

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

REBECCA ABBOTT

PLAINTIFF

v.

CIVIL NO. 08-2017

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Rebecca Abbott (“plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a decision of the Commissioner of the Social Security Administration (Commissioner) denying her application for disability insurance benefits (“DIB”). (Doc. # 1). The defendant filed an answer to plaintiff’s action on May 30, 2008, asserting that the findings of the Commissioner were supported by substantial evidence and were conclusive. (Doc. # 5).

On August 4, 2008, the Commissioner, having changed positions, filed a motion requesting that plaintiff’s case be remanded pursuant to "sentence four" of section 405(g) in order to conduct further administrative proceedings. (Doc. # 8). The defendant states that the case should be remanded to another ALJ for a full and fair analysis of plaintiff’s alleged impairments. On remand, they also stated that the ALJ will obtain updated medical evidence, including, if warranted, a consultative rheumatological examination and evidence from medical and vocational experts.

The exclusive methods by which a district court may remand a social security case to the Commissioner are set forth in "sentence four" and "sentence six" of 42 U.S.C. § 405(g). A remand pursuant to "sentence six" is limited to two situations: where the Commissioner requests a remand before answering the complaint, or where the court orders the Commissioner to consider new, material evidence that was for good cause not presented before the agency. The Fourth sentence of

the statute provides that "[t]he court shall have power 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." 42 U.S.C. § 405(g); *Shalala v. Schaefer*, 509 U.S. 292, 296, 113 S.Ct. 2625 (1993).

Here, we find remand for the purpose of the ALJ to further evaluate the evidence as addressed above, appropriate. Therefore, the Commissioner's motion to remand is hereby **GRANTED** and the case is remanded to the Commissioner for further administrative action pursuant to "sentence four" of section 405(g).

DATED this 18th day of February 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE