

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WILLIAM T. DAVIS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 02-1595-SLR  
 )  
 SOCIAL SECURITY ADMINISTRATION, )  
 )  
 Defendant. )

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William T. Davis, Wilmington, DE. Plaintiff, pro se.

Colm F. Connolly, United States Attorney and Leonard P. Stark,  
Assistant United States Attorney, United States Attorney's  
Office, Wilmington, Delaware. Counsel for Defendant.

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**MEMORANDUM OPINION**

Dated: May 20, 2003  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Plaintiff William T. Davis filed this action against defendant Social Security Administration on November 1, 2002. (D.I. 1) Plaintiff seeks increased social security benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Currently before the court is defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1). (D.I. 10) For the reasons that follow, the court shall grant defendant's motion.

**II. BACKGROUND**

According to defendant, "[t]he plaintiff has been in pay status for receipt of supplemental security income benefits since May 2000, and the amount of his check has increased in January of each year, in accordance with cost-of living increases. There is no record that he has ever filed a request for hearing or request for Appeals Council review." (D.I. 9 at 3) Plaintiff has not disputed this fact and has made no allegation that he has attempted to pursue relief through the administrative procedures of the Social Security Administration.

**III. STANDARD OF REVIEW**

Not only may the lack of subject matter jurisdiction be raised at any time, it cannot be waived and the court is obliged to address the issue on its own motion. See Moodie v. Fed. Reserve Bank of NY, 58 F.3d 879, 882 (2d Cir. 1995). Once jurisdiction is challenged, the party asserting subject matter

jurisdiction has the burden of proving its existence. See Carpet Group Int'l v. Oriental Rug Importers Ass'n, Inc., 227 F.3d 62, 69 (3d Cir. 2000).

Under Rule 12(b)(1), the court's jurisdiction may be challenged either facially (based on the legal sufficiency of the claim) or factually (based on the sufficiency of jurisdictional fact). See 2 James W. Moore, Moore's Federal Practice § 12.30[4] (3d ed. 1997). Under a facial challenge to jurisdiction, the court must accept as true the allegations contained in the complaint. See id. Dismissal for a facial challenge to jurisdiction is "proper only when the claim 'clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . is wholly insubstantial and frivolous.'" Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991) (quoting Bell v. Hood, 327 U.S. 678, 682 (1946)).

Under a factual attack, however, the court is not "confine[d] to allegations in the . . . complaint, but [can] consider affidavits, depositions, and testimony to resolve factual issues bearing on jurisdiction." Gotha v. United States, 115 F.3d 176, 179 (3d Cir. 1997). See also Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891-892 (3d Cir. 1977). In such a situation, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for

itself the merits of jurisdictional claims." Carpet Group, 227 F.3d at 69 (quoting Mortensen, 549 F.2d at 891). Although the court should determine subject matter jurisdiction at the outset of a case, "the truth of jurisdictional allegations need not always be determined with finality at the threshold of litigation." Moore at § 12.30[1]. Rather, a party may first establish jurisdiction "by means of a nonfrivolous assertion of jurisdictional elements and any litigation of a contested subject-matter jurisdictional fact issue occurs in comparatively summary procedure before a judge alone (as distinct from litigation of the same fact issue as an element of the cause of action, if the claim survives the jurisdictional objection)." Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 537-38 (1995) (citations omitted).

#### **IV. DISCUSSION**

Defendant argues that plaintiff's claim must be dismissed because plaintiff has failed to exhaust his administrative appeal remedies prior to filing this action.

The Social Security Act authorizes judicial review of a claimant's request for benefits only when the Commissioner renders a "final decision" after an administrative hearing before an ALJ.<sup>1</sup>

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<sup>1</sup>Under the regulations, a claimant must complete a four step process in order to obtain a final decision and qualify for judicial review. The steps are:

Any individual, **after any final decision of the Commissioner of Social Security made after a hearing to which he was a party**, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within 60 days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.

42 U.S.C. § 405(g) (emphasis added). Section 405(g) is the exclusive jurisdictional basis for judicial review of cases arising under Title II of the Social Security Act. See 42 U.S.C. § 405(h). An exception to the "final decision" rule applies when

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(1) Initial determination. This is a determination we make about your entitlement or your continuing entitlement to benefits or about any other matter, as discussed in Sec. 404.902, that gives you a right to further review.

(2) Reconsideration. If you are dissatisfied with an initial determination, you may ask us to reconsider it.

(3) Hearing before an administrative law judge. If you are dissatisfied with the reconsideration determination, you may request a hearing before an administrative law judge.

(4) Appeals Council review. If you are dissatisfied with the decision of the administrative law judge, you may request that the Appeals Council review the decision.

(5) Federal Court Review. **When you have completed the steps of the administrative review process listed in paragraphs (a)(1) through (a)(4) of this section, we will have made our final decision.** If you are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

20 C.F.R. § 404.900(a) (emphasis added).

a claimant is presenting a constitutional claim or a claim that is wholly collateral to the claim for benefits. See Califano v. Sanders, 430 U.S. 99, 108-09 (1977).

In the instant case, plaintiff is requesting that the court review a claim for increased benefits that has not been presented to the Social Security Administration. Plaintiff has failed to obtain a "final decision" that permits judicial review of the merits of his claim. Thus, the court lacks jurisdiction over the merits of plaintiff's claim for increased social security benefits.

#### **V. CONCLUSION**

For the reasons stated, defendant's motion to dismiss for lack of subject matter jurisdiction is granted. An appropriate order shall issue.

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**O R D E R**

At Wilmington this 20th day of May, 2003, consistent with  
the memorandum opinion issued this same day;

IT IS ORDERED that defendant's motion to dismiss the  
complaint (D.I. 10) is granted.

Sue L. Robinson  
United States District Judge