

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

| | | |
|------------------------|---|---------------------------------|
| EARNEST V. STEPHENS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 1:07cv1001-CSC |
| |) | (WO) |
| MICHAEL J. ASTRUE, |) | |
| COMMISSIONER OF SOCIAL |) | |
| SECURITY, |) | |
| |) | |
| Defendant. |) | |

ORDER

On April 24, 2008, Stephens submitted a brief, in which he “strongly objects that Dr. Davis’ nonexamining opinion invalidates the results of IQ testing and on remand, preserves [Stephens’] right to argue the application of 12.05C.” (Doc. No. 15, p. 6, n. 9.) Inexplicably, the plaintiff also argues that, “[a]lthough this is not an issue selected to appeal, Mr. Stephens maintains that the decision as to this point is wrong and will continue to make this argument on remand.” (*Id.*)

The court has reviewed the record in this case, including evidence indicating that Stephens received a valid full scale IQ score of 61, suffers from right eye blindness, attended some special education classes in Tenth Grade, and has been employed by numerous employers. Under the circumstances of this case, the court’s strong inclination is to reverse the Commissioner’s decision and remand for an award benefits to the claimant based on 12.05C of the Listing of Impairments. Consequently, notwithstanding the claimant’s footnote in which counsel pretermits discussion concerning the Listing, the court finds that

oral argument concerning whether Stephens has met the requirements of 12.05C is appropriate.

Accordingly, it is

ORDERED that oral argument concerning why the court should not award benefits based on evidence indicating that Stephens meets the requirements of 12.05C be and is hereby set on November 18, 2008, at 2:00 p.m. in Courtroom 4B, United States Courthouse Complex, One Church Street, Montgomery, Alabama. The court strongly encourages the parties to discuss a resolution of this case prior to argument.

Done this 27th day of October, 2008.

/s/Charles S. Coody
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE