself, all as is set forth in 42 USC § 1395a. Because Medicare will then become the “primary payer,” it will determine the health care services I receive because it will pay only for those services that it covers. My current insurance carrier will cease being a primary payer and will become only a supplemental carrier; most decision-making regarding providers and coverage will be exercised by Medicare. In addition, claims will be filed with Medicare for each and every health care service I obtain and, thus, my privacy will be lost as a myriad of individuals in Medicare and its relevant intermediary and carrier under contract with Medicare in Virginia, as well as a host of other government and private agents and employees, will have access to, and view, my health care records.

23. Without a preliminary injunction enjoining the enforcement of *POMS* (*‘Program Operations Manual System’*) *HI* (*‘Hospital Insurance’*) 00801.002, *Waiver of HI Entitlement by Monthly Beneficiary*, *POMS HI 00801.034, Withdrawal Considerations*, and *POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved*, I will automatically be enrolled in Medicare, Part A, and will be forced to accept health care services that I believe are inferior to those I could obtain privately. I will be forced to limit my choices of providers and physicians to only those who participate in the Medicare program. I will further be forced to accept health care services provided by Medicare that are now rationed, and will, in the future, be increasingly rationed, because of budget constraints. I further believe that I will be forced to accept the undermining of my maximum privacy in my health care decisions and records.
24. Without a preliminary injunction enjoining the enforcement of *POMS* (*‘Program Operations Manual System’*) *HI* (*‘Hospital Insurance’*) 00801.002, *Waiver of HI*

Entitlement by Monthly Beneficiary, POMS HI 00801.034, Withdrawal Considerations, and POMS GN 00206.020, Withdrawal (WD) Considerations When Hospital Insurance (HI) is Involved, the only way I will be able to disenroll from Medicare, Part A, is to surrender my monthly Social Security benefits and repay all those monthly Social Security benefits I have received since 2005, which I cannot afford to do.

I declare under penalty of perjury that the foregoing is true and correct.

12/30/2008
Dated

/s/ Brian Hall
BRIAN HALL

/s/ Frank M. Northam
Frank M. Northam
(DC Bar No. 206110)
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