

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

DANIQUE DAVIS
On behalf of J.B., A MINOR

PLAINTIFF

vs.

Civil No. 1:14-cv-01032

CAROLYN W. COLVIN
Commissioner, Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Before the Court is Defendant's Motion to Dismiss for Lack of Jurisdiction. ECF No. 9. Defendant filed this Motion on August 19, 2014 and seeks to have Plaintiff's case dismissed because this action was filed after the sixty-day deadline for filing this lawsuit. *Id.* Plaintiff has not filed a response to this Motion, and the deadline for her response has expired. *See* Local Rule 7.2(b).

The Parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 8. Pursuant to this authority, this Court enters this Memorandum Opinion.

1. Background

On May 30, 2014, Plaintiff filed her Complaint in this matter. ECF No. 1. Plaintiff brought this action pursuant to § 205(g) of Title II of the Social Security Act ("The Act"), 42 U.S.C. § 405(g) (2010), seeking judicial review of the final decision of the Commissioner of the Social Security Administration ("SSA") denying her request for disability benefits. *Id.*

Thereafter, on August 19, 2014, Defendant filed a Motion to Dismiss for Lack of Jurisdiction. ECF No. 9. With this Motion, Defendant claims Plaintiff's Complaint should be dismissed because Plaintiff failed to timely file this lawsuit. *Id.* Specifically, Defendant claims

Plaintiff should have filed his lawsuit on or before May 12, 2014 to be considered timely. *Id.* Instead, Plaintiff waited until May 30, 2014 to file this lawsuit. *Id.* Plaintiff has not responded to this Motion, and the time to respond has expired. *See* Local Rule 7.2(b).

2. Discussion

The subject matter jurisdiction of this Court is based upon 42 U.S.C. § 405(g). Pursuant to this provision, an individual may only appeal a decision of the SSA within “sixty days after mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.” *Id.*

In this action, Plaintiff was notified of the SSA’s final decision on March 13, 2014. ECF No. 9-1 at 3. On that date, the Appeals Council mailed her notice that her request for review of the ALJ’s unfavorable decision had been denied. *Id.* Giving the benefit of the doubt to Plaintiff, Plaintiff may have not received this notice until March 18, 2014. Sixty days after March 18, 2014 is May 17, 2014. There is no evidence the SSA gave Plaintiff an extension on this deadline. Accordingly, Plaintiff was required to file her lawsuit by this date. Plaintiff did not file her lawsuit until May 30, 2014. Because Plaintiff did not timely file her lawsuit, this case must be dismissed. *See* 42 U.S.C. § 405(g).

3. Conclusion

Based on the foregoing and because Plaintiff failed to timely file this lawsuit, this Court does not have subject matter jurisdiction over this case under 42 U.S.C. § 405(g). As such, Plaintiff’s case is dismissed without prejudice.

ENTERED this 16th day of September 2014.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U. S. MAGISTRATE JUDGE