

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2513

DAVIS L. YERGER,
Appellant

v.

NORTHUMBERLAND COUNTY ASSISTANCE OFFICE;
PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 4-24-cv-01268)
District Judge: Honorable Malachy E. Mannion

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 3, 2024
Before: KRAUSE, PHIPPS, and ROTH, Circuit Judges

(Opinion filed: December 9, 2024)

OPINION*

PER CURIAM

Davis Yerger appeals pro se from the District Court's order adopting the
Magistrate Judge's Report and Recommendation (R&R) in its entirety, overruling his

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

objection, and dismissing with prejudice his complaint brought against Northumberland County Assistance Office (CAO) and the Pennsylvania Department of Human Services (DHS).¹ We will affirm, with one modification.

Yerger previously applied for and was denied Medical Assistance and Home and Community-Based Services (HCBS) benefits from the CAO in 2023. His appeal was also denied without prejudice after a hearing because the two homes he owns make him ineligible for the programs. He subsequently filed this pro se complaint alleging that the CAO violated the Social Security Act of 1983, 42 U.S.C. § 1396(a), and Goldberg v. Kelly, 397 U.S. 254 (1970), when it “discriminated against [him] by not providing benefits” and failed to provide him with a transcript of the appeal hearing. Complaint at 1-2. He seeks \$80,000 in retroactive homecare benefits. The Magistrate Judge’s R&R recommended dismissal for lack of subject matter jurisdiction due to the CAO’s Eleventh Amendment immunity. Yerger timely filed an objection to the R&R asserting only that his Fourteenth Amendment due process rights were violated because he has a right to state and federal benefits. The District Court adopted the R&R in its entirety, overruled Yerger’s objection, and dismissed his complaint with prejudice.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and review *de novo* whether a party is entitled to Eleventh Amendment immunity. See Maliandi v. Montclair State

¹ The R&R notes that the District Court clerk “mistakenly docketed Northumberland CAO and DHS as two separate defendants. . . . [though] the body of the complaint contains no reference to DHS at all.” R&R at 2 n.2. Our resolution of this case is the same regardless of whether Yerger sued one or both parties.

Univ., 845 F.3d 77, 82 (3d Cir. 2016). Under the Eleventh Amendment, a civil suit may not be brought in federal court against a state, a state agency, or a state department, regardless of the relief sought, unless the state waives its immunity from suit. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). Pennsylvania DHS and, by extension one of its local offices, Northumberland CAO² are entitled to Eleventh Amendment immunity because they are agencies of the Commonwealth of Pennsylvania, which has not waived its immunity here. See Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249, 254-55, n.5 (3d Cir. 2010).³

However, the District Court dismissed the complaint with prejudice when it should have dismissed it without prejudice, because Eleventh Amendment immunity is a “threshold, nonmerits issue that does not entail any assumption by the court of substantive law-declaring power.” Merritts v. Richards, 62 F.4th 764, 772 (3d Cir. 2023) (internal quotations omitted). We will therefore modify the District Court’s dismissal of this complaint to reflect that it is dismissed without prejudice. See Curry v. Yachera, 835 F.3d 373, 379 (3d Cir. 2016).

² See Lewis v. Alexander, 685 F.3d 325, 337 (3d Cir. 2012) (“The DPW operates county assistance offices throughout the Commonwealth to serve the citizens of Pennsylvania.”).

³ Though the Betts opinion refers to the Pennsylvania “Department of Public Welfare” (or “DPW”) and not DHS, they are one and the same—the name of the department was changed in 2014. See 62 Pa. Stat. and Cons. Stat. § 103; St. Luke’s Health Network, Inc. v. Lancaster Gen. Hosp., 967 F.3d 295, 298 (3d Cir. 2020) (referring to “the Department of Human Services (formerly the Department of Public Welfare)”).

In view of the above, we will affirm the District Court's judgment as modified.