

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JANE DOE,

Plaintiff,

v.

Case No: 2:17-cv-0000-FtM-CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

SCHEDULING ORDER

This is an action seeking review of a determination of the Commissioner of the Social Security Administration. The case is at issue and, in accordance with the provisions of 42 U.S.C. § 405(g), the Commissioner has filed an Answer to the Complaint and a certified copy of the transcript of the record before the agency. In deciding an action for review under the Social Security Act, the Court can look no further than the pleadings and transcript of the record before the agency. No *de novo* hearing is authorized.

It is the policy of the judges of the Middle District of Florida to strongly encourage the parties in social security disability cases to consent to have their cases handled by a United States Magistrate Judge. This streamlines the legal process because the legal standard of review is identical at all levels of the judicial review process. If the parties consent to have the case handled by a magistrate judge, the undersigned will enter a final decision and judgment in due course. Any appeal of

this judgment must be taken directly to the Eleventh Circuit Court of Appeals. If the parties do not consent to have the case handled by a magistrate judge, the undersigned will prepare and file a Report and Recommendation for consideration by the United States District Judge assigned to the case. The district judge will then enter a final decision and judgment in due course. An appeal from that judgment is taken to the Eleventh Circuit.

In order to facilitate the prompt disposition of this case by the Court, the parties are ordered to prepare and file a single Joint Memorandum in support of their respective positions in the format and by the dates set forth below:

On or before **[45 days from the date of this Order]**, Plaintiff shall serve on the Commissioner, but not file, Plaintiff's portion of the Joint Memorandum in the format set forth below. Simultaneously with service of the memorandum, Plaintiff's counsel or Plaintiff, if unrepresented, shall provide counsel for the Commissioner with an electronic version of Plaintiff's memorandum in word processing format. On or before **[45 days from the date above]**, the Commissioner shall serve upon Plaintiff the proposed Joint Memorandum, which includes the Commissioner's additions to the Statement of Facts and the Commissioner's position with respect to the issues raised in Plaintiff's memorandum.¹ On or before **[14 days from the second date]**, counsel for the parties shall confer in a good-faith effort to resolve any disputed issues of procedural history, jurisdiction, standard of review, and statement of facts and revise

¹ If the Commissioner intends to seek a voluntary remand, the Commissioner should make every effort to move to remand before the Plaintiff has expended significant time in preparing the memorandum ordered above.

the proposed Joint Memorandum to the extent that they agree revisions are necessary.² Finally, on or before **[45 days from the second date]**, the parties shall file a single Joint Memorandum signed by counsel for both parties. The Joint Memorandum may not exceed forty (40) pages in length, except by leave of the Court.

The Joint Memorandum shall contain the following parts, including the headings, in the order set forth below:

I. Procedural History

A statement of the course of proceedings of this matter before the Social Security Administration and any previous proceedings in the federal courts, including citations to the page number(s) of the transcript or the docket number of the court file at which each decision by the Administrative Law Judge (“ALJ”), the Appeals Council, or a federal court can be found.

II. Statement of Jurisdiction

A concise statement of the statutory or other basis of jurisdiction of this Court with citations to the appropriate authority, including whether the case arises under the Social Security, Old Age, Survivors and Disability Insurance program, 42 U.S.C. §§ 401 *et seq.*; the Supplemental Security Income for Aged, Blind and Disabled program, 42 U.S.C. §§ 1382 *et seq.*; or some other program.

² Plaintiff may not insert arguments in reply to the Commissioner’s argument in the Joint Memorandum, except by leave of Court.

III. Standard of Review

The Court is familiar with the standard of review and the sequential evaluation process. The parties should avoid boilerplate discussions of the governing legal standards. A short and plain statement of the standard of review, as stated by the United States Supreme Court or the United States Court of Appeals for the Eleventh Circuit in controlling case law, is sufficient.

IV. Statement of Facts

Initially, Plaintiff shall set forth all facts on which Plaintiff will rely to support Plaintiff's position as to each disputed issue, supported by a reference to the page numbers in the transcript at which evidence establishing each fact can be found. It is helpful to the Court if the facts in the treatment records are stated chronologically, although it may be necessary in complicated records to state the facts under subheadings, such as Physical Impairments or Mental Impairments. The relevant medical history should be written in plain English and any medical terms should be defined. It is also helpful to the Court if the professionals whose records or testimony are part of the record relied upon by the parties are identified by their title or area of expertise, for example, M.D., chiropractor, or vocational expert.

After Plaintiff serves the Commissioner with his or her preliminary version of the Joint Memorandum, the Commissioner may then add to Plaintiff's statement of facts by including additional facts on which the Commissioner will rely to support the Commissioner's position. Any new facts must be inserted in the chronologically appropriate place in Plaintiff's statement of facts. If the Commissioner objects to a

statement of fact set forth by Plaintiff, the parties must confer in a good-faith effort to resolve the objection. If the parties are not able to resolve the objection, the Commissioner may state its objection to particular facts in a footnote.

While the Court will review the entire record and the facts set forth therein, ordinarily it will rely on the parties' statement of the facts as the presentation of all of the facts relevant to the issues raised, unless the interests of justice require consideration of additional facts of record.

V. Statement of the Issues

Plaintiff shall identify and frame, in a neutral fashion, each of the disputed issues that Plaintiff raises as the grounds for reversal and/or remand. Each issue should be set forth in and under separate subheadings. Plaintiff shall state Plaintiff's contentions under each subheading. The Commissioner shall then respond to each disputed issue under the same subheading, as follows:

A. Issue No. 1 [Example: "Whether the ALJ Properly Evaluated Plaintiff's Subjective Complaints of Pain"]

1. Plaintiff's Contentions Regarding Issue No. 1

Plaintiff shall concisely set forth his or her contentions supported by legal authority and by reference to facts in the Statement of Facts, including citations to the page(s) of the administrative record where cited evidence is found, and complete citations to relevant legal authority. Counsel are reminded that unpublished decisions of the Eleventh Circuit, decisions of other circuit courts of appeal, and district court decisions do not constitute controlling authority.

2. The Commissioner's Contentions Regarding Issue No. 1

The Commissioner shall concisely set forth the Commissioner's contentions supported by legal authority and by reference to facts in the Statements of Facts, including citations to the page(s) of the administrative record where cited evidence is found, and complete citations to relevant legal authority.

B. Issue No. 2, etc. [Repeat the foregoing format as needed.]

VI. Relief Requested

A. Plaintiff's Statement of Relief Requested

B. The Commissioner's Statement of Relief Requested

Motion practice under Federal Rules of Civil Procedure 12(c) (judgment on the pleadings) or Rule 56 (summary judgment) is considered inappropriate.

DONE and **ORDERED** in Fort Myers, Florida on _____.

Copies:
Counsel of record