UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FEB 1 4 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Clyde Lacy Rattler,)		
Plaintiff,)		
v.)	Civil Action No.	11 0365
Secretary of Health and Human Services,)		
Defendant.)		

MEMORANDUM OPINION

This matter, transferred from the Southern District of New York, is before the Court on its initial review of plaintiff's *pro se* complaint and application to proceed *in forma pauperis*. The application will be granted and the complaint dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (requiring dismissal of an action "at any time" the Court determines that it lacks subject matter jurisdiction).

Plaintiff is a District of Columbia resident suing the Secretary of Health and Human Services for "an unlimited sum of money[.]" Compl. at 4. As the basis of federal court jurisdiction, plaintiff states that the defendant "breach[ed] an express or implied term of a contract with [him]," *id.* at 2, but he identifies his injury as "a deform [sic] (RT) elbow." *Id.* at 3. Plaintiff has stated no supporting facts and, thus, has failed to satisfy the minimal pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. In any event, a claim for monetary damages against the United States is cognizable under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671 *et seq.* Such a claim is maintainable, however, only after the plaintiff has exhausted his administrative remedies by "first present[ing] the claim to the appropriate Federal agency. . . . " 28 U.S.C. § 2675. This exhaustion requirement is

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jurisdictional. See GAF Corp. v. United States, 818 F.2d 901, 917-20 (D.C. Cir. 1987); Jackson v. United States, 730 F.2d 808, 809 (D.C. Cir. 1984); Stokes v. U.S. Postal Service, 937 F. Supp. 11, 14 (D.D.C. 1996).

Plaintiff has not indicated that he exhausted his administrative remedies under the FTCA. Therefore, the complaint will be dismissed. *See Abdurrahman v. Engstrom*, 168 Fed.Appx. 445, 445 (D.C. Cir. 2005) (per curiam) ("[T]he district court properly dismissed case [based on unexhausted FTCA claim] for lack of subject matter jurisdiction."). A separate Order accompanies this Memorandum Opinion.

United States District Judge

Date: February <u>/0</u>, 2011