

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARON MARANT : CIVIL ACTION  
 :  
 v. :  
 :  
 ANDREW SAUL, Commissioner of : NO. 18-4832  
 Social Security :

**MEMORANDUM AND ORDER**

ELIZABETH T. HEY, U.S.M.J.

January 24, 2020

In Plaintiff’s brief challenging the denial of disability insurance benefits, she argued that the Administrative Law Judge (“ALJ”) who adjudicated her case was not properly appointed pursuant to the Appointments Clause of the United States Constitution. Doc. 12 at 2-3 (citing Lucia v. SEC, \_\_ U.S. \_\_, 138 S. Ct. 2044 (2018)). Defendant did not dispute the impropriety of the ALJ’s appointment but claimed that Plaintiff had forfeited the claim by failing to raise it at any point in the administrative proceedings. Doc. 15 at 4-13; Doc. 16 at 1-2. On December 6, 2019, I stayed consideration of this case pending a decision on this issue by the Third Circuit Court of Appeals. Docs. 19 & 20 (citing Cirko v. Berryhill, No. 19-1772 (3d Cir.) and Bizarre v. Berryhill, No. 19-1773 (3d Cir.)). The Third Circuit has now decided that the Appointments Clause challenge is not subject to exhaustion in the agency appellate process, and that the appropriate remedy is remand for a new administrative hearing before a constitutionally appointed ALJ other than the one who presided over the claimant’s first hearing.

Consistent with the Third Circuit's decision, I will remand this case pursuant to Cirko v. Commissioner of Social Security and Bizarre v. Commissioner of Social Security, \_\_ F.3d \_\_, 2020 WL 370832 (3d Cir. Jan. 23, 2020).

Appropriate Orders follow.