

misunderstood a party, has made a decision outside the adversarial issues presented to the Court by the parties, has made an error not of reasoning but of apprehension, or where a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the Court.” *Singh*, 383 F. Supp. 2d at 101 (quoting *Cobell v. Norton*, 224 F.R.D. 266, 272 (D.D.C. 2004)). The burden is on the movant to show that some harm would accompany a denial of the motion to reconsider. “In order for justice to require reconsideration, logically, it must be the case that, some sort of ‘injustice’ will result if reconsideration is refused. That is, the movant must demonstrate that some harm, legal or at least tangible, would flow from a denial of reconsideration.” *Cobell v. Norton*, 355 F. Supp. 2d 531, 539 (D.D.C. 2005).

When one becomes entitled to Social Security retirement benefits, one gets to choose whether to participate in that program or not. However, when one becomes entitled to hospital health insurance under Medicare, Part A, coverage is automatic and there is no choice. Plaintiffs essentially challenge SSA’s interpretation of “entitled” with respect to Medicare, Part A. The Defendants argue that the Social Security Act, 42 U.S.C. § 401 *et seq.*, “does not currently provide any mechanism for individuals who are entitled to monthly Social Security benefits to avoid or extinguish the resulting automatic entitlement to Medicare, Part A.” Defs.’ Mem. In Supp. of Mot. to Dismiss (“Defs.’ Mem.”) [Dkt # 12] at 4; *see id.* at 1-3, 5-8, 13-15, 18, 20, 21 nn. 17 & 18, 29-31; Defs.’ Reply [Dkt # 18] at 2, 3-6, 8-10, 14-18. Although repeated, this statement is inaccurate to describe the immediate issue: Plaintiffs do not want to “avoid or extinguish” their entitlement to Medicare, Part A. The entitlement is not the problem; one can be entitled and not participate. Plaintiffs want to receive Social Security benefits, to which they are entitled and for which they have applied, and avoid participation in Medicare, Part A, at least for now, even though they are also

entitled to such health insurance benefits.

In the time following the Court's Order on Defendants' motion to dismiss, Plaintiff John Kraus has received a decision from an SSA Administrative Law Judge² to the effect that "[t]here is no provision in the regulations that allows a beneficiary to withdraw once entitled or to 'disenroll' from Medicare Part A. Accordingly, the regulations do not permit the relief sought by the appellant, and Mr. Kraus' request to 'disenroll' from Medicare Part A is denied." Defs.' Mot. for Recons. [Dkt. # 30], Ex. A (Certified Records, ALJ Appeal No. 1-423622041 Decision). The ALJ concluded, as a matter of law, that "[t]he beneficiary/appellant may not withdraw from Medicare Part A coverage." *Id.* Mr. Kraus filed an appeal to the Medicare Appeals Council, which refused to review the ALJ's decision because "the law and regulations currently in effect do not provide for the relief the appellant seeks." Defs.' Mot. for Recons., Ex. A (Certified Records, Action of Medicare Appeals Council). In fact, the Social Security Act and regulations do not appear to specify — one way or the other — whether a retiree entitled to Social Security benefits and also entitled to Medicare, Part A, can elect to participate in one program and not the other. The *only* place where this is specified is in the POMS. Since a retiree clearly has a choice as to whether to apply for and receive Social Security benefits — to which s/he is entitled — it is not at all clear why the same retiree does not, under the law and regulations, have a choice as to whether to apply for and receive Medicare, Part A, benefits. The "entitlement" language on which the Defendants seem to base their arguments is the same but, because of the POMS, the result is very different.

² This Court has no jurisdiction to review, sustain, or reverse the administrative decisions in Mr. Kraus's case but notes only that both decisions were based solely on the absence of language in the law and regulations — thereby carefully avoiding any mention of the Program Operations Manual System ("POMS"). The absence of language is an unusual platform on which to base a legal decision.

