

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES ALLEN MARSHALL,)	
Plaintiff,)	
)	CIVIL ACTION
V.)	
)	NO. 10-1250-JWL
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
Defendant.)	
_____)	

**ORDER GRANTING PLAINTIFF’S MOTION FOR
EXTENSION OF TIME TO FILE SOCIAL SECURITY BRIEF**

This matter comes before the court upon the motion of Plaintiff for an extension of time till January 20, 2011 in which to file a “Motion for Judgment.” (doc. 6). As a preliminary matter, the court instructs Plaintiff that a “Motion for Judgment” is not the proper means to seek the court’s review of a decision of the Commissioner of Social Security, either in accordance with the law of the Tenth Circuit or with the local rules of the District of Kansas.

In 1994, the Tenth Circuit reversed a decision of the District of Kansas in which the district court granted a “Motion to Affirm” filed by the Agriculture Stabilization and Conservation Service in an action seeking review of that agency’s actions. Olenhouse v. Commmodity Credit Corp., 42 F.3d 1560 (10th Cir. 1994). The court held that district courts are required to process administrative reviews of agency actions as appeals. Olenhouse, 42 F.3d at 1580. The District of Kansas subsequently renumbered its local

rules and amended Local Rule 503 to conform with the requirements of Olenhouse. D. Kan. Rule 83.7.1 (2010) (*available online at <http://www.ksd.uscourts.gov/> on the left hand side of the page toward the bottom. Click on the “Rules” link.*). Local Rule 83.7.1 does not provide for motions for judgment, motions for summary judgment, or motions to affirm. It provides that plaintiff will file a brief within forty-five days after the administrative record is filed with the court, the Commissioner will file a brief in response within thirty days, and plaintiff may file a reply brief within fourteen days thereafter. Id. 83.7.1(d). The court will then review the Commissioner’s decision: “The case shall be submitted when all briefs have been filed.” Id. No other procedure is authorized to seek the court’s review. Therefore, plaintiff may not and shall not file any motion in this case seeking review of the Commissioner’s decision (such as a motion for judgment and memorandum in support thereof).

In the CM/ECF system for electronic filing, the court has provided a means to file the requisite briefs. When an attorney is ready to file a Social Security brief on the CM/ECF system, he should sequentially select the “Civil” menu bar, select “Responses and Replies” under the “Motions, Supporting Documents, Responses, Replies & Social Security” heading, and select either “Social Security - Commissioners Response Brief,” “Social Security - Plaintiffs Initial Brief,” “Social Security - Plaintiffs Reply Brief,” or “Social Security - Surreply Brief,” as appropriate from the options in the “drop-down” box that next appears. He should complete filing from that point. Following the correct procedure will ensure that the brief is properly docketed. No motions or memoranda are necessary or allowed. If Plaintiff needs assistance in properly filing his brief, he should

contact the Clerk's office.

The court construes Plaintiff's motion as a motion to extend the time to file his Social Security brief in this case, and after review of the motion and file herein, finds that fourteen days have passed since Plaintiff filed his motion, defendant's counsel has filed no objection to the requested extension, and cause exists to grant the motion.

IT IS THEREFORE ORDERED that the time in which Plaintiff may file a Social Security Brief is extended to and including January 20, 2011.

Dated at Kansas City Kansas, November 23, 2010.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge