

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

TERESA R. ROBERTS,

Plaintiff,

vs.

CASE NO. 2:04CV61

**JO ANNE B. BARNHART,
Commissioner of Social Security
Administration,**

Defendant.

OPINION/REPORT AND RECOMMENDATION

On the 17th day of August, 2004, Plaintiff filed her Complaint [Docket Entry 1]. Defendant filed an Answer on October 22, 2004 [Docket Entry 5]. On the 22nd day of November, 2004, Plaintiff filed a Motion to Extend Time to file her motion for summary judgment [Docket Entry 6]. On the 22nd day of November, 2004, the Honorable Robert E. Maxwell, District Judge, entered an Order, wherein he ruled the motions for summary judgment would be filed on or before the 24th day of January, 2005, and Plaintiff's Motion to Extend Time to file her motion for summary judgment was denied as moot [Docket Entry 7]. On the 24th day of January, 2005, Defendant filed a Motion for Summary Judgment [Docket Entry 8].

On the 9th day of March, 2005, District Judge Robert E. Maxwell entered an Order dismissing this case because Plaintiff failed to prosecute and to comply with the Court's order of November 22, 2004, in that she did not file her motion for summary judgment on or before the 24th day of January, 2005 [Docket Entry 9]. On March 22, 2005, Plaintiff filed her Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings, which was attached thereto [Docket Entry 11]. On March 24, 2005, Plaintiff filed an Amended Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings

[Docket Entry 13]. On April 28, 2005, an order was entered by District Judge Robert E. Maxwell referring said motions to the undersigned Magistrate Judge (Docket Entry 15).

On the 10th day of May, 2005, a hearing on Plaintiff's Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings and Amended Motion to Vacate Opinion Memorandum and Judgment Order Entered March 9, 2005, and for Reconsideration of Plaintiff's Motion for Judgment on the Pleadings [Docket Entries 11 and 13] was conducted by the undersigned. For reasons apparent to the Court and stated on the record of the May 10, 2005, hearing, the undersigned **RECOMMENDS** the Court vacate the Order of March 9, 2005, dismissing this case, and that this case be reinstated on the Court's docket.

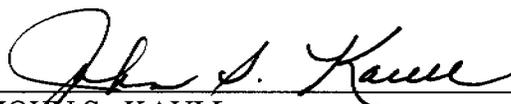
On the 31st day of May, 2005, Plaintiff filed a Supplemental Memorandum in Support of Motion for Judgment on the Pleadings [Docket Entry 17]. On the 1st day of June, 2005, Plaintiff moved to withdraw the supplemental memorandum [Docket Entry 18]. The undersigned **RECOMMENDS** the Motion to Withdraw be denied as mooted by this decision and **RECOMMENDS** the Supplemental Memorandum in Support of Motion for Judgment on the Pleadings be considered in deciding the underlying case [Docket Entries 17 and 18]. No further submissions shall be made.

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 United States Court for the Northern District of West Virginia is directed to provide a true copy of this order to all counsel of record.

DATED: September 30, 2005



JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE