

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

ROBERT D. SCHAFFER, JR. : CIVIL ACTION  
 :  
v. :  
 :  
KENNETH S. APFEL, Commissioner of :  
Social Security, et al. : NO. 97-8135

MEMORANDUM AND ORDER

HUTTON, J.

February 18, 1999

Presently before the Court are the unopposed Motion by pro se Plaintiff Robert D. Schaffer, Jr. for Writ of Mandamus against Defendant Kenneth S. Apfel, the Commissioner of Social Security, (Docket No. 22), Defendant's Motion to Dismiss Complaint (Docket No. 23) and Plaintiff's response thereto (Docket No. 25). Also before the Court is Plaintiff's Motion for Summary Judgment (Docket No. 26). For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED**, Plaintiff's Motion for Writ of Mandamus is **DENIED as moot**, and Plaintiff's Motion for Summary Judgment is **DENIED as moot**.

**I. BACKGROUND**

This is an action for judicial review of the denial of a claim for benefits under Title II and Title XVI of the Social Security Act ("Act"). Robert D. Schaffer, Jr. ("Plaintiff" or "Schaffer") filed an application for a Period of Disability and

Disability Insurance Benefits in September 1995. Plaintiff filed an application for Supplemental Security Income ("SSI") on September 1, 1995. Benefits were denied initially on September 22, 1995, and upon reconsideration on February 28, 1996. Plaintiff then filed a request for a hearing on April 22, 1996, and on October 17, 1997, the Administrative Law Judge issued an unfavorable decision.

On January 7, 1998, Plaintiff filed his pro se Complaint with this Court. Along with his Complaint, Plaintiff filed a Motion to Proceed in Forma Pauperis. Leave to proceed in forma pauperis was granted. On August 20, 1998, Plaintiff filed a Motion for Writ of Mandamus. On September 4, 1998, a Motion to Dismiss was filed on behalf of Kenneth S. Apfel, Commissioner of Social Security Administration ("Defendant" or "Commissioner"). Plaintiff filed a response to Defendant's Motion to Dismiss on September 25, 1998. The Plaintiff filed his Motion for Summary Judgment on November 23, 1998.

## **II. DISCUSSION**

### **A. Jurisdiction**

The Social Security Act ("Act") provides benefits to disabled persons under two programs administered by the Social Security Administration ("SSA"): the Social Security Disability Insurance Program ("SSD") and the Supplemental Security Income Program ("SSI"). Regulations for both programs establish a

five-step "sequential evaluation" process for determining eligibility for benefits. The initial determination of whether an individual is disabled is made by a state agency under the authority and control of the Secretary of Health and Human Services (Secretary). This determination is subject to review by the SSA. The disappointed claimant is then afforded a three-stage administrative review process. Proceeding through these three stages exhausts the claimant's administrative remedies. Thereafter, a claimant may seek judicial review in Federal District Court, but must do so within 60 days of the Secretary's final decision as required by 42 U.S.C. § 405(g).\<sup>1</sup>

Judicial review of decisions by defendant under Titles II and XVI of the Social Security Act is governed by the standard set forth in § 205(g) of the Act, which provides that an individual may seek review of "any final decision of the Secretary made after a hearing to which [the claimant] was a party." 42 U.S.C. § 405(g). Generally, where there has been no final decision by the Secretary after a hearing because the claimant failed to exhaust administrative remedies, as occurred here, a court cannot review the disposition of the claim. Califano v. Sanders, 430 U.S. 99,

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<sup>1</sup>Section 205(g) states in relevant part:  
(g) Any individual, after any final decision of the Secretary 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 Secretary may allow.  
42 U.S.C. § 405(g) (1976 & Supp. IV 1980).

107-08 (1977). However, the Supreme Court in Sanders did leave open possible redress for such claimants who can allege a deprivation of constitutional rights. Id. at 108-09.

**B. Plaintiff's Claims**

In the present motion, the Defendant has raised just one issue. Defendant asserts that Plaintiff failed to exhaust his administrative remedies with respect to his claim for benefits and, thus this Court is without jurisdiction over the subject matter of the action pursuant to § 205(g) of the Act, 42 U.S.C. § 405(g). Plaintiff neither disputes his failure to exhaust his administrative remedies with respect to his claim for benefits nor that no "final decision" of the Commissioner has been made. The Court, therefore, need not address those issues. Plaintiff contends, however, that provisions of the Act are invalid and unconstitutional.<sup>2</sup> Because this Court finds that Plaintiff's constitutional challenge of the Act is insufficient to create district court jurisdiction, the Plaintiff's Complaint is dismissed.

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<sup>2</sup>Plaintiff argues:

2. That 42 U.S.C. § 405(b)(1), sentence (2) of the Social Security Act is invalid on its face, on the grounds that it implies that the Commissioner determines disability, and is not pursuant to 42 U.S.C. § 421(a) and § 422(a) of the Act;

3. That 42 U.S.C. § 405(b)(2), (b)(3) of the Social Security Act is invalid on its face, on the grounds that it added two steps to the determination of disability, and is not pursuant to 42 U.S.C. § 420, § 421(a) and § 422(a) of the Act.

(Pl.'s Br. in Supp. of Mot. to Deny Def.'s Mot. to Dismiss at 9.)

## 1. Analysis

The Court in Sanders recognized that § 205(g) did not act as a bar to resolution of constitutional questions raised by the claimant when seeking review of the Secretary's decision. Sanders, 430 U.S. at 109. "Constitutional questions obviously are unsuited to resolution in administrative hearing procedures and, therefore, access to the courts is essential to the decision of such questions." Id. Thus, the Court held that judicial review was proper where the Secretary's decision to deny or discontinue social security benefits is challenged on constitutional grounds notwithstanding the absence of a prior administrative hearing.

Subsequent appeals court decisions, however, have explained that the constitutional questions contemplated by Sanders deal with incompetency and lack of counsel. Stauffer v. Califano, 693 F.2d 306, 307(3d Cir. 1982). See, e.g., Parker v. Califano, 644 F.2d 1199, 1202-03 (6th Cir. 1981); Shrader v. Harris, 631 F.2d 297, 299-300 (4th Cir. 1980). See also Penner v. Schweiker, 701 F.2d 256, 257 (3d Cir. 1983). In Penner, the Third Circuit considered the case of a claimant suffering from schizophrenia and depression whose request for a hearing was dismissed by the Administrative Law Judge for being filed late. The Court found that the district court had jurisdiction to review the decision and remanded for consideration by the Secretary as to whether the mental incapacity of the claimant prevented him from understanding

and pursuing his administrative remedies. Id. at 261. In the instant matter, the Plaintiff's claim that certain provisions of the Act are unconstitutional does not fall within the Sanders exception. Nowhere does Plaintiff's Complaint allege a lack of understanding or adequate representation. Accordingly, the Court lacks jurisdiction over this matter.

An appropriate Order follows.

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O R D E R

AND NOW, this 18th day of February, 1999, upon consideration of the unopposed Motion by pro se Plaintiff Robert D. Schaffer, Jr. for Writ of Mandamus against Defendant Kenneth S. Apfel, the Commissioner of Social Security, (Docket No. 22), Defendant's Motion to Dismiss Complaint (Docket No. 23), Plaintiff's response thereto (Docket No. 25), and Plaintiff's Motion for Summary Judgment (Docket No. 26), IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is **GRANTED**, Plaintiff's Motion for Writ of Mandamus is **DENIED as moot**, and Plaintiff's Motion for Summary Judgment is **DENIED as moot**.

IT IS FURTHER ORDERED that:

- (1) Plaintiff's Complaint **IS DISMISSED**; and
- (2) Clerk of Court **SHALL** mark this case closed.

BY THE COURT:

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HERBERT J. HUTTON, J.