

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MICHELLE LEE POWELL,

Plaintiff,

v.

CIVIL ACTION NO. 1:12-07781

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion for an extension of time in which to file a response to plaintiff's objections to Magistrate Judge VanDervort's Proposed Findings and Recommendations (PF&R) or, in the alternative, for a stay of this proceeding. (Doc. No. 13).

Local Rule of Procedure 9.4(a), governing appeals of Social Security claims, provides that

The plaintiff shall file and serve a brief in support of the complaint no later than 30 days after the date of service of the certified (or supplemental) administrative transcript. The Commissioner shall file and serve a brief in support of the defendant's decision no later than 30 days after the date of service of the plaintiff's brief. The plaintiff may file and serve a reply brief no later than 14 days after the date of service of the Commissioner's brief.

Apparently aware of the necessity of filing such a brief, on March 30, 2013, plaintiff filed a motion seeking an additional 30 days in which to file her opening brief. By Order entered April 2, 2013, plaintiff's motion for additional time was granted and

she was given until April 27, 2013 to file her brief. Plaintiff did not file a brief by April 27, 2013 nor did she file one at any time prior to the entry of the PF&R on February 28, 2014.

On March 17, 2014, plaintiff filed "objections" to the PF&R which, in essence, appear to be her opening brief in this matter. Defendant needs additional time to respond to plaintiff's "objections" because, due to plaintiff's failure to file the required brief, the issues are being raised for the first time. Furthermore, Magistrate Judge VanDervort's review of the case has been compromised by the lack of any filing on the part of plaintiff until after entry of the PF&R. Indeed, that PF&R may well need to be revised once both plaintiff and defendant have filed their briefs.

Plaintiff's failure to comply with Local Rule 9.4 and subsequent filing of "objections" constitute good cause for the granting of defendant's motion for additional time. Accordingly, defendant's motion is hereby **GRANTED** insofar as she seeks additional time in which to file a response in this matter. However, given the procedural irregularities encountered in this case, this matter is **REFERRED** back to Magistrate Judge VanDervort who should: (1) set a deadline for the filing of defendant's response; (2) decide whether additional briefing by either party is warranted; and (3) determine whether an amended PF&R needs to be entered.

The Clerk is directed to forward a copy of this
Memorandum Opinion and Order to counsel of record.

IT IS SO ORDERED this 27th of March, 2014.

ENTER:



David A. Faber

Senior United States District Judge