

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FIRST CALL AMBULANCE SERVICE,)	
INC.,)	
)	
Plaintiff,)	
)	
v.)	NO. 3:10-0247
)	Judge Campbell/Bryant
THE U.S. DEPARTMENT OF HEALTH)	
and HUMAN SERVICES, and)	
KATHLEEN SEBELIUS,)	
)	
Defendants.)	

TO: The Honorable Chief Judge Todd J. Campbell

REPORT AND RECOMMENDATION

Defendants have filed their motion to dismiss for inadequate service of process (Docket Entry No. 14). Plaintiff has filed no response in opposition.

On November 17, 2010, the undersigned Magistrate Judge entered an order requiring plaintiff to show cause on or before Tuesday, November 30, 2010, why defendants' motion to dismiss should not be granted. Despite this order, plaintiff has filed no response.

Rule 4(i) of the Federal Rules of Civil Procedure provides the requirements for service of process upon the United States and its agencies. The record in this case fails to show a return of any service of process on the defendants.

Rule 4(m) provides that if a defendant is not served within 120 days after the complaint is filed the court must dismiss the action without prejudice or order that service be made within

a specified time. The rule further provides that the time for accomplishing service of process may be extended if the plaintiff shows good cause for his failure to accomplish service.

The complaint in this case was filed on March 12, 2010 (Docket Entry No. 1).

From the record in this case, the undersigned Magistrate Judge finds (1) that no service of process has been accomplished on the defendants; (2) that more than 120 days have expired since the filing of the complaint; and (3) plaintiff has made no showing of good cause for its failure to serve process on the defendants. The undersigned Magistrate Judge, therefore, finds that defendants' motion to dismiss should be granted and that the complaint should be dismissed without prejudice.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that defendants' motion to dismiss be **GRANTED** and that the complaint be **DISMISSED** without prejudice.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can

constitute a waiver of further appeal of this Recommendation.
Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111
(1986).

ENTERED this 28th day of January 2011.

s/ John S. Bryant _____
JOHN S. BRYANT
United States Magistrate Judge