

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

_____ ,)	CASE NO. _____
)	
Plaintiff,)	JUDGE _____
)	
vs.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
COMMISSIONER OF SOCIAL)	
SECURITY)	INITIAL ORDER
Defendant.)	
)	

This action, brought pursuant to 42 U.S.C. § 405(g), has been referred to this court for entry of a Report and Recommended Decision.¹ In order to ensure a prompt and efficient decision on the issues presented, IT IS HEREBY ORDERED that:

Plaintiff’s Mandatory Notice to the Government

1. Plaintiff’s counsel shall: (a) immediately fax (216-522-4982) or email (marsha.treacey@usdoj.gov) to Marsha Treacey, Social Security Paralegal for the U.S. Attorney's Office, Northern District of Ohio, the case name, case number and Plaintiff's social security number and, (b) file a certificate with this Court confirming that such notice has been sent.

Answer and Transcript

2. Defendant shall, within 60 days of being served with the complaint, file and serve an answer together with a certified copy of the transcript of the administrative record.

¹ The requirements of this Initial Order shall also govern proceedings in the event the parties consent to the jurisdiction of the Magistrate for the entry of final judgment.

Plaintiff's Brief on the Merits

3. Within forty-five (45) days of the filing of the answer and transcript, the plaintiff shall go forward with his/her primary submission entitled: *Plaintiff's Brief on the Merits*. The brief shall be not more than twenty-five (25) pages in length, exclusive of addenda. *Although a forty-five (45) day period for filing is allowed, this Court expects that such submission will be filed at the earliest possible date.*

In the event the plaintiff's brief on the merits is not filed within forty-five (45) days after the answer, the case may be subject to dismissal for want of prosecution without further notice.

Defendant's Brief on the Merits

4. The defendant's response to the plaintiff's submission, entitled *Defendant's Brief on the Merits*, shall be filed within forty-five (45) days after the plaintiff's brief is filed. Defendant's brief shall be not more than twenty-five (25) pages in length, exclusive of addenda. If no submission is filed within that time, review will be undertaken based upon the plaintiff's brief only. *Although a forty-five (45) day period for filing is allowed, this Court expects that such submission will be filed at the earliest possible date.*

Reply Brief

5. If plaintiff chooses to respond to defendant's brief, plaintiff shall file a reply brief of not more than ten pages within fourteen (14) days from the filing of the defendant's brief. Plaintiff's reply brief may *only* address issues raised in defendant's brief and must not reiterate arguments previously presented.

Extensions

6. The court, having allowed each party fifteen (15) days beyond the normal period for filing briefs beyond the deadlines set by the Local Rule, will not grant extensions other than on motions demonstrating extraordinary circumstances. Further, any request for an extension of time must be filed at least five (5) days prior to the filing deadline. Failure to comply with this requirement will result in denial of the request for extension.

Requirements for Briefs

The court requires specific content in briefs on the merits and replies. These requirements are intended to allow each side to identify all essential facts upon which their position is based, to argue for their interpretation of how the law should be applied to those facts and to eliminate the requirement that the court search the record for facts not identified by the parties as essential to the determination of the case.

7. Each party's brief shall contain:

a. An enumerated *Statement of Legal Issues* involved in the case.

Requirements specifically applicable to Plaintiff's *Statement of Legal Issues* are set forth in Paragraph 8 below. Defendant's specific requirements are set forth in Paragraph 9 below.

b. A *Statement of Facts* setting forth the facts essential to the determination of the action. Each fact shall be supported by a specific reference to the transcript page number on which that fact is found (for example, a citation to a medical finding contained on a single page of a 20 page exhibit must cite to the specific page, not generally to the exhibit). The *Statement of Facts* shall accurately recite the record in a neutral tone without argument, coloring, or spin. Arguments

should be in the *Argument* section, not in the *Statement of Facts*. Any fact in the transcript not referred to in a party's *statement of facts* shall be deemed non-essential to the determination of the issues presented.

c. An *Argument* containing the party's analysis and advocacy concerning the issues to be decided. Defendant's brief shall specifically respond to the issues raised by plaintiff.

d. A *Conclusion* setting forth the specific relief sought by the party.

8. Plaintiff's Brief on the Merits must include as an *Addendum* a fully completed *Plaintiff's Fact Sheet* in the form attached. Plaintiff's *Statement of Legal Issues* must separately list each issue presented for decision by the Court. Specifically, *Statement of Legal Issues* must identify the finding claimed not supported by substantial evidence and the reason why the plaintiff asserts a lack of substantial evidence. Some examples of issue statements that will conform to this order are as follows:

- a. The ALJ found at step three that the plaintiff's impairments did not meet or equal Listing § _____. This finding lacks the support of substantial evidence because (brief summary of why substantial evidence does not support the finding).
- b. The ALJ found at step four that the plaintiff had the residual functional capacity for _____. This finding lacks substantial evidence because (e.g., the ALJ failed to give controlling weight to the evaluation of Dr. _____, a treating physician, and to give good reasons for the weight assigned that evaluation; the ALJ failed to include in the finding limitations caused by plaintiff's _____; or the ALJ failed to properly evaluate the credibility of the plaintiff's complaints of _____).

Plaintiff's *Argument* section must address each of the Commissioner's findings that plaintiff claims does not have the support of substantial evidence by citing specific references to the evidence in the transcript supporting plaintiff's arguments.

Plaintiff's brief must also include an *Addendum* consisting of a chart summarizing the evidence in the transcript supporting plaintiff's arguments. The addendum must conform to the format attached to this order.

PLEASE NOTE THAT UNDER THIS ORDER, PLAINTIFF MUST FILE THE FIRST BRIEF.

9. Defendant's brief must contain specific transcript references to the evidence that the Commissioner claims sustain the position that substantial evidence supports the decision at issue. Defendant's brief must also include as an addendum a chart, in the format attached to this order, summarizing the evidence that the Commissioner relies upon in support of his position.

10. *The Court will deem that the parties have waived reliance on any evidence not included in addenda to the briefs.*

s/Thomas M. Parker
Thomas M. Parker
United States Magistrate Judge

Dated: _____