

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 10-23919-CIV-LENARD/O'SULLIVAN

LAS MERCEDES HOME CARE CORP.,

Plaintiff,

v.

KATHLEEN SEBELIUS, Secretary of the
United States Department of
Health and Human Services,

Defendant.

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ORDER

THIS MATTER is before the Court on the Plaintiff's Motion for Order Deeming Plaintiff's Statement of Material Facts Admitted Pursuant to Local Rule 56.1(b) (DE# 51, 5/14/12). Local Rule 7.1(c) states that "[e]ach party opposing a motion shall serve an opposing memorandum of law no later than fourteen (14) days after service of the motion. Failure to do so may be deemed sufficient cause for granting the motion by default." S.D. Fla. L.R. 7.1(c). In the instant case, the defendant did not respond to the instant motion. As such, the Court may grant the instant motion by default.

The instant motion may also be granted on the merits. Local Rule 56.1(b) states, in pertinent part, that "[a]ll material facts set forth in the movant's statement filed and supported as required [by Local Rule 56.1(a)] **will be deemed admitted unless controverted by the opposing party's statement**, provided that the Court finds that the movant's statement is supported by evidence in the record." S.D. Fla. L.R. 56.1(b) (emphasis added). In the instant case, the defendant did not comply with the requirements of Local Rule 56.1. While the defendant filed its own statement of

undisputed facts, see Defendant's Statement of Undisputed Material Facts (DE# 44, 4/26/12), the defendant did not file a statement of material fact in opposition to the plaintiff's summary judgment motion which corresponded with the paragraph numbering scheme used by the movant. See S.D. Fla. L.R. 56.1(a).

Nonetheless, not all of facts in the Plaintiff's Statement of Material Facts as to Which There Is No Genuine Issue (DE# 40-1, 3/9/12) will be deemed admitted. "[E]ven where an opposing party neglects to submit any alleged material facts in controversy, the court must still satisfy itself that the evidence on the record supports the uncontroverted material facts that the movant has proposed." Hoff v. Steiner Transocean, Ltd., No. 12-22329-CIV, 2014 WL 273075, at *5 (S.D. Fla. Jan. 24, 2014) (citing Reese v. Herbert, 527 F.3d 1253, 1268-69, 1272 (11th Cir. 2008); United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla., 363 F.3d 1099, 1103 n. 6 (11th Cir. 2004)). Here, for instance, the plaintiff's statement that the Secretary used a "strict liability application of 42 U.S.C. §§ 1395pp, 1395gg" is not a factual statement, but the plaintiff's own characterization of what occurred in the administrative proceedings below. Moreover, in issuing the Report and Recommendation on the parties' cross-motions for summary judgment, the undersigned will also consider those facts contained in the Defendant's Statement of Undisputed Material Facts (DE# 44, 4/26/12) which are not disputed by the Plaintiff's Response to Defendant's Statement of Material Facts as to Which There Is No Genuine Issue (DE# 50-1, 5/14/12) and additional undisputed facts in the record which were omitted from the parties' statements of undisputed facts, but are nonetheless material to a ruling on the cross-motions for summary judgment. In accordance with the

foregoing, it is

ORDERED AND ADJUDGED that the Plaintiff's Motion for Order Deeming Plaintiff's Statement of Material Facts Admitted Pursuant to Local Rule 56.1(b) (DE# 51, 5/14/12) is **GRANTED in part and DENIED in part**. The undersigned will deem admitted those facts in the Plaintiff's Statement of Material Facts as to Which There Is No Genuine Issue (DE# 40-1, 3/9/12) which are supported by the record.

DONE AND ORDERED in Chambers at Miami, Florida this 7 day of March, 2014.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
U.S. District Judge Lenard
All counsel of record