

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**CYNTHIA MILLER**

**Plaintiff,**

**v.**

**Case No. 14-C-0657**

**CAROLYN W. COLVIN,**

**Acting Commissioner of the Social Security Administration  
Defendant.**

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**ORDER**

Pro se plaintiff Cynthia Miller filed this action for judicial review of the denial of her application for social security disability benefits. The court issued a briefing schedule, pursuant to which plaintiff was to have filed a brief in support of her action by September 10, 2014. As of today, she had filed no brief, and the Commissioner moves to dismiss.

The court may dismiss an action with prejudice if the plaintiff fails to prosecute or comply with any court order. Fed. R. Civ. P. 41(b). The court should exercise this right sparingly, dismissing a case only when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing. Salata v. Weyerhaeuser Co., 757 F.3d 695, 699 (7th Cir. 2014). The court should also provide a warning before invoking this sanction. Ball v. City of Chicago, 2 F.3d 752, 755 (7th Cir. 1993).

Given her pro se status, and the absence of any previous warnings, I will deny the Commissioner's motion. However, I will warn plaintiff that if she fails to file a brief on or before **October 31, 2014**, this action will be dismissed with prejudice, pursuant to Civil Local Rule 41(c) (E.D. Wis.) and Fed. R. Civ. P. 41(b). A copy of Civil Local Rule 41(c) is attached.

**THEREFORE, IT IS ORDERED** that the Commissioner's motion (R. 10) is **DENIED**.

**IT IS FURTHER ORDERED** that plaintiff file her brief on or before **October 31, 2014**.

If plaintiff fails to do so, the Commissioner may renew her motion to dismiss, or the court may dismiss the action on its own motion.

Dated at Milwaukee, Wisconsin this 10<sup>th</sup> day of October, 2014.

/s Lynn Adelman

LYNN ADELMAN

District Judge

## **CIVIL L.R. 41(c)**

### **DISMISSAL FOR LACK OF DILIGENCE**

Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action, the Court may enter an order of dismissal with or without prejudice. Any affected party can petition for reinstatement of the action within 21 days.