



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

**SOCIAL SECURITY APPEAL PACKAGE
FOR PRO SE LITIGANTS.**

Dear Litigant:

Enclosed within this package are the forms necessary for filing an action against the Commissioner of Social Security. Your package should include the following items:

- ☐ Instruction sheet for filing an Appeal of a Decision by the Commissioner of Social Security;
- ☐ A Form Complaint for Appeal of a Decision by the Commissioner of Social Security;
- ☐ A Civil Cover Sheet;
- ☐ An application to proceed without prepayment of fees;
- ☐ A Social Security Identification Form;
- ☐ A copy of General Order 18;
- ☐ A Notice to Consent to or Declination of Jurisdiction of a Magistrate Judge.

If you would like additional copies of these documents, they are available and can be downloaded from the Northern District's web page at www.nynd.uscourts.gov.

John M. Domurad
Clerk of Court

INSTRUCTIONS FOR PRO SE LITIGANTS **FILING SOCIAL SECURITY APPEAL CASES**

Below are instructions for completing the forms necessary to appeal a decision by the Commissioner of Social Security. After you have completed the various forms, you will need to return them to the Clerk's office for filing. Your failure to complete all of the required forms or the inaccurate completion of these forms may result in a delay in processing your appeal.

Step 1: Complete the Form Complaint.

You must complete the Form Complaint and return it to the Clerk's Office. Along with your original complaint, you must attach a copy of the Appeals Council's Decision.

Please remember to sign your original complaint.

Step 2: Complete the Social Security Identification Form.

You must complete the Social Security Identification Form and return it to the Clerk's Office along with your complaint. This form will be used by the Social Security Administration to obtain and produce the certified administrative record. This document will be lodged in CM/ECF as a restricted document, not available for public viewing.

Step 3: Complete the Application to Proceed Without Prepayment of Fees and Affidavit.

If you wish to request the filing fees be waived, you must complete an Application to Proceed Without Prepayment of Fees and Affidavit. Please note that this is a two sided form. If the Court grants your application to proceed without prepayment of fees, the filing fee will be waived.

Step 4: Complete the Civil Cover Sheet (JS 44 form).

In order to process your complaint, the Clerk's Office must receive a completed Civil Cover Sheet (Form JS-44). Instructions for completing this form can be found on the reverse side of the form. Typically, in social security appeal cases, the basis of jurisdiction is "Federal Question" and the "Nature of Suit" is either 863 DIWC/DIWW or 864 SSID Title XVI. If you have any questions about this form, the intake clerk at the Clerk's Office will be happy to assist you.

Step 5: File the entire package:

After completing all of the necessary documents, you will need to file these papers with the Clerk's Office for the Northern District of New York. Please remember to sign all originals and bring a copy of the Appeals Council's Decision with you.

Upon receipt of your complaint, the Clerk's Office will issue you a Social Security Action – Case Assignment Form. This document is important because it states your civil case number (e.g. ____ CV ____) and the Magistrate Judge¹ assigned to handle your case.

¹Please refer to General Order #18 for more information regarding assignment of social security appeals.

Step 6: File a Consent or Declination to Consent to Jurisdiction of Magistrate Judge

A Consent or Declination to Consent to Jurisdiction of a Magistrate Judge form is included below and must be filed with the Clerk's office within **21 days** from the filing of your complaint.

****Please note all Social Security Appeal cases are served electronically upon Defendants. Therefore, it is not necessary for the plaintiff to provide summonses to the Clerk. Please refer to General Order #18, Section B (attached below) for further information.**

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

**FORM COMPLAINT FOR APPEAL OF A DECISION
BY THE COMMISSIONER OF SOCIAL SECURITY**

| | |
|---|--------------------------------|
| Plaintiff V. Commissioner of Social Security Defendant | Civil Action No : ____-CV-____ |
|---|--------------------------------|

The above-named plaintiff makes the following representations to the Court for the purpose of obtaining judicial review of a decision of the defendant adverse to the plaintiff:

1. The plaintiff is a resident of (city) _____, in the State of _____ . The last four digits of the Plaintiffs social security number are ____ ____ ____ ____.
2. The plaintiff complains of a decision which adversely affects the plaintiff in whole or in part. The decision has become the final decision of the Commissioner for purposes of judicial review and bears the following caption:

In the case of

Claim for

(Claimant)

(Wage Earner)

(Last 4 digits of Social Security Number)

3. A copy of the Action of the Appeals Council is attached to this Complaint.
4. The plaintiff has exhausted administrative remedies in this matter and this Court has jurisdiction for judicial review pursuant to 42 U.S.C. § 405(g).

WHEREFORE, plaintiff seeks judicial review by this Court and the entry of judgment for such relief as may be proper, including costs.

Dated _____

Signature of Attorney or Plaintiff Pro Se

Address of Attorney or **Plaintiff Pro Se

Attorney Bar Roll Number _____

****Pro Se plaintiff(s) shall only provide City and State**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)* _____

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)* _____

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question *(U.S. Government Not a Party)*

☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

| | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | | | |

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District *(specify)* _____

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):* _____
Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____
DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff/Petitioner

v.

Defendant/Respondent

)
)
)
)
)

Civil Action No. _____

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____.

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

~~~~~

Plaintiff,

SOCIAL SECURITY  
IDENTIFICATION FORM

Civil Action No:

Commissioner of Social Security,

Defendant.

~~~~~

Please note that to obtain the necessary records from the Social Security Administration, the following information is required. This form will be lodged with the Court as a restricted document¹, only available to plaintiff and the attorneys for the Social Security Administration and the United States Attorney's Office for the Northern District of New York.

Plaintiff's Full Name: _____

Plaintiff's Social Security Number: _____ - _____ - _____

Plaintiff's Date of Birth: _____ / _____ / _____

If case is filed on behalf of a minor:

Minor's Full Name: _____

Minor's Social Security Number: _____ - _____ - _____

Minor's Date of Birth: _____ / _____ / _____

If case is filed on behalf of another wage earner's record, please provide the following information:

Wage Earner's Full Name: _____

Wage Earner's Social Security Number: _____ - _____ - _____

Wage Earner's Date of Birth: _____ / _____ / _____

¹ To be entered on the Court's CM/ECF system as 'Social Security Identification Form'

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

Filed
March 15, 2024

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 15th day of March, 2024

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. A copy of the complete decision from the Administrative Law Judge shall be attached as an exhibit to the complaint. 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

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

identifying information is necessary for the Commissioner to obtain and 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. The transcript shall contain bookmarks for all of the exhibits in the administrative record, including medical records; 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: March 15, 2024


Brenda K. Sannes
Chief U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Plaintiff,

Case No.

-VS-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**CONSENT TO or DECLINATION OF
JURISDICTION OF A MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. Section 636(a), FRCP 73, Local Rule 72.2.(d), and General Order 18, the party(ies) to the above captioned matter hereby:

Voluntarily consent(s) to have United States Magistrate Judge _____ conduct all further proceedings in this case to disposition, and with direct review by the Second Circuit Court of Appeals in the event an appeal is filed.

OR

Acknowledges the availability of a United States Magistrate Judge but declines to consent and requests the case be reassigned to a United States District Judge. If a party declines to consent, this matter shall be referred to the same Magistrate for review and preparation of a Report and Recommendation to the assigned District Judge for a Decision and Order.

Attorney/Pro Se Litigant Signature

Party represented

Date signed