

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

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|----------------------------------|---|-----------------------------------|
| SHEILA FAYE BROWN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 6:12-CV-1693-SLB |
| |) | |
| MICHAEL J. ASTRUE, |) | |
| Commissioner of Social Security, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION

This cause is before the court upon the motion of the Commissioner to dismiss. The basis for Commissioner’s motion is that this action was not timely filed under 42 U.S.C. § 405(g), which provides that a civil action seeking review of a final decision by the Commissioner must be “commenced within sixty days after the mailing to him of notice of such decision....” The Commissioner has interpreted “mailing” as the date of receipt by the individual of the Appeals Council’s notice of denial of request for review of the presiding officer’s decision. 20 C.F.R. § 422.210(c)(2006). The date of receipt is presumed to be five days after the date of such notice, unless there is a reasonable showing to the contrary made to the Appeals Council. 20 C.F.R. §§ 404.901, 416.1401, 422.210(c)(2006).

The uncontradicted declaration of Patrick J. Herbst establishes that the Appeals Council denied review of plaintiff’s claim on February 16, 2012. Therefore,

plaintiff's deadline to commence a civil action was on or before April 23, 2012.¹

Plaintiff's complaint was filed April 25, 2012.

The plaintiff has filed nothing in opposition to the Commissioner's motion and there appear to be no circumstances in the present case that would justify a tolling of the sixty-day requirement of 42 U.S.C. § 405(g). Accordingly, plaintiff's appeal is due to be dismissed.

An appropriate order will be entered contemporaneously herewith.

DONE and **ORDERED** this 14th day of January, 2013.

Sharon Lovelace Blackburn

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE

¹ Because the sixty-fifth day fell on a weekend, the deadline for filing an appeal was the following Monday, April 23, 2012.