

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

LORRAINE ELLIS CARSON, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	
RAILROAD RETIREMENT BOARD	:	
and UNITED STATES SOCIAL	:	No. 03-5230
SECURITY ADMINISTRATION,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

September 21, 2004

Plaintiffs Lorraine Ellis Carson (“Carson”), Ometa Ellis Richardson (“Richardson”), Jerry Ellis, and Gregory Ellis bring this action against Defendants United States Railroad Retirement Board (“RRB”) and United States Social Security Administration (“SSA”) to secure survivorship benefits based on the employment of their deceased father, Camillus Ellis. Richardson also seeks reinstatement of her insurance benefits as a disabled adult child. Presently before this Court are Defendants’ motion to dismiss Plaintiffs’ Complaint or, in the alternative, for summary judgment and numerous motions filed by Plaintiffs.¹ For the reasons set forth below, I grant Defendants’ motion to dismiss Plaintiffs’ claims for survivors’ benefits, grant Defendants’ motion for summary judgment on Richardson’s claims for reinstatement of disability benefits, and deny Plaintiffs’

¹ These are: Plaintiffs’ Motion to Rescind the Court’s Order of June 23, 2004 Granting Defendants’ Motion for Leave to File a Reply Brief; Plaintiffs’ Motion to Dismiss Defendants’ Motion to Dismiss, or, in the Alternative, for Summary Judgment; Plaintiffs’ Motion for Judgment by Default or Judgment on the Pleadings, Summary Judgment, or Declaratory Judgment; and Plaintiffs’ Motion for a Hearing to Determine the Calculation and Payment of the Amounts Owed to Plaintiffs by Defendants.

motions in their entirety.

I. MOTION TO DISMISS

A. Background

This is the third litigation filed by Plaintiffs relating to an identical factual background. *See Carson v. United States R.R. Ret. Bd.*, No. 96-3265 (3d Cir. Dec. 23, 1996) (“*Carson I*”) (denying petition for review of RRB’s final order); *Carson v. United States R.R. Ret. Bd.*, No. 01-0764, 2002 U.S. Dist. LEXIS 12250 (E.D. Pa. May 13, 2002), *aff’d*, No. 02-2688 (3d Cir. Nov. 7, 2003) (“*Carson II*”) (dismissing for lack of subject matter jurisdiction, collateral estoppel, and failure to exhaust administrative remedies). Plaintiffs are the adult children and heirs to the estate of Camillus Ellis (“Camillus”). (Compl. ¶¶ 10-13.) From 1946 until 1959, Camillus worked in the railroad industry. (*Id.* ¶ 18.) He died on February 4, 1968. (*Id.* ¶ 27.) The SSA paid survivor benefits to Camillus’s widow, Geneva Ellis, from February 28, 1968 until her death on November 25, 1986. (*Id.* ¶¶ 34, 37.)

On July 12, 1993, Carson submitted an application to the RRB claiming that she was entitled to unpaid benefits as an heir to her father’s estate. (*Id.* ¶ 51; Defs.’ Mot. to Dismiss or for Summ. J. Ex. A (Carson’s July 12, 1993 application form).) On August 19, 1993, the RRB denied Carson’s application because it found that Camillus did not have a “current connection” with the railroad industry at the time of his death. (Compl. ¶ 57; Defs.’ Mot. to Dismiss or for Summ. J. Ex. B (RRB’s Aug. 19, 1993 letter).) According to the RRB, survivor benefits are payable by *either* the RRB or the SSA, but not both, and Camillus was not insured for survivor benefits under the Railroad Act of 1974 because he “had regular wage quarters under the Social Security Act that broke his

current connection” to the railroad industry. (Defs.’ Mot. to Dismiss or for Summ. J. Ex. B at 1.) Therefore, at Camillus’s death, he lacked the “current connection” with the railroad industry necessary for payment of survivorship benefits through the RRB. (*Id.* Ex. C (RRB’s Dec. 2, 1993 letter).) The RRB concluded by noting that all credit earned by Camillus for his railroad-related labor was transferred to the SSA and included in the computation of survivor benefits, which were paid to Geneva Ellis from 1968 until 1986. (*Id.* Ex. B.) The RRB denied Carson’s three administrative appeals. (Compl. ¶¶ 58-63, 66, 70, 72, 78; Defs.’ Mot. to Dismiss or for Summ. J. Exs. C-E.) Carson then appealed the RRB’s May 12, 1995 final decision to the Third Circuit.

On December 23, 1996, the Third Circuit denied Carson’s appeal, holding that the RRB’s finding that Carson was ineligible for RRB benefits was supported by substantial evidence and was not based upon an error of law. *See Carson I*, No. 96-3265, slip op. at 1-2. Thereafter, Carson made at least nine subsequent requests to the RRB to reopen her case (Compl. ¶¶ 95, 97, 103, 105, 108, 113, 114, 116, 117), all of which were denied (Defs.’ Mot. to Dismiss or for Summ. J. Exs. G, H, I).

On February 14, 2001, Plaintiffs filed *Carson II* in this Court, seeking the same relief as in the instant action. (Compl. ¶ 118; Defs.’ Mot. to Dismiss or for Summ. J. Ex. J.) On May 13, 2002, this Court granted Defendants’ motion to dismiss all claims against the RRB for lack of subject matter jurisdiction because Congress has vested exclusive appellate jurisdiction over the RRB’s decisions in the Court of Appeals. *Carson II*, 2002 U.S. Dist. LEXIS 12250, at *3; *see also* 45 U.S.C. § 355(f) (2004). This Court also dismissed Plaintiffs’ claims against the SSA because Plaintiffs had failed to exhaust their administrative remedies. *Carson II*, 2002 U.S. Dist. LEXIS 12250, at *3-4. The Court of Appeals affirmed. *See Carson II*, No. 02-2688 (3d Cir. Nov. 7, 2003).

On September 15, 2003, undeterred by the Third Circuit's warning that "future repetitive litigation may result in sanctions," *Carson II*, No. 02-2688, slip op. at 4, Plaintiffs filed the instant action.

B. Standard of Review

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, courts must accept as true all of the factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will only be granted if it is clear that relief cannot be granted to the plaintiff under any set of facts that could be proven consistent with the complaint's allegations. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Although, in deciding a motion to dismiss, courts generally consider only the allegations in the complaint, exhibits attached to the complaint, and matters of public record, a court may also consider an undisputably authentic document attached to a defendant's motion where plaintiff's claims are based on the document. *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

C. Discussion

I. Survivorship Claims Against the RRB

Plaintiffs once again seek survivorship benefits from the RRB. (Compl. ¶ 22.) They claim that all previous adjudications of their claims for survivorship benefits from the RRB were improperly decided because Camillus qualified for an annuity from the RRB under an exception to

the “current connection” requirement for individuals who have completed ten years of railroad service and whose “permanent physical or mental condition is such that they are unable to engage in any regular employment.” 45 U.S.C. § 231a(1)(v). As Plaintiffs have previously been informed, however, 45 U.S.C. § 231(g) confers exclusive appellate jurisdiction over decisions of the RRB to the Courts of Appeals. 45 U.S.C. § 231(g) (2004) (incorporating by reference judicial review provisions of Railroad Unemployment Insurance Act, 45 U.S.C. § 355(f), which permits “review of any final decision of the Board by . . . the United States court of appeals”); *see also Carter v. R.R. Ret. Bd.*, 834 F.2d 62, 63 (3d Cir. 1987). This Court is therefore without subject matter jurisdiction to entertain any of Plaintiffs’ claims against the RRB.

Plaintiffs respond that this Court has jurisdiction because their claim arises under the Railroad Retirement Act of 1937, rather than the law that replaced it, the Railroad Retirement Act of 1974. (Compl. ¶¶ 24, 67, 68; Pls.’ Opp’n to Mot. to Dismiss or for Summ. J. at 23.) While Plaintiffs are correct that the 1937 Act initially vested review of RRB decisions in the district courts, 45 U.S.C. § 228k (1937), a 1946 amendment shifted the situs of jurisdiction to the Courts of Appeals. *See* Act of July 31, 1946, ch. 709, § 314, 60 Stat. 738 (1946) (codified as amended at 45 U.S.C. § 355(f)). The Courts of Appeals retained exclusive jurisdiction when the 1937 Act was replaced by the 1974 Act. *See* 45 U.S.C. § 231(g) (2004). As Camillus filed his application for benefits in 1967, the Court of Appeals has exclusive jurisdiction over this case. *See Bhd. of R.R. Trainmen On the Monongahela Connecting R.R. Co. v. R.R. Bd.*, 410 F.2d 353, 354 (3d Cir. 1969) (asserting jurisdiction over RRB decision after 1946 amendment but before enactment of 1974 Act).

Even assuming that this Court could entertain Plaintiffs’ claims against the RRB, these claims have already been adjudicated by the Third Circuit and are thus barred by the doctrine of

collateral estoppel. *See Carson I*, No. 96-3265, slip op. at 4 n.1 (upholding RRB’s final order denying Plaintiffs’ survivorship benefits claims); *see also Charter Oak Fire Ins. Co. v. Sumitomo Marine & Fire Ins. Co.*, 750 F.2d 267, 270 (3d Cir. 1984) (doctrine of collateral estoppel protects adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions) (citations omitted). Accordingly, Plaintiffs’ claims against the RRB are dismissed.

2. *Survivorship Claims Against the SSA*

Plaintiffs assert that the SSA wrongfully paid survivorship benefits to Geneva Ellis because the SSA had no jurisdiction over benefits resulting from Camillus’s employment history. (Compl. ¶¶ 34, 37.) According to Plaintiffs, the SSA should have referred these benefits to the RRB for distribution. (*Id.*) 42 U.S.C. § 405(g) bars judicial review of the denial of any claim for benefits until after a final decision by the Commissioner of Social Security. *See* 42 U.S.C. § 405(g) (2004) (permitting judicial review only “after any final decision of the Commissioner of Social Security”); *see also Matthews v. Eldridge*, 424 U.S. 319, 328 (1976) (holding that “some decision by the Secretary is clearly required by” section 405(g) before judicial review of claim regarding social security benefits). Plaintiffs do not allege, and none of Plaintiffs’ voluminous exhibits demonstrate, that the Commissioner has issued a final decision on any of their survivorship benefit claims, nor even that Plaintiffs have made an initial application to the SSA for administrative resolution of such claims. As Plaintiffs have failed to exhaust their administrative remedies, their claims against the SSA must be dismissed.

II. SUMMARY JUDGMENT

A. Background

Also included in Plaintiffs' complaint is an apparently unrelated appeal of a decision by the SSA Appeals Council which denied Richardson's application for reinstatement of disabled adult child's insurance benefits. (Compl. ¶ 5-6; Defs.' Mot. to Dismiss or for Summ. J. Ex. N.) Richardson was born on April 14, 1955. (Defs.' Mot. to Dismiss or for Summ. J. Ex. N at 3.) She became eligible for childhood insurance benefits when Camillus died in February 1968. (*Id.*) In April 1973, upon Richardson's eighteenth birthday, these benefits converted to disabled adult child's insurance benefits. (*Id.*) In March 1978, Richardson married Craig Richardson, and her disabled adult child's insurance benefits ceased. (*Id.*; Compl. ¶ 39); *see also* 42 U.S.C. § 202(d)(1)(D) (2004).

On May 19, 1999, Richardson filed a claim for reinstatement of these benefits. (Defs.' Mot. to Dismiss or for Summ. J. Ex. N at 3.) The SSA denied Richardson's claim on February 19, 2000 because her marriage made her ineligible for benefits. (Defs.' Mot. to Dismiss or for Summ. J. Ex. O.) On February 15, 2001, Richardson filed a request for a hearing with an Administrative Law Judge ("ALJ"). (Defs.' Mot. to Dismiss or for Summ. J. Ex. P.) On December 16, 2002, the ALJ found that the SSA's termination of benefits in 1978 was proper under the Social Security Act. (*Id.*; *see also* 42 U.S.C. § 202(d)(1)(D) (2004)). On July 10, 2003, the Appeals Council denied Richardson's petition for review of the ALJ's decision. (Defs.' Mot. to Dismiss or for Summ. J. Ex. Q.) This denial made the ALJ's decision the final decision of the Commissioner. *See* C.F.R. §§ 404.955, 404.981, 416.1455, 416.1466, 422.210; *see also* *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001). Therefore, unlike Plaintiffs' other claims against the SSA, Richardson's request for re-entitlement has wended its way through the administrative process and her appeal is now ripe for

review by this Court.

B. Standard of Review²

Ordinarily, summary judgment is appropriate when the record, viewed in the light most favorable to the nonmovant, establishes “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). If the moving party carries its initial burden of identifying those portions of the record that it believes illustrate the absence of a genuine issue of material fact, then the burden shifts to the nonmovant, who must offer evidence that establishes a genuine issue of material fact that should proceed to trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

When reviewing summary judgment motions based upon administrative actions, however, “the Court does not employ the standard of review set forth in Rule 56.” *Fund for Animals v. Babbitt*, 903 F.Supp. 96, 105 (D.D.C.1995); *see also Ackerman v. United States*, 324 F. Supp. 2d 1, 5 (D.D.C. 2004) (while summary judgment appropriate when reviewing administrative action, court

² Defendants moved to dismiss Plaintiffs’ claims or, in the alternative, for summary judgment. The Court will analyze Richardson’s claim for reinstatement of disability benefits under the standard for summary judgment, notwithstanding the limited amount of discovery that has taken place. Because this action reviews the decision of an administrative agency, it is appropriate to rule on Richardson’s claim at this time because all relevant documentation has been produced. *See, e.g., C.K. v. N.J. Dep’t of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996) (judicial review of administrative action confined to administrative record); *see also Sierra Club v. U.S. Fish & Wildlife Serv.*, 189 F. Supp. 2d 684 (W.D. Mich. 2002) (motions for summary judgment may be promptly decided with little or no discovery when judicial review is based on administrative record; such cases usually apt candidates for summary judgment because they ask whether administrative decision proper in light of an established record). Moreover, Plaintiffs were served with Defendants’ motion on January 14, 2004 and have been granted two extensions in their response date. Furthermore, in their response, Plaintiffs attached three large binders of exhibits and documentation. (*See Pls.’ Opp’n to Defs.’ Mot. to Dismiss or for Summ. J. Ex. A Vols. 1, 2, and 3.*)

applies relevant statute's standard of review rather than that of Fed. R. Civ. P. 56(c)); *J.N. Moser Trucking Inc. v. United States Dep't of Labor*, 306 F. Supp. 2d 774, 781 (N.D. Ill. 2004) ("judicial review of an agency's final determination follows standards quite different from those applied in a typical summary judgment proceeding"); *Ctr. for Biological Diversity v. Lohn*, 296 F. Supp. 2d 1223 (W.D. Wash. 2003) (when review based upon administrative record, summary judgment may be appropriate although district court does not employ federal rule's standard of review). Instead, when reviewing an agency's final decision on a motion for summary judgment, the court's function is to determine, as a matter of law according to the standard set forth in the relevant statute, whether the evidence in the administrative record permitted the agency to decide as it did. *See City & County of S.F. v. United States*, 130 F.3d 873, 877 (9th Cir. 1997); *Hunger v. Leininger*, 15 F.3d 664, 669 (7th Cir. 1994); *M.A. v. Voorhees Twp. Bd. of Educ.*, 202 F. Supp. 2d 345, 359 (D. N.J. 2002); *Sierra Club v. Dombeck*, 161 F. Supp. 2d 1052, 1064 (D. Ariz. 2001). Consequently, "where the Court is reviewing the decision of an administrative agency, a motion for summary judgment stands in a somewhat unusual light, in that the administrative record provides the complete factual predicate for the court's review." *Tex. Comm. on Nat. Res. v. Van Winkle*, 197 F. Supp. 2d 586, 595 (N.D. Tex. 2002) (citations and quotations omitted).

C. Discussion

Section 205(g) of the Social Security Act provides that a district court will affirm a final decision of the Commissioner of Social Security if it is supported by "substantial evidence." *See* 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive."); *see also Jones v. Sullivan*, 954 F.2d 125, 127 (3d Cir. 1991). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quotation omitted). The Third Circuit has held that “overall, the substantial evidence standard is a deferential standard of review.” *Jones v. Barnhart*, 364 F.3d 501, 503 (3d Cir. 2004). The operative question is “whether a reasonable fact finder could make such a determination based upon the administrative record.” *Berishaj v. Ashcroft*, 378 F.3d 314, 322 (3d Cir. 2004).

The clear terms of the Social Security Act provide that childhood disability insurance benefits terminate in the month the individual marries. 42 U.S.C. § 402(d)(1)(D) (2004) (eligibility for child’s insurance benefits ends “with the month preceding . . . the month in which such child dies or marries.”) There is only one exception to the marriage bar: Marriage will not terminate childhood insurance benefits if the eligible individual marries someone who is also entitled to benefits under Title II of the Social Security Act. 42 U.S.C. § 405(d)(5).

Here, it is undisputed that Richardson married Craig Richardson in 1978. (Compl. ¶ 39.) Accordingly, Plaintiff is not entitled to benefits unless Craig Richardson is also entitled to benefits under Title II. 42 U.S.C. § 405(d)(5). During the administrative process, however, Plaintiff indicated that Craig Richardson was entitled to disability benefits under the supplemental security income program, *not* Title II of the Social Security Act. First, in a December 28, 2001 letter to the SSA Appeals Council, Plaintiff stated that “Craig also received the SSID [supplemental security income disability] for himself.” (Pls.’ Opp’n to Defs.’ Mot. to Dismiss or for Summ. J. Ex. A Vol. 3 at 446.) Second, Plaintiffs’ July 20, 2000 Request for Reconsideration to the SSA admitted that Craig Richardson “was entitled to Supplemental Security Income benefits, not Social Securityt [sic] benefits,” but nevertheless argued that Richardson was entitled to reinstatement of her insurance

benefits. (*Id.* at 402.) Plaintiff has not presented any evidence to the contrary either before the ALJ, the Appeals Council, or before this Court. As Plaintiff's statements themselves demonstrate, a reasonable fact finder could determine, based on the administrative record, that the exception listed in 42 U.S.C. § 405(d)(5) did not apply to Richardson, and that her benefits were properly terminated in March 1978. Accordingly, this Court concludes that the SSA decision not to reinstate Richardson's disabled adult child's benefits was supported by substantial evidence. Defendant's motion for summary judgment is granted.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion is granted and Plaintiffs' motions are denied. Plaintiffs are reminded that they have already been warned once that "future repetitive litigation may result in sanctions." *Carson II*, No. 02-2688, slip op. at 4 (3d Cir. Nov. 7, 2003). Plaintiffs are hereby cautioned that they have come perilously close to incurring such sanctions. An appropriate Order follows.

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

LORRAINE ELLIS CARSON, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	
RAILROAD RETIREMENT BOARD	:	
and UNITED STATES SOCIAL	:	
SECURITY ADMINISTRATION,	:	
Defendants.	:	No. 03-5230

ORDER

AND NOW, this **21st** day of **September, 2004**, upon consideration of Defendant United States Railroad Retirement Board and United States Social Security Administration's Motion to Dismiss Plaintiff's Complaint and Plaintiffs' response thereto, Plaintiffs' motions and Defendants' responses thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants United States Railroad Retirement Board and United States Social Security Administration's Motion to Dismiss Plaintiffs' Complaint, or, in the Alternative, for Summary Judgment (Document No. 5) is **GRANTED**.
2. Plaintiffs' Motion to Rescind the Court's Order of June 23, 2004 Granting Defendants' Motion for Leave to File a Reply Brief; Plaintiffs' Motion to Dismiss Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgment; Plaintiffs' Motion for Judgment by Default or Judgment on the Pleadings, Summary Judgment, or Declaratory Judgment; and Plaintiffs' Motion for a Hearing to

Determine the Calculation and Payment of the Amounts Owed to Plaintiffs by Defendants (Document No. 16) are **DENIED**.

3. The Clerk of Court is directed to close this case.

BY THE COURT:

Berle M. Schiller, J.