

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

JOY D. SMART,

Plaintiff

v.

Civ. Action No. 1:10-cv-42

COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

**REPORT AND RECOMMENDATION COMPLAINT BE DISMISSED WITHOUT  
PREJUDICE AND THIS CASE STRICKEN FROM THE COURT'S DOCKET**

Plaintiff filed her Complaint in this action on March 15, 2010.<sup>1</sup> Commissioner filed his Answer on May 18, 2010.<sup>2</sup> On July 12, 2010, this Court issued a Notice to Plaintiff regarding the need to file her brief in support of her claim for relief within thirty days.<sup>3</sup> Plaintiff accepted service of the Court's July 12th Notice.<sup>4</sup> The Notice contained the language "Notice is hereby given to the Plaintiff, Joy Smart, that her complaint against the Commissioner of Social Security may be dismissed if she does not file her brief in support of her claim for relief within thirty (30) days of the date of this notice." See Court Order (Dkt. 13). The Court issued a Second Notice to Plaintiff regarding the need to file her brief in support of her claim for relief within thirty days on November 1, 2010.<sup>5</sup> Plaintiff accepted service of the Court's Second Notice on November 17, 2010. The Court's Second Notice contained the language "Notice is hereby given to the

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<sup>1</sup> Dkt. No. 1.

<sup>2</sup> Dkt. No. 10.

<sup>3</sup> Dkt. No. 13.

<sup>4</sup> Dkt. No. 14.

<sup>5</sup> Dkt. No. 17.

Plaintiff, Joy Smart, that her complaint against the Commissioner of Social Security may be dismissed if she does not file her brief in support of her claim for relief within thirty (30) days of the date of this notice. See Court Order (Dkt. 17).

Local Rule of General Procedure 86.02(c) provides that “[w]ithin 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.” Plaintiff has yet to file any brief in support of her claim for relief and, currently, Plaintiff’s brief is now twenty-four (24) weeks late. Accordingly, the Court recommends this action be **DISMISSED** without prejudice and the case be stricken from the Court’s docket.

The Clerk of the Court is **DIRECTED** to send a copy of this Notice to the Plaintiff, who appears *pro se*, by certified mail, return receipt requested, to her last known address as reflected on the docket sheet and all counsel of record .

Any party who appears *pro se* and any counsel of record, as applicable, may, within fourteen (14) days of the date 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 District Court Judge of Record. 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.

DATED: December 6, 2010

/s/ James E. Seibert  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE