

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60733-CIV-COHN/SELTZER

BRETT J. WOLLER,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,Defendant.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon Plaintiff's Motion for Summary Judgment (DE 12) and Defendant's Motion to Remand (DE 18) and was referred to United States Magistrate Judge Barry S. Seltzer pursuant to the provisions of 28 U.S.C. § 636 (DE 3).

On May 15, 2008, Plaintiff Brett J. Woller filed a Complaint (DE 1) seeking review of the final decision of the Commissioner denying his disability benefits under the Social Security Act. On August 1, 2008, the Commissioner filed an Answer to the Complaint. See Answer (DE 9). And on August 28, 2008, Plaintiff moved for summary judgment. See Motion (DE 12). Although the Commissioner initially responded and moved for summary judgment (DE 17), he now moves the Court to reverse his decision and remand the cause for further proceedings. See Defendant's Motion (DE 18).

Specifically, the Commissioner requests a remand pursuant to sentence four of 42 U.S.C. § 405(g), which provides as follows:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social

Security, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g); Shalala v. Schaefer, 509 U.S. 292, 297 (1993). The Commissioner is requesting a remand to direct the Administrative Law Judge (“ALJ”) “to further develop the record, hold a hearing, and issue a new decision.” Defendant’s Memorandum at 1(DE 19). Specifically, the Commissioner seeks a remand so that the ALJ may “obtain evidence from a medical expert as to the nature, duration, severity, and limiting effects of the claimant’s impairments and provide a comprehensive explanation for the weight to be given medical source opinion evidence.” Id. (DE 19).

The Commissioner, therefore, requests that the Court enter a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure and remand this case for his consideration pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff does not object to the Motion to Remand. See Defendant’s Motion at 1 - 2 (DE 18). Accordingly, having considered the record in this case and being fully advised in the premises, the undersigned hereby RECOMMENDS:

1. That Plaintiff’s Motion for Summary Judgment (DE 12) be DENIED AS MOOT;
2. That Defendant’s Motion for Summary Judgment (DE 17) be DENIED AS MOOT;
3. That Defendant’s Motion to Remand (DE 18) be GRANTED; and
4. That a Final Judgment be entered in favor of Plaintiff, under Fed. R. Civ. P. 58, REVERSING AND REMANDING the decision of the Commissioner pursuant to 42 U.S.C. § 405(g), and directing the Commissioner to conduct further proceedings in accordance with the Judgment. Specifically, the Commissioner will be directed to instruct the ALJ to:

- a. further develop the record;
- b. hold a new hearing;
- c. obtain evidence from a medical expert as to the nature, duration, severity, and limiting effects of the claimant's impairments; and
- d. provide a comprehensive explanation for the weight to be given medical source opinion evidence.

The parties will have ten (10) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable James I. Cohn, United States District Judge. Failure to file objections timely shall bar the parties from a *de novo* determination by the district judge of an issue covered in the report and shall bar the parties from attacking on appeal factual findings accepted or adopted by the district court except upon grounds of plain error or manifest injustice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989).

DONE AND SUBMITTED in Fort Lauderdale, Florida, this 2nd day of October 2008.


BARRY S. SELTZER
United States Magistrate Judge

Copies to:

Honorable James I. Cohn
United States District Judge

All Counsel of Record