UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRIAN N. WALKER, JR.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case # 17-CV-6403-FPG

DECISION AND ORDER

Pro se Plaintiff Brian N. Walker, Jr. ("Plaintiff") filed a Complaint and a Motion for Leave to Proceed *in forma pauperis* pursuant to 28 U.S.C. §1915. ECF Nos. 1, 2. Plaintiff seeks review of the final decision of the Acting Commissioner of Social Security ("the Commissioner") that denied his application for benefits under the Social Security Act. ECF No. 1.

The Court has jurisdiction over certain Social Security benefits claims pursuant to 42 U.S.C. §405(g). However, an individual seeking district court review of his or her Social Security benefits claim must first exhaust all administrative remedies. After exhausting his or her administrative remedies, the individual has 60 days to file an action seeking district court review of the Commissioner's final decision. 42 U.S.C. § 405(g). When the Appeals Council denies review, the 60-day timeframe starts the day after the individual receives the "Notice of Appeals Council Action" letter.

Plaintiff's Complaint indicates that he appealed to the Appeals Council on September 21, 2015, however, the requisite copy of the Appeals Council's decision is missing. Assuming that the Appeals Council issued a decision on Plaintiff's claim, it appears likely that the statute of limitations for filing this action has expired. The Court cannot evaluate the merits of this case until

Plaintiff proves that he has exhausted his administrative remedies so the Court can determine whether this action was timely filed.

Plaintiff has until **August 14, 2017** to file the "Notice of Appeals Council Action" letter that he received from the Appeals Council. If Plaintiff fails to abide by this Order his action will be dismissed as untimely. If Plaintiff files the proper documentation and the Court finds that his case is timely, the Court will rule on his motion for leave to proceed *in forma pauperis* accordingly.

IT IS SO ORDERED.

Dated: July 25, 2017
Rochester, New York

HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court