

PRESS RELEASE

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GOVERNMENT'S MOTION TO DISMISS *HALL V. SEBALIUS* MEDICARE LAWSUIT IS WITHOUT MERIT

LAWSUIT CHALLENGES SENIORS' RIGHTS TO KEEP SOCIAL SECURITY BENEFITS IF OPTING OUT OF MEDICARE

WASHINGTON, DC—U.S. District Court Judge Rosemary Collyer heard oral arguments Friday on the government's motion to dismiss a lawsuit challenging policies denying Social Security benefits to any senior who refuses to enroll in the Medicare hospital insurance program (Medicare Part A).

Originally filed in October, 2008 as *Brian Hall et al v. Michael Leavitt et al*, the lawsuit, now known as *Hall v. Sebelius*, asks the Court to permanently prohibit the Social Security Administration (SSA) and the Department of Health and Human Services (HHS) from forcing seniors into Medicare A through policies which were improperly adopted, the plaintiffs say, without required public notice and hearings.

"The arguments made by SSA and HHS lawyers in their motion to dismiss are baseless and don't address the real issue: the fact is that their policies are contrary to Social Security and Medicare laws and violate the Constitution," said Kent Masterson Brown, lead attorney for the plaintiffs in *Hall v. Sebelius*.

Government lawyers made the following two arguments:

- 1) The plaintiffs don't have standing to sue because they have not been harmed by the policies.

This is nonsense. Besides being denied the Social Security benefits to which they are entitled, the plaintiffs maintain that the health care services provided to Medicare beneficiaries are A) rationed (and will be rationed even more in the future based on the Trustees' projections), are B) inferior to those they can obtain privately, and C) are provided without concern for a patient's medical privacy. Furthermore, three of the Plaintiffs have lost much of their Federal Employee Health Benefits ("FEHB") coverage because they were forced into Medicare, Part A, as a condition of receiving their Social Security benefits and two other Plaintiffs are unable to collect their Social Security retirement benefits because the government's Social Security application - which they won't sign - requires them to accept Medicare, Part A, as a condition of

receiving Social Security. Each is losing nearly \$30,000 a year, money they will never be able to recover.

- 2) The plaintiffs have not exhausted all of the 'administrative remedies' available to them (i.e. they did not jump through enough bureaucratic hoops before seeking legal remedy).

This also is a specious argument. One of the plaintiffs has tried to resolve the matter administratively, as have other seniors who are not part of the lawsuit. They have all either gotten the bureaucratic runaround or no response at all. The Secretary of Health and Human Services has even informed one senior she will not decide such a request. Plaintiff John J. Kraus requested a hearing before an Administrative Law Judge in February 2006. He received no response to his request for more than three years. Beyond that, the issue raised by the Plaintiffs is not one that bureaucrats should decide. Although the government claims the Plaintiffs should exhaust administrative remedies, no procedures exist for the Plaintiffs to challenge the phantom regulations, creating a classic Catch-22 (telling them they must exhaust administrative remedies, while no administrative remedies exist). The issue obviously will have to be decided by the Court - and since the Plaintiffs are losing money and benefits, the Court should decide quickly.

“With the recent but not-surprising announcement that Social Security and Medicare are in worse financial shape than ever before, you'd think Washington would be happy if some seniors said ‘thanks, but no thanks’ to the costly Medicare hospitalization program” said Kent Masterson Brown. “The savings could be significant, according to our calculations.”

If just 1 percent of Medicare eligible seniors chose not to participate, Medicare expenditures would decrease by about \$1.5 billion per year immediately and by approximately \$3.4 billion per year by 2017. These not insignificant savings would continue to increase for several decades as the "Baby Boomers" retire.

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