

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

CINDY LOU DAY,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

CV 12-154-M-DLC-JCL

ORDER

**FILED**

**MAY 09 2013**

Clerk, U.S. District Court  
District Of Montana  
Missoula

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on April 5, 2013, and recommended that this case be dismissed with prejudice in light of Plaintiff's failure to comply with the Court's Orders and failure to prosecute. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax,

235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch related that an order was issued in November, 2012, establishing a briefing schedule in this matter. As of March 14, 2013, Day had not complied with the directive to file a motion for summary judgment and supporting brief by a date specific. On March 14, 2013, Defendant thus moved to dismiss the case pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. At this juncture, Judge Lynch issued a show cause order. Again, Day did not comply with the Court's order. Day has not filed a motion for summary judgment, requested additional time, or made any attempt to show cause why this case should not be dismissed. After a review of Judge Lynch's Findings and Recommendation, I find no clear error. Accordingly,

IT IS ORDERED that Judge Lynch's Findings and Recommendation (doc. 18) are adopted in full. This matter is DISMISSED WITH PREJUDICE pursuant to Fed. R. Civ. P. 41(b) in light of Plaintiff's failure to comply with the Court's Orders and failure to prosecute.

DATED this 9<sup>th</sup> day of May 2013.



Dana L. Christensen, Chief Judge  
United States District Court