

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PRECEDENTIAL VALUE	nonprecedential recommended decision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)

OPINION

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

PER CURIAM.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ELIZABETH S.,)

) Plaintiff) v.) No. 1:26-cv-00121-SDN)

FRANK BISIGNANO,)

Commissioner of) Social Security,)) Defendant)

RECOMMENDED DECISION ON MOTION TO DISMISS

The Plaintiff, proceeding pro se, initiated this Social Security appeal on March 9, 2026. See Complaint (ECF No. 1). The Commissioner has now moved to dismiss the Plaintiff's complaint seeking judicial review as untimely because the Plaintiff filed it more than sixty-five days after the Appeals Council mailed her notice of its denial of her request to review the administrative law judge's (ALJ's) decision on November 25, 2025. See Motion (ECF No. 9); Notice of Denial (ECF No. 9 1)1; 42 U.S.C. § 405(g) ("Any individual, after any final decision of the Commissione-r of Social Security made after a hearing to which [she] was a party . . . may obtain review of such decision by a civil action commenced within sixty days after the mailing to 1 The Court may properly consider the notice of denial (which is outside of the Plaintiff's complaint) without converting the Commissioner's motion to dismiss into a motion for summary judgment because the notice is central to the Plaintiff's appeal. See *Alt. Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001) ("Ordinarily, a court may not consider any documents that are outside of the complaint, or not expressly incorporated therein, unless the motion [to dismiss] is converted into one for summary judgment. There is, however, a narrow exception for documents the authenticity of which is not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." (cleaned up)). [her] of notice of such decision"); 20 C.F.R. § 422.210(c) ("Any civil action . . . must be instituted within 60 days after the Appeals Council's notice of denial of request for review of the [ALJ's] decision or notice of the decision by the Appeals Council is received by the individual [T]he date of receipt of notice of denial of request for review . . . shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary."). The Plaintiff failed to respond to the Commissioner's motion to dismiss and has therefore waived any opposition.² See Local Rule 7(b)(2) ("If a timely objection or response [to a motion] is not filed, it is waived."). In such circumstances, this Court may grant the motion because doing so would not

offend equity. See *NEPSK, Inc. v. Town of Houlton*, 283 F.3d 1, 7 (1st Cir. 2002) (“[I]t is within the district court’s discretion to dismiss an action based on a party’s unexcused failure to respond to a dispositive motion when such response is required by local rule, at least when the result does not clearly offend equity.” (footnote omitted)). Moreover, on the merits, the Commissioner has shown that the Plaintiff’s complaint was untimely and should be dismissed. See, e.g., *Piscopo v. Sec’y of Health & Hum. Servs.*, No. 93-2326, 1994 WL 283919, at *2-4 (1st Cir. June 27, 1994) (affirming the dismissal of a Social Security appeal filed after section 405(g)’s time limit). 2 The Commissioner certified that he notified the Plaintiff of the motion to dismiss by mailing her a copy. See Motion at 5. This Court recently had mail sent to the Plaintiff at the same address (which is the one she provided in her complaint) returned as undeliverable. See ECF No. 8. If the Plaintiff’s address has changed, it was her responsibility to update the Court and opposing counsel. See *Dresser v. Norms*, No. 1:18-cv-00426-DBH, 2019 WL 77134, at *2 (D. Me. Jan. 2, 2019) (rec. dec.) (“Parties to litigation have a duty to inquire periodically about the status of the litigation and to keep the court informed of their current address and contact information.”), *aff’d*, 2019 WL 302485 (D. Me. Jan. 23, 2019). Nevertheless, the Clerk’s Office is requested to call the Plaintiff one time at the telephone number she provided in an attempt to notify her of this recommended decision. For these reasons, I recommend the Court GRANT the Commissioner’s motion and DISMISS the Plaintiff’s complaint.

NOTICE

A party may file objections to those specified portions of a Magistrate Judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the District Court is sought, together with a supporting memorandum, within fourteen

(14) days after being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection. Failure to file a timely objection shall constitute a waiver of the right to de novo review by the District Court and to appeal the District Court’s order. Dated: May 29, 2026 /s/ Karen Frink Wolf United States Magistrate Judge