Childress v. Berryhill Doc. 19

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

JERAMIE MICHAEL CHILDRESS, :

Plaintiff, :

vs. : CA 18-0531-MU

ANDREW M. SAUL, :

Commissioner of Social Security,¹

:

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court² on the Defendant's unopposed motion to reverse and remand this action pursuant to sentence four of 42 U.S.C. § 405(g) (see Doc. 16), filed July 26, 2019.³ In his motion, the Commissioner of Social Security represents that it is his belief that this case should be remanded to the Commissioner of Social Security for further administrative proceedings but does not state the specific grounds upon which the request for remand is based (see Doc. 16, at 1 (noting only this Court's power to enter a judgment remanding this action to the Commissioner of Social Security)); therefore, the Court **ORDERS** that the Commissioner of Social Security, on remand, direct the

Andrew M. Saul became the Commissioner of Social Security on June 5, 2019. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Saul is substituted for Nancy Berryhill as the proper defendant in this case.

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. 17 ("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 a final judgment, and conduct all post-judgment proceedings."); see also Doc. 18 (endorsed order of reference)).

The Commissioner represents that counsel for the Plaintiff has no opposition to this motion. (See *id.* at 1).

Administrative Law Judge (ALJ) assigned to this case to address all issues identified by Plaintiff in his brief (see Doc. 13), as well as any other issues raised by Plaintiff on remand.

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[,]" the Defendant's unopposed motion (Doc. 16) is **GRANTED** and the decision of the Commissioner of Social Security denying Plaintiff benefits is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g), see *Melkonyan v. Sullivan*, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (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, 112 S.Ct. 2625, 125 L.Ed.2d 239 (1993), and terminates this Court's jurisdiction over this matter.

DONE and **ORDERED** this the 29th day of July, 2019.

s/P. Bradley Murray
UNITED STATES MAGISTRATE JUDGE