

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

MARILYN DAILEY,
Plaintiff,

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vs.

* Civil Action No.13-00559-CG-B

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CAROLYN W. COLVIN,
Commissioner of Social Security,

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Defendant.

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REPORT AND RECOMMENDATION

This matter is before the Court on the parties' joint Motion to Remand pursuant to "sentence four" of 42 U.S.C. § 405(g). (Doc. 17). This Motion has been referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2(c)(3). Upon consideration of all matters presented, the undersigned recommends that the cause be REMANDED to the Commissioner for a new determination.

In the joint motion, the parties have stipulated that this matter should be remanded to the Commissioner of Social Security for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. 17). Specifically, the parties represent that there exists two problems with this case: the transcript of the administrative hearing is inaudible at points and the evidentiary basis for the Administrative Law Judge's

(ALJ) finding that Ms. Dailey can perform certain medium exertion occupations is unclear. (Id., at 1). Accordingly, the parties request remand so that an ALJ can “hold a new hearing, during which he or she will obtain supplemental vocational expert testimony, and assess [Plaintiff’s] residual functional capacity based on the record as a whole, including the evidence gathered at the new hearing.” (Id.).

Upon consideration of the foregoing, and the 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,” the undersigned **RECOMMENDS** that the parties’ joint Motion to Remand be **GRANTED**, and that this Court enter judgment reversing and remanding this cause to the Commissioner for action consistent with the parties’ motion. 42 U.S.C. § 405(g); Melkonyan v. Sullivan, 501 U.S. 89, 101 111 S. Ct. 2157, 115 L. Ed. 2d 78 (1991).¹

DONE this **23rd** day of **June**, **2014**.

/s/ SONJA F. BIVINS
UNITED STATES MAGISTRATE JUDGE

¹ Plaintiff has reserved the right to petition the Court for attorney fees pursuant to the Equal Access to Justice Act (“EAJA”), and the Commissioner has reserved the right to file a response. In the alternative, the parties may stipulate to an award of EAJA fees, and may petition the Court for approval. (Doc. 17 at 2-3).