

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

OLLIE D. CARVER-THOMAS,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

11-cv-797-bbc

On May 2, 2012, I entered an order granting plaintiff Ollie Carver-Thomas's motion to reopen this case. Dkt. # 16. Now before me for reconsideration is the Commissioner's motion to dismiss plaintiff's complaint on the ground that it was filed too late. Plaintiff is seeking judicial review of the Commissioner's final determination that she is not entitled to social security disability benefits. As discussed in an order entered April 27, 2012, dkt. # 11, plaintiff's deadline for filing her civil complaint was November 25, 2011, sixty days after she received notice from the Appeals Council that it was denying her request for review.

Pursuant to an administrative order entered November 7, 2011, the courthouse was closed on November 25, 2011, which was the Friday after Thanksgiving. Admin. Order No.

304. This meant that plaintiff had until the following Monday, November 28, 2011, to file her complaint. Plaintiff filed her complaint the next day, on November 29, 2011.

In her opposition to the motion to dismiss, plaintiff asks the court to forgive her delay. She avers that although she intended to file her complaint earlier than November 25, 2011, she was unable to do so because her mother, who depends on plaintiff for care, had a medical emergency and was hospitalized approximately a week before plaintiff's complaint was due. Plaintiff further avers that she had made arrangements with someone to drive her to the courthouse to file her complaint during the "Thanksgiving holiday period," by which I understands she means the Friday after Thanksgiving, when the courthouse was closed. According to plaintiff, her driver could not adjust her work schedule so that she could drive plaintiff to the courthouse on Monday, November 28. Plaintiff was not able to get to the courthouse to file her complaint until Tuesday, November 29.

Under these circumstances, I am satisfied that it is appropriate to excuse plaintiff's late filing under the doctrine of equitable tolling, which permits a court to toll a statute of limitations if the plaintiff can show that extraordinary circumstances existed that prevented her from filing her complaint on time. Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); Bowen v. New York, 476 U.S. 467, 480-81 (1986). Although I am mindful that courts are to apply the doctrine of equitable tolling sparingly, National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113-114, 122 S.Ct. 2061, 2072 (2002), it appears that plaintiff

would have filed her complaint on time had it not been for circumstances outside her control: the emergency hospitalization of her mother and an unexpected courthouse closing. Further, the Commissioner makes no suggestion that he was prejudiced by plaintiff's one-day delay in filing her complaint. Baldwin County Welcome Center v. Brown, 466 U.S. 147, 152, 104 S.Ct. 1723 (1984) (once factor has been identified to justify equitable tolling, court may consider absence of prejudice to opposing party) (per curiam). Accordingly, the Commissioner's motion to dismiss the complaint is denied.

ORDER

IT IS ORDERED that:

1. The Commissioner's motion to dismiss this case, dkt. # 10, is DENIED.

Entered this 22d day of May, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge