

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DIANE DEJOHN,

Plaintiff,

14-CV-6414

-v-

**DECISION AND  
ORDER**

NANCY A. BERRYHILL, Acting  
Commissioner Of Social Security<sup>1</sup>,

Defendant.

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**I. Introduction**

Plaintiff Diane DeJohn ("plaintiff") has filed a motion in which she asks the Court for an Order directing defendant the Acting Commissioner of Social Security ("defendant" or "Commissioner") to promptly pay her past due Social Security disability benefits. (Docket No. 20). For the reasons set forth below, plaintiff's motion is granted, and the Commissioner is directed to provide plaintiff with payment of her past due Social Security disability benefits within 20 days of entry of this Decision and Order.

**II. Background**

Plaintiff's applications for Social Security disability benefits were filed on January 23, 2012, and February 14, 2012, respectively, and were initially denied. Following the denial of benefits, plaintiff was granted a hearing before an administrative

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Nancy A. Berryhill replaced Carolyn W. Colvin as Acting Commissioner of Social Security on January 23, 2017. The Clerk of the Court is instructed to amend the caption of this case pursuant to Federal Rule of Civil Procedure 25(d) to reflect the substitution of Acting Commissioner Berryhill as the defendant in this matter.

law judge ("ALJ"), who later issued a written decision denying benefits. The ALJ's decision became final on June 30, 2014, when the Appeals Council denied plaintiff's request for review. Plaintiff filed the present action seeking judicial review of the ALJ's final decision pursuant to 42 U.S.C. § 405(g), which resulted in the Court remanding the case for further administrative proceedings on August 6, 2015. On remand, the ALJ issued a decision dated July 18, 2016, in which he determined that plaintiff had been disabled since December 31, 2006. (Docket No. 20-1). On or about November 19, 2016, the Social Security Administration issued a Notice of Award determining that plaintiff was entitled to \$71,712.00 in past due Social Security benefits, of which \$17,928.00 was to be withheld for attorneys' fees. (Docket No. 20-2). The Notice of Award states that plaintiff "will soon receive a check for \$58,267.00 because [the Social Security Administration] had withheld money from your benefits." (*Id.*). However, plaintiff avers that, to date, she has not received payment of her past due Social Security disability benefits.

### **III. Discussion**

The Social Security Act "contemplates that payments shall commence within a reasonable time after a favorable decision." *Sharpe v. Harris*, 621 F.2d 530, 532 (2d Cir. 1980). Courts have not hesitated to impose deadlines on the Social Security Administration regarding the payment of benefits following a determination of disability. See *id.* (upholding judgment requiring

"that payments begin within twenty days of a favorable decision in cases in which the decision contains findings as to the proper level of payments and within sixty days of decision in cases requiring a 'pre-effectuation re-evaluation' to assess the appropriate level of benefits"); see also *Chagnon v. Schweiker*, 560 F. Supp. 71, 77 (D. Vt. 1982) (ordering that the Commissioner pay benefits within 60 days after a favorable determination by an ALJ or the Appeals Council and within 120 days after a favorable district court ruling).

In this case, there has been a delay of more than nine months since the ALJ's favorable determination on July 18, 2016. The Court finds this delay unreasonable as a matter of law. As a result, the Court grants plaintiff's motion and orders that the Commissioner promptly pay plaintiff her past due Social Security disability benefits.

#### **IV. CONCLUSION**

For the foregoing reasons, plaintiff's motion for prompt payment of past due Social Security disability benefits (Docket No. 20) is granted. The Commissioner is ordered to pay plaintiff's past due Social Security disability benefits within 20 days of entry of this Decision and Order.

**ALL OF THE ABOVE IS SO ORDERED.**

S/ MICHAEL A. TELESKA  
HONORABLE MICHAEL A. TELESKA  
UNITED STATES DISTRICT JUDGE

DATED: Rochester, New York  
May 4, 2017