

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

MICHAEL LEVIN : CIVIL ACTION
 :
 v. :
 :
 OFFICE OF VOCATIONAL :
 REHABILITATION, et al. : NO. 96-5779

MEMORANDUM ORDER

Plaintiff claims that the Office of Vocational Rehabilitation and persons associated with it denied him services to which he may be entitled under Title I of the Rehabilitation Act. Consistent with 28 U.S.C. § 1915(a)(1), his request to proceed in forma pauperis was granted.

To maintain an action predicated on a denial of rights under the Rehabilitation Act, a plaintiff must exhaust administrative remedies provided in Title VII. See Spence v. Straw, 43 F.3d 196, 201 (3d Cir. 1995). See also Tokarcik v. Forest Hills School Dist., 665 F.2d 443, 449 (3d Cir. 1981); Ryans v. New Jersey Com'n. for the Blind, 542 F. Supp. 841, 850 (D.N.J. 1982) (plaintiff claiming denial of services to which he is entitled under Title I of the Rehabilitation Act must show he "has in fact exhausted all adequate administrative remedies"); Reddinger v. Hospital Central Services, Inc., 4 F. Supp.2d 405, 409 (E.D. Pa. 1998) (noting same with regard to ADA claim).

The total failure of a plaintiff to file an administrative charge with the EEOC or other pertinent state

agency deprives the court of jurisdiction to adjudicate his discrimination claim. See Trevino-Barton v. Pittsburgh Nat. Bank, 919 F.2d 874-878 (federal courts "lack jurisdiction" to adjudicate discrimination claims in absence of previously filed administrative charge with the EEOC); Brennan v. National Telephone Directory Corp., 881 F. Supp. 986, 993 (E.D. Pa. 1995). Unless legally excused, the untimely filing of an administrative charge subjects a subsequent suit to dismissal for failure to present a claim on which relief may be granted. See Robinson v. Dalton, 107 F.3d 1018, 1021-22 (3d Cir. 1997); Hornsby v. United States Postal Service, 787 F.2d 87, 90 (3d Cir. 1986).

Plaintiff has not alleged, shown or suggested that he has ever pursued his administrative remedies. In the absence of such a showing, the court cannot adjudicate this action.

Even if the total failure to file a prior administrative charge were viewed as a failure to satisfy a non-jurisdictional prerequisite to suit, plaintiff's action would still be subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a cognizable claim. See Mitchell v. Farcass, 112 F.3d 1483, 1486-87 (11th Cir. 1997) (28 U.S.C. § 1915(e)(2) applies to cases pending prior to enactment); Powell v. Hoover, 956 F. Supp. 564, 566 (M.D. Pa. 1997) (except for subsections (a)(2), (b), (f)(2), (g) and (h) addressed specifically to prisoner suits, § 1915 applies to all in forma

