

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2019

Lyle W. Cayce
Clerk

No. 18-50837
Summary Calendar

BRUCE BECKER,

Plaintiff-Appellant,

v.

NANCY A. BERRYHILL, ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:17-CV-892

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:*

Bruce Becker brought a suit challenging the Social Security Administration's decision to temporarily suspend his disability benefits. The magistrate judge recommended dismissing Becker's suit because he had failed to satisfy the prerequisites for judicial review under 42 U.S.C. § 405(g). The

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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district court agreed, adopted the recommendation, and dismissed Becker's claims.

The district court, however, did not have the benefit of our recent decision in *In re Benjamin*, 924 F.3d 180 (5th Cir. 2019). It therefore understandably concluded Becker was subject to § 405(h)'s channeling and jurisdiction-stripping provisions. But in *Benjamin* we held that § 405(h) channels only certain kinds of challenges into § 405(g)—namely, “challeng[es to] (1) a disability determination by the Commissioner (2) for which the statute requires a hearing.” *Id.* at 188.

Becker does not appear to challenge an initial benefits determination here, but rather a later decision to suspend his benefits. If so, he would not be subject to § 405(h)'s channeling and stripping provisions. At the same time, that would mean Becker could not rely on § 405(g) to bring his claims; he would need an independent source of jurisdiction.

On remand, the district court should consider whether Becker's claims must be channeled through § 405(g) and (h) in the first instance and, if not, whether it has jurisdiction to consider Becker's claims based on the other alleged sources of jurisdiction. *See, e.g., Benjamin*, 924 F.3d at 188 (explaining the last sentence in § 405(h) strips federal jurisdiction under only the listed statutory provisions—§§ 1331 and 1346); *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 766 (5th Cir. 2011) (holding “§ 405(h) does not preclude § 1361 jurisdiction”).

The judgment is VACATED and REMANDED for further proceedings consistent with this opinion.