

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 James Allen Smyser,
10 Plaintiff,

No. CV-18-01165-PHX-GMS

11 v.

ORDER

12 Commissioner of Social Security
13 Administration,
14 Defendant.

15 Pending before the Court is the appeal of Plaintiff James Allen Smyser, which
16 challenges the Social Security Administration's decision to not reopen a previous
17 determination. Because the Court lacks jurisdiction to review this determination, the
18 appeal will be dismissed.

19 **BACKGROUND**

20 In February 1994, an application for Title XVI social security income benefits and
21 an application for Title II child disability benefits was filed on behalf of Plaintiff Smyser.
22 (Tr. at 12). He was awarded social security income benefits but was denied childhood
23 disability benefits. Plaintiff was denied childhood disability benefits initially and upon
24 reconsideration. A hearing request was filed in March 1995, but an Administrative Law
25 Judge ("ALJ") dismissed the request in April 1996.

26 In May 2013, Plaintiff filed a new application for childhood disability benefits,
27 alleging a disability onset date of June 1978. (Tr. at 21). Plaintiff's claim was denied both
28 initially and upon reconsideration. (Tr. at 53; Tr. at 54–55). Plaintiff then appealed to an

1 ALJ. (Tr. at 59). The ALJ conducted a hearing on the matter in January 2014, and
2 subsequently issued a decision denying benefits due to res judicata. (Tr. at 32–36).
3 Plaintiff then appealed his decision to the Appeals Council, which remanded, finding that
4 res judicata did not apply in these circumstances because the previous Title II folder could
5 not be found. (Tr. at 41–44). Then, the ALJ held a new hearing and subsequently issued
6 a decision finding the Plaintiff disabled with an onset date of June 1978. (Tr. 14–19).
7 Plaintiff then requested that the ALJ reopen the 1994 case, but the ALJ declined, explaining
8 her reasoning in a letter to him. (Tr. at 526–27). The ALJ explained that she could not
9 reopen his 1994 case under the existing regulations. (*Id.*). Smyser appealed. The Appeals
10 Council found that reopening of the 1994 application was not warranted, because
11 regulations prevented reopening after four years, and good cause for reopening did not
12 exist. (Tr. at 12).

13 **I. Legal Standard**

14 The Court reviews the Commissioner’s final decision to ensure that the findings are
15 supported by substantial evidence, and that the decision is free of harmful legal error. *See*
16 42 U.S.C. § 405(g).

17 **II. Analysis**

18 Plaintiff argues that the ALJ violated his due process rights by failing to reopen the
19 1994 determination of the Commissioner. But because Smyser fails to allege a colorable
20 constitutional claim, the Court must dismiss this appeal.

21 **A. Jurisdiction**

22 The Social Security Act limits the judicial review of the Commissioner’s decisions
23 to “any final decision . . . made after a hearing.” 42 U.S.C. § 405(g). A decision not to
24 reopen a prior benefits determination is discretionary and does not ordinarily qualify as a
25 final decision. *See Califano v. Sanders*, 430 U.S. 99, 107–09 (1977). Yet the Ninth Circuit
26 has held courts may nonetheless exercise jurisdiction where a claimant has alleged “any
27 colorable constitutional claim of due process violation that implicates a due process right
28 either to a meaningful opportunity to be heard or to seek reconsideration of an adverse

1 benefits determination.” *Evans v. Chater*, 110 F.3d 1480, 1483 (9th Cir. 1997) (citations
2 omitted). A challenge that is not “wholly insubstantial, immaterial, or frivolous” raises a
3 colorable constitutional claim. *Boettcher v. Sec’y of Health & Human Serv.*, 759 F.2d 719,
4 722 (9th Cir. 1985). To properly raise a colorable procedural due process claim, a plaintiff
5 must allege facts that would indicate that “he suffered from a mental impairment and was
6 not represented by counsel at the time of the denial of benefits.” *Udd v. Massanari*, 245
7 F.3d 1096, 1099 (9th Cir. 2001).

8 Smyser fails to allege a colorable constitutional claim here. Instead of claiming that
9 he failed to understand the 1994 denial of his claim for child disability benefits due to a
10 mental impairment or lack of counsel, Smyser instead alleges that he was entirely unaware
11 of the 1994 claim, and that there was no evidence that the Commissioner provided notice
12 of its denial. (Doc. 16 at 13). There is no evidence in the record that shows Smyser suffered
13 from mental impairments. (*See* Tr. at 313, 317, 321, 344, 348, 357, 407) (noting normal
14 mental status). Smyser explains that his parents handled his affairs for him at the time, and
15 that he did not know that part of his disability benefits application had been denied. While
16 an inability to handle one’s affairs due to a physical impairment may be relevant in
17 determining good cause under the Social Security Administration’s regulations, it is
18 insufficient to support a constitutional violation. *See* SSR 91–5p (noting that good cause
19 may be established where “any . . . physical condition . . . limits the claimant’s ability to
20 do things for him/herself.”). And while the records from his original application no longer
21 exist, notice of the denial may be inferred from the fact that someone requested a hearing
22 to appeal the Social Security Administration’s denial. That notice satisfies due process in
23 this context.

24 Smyser additionally cites cases from outside of this circuit that are inapplicable to
25 the facts of this case. (Doc. at 16 at 12) (citing *Triggs v. Chater*, 927 F. Supp. 1394 (D.
26 Colo. 1997); *Culbertson v. Secretary of Health and Human Services*, 859 F.2d 319, 322
27 (4th Cir. 1988)). *Triggs* and *Culbertson* hold that a claimant may not be bound by a
28 previous decision of the Commissioner if the claimant did not participate in that earlier

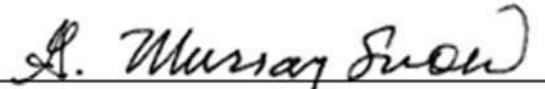
1 decision. *Triggs*, 927 F. Supp. at 1395 (citing *Culbertson*, 859 F.2d at 323). They do not
2 hold that the Commissioner *must* extend the benefits awarded back to the original
3 application date, as Plaintiff argues here. Here, the Appeals Council allowed Smyser to
4 file a new application for child disability benefits claim here despite the fact that his near
5 identical claim was denied in 1994. That alone satisfies the due process requirements as
6 articulated by *Triggs* and *Culbertson*.

7 **CONCLUSION**

8 Because Smyser does not allege a colorable constitutional claim, this Court lacks
9 jurisdiction to review his request to reopen a prior decision of the Social Security
10 Administration.

11 **IT IS THEREFORE ORDERED** that the decision of the ALJ is **AFFIRMED**.
12 The Clerk of Court is directed to enter judgment accordingly.

13 Dated this 13th day of May, 2019.

14 
15 _____
16 G. Murray Snow
17 Chief United States District Judge
18
19
20
21
22
23
24
25
26
27
28