

Ronald NEAL, Plaintiff,
v.
SANDHILLS CENTER, Defendants.

1:23-CV-1017.

United States District Court, M.D. North Carolina.

Signed June 11, 2024.

Ronald Neal, Greensboro, NC, Pro Se.

Thomas M. Van Camp, Van Camp Meacham & Newman, PLLC, Pinehurst, NC, for Defendant.

MEMORANDUM ORDER

THOMAS D. SCHROEDER, District Judge.

This case alleges disability discrimination. Before the court is the motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2), (b)(5), and (b)(6) by Defendant Sandhills Center. (Doc. 10.) Neal has responded in opposition (Doc. 13), Sandhills Center has replied (Doc. 14), and Neal has filed a surreply (Doc. 15).^[1] For the reasons set forth below, the Rule 12(b)(6) motion will be granted and the remaining motions will be denied without prejudice.

I. BACKGROUND

Plaintiff Ronald Neal appears pro se, and his pleadings "should not be scrutinized with such technical nicety that a meritorious claim should be defeated." Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). But the liberal construction of a pro se defendant's filing does not require the court to ignore clear defects in it, Bustos v. Chamberlain, No. 3:09-1760, 2009 WL 2782238, at *2 (D.S.C. Aug. 27, 2009), or to become an advocate for the pro se party, Weller v. Dep't of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990). See also Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985) (noting that "[d]istrict judges are not mind readers"). The facts alleged in the complaint, which the court accepts as true for the purpose of the motion to dismiss, show the following:

Ronald Neal is a resident of Greensboro, North Carolina. (Doc. 1 at 1.) Sandhills Center is a managed care organization in North Carolina that services Medicaid beneficiaries.^[2] (Id.) Neal began working for Sandhills Center in July 2016 as an In-Reach Specialist. (Id. at 6.) Sandhills Center posted job openings for Diversion Coordinators in November 2018 and listed a bachelor's degree as a required qualification. (Id.) While Sandhills Center hired one person for the role, Neal alleges that he and others thereafter carried out diversion coordinator duties while serving as In-Reach Specialists. (Id.)

In September 2021, Sandhills Center posted an opening for a Diversion Coordinator position again and listed a "License" and a bachelor's degree as required qualifications. (Id.) Neal was told by Sandhills Center that it "only ma[de] sense to hire [him]" because he was "already doing the job" and because he had obtained his bachelor's degree in 2020. (Id.) But Sandhills Center also informed him that the Tailored Care Plan^[3] requires that a person in the role be fully licensed. (Id.) While Sandhills Center emailed Neal the portion of the Plan indicating this requirement, he claims that Sandhills Center "discriminatorily left out the part of the Plan which states: 'Individuals with relevant and direct experience providing diversion services under [Transitions to Community Living Initiative]^[4] may continue to provide diversion services without meeting the minimum qualifications.'" (Id.) Neal alleges that "[d]ue to Sandhills[s] discriminating practices[,] Plaintiff was denied the job based on Plaintiff[s] mental health." (Id.)

In July 2022, Neal applied for the IDD-Care Coordinator position. (Id.) Sandhills allegedly told Neal that he did not have "the recommended two years of experience post bachelors" for the position. (Id.) He claims that Sandhills "blatantly has discriminated against Neal based on his mental health." (Id.)

In September 2023, Neal applied for an In-Reach Supervisor position. (Id. at 7.) Neal alleges that Sandhills did not hire him for the role because he "did not reveal a written warning." (Id.) Neal alleges that "Sandhills has consistently over the years been discriminating against [him] based on [m]ental health." (Id.)

In reliance on these allegations, Neal asserts a claim under 42 U.S.C. § 1981, Title VII, the Americans with Disabilities Act of 1990 ("ADA"), and Section 501 of the Rehabilitation Act of 1973. (Id. at 3.) On December 22, 2023, Sandhills Center moved to dismiss the complaint for lack of personal jurisdiction and improper service of process (on the grounds that the complaint was not served on a proper corporate representative and without any summons), and failure to state a claim upon which relief can be granted. (Doc. 10.) The motion has been fully briefed and is ready for resolution.

II. ANALYSIS

Ordinarily, the court would first address Sandhills Center's motion to dismiss the complaint for lack of personal jurisdiction and insufficient service of process pursuant to Rules 12(b)(2) and (b)(5), respectively. But there is no need to put Neal to the trouble of effecting proper service because the complaint nevertheless fails to state a claim. Therefore, the court proceeds to Sandhills Center's motion to dismiss pursuant to Rule 12(b)(6). See *Marino v. Nadel*, No. 17-cv-2116, 2018 WL 4634150, at *1 n.3 (D. Md. Sept. 27, 2018) (addressing Rule 12(b)(6) motion in lieu of addressing service defenses), *aff'd*, 763 F. App'x 305 (4th Cir. 2019).

A. Rule 12(b)(6) Standard of Review

Federal Rule of Civil Procedure 8(a)(2) provides that a pleading 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). A Rule 12(b)(6) motion to dismiss is meant to "test[] the sufficiency of a complaint" and not to "resolve contests

surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). To survive such a motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

In considering a Rule 12(b)(6) motion, a court "must accept as true all of the factual allegations contained in the complaint," Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (*per curiam*), and all reasonable inferences must be drawn in the non-moving party's favor, Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). However, the court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008). Rule 12(b)(6) protects against meritless litigation by requiring sufficient factual allegations "to raise a right to relief above the speculative level" so as to "nudge[] the[] claims across the line from conceivable to plausible." Twombly, 550 U.S. at 570, 127 S.Ct. 1955; see Iqbal, 556 U.S. at 678, 129 S.Ct. 1937. Thus, mere legal conclusions should not be accepted as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678, 129 S.Ct. 1937.

B. Sandhills Center's Rule 12(b)(6) Motion

Neal lists as applicable statutes "1977 (42 U.S.C. § 1981) Title VII The Americans with Disabilities Act of 1990 and Section 501 of the Rehabilitation Act of 1973." (Doc. 1 at 3.) Section 1981 prohibits race discrimination, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), prohibits discrimination on the basis of "race, color, religion, sex, or national origin." Giles v. Nat'l R.R. Passenger Corp., 59 F.4th 696, 702-03 (4th Cir. 2023) (requiring discrimination on the basis of race for a section 1981 claim); Clement v. Satterfield, 927 F. Supp. 2d 297, 307 (W.D. Va. 2013) ("[Section] 1981 does not prohibit discrimination on the basis of disability."). Here, because Neal has only alleged discrimination on the basis of "mental health," these provisions are inapplicable.^[5]

This leaves the ADA and Rehabilitation Act claims. While Sandhills Center correctly states that section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, does not apply to it because it is not a federal government agency (Doc. 11 at 4), the court construes Neal's complaint to plead a claim under section 504 of the Rehabilitation Act, 29 U.S.C. § 794, which prohibits disability discrimination "under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." Because the Fourth Circuit imposes the same requirements to establish liability under the Rehabilitation Act as under the ADA, and because the applicability of section 504 to Sandhills Center has not been briefed, the court assumes without deciding that section 504 applies. Koon v. North Carolina, 50 F.4th 398, 403, 403 n.2 (4th Cir. 2022) (stating that the "Fourth Circuit treats claims under the Rehabilitation Act and the ADA as the same" and analyzing claim under both statutes simultaneously); see also Waskul v. Washtenaw Cnty. Cmty. Mental Health, 979 F.3d 426, 458-64 (6th Cir. 2020) (discussing merits of section 504 claim against public community mental health authority).

Sandhills Center argues that neither the complaint nor the Equal Employment Opportunity Commission

("EEOC") charge contains an allegation of what his disability is other than a conclusory assertion of "mental health." (Doc. 11 at 5.) Neal contends in his response brief that he has a substance use disorder — namely, alcohol addiction. (Doc. 13 at 3.)

To state a claim for an ADA violation, Neal must allege that he "(1) has a disability; (2) was otherwise qualified to get some public program, service, or activity; and (3) was denied that program, service, or activity on the basis of his disability." Koon, 50 F.4th at 405. A disability is "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). Courts have "repeatedly rejected" alcohol addiction as a *per se* disability under the ADA. Chamberlain v. Securian Fin. Grp., Inc., 180 F. Supp. 3d 381, 398 (W.D.N.C. 2016) (collecting cases). While drug addiction "[u]nquestionably . . . constitutes an impairment under the ADA," a plaintiff still must allege that the impairment "substantially limits one or more major life activities" in order to allege a disability under the ADA. A Helping Hand, LLC v. Baltimore Cnty., 515 F.3d 356, 367 (4th Cir. 2008) (emphasis added).

Here, Neal has made only a bare assertion of a "mental health" issue in the complaint. (Doc. 1 at 6-7.) He specifies the condition, alcohol addiction, for the first time in his response brief to the motion to dismiss, which is impermissible for the court to consider. See E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc., 637 F.3d 435, 449 (4th Cir. 2011) (limiting consideration to the facts alleged in the complaint on a motion to dismiss); Sadler v. Pella Corp., 146 F. Supp. 3d 734, 759 n.13 (D.S.C. 2015) ("[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss." (internal quotation marks and citation omitted)).

Even if the court accepted Neal's conclusory assertion of alcohol addiction issues, the complaint, the EEOC charge, and the briefing on the motion to dismiss do not indicate the extent of the addiction such that the court could draw a reasonable inference that it "substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A).^[6] Accordingly, Neal has failed to allege that he is disabled as required to state a claim under the ADA and Rehabilitation Act. See Iqbal, 556 U.S. at 678, 129 S.Ct. 1937 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). As a result, Neal's complaint will be dismissed.^[7]

III. CONCLUSION

For the reasons stated, therefore,

IT IS ORDERED that Sandhills Center's motion to dismiss (Doc. 10) is GRANTED as to Neal's failure to state a claim upon which relief can be granted and DENIED AS MOOT as to lack of personal jurisdiction and improper service of process. Accordingly, the complaint is DISMISSED WITHOUT PREJUDICE.

[1] Local Rule 7.6 permits a surreply in limited circumstances. Sandhills Center has not objected to the filing of a surreply, and the court has considered it in light of Neal's pro se status.

[2] Sandhills Center has consolidated with Eastpointe Human Services and, in February 2024, together joined with Trillium Health Resources. See Trillium Health Resources, Consolidation Plan, at <https://www.trilliumhealthresources.org/sites/default/files/docs/About-Us/NewCounties/Trillium-Health-Resources-Consolidation-Plan.pdf> (last accessed June 11, 2024). No party has moved to substitute parties.

[3] North Carolina Department of Health and Human Services, Behavioral Health and Intellectual/Developmental Disabilities Tailored

Plan, at <https://medicaid.ncdhhs.gov/tailored-plans> (last accessed June 11, 2024).

[4] North Carolina Department of Health and Human Services, Transitions to Community Living, at <https://www.ncdhhs.gov/about/departments-initiatives/transitions-community-living> (last accessed June 11, 2024).

[5] To the extent Neal intended to plead a claim under 42 U.S.C. § 1981a, which provides for damages in the case of some intentional discrimination claims under the ADA, this claim would be denied, at a minimum, for the same reasons set forth below. See Kolstad v. Am. Dental Ass'n, 527 U.S. 526, 534-35, 119 S.Ct. 2118, 144 L.Ed.2d 494 (1999) (discussing section 1981a).

[6] In his surreply, Neal states that North Carolina requires his position to be held by someone with a "documented Severe Persistent Mental Illness [] or a Severe Mental Illness." (Doc. 15 at 1.) This assertion is not in the complaint, and Neal neither advocates for judicially noticing this fact nor files any judicially noticeable document in support of this job requirement. The court therefore cannot accept this factual assertion. Kolon Indus., Inc., 637 F.3d at 449.

[7] Sandhills Center raises for the first time in reply that two of the alleged promotion denials are untimely raised in the complaint. (Doc. 14 at 4.) Neal disagrees in his surreply. (Doc. 15 at 2.) Because the complaint is dismissed in any event, the court need not address this argument at this time. See Fort Bend Cnty. v. Davis, 587 U.S. 541, 139 S. Ct. 1843, 1851, 204 L.Ed.2d 116 (2019) (describing charge-filing rule as non-jurisdictional).

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