

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

GARY EDGAR,

Plaintiff,

OPINION AND ORDER

v.

06-C-0119-C

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

This is an appeal of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). Before the court is defendant commissioner's motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction based on plaintiff Gary Edgar's alleged failure to exhaust his administrative remedies with respect to the commissioner's denial of his applications for social security benefits. Defendant contends that plaintiff never requested the Appeals Council to review the adverse decision of the administrative law judge.

Assuming without deciding that a claimant's failure to seek Appeals Council review of an administrative law judge's decision deprives a federal court of jurisdiction under § 405(g), the motion will be denied. Defendant's motion rests upon her contention that plaintiff is challenging the denial of his applications for supplemental security income and disability insurance benefits filed in April 2003, which were denied in part by an

administrative law judge on July 20, 2005. Documents attached to defendant's motion show that those applications, as amended at the administrative hearing, covered the time period from March 15, 2003 to July 20, 2005 (the date of the administrative law judge's decision). However, as plaintiff indicated in his complaint and reiterates in his brief in response to defendant's motion, the adverse determination that he is challenging relates to the time period from October 21, 2000 to early 2004. (In the complaint, plaintiff says February 2004; in his brief, he says January 14, 2004.) According to plaintiff, his eligibility for benefits during that time period was the subject of a previous lawsuit in which this court reversed the commissioner's adverse decision and remanded it for further proceedings. (A review of this court's decision in that case, 04-C-0820-C, indicates that the applications at issue in that case were filed on December 27, 2001 and January 22, 2002.) Apparently, the commissioner denied plaintiff's applications again on remand. Plaintiff indicates that it is that denial that he is challenging in this lawsuit, not the partially favorable decision on his April 2003 applications issued by the administrative law judge on July 20, 2005.

Plaintiff is largely to blame for the confusion in this case because he has never specified the date on which the commissioner issued the final decision that plaintiff is challenging. However, it is plain from the complaint that plaintiff is contesting the commissioner's denial of his eligibility for benefits during the time period October 2000 to February 2004. Because the documents submitted by defendant appear to address different applications covering a different period of eligibility, defendant has failed to meet her burden

to establish lack of subject matter jurisdiction. United Phosphorus, Ltd. v. Angus Chemical Co., 322 F.3d 942, 946 (7th Cir. 2003) (party asserting lack of subject matter jurisdiction bears burden of proof).

ORDER

IT IS ORDERED that the motion of defendant Commissioner of Social Security to dismiss the complaint for lack of jurisdiction is DENIED.

Entered this 20th day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge