

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CAROL A. HUTCHINSON,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT	:	
OF PUBLIC WELFARE,	:	
Defendant.	:	No. 05-1724

MEMORANDUM AND ORDER

Schiller, J.

October 11, 2005

Pro se Plaintiff Carol Hutchinson brings her Complaint against the Commonwealth of Pennsylvania Department of Public Welfare, seeking general assistance benefits from the Commonwealth of Pennsylvania. Presently before the Court is Defendant's motion to dismiss the Complaint on sovereign immunity grounds and for improper service.¹ For the reasons set forth below, the Court must grant the motion.

I. BACKGROUND

Although it is not necessary for the disposition of Defendant's motion, the Court will briefly set forth the facts underlying Plaintiff's Complaint. In the Complaint, Plaintiff seeks assistance benefits to which she claims she is entitled. Plaintiff is from Jamaica and has lived in the United States since 1971. (Hutchinson Adjudication, Case No. 512761407-001, attached to Pl.'s Compl.) In September of 2004, Plaintiff relocated to Pennsylvania from New York. (*Id.*) She asserts that when she applied for welfare benefits on November 28, 2004, she informed the social worker that

¹ Plaintiff has not responded to Defendant's motion. Nonetheless, the Court will consider its merits.

her social security card and alien registration card were stolen. (Compl.) However, she did provide her alien registration number, a New York welfare card and a letter from her landlord. (*Id.*) She contends that her cash benefits from New York were discontinued, but that she still receives food stamp benefits from New York. (Hutchinson Adjudication, Case No. 512761407-001.) Plaintiff was subsequently denied assistance because she was unable to provide verification of her alien status and verification of her cash and food stamp benefit status in New York. (*Id.*) She appealed that decision and on March 16, 2005, her appeal was sustained in part and denied in part. The Administrative Law Judge concluded that Plaintiff was prohibited from simultaneously receiving food stamp benefits in more than one state but also concluded that she had cooperated in attempting to provide verification of her alien status and her cash assistance status from New York. (*Id.*) The Philadelphia County Assistance Office was therefore directed to accept Plaintiff's statement that she is a permanent resident and to reconsider her general assistance application while helping her obtain the required verification. (*Id.*) Plaintiff, who claims that she is still not receiving assistance, filed her Complaint on April 19, 2005, after being permitted to proceed *in forma pauperis*.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) allows a court to dismiss a lawsuit for lack of subject matter jurisdiction. Although Defendant's motion relies on the standards for a 12(b)(6) motion to dismiss for failure to state a claim, a claim that a lawsuit is barred by the Eleventh Amendment is properly addressed in a 12(b)(1) motion. *See Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 694 n.2 (3d Cir. 1996) (stating that "Eleventh Amendment is a jurisdictional bar which deprives federal courts of subject matter jurisdiction"). Indeed, the Third Circuit has "cautioned

against treating a Rule 12(b)(1) motion as a Rule 12(b)(6) motion and reaching the merits of the claims” because “the standard for surviving a Rule 12(b)(1) motion is lower than that for a 12(b)(6) motion.” *Gould Elecs., Inc. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000) (citing *Kehr Packages, Inc. v. Fidelcor*, 926 F.2d 1406, 1409 (3d Cir. 1991)).

When considering a motion to dismiss under Rule 12(b)(1), a district court must distinguish between facial and factual challenges to its subject matter jurisdiction. *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977). “In a facial attack, a defendant argues that the plaintiff did not properly plead jurisdiction . . . [whereas] a ‘factual’ attack asserts that jurisdiction is lacking on the basis of facts outside of the pleadings.” *Smolow v. Hafer*, 353 F. Supp. 2d 561, 566 (E.D. Pa. 2005) (citing *Mortensen*, 549 F.2d at 891). In reviewing a facial attack, such as the attack made here, “the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.”² *Gould Elecs.*, 220 F.3d at 176 (citations omitted). Furthermore, because Plaintiff is acting pro se, the Court must liberally construe her Complaint and “apply the applicable law, irrespective of whether [she] has mentioned it by name.” *Seville v. Martinez*, Civ. A. No. 04-5767, 2005 WL 289906, at *2 (E.D. Pa. Feb. 4, 2005) (quoting *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002)).

III. DISCUSSION

The Eleventh Amendment bars lawsuits against states by private parties, including those brought by a state’s own citizens; this immunity extends to lawsuits against state agencies that have

² When a factual attack is made, however, the court is not confined to the allegations in the complaint and “can look beyond the pleadings to decide factual matters relating to jurisdiction.” *Cestonaro v. United States*, 211 F.3d 749, 752 (3d Cir. 2000) (citation omitted).

no existence apart from the state. *See Jones v. Pa. Dep't of Pub. Welfare*, Civ. A. No. 03-3610, 2004 U.S. Dist. LEXIS 9915, at *17-*18 (E.D. Pa. May 27, 2004) (citing *Laskaris v. Thornburgh*, 661 F.2d 23, 25 (3d Cir. 1981)); *see also Coxson v. Pennsylvania*, 935 F. Supp. 624, 626 n.2 (W.D. Pa. 1996) (citing cases that have applied Eleventh Amendment immunity to actions brought by citizens of the defendant state).

Here, the only party that Plaintiff has named in her Complaint is the Pennsylvania Department of Public Welfare. By statute, the Department of Public Welfare is a political subdivision of the Commonwealth. 71 PA. STAT. ANN. § 61 (2005). Accordingly, Defendant lacks an existence apart from the Commonwealth. *See Scott v. Pa. Dep't of Pub. Welfare*, Civ. A. No. 02-3799, 2003 U.S. Dist. LEXIS 18081, at *10 (E.D. Pa. Aug. 28, 2003) (citing cases that support conclusion that Department of Public Welfare has no existence apart from the Commonwealth and is therefore entitled to Eleventh Amendment immunity). As one court has noted, “[T]he Department of Public Welfare is a part of the Commonwealth of Pennsylvania and subject to its Eleventh Amendment immunity. The Department is specifically designated as an ‘administrative department’ of the Commonwealth and all of its powers and duties are exercised as an administrative arm of the state.” *Flesch v. E. Pa. Psychiatric Inst.*, 434 F. Supp. 963, 977 (E.D. Pa. 1977). Therefore, a suit against the Department of Public Welfare is a suit against the Commonwealth.³ As noted previously, lawsuits against agencies that lack an existence apart from the Commonwealth are barred by the

³ On the local level, various County Boards of Assistance are charged with administering the Commonwealth’s public assistance program. *See* 62 PA. STAT. ANN. §§ 415, 419 (“Each county board shall: Administer public assistance in the county, and determine the eligibility for assistance of applicants and continued eligibility for assistance of persons. . . .”). These local offices are designated as parts of the Commonwealth under the Department of Public Welfare. *See Jones*, 2004 U.S. Dist. LEXIS 9915, at *17.

Eleventh Amendment. *See Coxson*, 935 F. Supp. at 626 (“It is well established that the Eleventh Amendment bars civil rights actions in federal court where the suit is brought by a private party against a state or agencies or departments created by the state which have no existence apart from the state.”) (citations omitted).

Although a state may waive its Eleventh Amendment immunity, Pennsylvania has explicitly declined to do so: “Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.” 42 PA. CONS. STAT. ANN. § 8521(b). Furthermore, “[t]he Third Circuit has repeatedly held that state agencies like the [Department of Public Welfare] are entitled to Eleventh Amendment immunity.” *Nelson v. Pa. Dep’t of Pub. Welfare*, 244 F. Supp. 2d 382, 390 (E.D. Pa. 2002) (citations omitted). Accordingly, Plaintiff’s claim against the Department of Public Welfare cannot stand.

IV. CONCLUSION

Because Plaintiff has sued a unit of the Commonwealth with no existence apart from the Commonwealth and Pennsylvania has not waived its Eleventh Amendment immunity, the Court grants Defendant’s motion and dismisses the Complaint.⁴ An appropriate Order follows.

⁴ Because the Court lacks subject matter jurisdiction over this action, there is no need to address whether Plaintiff properly served Defendant.

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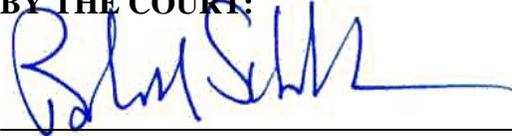
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Plaintiff,	:	
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COMMONWEALTH OF	:	
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OF PUBLIC WELFARE,	:	
Defendant.	:	No. 05-1724

ORDER

AND NOW, this 11th day of **October, 2005**, upon consideration of Defendant's Motion to Dismiss the Complaint, and for the foregoing reasons, it is hereby **ORDERED** that:

1. The Motion (Document No. 5) is **GRANTED**.
2. Plaintiff's Complaint is **DISMISSED with prejudice**.
3. The Clerk of Court is directed to close this case.

BY THE COURT:



Berle M. Schiller, J.