

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

MICHAEL GAYNOR,)	
Plaintiff,)	
)	
vs.)	Civil Action No. 5:11-CV-0311-JLH/JJV
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
Defendant.)	

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS

Before the Court is Agency’s unopposed Motion to Dismiss (Doc. 4). On May 31, 2011, in Case No. 5:11-cv-00023-BD (another case involving Plaintiff, Michael Gaynor), the Agency filed a motion for the Court to remand the case for further administrative proceedings pursuant to sentence six. *See* Case No. 5:11-cv-00023-BD (Doc. 6). The Commissioner pointed out that the remand was necessary because the Appeals Council dismissed Plaintiff’s request for review, believing that Plaintiff’s request was untimely filed. However, Plaintiff submitted additional evidence that demonstrated that Plaintiff filed a request for review in a timely manner. *See* Case No. 5:11-cv-00023-BD (Doc. 6). On June 23, 2011, Magistrate Judge Beth Deere granted the Agency’s Motion and ordered a remand of the case to the Agency for further administrative action. *See* Case No. No. 5:11-cv-00023-BD (Doc. 9, 10). This remand was made pursuant to sentence six of 42 U.S.C. § 405(g), and the Court retained jurisdiction to review the Agency’s final decision once the Agency completed the remand proceedings. *See* Case No. No. 5:11-cv-00023-BD (Doc. 9, 10).

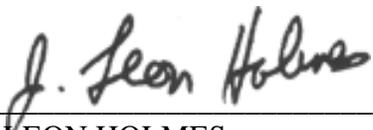
Defendant informs the Court that, on October 6, 2011, the Appeals Council considered Plaintiff’s request for review anew and denied Plaintiff’s request. Defendant also informs the

Court that Defendant has received a copy of the administrative record in Case No. 5:11-cv-00023-BD . Thus, the Agency has completed the remand proceedings, and the Agency's decision of August 11, 2009, is ripe for review.

In addition, on December 5, 2011, Plaintiff filed a new complaint for review of the ALJ's August 11, 2009 decision. *See* Case No. 5:11-cv-00311-JLH/JJV (Doc. 2). Defendant points out that since the Court has not ruled on the merits of Case No. 5:11-cv-00023-BD, the proper procedure in this situation is to reopen that case, and dismiss the complaint in the present case. Defendant will file, concurrently with this motion, a motion to reopen Case No. 5:11-cv-00023-BD. Defendant has filed, concurrently with his motion to dismiss, a motion to reopen Case No. 5:11-cv-00023-BD. *See* Case No. 5:11-cv-00023-BD (Doc. 12). Defendant has requested 15 days after the Court reopens Case No. 5:11-cv-00023-BD to file its answer in that case. *See* Case No. 5:11-cv-00023-BD (Doc. 12).

Because the complaint Plaintiff filed in Case No. 5:11-cv-0311-JLH/JJV involves the same final Agency decision in Case No. 5:11-cv-00023-BD, the Court orders dismissal of Plaintiff's complaint in Case No. 5:11-cv-0311-JLH/JVV.

IT IS SO ORDERED this 3rd day of January, 2012.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE