

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

SHERRY CAIN

PLAINTIFF

v.

NO. 3:17-cv-00249 DPM/PSH

**NANCY BERRYHILL, Acting Commissioner
of the Social Security Administration**

DEFENDANT

FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following proposed Findings and Recommendation have been sent to United States District Judge D.P. Marshall Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection, and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

On September 19, 2017, plaintiff Sherry Cain (“Cain”) began this case by filing a pro se complaint pursuant to 42 U.S.C. 405(g). In the complaint, she challenged the final decision of the Acting Commissioner of the Social Security Administration (“Commissioner”). The issues were joined on December 15, 2017, when the Commissioner filed an answer and thereafter filed a transcript of the administrative proceeding. On December 28, 2017, the Court issued a scheduling order. See Docket Entry 13. In the order, Cain was directed to file a brief on or before February 8, 2018. She was warned that her failure to file a timely brief could result in the dismissal of this case for failure to prosecute.

Cain did not file a brief, a request for an extension of time to file a brief, or any other submission by the February 8, 2018, deadline. Although the Court could have thereafter properly recommended that this case be dismissed, out of an abundance of caution, the Court gave her up to, and including, August 1, 2018, to file a brief in which she explained why the Commissioner’s final decision is not supported by substantial evidence on the record as a whole. Cain was warned that in the event she failed to file a brief by August 1, 2018, the Court would recommend that her complaint be dismissed. August 1, 2018, has now come and gone without Cain filing a brief, a request for an extension of time to file a brief, or any other submission.

A federal court is vested with the inherent power to police its docket. As a part of that power, the court may dismiss a case when a party fails to monitor the progress of the case or fails to prosecute or defend it in a timely and diligent manner. See Local Rule 5.5(c).

Cain has failed to monitor the progress of this case and has failed to prosecute it in a timely and diligent manner. Having weighed the competing interests, and on the basis of the Court's inherent policing power, the undersigned recommends that Cain's complaint be dismissed without prejudice. A separate judgment should also be entered.

DATED this 7th day of August, 2018.



UNITED STATES MAGISTRATE JUDGE