

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TYRONE LA-MAR BAYNHAM,

Plaintiff,

vs.

Case No. 14-2053-SAC

CAROLYN W. COLVIN,
Acting Commissioner of
Social Security,

Defendant.

MEMORANDUM AND ORDER

This is an action seeking review of the final decision of the Commissioner of Social Security that plaintiff was not disabled (Doc. 1). Defendant filed a motion to dismiss for lack of subject matter jurisdiction (Doc. 12-13). The court issued an order on May 30, 2014 directing defendant to file the record of the case, and further directed the parties to brief the issues raised (Doc. 16). Defendant filed the record on July 10, 2014 (Doc. 22).

On October 17, 2014, defendant filed a response to this court's order of May 30, 2014. Defendant stated that the Social Security Appeals Council had issued an order granting plaintiff an extension of time to file the civil action which makes defendant's motion to dismiss moot (Doc. 31 at 2). Defendant also filed their answer on the same date (Doc. 32).

IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. 12) is moot for the reasons set forth above.

On May 21, 2014, plaintiff filed a motion to transfer this case "to a Federal Court closer to my address" (Doc. 15). Defendant has not responded to the motion.

According to 42 U.S.C. § 405(g):

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia.

(emphasis added). Plaintiff's complaint indicates that plaintiff was living in Leavenworth, Kansas on the date he filed his complaint on February 6, 2014 (Doc. 1). On March 31, 2014, plaintiff notified the court that he had moved to Maryland (Doc. 10).

According to 28 U.S.C. § 1404, a change of venue may be granted, in the interest of justice, to any other district or division in which the case might have been brought or to any district or division to which all parties have consented. At

the time this action was brought, the District of Kansas was the only district where the complaint could have been filed because plaintiff stated that he was then a Kansas resident.

Plaintiff has not satisfied the requirements of 28 U.S.C. § 1404(a). First, plaintiff has made no showing that venue would have been proper in the District of Maryland or any other district when plaintiff filed his complaint. See DePalma v. Cates Control Systems, Inc., 2004 WL 1068135 at *1 (N.D. Tex. May 10, 2004). If venue is proper when the case is brought, subsequent changes in residence of the parties do not require a change of venue. See Tatar v. Levi, 2010 WL 3740610 at *3 (D. N.J. Sept. 20, 2010). Second, defendant has not consented to a change of venue.

Furthermore, review of social security disability determinations do not require plaintiff to appear in court; therefore it will be no less convenient for plaintiff if the case remains in the District of Kansas. For these reasons, the court will deny plaintiff's motion to transfer this case.

IT IS THEREFORE ORDERED that plaintiff's motion to transfer this case (Doc. 15) is denied.

IT IS FURTHER ORDERED that plaintiff will file their brief no later than January 15, 2015. Defendant shall file their response within 30 days after service of plaintiff's brief.

Plaintiff will then have 14 days after service of defendant's
brief to file a reply brief.

A copy of this order shall be mailed to plaintiff via
regular mail and certified mail, return receipt requested.

Dated this 3rd day of December 2014, Topeka, Kansas.

s/Sam A. Crow
Sam A. Crow, U.S. District Senior Judge