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Gregory VALENTINI, et al.
v.
Eric SHINSEKI, et al.

CASE NO.: CV 11-04846 SJO (MRWx)
|
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PROCEEDINGS:ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR RECONSIDERATION [Docket No. 83]

THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

***1** This matter is before the Court on Defendants Eric Shinseki and Donna M. Beiter's (collectively, "Defendants" or "Government") Motion for Reconsideration ("Motion"), filed on May 25, 2012. Plaintiffs filed an Opposition ("Opposition"), to which the Government replied ("Reply"). The Court found this matter suitable for disposition without oral argument and vacated the hearing scheduled for June 25, 2012. *See* Fed. R. Civ. P. 78(b). For the following reasons, the Court **GRANTS IN PART AND DENIES IN PART** the Government's Motion for Reconsideration.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Court's March 16, 2012 Order extensively details the allegations in the First Amended Complaint ("FAC"), which the Court will not endeavor to restate here. In short, Plaintiffs in this case are severely disabled veterans with mental disabilities, brain injuries, or both.[1] (*See* FAC ¶¶ 8-17, Aug. 12, 2011, ECF No. 24.) The FAC seeks redress for various harms Plaintiffs have allegedly suffered due to: (1) Defendants' failure to provide meaningful access to disability benefits to which Plaintiffs are entitled; and (2) Defendants' failure to comply with procedural requirements and misuse of land that might otherwise be used to provide services to veterans. (*See generally* FAC.) The FAC attempted to bring six causes of action against Defendants: one claim for violations of the Administrative Procedure Act, two claims for violations of the Rehabilitation Act, and three claims for violations of the Government's duties as trustee of a charitable trust. (*See generally* FAC.) Defendants filed a Motion to Dismiss, which the Court granted in part and denied in part. The Court permitted two of Plaintiffs' six claims to proceed. (*See generally* Mar. 16, 2012 Order, ECF No. 70.)

The Government argued in its Motion to Dismiss that the Veterans' Judicial Review Act ("VJRA") divests this Court of jurisdiction over Plaintiffs' two Rehabilitation Act claims. (Mot. to Dismiss 1315, Oct. 7, 2011, ECF No. 32.) Plaintiffs opposed this argument, initially citing the Ninth Circuit panel decision in the case *Veterans for Common Sense v. Shinseki*, 644 F.3d 845 (9th Cir. 2011), *rev'd en banc*, —— F.3d. ——, 2012 WL 1574288 (9th Cir. May 7, 2012). (Opp'n to Mot. to Dismiss 46.) However, after Plaintiffs filed their opposition brief to Defendants' Motion to Dismiss, the Ninth Circuit vacated the panel decision and agreed to hear the *Veterans for*

Common Sense case ("*VCS*") *en banc.* Accordingly, this Court was required to determine whether it had jurisdiction over Plaintiffs' Rehabilitation Act claims relying on authority other than *VCS.* The Court performed the analysis and, primarily relying on the D.C. Circuit's decision in *Broudy v. Mather*, 460 F.3d 106 (D.C. Cir. 2006), determined that it did have jurisdiction to rule on Plaintiffs' two Rehabilitation Act claims. (Mar. 16, 2012 Order 35-36.) Reaching the merits, the Court found that Plaintiffs failed to state a claim for facial discrimination, and dismissed that cause of action with leave to amend. (Mar. 16, 2012 Order 36-40.) However, the Court found that Plaintiffs adequately stated a claim for denial of meaningful access under the Rehabilitation Act, and permitted that claim to go forward. (Mar. 16, 2012 Order 34 n.13.) The other claim that survived the Government's Motion to Dismiss was Plaintiffs' claim for violation of the Administrative Procedures Act ("APA"). (Mar. 16, 2012 Order 18.) In the briefing on the Motion to Dismiss, the Government did not argue that the VJRA divested the Court of jurisdiction over Plaintiffs' APA claim.

***2** On May 7, 2012, the Ninth Circuit handed down its *en banc* decision in *VCS. Veterans for Common Sense v. Shinseki*, —— F.3d ——, 2012 WL 1574288 (9th Cir. May 7, 2012) (*en banc*). The Government filed the instant Motion for Reconsideration on May 25, 2012. The Government argues that, in light of the *en banc* decision in *VCS*, this Court lacks jurisdiction over **both** of Plaintiffs' remaining claims. (*See generally* Mot., May 25, 2012, ECF No. 83.) Accordingly, the Government seeks reconsideration of the Court's March 16, 2012 Order, which exercised jurisdiction over Plaintiffs' Rehabilitation Act claims and Administrative Procedure Act claim.

II. DISCUSSION

A. *Veterans for Common Sense*

In *VCS*, two organizations representing their members—veterans seeking mental health care benefits—sued officials in the Department of Veterans Affairs. The lawsuit raised three arguments: (1) the Veterans Health Administration ("VHA") used procedures that delayed care and lacked procedures for the veterans to expedite the care, which the plaintiffs claimed violated the Due Process Clause; (2) the Veterans Benefits Administration subjected veterans to delays in the adjudication and resolution of their disability compensation claims, allegedly violating the APA and the Due Process Clause; and (3) the Veterans Benefits Administration's practices and procedures—such as the absence of trial-like procedures at the Department of Veterans Affairs regional offices—allegedly violated veterans' constitutional rights. *VCS*, 2012 WL 1574288, at *2-3.

As in the instant case, the Government argued in *VCS* that the VJRA divested the trial court of jurisdiction to entertain these claims. Section 511 of the VJRA provides:

> The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

38 U.S.C. § 511(a). The Ninth Circuit engaged in a thorough review of the history of the VJRA. *VCS*, 2012 WL 1574288, at *4-10. The *VCS* court noted that "the VJRA supplies two independent means by which [federal district courts] are disqualified from hearing veterans' suits concerning their benefits." The first is the prohibition in § 511 ("may not be reviewed by ... any court...."); the second is Congress's decision to confer exclusive jurisdiction over such claims to the Veterans Court and the Federal Circuit. "Together, these provisions demonstrate that Congress was quite serious about limiting our jurisdiction over **anything dealing with the provision of veterans' benefits**." *Id.* at *7 (emphasis added).

After reviewing a number of cases from other circuits, the *VCS* court concluded that "§ 511 precludes jurisdiction over a claim if it requires the district court to review VA decisions that relate to benefits decisions, including any decision made by the Secretary in the course of making

benefits determinations." *Id.* at *10 (internal quotation marks and citation omitted). "This preclusion extends not only to cases where adjudicating veterans' claims requires the district court to determine whether the VA acted properly in handling a veteran's request for benefits, **but also to those decisions that may affect such cases**." *Id.* (emphasis added).

***3** Applying this standard to the claims before it, the *VCS* court held that it had no jurisdiction over two of the claims, but did have jurisdiction over the third. The Court noted that the first two causes of action argued that the plaintiffs were subjected to unreasonable delays, either in provision of their mental health care or in the adjudication of their disability compensation claims. The court noted that "Section 511 undoubtedly would deprive us of jurisdiction to consider an **individual** veteran's claim that the VA unreasonable delayed his mental health care." *Id.* at *11 (emphasis added). The court was unpersuaded by plaintiffs' argument that because their claim challenged **average** delays rather than the actual delay in any **individual** veteran's case, the resolution of the claim did not involve questions of law or fact necessary to a decision about providing benefits to an individual veteran. The court reasoned:

> [T]he average processing time does not cause veterans injury; it is only *their* processing time that is relevant.... The fact that VCS couches its complaint in terms of *average* delays cannot disguise the fact that it is, fundamentally, a challenge to thousands of individual mental health benefits decisions made by the VA. In order to determine whether the average delays alleged by VCS are unreasonable, the district court would have to review the circumstances surrounding the VA's provision of benefits to individual veterans. The district court does not acquire jurisdiction over VCS's complaint just because VCS challenges many benefits decisions rather than a single decision.

Id. at *12.

The VCS court **did** exercise jurisdiction over the third cause of action, which alleged that the lack of adequate procedures when veterans file claims for service-related disability benefits denied veterans procedural due process. The court held that the "jurisdictional question is a complex and close one." *Id.* at *16. Nevertheless, the court exercised jurisdiction because this claim did not require the court to review decisions affecting the provision of benefits for any individual claimants.

> VCS does not challenge decisions at all. A consideration of the constitutionality of the procedures in place, which frame the system by which a veteran presents his claims to the VA, is different than a consideration of the decisions that emanate through the course of the presentation of those claims. In this respect, VCS does not ask us to review the decisions of the VA in the cases of individual veterans, but to consider, in the "generality of cases," the risk of erroneous deprivation inherent in the existing procedures compared to the probable value of the additional procedures requested by VCS.

Id. at *17. Synthesizing these holdings, the critical inquiry is whether adjudication of the claim would require the district court to assess how any individual veteran's claim is handled (whether on its own, or in tandem with other veterans' claims). The *VCS* court held that it did have jurisdiction over the third claim because an analysis of the *Mathews v. Eldridge* factors, 424 U.S. 319 (1976), can be conducted without examining any individual veteran's claim; the analysis could be conducted in the abstract, or the "generality of cases." *VCS*, 2012 WL 1574288, at *17. However, an allegation that the VA's procedures result in unreasonable average delays would require an inquiry into the length of those average delays; but the average delays are really just a compilation of the individual delays experienced in individual cases.

With this framework in mind, the Court turns to the two causes of action remaining in the instant case to determine

if the VJRA divests the Court of jurisdiction.

B. Rehabilitation Act Claim

In the remaining Rehabilitation Act claim, Plaintiffs argue that the Government denied them meaningful access to services because they were not given the reasonable accommodation of permanent supportive housing. (FAC ¶ 117.) Plaintiffs assert that they cannot access VHA services because they are individuals with severe mental disabilities who cannot complete applications or persist through intake processes without assistance. (FAC ¶ 117.) Plaintiffs pray the Court to declare that the Government is denying Plaintiffs meaningful access to the VHA benefits offered by the Veterans Affairs Greater Los Angeles ("VA GLA") solely by virtue of their disability. (FAC Req. for Relief.) Plaintiffs also seek an injunction directing that the Government provide Plaintiffs permanent supportive housing as a reasonable accommodation for their disabilities. (FAC Req. for Relief.)

***4** In the briefing on the instant Motion, Plaintiffs attempt to draw parallels between their Rehabilitation Act claim and the claim over which the Ninth Circuit exercised jurisdiction in *VCS.* (Opp'n 2, June 4, 2012, ECF No. 84.) "Just as the claims in *VCS* challenging the procedures that frame the benefits adjudication system can be evaluated independent of DVA decisions about any individual veteran's eligibility for benefits, the violations of the [Rehabilitation Act] inherent in the VHA service delivery system can be determined without regard to DVA decisions regarding any individual veteran's entitlement to VHA services." (Opp'n 2.) As enunciated in *VCS*, however, the critical inquiry is not whether the lawsuit concerns veterans' entitlement to benefits. The VJRA precludes district courts from hearing a broader variety of cases than simply those cases challenging benefit entitlement decisions. Indeed, the two claims in *VCS* over which the Ninth Circuit held it lacked jurisdiction did not challenge entitlement to benefits; they challenged the average delays in provision of benefits and resolution of claims for compensation.

The test is whether, more broadly, the Court would be required to review how benefits were or are provided to any individual veteran. Applying this rule to the instant case, whether a desired accommodation—such as permanent supportive housing—is needed to give veterans meaningful access to their disability benefits does depend on a review and analysis of individual veterans' situations, and thus the VJRA bars this claim. To decide whether this accommodation is necessary, the Court would have to determine whether **particular veterans** are capable of meaningfully accessing their benefits without the aid of the desired accommodation. As the Government notes, different veterans who are Plaintiffs in this case have different objections to the VA's delivery based on their unique disabilities and circumstances: "Some say they cannot travel to the VA campus, FAC ¶¶ 117, 134, 198, while others allege they cannot negotiate the benefits application process, *id.* ¶¶ 117, 149, 188, 196, 217. The [Rehabilitation Act] claim is not 'one size fits all,' and is precluded under *VCS.*" (Reply 2-3, June 7, 2012, ECF No. 85.)

Even if the alleged barrier to access were the same for each afflicted veteran, the Court would still be required to assess the individual circumstances of each veteran to see if he or she is being denied meaningful access under the current system, and whether the requested accommodation is a reasonable remedy to that situation. This veteran-specific review is precisely what the Ninth Circuit has held district courts cannot entertain under the VJRA. The need for the reasonable accommodation of permanent supportive housing cannot be decided in the abstract, without considering the particular disabilities and circumstances of individual veterans; thus, this case is not like the claim over which the Ninth Circuit exercised jurisdiction in *VCS*, where the Court held that it could analyze the need for trial-like procedures in the "generality of cases." *VCS*, 2012 WL 1574288, at *17.
As discussed above, the Ninth Circuit noted that district courts would certainly lack jurisdiction over the claim of an individual veteran that his or her benefits were unduly delayed, and "[t]he district court does not acquire jurisdiction over VCS's complaint just because VCS challenges many benefits decisions rather than a single decision." *VCS*, 2012 WL 1574288, at *12. So too here, an individual veteran would certainly be precluded from arguing that the failure to provide him or her specifically with permanent supportive housing results in denial of meaningful access to benefits. Such a claim would necessarily require the Court to review "questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans." 38 U.S.C. § 511(a). Plaintiffs cannot avoid this jurisdictional problem by joining together and challenging the "system," rather than challenging an individual denial of permanent supportive housing.[2]

***5** In light of the Ninth Circuit's *en banc* decision in *VCS*,

the Court lacks jurisdiction over Plaintiffs' Rehabilitation Act claim. Accordingly, the Motion is **GRANTED** with respect to this claim, and the second cause of action is **DISMISSED WITHOUT LEAVE TO AMEND**.

C. Administrative Procedure Act Claim

Plaintiffs' APA claim asserts that land deals entered into by VA GLA were improperly executed in violation of the APA. (FAC ¶ 312.) Plaintiffs allege that they have suffered procedural and substantive injuries. (FAC ¶ 313.) Plaintiffs seek an injunction prohibiting VA GLA from executing under 38 U.S.C. §§ 8151-8153 (the statutes that authorize enhanced sharing agreements) any agreements that do not concern the sharing of health-care resources. (FAC Req. for Relief.) Plaintiffs pray the Court to declare that the Government violated 38 U.S.C. §§ 8151-8153 and 8161-8169 by entering into a number of enhanced sharing agreements unauthorized by any law or regulation. (FAC Req. for Relief.)

Just as in the briefing on the earlier Motion to Dismiss, the Government again attempts to characterize the relief sought in the APA claim as a mandate that the Government provide permanent supportive housing. (Mot. 12; Mot. to Dismiss 4-5.) This is **not** the relief sought in the APA claim. Plaintiffs simply seek a declaration that the disputed land-use agreements were unauthorized by law or regulation. (FAC Req. for Relief.) The Court has already noted:

> In their APA claim, Plaintiffs are not seeking an injunction ordering the Government to provide permanent supportive housing. Plaintiffs merely seek an injunction forbidding the Government from executing agreements as [Enhanced Sharing Agreements] that do not concern sharing of health-care resources.

(Mar. 16, 2012 Order 13.) If Plaintiffs prevail on this claim and the existing land-use agreements are deemed unlawful, Plaintiffs certainly **hope** that this land will be used to construct permanent supportive housing for their benefit. But this is not the relief sought in this claim; Plaintiffs recognize that if the existing land-use agreements are determined to be unlawful, the Government could choose to use the land for any lawful purpose, and the Government might **not** choose to use the land to create permanent supportive housing.

Indeed, it is clear from the Complaint that the APA claim does not directly concern the provision of veterans benefits at all. The direct focus of the APA claim is the alleged unlawfulness of the Government's land-use agreements. The VJRA's limitation on district courts' jurisdiction is not implicated simply because the resolution of this claim could possibly have some downstream effect on the provision of veterans benefits (i.e., if the current land-use agreements are declared unlawful, the Government **might** decide to use the land to provide permanent supportive housing).

Most importantly, the Court is capable of resolving the APA claim without the need to analyze the particular circumstances of any individual veteran. Resolution of the APA claim necessitates only a review of the content of the land-use agreements, a review of the procedures the Government followed in entering those land-use agreements, and an analysis of whether the procedures followed and the content of the deals complied with the applicable law. The Court will not be required to conduct inquiry into any individual veteran's request for benefits in order to determine if the land-use agreements were lawfully entered.

***6** The Court finds that the VJRA has no bearing on Plaintiffs' APA claim. The Motion is **DENIED** with respect to this claim.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' Motion, disposing of the claims as follows:

(1) The Court **GRANTS** the Motion with respect to the Rehabilitation Act claim and **DISMISSES** the claim without leave to amend;

(2) The Court **DENIES** the Motion with respect to the Administrative Procedure Act claim.

IT IS SO ORDERED.

All Citations Not Reported in Fed. Supp., 2012 WL 12882704

Footnotes

[1] The individual Plaintiffs are joined by the Vietnam Veterans of America, which asserts associational standing on behalf of its members. (FAC ¶ 45; Opp'n to Mot. to Dismiss 1 n.1, Oct. 21, 2011, ECF No. 35.)

[2] In the Court's earlier March 16, 2012 Order, the Court held that the critical inquiry to determine if the VJRA barred a claim was whether the claim challenged a systemic problem or whether it challenged an individual benefit determination. (Mar. 16, 2012 Order 34-36.) The Ninth Circuit has now held otherwise. Even challenges to system-wide procedures or practices are barred by the VJRA if resolution of the claim "implicates questions of law and fact regarding the appropriate method of providing benefits to individual veterans." *VCS*, 2012 WL 1574288, at *13.