

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

JUSTIN W. TURNER

PLAINTIFF

v.

CIVIL NO. 12-2020

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

ORDER ON MOTION TO REMAND

Plaintiff, Justin W. Turner, filed this action on January 24, 2012, seeking judicial review of a decision of the Commissioner of Social Security (Commissioner) pursuant to 42 U.S.C. § 405(g). ECF No. 1. In place of an answer, Defendant filed a motion to remand for further administrative action pursuant to 42 U.S.C. § 405(g). ECF No. 7. Specifically, Defendant seeks remand to allow the ALJ an opportunity to reassess Plaintiff's mental impairments and resulting functional limitations. Def.'s Mot. to Remand, 1-2, ECF No. 7.

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).

In this instance, Defendant seeks remand pursuant to sentence four of 42 U.S.C. § 405(g). Def's Mot. to Remand, 2-3. However, no answer has been filed in the current action. As such,

remand under sentence six of § 405(g) is appropriate.

Based on the foregoing, the undersigned grants Defendant's motion and remands this case to the Commissioner for further administrative action pursuant to sentence six of 42 U.S.C. § 405(g).

IT IS SO ORDERED this 30th day of April 2012.

/s/ J. Marschewski

HONORABLE JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE