



United States District Court
DISTRICT OF MINNESOTA

LR 7.2 PROCEDURES IN SOCIAL SECURITY CASES

(a) Case Assignment.

(1) The clerk must randomly assign every case filed under 42 U.S.C. § 405(g) to a magistrate judge.

(2) On or before the date on which the answer must be filed, each party must submit a completed Social Security Case Assignment Form, through which the party either:

(A) consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

(B) asks to have a district judge assigned to the case.

(3) The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the ECF system.

(4) If any party asks to have a district judge assigned to the case, the clerk must randomly assign the case to a district judge. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

(b) Filing an Answer.

(1) Within 60 days after the United States is served with a pleading under 42 U.S.C. § 405(g), the Commissioner of Social Security must file and serve an answer and a certified copy of the administrative record.

(2) If the Commissioner seeks an extension of time to answer, the Commissioner must move for the extension before the end of the 60-day period set forth in LR 7.2(a)(1).

(c) Motions; Time Limits.

(1) Within 60 days after the Commissioner of Social Security serves the answer and administrative record, the plaintiff must file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a

supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(2) Unless the court orders otherwise, all motions will be decided without oral argument.

(3) If a magistrate judge issues a report and recommendation, a party may object to the report and recommendation in accordance with Fed. R. Civ. P. 72(b), LR 72.2(b), and 28 U.S.C. § 636(b)(1)(B), and the opposing party may respond to the objecting party in accordance with the same rules and laws. Objections and responses must not exceed the word limit set forth in LR 72.2(b).

(d) Review After Remand When Courts Retain Jurisdiction.

(1) If the Commissioner of Social Security's final decision upon remand is adverse to the plaintiff, the Commissioner must file and serve a supplemental administrative record within 60 days after that final decision.

(2) Within 60 days after the Commissioner serves the supplemental administrative record, the plaintiff may file and serve a summary-judgment motion and a supporting memorandum. Within 45 days after the plaintiff serves its summary-judgment motion, the Commissioner must file and serve a summary-judgment motion and a supporting memorandum. Within 14 days after the Commissioner serves its summary-judgment motion, the plaintiff may file and serve a reply memorandum.

(e) Attorney's Fees Under the Social Security Act. Petitions for fees under the Social Security Act must be filed within 30 days after the plaintiff's attorney is notified of the Commissioner of Social Security's award certificate.

[Adopted effective November 1, 1996; amended January 3, 2000; amended May 17, 2004; amended October 18, 2007; amended September 24, 2009; amended December 1, 2009; amended January 31, 2011; amended September 12, 2014; amended December 1, 2015]

2015 Advisory Committee's Note to LR 7.2

LR 7.2(a) has been amended to require that a party's consent to the disposition of a case by a magistrate judge be explicit. Under former LR 7.2(a)(1)(B), a party was deemed to implicitly consent to disposition by a magistrate judge if that party did not notify the Court otherwise. Although it is clear that a party can implicitly consent to the disposition of a case by a magistrate judge (*see Roell v. Withrow*, 538 U.S. 580 (2003)), LR 7.2(a)(1)(B) was nevertheless in some tension with 28 U.S.C. § 636(c)(2), which seems to envision that any such consent will be explicit. To remove that tension, LR 7.2(a) has been amended to require each party to submit a Social Security Case Assignment Form, through which the party will inform the Court whether he or she consents to disposition of the case by the magistrate judge. The form is available on the Court's website.

Each party must submit a completed copy of the Social Security Case Assignment Form on or before the date on which the answer is due. The form must not be filed on the ECF system; instead, a paper copy must be submitted to the clerk. This procedure helps “to protect the voluntariness of the parties’ consent.” 28 U.S.C. § 636(c)(2).

2014 Advisory Committee’s Note to LR 7.2

The rule was amended to require that social security appeals be initially assigned to only a magistrate judge. The court will presume that the parties consent to disposition by a magistrate judge unless a party notifies the court to the contrary on or before the date that the answer is due. If a party does notify the court to the contrary, a district judge will also be assigned to the case, the magistrate judge will issue a report and recommendation (R&R), and either or both parties may seek de novo review of the R&R from the district judge. Thus, these amendments do not in any way affect the substantive rights of parties to social security appeals.

2011 Advisory Committee’s Note to LR 7.2

The language of LR 7.2 has been amended in accordance with the restyling process described in the 2012 Advisory Committee’s Preface on Stylistic Amendments.

LR 7.2(b) corrects an inadvertent inconsistency with the word limits set forth in LR 7.2(b).

The former provisions in LR 7.2(d) describing when motions for attorney’s fees under certain laws may be filed are deleted as redundant.

2007 Advisory Committee’s Note to LR 7.2

The rule was amended by replacing all references to “Secretary of Health and Human Services” to “Commissioner of Social Security” as referenced in the statute upon which the local rule is based.

1996 Advisory Committee’s Note to LR 7.2

LR 7.2(b)(3) was amended to properly refer to “Magistrate Judge” rather than “Magistrate.”

LR 7.2(c) was amended so that it applies only to cases remanded under sentence six of 42 U.S.C. § 405(g) where the Court has retained jurisdiction. See Note accompanying LR 7.2(d).

LR 7.2(d)(1): Although this paragraph was not amended, practitioners should be aware that the date which triggers the time for filing a motion or petition for attorney’s fees varies in Social Security cases remanded by the Court to the Secretary depending on which sentence of 42 U.S.C. § 405(g) authorized the remand.

In *Melkonyan v. Sullivan*, 501 U.S. 89 (1991), the Supreme Court discussed the time for filing a petition for attorney’s fees under the Equal Access to Justice Act (EAJA) in Social Security appeals. The Supreme Court recognized that under 42 U.S.C. § 405(g), a federal district court has the authority to remand a Social Security appeal under two separate and distinct circumstances.

The Court may, under the fourth sentence of § 405(g), “enter a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.” If the Court remands the cause for a rehearing under this sentence, it is referred to as a “sentence four” remand.

The Court may, under the sixth sentence of § 405(g), “on motion for the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the

Secretary, and it may at any time order additional evidence to be taken by the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding.” These remands are called “sentence six” remands.

When a claim is remanded by the Court under sentence four, the remand is a final decision and the judge’s order shall state that a judgment should be entered. The Court does not retain jurisdiction to review the proceedings on remand. In *Shalala v. Schaefer*, 509 U.S. 292 (1993), the Supreme Court held that a claimant becomes a prevailing party by obtaining a sentence-four judgment. The time within which to petition for attorney’s fees under the EAJA begins on the date of entry of the final judgment in conjunction with the remand order. If the decision on remand is adverse to the claimant, the claimant must file and serve a new summons and complaint.

When a claim is remanded under sentence six, the Court properly retains jurisdiction until after the administrative proceedings on remand. After the final decision of the Secretary upon remand, the Court must take some further action. If the decision is favorable to the claimant, the Court should issue a final judgment in the claimant’s favor. The time within which to petition for attorney’s fees under EAJA begins on the date of the entry of the final judgment. If the final decision of the Secretary upon remand is adverse to the claimant, then the procedure set forth in LR 7.2(c)(1) and (2) should be followed.