

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

ROBERT E. TODD,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION 09-0318-M
	:	
MICHAEL J. ASTRUE,	:	
Acting Commissioner of	:	
Social Security,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

In this action under 42 U.S.C. § 405(g), Plaintiff seeks judicial review of an adverse social security ruling which denied a claim for disability insurance benefits and Supplemental Security Income (Docs. 1). The parties filed written consent and this action has been referred to the undersigned Magistrate Judge to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73 (see Doc. 16).

Defendant has filed a Motion and Memorandum for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Remand of the Cause to the Defendant (Doc. 13). Defendant has stated that Plaintiff's attorney has no objection to the motion (Doc. 13, p. 2). Defendant states the following:

On remand by the Court, the Appeals Council will remand this case to an Administrative Law Judge (ALJ), who will be directed to (1) properly consider the Plaintiff's subjective

complaints of pain and functional limitations as required by case law and Social Security Ruling (SSR ) 96-7p; and (2) determine Plaintiff's residual functional capacity, an [sic] if appropriate, obtain a Residual Functional Capacity Assessment from an examining physician.

(Doc. 13, pp. 1-2). This is a tacit admission that Plaintiff's application was not appropriately considered and that this action should be reversed. Without reviewing the substantive evidence of record, this Court accepts Defendant's acknowledgment of error.

It appears to the Court that the decision of the Secretary should be reversed and remanded. Such remand comes under sentence four of 42 U.S.C. § 405(g). See *Melkonyan v. Sullivan*, 501 U.S. 89 (1991). For further procedures not inconsistent with this report, see *Shalala v. Schaefer*, 509 U.S. 292 (1993).

Therefore, it is **ORDERED**, without objection from Plaintiff, that Defendant's Motion to Remand under sentence four be **GRANTED** (Doc. 17) and that this action be **REVERSED** and **REMANDED** to the Social Security Administration for further administrative proceedings not inconsistent with the orders of this Court. Judgment will be entered by separate order.

DONE this 9<sup>th</sup> day of November, 2009.

s/BERT W. MILLING, JR.  
UNITED STATES MAGISTRATE JUDGE