



1 to timely request reconsideration results in a binding initial determination. 20 C.F.R. §404.905,  
2 416.505. Upon obtaining an adverse determination upon reconsideration, the claimant “shall be  
3 entitled to a hearing thereon by the Commission.” 42 U.S.C. §421(d).


4 Here, Plaintiff has failed to seek reconsideration of the agency’s unfavorable determination  
5 as required by 20 C.F.R. §§404.904, 404.909(a), 416.1404, 416.1409(a). (Devera Decl. ¶3(a); Exh.  
6 3). Plaintiff has simply failed to pursue her administrative remedies prior to commencing the present  
7 action. Consequently, the court presently lacks jurisdiction to entertain Plaintiff’s claim. See  
8 Califano v. Sanders, 430 U.S. 99,108 (1977).

9 Even though Plaintiff cannot presently pursue a judicial remedy, the court notes that Plaintiff,  
10 pursuant to 20 C.F.R. §§404.911 and 930(2009), may request a hearing before an Administrative Law  
11 Judge. Moreover, the Government represents that it “finds good cause for Plaintiff’s failure to timely  
12 file a request for a hearing before an Administrative Law Judge and, therefore, upon Order from this  
13 Court shall consider Plaintiff’s filing of this Complaint as a timely request for a hearing before an  
14 Administrative Law Judge.” (Response at pp. 2:28 - 3:3). Accordingly, the court instructs the  
15 Commissioner to “consider Plaintiff’s filing of this Complaint as a timely request for a hearing before  
16 an Administrative Law Judge.”

17 In sum, the court grants the motion to dismiss for lack of subject matter jurisdiction.

18 **IT IS SO ORDERED.**

19 DATED: December 18, 2009

20   
21 Hon. Jeffrey T. Miller  
United States District Judge

22 cc: All parties

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