IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MECA C. MOLINA,

Plaintiff,

v. Case No. 17-2684-JWB

NANCY A. BERRYHILL,
Commissioner of Social Security,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's Motion for Extension of Time (Doc. 16) and Motion to Appoint Counsel (Doc. 17.) For the reasons stated herein, the Motion for Extension of Time (Doc. 16) is GRANTED; the Motion to Appoint Counsel (Doc. 17) is DENIED.

I. Background

Plaintiff, acting through counsel, filed a complaint on December 1, 2017, challenging the Commissioner's denial of her application for social security disability benefits. (Doc. 1.) On July 18, 2018, Plaintiff's then-counsel, Teresa Meagher, filed a motion to withdraw, asserting that Plaintiff had terminated her representation. (Doc. 10 at 1.) The court granted the motion to withdraw on August 24, 2018. (Doc. 14.) The order gave Plaintiff additional time to file a brief in support of the complaint (until October 22, 2018), but cautioned her that because she is proceeding without counsel she is responsible for complying with court deadlines. (*Id.* at 2.) On November 1, 2018, after Plaintiff failed to file a brief, the court directed her to show cause why the action should not be dismissed for failure to prosecute. (Doc. 15.) Plaintiff subsequently filed a motion for more time and a motion for appointment of counsel.

II. Motion for Extension of Time (Doc. 16.)

Plaintiff's motion requests more time "to obtain legal counsel." (Doc. 16 at 12.) In support, Plaintiff asserts that she is homeless and has limited access to resources. (*Id.*)

Based on Plaintiff's current homelessness and limited ability to access resources, the court will grant her request for additional time. Plaintiff does not request a specific period, but considering all of the circumstances – including the fact this case was filed nearly one year ago - the court concludes an additional 60 days is sufficient. The court will accordingly grant Plaintiff an extension of time to January 31, 2019, to file an opening brief showing why the Commissioner erred in denying her application for benefits. If Plaintiff is unable to find counsel to represent her and to file a brief by that date, Plaintiff herself will be responsible for filing the brief by that date. Plaintiff is cautioned that if she fails to file a brief by January 31, 2019, the court will dismiss the action for failure to prosecute. *See* D. Kan. R. 41.1.

III. Motion for Appointment of Counsel (Doc. 17.)

Plaintiff moves for the appointment of counsel. Her motion asserts that she "contacted [three] attorneys" but they will not take her case. (Doc. 17 at 2.) Plaintiff has not provided any contact information about these attorneys.

Four factors are considered when the court decides whether to appoint counsel for an individual in a civil case: (1) plaintiff's ability to afford counsel, (2) plaintiff's diligence in searching for counsel, (3) the merits of plaintiff's case, and (4) plaintiff's capacity to prepare and present the case without the aid of counsel. *See Ratcliff v. Ks. State High Sch. Activities Ass'n*, No. 18-1240-JWB, 2018 WL 6019342, at *2 (D. Kan. Nov. 16, 2018) (citations omitted.)

The court finds Plaintiff is unable to afford counsel. The merits of her case are unknown at this point. Her capacity to present her case without counsel is also uncertain, although her homeless status would likely make it difficult to present her own case. But Plaintiff's failure to adequately

demonstrate a diligent effort to obtain counsel weighs heavily against an appointment in this case. Leaving aside Plaintiff's failure to be more specific about her attempts to obtain new counsel, Plaintiff has not explained why she terminated the experienced attorney she previously had representing her in this action. Under the circumstances, the court finds that appointment of counsel is not warranted.

IT IS THEREFORE ORDERED this 28th day of November, 2018, that Plaintiff's Motion for Appointment of Counsel (Doc. 17) is DENIED. Plaintiff's Motion for Extension of Time (Doc. 16) is GRANTED. Plaintiff is granted until January 31, 2019, to file her opening brief.

____s/ John W. Broomes_____
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE