

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

MELVIN A. JONES,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-1251 (BAH)
)	
COMMISSIONER OF SOCIAL SECURITY)	
ADMINISTRATION,)	
)	
Defendant.)	
)	

MEMORANDUM OPINION

In June 2012, the Plaintiff, proceeding *pro se*, filed suit in the Superior Court of the District of Columbia against Administrative Law Judge (“ALJ”) C.J. Sturek of the Social Security Administration (“SSA”). The Defendant removed this action from Superior Court, *see* ECF No. 1, and has moved to dismiss the complaint as moot. Def.’s Mot. to Substitute the Comm’r of Social Security for C.J. Sturek and to Dismiss the Compl., ECF No. 7. For the following reasons, the motion will be granted and this case will be dismissed.

The instant complaint is based on ALJ Sturek’s delay in issuing a decision on the Plaintiff’s application for supplemental social security income following a remand of the Plaintiff’s earlier case to SSA. *See* Compl., ECF No. 3-1; *Jones v. Astrue*, 654 F. Supp. 2d 37 (D.D.C. 2009), *rev’d*, 647 F.3d 350 (D.C. Cir. 2011) (with instructions to remand the case to the Social Security Commissioner). On September 9, 2012, the Defendant’s motion to substitute the SSA Commissioner as the proper defendant was granted and the Plaintiff was instructed to respond to the pending motion to dismiss. *See* Order, ECF No. 8. The Plaintiff filed his

opposition, *see* Opp'n to Def.'s Mot. to Substitute the Comm'r of Social Security for Judge C.J. Sturek, ECF No. 9, the Defendant filed a Reply, ECF No. 10, and the Plaintiff was permitted to file a Surreply, ECF No. 11.

The Defendant moves to dismiss the instant complaint as moot in light of the "Unfavorable" decision ALJ Sturek issued on July 16, 2012. Def.'s Ex. A, ECF No. 7-1 (Not. of Decision). That decision is the subject of a separate action pending before the undersigned judge that the Plaintiff filed on August 31, 2012. *Jones v. Astrue*, No. 12-1458; *see* Compl., ECF No. 1 ("Request the Court to Overturn SSI Unfavorable Decision by Judge C.J. Sturek").

In his opposition, the Plaintiff continues his attack against ALJ Sturek with unsubstantiated accusations that he has a "personal prejudice and hatred of minorities seeking benefits," Pl.'s Opp'n at 1, to which defendant replies that "it was ALJ Sturek who awarded [Plaintiff] the disability benefits that he is currently being paid" Def.'s Reply at 1; *see* Not. of Decision at 19, n.6 ("This decision does not in any way affect the favorable decision . . . entered on the application filed on March 31, 2008 finding that the claimant was disabled as of March 4, 2008."). In any event, the Social Security Act precludes an "action against . . . any officer or employee [of the SSA] . . . under section 1331 or 1346 of Title 28." 42 U.S.C. § 405(h). The Plaintiff's judicial remedy lies exclusively under 42 U.S.C. § 405(g). *See Friedman v. Sebelius*, 686 F.3d 813, 826 (2012) (reiterating that "Section 405(h) [of 42 U.S.C.] . . . makes [42 U.S.C.] § 405(g) the exclusive avenue for judicial review of administrative decisions") (quoting *Nat'l Kidney Patients Assoc. v. Sullivan*, 958 F.2d 1127, 1130 (D.C. Cir. 1992)) (alterations in original). Since the Plaintiff is pursuing his § 405(g) remedy in Civ. Action No. 12-1458, this case,

predicated on a moot claim, will be dismissed. A separate Order accompanies this Memorandum Opinion.

/s/ *Boyd A. Howell*
UNITED STATES DISTRICT JUDGE

DATE: May 2, 2013