

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00689-AP

JERRY ARCHULETA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner of Social Security,

Defendant.

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**JOINT CASE MANAGEMENT PLAN FOR SOCIAL SECURITY CASES**

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**1. APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

For Plaintiff:

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For Defendant:

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**2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

The Court has jurisdiction based on section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

**3. DATES OF FILING OF RELEVANT PLEADINGS**

- A. Date Complaint Was Filed:** March 15, 2013
- B. Date Complaint Was Served on U.S. Attorney's Office:** March 20, 2013
- C. Date Answer and Administrative Record Were Filed:** June 18, 2013

**4. STATEMENT REGARDING THE ADEQUACY OF THE RECORD**

Upon information and belief, Plaintiff believes the record is complete and accurate, except as discussed in Paragraph 5 below. To the best of her knowledge, Defendant states that the record is complete and accurate.

**5. STATEMENT REGARDING ADDITIONAL EVIDENCE**

Plaintiff states that he anticipates filing a motion to supplement the administrative record pertaining to the following records: certain attachment to his attorney's Final Statement, submitted to the Appeals Council on May 18, 2012.

Defendant states that she plans to consult with the Appeals Council regarding the May 18, 2012, documents to see whether a supplemental transcript containing those documents is appropriate. Defendant cannot stipulate to supplement the certified administrative record with the additional evidence if it was not before the ALJ or the Appeals Council. *See* 42 U.S.C. § 405(g) (sentence three: stating that the Commissioner "shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based"). If Plaintiff submits the additional evidence with his opening brief, the Court could still consider the evidence to determine if it met the criteria of remand under sentence six of 42 U.S.C. 405(g). *See Selman v. Califano*, 619 F.2d 881, 884-85 (10th Cir. 1980) (court cannot consider additional evidence outside of the administrative record, except to determine whether the case should be remanded under sentence six of 42 U.S.C. § 405(g) for consideration of additional evidence). A motion to remand for consideration of new evidence under sentence six of 42 U.S.C. 405(g) can be made as part of Plaintiff's opening brief or may be made by separate motion at Plaintiff's option. Defendant would reserve the right to argue that the requirements for sentence six remand were not met.

However if the evidence was received but rejected by the Appeals Council, Plaintiff may submit a motion to supplement the record if Plaintiff can show that the information was submitted to the Appeals Council and the Appeals Council refused to consider that evidence if the evidence was (1) new, (2) material, and (3) related to the period on or before the date of the ALJ's decision. This standard for considering evidence rejected by the Appeals Council is set forth in *Krauser v. Astrue*, 638 F. 3d 1324, 1328 (10th Cir. 2011). Plaintiff may file a motion to supplement the record up to the time the opening brief is due, or within such additional time as the Court may upon motion grant if the Appeals Council has not addressed Defendant's consultation as to these additional documents within two weeks of the date of this order. A motion to supplement the record can be made as part of Plaintiff's opening brief or may be made by separate motion at Plaintiff's option. Defendant would reserve the right to argue that, if the Appeals Council did receive and reject the evidence, it was not new, material, and/or related to the period on or before the date of the ALJ's decision.

**6. STATEMENT REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

The parties, to the best of their knowledge, do not believe this case raises unusual claims or defenses.

**7. OTHER MATTERS**

There are no other matters anticipated. Plaintiff's current claim does not involve any prior judicial proceedings.

**8. BRIEFING SCHEDULE**

Attorneys for both parties agree to the following proposed briefing schedule:

- A. Plaintiff's Opening Brief Due:** August 30, 2013
- B. Defendant's Response Brief Due:** October 4, 2013
- C. Plaintiff's Reply Brief (If Any) Due:** October 23, 2013

The parties have agreed to extend the time for the filing of the opening, response, and reply briefs due to previously scheduled vacations.

**9. STATEMENTS REGARDING ORAL ARGUMENT**

**A. Plaintiff's Statement:** Plaintiff does not request oral argument.

**B. Defendant's Statement:** Defendant does not request oral argument.

**10. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

Not all parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.

**11. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

THE PARTIES FILING MOTIONS FOR EXTENSION OF TIME OR CONTINUANCES MUST COMPLY WITH D.C.COLO.LCivR 7.1(C) BY SUBMITTING PROOF THAT A COPY OF THE MOTION HAS BEEN SERVED UPON THE MOVING ATTORNEY'S CLIENT, ALL ATTORNEYS OF RECORD, AND ALL PRO SE PARTIES.

*The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.*

DATED this 9<sup>th</sup> day of July, 2013.

BY THE COURT:

*s/John L. Kane*

U.S. DISTRICT COURT JUDGE

APPROVED:

s/ Gordon W. Williams

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