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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAREN L. DEXTER,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. C17-5253-JPD

ORDER

I. INTRODUCTION

This matter comes before the Court on the Commissioner’s motion to dismiss for lack of subject matter jurisdiction. Dkt. 12. After careful consideration of the Commissioner’s motion and Plaintiff’s response, the governing law, and the balance of the record, the Court GRANTS the Commissioner’s motion (Dkt. 12) and DISMISSES the case.

II. BACKGROUND

Plaintiff filed an application for Disability Insurance Benefits (“DIB”) in September 2003, with a date last insured of December 31, 1997. Dkt. 12-2 at 2; Dkt. 12-3 at 12. This application was denied initially and upon reconsideration. Dkt. 12-3 at 2-3. The

1 reconsideration notice was dated April 15, 2004, and told Plaintiff she could appeal that denial  
2 by requesting a hearing with an administrative law judge (“ALJ”) within 60 days. *Id.* Plaintiff  
3 did not appeal the reconsideration decision until March 21, 2005. Dkt. 12-3 at 7. The  
4 following day, Plaintiff explained her untimeliness: “I didn’t realize I had to refile in any  
5 certain amount of time, and have been very sick and Mother has died of cancer[.] [S]he was  
6 my first concern, and now I need help.” Dkt. 12-7 at 5.

7 In August 2005, the ALJ found that Plaintiff had not shown good cause for filing an  
8 untimely request for a hearing, because the reconsideration notice clearly stated the 60-day  
9 deadline. Dkt. 12-3 at 7. The ALJ did not comment on the remainder of Plaintiff’s  
10 explanation for her untimeliness. *Id.*

11 Plaintiff filed another DIB application in August 2007, and the ALJ denied the  
12 application based on *res judicata* in July 2009. Dkt. 12-3 at 12-14. The Appeals Council  
13 found that the ALJ should not have written a decision denying benefits, but should have  
14 instead dismissed Plaintiff’s request for a hearing based on the application of *res judicata*.  
15 Dkt. 12-3 at 16-19.

16 Plaintiff sought judicial review, and the district court found that she had not exhausted  
17 her administrative remedies and had not raised a colorable constitutional claim that would  
18 except her from the exhaustion requirement. *See Order Adopting R&R, Dexter v. Astrue*,  
19 Case No. 11-5023-RJB (W.D. Wash. Nov. 22, 2011), ECF No. 25. Plaintiff appealed, and the  
20 Ninth Circuit reversed the district court’s decision, finding that Plaintiff had raised a colorable  
21 constitutional claim of a denial of due process because the ALJ did not address all of the  
22 reasons Plaintiff provided to explain her untimeliness. *Dexter v. Colvin*, 731 F.3d 977 (9th  
23 Cir. 2013). The Ninth Circuit remanded the matter to the ALJ for consideration of all of  
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1 Plaintiff's reasons for her untimely filing. *Dexter*, 731 F.3d at 982.

2 The ALJ held a hearing on December 11, 2014. Dkt. 12-4 at 2-43, Dkt. 12-5 at 1-39,  
3 Dkt. 12-6 at 1-38. The ALJ issued a decision on November 27, 2015, finding that none of  
4 Plaintiff's reasons amounted to good cause for her untimely filing and dismissing her request  
5 for a hearing. Dkt. 12-7 at 5-12. Plaintiff filed exceptions to the ALJ's decision, and the  
6 Appeals Council found no reason to assume jurisdiction. Dkt. 12-7 at 14-19. Plaintiff now  
7 seeks judicial review.<sup>1</sup>

### 8 III. ANALYSIS

9 A federal district court's review of claims arising under the Social Security Act is  
10 limited, and the court does not have subject matter jurisdiction over such claims unless a  
11 claimant has exhausted her administrative remedies as set forth in the Social Security Act. *See*  
12 42 U.S.C. § 405(g); *Subia v. Comm'r of Social Sec. Admin.*, 264 F.3d 899 (9th Cir. 2001);  
13 *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989). Specifically, 42 U.S.C. §  
14 405(g) "provides that a civil action may be brought only after (1) the claimant has been party  
15 to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the  
16 claim." *Bass*, 872 F.2d at 833. The Code of Federal Regulations further defines "reviewable  
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18 <sup>1</sup> Plaintiff contends that the Commissioner's failure to file a complete certified  
19 administrative record hampers the Court's ability to review this case and constitutes a denial  
20 of due process to herself as well. Dkt. 20-1 at 15. Plaintiff is incorrect, because the  
21 Commissioner filed a motion to dismiss instead of answering Plaintiff's complaint. *See* Fed.  
22 R. Civ. P. 12(b). Therefore, the Commissioner did not err in failing to file a full certified  
23 record, which would have constituted an answer to Plaintiff's complaint. *See* General Order  
24 05-15 (W.D. Wash. Jun. 1, 2015) (permitting the Commissioner to file the certified  
administrative record in lieu of a separate answer). The documents attached to the  
Commissioner's motion adequately document the history of this case, and Plaintiff has not  
identified any particular records that were needed in order to fully respond to the  
Commissioner's motion.

1 ‘final decisions’ as decisions by the Appeals Council either reviewing or denying review of an  
2 ALJ decision.” *Matlock v. Sullivan*, 908 F.2d 492, 493 (9th Cir. 1990) (citing 20 C.F.R. §  
3 416.1481 (1989)).

4 A decision denying a claimant’s benefits application upon reconsideration is not a  
5 “final decision,” and therefore Plaintiff’s failure to timely request a hearing amounts to a  
6 failure to exhaust her administrative remedies. Plaintiff appears to contend that she has  
7 “effectively exhausted her administrative remedies,” but does not explain how this is so. Dkt.  
8 20-1 at 10. Instead, her brief explains why colorable constitutional claims, for example, are  
9 not precluded by a failure to exhaust administrative remedies. *See* Dkt. 20-1 at 5-8. Thus, the  
10 Court must consider whether Plaintiff has again raised a colorable constitutional claim that  
11 would exempt her from the exhaustion requirement.

12 The Ninth Circuit in *Dexter* explained that because the ALJ addressed only the most  
13 “obviously deficient” grounds on which Plaintiff had claimed good cause for her untimely  
14 filing, Plaintiff was deprived of due process. 731 F.3d at 982 (“*Dexter* cited just three reasons  
15 for the late filing, and the ALJ addressed only the most obviously deficient of them. Due  
16 process requires more than that.”). Thus, the Ninth Circuit held that due process required a  
17 remand to allow the ALJ to consider and address all of the reasons Plaintiff provided as  
18 explanation for her late filing. *Id.* (“We remand this matter to the district court to remand to  
19 the SSA to further consider *Dexter*’s alternative grounds for good cause to file a late request  
20 for hearing on her 2003 application for benefits.”).

21 On remand, the ALJ held a hearing, and took testimony from Plaintiff regarding the  
22 merits of her DIB claim as well as her reasons for untimely filing her request for a hearing.  
23 Dkt. 12-4 at 2-43, Dkt. 12-5 at 1-39, Dkt. 12-6 at 1-38. The ALJ’s decision finds that Plaintiff  
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1 had not shown good cause for her untimely filing, and all of Plaintiff’s reasons were addressed  
2 in detail. Dkt. 12-7 at 5-12. The ALJ’s decision therefore complies with the Ninth Circuit’s  
3 remand order, and Plaintiff has cited no authority requiring any additional process.<sup>2</sup>

4 Plaintiff also devotes a significant portion of her brief to challenging the merits of the  
5 ALJ’s finding regarding good cause (Dkt. 20-1 at 11-17), but judicial review of the merits is  
6 foreclosed. *See Dexter*, 731 F.3d at 980-81 (holding that Plaintiff “is *not* entitled to seek  
7 judicial review of the merits of the ALJ’s good-cause decision”). Plaintiff also seems to argue  
8 that due process requires a decision on the merits of her benefits application, but again, cites  
9 no authority supporting this position. Dkt. 20-1 at 8, 10-11. The Ninth Circuit’s opinion in  
10 *Dexter* makes clear that Plaintiff was entitled to an evaluation of whether any of her reasons  
11 amounted to good cause, but does not suggest that Plaintiff was also entitled to a decision on  
12 the merits of her disability claim. *See* 731 F.3d at 981-82 (“[I]f a claimant provides a facially  
13 legitimate reason to constitutes ‘good cause’ under the Commissioner’s regulations . . . then  
14 due process requires that the ALJ address it.”).

15 Lastly, Plaintiff contends that the ALJ erred in considering only whether she had  
16 shown good cause for her untimely filing, without also considering whether her original claim  
17 should have been reopened when she reapplied for DIB in 2007, less than four years after she  
18 filed her original claim. Dkt. 20-1 at 15-16. Plaintiff raised this issue in exceptions to the  
19 Appeals Council, which found that the Ninth Circuit’s consolidation of Plaintiff’s applications

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21 <sup>2</sup> Plaintiff does, however, cite Social Security Ruling (“SSR”) 91-5p for the proposition that  
22 the ALJ should have given her the benefit of the doubt regarding her mental incapacity. Dkt.  
23 20-1 at 14. But Plaintiff did not cite mental incapacity as a reason why her filing was  
24 untimely, and she did not describe mental incapacity at the hearing. Instead, as found by the  
Appeals Council, “[s]imply, there are no indications of such incapacity of record.” Dkt. 12-7  
at 18. Plaintiff has failed to establish error related to SSR 91-5p.

