

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHARLES SPRINGFIELD,

Plaintiff,

v.

Civil Action No. 5:07CV167
(STAMP)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

On December 20, 2007, the plaintiff, by counsel, brought the above-styled civil action. On the same date, the plaintiff filed an application to proceed in forma pauperis ("IFP application"). The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B).

After reviewing the file, Magistrate Judge Seibert determined that the plaintiff had submitted an out-of-date IFP application form. Accordingly, the magistrate judge directed the plaintiff to complete a new IFP application form, which the plaintiff did on February 20, 2008. However, the plaintiff failed to provide required information concerning the income and assets of his spouse. The magistrate judge entered an order on March 11, 2008,

directing the plaintiff to remedy the deficiencies in the plaintiff's IFP application form. The plaintiff failed to comply. On August 8, 2008, the plaintiff was again ordered to complete a new IFP application form to include his spouse's income and assets. The August 8, 2008 order advised the plaintiff that failure to file the IFP application within fourteen days of the date of entry of the order would result in the entry of a report recommending dismissal of the plaintiff's complaint. On January 16, 2009, the magistrate judge entered an report recommending that this action be dismissed for failure to comply with the order requiring the plaintiff to file an IFP application including the income and assets of the plaintiff's spouse. To date, no objections or other communications been have filed with this Court.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff did not file

objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

The magistrate judge found that the plaintiff has not submitted the IFP application form with information concerning the income and assets of the plaintiff's spouse. A review of the record indicates that the plaintiff has not submitted a complete IFP application form, nor has he paid the required fee, or otherwise communicated with this Court to explain his reasons for noncompliance. This Court concludes that the magistrate judge's findings are not clearly erroneous, and, accordingly, finds that the plaintiff's complaint should be dismissed for failure to comply with the Court's order to file an IFP application including the income and assets of the plaintiff's spouse.

III. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the plaintiff's complaint is DISMISSED without prejudice. Further, it is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: January 27, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE