

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

	)	CASE NO.
	)	
Plaintiff,	)	JUDGE
	)	
v.	)	MAGISTRATE JUDGE
	)	NANCY A. VECCHIARELLI
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	<u>ORDER</u>

This action brought pursuant to 42 U.S.C. § 405(g) and being before this Court either for entry of a Report and Recommended Decision or, upon consent of the parties for entry of final judgment, **IT IS HEREBY ORDERED:**<sup>1</sup>

1. Plaintiff's counsel shall (a) immediately fax (216-522-4982) or email ([marsha.treacey@usdoj.gov](mailto:marsha.treacey@usdoj.gov)) to Marsha Tracey, 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) shall file a certificate with this Court confirming that such notice has been sent.

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<sup>1</sup> **This Order revises and supersedes the Court's Initial Order for Social Security cases issued on July 16, 2012. The only change is the addition of the underlined and italicized language in the paragraph following paragraph 6.**

2. The defendant is granted a maximum of 60 days from the date of receiving service of the complaint to file an answer and administrative record. **No extensions** will be granted beyond the expiration of the 60-day period **except upon a showing of good cause for extraordinary circumstances. IN ACCORDANCE WITH LOCAL RULE 8.1 (d), TRANSCRIPTS OF THE ADMINISTRATIVE RECORD ARE NOT AVAILABLE ONLINE AND MAY BE FILED WITHOUT REDACTION.**

3. Within sixty (60) days of the filing of the answer and transcript, the plaintiff shall go forward with his/her primary submission. That pleading shall be no more than a total of twenty pages in length, shall be captioned "**Plaintiff's Brief On The Merits,**" shall state with particularity the grounds for any relief sought and the legal arguments in support, and shall conclude with a statement of the relief sought. **No extension beyond that date will be granted other than on motion demonstrating good cause.** While a sixty (60) day period for filing is allowed, this Court expects that such submission will be filed at the earliest possible date.

4. In the event the plaintiff's brief on the merits is not filed within sixty (60) days after the answer, the case may be subject to dismissal for want of prosecution without further notice.

5. The defendant's response to the plaintiff's submission shall be filed within forty-five (45) days thereafter, shall be no more than a total of twenty pages in length, and shall be captioned "**Defendant's Brief On The Merits.**" If no submission is filed within that time, review will be undertaken based upon the plaintiff's brief only. **No extension beyond that date will be granted other than on motion demonstrating**

**good cause.** While a forty-five (45) day period for filing is allowed, this Court expects that such submission will be filed at the earliest possible date.

6. If the plaintiff chooses to respond to the defendant's brief, the plaintiff shall file a reply brief of not more than ten pages within fourteen (14) days from the filing of the defendant's brief.

**PLEASE NOTE:**

Plaintiff should be mindful of Rule 16.3.1 of the Local Rules of the United States District Court for the Northern District of Ohio, a copy of which is attached to this Order. Among other things, the Local Rule states that, Plaintiff "shall cause the summons and complaint to be served upon the defendant in the manner specified by Fed. R. Civ. P. 4(i) within 21 days (21) of the date of filing the complaint with the Clerk of Court." N.D. Ohio LR 16.3.1(b).

Plaintiff's brief shall first set forth a list of "Legal Issues," followed by a recitation of "Facts" in a "Facts" section, and then an "Argument" or "Analysis" section. **In the "Facts" section, the brief shall cite, by exact and specific transcript page number, the pages relating these facts.** 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 20 pages of the Exhibit. **All facts relevant to the legal issues and discussion must be set forth in the "Facts" section.** Defendant's brief shall specifically address the legal issues and facts cited by plaintiff and **shall cite, by exact and specific transcript page number, all relevant facts in a "Facts" section.** The "Facts" section of both briefs shall accurately recite the record without argument, coloring, or "spin."

The arguments should be in the “Argument” or “Analysis” section of the brief, not in the “Facts” section, and shall be preceded by headings identifying the claimed errors.

The parties are expected to fully and fairly present to the Court all relevant evidence in the record, both favorable and unfavorable. For example, on issues involving an evaluation of the weight of the evidence, a party should not cite only to the evidence either rejected or relied upon by the ALJ. **A full recitation of all relevant evidence should be presented.** Briefs shall cite concisely the relevant statutory and case law supportive of the party’s position. **Any facts recited in support of the “Argument” or “Analysis” section of the brief must also be set forth in the “Facts” section of the brief.**

**Any factual allegations or arguments relying upon the record that either do not cite to the record or are unsupported by the record citation will not be considered by the Court.**

Date:

s/ Nancy A. Vecchiarelli  
NANCY A. VECCHIARELLI  
U.S. MAGISTRATE JUDGE

### **Rule 16.3.1 Review of Decisions by the Commissioner of Social Security**

Pursuant to this Court's authority to issue scheduling orders controlling Administrative Track cases, as provided in Local Rule 16.2(a)(2)(D), and to issue orders governing the powers and duties of Magistrate Judges, as provided in Local Rule 72.1, the following rules should govern the briefing and disposition of reviews of decisions by the Commissioner of Social Security brought under 42 U.S.C. § 405(g).

(a) Form of Review. A civil action brought to review a decision of the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), shall be adjudicated as an appeal pursuant to this rule.

(b) Summons and Complaint. The plaintiff shall cause the summons and complaint to be served upon the defendant in the manner specified by Fed.R.Civ.P.4(i), within twenty-one (21) days of the date of filing the complaint with the Clerk of Court. Special disclosure requirements set forth in Local Rule 9.1 must also be followed when applicable.

(c) Answer and Transcript. The defendant shall serve an answer on plaintiff, and file the answer, together with a certified copy of the transcript of the administrative record, within sixty (60) days of service of the complaint.

(d) Plaintiff's Brief. The plaintiff shall file a brief, and serve it upon defendant within thirty (30) days of service of defendant's answer

(e) Defendant's Brief. Within thirty (30) days after plaintiff's brief is filed, defendant shall file a brief which responds specifically to each issue raised by plaintiff, and shall serve it upon the plaintiff.

(f) Reply Brief. The plaintiff may file a brief in reply to the brief of defendant, and serve it upon defendant within fourteen (14) days of the filing of defendant's brief.

(g) Length of Briefs. The brief for the plaintiff shall not exceed twenty-five (25) pages. The brief for the defendant shall not exceed twenty-five (25) pages. The reply brief shall not exceed ten (10) pages.

(h) Report and Recommendations.

(1) In any case assigned to a Magistrate Judge pursuant to Local Rule 72.2(b)(1), the Magistrate Judge should issue a Report and Recommendation within two hundred and eighty-five (285) days of the filing of the answer and transcript.

(2) The District Judge assigned to the case should adopt, modify, or overrule the Report and Recommendation of the Magistrate Judge within one hundred and five (105) days of its issuance.

(3) Whenever possible, a quicker resolution is encouraged in order to provide faster relief to the parties and to avoid rendering the case reportable under the Guide to Judiciary Policy Vol. 18, Statistics, Ch. 5, § 540.50.

(i) Magistrate Consent Cases.

(1) In any case where the parties have consented to have a Magistrate Judge decide the case, the Magistrate should issue an opinion deciding the case within two hundred and eighty-five (285) days of the filing of the answer and transcript.

Effective 12/19/2012.