

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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OLLIE D. CARVER-THOMAS,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.  
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ORDER

11-cv-797-bbc

This is an action for judicial review of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). On April 27, 2012, I entered an order granting the Commissioner of Social Security's motion to dismiss this case on the ground that it was untimely, noting that plaintiff Ollie Carver-Thomas had not filed any opposition to the motion. Plaintiff now moves to reopen the case, submitting evidence showing that she did file a brief in opposition to the motion on opposing counsel. (The government brought this fact to the court's attention in a letter dated May 1, 2002. *See* dkt. #13. In the letter, the government says that although plaintiff's brief was eventually routed to the lawyer who prepared the Commissioner's motion to dismiss, he did not realize that

plaintiff had not filed her response with the court.)

In her brief, plaintiff explains why she was unable to file her complaint on time. Because these circumstances could show that plaintiff qualifies for equitable tolling, I will grant plaintiff's motion and reconsider the motion to dismiss. Before doing so, however, plaintiff must verify under oath the facts she presents in her brief, either by 1) re-submitting a copy of her brief that is signed by a notary or 2) by re-submitting a copy of her brief with a signed statement indicating that she swears under penalty of perjury that the facts asserted in her brief are true. Plaintiff must file this submission with the court, with a copy to Richard Humphrey, the attorney for the Commissioner.

#### ORDER

IT IS ORDERED that

1. Plaintiff Ollie Carver-Thomas's motion to reopen this case, dkt. #14, is GRANTED.
2. The order and judgment entered in favor of defendant, dkt. ## 11 and 12, are VACATED.
3. Not later than May 21, 2012, plaintiff shall submit to the court either:
  - a) a copy of her brief that is signed by a notary, or
  - b) a copy of her brief with a signed statement indicating that she swears under

penalty of perjury that the facts asserted in her brief are true.

Plaintiff must send a copy of her verified or notarized brief to Richard Humphrey, United States Attorney's Office, P.O. Box 1585, Madison, WI, 53701-1585.

4. Upon receipt of plaintiff's notarized or verified brief, the clerk shall place the motion to dismiss under advisement.

Entered this 2d day of May, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge