

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

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DENISE E. OLVER,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,

Defendant.

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ORDER

14-cv-338-wmc

On January 22, 2015, the court held a telephonic motion hearing on plaintiff's Motion for Leave to File Corrected Brief and to Amend the Briefing Schedule. (Dkt. #18.) Plaintiff appeared by attorney Dana Duncan; defendant appeared by Assistant Attorney General Richard Humphrey and Assistant Regional Counsel Lu Han. In the text order setting the hearing, the court advised plaintiff's counsel to be prepared to show cause why sanctions should not be entered against him in light of his failure to prosecute this case timely on behalf of his client.

In support of the motion to amend/correct her opening brief, plaintiff explains that the brief was originally filed in error, containing the ALJ's decision in the argument section of the brief (rather than the actual argument). This is particularly troubling given my recent, private written admonition to plaintiff's counsel detailing the unacceptable practices and lack of controls throughout calendar year 2014, which repeatedly foisted problems on this court resulting from his and his office's sloppiness, lack of diligence and other failures to meet minimum practice expectations. As noted during the hearing, the

present case is in many ways a microcosm of those systemic failures as detailed in the following sequence of events:

- On September 8, 2014, defendant answered the complaint and filed the social security hearing transcript, triggering the briefing schedule. (Dkt. ##8, 9.)
- The briefing schedule automatically set by the filing of the transcript provided plaintiff's opening brief was due October 8, 2014; opposition due November 7, 2014; and reply due November 24, 2014. (Dkt. #9.)
- Plaintiff missed the deadline for filing the opening brief; instead on October 28, 2014 -- 20 days later -- plaintiff filed an unopposed motion to cure clerical error and extension of briefing schedule. In the motion, plaintiff requested an extension to November 7, 2014, to file her opening brief "[d]ue to miscommunication and clerical error." (Dkt. #10.)
- In a text order, Judge Crocker concluded that plaintiff's counsel's confessions of mismanagement do not constitute good cause, but still extended the deadline to November 3, 2014 at 9:00 a.m., to protect Olver's appeal. (Dkt. #11.) Judge Crocker warned, however, that "[a]s of 9:01 AM [on November 3rd] the proverbial door is shut" and that "plaintiff shall [not] receive an extension of" the 14-day reply time limit. (*Id.*)
- Plaintiff filed her opening brief by this new deadline, although one without an argument section. (Dkt. #13.)
- Defendant received an extension to file her opposition until January 2, 2015. Defendant filed the opposition brief that day, explaining that:

Plaintiff's sole argument is that the ALJ "erred by failing to properly consider and assess the age requirements of the Medical-Vocational Guidelines or 'Grids' contrary to law" (Pl. Br. at 1). Plaintiff's brief, however, consists of a summary of the facts, case law regarding the standard of review, and quotations from the ALJ's decision only (Pl. Br. at 1-14). Confusingly, Plaintiff ends her argument by paraphrasing the ALJ's decision . . . . After this statement, Plaintiff concludes her argument with no explanation of how the ALJ allegedly erred in applying the Medical-Vocational Guidelines (Pl. Br. at 14). Plaintiff's argument is undeveloped and therefore waived.

(Def.'s Opp'n (dkt. #17) 5.)

- In the text order granting defendant's extension, the court set a deadline for the reply brief of January 16, 2015. (Dkt. #16.)
- On January 19, 2015 -- three days after that deadline -- plaintiff filed her motion to amend/correct her opening brief. (Dkt. #18.) In that motion, plaintiff's counsel attests that he "was unaware of this situation [with the original brief] until starting his work on the Reply Brief *this day*." (Dkt. #18 at ¶ 11 (emphasis added).)

Based on this record, argument heard during the hearing, and plaintiff's repeated lapses in other cases, the court will impose a relatively nominal monetary sanction of \$250 to be paid immediately to the clerk of court. Attorney Duncan is admonished, as he was in my earlier letter and during the hearing, that future instances of mismanagement and lack of oversight will result in graduated sanctions, ultimately to include being barred from filing new actions in this court.<sup>1</sup> Plaintiff's counsel is running a one-attorney mill, but apparently has plenty of staff; these failures have to stop.

As for the motion to amend/correct plaintiff's opening brief, the court will grant that motion in part as described below in its order to avoid prejudicing the plaintiff further.

## ORDER

IT IS ORDERED that:

- 1) Attorney Dana Duncan is sanctioned \$250 to be paid immediately to the Clerk of Court for the Western District of Wisconsin; and

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<sup>1</sup> The court will circulate this order to the other judges of this court.

2) Plaintiff's motion to amend / correct her opening brief and amend the briefing schedule is GRANTED IN PART. As directed at the hearing, plaintiff filed her corrected brief yesterday, January 22, 2015. Defendant's amended opposition is due on or before March 9, 2015. No reply will be allowed.

Entered this 23rd day of January, 2015.

BY THE COURT:

/s/

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William M. Conley  
District Judge