

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

CLARA C. GAITHER

PLAINTIFF

VS.

4:11CV00576

ARKANSAS FOUNDATION FOR MEDICAL CARE

DEFENDANT

ORDER

Pending are Defendant's motion to dismiss, or in the alternative, motion to quash, docket # 13 and Plaintiff's motion to not dismiss and motion to not quash, docket # 15, which the Court will interpret as a response to Defendant's motion. For the reasons stated below, Defendant's motion to dismiss is denied, Defendant's motion to quash is granted.

On July 20, 2011 Plaintiff filed her *pro se* complaint against the Arkansas Foundation for Medical Care pursuant to Title VII of the Civil Rights Act of 1964, as amended. Plaintiff asked the Court to grant her leave to proceed *in forma pauperis*. On July 21, 2011 the Court denied Plaintiff's motion to proceed *in forma pauperis*, finding that based on her earnings she was not entitled to be treated as indigent. Plaintiff paid her filing fee in full on August 19, 2011.

Defendant filed its motion to dismiss on December 22, 2011 claiming that Plaintiff failed to serve the Defendant until December 14, 2011, more than 120 days after the Complaint was filed and failed to serve the Defendant's registered agent for service. Plaintiff states that she calculated the 120 days from the date on which she paid her filing fee. Further, Plaintiff claims that she has contacted legal counsel who will enter an appearance if her Complaint survives Defendant's motion to dismiss.

Because Plaintiff is proceeding *pro se* and has provided the Court with reasonable

justification for failing to serve the complaint within 120 days of filing, the Court will allow the Plaintiff an additional thirty (30) days in which to perfect service on the Defendant. The service attempted by mail to John Clayborn at the Defendant's office is hereby deemed insufficient and is quashed.

Plaintiff is directed to serve the Defendant as required by the Federal Rules of Civil Procedure within thirty (30) days of the entry of this order. Failure to do so will result in the dismissal of Plaintiff's Complaint.

IT IS SO ORDERED this 18th day of January, 2012.



James M. Moody
United States District Judge