

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JEFFREY CASSIDY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 12-1711-LPS-SRF
	)	
CAROLYN W. COLVIN, <sup>1</sup>	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**

At Wilmington this 6th day of January, 2014, I recommend that the court dismiss the above-captioned action without prejudice for the following reasons:

1. On December 17, 2012, pro se plaintiff Jeffrey Cassidy (“plaintiff”) filed the present action seeking judicial review of a decision of the Social Security Commissioner (“defendant”) denying plaintiff’s request for benefits. (D.I. 3) Defendant filed an answer on April 27, 2013. (D.I. 11)

2. On May 13, 2013, the court set a briefing schedule for dispositive motions, setting forth a deadline of June 28, 2013 for filing summary judgment motions. (D.I. 14) Plaintiff did not submit a motion for summary judgment on or before the briefing deadline.

3. On September 5, 2013, the court entered an order to show cause, on or before October 7, 2013, why the above-captioned action should not be dismissed for failure to prosecute, pursuant to D. Del. LR 41.1.<sup>2</sup> (D.I. 15)

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<sup>1</sup> Carolyn W. Colvin became the Commissioner of Social Security on February 13, 2013, after this proceeding was initially filed. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin replaced the previous Commissioner, Michael J. Astrue, as the defendant in this case.

<sup>2</sup> D. Del. LR 41.1 provides that:

4. On September 26, 2013, plaintiff responded to the order to show cause and moved for an extension of time. Plaintiff indicated that he did not receive the order setting the briefing schedule because his address was incorrect, and he provided the correct address. He requested an extension of thirty (30) days to file his brief. (D.I. 16)

5. On October 4, 2013, the court entered an order granting plaintiff's motion for extension of time, and setting a new briefing schedule with a deadline of November 12, 2013 for plaintiff's opening brief. (D.I. 17)

6. Plaintiff did not file a dispositive motion by the November 12, 2013 deadline. On November 15, 2013, the court entered a second order to show cause, on or before December 16, 2013, why the above-captioned action should not be dismissed for failure to prosecute, pursuant to D. Del. LR 41. (D.I. 18)

7. To date, plaintiff has not filed a dispositive motion, and has not filed any additional motions for extension of time or made any other filings since September 26, 2013. Therefore, I recommend that the court dismiss the above-captioned action without prejudice for failure to prosecute.<sup>3</sup> The Clerk of Court shall cause a copy of this Report and Recommendation to be mailed to plaintiff.

8. This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), and D. Del. LR 72.1. The parties may file and serve specific written

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Subject to the provisions of Fed. R. Civ. P. 23 and 23.1, in each case pending wherein no action has been taken for a period of 3 months, the Court may, on its motion or upon application of any party, and after reasonable notice and opportunity to be heard, enter an order dismissing such case unless good reason for inaction is given.

<sup>3</sup> I recommend that the court entertain a motion to reopen the case, should plaintiff file such a motion accompanied by: (1) a motion for summary judgment; and (2) an opening brief in support, within 30 days from the date of this Report and Recommendation.

objections within fourteen (14) days after being served with a copy of this Report and Recommendation. Fed. R. Civ. P. 72(b)(2). The written objections and responses are each limited to five (5) pages.

9. The parties are directed to the court's Standing Order In Pro Se Matters For Objections Filed Under Fed. R. Civ. P. 72, dated November 16, 2009, a copy of which is available on the court's website, [www.ded.uscourts.gov](http://www.ded.uscourts.gov).

Dated: January 6, 2014

  
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Sherry R. Fallon  
UNITED STATES MAGISTRATE JUDGE