

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-60234  
Summary Calendar

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RONALD GLADNEY,

Plaintiff-Appellant,

versus

SHIRLEY CHATER, Commissioner  
of Social Security,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 1:95-CV-277-RR  
- - - - -

October 29, 1996  
Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Ronald Gladney appeals the district court's dismissal of his complaint appealing the Commissioner of Social Security's denial of benefits as time-barred. The Commissioner's motion to dismiss is reviewed as a motion for summary judgment because matters outside the complaint were considered in granting the motion. Washington v. Allstate Ins. Co., 901 F.2d 1281, 1284 (5th Cir.

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

1990); Fed. R. Civ. P. 12(b)(6). Gladney argues that he successfully rebutted the presumption that he received notice of the Appeals Council's decision to uphold denial of benefits by showing that the notice was sent to an incorrect address. Our review of the record reveals that Gladney did not present a material fact issue as to whether he successfully rebutted the presumption. Therefore, Gladney's complaint filed in the district court was untimely. The district court did not err by dismissing the complaint as time-barred.

AFFIRMED.