

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10097-B

MICKIE STONE,

Plaintiff - Appellant,

versus

CENTENE CORPORATION,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Mickie Stone has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective April 19, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Craig Stephen Gantt, B, Deputy Clerk

FOR THE COURT - BY DIRECTION

*The fees were waived by
the clerk at the
federal court house in
Fort Lauderdale, Fla.
I only had my disability
at the time.*

Appellate
Court:

Case: 19-10097 Date Filed: 03/27/2019 Page: 1 of 1

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✓ ORDER:

Mickie Stone's motion for leave to proceed on appeal *in forma pauperis* is DENIED
because the appeal is frivolous. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002); 314 F.3d 528
§ 1915(e)(2)(B).


UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-63050-BLOOM/Valle

MICKIE STONE,

Plaintiff,

v.

CENTENE CORPORATION,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND DISMISSING CASE**

THIS CAUSE is before the Court upon Plaintiff Mickie Stone's ("Plaintiff") Motion for Leave to Proceed *in Forma Pauperis*, ECF No. [3] (the "IFP Motion"). Plaintiff filed this Action against Centene Corporation ("Defendant" or "Centene") on December 13, 2018. *See* Compl., ECF No. [1]. Plaintiff also filed a Motion for Referral to the Volunteer Attorney Program. ECF No. [4]. For the reasons stated below, the IFP Motion is denied and this matter is dismissed without prejudice.

Plaintiff, a *pro se* litigant, has not paid the required filing fee and, therefore, the screening provisions of 28 U.S.C. § 1915(e) are applicable. Pursuant to that statute, courts are permitted to dismiss a suit "any time [] the court determines that . . . (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." *Id.* § 1915(e)(2). Even under the relaxed pleading standard afforded to *pro se* litigants, *see Abele v. Tolbert*, 130 F. App'x 342, 343 (11th Cir. 2005), Plaintiff's Complaint fails.

A pleading in a civil action must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While a complaint “does not need detailed factual allegations,” it must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)’s pleading standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation”). Nor can a complaint rest on “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557 (alteration in original)). “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

Further, a “district court may act *sua sponte* to address the issue of subject matter jurisdiction at any time.” *Herskowitz v. Reid*, 187 F. App’x 911, 912–13 (11th Cir. 2006) (footnote call numbers and citations omitted). This is because federal courts are “‘empowered to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution,’ and which have been entrusted to them by a jurisdictional grant authorized by Congress.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999) (quoting *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994)).

In 2013, Plaintiff alleges that he was fired from his job as a case manager at Centene due to the Defendant’s discrimination against people with mental health issues. ECF No. [1], at 3. Plaintiff also alleges that he experienced harassment from his direct supervisors and that Centene’s human resources department encouraged him to quit his job. *Id.* Plaintiff states three causes of action against the Defendant, which include “HIPPA Violations,” “Mental Health Discrimination,” and “Harassment.” *Id.*

Upon a careful review of Plaintiff's Complaint, the Court has determined it is without a jurisdictional basis to proceed. As an initial matter, there is no basis for jurisdiction of a private action under the Health Insurance Portability and Accountability Act ("HIPAA"). *See Sneed v. Pan American Hosp.*, 370 Fed. Appx. 47, 50 (11th Cir.2010) ("We decline to hold that HIPAA creates a private cause of action."); *see also Bradley v. Pfizer, Inc.*, 440 Fed. Appx. 805, 809 (11th Cir. 2011) (relying on Fifth Circuit decision in holding for first time that "there is no private right of action for a violation of HIPAA's confidentiality provisions").

Concerning Plaintiff's remaining claims that relating to the Defendant's alleged discriminatory conduct against people with mental health issues, the Complaint cannot proceed. Plaintiff has failed to satisfy the conditions precedent of filing a Title VII charge with the Equal Employment Opportunity Commission ("EEOC") prior to initiating this lawsuit. The American Disabilities Act of 1990 ("ADA") protects individuals with disabilities from employment discrimination. "A precondition of filing a lawsuit alleging employment discrimination is the exhaustion of administrative remedies." *Clinton v. Delray Credit Counseling, Inc.*, No. 08-80828-CIV, 2008 WL 5054097, at *1-2 (S.D. Fla. Nov. 26, 2008). Before filing a statutory employment discrimination suit under the ADA, 42 U.S.C. §§ 12111 *et seq.*, a plaintiff must exhaust the available administrative remedies by filing a charge with the EEOC. *See* 42 U.S.C. § 2000e-5(e)(1) (within 180 days after the alleged unlawful employment practice occurred, a plaintiff must file a Title VII charge with the EEOC); 42 U.S.C. § 12117(a) (Title VII's remedies and procedures apply to the ADA); *Anderson v. Embarq/Sprint*, 379 F. App'x 924, 926 (11th Cir. 2010). Furthermore, as a condition precedent to seeking judicial relief, a plaintiff should show receipt of a right-to-sue letter from the EEOC pertaining to the alleged employment discrimination. *Pinkard v. Pullman-Standard*, 678 F.2d 1211, 1216 (5th Cir.

1982) *cert. denied*, 459 U.S. 1105, 103 S. Ct. 729, 74 L.Ed. 2d 954 (1983). An action for employment discrimination commenced by a plaintiff who has not satisfied the conditions precedent is subject to dismissal without prejudice. *Id.* at 1218. Here, Plaintiff has failed to satisfy the condition precedent of filing a charge with the EEOC and obtaining a right-to-sue letter prior to bringing the instant action. Thus, Plaintiff has not exhausted the administrative remedies available to him prior to seeking judicial relief.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's IFP Motion, ECF No. [3], is **DENIED**.
2. The Complaint, ECF No. [1], is **DISMISSED WITHOUT PREJUDICE**.
3. Defendant's Motion for Referral to Volunteer Attorney Program, ECF No. [4], is **DENIED as moot**.
4. The Clerk is instructed to **CLOSE** this case.

DONE AND ORDERED in Miami, Florida, this 17th day of December, 2018.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-cv-63050-BLOOM/Valle

MICKIE STONE,

Plaintiff,

v.

CENTENE CORPORATION,

Defendant.

ORDER DENYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

THIS CAUSE is before the Court upon Plaintiff Mickie Stone's ("Plaintiff") Motion for Permission to Appeal *In Forma Pauperis*, ECF No. [8] ("Motion"). The Court has reviewed the Motion, the applicable law, and is otherwise fully advised. After careful consideration of the Motion the Court denies the request *without prejudice* because the Motion does not satisfy the requirements of Federal Rule of Appellate Procedure 24.

Federal Rule of Appellate Procedure 24(a)(1)(C) states that a party desiring to appeal *in forma pauperis* must file a motion in the district court that attaches an "affidavit that . . . states the issues that the party intends to present on appeal." Fed. R. App. Pro. 24(a)(1)(C). Plaintiff states in her Motion that her case "was not reviewed properly," and that the "tolling rule should be in effect." ECF No. [8], at 1. Plaintiff's Complaint, ECF No. [1], however, was not dismissed due to the timing of the filing of the Complaint nor any perceived expiration of any applicable statute of limitations.¹

¹ The Court notes that it did not evaluate whether Plaintiff's Complaint has been timely filed, nor whether tolling provisions would apply.

The Order Denying Motion for Leave to Proceed *In Forma Pauperis* and Dismissing Case, ECF No. [6], specifically stated that Plaintiff's claims could not proceed because "there is no basis for jurisdiction of a private action under the Health Insurance Portability and Accountability Act ("HIPAA")" and because "Plaintiff has failed to satisfy the conditions precedent of filing a Title VII charge with the Equal Employment Opportunity Commission ("EEOC") prior to initiating this lawsuit." ECF No. [6], at 3. Plaintiff's Motion therefore does not adequately identify the "issues that [Plaintiff] intends to present on appeal" relating to the Court's Order, as required by Federal Rule of Appellate Procedure 24(a)(1)(C).

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion, ECF No. [8], is **DENIED WITHOUT PREJUDICE**.²

DONE AND ORDERED in Miami, Florida, this 9th day of January, 2019.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

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² Should the Plaintiff wish to proceed on her appeal, the Court also directs the Plaintiff to Federal Rule of Appellate Procedure 24(a)(5), which states that a "party may file a motion to proceed on appeal *in forma pauperis* in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1)." See Fed. R. App. P. 24(a)(5).