

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J. TROY MAZZION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action 06-0719 (HHK)

MEMORANDUM OPINION

Plaintiff alleges that the Social Security Administration has denied him disability payments and that he is “still being denied reactivation of payments and [is] currently deficient checks [*sic*] for 8/05, 10/05, 11/05, 12/06 and 2/06. . . .” Compl. at 1. Defendant moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction based on plaintiff’s failure to exhaust administrative remedies. Upon consideration of the parties’ submission and the entire record, the Court agrees that it lacks jurisdiction and, thus, will grant defendant’s motion to dismiss.

Judicial review of the denial of social security benefits is available to “[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party. . . .” 42 U.S.C. § 405(g). “[T]he exhaustion requirement [] is a prerequisite to jurisdiction,” *Heckler v. Ringer*, 466 U.S. 602, 617 (1984), “that may be excused only under rather limited conditions.” *National Kidney Patients Ass’n v. Sullivan*, 958 F.2d 1127, 1130 (D.C. Cir. 1992). Plaintiff has not credibly refuted defendant’s

assertion that jurisdiction is lacking because, among other reasons, the Commissioner has not rendered a final decision on the claim forming the basis of this action. *See* Def.'s Mem. at 1, 5; Declaration of Rose Ray ¶ 3. Moreover, plaintiff has not presented any basis for excusing his failure to exhaust. *See Heckler*, 466 U.S. at 18 (describing "certain special cases" where the exhaustion requirement may be excused). "Whenever [as here] it appears by suggestion of the parties . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3). Accordingly, a separate Order of dismissal accompanies this Memorandum Opinion.

s/s
Henry H. Kennedy, Jr.
United States District Judge

November 30, 2006