UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

GILBERT F. PETERS,

Plaintiff,

v.

Case No. 07-13505 Hon. Gerald E. Rosen Magistrate Judge Steven D. Pepe

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

At a session of said Court, held in the U.S. Courthouse, Detroit, Michigan on <u>September 30, 2008</u>

PRESENT: Honorable Gerald E. Rosen United States District Judge

On January 15, 2008, Magistrate Judge Steven D. Pepe issued a Report and

Recommendation ("R & R") recommending that the Court grant the Defendant

Commissioner of Social Security's motion to dismiss. On February 13, 2008, Plaintiff

Gilbert F. Peters filed objections to the R & R.¹ For the reasons stated briefly below, the

Court finds no merit in these objections, and therefore adopts the R & R in its entirety.

In his objections, as in his response to Defendant's underlying motion to dismiss,

Plaintiff continues to assert that the 60-day period of limitation set forth at 42 U.S.C. §

¹The Court notes that these objections were filed just over a week outside the 10-day period for doing so.

405(g) does not apply here, and that he timely commenced this action within a longer period of limitation that governs suits brought under the Administrative Procedure Act. As explained in the R & R, however, Plaintiff's right of action in this case plainly arises under the Social Security Act (the "Act"), where it is clear from his complaint that he seeks to challenge the decision of the Defendant Commissioner that he was not entitled to Supplemental Security Income benefits. Because the Act gives rise to Plaintiff's claim, it provides the exclusive avenue for judicial review of Defendant's decision, *see* 42 U.S.C. § 405(h), and Plaintiff was obligated to commence this suit within the Act's 60-day period of limitation. He acknowledges that he did not and, as observed in the R & R, he has not suggested any basis for tolling this period of limitation. Accordingly,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's January 15, 2008 report and recommendation is ADOPTED as the ruling of this Court. IT IS FURTHER ORDERED, for the reasons stated in the R & R, that Defendant's motion to dismiss is GRANTED.

Dated: September 30, 2008

<u>s/Gerald E. Rosen</u> United States District Judge I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2008, by electronic and/or ordinary mail.

<u>s/LaShawn R. Saulsberry</u> Case Manager