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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEVEN M. GOLDSTEIN)	Case No.: 11-CV-898-PSG
)	
Plaintiff,)	ORDER GRANTING DEFENDANT’S
v.)	MOTION TO DISMISS
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

In this action against the Social Security Administration (“SSA”), Plaintiff Steven M. Goldstein (“Goldstein”), proceeding pro se, appeals a denial of child survivor insurance benefits. On February 22, 2011, Goldstein filed a complaint alleging “breach of contract to provide survivorship insurance benefits.”¹ On September 14, 2011, Defendant Michael J. Astrue (“Astrue”), Commissioner of Social Security, moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (12)(b)(6). On October 7, 2011, Goldstein filed a “motion of postponement and answer to certain defense claims,” which the court will treat as a late response to Astrue’s

¹ See Docket No. 1 at 1 (Compl.).

1 motion to dismiss.² On October 14, 2011, Astrue filed a reply. On October 25, 2011, the court took
2 the motions under submission. Having considered the arguments and evidence presented by the
3 parties, the court finds that it lacks subject matter jurisdiction over this matter and hereby
4 GRANTS Astrue's motion to dismiss. As explained below, the court further DENIES Goldstein's
5 motion requesting postponement or a stay of this action.

6 I. BACKGROUND³

7 Goldstein is the recipient of monthly disability insurance benefits on his own record in the
8 amount of \$1,446.50.⁴ In August 2010, Goldstein applied for survivorship insurance benefits as the
9 disabled child of a deceased parent who also had been receiving Social Security insurance
10 benefits.⁵ Goldstein alleges that he is entitled to receive simultaneous disability insurance benefits
11 on his own record, as well as child survivor insurance benefits on his parent's record.⁶ On August
12 31, 2010, Goldstein's application was denied on the ground that he already was entitled to an equal
13 or larger benefit on his own record.⁷ Goldstein filed for reconsideration, and on January 7, 2011,
14 the SSA issued a denial on reconsideration for the same reason.⁸ On February 10, 2011, Goldstein
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19 ² Pursuant to Civ. L.R. 7-3(a), Goldstein had 14 days after service of Astrue's motion to dismiss to
file a response.

20 ³ It is difficult to discern any underlying facts from Goldstein's complaint, which is made up
21 almost exclusively of Goldstein's legal analysis and conclusions. The court therefore has relied
22 primarily on Astrue's motion to dismiss and accompanying declarations and exhibits in order to
understand the factual and administrative history of this case. For future reference, the court directs
23 Goldstein to Fed. R. Civ. P. 8(a), which sets forth the basic requirements for a pleading that states a
claim for relief.

24 ⁴ See Docket No. 1 at 6.

25 ⁵ See *id.*

26 ⁶ See Docket No. 22 at 2 (Def.'s Mot. To Dismiss), Ex. 1 ¶ 3a (Jones Decl.); Docket No. 1 at 6-7.

27 ⁷ See Docket No. 22, Ex. 2.

28 ⁸ See *id.*, Ex. 3.

1 filed a timely request for a hearing before an Administrative Law Judge (“ALJ”). Shortly
2 thereafter, Goldstein filed the instant action in federal court.

3 On July 29, 2011, the ALJ issued a decision unfavorable to Goldstein, upholding the denial
4 of benefits.⁹ The ALJ’s notice of decision informed Goldstein of his right to file an appeal to the
5 SSA Appeals Council within 60 days of the date notice was received. No appeal was filed.¹⁰

6 II. ANALYSIS

7 A. Failure to Exhaust Administrative Remedies

8 Section 405(g) provides for judicial review of “any *final decision* of the Commissioner of
9 Social Security” made after a hearing to which the claimant was a party.¹¹ The Social Security
10 regulations provide for a set process of administrative review, up through the right to judicial
11 review.¹² The process requires (1) an initial determination, (2) reconsideration, (3) hearing before
12 an ALJ, (4) Appeals Council review, and (5) federal court review.¹³ The regulations further provide
13 that if a claimant is dissatisfied with a determination but does not “take the next step within the
14 stated time period,” the claimant will lose the right to further administrative and to judicial review,
15 unless good cause is shown.¹⁴ Goldstein concedes that he “was not aware of the requirement in the
16 U.S. law regarding administrative exhaustion” and hence did not appeal the ALJ’s July 29, 2011
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21 ⁹ *See id.*, Ex. 4.

22 ¹⁰ *See id.* ¶ 3b. *See also* Docket No. 23 at 1 (“The plaintiff fully will cooperate with this
23 requirement [to continue the administrative appeal process].”) (Pl.’s Opp’n to Def.’s Mot. To
Dismiss).

24 ¹¹ 42 U.S.C. § 405(g) (emphasis added).

25 ¹² *See* 20 C.F.R. § 404.900(a) (“The regulations describe the process of administrative review and
26 explain your right to judicial review after you have taken all the necessary administrative steps.”).

27 ¹³ *See id.*

28 ¹⁴ *See id.* § 404.900(b).

1 determination to the Appeals Council.¹⁵ Goldstein also has not attempted to argue good cause – nor
2 would establishing good cause allow him to skip the Appeals Council step and leap directly to
3 judicial review. Goldstein therefore has not exhausted his administrative remedies under the Social
4 Security Act, 42 U.S.C. § 405(g). Accordingly, this court lacks subject matter jurisdiction to hear
5 Goldstein’s claims and must dismiss the action.¹⁶

6 **B. Request to Postpone or Stay the Action**

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8 In his response to the motion to dismiss and request for postponement, Goldstein asks this
9 court to stay or continue the case until the process of administrative exhaustion is complete.

10 Goldstein argues that he has established in good faith that he will require “some time for the appeal
11 to be pursued so that [the] current matter can be adjudicated correctly” and points to the absence of
12 prejudice to any party should the court grant his motion.¹⁷ Goldstein also points to the likelihood
13 that his administrative appeal will be denied, whereby a stay of this matter would be more efficient
14 than dismissal with prejudice and the need for Goldstein to re-file at a later time.

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16 Although the court may be sympathetic to Goldstein’s misapprehension of the
17 administrative appeals process and requirements, as well as his arguments as to a stay, the court
18 cannot maintain an action over which it has no jurisdiction. Subject matter jurisdiction must exist
19 as of the time the action is commenced.¹⁸ Even if all parties prefer adjudication in federal court,

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¹⁵ See Docket No. 23 at 1.

23 ¹⁶ See Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
24 jurisdiction, the court must dismiss the action.”). Because the court must dismiss Goldstein’s
25 claims for lack of subject matter jurisdiction, it is not necessary for the court to reach Astrue’s
26 additional arguments pertaining to Goldstein’s failure to state a claim upon which relief can be
27 granted pursuant to Fed. R. Civ. P. 12(b)(6).

28 ¹⁷ See Docket No. 23 at 2.

¹⁸ See *Morongo Band of Mission Indians v. Cal. St. Bd. of Equalization*, 858 F.2d 1376, 1380 (9th
Cir. 1988) (citing *Mollan v. Torrance*, 22 U.S. 536, 538 (1824) (additional citations omitted)).

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consent of the parties is insufficient to confer jurisdiction.¹⁹ The court therefore is without power to grant Goldstein’s motion for postponement. Goldstein’s motion is DENIED.

III. CONCLUSION

In accordance with the foregoing, Astrue’s motion to dismiss is hereby GRANTED with prejudice. Goldstein’s motion requesting postponement or a stay of this action is hereby DENIED.

Dated: 1/3/2012



PAUL S. GREWAL
United States Magistrate Judge

¹⁹ See *id.*

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Notice of this filing was automatically mailed to counsel via the court's Electronic Case Filing system.

A copy of this filing was mailed to:

Steven M. Goldstein
184 Centre Street
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Mountain View, CA 94041

Dated: 1/3/2012

/s/ Chambers Staff
Chambers of U.S. Magistrate Judge Paul S. Grewal