

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

SEAN P. SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 24-0074-I
)	
TENNESSEE DEPARTMENT OF)	
FINANCE & ADMINISTRATION,)	
DIVISION OF TENNCARE;)	
and STEPHEN SMITH, DIRECTOR OF)	
TENNCARE, in his official capacity,)	
)	
Respondents.)	

**ORDER DENYING PETITIONER’S
MOTION FOR ACCESSIBLE JUSTICE**

This matter came before the Court on May 10, 2024, on Petitioner Sean P. Smith’s *Motion for Accessible Justice – When are the Burdens of Litigation Discriminatory Against Disabled Adults?* Mr. Smith represents himself. Assistant Attorneys General Haylie C. Robbins, Taylor M. Davidson, and Reed N. Smith represent Respondents Tennessee Department of Finance & Administration, Division of TennCare, and Stephen Smith, Director of TennCare (together, “TennCare”).

Mr. Smith’s¹ motion includes extensive arguments concerning the “burdens of litigation” for him and other disabled persons, including the inadequacy of government financial assistance that would allow litigants to hire lawyers, the failure of the Tennessee legal community to provide him with competent counsel, the challenges of learning the Court’s procedural rules, and his own difficulties in bringing and participating in this lawsuit. He requests the following relief:

¹ Because Petitioner Sean Smith, Respondent Stephen Smith, and Assistant Attorney General Reed Smith share the same surname, all references to “Mr. Smith” herein are to Petitioner Sean Smith.

1. For the Court to provide the relief required to make Justice Accessible to Mr. Smith and other disabled adults in Tennessee with mental, cognitive, and physical disabilities compromising their ability to meet the burdens of litigation.
2. DEFEND THE DISABLED.

Pet. Motion.

In addition to his “Requested Relief,” Mr. Smith suggests that “the simplest and most complete remedy” would be “to provide . . . a competent attorney whose legal practice includes an area of focus for the issues involved in the complaint.” Alternatively, he requests the appointment of a “suitable representative” with appropriate legal knowledge and disability advocacy experience to assist with his litigation. Mr. Smith states that he “[does not] know what the right answer is here, other than . . . that an effective remedy is needed,” and the Court should “mak[e] justice accessible on an ongoing basis by addressing each problem that is anticipated or encountered that limits or prevents [his] access to justice throughout this case.”

TennCare responds that while it is sympathetic to Mr. Smith’s difficulties, he is not entitled to the appointment of counsel in this civil lawsuit, and his requests to “make justice accessible” and to “defend the disabled” are too vague and ill-defined to warrant relief.

In reply, Mr. Smith argues he does not seek appointed counsel because of his indigency, but because of his disabilities and, thus, claims a “conditional” right to legal assistance from an attorney or other “qualified representative.”² Mr. Smith also replies that he has clearly

² Despite this contention, Mr. Smith’s lengthy reply argument and citations to legal authority from multiple federal district courts and courts of appeals largely concern the appointment of counsel for indigent civil litigants and those litigants’ circumstances compared to his own. Mr. Smith also relies on Tennessee Supreme Court Rule 13, which establishes the procedures for appointing counsel when “an indigent party has a statutory or constitutional right to appointed counsel.” Mr. Smith has no constitutional right to appointed counsel in this civil case, nor any statutory right to counsel under either the American with Disabilities Act (“ADA”) or the Uniform Administrative Procedures Act (“UAPA”).

Mr. Smith relies on cases from the United States Court of Appeals for the Third Circuit. For example, in the Third Circuit Court of Appeals case of *Tabron v. Grace*, the court developed a list of criteria for the federal district courts within the Third Circuit to use when deciding whether to appoint counsel for

communicated his requested relief in his motion; and he only recognizes that it is not for him to say what the Court can and cannot do to make justice accessible to him.

Request for Appointed Counsel as an Indigent Civil Litigant. Under Tennessee law, indigent litigants in civil cases, like this one, have “neither a constitutional nor statutory right to court-appointed assistance” of counsel. *Hessmer v. Miranda*, 138 S.W.3d 241, 245 (Tenn. Ct. App. 2003) (citations omitted). Courts may, however, appoint counsel in civil cases under “exceptional” circumstances and at their discretion. *White v. Bacon*, M2004-02110-COA-R3-CV, 2006 WL 211810, at *4 (Tenn. Ct. App. Aug. 28, 2006). The Court finds this case does not present “exceptional” circumstances that warrant the appointment of counsel to an indigent civil litigant. While this case concerns important issues, the litigation itself is not complex. Mr. Smith seeks judicial review under the UAPA of a “complaint-appeal” he filed with TennCare, which that agency denied. Judicial review under the UAPA is limited to the record made before the agency. Tenn. Code Ann. § 4-5-322(g). Thus, this Court’s judicial review of the factual and legal issues before the agency and is narrow in scope. *Id.*, § 4-5-322(h).³ Before this Court, the record reveals that Mr. Smith has made extensive filings on his own behalf that include voluminous factual, historical, and legal research, and zealous advocacy.

Request for Appointed Counsel as an ADA Accommodation. The Americans with

indigent civil litigants under 28 USC § 1915(e)(1). 6 F.3d 147, 155-57 (3d Cir. 1993). In *Montgomery v. Pinchak*, a pro se inmate requested appointed counsel in a § 1983 action alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court denied the inmate’s request. 294 F.3d 492 (3d Cir. 2002). The Third Circuit Court of Appeals applied the *Tabron* factors and reversed the decision of the district court. *Id.* at 505. These cases are distinguishable from Mr. Smith’s in several ways, foremost is that he brings his petition for judicial review in Tennessee state court under Tennessee law, and 28 USC § 1915(e)(1), a federal statute, does not apply.

³ The Court scope of judicial review is limited to reversing or modifying the agency’s decision only if it prejudices Mr. Smith’s rights and (i) violates constitutional or statutory provisions; (ii) exceeds the agency’s statutory authority; (iii) was procedurally unlawful; (iv) was arbitrary or capricious or an abuse of the agency’s discretion; or (v) is unsupported by substantial and material evidence. Tenn. Code Ann. § 4-5-322(h)(1) - (5)(A).

Disabilities Act provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 USC § 12132. But the ADA does not require a public entity to provide an accommodation that “would result in a fundamental alteration in the nature of a service, program, or activity.” 28 CFR § 35.164. As noted above, there is no constitutional or statutory right to appointed counsel in civil cases in Tennessee. *Hessmer*, 138 S.W.3d at 245. This Court is not aware of any Tennessee decisions addressing the issue, but other states hold there is no right to counsel as a disability accommodation under the ADA.⁴ See *Smith v. Dugas*, No. 2019 CA 0852, 2020 WL 913673, *2 (La. App. 1 Cir. Feb. 26, 2020) (citing *Stone v. Town of Westport*, No. 3:04cv18 (JBA), 2007 WL 9754412, *1 (D. Conn. Feb. 23, 2007)); *Johnson v. City of Port Arthur*, 892 F.Supp. 835, 842-43 (E.D. Tex. 1995); *White v. Franks*, No. 2001-CA-001018-MR, 2003 WL 22520440, *3 (Ky. Ct. App. Nov. 7, 2003), *perm. app. denied* (Ky. Sup. Ct. Oct. 13, 2004)); *Alonso v. Alonso*, No. 18-23668-Civ-SCOLA/TORRES, 2020 WL 13538521, at *1-2 (S.D. Fla. July 10, 2020) (citing *Hunger v. Beck*, 244 F.App’x 848, 852-53 (10th Cir. 2007); *Douris v. New Jersey*, 500 F.App’x 98, 101 (3d Cir. 2012); *Pinson v. Equifax Credit Information Services, Inc.*, 316 F.App’x 744 (10th Cir. 2009)). See also *In re Kamdyn H.*, 2024 WL 733317, at *14 (Tenn. Ct. App. Feb. 22, 2024) (citing *Summers Hardware & Supply Co., Inc. v. Steeler*, 794 S.W.2d 358, 362 (Tenn. Ct. App. 1990) (cases from other jurisdictions, state and federal, “are always instructive, sometimes persuasive, but never controlling” on Tennessee courts)).

Even if the appointment of counsel were an available accommodation under the ADA, Mr.

⁴ Mr. Smith attached to his motion his correspondence with the Assistant General Counsel of the Administrative Office of the Courts, who serves as the State Judicial Branch ADA Coordinator. He advised Mr. Smith that the ADA does not provide a right to counsel for persons with disabilities, provided the statutory citation to the ADA to Mr. Smith, and attached several relevant court opinions.

Smith's difficulties, as he presents them, appear to stem more from his lack of legal education and the time and effort required to learn the Court's procedural rules, than from any cognitive or other disability. *See Powell v. Bartlett Medical Clinic and Wellness Center*, No. 2:20-cv-02118, 2021 WL 243194 (S.D. Ohio Jan. 25, 2021) (citing *Stone*, 2007 WL 9754412, *1) (appointment of counsel not warranted where it would accommodate plaintiff's "'unrepresentedness' and lack of legal education," not his disability). Despite Mr. Smith's unfamiliarity with court procedural rules, and his claim that the "burdens of litigation" is too much to bear, Mr. Smith has managed to file his petition; amend his petition; prepare and file affidavits; and file multiple motions, dense with legal research and analysis, seeking various forms of relief. Mr. Smith suggests that TennCare's pending motion to dismiss—"questioning whether or not" he has a case—is evidence of the complexity of his case and his inability to properly present it. But the legal merit of Mr. Smith's claim is before the Court on judicial review, it is not dependent on his "legal ability" to present it. In fact, licensed and experienced lawyers sometimes have their cases dismissed for failure to state a claim and, on the other hand, self-represented litigants can successfully defend a motion to dismiss. The Court does not find that Mr. Smith's disability warrants the appointment of counsel as an ADA accommodation in this case.

Alternative Relief. Finally, Mr. Smith proposes as an alternate form of relief that the Court appoint a disability advocate with legal knowledge to assist him in this litigation. He attached to his motion as an exhibit a 2018 Denver Law Review article advocating that the Colorado courts implement accommodations for pro se litigants with mental disabilities, as "a few court systems" have begun to do. In Tennessee, however, there are no programs or resources available through which the Court could grant this kind of relief.

The Court previously has noted that Mr. Smith is entitled to "fair and equal treatment" by this Court as a self-represented party, including providing him with "a certain amount of leeway

in drafting [his] pleadings and briefs,” and giving effect to their substance over their form. *Hessmer v. Hessmer*, 138 S.W.3d 901, 904 (Tenn. Ct. App. 2003) (citations omitted). The Court has and will continue to do so. For example, the Court previously granted Mr. Smith’s request for accommodations in the form of hearings scheduled for later in the mornings and conducted by videoconference to ease the burden of traveling to Nashville. Also, during oral argument on this motion, the Court reminded Mr. Smith and TennCare’s counsel that they parties may agree to waive oral argument on any motions, and the Court will decide the motion based upon the papers. See Local Rule 26.11(a).

Based on the foregoing, the Court respectfully DENIES Mr. Smith’s *Motion for Accessible Justice*.

IT IS SO ORDERED, and all other matters are reserved.

/s/ Patricia Head Moskal
PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class postage pre-paid, to the parties or their counsel named below:

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/s/ Bettie Ross
Deputy Clerk & Master

05/13/2024
Date