

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HENRY KING,

No. C-13-2079 EMC

Plaintiff,

v.

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**CAROLYN W. COLVIN, Acting
Commissioner of Social Security,**(Docket No. 16)**Defendant.

Plaintiff filed the instant action on May 7, 2013, challenging the termination of his Social Security benefits. Docket No. 1. Defendant has now filed a motion to dismiss for lack of subject matter jurisdiction, arguing that Plaintiff's suit is premature because he has not yet exhausted his administrative remedies. Docket No. 16. His time to respond having passed, Plaintiff has filed no opposition to the motion. The Court finds this matter suitable for disposition without oral argument and **VACATES** the hearing set for September 5, 2013.

The Court previously considered this exact issue in *King v. Colvin (King I)*, 13-cv-1897-EMC, Docket No. 32. In that case, filed April 25, 2013, Plaintiff raised substantially identical objections to a the Social Security Administration's ("SSA") termination of his benefits. Though Plaintiff's pro se filings are in places unintelligible, both suits appear to be challenging the same action taken by SSA to terminate his benefits.

As Defendant pointed out in *King I*, however, Plaintiff may not initiate suit challenging SSA's termination of his benefits at this time because he has not yet exhausted his administrative

1 remedies. The Social Security Act provides that an individual may seek review of a denial of
2 benefits after a final decision of the Commissioner of Social Security. 42 U.S.C. § 405(g) (“Any
3 individual, after any final decision of the Commissioner of Social Security made after a hearing to
4 which he was a party, irrespective of the amount in controversy, may obtain a review of such
5 decision by a civil action commenced within sixty days”). The Act does not permit courts to review
6 actions taken by the Commissioner prior to the issuance of a final decision. 42 U.S.C. § 405(h) (“No
7 findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person,
8 tribunal, or governmental agency except as herein provided.”); *Klemm v. Astrue*, 543 F.3d 1139,
9 1144 (9th Cir. 2008) (“The Social Security Act grants to district courts jurisdiction to review only
10 “final decisions” of the Commissioner.”).

11 The regulations implementing the Social Security Act provide for a four step administrative
12 review process. 20 C.F.R. § 416.1400(a). These steps are (1) an initial determination about
13 eligibility; (2) reconsideration of the initial determination; (3) a hearing before an administrative law
14 judge; and (4) review by the Social Security Appeals Council. *Id.* It is only after completing all of
15 these steps that the Commissioner’s decision is “final” and the individual may seek judicial review
16 of that decision. *Id.* Thus, Plaintiff cannot bring suit in this Court until he has had a hearing before
17 an administrative law judge, and then a review by the Social Security Appeals Counsel.

18 As this Court previously recognized in *King I*, Plaintiff has requested a hearing before an
19 administrative law judge challenging the termination of his benefits. *King I*, 13-cv-1897-EMC,
20 Docket No. 32 at 2. This hearing is currently set for August 29, 2013. *Id.* Plaintiff has therefore not
21 yet exhausted his administrative remedies, and may not request review of the SSA’s determination
22 by this Court at this time. Defendant’s motion to dismiss is therefore **GRANTED**, and this case is
23 **DISMISSED** for lack of subject matter jurisdiction. This dismissal is without prejudice to
24 Plaintiff’s right to seek judicial review of a final decision of the Commissioner once he has
25 exhausted his administrative remedies.


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IT IS SO ORDERED.


EDWARD M. CHEN
United States District Judge