

CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LENOR E. CANALES, :
o/b/o J.A.J., Jr., a minor, :

Plaintiff, :

v. :

COMMISSIONER OF SOCIAL :
SECURITY, :

Defendant. :

Civil Action No. 14-7956 (SRC)

OPINION & ORDER

CHESLER, District Judge

This matter comes before the Court on the motion to dismiss the Complaint by the Commissioner of Social Security. In brief, the Commissioner argues that Plaintiff failed to initiate this action within 60 days after the mailing of the Commissioner’s final decision, as required by 42 U.S.C. § 405(g). The Commissioner asserts, and the record confirms, that the Commissioner’s final decision was mailed on July 31, 2014, and that Plaintiff filed this action on December 22, 2014, well after the end of the 60-day limitation period.

In opposition, Plaintiff contends that she timely filed for an appeal by faxing a handwritten letter to the Commissioner. Unfortunately, with this argument, Plaintiff effectively concedes that she did not timely initiate this action. A letter faxed to Social Security cannot initiate a case in district court. Section 405(g) states:

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 . . .

Plaintiff has not given this Court any basis to find that she commenced a civil action in a district court within the period required by 42 U.S.C. § 405(g). Plaintiff failed to initiate this action with the statutory 60-day period and the action must be dismissed.

For these reasons,

IT IS on this 24th day of June

ORDERED that the Commissioner's motion to dismiss the Complaint is **GRANTED**, and the Complaint is hereby **DISMISSED** with prejudice.

s/ Stanley R. Chesler
STANLEY R. CHESLER, U.S.D.J.