

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHELLE LEE,

No. 2:14-cv-1270-EFB

Plaintiff,

V.

**ORDER TO SHOW CAUSE**

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

This is a petition for judicial review of an Administrative Law Judge's decision denying her application for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act. As explained below, it is not clear from the record whether this court has subject matter jurisdiction.

Plaintiff filed an application for SSI on October 4, 2005, alleging that she had been disabled since November 6, 1999. Administrative Record (“AR”) 60-63. Her application was denied initially and upon reconsideration. *Id.* at 49-53, 55-59. A hearing was held before administrative law judge (“ALJ”) Mark Ramsey, *id.* at 509-557, and he issued his decision on September 8, 2008, finding that plaintiff was not disabled under section 1614(a)(3)(A) of the Act. *Id.* at 25-36. Plaintiff’s request for review by the Appeals Council was denied on July 29, 2010. *Id.* at 6-9. Plaintiff then sought judicial review in this court. On January 25, 2012, a judge of this

1 court remanded the case to the Commissioner for further administrative proceedings. *Id.* at 572-  
2 575L.

3 On remand, the Appeals Council vacated the earlier decision and remanded the matter to  
4 an ALJ for further proceedings. A further hearing was held and the ALJ issued a new decision on  
5 January 27, 2014, again finding that plaintiff was not disabled under section 1614(a)(3)(A) of the  
6 Act. *Id.* at 561-570E. Plaintiff again sought judicial review, initiating this civil action on May  
7 23, 2014. However, there is nothing in the petition or the record to indicate whether plaintiff  
8 sought review with the Appeals Council before initiating this suit. This open question is  
9 jurisdictional.

10 As a sovereign, the United States is immune from suit except according to its consent to  
11 be sued. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). It necessarily follows where Congress  
12 waives the immunity of the United States any terms and conditions that it places on the waiver are  
13 jurisdictional and must be strictly construed. *See Block v. North Dakota ex rel. Board of Univ.*  
14 *and School Lands*, 461 U.S. 273, 287 (1983); *Jerves v. United States*, 966 F.2d 517, 521 (9th Cir.  
15 1992).

16 42 U.S.C. § 405(g) provides a limited waiver of sovereign immunity by permitting district  
17 courts to review a “final decision” of the Commissioner of Social Security.<sup>1</sup> A claimant may  
18 obtain a final decision from the Commission only by proceeding through all stages of the  
19 administrative appeals process. *Bowen v. City of New York*, 476 U.S. 467, 482 (1986). The  
20 stages of the appeals process consists of: 1) initial determination; 2) reconsideration; 3) hearing  
21 before an ALJ; and 4) Appeals Council review. Only upon the Appeals Council issuing a  
22 decision or declining review may a claimant seek review in a federal district court. 20 C.F.R.  
23 § 404.981.

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26 <sup>1</sup> 42 U.S.C. § 405(g) provides in pertinent part: “Any individual, after any final decision  
27 of the Commissioner of Social Security made after a hearing to which he was a party, irrespective  
28 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 Commissioner of Social Security may allow.”

1           In the instant action, the Commissioner has lodged with the court an administrative  
2 transcript and the parties have filed cross motions for summary judgment. But none of those  
3 documents indicate whether plaintiff sought review from the Appeals Council. Further, after  
4 searching the approximately 1,300 page administrative record, the court is unable to locate any  
5 document indicating that plaintiff sought review from the Appeals Council. Thus, it cannot be  
6 discerned from the record whether this court has jurisdiction to review the ALJ's January 27,  
7 2014 decision.

8           Accordingly, it is the ORDERED that within 7 days of the date of this order, plaintiff shall  
9 show cause, in writing, why this action should not be dismissed for lack of jurisdiction. Plaintiff  
10 is admonished that failure to comply with this order will result in dismissal of this action.

11 DATED: September 9, 2015.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE

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