

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

DAVID L. DAVIS

PLAINTIFF

v.

CIVIL NO. 2:16-cv-2210-MEF

NANCY A. BERRYHILL, Acting  
Commissioner Social Security Administration<sup>1</sup>

DEFENDANT

**MEMORANDUM OPINION**

David Davis, 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 applications for disability insurance benefits (“DIB) and supplemental security income (“SSI”). ECF No. 1. This matter is presently before the undersigned by consent of the parties. ECF No. 5.

The Commissioner filed an answer to Plaintiff’s action on November 7, 2017, asserting that the findings of the Commissioner were supported by substantial evidence and were conclusive. ECF No. 12. On April 7, 2017, having changed positions, the Commissioner 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 No. 18.

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,

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

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 (1993).

Here, we find remand is appropriate to allow the Defendants to conduct further administrative proceedings regarding this matter. Therefore, the Commissioner’s motion to remand is hereby **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 April, 2017.

/s/ Mark E. Ford  
HONORABLE MARK E. FORD  
UNITED STATES MAGISTRATE JUDGE