

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02193-GPG

PANON WILLIAMS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT

This matter is before the Court on the Amended Complaint (ECF No. 5) that Plaintiff, Panon Williams, filed *pro se* on October 19, 2015. The Court must construe Plaintiff's Amended Complaint liberally because she is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, Ms. Williams will be ordered to file a second amended Complaint if she wishes to pursue her claims in this action.

The Amended Complaint only complies in part with the order of October 6, 2015. Ms. Williams has named the Commissioner of Social Security as defendant and asserts that she is seeking judicial review of decisions by the Commissioner of Social Security denying her claims for social security disability benefits. However, Ms. Williams fails to assert jurisdiction pursuant to an appropriate statutory authority, such as 42 U.S.C. §

405(g), and fails to include information to assist the Court in reviewing the Commissioner's decision, including the date when the Commissioner denied Plaintiff's claim, the reason her claim was denied, why she believes the decision was erroneous, and a copy of the Commissioner's decision denying Plaintiff's claim for benefits.

The Court reviews the Commissioner's decision to determine whether substantial evidence in the record as a whole supports the factual findings and whether the correct legal standards were applied. *Wall v. Astrue*, 561 F.3d 1048, 1052 (10th Cir.2009); see also *Maiorano v. Astrue*, 930 F. Supp. 2d. 1240, 1244 (D. Colo. 2013). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wall*, 561 F.3d at 1052. In reviewing the Commissioner's decision, the Court may neither reweigh the evidence nor substitute its judgment for that of the agency. *Salazar v. Barnhart*, 468 F.3d 615, 621 (10th Cir.2006). "On the other hand, if the [Administrative Law Judge (ALJ)] failed to apply the correct legal test, there is a ground for reversal apart from a lack of substantial evidence." *Thompson v. Sullivan*, 987 F.2d 1482, 1487 (10th Cir.1993).

Ms. Williams will be afforded a final opportunity to assist the Court in reviewing the Commissioner's decision by providing a short and plain statement of her claims showing that she is entitled to relief, and by attaching to the second amended Complaint a copy of the Commissioner's decision denying Plaintiff's claim for benefits, if available. Ms. Williams will be ordered to file a second amended Complaint that complies with this order, the October 6 Order, and the pleading requirements of Rule 8 if she wishes to pursue her claims in this action.

Ms. Williams is reminded that she may suffer unforeseen consequences if she fails within the time allowed to file a second amended Complaint as directed. See *Rodriguez v. Colorado*, 521 F. App'x 670, 671-72 (10th Cir. 2013). Even if the Court dismisses the instant action without prejudice for failure to comply with this order, the dismissal may act as a dismissal with prejudice if Ms. Williams seeks to refile in this Court because the period for filing a Social Security action may have expired. Pursuant to Section 205(g) of the Social Security Act, a civil action must be commenced "within sixty days after the mailing to him of notice of [any final decision of the Commission of Social Security] or within such further time as the Commissioner may allow." 42 U.S.C. § 405(g).

Accordingly, it is

ORDERED that Plaintiff, Panon Williams, file **within thirty (30) days from the date of this order** a second amended Complaint that complies with this order, the order of October 6, 2015, and the pleading requirements of Fed. R. Civ. P. 8. It is

FURTHER ORDERED that Ms. Williams shall obtain the appropriate Court-approved Complaint form, along with the applicable instructions, at www.cod.uscourts.gov, and use that form in submitting the second amended Complaint.

It is

FURTHER ORDERED that, if Ms. Williams fails within the time allowed to file a second amended Complaint that complies with this order to the Court's satisfaction, the action may be dismissed without further notice.

DATED October 21, 2015, at Denver, Colorado.

BY THE COURT:

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line that curves upwards and then back down to the right.

Gordon P. Gallagher
United States Magistrate Judge