

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

KENNETH E. LEGGETT,
Plaintiff,

vs.

CASE NO. 1:07CV148

MICHAEL ASTRUE,
Commissioner of Social Security,
Defendant.

REPORT AND RECOMMENDATION/ OPINION

On November 6, 2007, Plaintiff, Kenneth E. Leggett, (“Plaintiff”), *pro se*, filed a Complaint in this Court pursuant to 42 U.S.C. § 405(g), to review a denial of Social Security benefits, under the Social Security Act [Docket Entry 1]. That same date, Plaintiff filed an “Application for Leave to Proceed without Prepayment of Fees” [Docket Entry 2]. The case was thereafter assigned to the undersigned United States Magistrate Judge. On November 7, 2007, Plaintiff was sent a “Notice of General Guidelines for Filing Pro Se in Federal Court” [Docket Entry 3]. On November 9, 2007, the undersigned United States Magistrate Judge scheduled a hearing on the matter, for November 29, 2007, at 10:30 a.m. [Docket Entry 4]. On November 27, 2007, Plaintiff faxed to the undersigned a letter, stating that he wished to cancel the hearing scheduled for November 29, 2007, and further stating that he was “not pursuing the matter any further.” The undersigned cancelled the hearing as requested.

Pursuant to Fed.R.Civ.P. 41(a)(1), a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. No Defendant has filed an answer or motion for summary judgment in this case; in fact, no defendant has been served.

The undersigned United States Magistrate Judge therefore recommends Plaintiff’s faxed

letter of November 27, 2007, be construed as a Notice of Dismissal, and that this case be dismissed and stricken from the Court's docket.

Any party may, within ten 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 be submitted to the Honorable Irene M. Keeley, Chief 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 mail a copy of this Report and Recommendation to the Plaintiff *pro se*, by Certified Mail.

Respectfully submitted this 5th day of December, 2007.

/s/ John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE