UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

INFORMATION FOR FILING A CIVIL COMPLAINT REVIEW OF CLAIM FOR SOCIAL SECURITY BENEFITS

OFFICE OF THE CLERK OF COURT MAY 2013

WDNC- Social Security Complaint - May 2013

INTRODUCTION

This information packet is designed to help you file a civil complaint in federal court without the assistance of a trained and licensed attorney. In the civil complaint you are requesting a judicial review of the final administrative determination of the Defendant Commissioner of the Social Security Administration. The federal law which governs this judicial review is pursuant to Section 205(g) of the Social Security Act, Title 42 United States Code Section 405(g) (42 U.S.C. §405(g)). When you represent yourself in a lawsuit you are known as a pro se litigant or a person who is proceeding pro se.

In order to file a civil lawsuit requesting a judicial review of the denial of your claim for social security benefits, you must prepare and file with the court what is known as a complaint. This instruction packet is designed to help you prepare a civil complaint. Once you have prepared your complaint form, you can find additional information on how to file the complaint and proceed with your lawsuit in the Pro Se Litigant Guide available on the court's website at <u>www.ncwd.uscourts.gov</u> under the forms tab. You may request a copy of the Guide from any of this court's divisional offices as well.

A sample complaint form is included in this packet to help you prepare your complaint. Your complaint must be typewritten or legibly handwritten. All questions must be answered clearly in the correct space on the form. If you need extra space additional pages may be attached, must be legible and indicate which question you are answering.

PREPARING THE COMPLAINT

The Office of the Clerk has prepared a complaint form to assist a party appearing pro se. A copy of the complaint form is attached to this information packet. The instructions in this section correspond by name to the sections in the sample complaint form.

If you need more space to record detail than the sample complaint form provides, you may attach additional pages the same size as the complaint form.

CAPTION AND HEADING

Before your case can be filed with the Clerk's Office, the first page of your complaint must indicate the division of the Western District of North Carolina in which your case originates. Determining the division is relatively easy as the divisions are comprised by county as noted below.

Asheville Division:

If the plaintiff resides in one of the following counties, it is an Asheville Division case: Avery, Buncombe, Burke, Cleveland, Haywood, Henderson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania & Yancey.

Bryson City Division:

If the plaintiff resides in one of the following counties, it is a Bryson City Division case: Cherokee, Clay, Graham, Jackson, Macon & Swain.

Charlotte Division:

If the plaintiff resides in one of the following counties, it is a Charlotte Division case: Anson, Gaston, Mecklenburg & Union.

Statesville Division:

If the plaintiff resides in one of the following counties, it is a Statesville Division case: Alexander, Alleghany, Ashe, Caldwell, Catawba, Iredell, Lincoln, Watauga & Wilkes.

In the caption, you must add your name as the plaintiff on the line provided.

This type of civil action is filed naming the Commissioner of Social Security Administration as the defendant, therefore, this action may be brought under Title 28 U.S.C. §1391(3) in the division where the Plaintiff resides as there is no real property involved in this action.

A. JURISDICTION

This section sets forth the jurisdiction authority under which the action is filed.

B. PARTIES

Plaintiff: As the person initiating the lawsuit, you are the plaintiff. You must identify yourself as such and provide the city and county in which you reside.

Defendant: The Commissioner of the Social Security Administration is named as the defendant in the complaint form.

C. CAUSE OF ACTION

This section sets forth your cause of action, check (\mathscr{A}) applicable boxes and insert additional information if needed.

D. DEMAND

The complaint form includes a demand to reverse the determination of the Social Security Administration and award benefits as entitled.

E. SIGNATURE (Declaration Under Penalty of Perjury)

You must sign your complaint and file it with the Clerk of Court. When you do, you are making a declaration under law to the court that everything in your complaint is true. It is important for you to realize that the judge assigned to your case can order sanctions or penalties against you or any other party that files a complaint or pleadings that are frivolous, without merit, based on false or misleading information, etc. These sanctions or penalties can take many forms; examples include dismissing your case, assessing fines, requiring you to pay the attorney costs for the opposing party, limiting your filing privileges in federal court, etc. If you intentionally make false statements in the document you file with the Clerk, you may be charged with criminal lying or perjury, an offense with potentially serious consequences.

FILING THE COMPLAINT

You may file the complaint with the court by delivering it or mailing it to any of the Clerk's divisional offices, addresses are as follows:

Asheville Division: 100 Otis St., Rm. 309, Asheville, NC 28801.

Charlotte Division: 401 W. Trade St., Rm. 210, Charlotte, NC 28202.

Statesville Division: 200 W. Broad St., Rm. 313, Statesville, NC 28677.

Whether you deliver or mail your complaint to the court, you must submit the original of the complaint and a \$400.00 filing fee. If filing by mail and you would like a file-stamped copy returned, submit the extra copy of the complaint with a self-addressed, postage-paid envelope.

The \$400.00 filing fee can be waived by the court if you complete and the court accepts an application to proceed in forma pauperis. An application to proceed in forma pauperis asks the court to have the government pay your filing fee for you because you do not have the money to do so yourself. Applications to proceed in forma pauperis are available at any of the Clerk's divisional offices or on the court's website at <u>www.ncwd.uscourts.gov</u>. You should submit your application to proceed in forma pauperis along with your complaint to the Clerk's Office. If the court grants your application, you will be able to proceed without submitting the \$400.00 filing fee.

WAIVER APPLICATION DENIED IN ITS ENTIRETY:

If the judge subsequently denies your waiver application in its entirety, you will be required to pay the \$400.00 filing fee within the time specified in the order denying the application. In the event the filing fee is not paid within the specified time, your complaint could be summarily dismissed.

WAIVER APPLICATION DENIED IN PART – PORTION OF FILING FEE ORDERED PAID:

If the judge orders that a portion of the filing fee must be paid within a specified time, your filing fee must be paid within the time period ordered by the court or your case could be summarily dismissed.

NOTE: The defendant named in your lawsuit must be notified of your lawsuit in a specific manner governed by law. You should refer to the Court's Pro Se Litigant Guide for information on service of the complaint.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

Plaintiff

Case No. _____

COMPLAINT

COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION Defendant.

A. JURISDICTION

Jurisdiction is proper in this court pursuant to Section 205(g) of the Social Security Act,

42 U.S.C. Section 405(g), to review a final determination of the Commissioner. I have

appealed my case through all the steps required by the Social Security Administration

and they have issued a Final Decision denying my claim.

B. PARTIES

1. I am the Plaintiff in this civil action. My name is ______.

I live in the City of _____, County of _____,

State of North Carolina.

2. The defendant is the Commissioner of the Social Security Administration.

C. CAUSE OF ACTION

____ I am/have been unable to work at any job.

- ____ The decision of the Social Security Administration is not supported by the evidence.
- ___ Other:_____

D. DEMAND

I ask that the Court reverse the determination of the Social Security Administration and award me the benefits to which I am entitled.

E. DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621.

Executed at _____ (Location) on _____ (Date)

Signature

Street Address

City, State, Zip Code

Phone Number