

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

JACKIE C. LOPER,	:	
Plaintiff,	:	
vs.	:	CA 10-0433-C
MICHAEL J. ASTRUE,	:	
Commissioner of Social Security,	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Commissioner’s Unopposed 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. 17),¹ filed February 1, 2011.²

In his motion, the Commissioner represents that it is his belief that this case should be remanded for further administrative proceedings (*id.*, p. 1), and further represents that—if the Court grants the motion—upon remand,

the Appeals Council will vacate the administrative law judge’s (ALJ’s) February 10, 2009 decision, and will direct the ALJ to offer Plaintiff a supplemental hearing and the opportunity to submit additional evidence. The

¹ The parties have consented to the exercise of jurisdiction by the Magistrate Judge, pursuant to 28 U.S.C. § 636(c), for all proceedings in this Court. (Doc. 14 (“In accordance with provisions of 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, . . . order the entry of final judgment, and conduct all post-judgment proceedings.”); *see also* Doc. 18 (order of reference).

² Defendant represents that counsel for Plaintiff has no objections to the relief requested in the motion. (*Id.*, p. 2.)

ALJ will consider the effects of Plaintiff's obesity, pursuant to Social Security Ruling (SSR) 02-1p; evaluate all medical source opinions and state the weight given to each opinion in accordance with 20 C.F.R. § 416.927(d); reevaluate Plaintiff's residual functional capacity and explain how the evidence supports the residual functional capacity findings; and reconsider whether Plaintiff can perform her past work, and if not, determine whether other work exists which she can perform in accordance with SSR 00-4p. If a vocational expert is utilized at either step, the ALJ will present the vocational expert a hypothetical question that includes all of Plaintiff's mental and physical work-related limitations. Plaintiff filed a subsequent application for Title XVI benefits on July 30, 2010; therefore, her two Title XVI claims should be consolidated upon remand.

(*Id.*, pp. 1-2.)

In light of the foregoing, and the plain language of sentence four of 42 U.S.C. § 405(g) empowering this Court “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[.]” it is **ORDERED** that the motion be **GRANTED**, and that the decision of the Commissioner of Social Security denying Plaintiff benefits be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g), *see Melkonyan v. Sullivan*, 501 U.S. 89 (1991), for further proceedings not inconsistent with this decision. The remand pursuant to sentence four of § 405(g) makes Plaintiff a prevailing party for purposes of the Equal Access to Justice Act, 28 U.S.C. § 2412, *see Shalala v. Schaefer*, 509 U.S. 292 (1993), and terminates this Court's jurisdiction over

this matter.³

DONE this the 4th day of February, 2011.

s/ WILLIAM E. CASSADY
UNITED STATES MAGISTRATE JUDGE

³ Oral argument in this case, presently scheduled for February 23, 2011 (Doc. 12), is **CANCELED**.