

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

ANDREA LASHUN WILLIAMS
on behalf of
S.E.A., Jr., a minor

PLAINTIFF

vs.

Civil No. 6:14-cv-06151

CAROLYN W. COLVIN
Commissioner, Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Pending now before this Court is Defendant's Motion to Dismiss. ECF No. 9.¹ Plaintiff has not responded to this motion. 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. 7. Pursuant to this authority, the Court issues this Memorandum Opinion and orders the entry of a final judgment in this matter.

1. Background:

Defendant filed a Motion to Dismiss alleging Plaintiff's complaint was untimely filed. Defendant states the complaint was not filed within the statutory time limitation of sixty days following the Commissioner's notice to Plaintiff that his request for review was denied. According to Defendant, the Appeals Council denied Plaintiff's request for review on September 2, 2014. ECF No. 10-1, Pgs. 29-34. On October 31, 2014, Plaintiff requested an extension of time to file a civil action. ECF No. 10-1, Pg. 35. On November 17, 2014, the Appeals Council granted Plaintiff an extension of 30 days from receipt of the letter to file a civil action. ECF No. 10-1, Pgs. 36-37. The

¹ The docket numbers for this case are referenced by the designation "ECF. No."

Appeals Council explained it would assume Plaintiff received the letter 5 days after the date on it unless Plaintiff showed she did not receive it within that 5-day period. *Id.* Therefore, to be considered timely, Plaintiff had to file a civil action within 35 days of November 17, 2014, or by December 22, 2014, unless she showed she did not receive the letter within the presumed 5-day period. Plaintiff made no such showing. The Complaint in this case was actually filed on December 24, 2014. ECF. No. 1.

2. Discussion:

The only civil action an individual may bring on any claim arising under Title II or Title XVI of the Social Security Act is an action to review the final decision the Commissioner has made after hearing the case. An individual must commence that action within sixty days after receiving notice of the Commissioner's final decision or within such further time as allowed by the Commissioner. The Commissioner may extend the time for instituting a civil action upon a claimant's request and showing of good cause. *See* 42 U.S.C. 405(g); 20 C.F.R. § 422.210(c).

Plaintiff received notice the Appeals Council denied her request for review on September 2, 2014. ECF No. 10-1, Pgs. 29-34. On November 17, 2014, the Appeals Council granted Plaintiff an extension of 30 days from receipt of the letter to file a civil action. ECF No. 10-1, Pgs. 36-37. Based on this, Plaintiff should have commenced his civil action on or before December 22, 2014. This date includes the additional five days for receipt by mail. Plaintiff filed her complaint on December 24, 2014. ECF No. 1. Defendant asserts this filing is untimely. The Plaintiff has not responded to this Motion to Dismiss. Based on this, the Court finds Plaintiff's complaint was not filed timely and should be dismissed.

3. Conclusion:

Based on the foregoing, Defendant's Motion to Dismiss (ECF No. 9) is **GRANTED**. A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

ENTERED this **28th day of April, 2015**.

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