

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

VERNELL L. SEBRELL : CIVIL ACTION
: :
v. : :
: :
KENNETH S. APFEL, Commissioner :
of Social Security, et al. : NO. 98-516

O R D E R - M E M O R A N D U M

AND NOW, this 9th day of September, 1998 the motion of defendant Kenneth S. Apfel, Commissioner of Social Security, to dismiss, Fed. R. Civ. P. 12(b)(1),¹ (6),² is granted.

¹ "When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff must bear the burden of persuasion." Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir.), cert. denied, 501 U.S. 1222, 111 S. Ct. 2839, 115 L. Ed.2d 1007 (1991). Our Court of Appeals has stated:

[W]hen there is a factual question about whether a court has jurisdiction, the trial court may examine facts outside the pleadings and thus the trial court may proceed as it never could under [Rule] 12(b)(6) or [Rule] 56. Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction - its very power to hear the case. . . . [N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.

Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997) (internal quotations and citations omitted).

² Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the
(continued...)

On February 6, 1998, pro se plaintiff Vernell L. Sebrell filed this action for supplemental security income under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 et seq. (1994), against the Commissioner and eight managers and employees of the Social Security Administration. According to the complaint, defendants improperly refused to (1) pay plaintiff's supplemental security income, ¶¶ 1, 3; or (2) send or acknowledge receipt of information pertinent to her claim, ¶¶ 2, 4, 5, 9. Defendants also allegedly (3) gave her false information, ¶ 3; (4) fabricated information about her claim, ¶ 6; (5) treated her rudely, ¶ 7-8; and (6) improperly calculated her benefits, ¶ 10.³ Jurisdiction is under the Social Security Act, 42 U.S.C. §§ 405(g), 1383(c)(3) (1994).

The motion asserts that (1) subject matter jurisdiction does not exist because plaintiff has not exhausted administrative remedies, motion, at 4; and (2) the managers and employees of the

²(...continued)

light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle her to relief. Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

³ It appears from the complaint and the response to the motion that, on April 4, 1997, an administrative law judge found that plaintiff was eligible for disability insurance benefits as well as supplemental security income as of July 15, 1994, but that she was subsequently determined to be ineligible for supplemental security income after defendant discovered that plaintiff owned property in Suffolk, Virginia that she had not previously reported, compl. ¶ 5; response, at 8. Plaintiff denies that she owns the property in question, compl. ¶¶ 4, 10.

Social Security Administration are not proper defendants, id. at 11.

1. Subject matter jurisdiction – Under Title XVI of the Social Security Act, plaintiff may obtain judicial review of the Commissioner's determination of supplemental security income eligibility only if such determination is a "final decision":

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. . . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g) (1994).⁴ Section 405(h) states:

No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or government agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.

42 U.S.C. § 405(h) (1994).

⁴ Title 42 U.S.C. § 1383(c)(3) states that final determinations under Title XVI of the Social Security Act are subject to judicial review as provided in Title II of the Act – § 405(g).

Federal regulations define a four-step administrative process culminating in the Commissioner's final decision.⁵ See 20 C.F.R. § 416.1400(a) (1998). First, an initial determination is made as to a claimant's eligibility. See § 416.1402(a). Second, a claimant may request reconsideration. See § 416.1407. Third, a claimant may request a hearing before an administrative law judge. See § 416.1429. Fourth, a claimant may request review of the hearing decision – or of the dismissal of a hearing request – by the Appeals Council. See § 416.1467. Each step has a 60-day appeal period. See §§ 416.1409, 416.1433(b), and 416.1468(a). The Appeals Council decision – or its refusal to review the hearing decision – constitutes the "final decision" of the Commissioner. § 416.1400(a)(5). A claimant may file suit in federal court within 60 days of notice of the Appeals Council's action. See § 416.1481. The failure to exhaust these administrative remedies precludes subject matter jurisdiction. See Fitzgerald v. Apfel, C.A. No. 97-1605, 1998 WL 294016, at *2 (3d Cir. Mar. 13, 1998).

Here, it appears that after receiving notice of a determination as to her ineligibility for supplemental security income, plaintiff filed this action rather than requesting

⁵ Where the parties agree that the dispute is limited to constitutional questions – a situation not applicable here – an expedited appeals process is available. See 20 C.F.R. § 416.1424 (1998).

reconsideration under 20 C.F.R. § 416.407.⁶ The complaint must be dismissed, therefore, for lack of subject matter jurisdiction.

Accordingly, this action is dismissed.⁷

Edmund V. Ludwig, J.

⁶ As defendant's motion correctly notes, the complaint contains no "short and plain statement of the grounds upon which the court's jurisdiction depends," as required by Fed. R. Civ. P. 8(a)(1). Defendant's motion, at 1 n.2.

⁷ Following the filing of defendant's motion, the parties were given until September 4, 1998 to resolve their dispute. By fax dated September 3, 1998 defendant's counsel advised that he had offered plaintiff the opportunity "to continue her claim at the reconsideration level," but that she had not accepted the offer.