

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

BRENDA K. VESTAL,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-00422

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's motion to reopen this case and reconsider its Order of July 5, 2018. See ECF No. 11). That Order dismissed this case pursuant to Federal Rule of Procedure 4(m) based upon plaintiff's failure to timely serve defendant. On June 19, 2018, plaintiff was advised that the record did not reflect that service had been made within the requisite 90 days. See ECF No. 9.* That Order further advised plaintiff "to demonstrate good cause for not serving the defendant with process" and that "[f]ailure to respond to this order within ten days or an insufficient showing of good cause will result in dismissal without prejudice of this case." Id.

In support of the instant motion, counsel for plaintiff states that she and her attorney did not receive the court's

* The Order dismissing the case erroneously stated that plaintiff "was notified of her failure to effectuate service upon defendant within 120 days after filing of the complaint." The correct time limit for service is 90 days. See Fed. R. Civ. P. 4(m).

Order of June 19, 2018. She does not, however, give a reason for plaintiff's failure to serve defendant within 90 days.

The records of the court reflect that not only was the Order of June 19, 2018 electronically mailed to both plaintiff's counsel and her secretary but that the message was successfully delivered to plaintiff's attorney. See Exhibit A (attached). Furthermore, even if plaintiff's counsel failed to receive the Order of June 19, 2018, she still has not given a reason, much less shown good cause, for her failure to make service within the requisite time period. For this reason, the court is unable to grant the relief requested at this juncture. However, the court will allow plaintiff to supplement her motion to demonstrate good cause exists for her failure to timely serve defendant. Any additional filings in support of this motion should be filed within ten (10) days of entry of this Order.

The Clerk is directed to directed to send a copy of this Order to counsel of record.

IT IS SO ORDERED this 12th of July, 2018.

ENTER:




David A. Faber
Senior United States District Judge

EXHIBIT A

WVSD Case 1:18-cv-00422 (Vestal v. Berryhill) Docket Entry 9 – filed on 06/19/2018 at 1:24PM EDT

Notice of Electronic Filing:


[Civil](#) ▾ [Criminal](#) ▾ [Query](#) [Reports](#) ▾ [Utilities](#) ▾ [Search](#) [Help](#) [What's New](#)
[Log Out \(Michael Kinder\)](#)

Message-Id: <8435018@wvsd.uscourts.gov>
 Subject: Activity in Case 1:18-cv-00422 Vestal v. Berryhill Order
 Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court
 Southern District of West Virginia

Notice of Electronic Filing

The following transaction was entered on 6/19/2018 at 1:24 PM EDT and filed on 6/19/2018

Case Name: Vestal v. Berryhill
 Case Number: 1:18-cv-00422
 Filer:
 Document Number: 9

Docket Text:

ORDER: The docket in this action reflects that service has not been obtained upon the defendant within 90 days of filing of the complaint. Accordingly, the Court ORDERS the Plaintiff to demonstrate good cause for not serving the defendant with process. Failure to respond to this order within ten days or an insufficient showing of good cause will result in dismissal without prejudice. Signed by Senior Judge David A. Faber on 6/19/2018. (cc: counsel of record) (arb)

1:18-cv-00422 Notice has been electronically mailed to:

Deborah K. Garton dkgarton@frontiernet.net, janeyoung@frontiernet.net

Nora R. Koch ogc.phil.sdvw@ssa.gov, nora.koch@ssa.gov

Proof of Delivery:



CENTS Message Details

[Change Password](#) [Change Secret Question](#) [Start a Search](#) [Contact Us](#) [Search Tips](#)

Select Recipient Name:

Envelope and Header Information

Sender: wsd_cmc@wvsd.uscourts.gov
 Recipients: dkgarton@frontiernet.net
 Subject: Activity in Case 1:18-cv-00422 Vestal v. Berryhill Order
 Message-ID Header: 8435018@wvsd.uscourts.gov
 Message Size: 3.93 (KB)
 Ironport Host: 156.119.101.21
 Message Timestamp: 06/19/18 13:26:42 -07
 Sending Host IP Address: 156.119.190.46

Message Delivery Information

06/19/18 13:26:43 -07 Message Successfully delivered to
dkgarton@frontiernet.net at 98.137.159.26. Response: ok
 rhdnl