

<b>DISTRICT COURT</b> <b>CITY AND COUNTY OF DENVER, COLORADO</b>	<p style="text-align: center; font-size: 2em; font-weight: bold;">COPY</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs:  <p style="text-align: center;"><b>VALERIE IMANI HAWTHORNE-BEY, <i>et al.</i></b></p> Defendants:  <p><b>KAREN REINERTSON</b>, Executive Director of the Colorado Department of Health Care Policy and Financing, <i>et al</i></p>	
<p><b><u>DECISION REGARDING DEFENDANTS' MOTION TO DISMISS -- NO PRIVATE RIGHT OF ACTION</u></b></p>	

THIS MATTER comes before the Court on Defendants' Motion to Dismiss. Therein, Defendants argue that Plaintiffs lack a private right of action under the Federal and State of Colorado Welfare Benefit Programs. The Court has read and considered the arguments of counsel and, for reasons stated below, does hereby deny the Motion to Dismiss.

GENERAL CONSIDERATIONS REGARDING 42 U.S.C § 1983 ACTIONS

“Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” Wilder v. Va. Hosp. Ass'n, 496 U.S. 498, 508 (1990). However, §1983 is only an enforcement mechanism; it gives individuals a cause of action for violations of rights that are secured elsewhere, but “one cannot go to court and claim a ‘violation of §1983’ for 1983 by itself does not protect anyone against anything.” Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617 (1979) quoted in Gonzaga Univ. v. Doe, 536 U.S. 273 (2002). Thus, a plaintiff making a §1983 claim must “identify with particularity the rights” he or she claims were violated. Blessing v. Freestone, 520 U.S. 329, 342 (1997). In the case at bar, Plaintiffs’ §1983 claims are based upon alleged deprivations of rights that Plaintiffs argue are secured to them by both federal statutes the Constitution.

ACTIONABILITY OF PLAINTIFFS’ §1983 CLAIMS FOR VIOLATIONS OF STATUTORY LAW

A plaintiff seeking redress through §1983 “must assert the violation of a federal *right*, not merely a violation of federal *law*.” Blessing, 520 U.S. at 340 (emphasis in original). Thus when, as here, a plaintiff bases a §1983 claim on violations of federal statutory law, the first step for the Court must be a determination of whether the federal statute at issue gives rise to the type of individualized rights that are actionable under §1983. This determination utilizes a three-factor analysis. Id.

First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so “vague and amorphous” that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States. In other words, the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.

Id. at 340-341 (quoting Wright v. Roanoke Redevelopment and Hous. Auth., 479 U.S. 418, 431 (1987)).

In analyzing the first factor, Congressional intent, the Court must look for “rights-creating language” that clearly imparts an “individual entitlement” and has an “unmistakable focus on the benefited class.” Gonzaga Univ., 536 U.S. at 287 (citations omitted). The prototypical examples of rights-creating language are found in Title VI of the Civil Rights Act of 1964 (“no person in the United States shall . . . be subjected to discrimination under any [federal] program. . .”) and in Title IX of the Education Amendment of 1972 (“no person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any . . . activity receiving Federal financial assistance”). Gonzaga Univ., 526 U.S. at 283-84 & n.3.

The second factor, specificity, is relatively straightforward. The statute cannot be so vague that it is unclear what rights Congress has conferred to individuals. However, courts may look to the regulations to clarify the meaning of potentially ambiguous statutory terms. See, e.g., Wright, 479 U.S. at 431-432 (using regulation to clarify ambiguous term).

The final factor, mandatory language, involves attention to the “context of the entire statute and legislative history.” Wilder at 510. This factor thus involves careful attention to each word of the statute.

With these general principles in mind the Court will discuss the statutes Plaintiffs rely upon in their §1983 claim.

#### 42 U.S.C. §1396(a)(8)

Under 42 U.S.C. §1396(a)(8), a state Medicaid plan must “provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals.” Id. Regulations implementing this statute provide that applicants seeking Medicaid on the basis of a disability must have their eligibility determined within 90 days, and that all other applicants must have their eligibility determined within 45 days. 42 C.F.R. §435.911(a)(1)&(2) (2005).

In Sabree v. Richman, 367 F.3d 180 (3d Cir. 2004), the Third Circuit, applying the Blessing test, found that §1396(a)(8) provides a private right that is actionable under §1983. The Sabree court stated, “Without difficulty, we conclude that [§1396(a)(8) satisfies] the Blessing test because: (1) Plaintiffs were the intended beneficiaries of ... §1396(a)(8); (2) the rights sought to be enforced by them are specific and enumerated, not “vague and amorphous” and; (3) the obligation imposed on the states is unambiguous and binding.” Sabree, 367 F.3d at 189. The court also stated:

The [Supreme] Court identified the text of Titles VI and IX as exemplars of rights-creating language. Viewing Titles VI and IX, we find it difficult, if not impossible, as a linguistic matter, to distinguish the import of the relevant Title XIX language – “a state plan must provide” from the “No person shall” language of Titles VI and IX. Just as in Titles VI and IX, the relevant terms used in Title XIX are “mandatory rather than precatory.” Further, the “individual focus” of ... [section] 1396(a)(8) is unmistakable. The relevant Title XIX provisions enumerate the entitlements available to “all eligible individuals.” The provisions do not focus on “the [entity] ... regulated rather than the individuals protected.” Neither do the statutory references to the individual appear “in the context of describing the type of ‘policy or practice’ that triggers a funding prohibition.” Sabree at p. 190 (citations omitted).

Although Sabree is not binding precedent, this Court finds it persuasive. Defendants’ arguments are not sufficient to deter this Court from following Sabree. The Court concludes that Plaintiffs do have a private right of action under 42 U.S.C. §1396(a)(8). For each of Plaintiffs’ claims based upon alleged violations of this Medicaid statute, Defendants’ motion to dismiss is DENIED.

#### THE FOOD STAMP PROVISIONS INVOLVED IN THIS CASE CREATE A PRIVATE RIGHT OF ACTION WHICH IS ENFORCEABLE UNDER 42 U.S.C. §1983

Numerous courts have held that the various provisions of the Food Stamp Act provide a private right of action which is enforceable through §1983.

In Victorian v. Miller, 813 F.2d 718 (5<sup>th</sup> Cir. 1987) (en banc), the Fifth Circuit held “that food stamp claimants may bring an action under §1983 against state officials for violations of the Food Stamp Act.” Id. at 719. In making this determination, the court, in part, looked to the legislative history involved in the 1977 amendment to the Food Stamp Act. See id. at 724. In making the amendment, “the House Agricultural Committee Report stated: ‘The administrative remedies against the state contained in section 11(f) and elsewhere should not be construed as abrogating in any way private causes of action against states for failure to comply with federal statutory or regulatory requirements.’” Id. This legislative history makes clear that Congress intended to allow §1983 actions for violations of the Food Stamp Act.

In Reynolds v. Giuliani, 35 F.Supp.2d 331 (S.D.N.Y. 1999), the Federal District Court viewed the various statutory and regulatory provisions that set forth specific time tables and

rights to applicants who apply for food stamps. The court concluded these statutory provisions and regulations were intended to benefit individuals. The court stated: “[h]ere, plaintiffs have identified several specific provisions of the Food Stamp Act which Congress undoubtedly intended to benefit individuals such as the plaintiffs, and which impose unambiguous obligations on participating State agencies.” *Id.* at 340-41. In light of these specific benefits to individuals and the unambiguous obligation on states, the court concluded plaintiffs in that case had a private right of action enforceable under 42 U.S.C. §1983. *See id.*

Other cases that have recognized a private right of action to enforce the Food Stamp Act include *Haskins v. Stanton*, 794 F.2d 1273 (7<sup>th</sup> Cir. 1986), and *Robidoux v. Kitchel*, 876 F.Supp. 575 (D. Vermont 1995).

This Court chooses not to follow its previous ruling in *Monez v. Reinertson*, 04 CV 2275 (decided August 27, 2004). After a more careful review of the issue, the Court concludes that Plaintiffs do have a private right of action to enforce their rights under the Food Stamp Act through §1983. For each of Plaintiffs’ claims based upon alleged violations of the Food Stamp Act, Defendants’ motion to dismiss is DENIED.

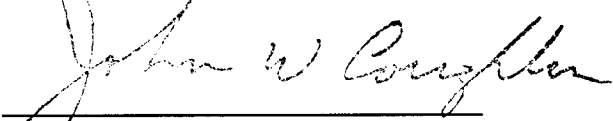
**THOSE PLAINTIFFS WHO ARE ELIGIBLE TO RECEIVE COLORADO WORKS, CHP PLUS, OR OLD AGE PENSIONS MAY ASSERT THEIR RIGHT TO ELIGIBILITY THROUGH THIS LAWSUIT**

*Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001) made it clear that those eligible to receive benefits from state welfare programs do have a property interest in those benefits that may be enforced. “[B]ecause plaintiffs had a property right, albeit not an unlimited one, in continued receipt of welfare benefits, plaintiffs were constitutionally entitled to procedural due process.” *Id.* at 477. *Weston* made it clear that Plaintiffs in this case may proceed with their cause of action. Defendants’ Motion to Dismiss Plaintiffs’ claims under the Estate Welfare Benefit Programs is DENIED.

**CONCLUSION**

The Motion to Dismiss for Plaintiffs’ lack of a private right of action under both the Federal and State benefit programs is DENIED.

Done this 21 day of January, 2005  
BY THE COURT:

  
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John W. Coughlin  
District Court Judge

Cc: All counsel