

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

MELISSA MAYLE,
for Brian Joseph Hardy,

Petitioner,

v.

Civil Action No. 3:07CV105
(JUDGE BAILEY)

COMMISSIONER OF
SOCIAL SECURITY,

Respondent.

**REPORT AND RECOMMENDATION THAT ACTION BE DISMISSED BECAUSE
PETITIONER DID NOT FILE HER BRIEF IN SUPPORT OF HER CLAIM AFTER
NOTICE GIVEN BY THE COURT**

Melissa Mayle, for Brian Joseph Hardy, filed her complaint against the Social Security Administration on August 13, 2007. The Commissioner filed an Answer and a copy of the administrative record on October 18, 2007. Local Rule of General Procedure 83.12(b) provides that “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.” Since the Commissioner filed an answer on October 18, 2007, Plaintiff’s brief was due on November 18, 2007. Plaintiff has not yet filed her brief. Plaintiff’s brief is now more than three (3) months late.

The Fourth Circuit has ruled that *pro se* litigants appealing from a denial of Social Security benefits must receive notice before the court takes dispositive action against them. *Burrow v. Shalala*, 1993 U.S. App. LEXIS 26800 (4th Cir.); *see also Allen v. Social Security Administration*, 2005 U.S. Dist. LEXIS 40266 (D.S.C.); *Tipton v. Massanari*, 2001 U.S. Dist. LEXIS 14093 (E.D. Va.). This notice must include alerting the *pro se* party of his right to file materials with the court and that the failure to do so could result in summary disposition against him. *Roseboro v. Garrison*, 528 F.2D 309, 310 (4th Cir. 1975). Furthermore, the notice must be understandable to a lay party.

Id. the district court's failure to give such notice before entry of judgment represents grounds for reversal. *Id.*

Petitioner was sent the following notice:

NOTICE: Notice is hereby given to the *pro se* petitioner, Melissa Mayle, for Brian Joseph Hardy, that she must file her brief in support of her claim within thirty (30) days of the date of this notice. If she fails to do so, I will recommend her complaint be dismissed for failure to comply with the Local Rules.

Petitioner received a copy of the notice February 27, 2008. More than thirty (30) days has passed since the date of the Order and Petitioner has not filed her brief in support of her claim.

Therefore, it is **RECOMMENDED** this action be **DISMISSED**.

Any party who appears *pro se* and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. 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.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear *pro se* and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: March 25, 2008

/s/ James E. Seibert

JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE