

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

LINDA K. LASATER

PLAINTIFF

V.

NO. 12-2145

MICHAEL J. ASTRUE,¹

Commissioner of the Social Security Administration

DEFENDANT

ORDER

Comes now the “Suggestion of Death” dated September 13, 2012, requesting that John F. Lasater, Plaintiff’s surviving spouse, be allowed to substitute as Plaintiff in the above referenced case. (Doc. 7). There was no response filed by Defendant.

A Certificate of Death attached to the pleading indicates Plaintiff died on August 12, 2012. (Doc. 7-1). Rule 25(a)(1), of the Federal Rules of Civil Procedure allows 90 days for a party or a successor or representative of the deceased party to file a motion to substitute parties in the case of death from the date the death is suggested upon the record by service of a statement of the fact of the death. Fed.R.Civ.P. 25(a)(1).

In the present case, Plaintiff’s suggestion of death was filed on September 13, 2012. (Doc. 7). The present pleading before this Court was filed within the 90 day period allowed by Rule 25(a)(1). Thus, the pleading to substitute a party is timely filed.

The Social Security Act (Act) states that if an individual dies before any payment due her is completed, payment of the amount due shall be made:

¹Carolyn Colvin became the Acting Social Security Commissioner on February 14, 2013. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Carolyn Colvin has been substituted for Commissioner Michael J. Astrue as the defendant in this suit.

to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either (I) was living in the same household with the deceased at the time of [his] death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual, or ... to the legal representative of the estate of the deceased individual, if any.

42 U.S.C. § 404(d)(1) and (d)(7). Plaintiff's pleading states that Mr. Lasater is Plaintiff's surviving spouse. (Doc. 7). Therefore should Plaintiff's claim prevail, as his surviving spouse, Mr. Lasater would be entitled to receive Plaintiff's benefits.

Based on the above discussion, the Court hereby finds that Mr. John F. Lasater should be, and is hereby, substituted Plaintiff in the above referenced case.

IT IS SO ORDERED this 15th day of February, 2013.

/s/ Erin L. Setser _____

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE