

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVID C. HOWARD,
Plaintiff,

Case No. 1:13-cv-295
Spiegel, J.
Litkovitz, M.J.

vs.

COMMISSIONER OF SOCIAL SECURITY,
et al.,
Defendants.

ORDER

Plaintiff David C. Howard, proceeding pro se, brings this action seeking to recover social security benefits to which he allegedly is entitled. He names as defendants the Commissioner of Social Security (Commissioner) and “Ms. Phyllis M. Smith-Great Lakes Program Service Ctr” (Smith).

On November 22, 2013, the Commissioner filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction based on plaintiff’s failure to exhaust his administrative remedies. (Doc. 18). Plaintiff filed two motions to stay this matter in response to the motion to dismiss. (Docs. 20, 21). Subsequently, on March 10, 2014, the Commissioner filed the Declaration of Patrick J. Herbst, the Social Security Administration employee vested with the responsibility for processing plaintiff’s claim, and several documents attached as exhibits to the declaration. (Doc. 22). The declaration and exhibits are referenced in the motion to dismiss, but the Commissioner failed to attach these documents to the motion. There is no indication that plaintiff ever received notice of Mr. Herbst’s declaration and attached exhibits because defendant’s filing does not include a certificate of service pursuant to Fed. R. Civ. P. 5 showing the documents were served on plaintiff, and plaintiff has not responded to the submission. The Court will therefore direct that service of the documents be made on plaintiff

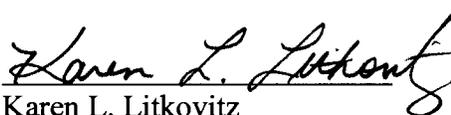
and will defer issuing a report and recommendation on the motion to dismiss until plaintiff has had an opportunity to respond to defendant's submission.

Accordingly, defendant Commissioner is **ORDERED** to serve the Declaration of Patrick J. Herbst and attached exhibits (Doc. 22) on plaintiff and show proof of service within **ten (10) days** of the date of this Order.

Plaintiff shall have **twenty-one (21) days** from the date of service of the Declaration of Patrick J. Herbst and attached exhibits to submit a supplemental response to the Commissioner's motion to dismiss (Doc. 18), addressing any issues raised in the declaration and attached documents.

IT IS SO ORDERED.

Date: 5/12/14


Karen L. Litkovitz
United States Magistrate Judge