

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF INDIANA  
 INDIANAPOLIS DIVISION

JEFFREY E. HOWELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:16-cv-00352-RLY-MJD
	)	
CAROLYN W. COLVIN, Acting	)	
Commissioner of the Social Security	)	
Administration,	)	
	)	
Defendant.	)	

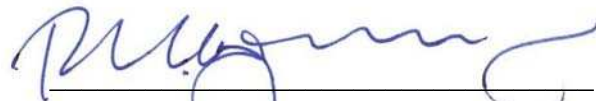
**ORDER ON HOWELL’S MOTION TO STAY and  
 THE COMMISSIONER’S MOTION TO DISMISS**

Jeffrey E. Howell, Plaintiff, filed this action for judicial review of the decision by Carolyn W. Colvin, Acting Commissioner of the Social Security Administration, to withhold funds from his future monthly benefit checks due to an alleged overpayment that occurred in August 2015. The Commissioner moves to dismiss Howell’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to exhaust his administrative remedies. “It is axiomatic that the United States as sovereign cannot be sued without its consent. If the Government does waive its sovereign immunity, it alone dictates the terms and conditions on which it may be sued.” *Macklin v. United States*, 300 F.3d 814, 820 (7th Cir. 2002) (citation omitted). Here, Congress has authorized judicial review only “after any final decision of the Commissioner of Social Security.” 42 U.S.C. § 405(g). *See* 20 C.F.R. § 404.900(a).

The Commissioner argues that Howell has not obtained a final decision yet because his case is still pending at the reconsideration stage. Howell readily concedes as much. He therefore requests that the court either stay the case or dismiss it *without prejudice*. The court cannot simply stay further proceedings because the United States has not waived its sovereign immunity for this claim. Dismissal is required.

Therefore, the Commissioner's Motion to Dismiss (Filing No. 19) is **GRANTED** and Howell's Motion to Stay Further Proceedings (Filing No. 13) is **DENIED**. Howell's Complaint is hereby **DISMISSED WITHOUT PREJUDICE**. The Clerk is **DIRECTED** to close this case forthwith.

**SO ORDERED** this 2nd day of August 2016.



RICHARD L. YOUNG, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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