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GOVERNMENT ARGUMENTS “A SHAM,” SAY PLAINTIFFS IN MEDICARE LAWSUIT

PLAINTIFFS FACE “CATCH 22,” ATTORNEY SAYS

WASHINGTON, MARCH 18, 2009 – The plaintiffs in a lawsuit challenging a government policy denying Social Security benefits to senior citizens who don’t enroll in the financially troubled Medicare Part A hospital insurance program, urged the court today to reject government efforts to have the case dismissed.

Instead, the plaintiffs asked the court to grant their request for summary judgment and to issue a permanent injunction barring enforcement of the illegal regulations.

The lawsuit, Brian Hall et al v. Charles E. Johnson et al [originally known as Brian Hall v. Michael Leavitt], was filed in October 2008 in the U.S. District Court for the District of Columbia.

“The defendants’ motion to dismiss is based on two erroneous claims: That the illegal rules are based on ‘reasonable interpretations’ of the Social Security and Medicare statutes and that the plaintiffs failed to exhaust their administrative remedies prior to filing their lawsuit,” said plaintiff attorney Kent Masterson Brown.

In response to the claim that the rules are based on ‘reasonable interpretations’ of the statutes, plaintiffs Brian Hall, Lewis Randall, Norman Rogers, John J. Kraus, and Richard K. Armeay say in their response to the government motion that “nowhere in [the statutes] is there any mention whatsoever that an individual who applies for monthly Social Security benefits must also enroll in Medicare, Part A. Nowhere ... is there any mention whatsoever that an individual who applies for Social Security monthly benefits cannot obtain them unless that individual agrees to be enrolled in Medicare, Part A. Nowhere ... is there any mention whatsoever that an individual who disenrolls from Medicare, Part A, must also disenroll from receiving Social Security monthly benefits and repay to the SSA all the benefits received to date.”

Additionally, “the defendants’ arguments that the plaintiffs’ ... complaint should be dismissed because they have failed to exhaust administrative remedies is a sham,” the plaintiffs say. It is a sham, they stress, because “there are no administrative remedies available.” In fact, they told the court, several of the plaintiffs did try to resolve the matter administratively, as have several other seniors who are not part of the lawsuit, but they either got the runaround or no response at all.

Plaintiff John J. Kraus, for instance, requested a hearing before an Administrative Law Judge in February 2006. The SSA has failed and refused to ever respond to his request.

“Ironically, the defendants even admit in their motion to dismiss that there is no statutory or regulatory mechanism to avoid Medicare, Part A and retain entitlement to one’s Social Security monthly benefits,” said Brown. “No procedures exist for challenging the phantom regulations. Yet government attorneys are asking the court to dismiss the case because the plaintiffs haven’t exhausted the non-existent administrative remedies.

“If that isn’t a Catch-22, I don’t know what is.”

Brown said, “We can understand why the government’s lawyers do not want Judge Collyer to rule on this case. The policies the government has adopted are unlawful. The manner in which they were adopted are unlawful. So it is hardly surprising that they are now claiming the plaintiffs haven’t jumped over enough bureaucratic hurdles to merit their day in court. This is exactly why a decision is needed.”

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For more information on the lawsuit, visit <http://www.medicarelawsuit.org>.