

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
SOUTHERN CRESCENT)	CASE NO. 10-73264 - MHM
REHABILITATION &)	
RETIREMENT COMMUNITY, INC.,)	
)	
Debtor.)	
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SOUTHERN CRESCENT)	
REHABILITATION & RETIREMENT)	
COMMUNITY, INC.,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 11-5284
HUMANA INSURANCE COMPANY,)	
)	
Defendant.)	

DISMISSAL ORDER

Plaintiff filed a *Complaint for Turnover* seeking payment from Defendant of a debt for care and services provided by Plaintiff's traumatic brain injury center. Plaintiff seeks turnover in Count I under 11 U.S.C. §542; in Count II under O.C.G.A. §9-2-7 (implied obligations to pay); and in Count III under O.C.G.A. §33-4-6 (liability of insurer for damages and attorney's fees on bad faith refusal to pay claims). Although not specifically alleged in the complaint, the exhibits attached to the complaint indicate that the claims Plaintiff submitted to Defendant were Medicare claims.

Defendant filed a motion to dismiss the complaint under Fed. R. Civ. Proc. 12(b)(1) and (6), incorporated in Bankruptcy Rule 7012, alleging that Plaintiff's claims for relief are preempted by federal Medicare law; that Plaintiff failed to plead exhaustion of administrative remedies; that, as to Count I, §542 does not provide for turnover when the claims are disputed; and that, as to Count III, Plaintiff failed to plead bad faith. Plaintiff's untimely response to Defendant's motion to dismiss failed to cite any case or statutory law and failed to attempt to distinguish any of the law cited by Defendant.

Defendant shows that Plaintiff's state law claims, Counts II and III are preempted by the Social Security Act provision regarding the Medicare Advantage program, 42 U.S.C. §1395w-26(b)(3). *See also* 42 C.F.R. §422.402. Additionally, the Social Security Act requires exhaustion of administrative remedies before a party may seek judicial review. *Uhm v. Humana, Inc.*, 620 F. 3d 1134 (11th Cir. 2010). Neither the complaint nor Plaintiff's response to the motion to dismiss present or allege exhaustion of administrative remedies. Finally, the exhibits attached to the complaint indicate the claims Plaintiff asserts against Defendant are disputed. Disputed claims are not subject to turnover under 11 U.S.C. §542. Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is *granted*.

The Clerk is directed to serve a copy of this order upon counsel for Plaintiff, counsel for Defendant, and the U.S. Trustee.

IT IS SO ORDERED, this the 30th day of March, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE