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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL CASE NO. 1:09cv233

WAYMAN CALDWELL,	
Plaintiff,	
VS.	<u> </u>
MICHAEL J. ASTRUE, Commissioner of Social Security,	
Defendant.))

THIS MATTER is before the Court *sua sponte* to provide the Plaintiff with notice pursuant to Federal Rule of Civil Procedure 4(m).

On June 29, 2009, the Plaintiff initiated this action by filing a complaint. [Doc. 1]. On July 8, 2009, the Plaintiff was granted leave to proceed without the prepayment of fees. [Doc. 3]. Summons issued on July 22, 2009 but the record does not show whether Plaintiff's counsel arranged for service thereof by the United States Marshal. [Doc. 4].

To date, the Plaintiff has not filed proof of service. Federal Rule of Civil Procedure 4 provides:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed.R.Civ.P. 4(m).

The Court recognizes that the summons was to be served by the United States Marshal; however, it remained the responsibility of Plaintiff's counsel to insure that service was effected. Plaintiff is hereby placed on notice that unless good cause is shown for the failure to effect service of the summons and complaint on the Defendant, this action shall be dismissed without prejudice.

IT IS, THEREFORE, ORDERED that on or before fifteen (15) days of entry of this Order, the Plaintiff shall show good cause for the failure to effect service on the Defendant.

Signed: November 2, 2009

Martin Reidinger
United States District Judge