

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-7466
Summary Calendar

CATHERINE M. STARR,

Plaintiff-Appellant,

VERSUS

SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY OPERATIONS,
BALTIMORE, MARYLAND,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-H-91-0242(P)(N))

(August 10, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:¹

Catherine M. Starr appeals the dismissal of her complaint against the Secretary of the Department of Health and Human Services for lack of jurisdiction.

I.

The Secretary found Catherine M. Starr disabled in 1978. In

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

September, 1980, the Secretary notified Starr that she was no longer eligible for disability benefits and that her last payment would be the September payment. Starr did not appeal or seek to have this decision reconsidered.

Starr filed a new application for benefits in October, 1985. An ALJ found that Starr was disabled beginning October, 1980. The Secretary made payments for the 12-month period prior to Starr's application.

In 1988, the Secretary notified Starr that she was no longer eligible for disability payments. However, an ALJ found in 1989 that Starr continued to be eligible for benefits.

In 1991, Starr filed a complaint in the district court under the Federal Tort Claims Act ("FTCA"). She alleged that she should have received benefits for the entire period beginning in October, 1980. Instead, the Secretary made payments only for the period beginning in October, 1984. The district court, relying on a magistrate's findings, dismissed Starr's complaint for lack of jurisdiction. The court found that because Starr did not appeal the September, 1980 discontinuation of benefits, she had not exhausted her administrative remedies.

II.

Starr argues that because the ALJ in the 1985 hearing found that she was disabled beginning in 1980, she should receive retroactive benefits to 1980. The difficulty is that Starr's claim for disability benefits was not filed until 1985. Under the Social Security Act:

[a]n individual who would have been entitled to a disability insurance benefit for any month had he filed application

therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

42 U.S.C. § 423(b). According to the Secretary's regulations, "[i]f you file an application for disability benefits [] ... after the first month you could have been entitled to them, you may receive benefits for up to 12 months immediately before the month in which your application is filed." 20 C.F.R. § 404.621(a)(1)(i). When Starr applied in 1985, she received benefits for the 12 previous months according to the regulations.

Regardless of the initial date of her disability, Starr could never be entitled to an award of benefits prior to the twelve-month period before she applied for benefits. **Meadows v. Cohen**, 409 F.2d 750, 752 (5th Cir. 1969). Starr failed to seek payment of benefits for 1980-84 during the time when she was eligible to receive those payments.

AFFIRMED