

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

TOMMY THOMPSON

PLAINTIFF

vs.

Case No. 6:09-cv-06007

MICHAEL J. ASTRUE
Commissioner, Social Security Administration

DEFENDANT

ORDER

BEFORE the Court is Defendant's Motion To Dismiss. ECF No. 8. Defendant seeks to have Plaintiff's complaint dismissed because Plaintiff did not serve the Defendant within the 120-day period set forth in Federal Rule of Civil Procedure 4(m). Plaintiff responded on May 19, 2010. ECF No. 10. 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. 4.

Federal Rule of Civil Procedure 4(m) provides that:

[i]f a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Plaintiff's Complaint was filed on January 22, 2010. ECF No. 1. Summons was issued as to Defendant and returned to Plaintiff's counsel for service on January 22, 2010. (Text Entry Clerk, 01/22/2010). According to Plaintiff's counsel, he did not receive the Summons following the filing of his Complaint. It was not until several months later that he realized this had happened. ECF. No.

10, Pg. 1. Upon determining this, Plaintiff's counsel requested Summons be reissued. Summons was reissued to Plaintiff's counsel on February 11, 2010. (Text Entry Clerk, 02/11/2010). Following this, Defendant was served with Plaintiff's Complaint on February 19, 2010. ECF No. 8, Pg. 2.

The Court finds good cause exists for Plaintiff's failure to timely serve Defendant with the Complaint and Defendant's Motion to Dismiss should be dismissed.

IT IS THEREFORE ORDERED Defendant's Motion To Dismiss (ECF No. 8) is hereby **DENIED.**

IT IS SO ORDERED this 21st day of October 2010.

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