

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

CANDIS M. SAVAGE

PLAINTIFF

VS.

CASE NO. 14-CV-1014

CAROLYN W. COLVIN

Commissioner, Social Security Administration

DEFENDANT

ORDER

Before the Court is the Report and Recommendation filed June 2, 2014 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 13). Judge Bryant recommends that Motion to Dismiss (ECF No. 9) be denied. After reviewing the record *de novo*, the Court declines to adopt Judge Bryant's Report and Recommendation.

Defendant filed a Motion to Dismiss arguing that this action was untimely filed. Specifically, Defendant points out that the deadline for filing was February 20, 2014 and that Plaintiff's action was not filed until February 27, 2014. After reviewing the submitted evidence, Judge Bryant concluded that it appeared that Plaintiff attempted to mail her Complaint on February 7, 2014 and that there must have been a delay in delivery by the U.S. Postal Service that prevented the action from being filed by February 20, 2014. For this reason, Judge Bryant recommends that the Motion to Dismiss be denied and that Plaintiff's action be considered as timely filed. Defendant has filed objections to the Report and Recommendation. (ECF No. 14).

Plaintiff seeks judicial review of a final decision of the Commissioner of the Social Security Administration, denying her application for Social Security benefits. The Commissioner noticed Plaintiff that her request for review was denied on December 17, 2013. (ECF No. 9). Plaintiff then had sixty days, or until February 20, 2014, to commence a civil action to review the final decision

of the Commissioner. 42 U.S.C. § 405(g). It is undisputed that this action was not filed until February 27, 2014. (ECF No. 1).

Plaintiff argues that she timely prepared and mailed her Complaint on February 7, 2014, but that there was a delay in the United States Postal Service that kept it from being filed until February 27, 2014. However, the attorney assumes the risk that there may be a slight disruption of ordinary mail service which may delay filing. *Hallgreen v. U.S. Dep't of Energy*, 331 F.3d 588, 590 (8th Cir. 2003). Moreover, Plaintiff should have suspected that there was some sort of delay in the filing of the Complaint when she did not receive electronic acknowledgment that the Complaint had been received and filed within a few days of mailing. Had Plaintiff been diligent in monitoring the receipt of her Complaint, there would have been time to remedy the situation and make a second attempt at filing. Under these circumstances, the Court finds no reason to excuse the late filing of the Complaint. Accordingly, the Court finds that the Motion to Dismiss should be and hereby is

GRANTED.

IT IS SO ORDERED, this 10th day of November, 2014.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge