

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REGINALD PERRY,

Plaintiff,

v.

Case No. 2:17-cv-12718

District Judge Victoria A. Roberts

Magistrate Judge Anthony P. Patti

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

ORDER DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION TO AMEND STATEMENT OF CLAIMS (DE 7)

Plaintiff, Reginald Perry, filed this complaint *in pro per* on August 18, 2017 for judicial review of a social security decision. Plaintiff's form complaint includes several sections, including one labeled, "Statement of Claim." It states:

New evidence that was not available had not been reviewed. Dis[c] dis[ea]se, inflam[m]ation, pain, numbness and tingling in the feet and back. No longer able [to] work at all now. Pain medication makes plaintiff drowsy. Plaintiff has headaches daily and sharp pain running up his arms.

(DE 1 at 3.) Currently before the Court is Plaintiff's August 22, 2017 "motion to amend statement of claims," by which he seeks to "include a relevant allegation of [d]ue process violation." In particular, Plaintiff claims:

Plaintiff's RFC was not fairly considered in accordance with the rules. Mr. Perry is 61yrs. of age and was [f]ound capable of doing less than a full line of sedentary work. Without doubt 20 CFR sec. 1567 states

[t]hat "for a finding of a full range of light work one must be able to perform substantially all of the Requirements of the rule.["]¹ Yet plaintiff[']s RFC findings concluded that he could only perform nearly 6 hrs. [o]f sedentary work performance. Thus plaintiff claims the ALJ failed to properly apply SSR 201.14 of the Medical Vocational Guidelines and RFC Grid Rule 2011.01 in error. Error by the ALJ amounts to a violation of a claimant[']s Due Process Rights.

(DE 7 at 2.) In sum, Plaintiff's complaint seems to make a "new and material evidence" argument under Sentence 6; on the other hand, Plaintiff's proposed amendment suggests that the ALJ's June 15, 2016 decision (DE 1 at 10-20), made final by the Appeals Council's June 13, 2017 denial of Plaintiff's request for review (DE 1 at 7-9), was erroneous – a Sentence 4 argument.

Upon consideration, Plaintiff's motion (DE 7) is **DENIED WITHOUT PREJUDICE**. Plaintiff may file an amended complaint (1) after his original complaint has been served and (2) within Rule 15's provisions for amendments for "amending as a matter of course." Fed. R. Civ. P. 15(a)(1). To be clear, "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1).

¹ In fact, the definition of light work provides that "[t]o be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities." 20 C.F.R. § 404.1567(b).

Moreover, Plaintiff is hereby advised that “[a]ny amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.” E.D. Mich. LR 15.1. In other words, “[g]enerally, amended pleadings supersede original pleadings.” *Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 617 (6th Cir. 2014) (citing 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1476 (3d ed.2010)). Thus, should Plaintiff file an amendment to his original complaint after it has been served, any such amended complaint should be drafted to *replace* the one originally filed on August 18, 2017.

IT IS SO ORDERED.

Dated: August 31, 2017

s/Anthony P. Patti _____
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on August 31, 2017, electronically and/or by U.S. Mail.

s/Michael Williams _____
Case Manager for the
Honorable Anthony P. Patti