

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

Jordan Scott Montgomery v. Michelle King, Acting Commissioner of
Social Security

No. 23-cv-740-wmc, United States District Court for the Western District of Wisconsin (December 29, 2025)

SUMMARY

The United States District Court for the Western District of Wisconsin grants the Commissioner of Social Security’s motion to dismiss or, alternatively, for summary judgment. The court holds that the plaintiff’s action seeking review under 42 U.S.C. § 405(g) was filed one day beyond the applicable deadline and that his pro se status and miscalculation of the limitations period did not warrant equitable tolling.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	William M. Conley
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	December 29, 2025
DOCKET	23-cv-740-wmc
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought review under 42 U.S.C. § 405(g) of the Social Security Appeals Council's denial of review. The Commissioner moved to dismiss or, alternatively, for summary judgment. Because the parties submitted affidavits, the court treated the motion under the summary-judgment standard.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views the facts and draws reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	unpublished
PARTIES	Jordan Scott Montgomery v. Michelle King, Acting Commissioner of Social Security

TOPICS

statute of limitations summary judgment judicial review of agency action administrative law
civil procedure

PRACTICE AREAS

Social Security Administrative law Civil procedure Statute of limitations Equitable tolling

QUESTIONS PRESENTED

1. Whether Montgomery's action under 42 U.S.C. § 405(g) was timely filed.
2. Whether equitable tolling excused Montgomery's one-day filing delay based on his pro se status, alleged miscalculation, or the short length of the delay.
3. Whether the Commissioner was entitled to summary judgment.

HOLDINGS

1. Montgomery's civil action was untimely because it was filed one day after the applicable filing deadline.
2. Montgomery was not entitled to equitable tolling because he did not show that he pursued his rights diligently or that an extraordinary circumstance prevented timely filing. His pro se status, alleged miscalculation, and one-day delay were insufficient.

KEY QUOTATIONS

“Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) he has been pursuing his rights diligently; and (2) some extraordinary circumstance stood in his way.” (II)

“A pro se litigant’s pleadings are held to “less stringent standards than formal pleadings drafted by lawyers.”” (II)

“Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.” (II)

“Foreclosing litigants from bringing their claims because they missed the filing deadline . . . may seem harsh, but courts have to draw lines somewhere [because] statutes of limitation protect important social interests.” (II)

FACTUAL BACKGROUND

The Appeals Council denied Montgomery's request for review on August 17, 2023, and advised him that he had sixty days from receipt of the notice to file a civil action. Applying the presumptive five-day receipt period, the court determined that the deadline was October 23, 2023, but Montgomery's complaint was not filed until October 24, 2023. Montgomery offered no evidence that he received the notice late, was misled by the Appeals Council, or faced an extraordinary circumstance preventing timely filing; he relied primarily on his pro se status and the one-day delay.

PROCEDURAL HISTORY

An administrative law judge denied Montgomery's claims for disability insurance benefits and supplemental security income on November 23, 2022. The Appeals Council denied review on August 17, 2023, and Montgomery filed this action on October 24, 2023. The district court granted the Commissioner's motion and directed the clerk to enter judgment for the defendant and close the case.

DISPOSITION

other

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 255 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)
- Bowen v. City of New York, 476 U.S. 467, 479 (1986)
- Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)
- Hoosier Bancorp of Indiana, Inc. v. Rasmussen, 90 F.3d 180, 183 (7th Cir. 1996)
- Cada v. Baxter Health Care Corp., 920 F.2d 446, 451 (7th Cir. 1990)
- Henderson v. Sheahan, 196 F.3d 839, 845 (7th Cir. 1999)
- Baldwin County Welcome Ctr. v. Brown, 466 U.S. 147, 152 (1984)
- United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000)
- Wilson v. Doctors Hospital of Hyde Park, 909 F. Supp. 580, 581 (N.D. Ill. 1996)
- Berg v. Bowen, 699 F. Supp. 184, 184-85 (S.D. Ind. 1988)
- Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN JORDAN SCOTT MONTGOMERY, Plaintiff, OPINION AND ORDER v. 23-cv-740-wmc MICHELLE KING, Acting Commissioner of Social Security Defendant. Representing himself, plaintiff Jordan Scott Montgomery brings this civil action under 42 U.S.C. § 405(g) seeking review the Social Security Appeals Council's decision to deny his request for review.

Before this court is defendant's motion to dismiss or, in the alternative, for summary judgment. (Dkt. #7.) For the following reasons, the court will grant defendant's motion. UNDISPUTED FACTS¹ On November 23, 2022, an administrative law judge issued a decision denying Montgomery's claims for disability insurance benefits and supplemental security income. (Dkt. #1-1.)

Montgomery timely appealed this denial and on August 17, 2023, the Appeals Council denied his review. (Dkt. #1-2.) The Appeals Council's denial specifically advised Montgomery that he had

sixty days from receipt of its notice of denial to file a civil action for review. *Id.* Sixty-two days later, on October 18, 2023, Montgomery began to research where he must file his civil action.

(Dkt. #10.) On October 20, 2023, Montgomery 1 As the parties have both submitted supporting affidavits, the court will examine this motion under the standards for summary judgment. Unless otherwise noted, the court finds the following facts to be material and undisputed. sent copies of his lawsuit by certified mail to three addresses, including this court. (*Id.*)

The court received and filed this civil action on October 24, 2023, some 68 days after receipt of the Appeals Council's denial. (Dkt. #1.) OPINION The court may grant summary judgment if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

In deciding whether to grant summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A factual dispute can preclude summary judgment, but only if the "facts might affect the outcome of the suit under the governing law." *Id.* at 248.

The party moving for summary judgment carries the initial burden of showing that there is no genuine issue of material fact and that it is entitled to relief. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). I. Plaintiff's Complaint is Untimely Under 42 U.S.C. § 405(g), a Social Security claimant may obtain judicial review of any final decision of the agency by filing a civil action within sixty days following notice of the agency's decision.

The date of receipt of an Appeals Council action is presumed to be five days after the date of such notice, unless shown otherwise. 20 C.F.R. § 404.901. There is no genuine dispute of material fact that plaintiff filed this lawsuit late, albeit by just one day.

The Appeals Council sent a notice denying plaintiff's request for review on August 17, 2023. As a result, plaintiff is presumed to have notice of the decision five days later, on August 22, 2023. Plaintiff has neither claimed nor shown that he did not receive the notice within the presumptive five-day period.

Thus, plaintiff had until October 21, 2023, to file his lawsuit. Since that date fell on a weekend, plaintiff had until the next business day--Monday, October 23, 2023--to file his complaint. Fed. R. Civ. P. 6(a)(1)(C). Since this lawsuit was filed on October 24, 2023 -- one day late -- the civil action was not timely filed. II. Plaintiff is not Entitled to Equitable Tolling Despite being untimely, there remains a question whether plaintiff is entitled to equitable tolling, particularly given a one day delay.

Bowen v. City of New York, 476 U.S. 467, 479 (1986). "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) he has been pursuing his rights

diligently; and (2) some extraordinary circumstance stood in his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). Equitable tolling “aids plaintiffs who, because of disability, irremediable lack of information, or other circumstances beyond his control just cannot reasonably be expected to sue in time.

It does not provide aid to those plaintiffs who fail to research the requirements of bringing a lawsuit.” *Hoosier Bancorp of Indiana, Inc. v. Rasmussen*, 90 F.3d 180, 183 (7th Cir. 1996) (internal citation and quotations omitted); see also *Cada v. Baxter Health Care Corp.*, 920 F.2d 446, 451 (7th Cir. 1990) (A plaintiff is only entitled to equitable tolling of a statute of limitations “if, despite all due diligence, he is unable to obtain vital information bearing on the existence of his claim.”) (emphasis added).

Unfortunately, plaintiff has not alleged any facts nor provided any evidence that he was misled by the Appeals Council and points to nothing other than his pro se status as grounds for a failure to file this action timely. A pro se litigant’s pleadings are held to “less stringent standards than formal pleadings drafted by lawyers.” *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir.

1999). However, a plaintiff’s pro se status at the time of filing does not, standing alone, excuse compliance with procedural rules or justify equitable tolling. See *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984) (“Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.”).

Nor does the fact that plaintiff’s lawsuit is late by just one day influence this analysis. See *United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir. 2000) (holding that a pleading filed one-day late was untimely, while explaining that “[f]oreclosing litigants from bringing their claims because they missed the filing deadline... may seem harsh, but courts have to draw lines somewhere [because] statutes of limitation protect important social interests”); *Wilson v. Doctors Hosp. of Hyde Park*, 909 F. Supp. 580, 581 (N.D.

Ill. 1996) (dismissing pro se plaintiff’s complaint filed one day after the statutory deadline); *Berg v. Bowen*, 699 F. Supp. 184, 184-85 (S.D. Ind. 1988) (dismissing a social security complaint filed two days later than the limitation period where the plaintiff provided no showing that the notice of denial was not received within the presumptive five-day period and failed to show any facts warranting equitable tolling of the limitations period).

A pro se plaintiff’s miscalculation of the limitations period likewise fails to constitute grounds for tolling, because principles of equitable tolling “do not extend to what is at best a garden variety claim of excusable neglect.” *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990).

Having found that the civil action was not timely filed and plaintiff has proffered no basis for equitable tolling, the court concludes that defendant is entitled to summary judgment as to this

action. ORDER IT IS ORDERED that: 1) Defendant's motion to dismiss or, in the alternative, for summary judgment (dkt. # 7) is GRANTED. 2) The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 29th day of December, 2025. BY THE COURT: /s/

WILLIAM M. CONLEY District Judge

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