

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

FRANCIS ANDERSON,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 3:10-CV-1442 (CSH)
	:	
MICHAEL J. ASTRUE,	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

RULING ACCEPTING AND ADOPTING RECOMMENDED RULING

Plaintiff, incarcerated and *pro se*, filed this action on September 9, 2010, contending that he was found to be disabled by the Social Security Administration in 2007 but that his disability benefits were subsequently terminated. Defendant filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that this Court lacks subject matter jurisdiction because none of the determinations of which Plaintiff complains constitute a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g).

Defendant's motion to dismiss [Doc. 13] and Plaintiff's motion to appoint counsel [Doc. 14] were referred to Magistrate Judge Joan Glazer Margolis for consideration and a ruling. On January 5, 2011, she rendered a recommended ruling [Doc. 17], familiarity with which is assumed, granting the motion to dismiss on account of Plaintiff's failure to exhaust his administrative remedies and denying as moot Plaintiff's motion for appointment of counsel. In the recommended ruling, Judge Margolis correctly concluded that Plaintiff has satisfied only two of the four steps necessary to exhaust his administrative remedies before proceeding to court, and consequently "[a] final decision has not been made after a hearing under 42 U.S.C. § 405(g), and thus this Court may not exercise jurisdiction over this matter." [Doc. 17 at 5]

Plaintiff has not filed an objection to the recommended ruling, despite the instruction in

the recommended ruling itself that Plaintiff should file an objection if he desired a district judge's review of the recommended ruling, and of the fact that "failure to file [a] timely objection to [the] Magistrate Judge's recommended ruling may preclude further appeal to Second Circuit." [Doc. 17 at 6]

However, Plaintiff did file within fourteen days a motion for reconsideration [Doc. 18] of the recommended ruling, which the Magistrate Judge appropriately denied. [Doc. 19] In an abundance of caution, this Court will construe Plaintiff's motion for reconsideration as an objection to the recommended ruling, and has considered the arguments therein. Specifically, Plaintiff contends that he never received several letters that were sent by the Social Security Administration advising him regarding the status of his case. Presumably, he offers this as the reason for his failure to pursue his case to administrative exhaustion. Regardless of the reason, Plaintiff's failure to exhaust his administrative remedies, and the resulting absence of a final decision, serve to deprive this Court of subject matter jurisdiction over this case, and it must be dismissed.

An alternative ground for decision emerges from Judge Margolis's correct observation at footnotes 9 and 11 that Social Security benefits are not payable to any individual confined in a jail, prison, or other penal institution or correctional facility. Accordingly, Plaintiff, who is currently incarcerated, would not in any event be eligible for benefits until he is released. 42 U.S.C. § 402(x)(1)(A); 20 C.F.R. § 404.468(a); *Langella v. Gov't of U.S.*, 6 Fed. Appx. 116, 177 (2d Cir. 2001).

The Court has reviewed the recommended ruling of the Magistrate Judge, Plaintiff's objections thereto in the form of a motion for reconsideration, and the relevant portions of the

record. The Court concludes that the Magistrate Judge reached the correct result based thereon. Accordingly, the recommended ruling of the Magistrate Judge [Doc. 17] is **accepted and adopted**. Defendant's Motion to Dismiss [Doc. 13] is **granted**, and Plaintiff's motion for appointment of counsel [Doc. 14] is **denied as moot**. Judgment shall enter accordingly.

SO ORDERED.

Dated at New Haven, Connecticut, this 25th day of February, 2011.

 /s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge