

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

SHEILA SANCHEZ for
CHILA SANCHEZ,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

ORDER

03-C-537-C

This is an appeal of an adverse decision of the Commissioner of Social Security brought by Sheila Sanchez on behalf of her minor child, Chila Sanchez. In a previous order, this court noted that it might be necessary for the court to appoint a lawyer to represent Chila Sanchez's interests because it appeared that Sheila Sanchez was having problems getting the defendant served properly. In response to that order, Sheila Sanchez wrote a letter stating that she had been unsuccessful in her attempts to accomplish service; she agreed that a lawyer would be helpful. At the same time, however, Sanchez submitted documents suggesting that she had in fact served the defendant. That fact was confirmed on March 4, 2004, by the defendant's filing of a motion to dismiss the case for lack of jurisdiction. Defendant has not challenged service.

Thus, the issue that gave rise to this court's concern that Sheila Sanchez is not competent to represent her daughter's interests has been resolved. Service having been accomplished, the issue now before the court is whether it must dismiss the complaint because Sanchez did not file it until more than 60 days after the date she received notice from the Appeals Council that it had denied her request for review, as defendant contends in her brief. This is a fact-based inquiry that does not involve any complicated legal issues. Sheila Sanchez has the ability to tell the court whether she agrees that she did not file her complaint within the 60-day deadline and if so, to explain the circumstances that prevented her from filing it on time. Accordingly, I find it is unnecessary to appoint counsel for Chila Sanchez at this time.

ORDER

IT IS ORDERED that:

1. Sheila Sanchez's request for the appointment of counsel to represent her daughter is DENIED.

2. Sanchez has until March 25, 2004, within which to file a response to the motion to dismiss that was filed by defendant on March 4, 2004. Defendant has until April 5, 2004, within which to file a reply.

Dated this 9th day of March, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge