

LEONARD HARP, <i>et al.</i> ,	*	IN THE
<i>Plaintiffs,</i>	*	CIRCUIT COURT
v.	*	FOR
GOVERNOR LARRY HOGAN, <i>et al.</i> ,	*	BALTIMORE CITY
<i>Defendants.</i>	*	CASE NO. 24-C-21-002999
* * * * *	*	

MEMORANDUM

Plaintiffs, on their own behalf and behalf of all other similarly situated individuals, (“Plaintiffs”) filed an amended verified class action complaint against Governor Larry Hogan and Labor Secretary Tiffany Robinson. (Docket Entry No. 14.) Plaintiffs seek a declaratory judgment that Defendant Robinson violated Plaintiffs’ rights when she failed to “process and distribute legitimate unemployment insurance claims” and “failed to establish and execute policies required by statute to ensure timely claims processing and effective communication to [Plaintiffs].” (Pls.’ Am. Compl. Counts III and IV.) Pending before the Court is a motion to dismiss filed by Defendants Governor Hogan and Secretary Robinson. (Docket Entry No. 15.) Plaintiffs have filed an opposition. (Docket Entry No. 15/1.) The motion has been fully briefed. All counsel of record appeared for a hearing before the Court remotely on October 25, 2021. At the hearing, the parties agreed that Counts I and II of the amended complaint are moot. For the reasons set forth below, the Court will grant the motion to dismiss as to the remaining counts.

Standard of Review

In reviewing a motion to dismiss for failure to state a claim, the court must assume the truth of all well pleaded facts as well as all reasonable inferences that can be drawn from those facts. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010). Any ambiguity in the pleading of those facts must be construed against the pleader. *Figueiredo-Torres v. Nickel*, 321 Md. 642, 647 (1991). Whether to grant a motion to dismiss is based solely on the adequacy of the complaint. *Green v. H&R Block, Inc.*, 355 Md. 488, 501 (1999). “Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Pendleton v. State*, 398 Md. 447, 459 (2007) (quoting *Ricketts v. Ricketts*, 393 Md. 479, 492 (2006)).

Facts

The facts set forth in this section are taken from Plaintiffs’ amended complaint. Plaintiffs allege that due to the COVID-19 Pandemic, the country experienced its highest levels of unemployment since 1948. (Pls’ Am. Compl. ¶¶ 38-39.) In response, the President signed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act into law providing pandemic unemployment assistance and emergency unemployment compensation to certain unemployed workers. (Pls’ Am. Compl. ¶¶ 39-42.) Plaintiffs allege that the State of Maryland enrolled in the federal programs under the CARES act and is responsible for distributing federal unemployment

insurance funds and processing unemployment insurance claims. (Pls.' Am. Compl. ¶¶ 46-47.)

Plaintiffs claim that they have been denied “partial or complete access to the funds” provided by the federal programs. (Pls' Am. Compl. ¶ 49.) They assert that they have been “investigated for fraud”; “charged thousands of dollars for alleged overpayment”; “disqualified for benefits”; and “placed ‘on-hold’ status for months or indefinitely” without explanation or the opportunity for a hearing. (Pls.' Am. Compl. ¶¶ 50-53.) According to Plaintiffs, the denial of access to benefits has caused Plaintiffs “the possibility of home foreclosure, eviction, and car repossession.” (Pls' Am. Compl. ¶ 54.) Plaintiffs further allege that they have suffered adverse mental health consequences. (Pls' Am. Compl. ¶ 55.)

Plaintiffs bring claims against Defendant Secretary Robinson¹ for declaratory judgment under Md. Code Ann., Labor and Employment (“Lab. & Empl.”) §§ 8-102 and 8-106 asking the Court to declare that she failed to process and distribute legitimate unemployment insurance claims without cause or due process (Count III), and declaratory judgment under Lab. & Empl. § 8-109 asking the Court to declare that she failed to establish and execute policies required by statute to ensure timely processing of claims. (Count IV.)

¹ As set forth above, the parties agreed at oral argument that Counts I and II of the amended complaint are moot. Secretary Robinson is the only named Defendant with respect to Counts III and IV. Accordingly, there are no remaining claims against Governor Hogan constituting a separate basis for dismissal of the Governor as a defendant in this case.

Discussion

Private rights of action to enforce alleged statutory violations must be expressly or impliedly created by the General Assembly. See *Scull v. Groover, Christie & Merritt, P.C.*, 435 Md. 112, 121 (2013). In their amended complaint, Plaintiffs have not alleged an express right of action under Title 8 and conceded at oral argument that there is no express right of action under Lab. & Empl. §§ 8-102, 8-106, or 8-109. The dispute in this case concerns whether an implied right of action exists under Title 8.

In determining whether a private right of action can be implied to allow a claimed violation of a statute, the focus is on whether the General Assembly intended to provide a private right of action. *Fangman v. Genuine Title, LLC*, 447 Md. 681, 694 (2016). Maryland has adopted the Supreme Court's test in *Cort v. Ash*, 422 U.S. 66 (1975), in discerning the intent of the legislature for purposes of determining whether an implied right of action exists. *Baker v. Montgomery County*, 427 Md. 691, 709 (2012). The relevant factors established by *Cort* are:

First, is the plaintiff "one of the class for whose especial benefit the statute was enacted [.]" Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?

Baker, 427 Md. at 709 (quoting *Cort v. Ash*, 422 U.S. 66, 78 (1975)).

Class for Whose Benefit the Statute was Enacted

The first *Cort* factor favors Plaintiffs. The express legislative findings and policy set forth in Title 8 indicates that the General Assembly found that "economic

insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of the State.” Lab. & Empl. § 8-102(b)(1). It further found that the impact “falls with crushing force on the unemployed worker and the family of the unemployed worker.” Lab. & Empl. § 8-102(b)(2). This text plainly indicates the General Assembly’s intent to protect unemployed workers and their families.

The legislative history of Title 8 supports that it was enacted to benefit the unemployed. Plaintiffs rely on Lab. & Empl. § 8-109, which was adopted by the General Assembly and became effective on April 9, 2021. *See* 2021 Md. Laws Ch. 49 (H.B. 1002). The legislation required the Department to take specified actions related to applicants for unemployment benefits, including establishing procedures to enable applicants to track the status of a claim, establishing standards for the timely processing of claims, and tracking the percentage of laid-off workers who file a claim for benefits. *See* Fiscal Note, H.B. 1002 (2021). While the General Assembly directed the requirements of Title 8 to the Department, it is reasonable to conclude that it was done so for the benefit of unemployed workers.

Plaintiffs allege that they are applicants and/or recipients of unemployment insurance benefits. (Pl.’s Am. Compl. ¶¶ 6-34.) They claim that the Department has denied them access to those benefits. Among other allegations, they claim that the Department has not timely processed their claims, placed them on-hold status, and charged them for overpayments. (Pl.’s Am. Compl. ¶¶ 49-53.) The express language and legislative history of Title 8 suggest that they are within the class of persons for whose benefit Title 8 was enacted.

Legislative Intent to Create a Private Right of Action

The lack of any legislative intent to create a private right of action contained in Title 8 weighs the second *Cort* factor heavily in favor of Defendants. Neither the express language of the statutory provisions nor the legislative history of Title 8 make any mention of a private right of action. Plaintiffs have not cited to any such language. It would be inappropriate for the Court to infer such a right in absence of any indication on the part of the General Assembly.

The General Assembly established specific administrative procedures in Title 8 for the review of determinations for individuals who file claims for benefits. An individual is first entitled to file an appeal of a benefits determination with the Lower Appeals Division. Lab. & Empl. § 8-508(a). A hearing is held before a hearing examiner who makes findings of facts, conclusions of law, and may affirm, modify, or reverse a determination. Lab. & Empl. § 8-508(c). An individual may file an appeal of the hearing examiner's decision with the Board of Appeals. Lab. & Empl. § 8-5A-10(a). The Board of Appeals "may remand, affirm, modify, or reverse the findings of fact or conclusions of law" of the hearing examiner. Lab. & Empl. § 8-5A-10(c). Any party aggrieved by a decision of the Board of Appeals has the right to seek judicial review. Lab. & Empl. § 8-5A-12.

It is apparent from the statutory scheme that judicial review of final agency decisions was the mechanism established by the General Assembly for review of unemployment insurance claims made by unemployed workers. There is nothing in the legislative history specifically referring to any private remedy available to parties.

The absence of statutory language or reference in the legislative history supports the decision not to find an implied right.

Consistent with the Underlying Purposes of the Legislative Scheme

The final *Cort* factor is whether implying a private right of action in favor of Plaintiffs would be consistent with the legislative scheme. This factor also weighs in favor of Defendants. It would be inconsistent with the intent of the General Assembly to authorize a private right of action separate and apart from the administrative review procedures set forth in Title 8.

While Title 8 may have been enacted for the benefit of unemployed workers, the General Assembly vested the Department with the administration of unemployment insurance benefits. It detailed specific procedures for which applicants for unemployed insurance benefits could seek review of the Department's actions. There is no evidence that the General Assembly intended to provide private remedies to unemployed workers. As pointed out by Defendants, allowing private rights of action would interfere with the administrative functions of the Department and only further delay the timely processing of benefits claims. For all these reasons, the Court finds that the General Assembly did not intend to provide a private right of action under Title 8. This conclusion is supported by appellate precedent rejecting a private right of action under Title 8. *See Dep't of Econ. and Employment Dev. v. Lilley*, 106 Md. App. 744, 755 (1995) (Title 8 does not provide a remedy to an employee where an employer knowingly makes "a false statement or false representation or knowingly fail to disclose a material fact" related to unemployment benefits).

Declaratory Relief


Plaintiffs seek declaratory relief in Counts III and IV of their amended complaint. They have not identified any basis for pursuing declaratory relief in the absence of a private right of action. At oral argument, Plaintiffs' counsel conceded that the Court would need to find a private right of action under Title 8 for their case to go forward. Since this Court declines to find a private right of action under Title 8, Plaintiffs are barred from declaratory relief. *See Baker v. Montgomery County*, 427 Md. 691, 716 (2012) (no basis to obtain declaratory or injunctive relief where no private cause of action existed).

What is more, the Declaratory Judgment Act provides a court with the power to grant declaratory relief if "an actual controversy exists" between the parties. Md. Code Ann., Cts. & Jud. Proc. § 3-409(a). Allowing Plaintiffs to proceed with an action for declaratory relief under the circumstances presented here would essentially be allowing them to pursue a private right of action. The Declaratory Judgment Act should not be used to circumvent the requirements of a private right of action.

The Court is mindful of the impact on Plaintiffs of untimely processed claims, being placed on-hold status, and other delays associated with unemployment insurance benefits. This is especially true considering the COVID-19 pandemic. The responsibility for resolving these issues, however, has been placed with the Department. The General Assembly simply did not provide a separate remedy for Plaintiffs to bring suit under Title 8.

Accordingly, the remaining counts of Plaintiffs' amended complaint must be dismissed. A separate order follows.

4/2/2021
Date



JOHN S. NUGENT JUDGE
Circuit Court for Baltimore City

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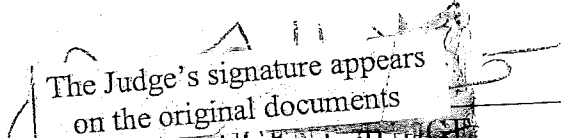
ORDER

For the reasons set forth in the foregoing Memorandum, it is this 2nd day of November 2021, hereby

ORDERED that Defendants Governor Larry Hogan and Labor Secretary Tiffany Robinson's motion to dismiss is **GRANTED**; and it is further

ORDERED that Counts I and II of Plaintiffs' amended complaint are **DISMISSED** as moot; and it is further

ORDERED that Counts III and IV of Plaintiffs' amended complaint are **DISMISSED** with prejudice.


 The Judge's signature appears
 on the original documents
~~JUSTIN S. NUGENT, JUDGE~~
 Circuit Court for Baltimore City