

district court. *See also Califano v. Sanders*, 430 U.S. 99, 108 (1977). In turn, “the meaning of the term ‘final action’ has been left to the [commissioner] to flesh out by regulations.” *Brittingham v. Barnhart*, No. Civ.A. 02-459-JJF, 2003 WL 22748002, at *3 (D. Del. Nov. 17, 2003) (citing *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975), internal quotation marks omitted). Relevant Social Security regulations define administrative actions that are “not subject to judicial review” to include denying a request to reopen an earlier adjudication. 20 C.F.R. §§ 404.903(l), 416.1403(a)(5); *see also Torres v. Secretary of Health & Human Servs.*, 845 F.2d 1136, 1138 (1st Cir. 1988).

“[T]he opportunity to reopen final decisions and any hearing convened to determine the propriety of such action are afforded by the [commissioner’s] regulations and not by the Social Security Act.” *Sanders*, 430 U.S. at 108. Denial of a request to reopen a claim for benefits generally is not subject to judicial review absent a colorable constitutional claim. *Torres*, 845 F.2d at 1138.

If her itemized statement is read indulgently, the plaintiff here makes a constitutional claim of violation of her right to due process, Itemized Statement at 5, but she fails to do more than mention such a claim. She does not identify the basis for her due process claim, as, for example, inadequate notice of denial of the closed application, or inability to understand or take action on a notice of denial due to mental impairment. The mere denial of a request to reopen a claim does not entitle a claimant to judicial review. *Sanders*, 430 U.S. at 108.

To the extent that the plaintiff means for the cases cited in her itemized statement to support her constitutional claim, they do not. Both *Steele v. Astrue*, Civil No. 09-548-P-H, 2010 WL 4412111 (D. Me. Oct. 31, 2010), and *Bowring v. Social Sec. Admin. Comm’r*, Civ. No. 1:09-cv-573-JAW, 2010 WL 3780982 (D. Me. Sept. 21, 2010), dealt with a plaintiff’s failure to file a

timely appeal of the denial of an application for benefits, which is not asserted as the basis of the plaintiff's claim here. Furthermore, the interpretation of Social Security Ruling 91-5p, which addresses the concept of good cause for missing the deadline to request review, is also not the asserted basis of the plaintiff's claim here.

Conclusion

For the foregoing reasons, I recommend that the commissioner's denial of the plaintiff's request to reopen her earlier application for benefits be **AFFIRMED**.

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 this 28th day of September, 2011.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge

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