

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

PAMELA G. MOLLOHAN,
Plaintiff,

v.

CIVIL ACTION NO. 2:08CV56

MICHAEL J. ASTRUE,¹
COMMISSIONER OF SOCIAL SECURITY,
Defendant

REPORT AND RECOMMENDATION/OPINION

On April 3, 2008, the plaintiff, Pamela G. Mollohan, by Randall W. Galford, her attorney, filed a Complaint in this matter [Docket Entry 1]. On June 9, 2008, Defendant filed her Answer to the Complaint, and a copy of the Transcript of the Administrative Proceedings in this matter.

L.R.Gen.P. 83.12 provides:

Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office.

Plaintiff's Motion for Summary Judgment was therefore due on or before July 14, 2008, at the very latest. On September 15, 2008, more than two months after the motion was due, Plaintiff, through counsel, filed a "Motion for Extension of Time to File Summary Judgment" [Docket Entry 11]. As grounds for the extension, counsel stated only: "[T]he transcript was received by counsel on June 11, 2008, and misfiled and counsel who is a sole practitioner has jury trials and hearings scheduled in the next week."

¹ On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should be substituted, therefore, for former Commissioner Jo Anne B. Barnhart as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. §405(g).

L.R.Gen.P 83.12 (d) provides, in pertinent part:

No extensions of time for filing briefs shall be allowed absent a showing of good cause. If a party desires an extension of time within which to respond, the moving party is specifically directed to file a motion for extension before the date upon which the brief or response is due

On September 16, 2008, the undersigned United States Magistrate Judge entered an “Order Granting in Part and Denying in Part Plaintiff’s Motion for Extension of Time to File Summary Judgment, Docket Entry 11” [Docket Entry 12]. The Order expressly quoted both the above-cited rules, finding: “Not only is Plaintiff’s motion untimely, the reasons given for needing the extension of time, while certainly statements of neglect, do not constitute excusable neglect or good cause,” as required by the rule.

Nevertheless, the undersigned extended the time for Plaintiff to file her motion until 4:00 p.m. September 24, 2008. A review of the docket as of September 29, 2008, reveals that Plaintiff has still not filed her motion or brief.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that the plaintiff’s Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE** for failure to prosecute and for failure to comply with the Court’s Order of September 16, 2008.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and

Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record.

DATED: September 29, 2008.

John S. Kaul

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE