

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:09cv50

JULLA EMMER C. SCRUGGS,)
)
 Plaintiff,)
)
 vs.)
)
 MICHAEL J. ASTRUE,)
 Commissioner of Social Security,)
)
 Defendant.)
 _____)

ORDER

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

On September 10, 2009, the Plaintiff initiated this action by filing a complaint. [Doc. 1]. On September 15, 2009, the Plaintiff was granted leave to proceed without the prepayment of fees. [Doc. 3]. Summons issued on December 17, 2009 and was delivered to the United States Marshal for service. [Doc. 4].

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

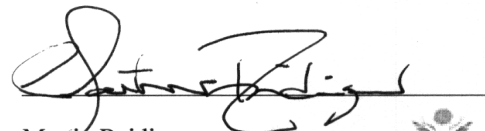
If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for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

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

While the Court recognizes that the summons was delivered to the United States Marshal for service, proof of service has not been entered in the record. 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. The Court would entertain Plaintiff's motion for an enlargement of time within which to effect service.

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: January 14, 2010



Martin Reidinger
United States District Judge

