

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

SEP 2 1964

ROBERT H. SHENWELL, CLERK
BY BG

DEPUTY

STANDING ORDER FOR DISPOSITION OF SOCIAL SECURITY APPEALS

The Court having determined that the disposition of social security appeals will be enhanced by treating them as appeals, rather than ordinary civil actions, the procedures set out herein shall be effective in all social security actions filed in this District. Accordingly,

IT IS **ORDERED** that effective immediately upon the filing of this Order:

I. Summary Opinions:

A judicial officer within this district, when charged with the review of a determination made by an administrative tribunal, may affirm that determination, without further explanation, when the officer finds that the decision of the administrative agency is supported by substantial evidence on the record as a whole.

II. A. **Scheduling Order:** As soon as evidence of service of process has been filed in the record, the Clerk shall issue a Scheduling Order directing the appellee, Secretary of Health and Human Services, to lodge the transcript of the administrative proceedings with the Clerk within a prescribed period. Deadlines for the filing of the appellant's brief on the merits, the appellee's opposition brief, and any reply brief by appellant shall also be set in the Scheduling Order, along with requirements for the form, content and length of the briefs. A form for the Scheduling Order, which may be modified from time to time by the Clerk at the direction of the Court is attached hereto as Appendix A.

B. **Notice of Opportunity to Consent:** Along with the Scheduling order, the Clerk shall send a Notice of Opportunity to Consent to proceed before a United States Magistrate Judge, with instructions to the appellant that, if consent is given, the form should be executed and delivered to the office of the United States Attorney so that the consent of the government can be added if appropriate. A form for use by the Clerk is attached as Appendix B.

- C. **Notice of New Procedures:** Upon the filing of a social security appeal, the Clerk shall mail to counsel for appellant a notice of these new procedures in the form set out in Appendix C, which may be amended from time to time as necessary to reflect changes in these procedures.
- D. **Dispositions** After the transcript has been lodged and the time for filing briefs has elapsed, the Clerk shall notify the Magistrate Judge assigned to the case who shall promptly issue a report and recommendation or opinion, as appropriate.



JOHN M. SHAW, CHIEF JUDGE
UNITED STATES DISTRICT COURT



F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE



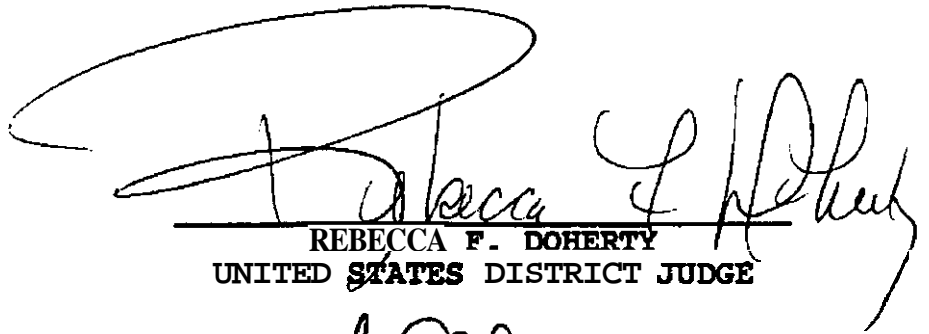
DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

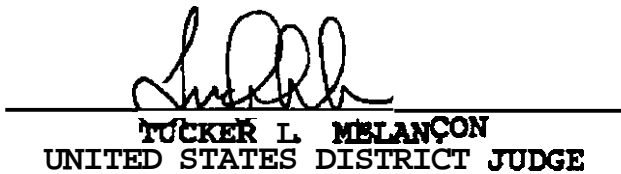


RICHARD T. HAYK
UNITED STATES DISTRICT JUDGE

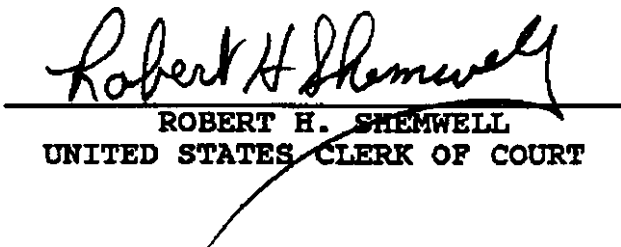


JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE


TUCKER L. MELANCON
UNITED STATES DISTRICT JUDGE

FILED this 31st day of August, 1994.


ROBERT H. SHEM WELL
UNITED STATES CLERK OF COURT

COPY SENT
DATE 9-2-94
BY BJ
TO: all Clerks
divisional offices

NOTICE OF NEW PROCEDURES IN SOCIAL SECURITY APPEALS

The purpose of this notice is to inform you of a change in this court's method of processing social security appeals so that you will not waste time in preparing unnecessary motions and other documents.

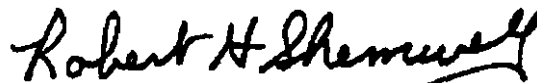
The former practice of deciding social security appeals on cross motions for summary judgment is no longer to be employed in this district. Instead, social security cases will be treated as what they are -- appeals! As in all other appeals the party taking the appeal, in this case the plaintiff, will be required to identify **specifically** the grounds for appeal. A general statement that the Administrative Law Judge's findings are not supported by substantial evidence, standing alone, will not suffice.

Immediately following the filing of a social security appeal, plaintiff shall serve defendant pursuant to Fed.R.Civ.P. 4(i), and file proof of service in the record. Upon the filing of proof of service of process, a scheduling order will be issued setting deadlines for filing (1) the transcript of administrative proceedings, and notice of filing of same; (2) the plaintiff's brief; (3) The Secretary's responding brief; and (4) the plaintiff's reply brief.

Pursuant to the Civil Justice Reform Act Plan, each party may only be granted one continuance in meeting these deadlines by a magistrate judge. Additional continuances must be granted by a district judge.

It is expected that the Secretary will consent in 80-90% of the cases to have the assigned magistrate judge adjudicate the matter pursuant to 28 U.S.C. § 636(c). This will substantially reduce the delays inherent in the normal review process. If counsel for the plaintiff desires this option, counsel shall initiate the process of consent by executing the consent form and forwarding it to the Assistant U. S. Attorney for execution. Consent forms will be provided to the parties as an attachment to the Scheduling Order.

Please note and observe this new practice. Your failure to do so will only result in an unnecessary expenditure of time and energy on your part. This new approach to social security appeals has been adopted in order to better define the issues and to enable the court to deal more expeditiously with this class of cases. Your cooperation will be expected and appreciated.



ROBERT H. SHEMWELL
Clerk of Court

ATTORNEY'S HHS CASE DEADLINES WORKSHEET

Cue Number:

Plaintiff:

summons Served + 90 days = Transcript due deadline:

Time extended, new deadline:

____/____/____

Transcript filed ____/____/____ + 60 days = Plaintiff's brief deadline:

Time extended, new deadline:

____/____/____

____/____/____

Pltf's brief filed ____/____/____ + 45 days = Defendant's brief deadline:

Time extended, new deadline:

____/____/____

____/____/____

Def't's brief tiled ____/____/____ + 10 days = Plaintiffs reply brief deadline:

Time extended, new deadline:

____/____/____

____/____/____

REMINDER: Only one extension per party may be granted by the magistrate judge upon a showing of good cause. Any additional requests for extensions must be directed to the district judge.

In any case where the brief or reply brief is not timely received, the magistrate judge shall treat the matter as unopposed and submit it to the court immediately for final determination.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

SCHEDULING ORDER

The plaintiff has filed this action pursuant to 42 U.S.C. §405(g) seeking review of a decision by the Secretary of Health and Human Services. The following appaal procedures shall be followed:

■ BRIEFING PROCEDURES:

- (1) **FILING OF TRANSCRIPT AND NOTICE THEREOF.** Within ninety (90) days following service of the petition,¹ defendant shall file with the Clerk a Noice of Filing of Transcript, along with a certified copy of the transcript of administrative proceedings. A oopy of the notice shall be served on the plaintiff and on the assigned magistrate judge. A oopy of the transcript shall be served upon the plaintiff.
- (2) **PLAINTIFF/S BRIEF.** Within sixty (60) days after service of the notice and transcript, plaintiff shall file and serve upon defendant a memorandum brief which shall comply with the following requirements:
 - (a) **Statement of the case.** This statement shall briefly outline the course of the proceedings and its disposition at the administrative level and shall set forth a brief statement of pertinent facts. This statement of facts shall include plaintiff's age, education and work experience, a summary of the physical and mental impairments alleged; and a brief outline of the pertinent factual, medical and/or vocational evidence of record.

Each statement of fact shall be supported by reference to the page(s) in the record where the evidence may be located.
 - (b) **Statement of errors.** This statement shall set forth in separate numbered paragraphs the specific

¹The plaintiff's petition for judicial review will be treated as an appeal regardless of the style of the action.

errors committed at the administrative level which entitle plaintiff to relief.

The court will consider only those errors specifically identified in the briefs. A general allegation that the ALJ's findings are unsupported by substantial evidence, standing alone, is insufficient to invoke the appellate function of the federal court.

- (c) Argument. The argument shall be divided into sections separately addressing each issue and shall set forth the contentions of plaintiff with respect to each issue and the reasons therefor.

Each contention must be supported by specific reference to the portion of the record relied upon and by citations to statutes, regulations and cases supporting plaintiff's position. Cases from other districts and circuits should be cited only in conjunction with relevant cases from this jurisdiction, or if authority on point from this jurisdiction does not exist. Citations to unreported district court opinions shall be accompanied by a copy of the opinion.

- (d) Conclusion. The plaintiff's brief shall conclude with a short statement of the relief sought.

- (3) DEFENDANT'S BRIEF. within forty-five (45) days after service of plaintiff's brief, defendant shall file and serve upon opposing counsel a brief which responds specifically to each issue raised by the plaintiff. The response shall not address matters not put at issue by the plaintiff. Defendant shall not include a "statement of the case", described above, unless plaintiff's statement is inaccurate or incomplete. In that event, defendant need only address those limited areas.
- (4) PLAINTIFF'S RELY BRIEF. Plaintiff may file, and serve upon defendant a brief in reply to the brief of defendant within ten (10) days of the filing of defendant's brief.
- (5) PAGE LIMITATIONS. Original briefs may not exceed ten double-spaced pages, and reply briefs may not exceed five double-spaced pages, unless the court grants an exception for good cause shown.
- (6) EXTENSIONS OF TIME. only one extension of time per party may be granted by the magistrate judge upon a showing of

good cause. Any additional requests for extensions must be directed to the district judge.'

- (7) UNTIMELY BRIEFS. In any case where the brief or objection is not timely received, the magistrate judge will treat the matter as unopposed and submit it to the court immediately for final determination.'

II. NOTICE OF OPPORTUNITY TO CONSENT

The parties are hereby notified of the opportunity to consent to the disposition by a Magistrate Judge. The Clerk of Court is directed to attach to this order two forms: (1) "Notice of Opportunity to Consent to a Jury or Court Trial by a Magistrate Judge," and (2) "Consent to Proceed Before a Magistrate Judge".

In the event the parties desire to consent, plaintiff's counsel shall **sign** the consent form within 30 days of receipt thereof, and shall mail the original to the United States Attorney, 300 Fannin Street, Suite 3201, Shreveport, La. 71101. The AUSA assigned to the case shall sign the original consent form and file it with the Clerk at the time of filing of the Secretary's brief.

BY ORDER OF THE COURT

¹See the Civil Justice Expense and Delay Reduction Plan for the W.D.La. effective December 1, 1993, p.3.

³Id.

Form 33. Notice of Availability of a Magistrate Judge to Exercise Jurisdiction and Appeal option.

In accordance with the provisions of Title 28, U.S.C. §636(c), you are hereby notified that a United States magistrata judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrata judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate judge may be taken directly to a district judge. Case8 in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this judicial circuit only by way of a petition for leave to appeal.

Copies of the Form for the "Consent to Jurisdiction by a United States Magistrate Judge" and "Election of Appeal to a District Judge" are available from the clerk of the court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

DIVISION

VERSUS

CIVIL ACTION NO. _____
JUDGE _____
MAGISTRATE JUDGE _____

CONSENT TO PROCEED BEFORE UNITED STATES MAGISTRATE JUDGE
IN SOCIAL SECURITY CASE

In accordance with the provisions of Title 28, U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case hereby voluntarily consent to have the United States Magistrate Judge assigned to this case conduct any and all further proceedings in the case and order the entry of a final judgment.

Appellant _____

Secretary of H.H.S.

Attorney _____

Assistant U. S. Attorney

Signed _____

Signed _____

Date _____

Date _____