No. 19-3527

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STEPHANIE L. STEIGERWALD,

Plaintiff-Appellee,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellant.

O R D E R

Before: GUY, COOK, and GRIFFIN, Circuit Judges.

The Commissioner of Social Security has appealed a district court judgment for a Plaintiff class requiring the completion, by September 25, 2019, of windfall offset recalculations for approximately 130,000 recipients of Title II and Title XVI benefits under the Social Security Act. The briefing for that appeal is ongoing. In the interim, the Commissioner moves to stay the deadline imposed by the district court. The Commissioner assures this court that it will continue to process the recalculations, but insists that a stay is necessary because the current deadline is infeasible and potentially "catastrophic." Plaintiffs oppose a stay, and the Commissioner replies.

A party may seek a stay in this court if the district court denied a stay below or "failed to afford the relief requested." Fed. R. App. P. 8(a)(2)(A)(ii). The Commissioner moved for a stay before the district court and asked the court to rule on the motion by June 24, 2019—two weeks after the motion was filed. The district court did not rule on the motion by the requested date and the motion remains pending. Given the looming deadline imposed by the judgment, the

Commissioner acted in good faith by seeking a stay before us while his motion remains pending below.

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [our] discretion." *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). We balance four factors to determine whether a stay is appropriate: (1) whether the movant "has made a strong showing that he is likely to succeed on the merits"; (2) whether the movant "will be irreparably injured absent a stay"; (3) whether issuance of a stay will "substantially injure" other interested parties; and (4) "where the public interest lies." *Id.* at 434 (citation omitted). More than a "possibility" of relief and of irreparable injury is necessary to satisfy the first two factors, respectively. *Id.* at 434–35. The first two factors are "the most critical." *Id.* at 434.

The only issue on appeal is whether the district court erroneously imposed a nine-month deadline on the Commissioner to complete recalculation of Plaintiffs' benefits. The Commissioner raises two arguments. First, he claims the district court lacked the authority to impose a deadline, which goes to the first factor: likelihood to succeed on the merits. Second, the Commissioner claims that even if the district court could properly set a deadline, it abused its discretion by setting this particular deadline. This argument goes both to factor one (likelihood of success) as well as the other three factors, which concern possible injuries.

The Commissioner's basis for the first argument comes from *Heckler v. Day*, where the Supreme Court invalidated a class-wide injunction imposing mandatory time limits to reconsider the denial of disability benefits and to conduct agency hearings when the statute governing reconsideration only required a decision within a "reasonable time." 467 U.S. 104, 119 (1984). The Court concluded that, given legislative history establishing that Congress had found mandatory deadlines for adjudicating disability claims unworkable, "it would be an unwarranted judicial intrusion into this pervasively regulated area for federal courts to issue injunctions imposing deadlines with respect to future disability claims." *Id.* It also emphasized that injunctive

relief could be properly used "to remedy individual violations." *Id.* n.33. At least two circuits have distinguished *Day*, holding that it applies only to future and/or disputed claims. *See Holman v. Califano*, 835 F.2d 1056, 1058 (3d Cir. 1987); *Chagnon v. Bowen*, 792 F.2d 299, 302 (2d Cir. 1986). These cases are arguably distinguishable given that Plaintiffs here were collectively deemed eligible for recalculation of their benefits, but not eligible for the benefits themselves. The Commissioner has, at the very least, a strong and arguable case.

As for the second argument, the Commissioner asserts that the deadline was an abuse of discretion. We review the grant of an injunction for an abuse of discretion; legal conclusions supporting the injunction are reviewed de novo, factual findings are reviewed for clear error. *Sharpe v. Cureton*, 319 F.3d 259, 272 (6th Cir. 2003). The district court gave the Commissioner less than half the time he estimated he would need to complete the recalculations if all of the technicians trained to complete the calculations were devoted to the task in lieu of performing their other responsibilities.

We consider three factors in evaluating irreparable harm: the "substantiality of the injury alleged"; whether the injury will likely occur; and whether the movant provided adequate proof of the alleged injury. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991). "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." *Id.* (citation omitted). Additionally, any alleged harm must be "certain and immediate, rather than speculative or theoretical." *Id.* Plaintiffs do not dispute that the Commissioner will face significant obstacles to completing the recalculations in the time allotted. *See Blankenship v. Sec'y of HEW*, 587 F.2d 329, 335 (6th Cir. 1978) ("Simplistic and unreasonably short time limitations imposed from the outside without a thorough understanding of the reasons for the problem will frustrate welfare administration. . . . If the statute . . . is interpreted mechanically to require a 90-day time limit, unalterable regardless of the circumstances, it may make government unworkable."). These

obstacles will impact not only Plaintiffs' recalculations, but also other potential and present recipients of Social Security benefits. The parties and the public both benefit from accurate calculations by the Social Security Administration. We note that the Commissioner sought a two-year period in which to complete the recalculations before the district court. "We take the statements made to us by counsel for [the Social Security Administration] at face value. As an officer of the court, he was under an obligation of candor, and the preexisting controversy over the [issue at hand] and the relief requested in the case surely cautioned against casual misstatements." *Shisler v. Heckler*, 787 F.2d 76, 84 (2d Cir. 1986).

The motion to stay is **GRANTED**. The Commissioner shall continue to recalculate the benefits owed and file regular status reports with the district court establishing his efforts to expeditiously complete the recalculations within his self-imposed two-year period.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk