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FSM SUPREME COURT TRIAL DIVISION

SEPE F. PALIKKUN and FRANCIS P. SIGRAH, as)	CIVIL ACTION NO. 2013-2002
Guardians for RICHARD TIMOTHY GEORGE,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
FSM SOCIAL SECURITY ADMINISTRATION and)	
the FSM SOCIAL SECURITY ADMINISTRATION)	
BOARD OF DIRECTORS,)	
)	
Defendants.)	
)	

ORDER GRANTING DISMISSAL

Dennis K. Yamase
Associate Justice

Decided: March 25, 2014

APPEARANCES:

For the Plaintiffs: Charlton Timothy
Canney Palsis, Esq. (Supervising attorney)
Micronesia Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

For the Defendants: Micahel J. Sipos, Esq.
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Kolonias, Pohnpei FM 96941

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HEADNOTES

Social Security; Statutes of Limitation

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun

v. FSM Social Sec. Admin., 19 FSM R. 314, 316 (Kos. 2014).

Social Security; Statutes of Limitation

When the Social Security Board's decision was entered on August 27, 2013, and was received by the plaintiff on September 17, 2013, the 60-day deadline would fall on October 26, 2013, which would have given the plaintiff 39 days to file her claim after service of the Board's decision. She thus had adequate time to file her claim, and when she failed to file her claim in time pursuant to 53 F.S.M.C. 708, the court is unwilling to extend the timeframe to file a claim when the statute's language is clear, and the complaint will be dismissed based on its filing being untimely under 53 F.S.M.C. 708. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

Civil Procedure – Before Responsive Pleadings; Statutes of Limitation

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

I. BACKGROUND

A Summons and Complaint were filed on November 5, 2013 by the Plaintiffs, Sepe F. Palikkun and Francis P. Sigrav, as Guardians for Richard Timothy George (George). On November 22, 2013, the Defendants, FSM Social Security Administration (FSMSSA) and the FSM Social Security Administration Board of Directors (Board), filed a Motion to Dismiss for Failure to State a Claim Upon which Relief can be Granted, pursuant to FSM Civil Rule 12(b)(6). The Plaintiffs filed an opposition to FSMSSA's and the Board's motion on December 23, 2013.

II. FACTS

Palikkun is the natural mother of Richard Timothy George. At the time of George's birth, Sepe Francis Palikkun was known as Sepe Timothy George. Timothy George is the wage earner for FSM Social Security benefits, and the grandfather of George. On October 13, 2004, the Kosrae State Court confirmed Timothy George's customary adoption of Richard Timothy George.¹ Timothy George died on October 2, 2011. Pl.'s Compl. Ex. "B."

Palikkun applied for surviving dependent's benefit with the FSM Social Security Administration (FSMSSA) on behalf of Richard Timothy George, which was denied by FSMSSA on February 1, 2012. Pl.'s Compl. Ex. "D." This decision was appealed to the Board, and on August 27, 2013, the denial of benefits was upheld. Pl.'s Compl. Ex. "E." The August 27, 2013 letter from the Board states that Palikkun may have the matter reviewed by the FSM Supreme Court Trial Division by filing a written petition within sixty (60) days of the entry of the order, pursuant to 53 F.S.M.C. 708. Pl.'s Compl. Ex. "E." The Summons and Complaint were filed on November 5, 2013, or approximately seventy (70)

¹ The complaint states that confirmation of this adoption is attached as Exhibit "C," however, no such exhibit is attached to the copy submitted to the court.

days after the entry of the order.

III. DISCUSSION

A. 53 F.S.M.C. 708

In the FSMSSA's Motion to Dismiss, a statute of limitation argument is made, claiming that Palikkun's claim is time barred because it was filed ten (10) days outside of the required 60-day filing period. Palikkun, states that the decision by the Board was not served on her until September 17, 2013, which would allow her up until November 16, 2013 to file her appeal.

The timeframe in which to appeal a decision of the FSMSSA Board is governed under 53 F.S.M.C. 708, which states

Any person aggrieved by a final order of the Board may obtain a review of the order in the Trial Division of the Supreme Court of the Federated States of Micronesia by filing in Court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served on the Board, by service on its secretary or other designated agent, and thereupon the Board shall certify and file in Court a copy of the record upon which the order was entered. The findings of the Board as to the facts, if supported by competent, material, and substantial evidence, shall be conclusive. If either party applies to the Court for leave to adduce additional material evidence and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the Court may order the additional evidence to be taken by the Board and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The judgment of the Court upon the record shall be final, subject to review by the Appellate Division of the Supreme Court upon petition of any aggrieved party, including the Board, within 60 days from judgment.

In Andrew v. FSM Social Security Administration, 12 FSM Intrm. 101 (Kos. 2003), this court dealt with a similar issue. In Andrew, the Board entered its decision on May 6, 2003, but was not mailed to the petitioner until May 14, 2003, and was not received until May 19, 2003.² *Id.* at 103-04. The petitioner argued that an additional six (6) days, pursuant to FSM Civil Rule 6(e), should be added to the sixty (60) day requirement under 53 F.S.M.C. 708. The Andrew court held

Since the statute is silent, the court will not add additional time. A factor the court considers is that 60 days is the time given in which a claimant may decide to appeal. This is a considerable amount of time, and even given the exigencies of mail service in Micronesia, equitable considerations do not require that additional time be given. Sixty calendar days from the date of the letter was adequate.

[Andrew, 12 FSM Intrm. at 104.]

² In the companion case cited as Andrew v. FSM Social Sec. Admin., 12 FSM Intrm. 78 (Kos. 2003), the complaint was filed on July 14, 2003. If the 60-day requirement began to run on May 19, 2003, as suggested by the petitioner, the filing of the complaint would have been valid.

Palikkun v. FSM Social Sec. Admin.
 19 FSM R. 314 (Kos. 2014)

The Board's decision was entered on August 27, 2013, and was received by Palikkun on September 17, 2013. The 60-day deadline would fall on October 26, 2013, which would have given Palikkun thirty (39) days to file her claim after service of the Board's decision. In line with the holding in Andrew, the court finds that Palikkun had adequate time to file her claim, and she failed to file her claim in time pursuant to 53 F.S.M.C. 708. The court is unwilling to extend the timeframe to file a claim when the language of the statute is clear.

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM Intrm. 223, 228 (Pon. 2005). Accordingly, the Plaintiff's complaint is dismissed based on its filing being untimely under 53 F.S.M.C. 708.

B. *Other Claims*

Palikkun makes a claim for violation of procedural due process under the FSM Constitution, and that Public Law 15-73 does not apply to this matter. Because the court finds that the Palikkun's complaint is untimely, and as a result, dismisses the complaint, the other issues presented need not be considered.

IV. CONCLUSION

The Defendant's Motion to Dismiss is HEREBY GRANTED. The Plaintiff's complaint is DISMISSED.

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FSM SUPREME COURT APPELLATE DIVISION

GINN P. NENA,)	APPEAL CASE NO. K7-2013
)	Civil Action No. 39-2013
Appellant,)	
)	
vs.)	
)	
HAMLIN SAIMON, JOSHAIA SAIMON,)	
and LENORA SIGRAH,)	
)	
Appellees.)	
_____)	

OPINION

Argued: February 19, 2014
 Decided: March 26, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
 Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
 Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court