

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEBRA LUNA,

Plaintiff,

vs.

Case No. 8:16-cv-2010-T-27MAP

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

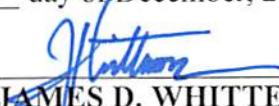
Defendant.

ORDER

BEFORE THE COURT is the Report and Recommendation submitted by the Magistrate Judge recommending that Commissioner's Motion to Dismiss construed as a motion for summary judgment (Dkt. 11) be denied (Dkt. 14). Neither party submitted additional evidentiary materials after the Magistrate Judge advised he would consider the motion to dismiss as a summary judgment motion (Dkt. 13). Neither party has filed objections to the Report and Recommendation where the Magistrate Judge found that the Plaintiff has shown the extraordinary circumstances necessary for equitable tolling. The agency effectively misled her by sending the notice of her right to appeal to her former representative despite informing Mr. Steinberg it would deal directly with him regarding her claims.

After careful consideration of the Report and Recommendation in conjunction with an independent examination of the file, the Court is of the opinion that the Report and Recommendation should be adopted, confirmed, and approved in all respects. Accordingly, the Report and Recommendation (Dkt. 14) is adopted, confirmed, and approved in all respects and is made a part of this order for all purposes, including appellate review. Commissioner's Motion to Dismiss (Dkt. 11) is **DENIED**.

DONE AND ORDERED on this 28th day of December, 2016.



JAMES D. WHITTEMORE
United States District Judge

Copies to: Counsel of record