

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARGARET M. HEIDER,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE B. BARNHART,  
Commissioner of Social Security,

06-C-115-S

Defendant.

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Plaintiff Margaret M. Heider, by her counsel, commenced this action to review a decision of the Commissioner of Social Security denying her social security disability benefits. On May 25, 2006 defendant moved to dismiss plaintiff's complaint for lack of subject matter jurisdiction. This motion has been fully briefed and is ready for decision.

FACTS

Plaintiff filed an application for disability insurance benefits on April 28, 1993. This application was denied initially and upon reconsideration. Plaintiff did not pursue this application further.

On April 12, 2002 plaintiff filed a second application for disability insurance benefits which was denied initially. Plaintiff did not pursue that application further. The April 12, 2002 decision adjudicated the issue of plaintiff's disability through June 30, 1996, her date last insured.

On July 22, 2003 plaintiff filed her third application for disability insurance benefits. The agency denied this application initially and on reconsideration. Plaintiff requested a hearing before an ALJ. On August 25, 2005 ALJ Birge dismissed plaintiff's request for a hearing finding that *res judicata* applied.

#### MEMORANDUM

The Commissioner argues that this Court lacks subject matter jurisdiction of plaintiff's claim. Plaintiff agrees that this Court lacks jurisdiction because there has been no final decision of the Commissioner that is subject to judicial review. 42 U.S.C. § 405(g).

Plaintiff further concedes that the doctrine of *res judicata* was correctly applied to her case. She makes the argument that the ALJ should have considered her third application an implied motion to reopen. The Court does not have subject matter jurisdiction of refusals to reopen claims unless a colorable constitutional claim arises.

Plaintiff submits that her colorable constitutional claim alleges that she was denied due process when she was not provided an opportunity to present evidence concerning her third application for benefits. Plaintiff has not presented any authority that suggests she had a property interest in the possible entitlement to disability insurance benefits.

In addition her third application for benefits was pending for two years and she has not shown why she could not have submitted additional evidence during this time period.

Plaintiff also argues that she did not receive notice of the initial denial of her April 12, 2002 application and that this notice might be deficient. Plaintiff has not shown that any deficiency in this notice would have affected the August 25, 2005 decision that *res judicata* applied.

Plaintiff has not shown that she has a colorable constitutional claim. Accordingly, defendant's motion to dismiss for lack of subject matter jurisdiction will be granted.

ORDER

IT IS ORDERED that defendant's motion to dismiss the above entitled matter for lack of subject matter jurisdiction is GRANTED.

Entered this 27<sup>th</sup> day of June, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge