

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ENTERED ON DOCKET

MAR 23 2010

IN RE:	:	CASE NO. 09-93431-JB
	:	
DIEGO M. RODRIQUEZ,	:	
	:	
Debtor.	:	
_____	:	CHAPTER 7
	:	
DIEGO M. RODRIQUEZ,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 10-9006-JB
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

ORDER

This adversary proceeding relates to a dispute between the debtor and the United States of America on behalf of its agency, the U.S. Department of Health and Human Services, Social Security Administration (the "SSA"), regarding the overpayment of Social Security disability benefits that debtor received from 2000 to 2005 and the SSA's recoupment of those payments by withholding future benefits. In his *pro se* complaint, debtor seeks relief for the SSA's alleged failure to grant him a pre-recoupment hearing to determine debtor's entitlement to a waiver of the overpayments. The SSA filed a motion to dismiss for lack of subject matter jurisdiction, contending that debtor failed to exhaust his administrative remedies.

The relevant history is as follows. On December 15, 1993, debtor Diego Rodriquez applied for disability benefits with the SSA. Debtor was found disabled as of

April 17, 1993 and entitled to benefits for the period beginning in October of 1993. Years later, debtor began working in a vocational rehabilitation program with Microsoft Corporation to gain certain computer certifications. Debtor accepted employment in 2000 and contends he notified the SSA of his employment by mailing two letters and carrying a copy of his offer letter to his local Social Security office. Even though he was earning above the income threshold to qualify for disability benefits, debtor continued to receive his monthly benefit payments from the SSA. Although the record is unclear, it appears that part of the dispute between the parties may stem from the fact that the SSA lost debtor's file for a period of five years.

In October of 2005, the SSA sent debtor letters stating that because of his employment, debtor's entitlement to disability benefits ended in October of 2000 and that debtor had received overpayments of benefits totaling \$73,871.00. SSA records show that on October 26, 2005, debtor requested that the SSA reconsider this determination. Debtor contends he also requested a waiver of the overpayments in October of 2005 and on other occasions, because debtor contends that he was not at fault and he could not survive without the monthly benefit payments. For some period of time, it appears that the SSA recouped the overpayments by reducing or eliminating debtor's monthly benefits, although the record before the Court is not clear on the dates and amounts of the collections. It also appears that no action was taken on any request for a waiver. After filing a Chapter 7 bankruptcy petition before this Court on December 21, 2009, debtor filed a complaint claiming he was denied a pre-recoupment hearing, that overpayments were wrongfully collected from him and that the SSA did not follow its own procedures when he requested a waiver of the

overpayments.

Before addressing defendant's arguments that the Court should dismiss the complaint because debtor failed to exhaust his administrative remedies, there is the threshold issue of whether the Bankruptcy Court would have jurisdiction, assuming debtor had exhausted his administrative remedies. The Court raises this issue *sua sponte* and concludes that it does not have jurisdiction to hear this complaint.

Bankruptcy jurisdiction does not encompass the type of judicial proceeding brought by the debtor. Bankruptcy jurisdiction is granted in 28 U.S.C. § 1334. Under §1334(b), district courts have original, but not exclusive, jurisdiction of "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). District courts refer proceedings "arising under", "arising in" or "related to" a Title 11 case to bankruptcy courts, and a bankruptcy court's jurisdiction must be based on the "arising under", "arising in" or "related to" language of § 1334(b). 28 U.S.C. § 157(a); *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S.Ct. 1493 (1995). A claim "arises under" Title 11 if the cause of action invokes a right created by the Bankruptcy Code and "arises in" a case under Title 11 if the claim would arise only in a bankruptcy context. *Cont'l Nat'l Bank of Miami v. Sanchez (In re Toledo)*, 170 F.3d 1340, 1344-1345 (11th Cir. 1999). Here, the claim, if one exists, does not arise under the Bankruptcy Code and is not dependent on bankruptcy law for its existence. If a cause of action exists, it exists under 42 U.S.C. § 405(g), the law governing judicial review of Social Security determinations.

Debtor's claim against the SSA in this adversary proceeding does not "relate to" a case under Title 11. The Eleventh Circuit adopted the Third Circuit's test in *Pacor*,

*Inc.v. Higgins* for determining when a proceeding is “related to” a Title 11 case. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir. 1990) (adopting *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3rd Cir. 1984)). “Related to” proceedings possess “some nexus between the related civil proceeding and the Title 11 case” so that the proceeding “could conceivably have an effect on the estate being administered in bankruptcy.” *Id.* at 787-788; *see also Lawrence v. Goldberg*, 573 F.3d 1265, 1270-1271 (11th Cir. 2009); *Community Bank of Homestead v. Boone (In re Boone)*, 52 F.3d 958, 960 (11th Cir. 1995). Here, there is no nexus between debtor’s SSA cause of action and the administration of the estate, because debtor’s disability benefits would be exempt under both the federal exemption and the Georgia exemption statutes. 11 U.S.C. §522(d)(10); O.C.G.A. § 44-13-100. The parties have not argued and there is no indication that the Chapter 7 Trustee has or could have any interest in debtor’s disability benefits. Thus, this dispute between the debtor and the SSA does not conceivably affect the administration of the estate and is not “related to” a case under Title 11 within the meaning of 28 U.S.C. §1334(b).

In addition, the Local Rules and Standing Orders make it clear that the magistrate judges, not bankruptcy judges, have the delegated authority to hear Social Security actions to review administrative determinations by the SSA. The Local Rules of the District Court for the Northern District of Georgia delegate jurisdiction to the Bankruptcy Court in LR 83.7, NDGa. This delegation does not include Social Security actions brought under 42 U.S.C. § 405(g). Section 405(g) provides that all actions by claimants for judicial review of a final decision of the Commissioner “shall be brought in the district court of the United States for the judicial district in which the plaintiff resides.” 42 U.S.C. § 405(g). The

District Court has in turn delegated judicial review of Social Security actions to the magistrate judges, not bankruptcy judges. LR 83.9, NDGa.; see also *In re Cases Referred to Magistrate Judges*, United States Court Northern District of Georgia, Standing Order 08-01, June 12, 2008 (holding that “[t]he Court designates the magistrate judges of this court to hear . . . all actions brought under Section 205(g) of the Social Security Act, 42 U.S.C.

§ 405(g), and related statutes, to review administrative determinations which have come before the court on a developed administrative record.”). While the Bankruptcy Court has jurisdiction under 28 U.S.C. § 1334(b) to determine Social Security matters arising in, arising under or related to bankruptcy cases, such as questions involving the bankruptcy discharge or the bankruptcy automatic stay, that jurisdiction is limited and does not include a judicial review of the matters at issue in the present adversary proceeding.

This Order could end here with the Court’s conclusion regarding bankruptcy jurisdiction. However, because the parties have expended so much effort on the arguments related to exhaustion of administrative remedies, the Court will address those arguments with the hope that this review might assist the parties in coming to a prompt resolution of the dispute.

The SSA seeks dismissal of debtor’s adversary proceeding for lack of subject matter jurisdiction, on the ground that debtor has failed to pursue administrative remedies that must be exhausted prior to securing judicial review of an SSA overpayment determination. Congress has authorized judicial review of final decisions of the SSA Commissioner (“the Commissioner”) in cases arising under Title II and Title XVI of the Social Security Act (“the Act”). Those statutory provisions provide the exclusive

jurisdictional basis for judicial review in cases arising under the Act.

Section 405(g) of the Act provides:

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 sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal of business within any such judicial district, in the United States District Court for the District of Columbia. . . .

42 U.S.C. § 405(g) (emphasis added).

Section 405(h) further provides:

The findings and decision of the Commissioner of the Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.

42 U.S.C. § 405(h) (emphasis added).

Thus, Congress has explicitly stated that, in claims arising under the Act, judicial review is permitted only in accordance with the provisions of section 405(g) of the Act, as limited by section 405(h) of the Act. *See, e.g., Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 10, 120 S.Ct. 1084 (2000). Sections 405(g) and 405(h) limit judicial review of a claim arising out of the Act to review “after any final decision of the Commissioner.” 42 U.S.C. § 405(g). A final decision is deemed to have been issued when

claimant completes the review process proscribed by the Commissioner, because the statute authorizes the Commissioner to specify when a claim is administratively exhausted. *Weinberger v. Salfi*, 422 U.S. 749, 766, 95 S.Ct. 2457 (1975). A claimant can only seek judicial review in federal court after exhausting his or her administrative remedies. *Schweiker v. Chilicky*, 487 U.S. 412, 424, 108 S.Ct. 2460 (1988).

The SSA identifies two options available to a claimant to administratively appeal an SSA determination that overpayments have occurred: (1) a request for a reconsideration or (2) a request for a waiver of the recovery of the overpayment. If a request for reconsideration is made, the SSA will review the initial determination and issue a reconsideration determination. 20 C.F.R. § 416.1407. If the claimant is dissatisfied with the SSA's reconsidered determination, the claimant may request a hearing with an administrative law judge. 20 C.F.R. § 404.930. After a decision is made by an administrative law judge, claimant may request review by the SSA Appeals Council. 20 C.F.R. §§ 404.967, 416.1467. It is only after the Appeals Council reviews a decision by the administrative law judge or denies review of the decision that a claimant is entitled to judicial review. *See Ingram v. Comm'r of Soc. Sec. Admin.*, 496 F.3d 1253, 1261 (11th Cir. 2007).

The record reflects that debtor did not exhaust his administrative remedies with respect to a request for reconsideration. SSA records show that on October 26, 2005 debtor filed a request for reconsideration of the determination that he had been overpaid \$73,871.00. Some nineteen months later, on June 5, 2007, the SSA responded to debtor's initial request for reconsideration by affirming its initial determination, apologizing for failing to stop benefits when debtor first reported he worked for Microsoft Corporation, and

stating that the amount of the overpayment was now \$54,264.50. The SSA contends that debtor never pursued the next step in the administrative process, which would have been to file a request for a hearing with an administrative law judge. The record also shows that debtor rescinded his request for reconsideration in a letter from debtor to the Appeals Council of the SSA dated March 12, 2007. Because debtor did not seek review of his reconsidered determination by an administrative law judge, the record demonstrates that he did not exhaust his administrative remedies, and defendant's motion to dismiss as to any claim for judicial review of the reconsideration determination has merit.

With respect to debtor's request for a waiver of the recovery of the overpayments, the record is less clear. The SSA claims that debtor did not request a hearing or waiver of the overpayment with his local Social Security office. See Def.'s Mot. Dismiss, Declaration of Roberta Heady, ¶ 10, filed February 18, 2010. However, debtor contends he made numerous requests for a waiver and that he is unable to exhaust his administrative remedies, because the SSA will not process his request for a waiver. It is difficult to understand from the current record what debtor needed to do in order to exhaust his administrative remedies on his request for a waiver.

Several documents attached to the parties' pleadings refer to debtor's request for a waiver. For example, in a letter dated January 9, 2006 from debtor to the SSA Billing Department for Overpayments, debtor stated that he twice requested the necessary documents to file a request for waiver of the overpayment and that he has not received the documents of a notice of a hearing. In a letter from debtor to Commissioner Michael J. Astrue dated March 12, 2007, debtor stated that he requested a waiver of overpayment immediately after



he received notice of his overpayment in October of 2005. In a letter from debtor to the SSA Appeals Council dated March 12, 2007, debtor stated that he requested a waiver in October of 2005 and that he was continuing to pursue this waiver request. In a letter dated June 29, 2007 from debtor to Mr. Stephen Breen with the SSA, debtor reiterated his request for a waiver. Mr. Breen is the assistant regional commissioner for processing center operations who wrote debtor informing him of both the October 2, 2005 initial determination and the June 5, 2007 reconsidered determination. In a letter from debtor to the Disability Adjudication and Review Board dated November 27, 2007, debtor reiterated his requests for a pre-recoupment hearing. In a letter dated August 3, 2009 from debtor to Mr. Breen, debtor again requested a waiver of overpayment, and stated that he has been requesting a waiver since 2005.

In a letter dated November 19, 2007 to the debtor from the Appeals Council of the SSA, the Appeals Council advised debtor that he had mailed his letters of January, 2005 and March 12, 2007 to the wrong SSA entity and that he needed to request a hearing with his local Social Security office in Portland, Oregon. The Appeals Council directed debtor to make his requests with this local Social Security office and indicated that it was sending debtor's file to the Portland office for review.

In view of the history of correspondence and proceedings between the parties, the Court encourages the SSA to explain to the debtor why no pre-recoupment hearing was made available to the debtor and whether he has any remedy available to him at this time. It might be helpful if the SSA could respond to debtor's contention that he made numerous requests for a waiver of the overpayments. If these requests were not made on the proper

form or at the proper office, it would be helpful if the SSA could explain to the debtor what he did incorrectly in each instance. If it turns out that debtor did make a proper request for a waiver of the overpayments, it would be helpful if the SSA could explain why he did not have a pre-recoupment hearing. If the debtor should have had a pre-recoupment hearing and disability benefits were withheld by mistake, it would be helpful if the SSA could explain to the debtor whether he has any administrative remedies available.

Finally, the debtor has filed pleadings in which he states that the SSA will not currently process his January, 2010 application for waiver of the overpayments without written orders from the Bankruptcy Court. The SSA recently filed a copy of a March 16, 2010 letter from the Assistant Regional Counsel to debtor in which the SSA states that it is SSA policy not to process a waiver request until after debtor's bankruptcy case is closed and that he should re-file his request with the Gwinnett District office. The parties should understand that when the debtor receives a Chapter 7 discharge, it will discharge any overpayment claim by the SSA. The Court explained this principle to the parties at the February 22, 2010 hearing. *See Neavear v. Schweiker (In re Neavear)*, 674 F.2d 1201, 1206 (7th Cir. 1982) (holding that an overpayment debt of Social Security benefits is dischargeable unless the debtor falls within the exceptions to discharge enumerated under 11 U.S.C. § 523); *Rowen v. Morgan*, 747 F.2d 1052, 1055 (6th Cir. 1984); *Hawley v. United States of America (In re Hawley)*, 23 B.R. 236, 238-239 (Bankr. E.D. Mich. 1982). The deadline for filing complaints objecting to the debtor's discharge or dischargeability of debts was March 22, 2010. No such complaints have been filed, and thus the debtor will receive a Chapter 7 discharge shortly. Importantly, that discharge will include any obligation by the debtor to

the SSA for overpayments as of the date this bankruptcy was filed. The bankruptcy discharge should not, however, affect any claim the debtor might have, if one exists, arising from the alleged failure to process a request for a waiver of overpayments in 2005, 2006, 2007 and 2009.

In accordance with the above reasoning, this adversary proceeding is dismissed without prejudice to debtor's right to exhaust any administrative remedies he may have and then to seek judicial review, if appropriate, in the District Court.

It is so ORDERED, this 23<sup>rd</sup> day of March, 2010.

  
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JOYCE BIARY  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING


A copy of the foregoing Order was mailed to the following:

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Mailed: 03/23/2010