

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-02916-AP

DOMINIC T. NELMS,

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:

Gordon W. Williams  
143 Union Boulevard, Suite 270  
Lakewood, Colorado 80228  
Tel: 303-988-2841  
gwilliamsefile@jeffcolaw.net

John F. Walsh  
United States Attorney

J.B. García  
Assistant United States Attorney  
District of Colorado

For Defendant:

Stephanie Lynn F. Kiley  
Special Assistant United States Attorney  
Office of the General Counsel  
Social Security Administration  
1961 Stout Street, Suite 4169  
Denver, Colorado 80294-4003  
(303) 844-0815  
[stephanie.kiley@ssa.gov](mailto:stephanie.kiley@ssa.gov)

**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:** October 25, 2013
- B. Date Complaint Was Served on U.S. Attorney's Office:** November 14, 2013
- C. Date Answer and Administrative Record Were Filed:** February 7, 2014

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

The parties, to the best of their knowledge, state that the administrative record is complete and accurate (except for Plaintiff's issues as to rejected evidence addressed in section 5 below.)

### **5. STATEMENT REGARDING ADDITIONAL EVIDENCE**

Plaintiff states:

The attorney for the Plaintiff at the Appeals Council presented evidence that he believed was new and material including a medical source opinion from the Plaintiff's treating doctor. This evidence was rejected by the Appeals Council as not being time relevant and is not included in the administrative record. Plaintiff's counsel will argue that the Appeals Council's action rejecting this evidence was incorrect and that the evidence was new and material and should have been considered. This rejected evidence is still contained in the Social Security electronic record. While Plaintiff believes the rejected evidence should have been included in the transcript of the record so the court could consider this question, in order to avoid having to have the court rule on this procedural issue, the parties have agreed that counsel for Plaintiff may attach copies of the rejected evidence to the opening brief and may argue, as to those documents, whether they should have been considered and to the extent they should have been considered may raise any other issues relevant to those documents. Defendant has been provided with a copy of those documents and does not dispute that those are the documents that were presented to and rejected by the Appeals Council.

Additionally Plaintiff has numerous additional medical records, including records attached to the complaint, that Plaintiff believes are new and material and that the case should be remanded for consideration of this evidence pursuant to sentence 6 of 42 U.S.C. 405(g). The parties have agreed that Plaintiff, at her option, may either attach those documents to the opening brief and argue for remand or in that alternative may file a separate motion and argument for remand for consideration of new and material evidence

Defendant states:

Pursuant to section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), the Court's review is limited to the certified administrative transcript that was filed with Defendant's answer. Defendant reserves the right to respond to the issues Plaintiff raises regarding rejected evidence and a request for remand to consider alleged new and material evidence.

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

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

**7. OTHER MATTERS**

The parties have no other matters (other than the procedures referred to in section 5) to bring to the attention of the Court.

The parties state that this case is not on appeal from a decision issued on remand from this Court.

**8. BRIEFING SCHEDULE**

The parties request the following briefing schedule, outside of the 60 day briefing schedule, due to Defendant's workload. ***OK/JLK – no extensions.***

- A. **Plaintiff's Opening Brief Due:** May 9, 2014
- B. **Defendant's Response Brief Due:** June 9, 2014
- C. **Plaintiff's Reply Brief (If Any) Due:** June 24, 2014

**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**

**Indicate below the parties' consent choice.**

- A. ( ) All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.
- B. (X) All parties have not 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 25<sup>th</sup> day of February, 2014.

BY THE COURT:

*s/John L. Kane*

U.S. DISTRICT COURT JUDGE

APPROVED:

UNITED STATES ATTORNEY

/s/ Gordon W. Williams

Gordon W. Williams  
143 Union Blvd., Suite 270  
Lakewood, CO 80228  
303-988-2841  
gwilliamsefile@jeffcolaw.net  
Attorney for Plaintiff

/s/ Stephanie Lynn F. Kiley 2/24/2014

By: Stephanie Lynn F. Kiley  
Special Assistant U.S. Attorney  
Social Security Administration  
1961 Stout Street, Suite 4169  
Denver, CO 80294-4003  
303-844-0815  
stephanie.kiley@ssa.gov  
Attorneys for Defendant.