

U.S. District Court
N.D. of N.Y.

Filed
October 8, 2020

JOHN M. DOMURAD, CLERK

**THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**



GENERAL ORDER #18

.....
In the Matter of:

**THE ASSIGNMENT, MANAGEMENT AND FILING REQUIREMENTS OF
THE DISTRICT'S SOCIAL SECURITY DOCKET**
.....

Amended this 8th day of October, 2020

A. ASSIGNMENT OF SOCIAL SECURITY CASES

It is Ordered that all cases in which a plaintiff seeks review, pursuant to 42 U.S.C. § 405(g), of a decision by the Commissioner of Social Security (“Commissioner”), shall be randomly assigned to a United States Magistrate Judge.

The United States has already indicated its general consent to Magistrate Judge jurisdiction in cases of this nature subject to its reserved rights to withdraw the consent in a given case and to withdraw its general consent. Promptly after the filing of all such cases, the Clerk shall direct a Notice of Social Security Case Assignment to all parties that accomplishes the following:

- (1) Identifies the Magistrate Judge to whom the case is assigned;
- (2) Confirms that any withdrawal of consent by the United States must be filed no later than the date the United States files the administrative record;
- (3) Notifies plaintiff and/or plaintiff’s counsel of plaintiff’s right to consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c);
- (4) Provides a consent/declination form for plaintiff to complete and advises plaintiff that the executed form must be received by the Clerk within 21 days of the date of the notice; and
- (5) Advises the parties as to the court’s procedure in the absence of consent.

If plaintiff timely consents, and if the United States does not timely withdraw consent, the case shall be deemed assigned to the Magistrate Judge without the necessity of an order of referral. In the event that the plaintiff does not timely consent, or if the United States timely withdraws its consent, the Clerk shall reassign the case to a U.S. District Judge consistent with General Order 12.¹ Such reassigned cases shall be referred to the same Magistrate Judge to whom the case was originally assigned for all pretrial, non-dispositive matters and for issuance of a report and recommendation.

The Chief Judge may direct the reassignment of cases as needed to assure a more equitable distribution. Consent given to one magistrate judge is sufficient for the reassignment to another magistrate judge without the need for a secondary consent.

¹ General Order #12 - Case Assignment Plan for the Northern District of New York.

Proceeding In Forma Pauperis. Unless the court otherwise directs, upon filing, the Clerk shall assign to a Magistrate Judge all motions and applications to proceed in forma pauperis. Upon receipt, the Clerk shall assign to a Magistrate Judge any referral or request from an appellate court for a determination regarding in forma pauperis status on appeal. All applications to proceed in forma pauperis are deemed referred pursuant to 28 U.S.C. § 636.

B. ELECTRONIC SERVICE IN SOCIAL SECURITY CASES

A significant number of cases seeking review of the Commissioner's decision denying an application for benefits are filed in this District. The Court and the United States Attorney's Office for the Northern District of New York ("USAO-NDNY") share an interest in facilitating the efficient resolution of those complaints. To this end, the USAO-NDNY and Regional Counsel for the Social Security Administration have agreed to electronic service in Social Security Cases.

THE COURT HEREBY ORDERS:

- (1) This General Order shall only apply to complaints instituted by a plaintiff against the Commissioner in which the only claim that is being brought is pursuant to 42 U.S.C. § 405(g). It shall not apply to any other complaint. In particular, this General Order does not apply to (a) complaints that include claims against the Commissioner in addition to, or other than, those brought pursuant to 42 U.S.C. § 405(g); or (b) complaints that include defendants other than the Commissioner.
- (2) Complaints filed pursuant to 42 U.S.C. § 405(g), shall be filed with the Clerk of Court, pursuant to General Order #22, Section 4.2. Following case assignment and case opening, CM/ECF will generate a Notice of Electronic Filing (NEF) to the United States Attorney and Regional Counsel for the Social Security Administration.
 - A. Upon filing the Complaint by the Clerk, the NDNY CM/ECF system will serve the Complaint through a Notice of Electronic Filing to the USAO-NDNY and Regional Counsel for the Social Security Administration.
 - B. When filing the Complaint with the Clerk, Plaintiff shall also file a Social Security Identification Form² containing the full name and complete social security number of the plaintiff, including that of a minor plaintiff not otherwise identified by his or her full name. If the plaintiff's application for Social Security benefits was filed on another person's wage-record, that person's Social Security number shall also be provided. The identifying information is necessary for the Commissioner to obtain and

² A Social Security Identification Form is available on the Court's website at nynd.uscourts.gov.

produce the certified administrative record. The Social Security Identification Form will be lodged in CM/ECF as a restricted document and sent via Notice of Electronic Filing to the U.S. Attorney and Regional Counsel for the Social Security Administration through the NDNY CM/ECF system.

C. Upon receipt of the Complaint and Social Security Identification Form by the USAO-NDNY and Regional Counsel for the Social Security Administration, the Government shall file a Notice of Appearance. Upon the filing of the Notice of Appearance, the clerk shall terminate the e-mail address that was used for service of the Complaint upon the Social Security Administration Office of General Counsel. Thereafter, all Notices of Electronic Filing will be served upon the attorney representing the Social Security Administration in accordance with the Notice of Appearance.

- (3) Service of a Complaint along with the Social Security Identification will be considered complete only when the three steps in paragraph 2(A), 2(B) and 2(C) above have been completed.
- (4) If a plaintiff follows the steps above and service is effectuated in accordance with this General Order, the USAO-NDNY and Regional Counsel for the Social Security Administration agree not to raise insufficient service as a defense in the response to the Complaint. Nothing in this General Order, however, shall be deemed to be a waiver of service pursuant to Federal Rule of Civil Procedure 4(d). Electronic service under this General Order is intended to more efficiently move the processing of these cases through the litigation life cycle.

C. **FILING OF THE ADMINISTRATIVE RECORD AND BRIEFING SCHEDULE**

IT IS HEREBY

ORDERED that, after service of the Complaint and the Social Security Identification Form has been effectuated, the defendant shall electronically file the certified transcript of the administrative proceedings, which shall constitute the defendant's answer **within 90 days** of said filing of a notice of attorney appearance, or a motion to dismiss **within 90 days** of said service; and it is further

ORDERED that, if a motion to dismiss is denied, the defendant shall file the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, **within 30 days** of service of said denial; and it is further

ORDERED that, after the filing of the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, counsel for the parties or the party, if appearing *pro se*, shall submit briefs in accordance with the following requirements:

- (1) **Within forty-five (45) days** from the filing of the certified transcript of the administrative proceedings, which shall constitute the defendant's answer, plaintiff shall serve and file a brief setting forth the grounds that plaintiff contends entitle plaintiff to relief. The brief shall contain the following items, under the appropriate headings and in the order here indicated:
 - A. A statement of the issues presented for review, set forth in separately numbered paragraphs.
 - B. A statement of the case. This statement should briefly indicate the course of the proceeding and its disposition at the administrative level and should set forth a general statement of the facts. The statement of the facts shall include plaintiff's age, education, work experience, if relevant, and a summary of other evidence of record. Each statement of fact shall be supported by reference to the page in the record where the evidence may be found.
 - C. An argument. The argument may be preceded by a summary. The argument shall be divided into sections separately addressing each issue and must set forth plaintiff's contentions with respect to the issues presented and reasons therefor. Each contention must be supported by specific reference to the portion of the record relied upon and by citations to statutes, regulations, and cases supporting plaintiff's position. Cases from other districts and circuits should be cited only in conjunction with relevant cases from this jurisdiction, or if authority on point from this jurisdiction does not exist.
 - D. A short conclusion stating the relief sought. The issues before the Court are limited to the issues properly raised in the briefs.
- (2) Within forty-five (45) days after service of plaintiff's brief, defendant shall serve and file a brief that identifies and responds to each issue raised by plaintiff. Defendant's brief shall conform to the requirements set forth above for plaintiff's brief, except that a statement of the issues and a statement of the case need not be included unless defendant is dissatisfied with plaintiff's recitation of the same.
- (3) No party shall file or serve a brief that exceeds twenty-five (25) pages in length, double-spaced, unless leave from the assigned judge is obtained prior to filing the

brief. All briefs shall be formatted as prescribed by Local Rule 10.1(a) and shall contain a table of contents;

- (4) Reply papers are not permitted without the Court's prior permission; and it is further

ORDERED that, upon receipt of the defendant's brief as provided herein, the Clerk shall forward the entire file to the assigned judge as determined in Part A of this Order. The assigned judge will treat the proceeding as if both parties had accompanied their briefs with a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure; and it is further

ORDERED that, when plaintiff wants the Court to remand the case based on new and material evidence, plaintiff must file a motion for remand pursuant to sentence six of 42 U.S.C. § 405(g). Motion filing and response papers must be filed in accordance with NDNY Local Rule 7.1. Upon plaintiff's filing of a motion for remand pursuant to sentence six, the parties' brief filing deadlines for an adjudication of the merits will be stayed until the court rules on the sentence six motion. If the motion is denied, plaintiff's brief will be due within 45 days from the date of the court's order, and defendant's brief will be due within 45 days of service of plaintiff's brief; and it is further

ORDERED that, generally no oral argument will be heard by the court. If, however, an oral hearing is requested and scheduled before the assigned judge, or ordered by the Court *sua sponte*, notice of same will be sent to the parties, and, at said hearing, counsel should be fully prepared to argue the facts, issues, and legal contentions in the case; and it is further

ORDERED that the Clerk shall serve a copy of this Order upon counsel for the parties herein upon the filing of the complaint; and it is further

ORDERED that this General Order shall apply to all District Judges and Magistrate Judges in the Northern District of New York, including visiting judges and recalled Magistrate Judges.

D. NOTIFICATION OF THE CONSEQUENCES OF FAILING TO FILE A BRIEF AS REQUIRED BY PARAGRAPH C(1)(A-D)

A party's brief may be its only opportunity to set forth arguments that entitle the party to a judgment in its favor. The failure to file a brief by either party may result in the consideration of the record without the benefit of the party's arguments. In the event a plaintiff fails to submit a brief, the defendant may file a motion to dismiss for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b), and the action may be dismissed with prejudice on the basis of the plaintiff's failure to file a brief.

E. MOTION FOR FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT (“EAJA”)

Prior to filing a motion under 28 U.S.C. §2412 in an action under this rule, plaintiff is encouraged to contact defendant to attempt to reach an agreement by stipulation. Unless stipulated, any motion for fees and expenses under 28 U.S.C. §2412 in an action under this rule shall not be filed before the judgment at issue is final and not appealable. Defendant shall have fourteen (14) days to respond to a motion under 28 U.S.C. §2412 in an action under this rule.

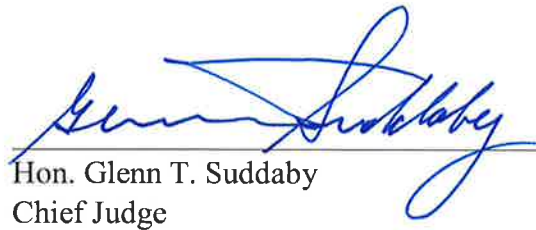
F. MOTION FOR ATTORNEY’S FEES UNDER 42 U.S.C. §406(b).

[THE ADDITION OF THIS SECTION EXTENDS THE 14 DAY DEADLINE TO FILE A MOTION FOR RECONSIDERATION AS “SUGGESTED” IN *SINKLER VS. BERRYHILL*, 932 F.3d 83]

- (1) **Timing of Motion.** Plaintiff’s counsel may file a motion for attorney’s fees under 42 U.S.C. §406(b) no later than sixty (60) days after the date of the final notice of award sent to plaintiff’s counsel of record at the conclusion of defendant’s past-due benefit calculation stating the amount withheld for attorney’s fees. Should information come to the attention of either party after the entry of an order approving fees under 42 U.S.C. §406(b) suggesting that the information used to calculate the appropriate fee was incorrect or incomplete, a motion may be brought under Rule 60(b)(1), (2) or (6) of the Federal Rules of Civil Procedure seeking a correction of the fee approved.
- (2) **Service of Motion.** Plaintiff’s counsel must serve a motion for attorney’s fees on defendant and must attest that counsel has informed plaintiff of the request.
- (3) **Contents of Motion.** The motion for attorney’s fees must include:
 - (A) a copy of the final notice of award showing the amount of retroactive benefits payable to plaintiff (and to any auxiliaries, if applicable), including the amount withheld for attorney’s fees, and if the date that counsel received the notice is different from the date provided on the notice, evidence of the date counsel received the notice;
 - (B) an itemization of the time expended by counsel representing plaintiff in federal court, including a statement as to the effective hourly rate (as calculated by dividing the total amount requested by the number of hours expended);

- (C) a copy of any fee agreement between plaintiff and counsel;
 - (D) statements as to whether counsel:
 - (i) has sought, or intends to seek, fees under 42 U.S.C. §406(a) for work performed on behalf of plaintiff at the administrative level;
 - (ii) is aware of any other representative who has sought, or who may intend to seek, fees under 42 U.S.C. §406(a);
 - (iii) was awarded attorney's fees under the EAJA in connection with the case, and if so, the amount of such fees; and
 - (iv) will return the lesser of the EAJA and 42 U.S.C. §406(b) awards to plaintiff upon receipt of the 42 U.S.C. 406(b) fee award.
 - (E) any other information the Court would reasonably need to assess the petition.
- (4) **Response. Within fourteen (14) days** of service of the motion, the defendant shall file a response or notice of no response to the petition.

DATED: October 8, 2020


Hon. Glenn T. Suddaby
Chief Judge