

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

Elizabeth S. v. Frank Bisignano, Commissioner of Social Security

Elizabeth S. · No. 1:26-cv-00121-SDN · Decided May 29, 2026

SUMMARY

A United States magistrate judge recommends granting the Commissioner of Social Security’s motion to dismiss a pro se plaintiff’s appeal as untimely under 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210(c). The recommendation also concludes that the plaintiff waived opposition by failing to respond and gives notice of the fourteen-day objection period.

CASE DETAILS

COURT	United States District Court for the District of Maine
WRITING FOR THE COURT	Karen Frink Wolf
JURISDICTION	United States District Court for the District of Maine
DECIDED	May 29, 2026
DOCKET	1:26-cv-00121-SDN
DISPOSITION	other
PROCEDURAL POSTURE	Recommended decision on the Commissioner's motion to dismiss a Social Security appeal as untimely.
STANDARD OF REVIEW	De novo review by the district court of specified objections to the magistrate judge's recommended decision under 28 U.S.C. § 636(b)(1)(B); motion-to-dismiss review of the complaint and documents properly considered with it.
PRECEDENTIAL VALUE	nonprecedential recommended decision
PARTIES	Elizabeth S. v. Frank Bisignano, Commissioner of Social Security

TOPICS

motions to dismiss

statute of limitations

judicial review of agency action

administrative law

civil procedure

PRACTICE AREAS

Social Security

administrative law

federal civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the court could consider the Appeals Council's notice of denial on the Commissioner's motion to dismiss without converting the motion into one for summary judgment.
2. Whether the Plaintiff's Social Security complaint was untimely under 42 U.S.C. § 405(g) and 20 C.F.R. § 422.210(c).
3. Whether the Plaintiff's failure to respond to the motion to dismiss waived opposition under the local rules.

HOLDINGS

1. The court may consider an undisputed notice of denial that is central to the Plaintiff's appeal without converting the motion to dismiss into a motion for summary judgment.
2. The Plaintiff's complaint was untimely because it was filed more than sixty days after the Appeals Council mailed its notice of denial, even accounting for the presumptive five-day receipt period.
3. The Plaintiff waived opposition to the motion to dismiss by failing to file a timely response required by the local rule, and dismissal on that basis would not offend equity.

KEY QUOTATIONS

“For these reasons, I recommend the Court GRANT the Commissioner’s motion and DISMISS the Plaintiff’s complaint.” (at 2)

FACTUAL BACKGROUND

The Appeals Council mailed notice on November 25, 2025, denying the Plaintiff's request to review an ALJ decision. The Plaintiff commenced this civil action on March 9, 2026, more than the statutory sixty-day period plus the presumptive five-day receipt period after mailing. The Plaintiff did not respond to the Commissioner's motion to dismiss.

PROCEDURAL HISTORY

The pro se Plaintiff filed a Social Security appeal on March 9, 2026, seeking review of the Appeals Council's November 25, 2025, denial of review of an administrative law judge's decision. The Commissioner moved to dismiss, arguing that the complaint was filed more than sixty-five days after the Appeals Council mailed its denial. The Plaintiff did not respond, and the magistrate judge recommended that the motion be granted and the complaint dismissed, subject to de novo review by the district court upon timely objection.

DISPOSITION

other

CASES CITED

- *Alt. Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001)
- *NEPSK, Inc. v. Town of Houlton*, 283 F.3d 1, 7 (1st Cir. 2002)

- *Piscopo v. Sec'y of Health & Hum. Servs.*, No. 93-2326, 1994 WL 283919, at *2-4 (1st Cir. June 27, 1994)
- *Dresser v. Norms*, No. 1:18-cv-00426-DBH, 2019 WL 77134, at *2 (D. Me. Jan. 2, 2019), *aff'd*, 2019 WL 302485 (D. Me. Jan. 23, 2019)

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