UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOUGLAS R. MCCARROLL,	:	
PLAINTIFF,	:	
	:	**CIVIL ACTION NO. 3:09cv934(VLB)**
	:	
v.	:	**FEBRUARY 14, 2012**
	:	
CRYSTAL KIMBALL, ET AL.,	:	
DEFENDANTS.	:	

ORDER DENYING IN PART DEFENDANT ATLANTA PSYCHOLOGY ASSOCIATES AND COMMUNITY SOLUTION INC. AND ELAINE COHEN'S MOTIONS TO DISMISS [DKT. ## 27 and 32]

The Court denies in part Atlanta Psychological Associates and Community Solutions Inc. and Elaine Cohen's motions to dismiss on the basis of Plaintiff's failure to comply with Fed. R. Civ. P 4(m) which permits the Court to dismiss an action if a defendant is not served within 120 days after the complaint has been filed. The complaint was filed in the instant action on June 20, 2011 and pursuant to Fed. R. Civ. P. 4(m) the complaint should have been served on or before October 8, 2011. Plaintiff, who is proceeding pro se, was granted leave to proceed in forma pauperis on June 14, 2011. In response to the Court's order to show cause [Dkt. #15], Plaintiff indicated that he filled out the required USM 285 forms for service and submitted them to the Clerk on October 3, 2011 within the 120 day time period under Rule 4(m). Atlanta Psychological Associates were served on November 9, 2011 and Community Solutions Inc. and Elaine Cohen were served on November 29, 2011.

"Rule 4(m) permits the Court to extend the time for service where good cause for delay exists, and therefore to deny a motion to dismiss where service

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occurred late." Swan v. Schlein, 441 F.Supp.2d 491, 498 (S.D.N.Y. 2006). Courts in this circuit have routinely held that good cause is established when the Marshal's Office has failed to effect service on behalf of a pro se plaintiff proceeding in forma pauperis. *See Kavazankian v. Rice*, 03-cv-1923, 2005 WL 1377946, at *2 (E.D.N.Y. June 7, 2005) (citing the "numerous courts that have held that good cause under Rule 4(m) is automatically established when the Marshal's Office has failed to effect service so long as the plaintiff has provided the information necessary to identify the defendants"). Here, the Plaintiff provided the necessary forms to the Marshal's within the 120 day period and therefore has demonstrated there was good cause for the delay in service. The Court notes that both Atlanta Psychological Associates and Community Solutions Inc. and Elaine Cohen have moved to dismiss Plaintiff's complaint on other substantive grounds and they are directed to re-file their motions to dismiss on those grounds within 14 days of this Order for the Court's review.

IT IS SO ORDERED.

/s/

Hon. Vanessa L. Bryant

United States District Judge

Dated at Hartford, Connecticut: February 14, 2012