

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

BOBBY L. NUTT

PLAINTIFF

v.

CIVIL NO. 13-2183

CAROLYN W. COLVIN¹, Commissioner
Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Bobby Nutt (“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 his application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). ECF No. 1. The Defendant filed an answer to Plaintiff’s action on December 20, 2013, asserting that the findings of the Commissioner were supported by substantial evidence and were conclusive. ECF No. 9.

On May 10, 2014, 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. ECF Nos. 12. Specifically, the Commissioner requests that remand be granted to allow the ALJ to reconsider the issue of whether Plaintiff meets or equals Listing 12.05C and to consider and resolve potential inconsistencies in the record with respect to whether or not Plaintiff’s hearing loss is a severe impairment.

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

¹Carolyn W. Colvin became the Social Security Commissioner on February 14, 2013. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Carolyn W. Colvin has been substituted for Commissioner Michael J. Astrue as the defendant in this suit.

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, we recommend that the Commissioner’s motion to remand be **GRANTED** and the case remanded to the Commissioner for further administrative action pursuant to “sentence four” of section 405(g).

DATED this 10th day of March 2014.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE