

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

SHEILA D. SMITH

PLAINTIFF

v.

No. 2:11-cv-62-DPM-HDY

**MICHAEL J. ASTRUE,
Commissioner of the
Social Security Administration**

DEFENDANT

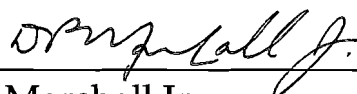
ORDER

The Court has reviewed Magistrate Judge H. David Young's Proposed Findings and Recommendations, *Document No. 7*, and Smith's objection, *Document No. 8*, and adopts Judge Young's proposed disposition. The Court approaches the timeliness issue *de novo*. FED. R. CIV. P. 72(b)(3). Smith claims she and her attorney never received notice of the Appeals Council's decision. *Document No. 8*, at ¶ 3. But Smith appealed that decision to this Court, so it must have come to hand somehow. The Court asked Smith's lawyer some questions to clarify and supplement the record on this point. *Document No. 9*. The deadline for responding has passed and no response has been filed. As the record stands, there has been no "reasonable showing" that Smith or

her lawyer did not get notice within the presumptive five-day mailing period. 20 C.F.R. § 422.210(c). Without more, equitable tolling is inappropriate. *Bess v. Barnhart*, 337 F.3d 988 (8th Cir. 2003).

Magistrate Judge Young's Proposed Findings and Recommendations, Document No. 7, adopted in part and declined in part. Motion, Document No. 5, granted. Smith's complaint is dismissed with prejudice as untimely.

So Ordered.



D.P. Marshall Jr.
United States District Judge

4 Nov. 2011