

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

MELISSA CUNNINGHAM

PLAINTIFF

v.

CIVIL NO. 2:21-cv-02176-MEF

KILOLO KIJAKAZI, Acting Commissioner,
Social Security Administration

DEFENDANT

MEMORANDUM OPINION AND ORDER

Melissa Cunningham, 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 benefits. (ECF No. 2). This matter is before the undersigned by consent of the parties. (ECF No. 5).

The Commissioner filed an answer to Plaintiff’s action on January 7, 2022, asserting that the findings of the Commissioner were supported by substantial evidence and were conclusive. (ECF No. 10). On February 25, 2022, having changed positions, the Commissioner filed a motion requesting that Plaintiff’s case be remanded pursuant to “sentence four” of section 405(g) to allow further administrative proceedings. (ECF No. 17).

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 (1993).

Here, we find remand is appropriate to allow the Defendant to conduct further administrative proceedings regarding this matter. Therefore, the Commissioner’s motion (ECF No. 17) is **GRANTED**, and the case will be remanded to the Commissioner for further administrative action pursuant to “sentence four” of section 405(g).

DATED this 28th day of February 2022.

/s/ Mark E. Ford

HON. MARK E. FORD

UNITED STATES MAGISTRATE JUDGE