

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**TONEY L. JOHNSON  
and KIMBERLY SMITH,**

**Plaintiffs,**

**CIVIL ACTION NO. 16-cv-11520**

**v.**

**DISTRICT JUDGE BERNARD A. FRIEDMAN**

**COMMISSIONER OF  
SOCIAL SECURITY,**

**MAGISTRATE JUDGE MONA K. MAJZOUB**

**Defendant.**

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**REPORT AND RECOMMENDATION**

Plaintiffs Toney L. Johnson and his mother, Kimberly Smith, seek judicial review of Defendant Commissioner of Social Security's determination that he is not entitled to social security benefits for his physical and mental impairments under 42 U.S.C. § 405(g). (Docket no.

1.) This matter has been referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket no. 4.)

**I. RECOMMENDATION**

The undersigned recommends that this matter be dismissed pursuant to Federal Rule of Civil Procedure 41(b) and Eastern District of Michigan Local Rule 41.2.

**II. REPORT**

On July 12, 2016, this Court issued a Scheduling Order requiring Plaintiffs to file a Motion for Summary Judgment on or before August 23, 2016. (Docket no. 16.) The Order was served on the parties the same day. Plaintiffs did not file a Motion for Summary Judgment and did not make any attempt to seek an extension. On September 13, 2016, the Court issued an

Order to Show Cause directing Plaintiffs to respond on or before September 30, 2016, and explain why they failed to comply with the Scheduling Order, or, in the alternative, file a Motion for Summary Judgment. (Docket no. 19.) The Order to Show Cause clearly advised Plaintiffs that “[f]ailure to respond . . . by September 30, 2016 may result in the dismissal of this case.” (*Id.*) Again, the Order was served on Plaintiffs and Defendant’s counsel of record. (*Id.*)

To date, Plaintiffs have not responded to the Court’s Order to Show Cause. Under Federal Rule of Civil Procedure 41(b), a federal court may *sua sponte* dismiss a claim for failure to prosecute or comply with a court order. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962); *Steward v. City of Jackson, Tenn.*, No.00-6011, 2001 WL 278687, at \*1 (6th Cir. Mar. 13, 2001) (unpublished). Moreover, Local Rule 41.2 provides that “when . . . the parties have taken no action for a reasonable time, the court may, on its own motion after reasonable notice or on application of a party, enter an order dismissing or remanding the case unless good cause is shown.” E.D. Mich. LR 41.2. Plaintiffs were given reasonable notice that they needed to take action or risk dismissal of this case. Accordingly, the undersigned recommends that Plaintiffs’ Complaint be dismissed for failure to comply with the Court’s orders and for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and Eastern District of Michigan Local Rule 41.2.

### **REVIEW OF REPORT AND RECOMMENDATION**

Either party to this action may object to and seek review of this Report and Recommendation, but must act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v.*

*Walters*, 638 F.2d 947 (6th Cir. 1981). Filing objections which raise some issues but fail to raise others with specificity will not preserve all objections that a party might have to this Report and Recommendation. See *Willis v. Sec’y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Rule 72.1(d)(2) of the Local Rules of the United States District Court for the Eastern District of Michigan, a copy of any objection must be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party’s timely filed objections, the opposing party may file a response. The response shall be not more than five (5) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: October 13, 2016

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served upon Plaintiffs and counsel of record on this date.

Dated: October 13, 2016

s/ Lisa C. Bartlett  
Case Manager