

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

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GARY L. EDGAR,

Plaintiff,

OPINION AND ORDER

v.

04-C-0820-C

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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On August 21, 2006, this court ordered the commissioner to show cause why she should not be found in contempt for her failure as of August 2006 to provide plaintiff Gary Edgar with a new hearing on his applications for social security benefits pursuant to this court's order of June 16, 2005 reversing and remanding the commissioner's decision to deny plaintiff's applications. After the parties responded to the order to show cause, the court issued an order directing the commissioner to state whether plaintiff's case had been assigned priority, pursuant to the agency's Hearings, Appeals and Litigation Law Manual (HALLEX) 1-1-8-18, by virtue of the fact that plaintiff's case was the subject of a court remand. The commissioner has now responded to that order and the motion is ripe for decision.

Having considered the commissioner's response and plaintiff's response to it, I find that the commissioner is not in contempt. This court did not specify a deadline for complying with the order and plaintiff's case is currently scheduled for a new hearing.

Although the commissioner failed to assign plaintiff's case priority as directed by the HALLEX manual, the manual is not binding on the commissioner and has no legal force.

From the record, I find the following facts for the purpose of deciding the motion for a finding of contempt.

### FACTS

Plaintiff filed applications for Supplemental Security Income and Disability Insurance Benefits on December 27, 2001 and January 22, 2002, respectively, alleging that he had been disabled since October 21, 2000 as a result of hypertension, coronary artery disease, depression, anxiety, hyperlipidemia and rheumatic arthritis. Plaintiff's applications were eventually considered by Administrative Law Judge John Pleuss who, after a hearing, issued a decision on March 14, 2003, finding that plaintiff was not disabled at any time through the date of the decision. After the Appeals Council denied review, plaintiff filed a civil action in this court on October 27, 2004. The case was referred to Magistrate Judge Stephen Crocker for the issuance of a report and recommendation.

On May 31, 2005, Judge Crocker issued a decision recommending that the commissioner's decision be reversed and plaintiff's case remanded to the commissioner pursuant to sentence four of 28 U.S.C. § 405(g). Judge Crocker determined that further administrative proceedings were necessary, explaining:

The ALJ addressed some of plaintiff's alleged mental limitations, but nothing in his decision makes clear how he accounted for the substantial evidence in the record indicating that plaintiff has significant limitations in his ability to concentrate, process information and relate to others, including supervisors.

Rep. and Rec., dkt. #11, at 22. Judge Crocker recommended that the case be remanded "for further proceedings consistent with this opinion." *Id.*, at 27.

The commissioner did not object to the magistrate judge's report and recommendation. Accordingly, on June 16, 2005, I entered an order adopting the magistrate judge's recommendation and ordered the case reversed and remanded to the Social Security Administration pursuant to sentence four of 42 U.S.C. § 405(g). The order did not set forth any deadline for compliance with the order or otherwise suggest a time frame within which new administrative proceedings were to be held.

On or about August 20, 2005, plaintiff's file was forwarded administratively to the Social Security Administration's Office of Disability Adjudication and Review in Madison pursuant to this court's remand order. According to the social security administration's Hearings, Appeals and Litigation Law Manual (HALLEX) 1-2-8-18, available at [http://www.ssa.gov/OP\\_Home/hallex/I-02/I-2-8-18.html](http://www.ssa.gov/OP_Home/hallex/I-02/I-2-8-18.html), cases remanded by the Appeals Council to the Office of Adjudication and Review (formerly called the Office of Hearings and Appeals) pursuant to a court remand are to be flagged and hearing officers "must give priority to court remand cases." In plaintiff's case, the agency did not comply with the

manual and did not assign priority to plaintiff's case. As of September 8, 2006, a hearing had not yet been scheduled on plaintiff's claim. In response to this court's order of September 14, 2006, however, the agency assigned plaintiff's case priority and scheduled it for a hearing on November 9, 2006.

According to Sridhar Boini, the Social Security Administration's regional attorney for the six-state region that includes Wisconsin, the Madison Office of Disability Adjudication and Review has a total of 1,979 cases pending, 1,145 of which are cases it received in the fiscal year beginning October 2005 and 835 of which are cases, including plaintiff's, that have been pending for more than one year. The Madison office is staffed by two administrative law judges, one manager and three decision writers. The office has closed 843 cases thus far in the fiscal year, amounting to an average of approximately 38 cases per month for each administrative law judge. Of the cases pending in the Madison office, 571 have been pending longer than plaintiff's.

#### OPINION

Under 18 U.S.C. § 401, a federal court has the power to "punish by fine . . . such contempt of its authority . . . as . . . disobedience or resistance to its lawful writ, process, order, rule, decree, or command." "A court's civil contempt power rests in its inherent limited authority to enforce compliance with court orders and ensure judicial proceedings

are conducted in an orderly manner.” Jones v. Lincoln Elec. Co., 188 F.3d 709, 737 (7th Cir. 1999). To be held in civil contempt, a person must have violated an order or decree that sets forth in specific detail an unequivocal command from the court. United States v. Dowell, 257 F.3d 694, 699 (7th Cir. 2001). Civil contempt proceedings are designed to compel compliance with the court order and to compensate the complainant for losses caused by contemptuous actions. Tranzact Technologies, Inc. v. ISource Worldsite, 406 F.3d 851, 855 (7th Cir. 2005) (citing Dowell, 257 F.3d at 699). The party asserting a violation of a judicial order has the burden of proving the violation by clear and convincing evidence. Goluba v. School District of Ripon, 45 F.3d 1035, 1037 (7th Cir. 1995). To reach a finding of contempt, a district court need not find that a violation was “willful.” Commodity Futures Trading Comm. v. Premex, Inc., 655 F.2d 779, 784 n.9 (7th Cir. 1981). It is enough that a party “has not been reasonably diligent and energetic in attempting to accomplish what was ordered.” Goluba, 45 F.3d at 1037.

The record in this case lacks clear and convincing evidence upon which to find that the commissioner has violated this court’s order of June 16, 2005. The order merely directed the commissioner to conduct further proceedings in plaintiff’s case without specifying any time frame within which those proceedings should be held. Although this court expects its orders to be carried out within a reasonable time frame, I am persuaded that it would be

improper to hold the commissioner in contempt when the order did not set forth an explicit deadline for compliance and when a hearing has now been scheduled.

I agree with the commissioner that the agency's failure to comply with the HALLEX manual does not provide a basis for a contempt finding. Schweiker v. Hansen, 450 U.S. 785, 789 (1981) (Claims Manual used internally by SSA employees was not regulation, had no legal force and did not bind SSA); Parker for Lamon v. Sullivan, 891 F.2d 185, 190 (7th Cir. 1989) (agency's Program Operations Manual had no legal force). That said, it is troubling that the agency did not assign priority to plaintiff's case. It is troubling not only because the agency violated its internal policy in failing to do so, but also because one would expect as a practical matter that the commissioner would give prompt attention to cases in which a court has determined that the administrative law judge's decision to deny benefits was flawed. Such applications are likely to be older than those awaiting initial hearings; moreover, they have been deemed judicially to have been denied improperly. As a matter of fairness, these claimants are entitled to have their ever-aging applications reheard promptly. In future cases remanded by this court to the agency for further administrative proceedings, this court will expect the commissioner to adhere to her internal policy and give such cases priority over those awaiting initial determination.

ORDER

IT IS ORDERED that the motion for a finding of contempt for the commissioner's failure to comply with this court's order of June 16, 2005 is DENIED.

Entered this 27<sup>th</sup> day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge