

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT FRANKFORT

GARY WAYNE BLACKBURN, II,
Plaintiff,

V.

**CAROLYN W. COLVIN, Acting
Commissioner of Social Security,**
Defendant.

CIVIL ACTION NO. 3:15-59-KKC

OPINION AND ORDER

*** **

This matter is before the Court on the Commissioner's motion to dismiss or, in the alternative, for summary judgment. (DE 4). For the reasons set forth below, Defendant's motion will be granted.

On September 1, 2015, the Plaintiff, Gary Wayne Blackburn, brought this action pursuant to 42 U.S.C. § 405(g) to obtain judicial relief from an administrative decision of the Commissioner of Social Security denying his claim for Social Security Disability Insurance Benefits ("DIB") and Supplemental Security Income. (DE 1). Defendant argues that Plaintiff's complaint should be dismissed as untimely. (DE 4.)

Judicial review of social security claims is limited by statute. Under 42 U.S.C. § 405(g), review is limited to "civil action[s] commenced within sixty days after the mailing to [a claimant] of notice of [a final decision] or within such further time as the Commissioner [] may allow." The Commissioner has interpreted "mailing" as the date of receipt by the claimant of the Appeals Council's decision. *See* 20 C.F.R. § 422.210(c). However, the date of receipt is presumed to be five days after the notice date, absent a reasonable contrary showing. *See* 20 C.F.R. § 416.1401.

Notice of the Appeals Council's decision declining review was mailed June 25, 2015, and thus, the presumptive deadline for Plaintiff's filing was August 31, 2015. (DE 4 at 1-2.) Plaintiff has offered no response to claim that his September 1, 2015, complaint was timely. Because there is no dispute that the complaint in this case was untimely filed, the Defendant is entitled to Summary Judgment. *See Brown v. Comm'r of Soc. Sec.*, No. 14-12525, 2015 WL 5655870, at *3 (E.D. Mich. Sept. 25, 2015) ("plaintiff herself must rebut the presumption that plaintiff received the Appeals Council decision").

Accordingly, it is **ORDERED** as follows:

1. The Commissioner's motion to dismiss or, in the alternative, for summary judgment (DE 4) is **GRANTED**; and

2. This action shall be **DISMISSED** and **STRICKEN** from the Court's **ACTIVE DOCKET**.

Dated July 1, 2016.



A handwritten signature in cursive script that reads "Karen K. Caldwell".

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY