

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

CANDACE L. DILLIHUNT

PLAINTIFF

vs.

Civil No. 4:08-cv-04049

MICHAEL J. ASTRUE,  
Commissioner, Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

On November 13, 2008, Defendant filed a Motion to Remand. (Doc. No. 10).<sup>1</sup> Plaintiff has not responded to this motion. The parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. (Doc. No. 4). Pursuant to this authority, the Court issues this memorandum opinion and orders the entry of a final judgment in this matter.

Defendant requests a remand pursuant to sentence four of 42 U.S.C. § 405(g), so the Commissioner may conduct further administrative proceedings. Defendant argues the finding that Plaintiff does not have a severe mental impairment is not supported by substantial evidence. Additionally, Defendant argues this finding is inconsistent with a determination on a subsequent application that found Plaintiff was under a disability on the basis of a mental impairment.

This Court finds this motion is well-taken and should be granted. The Commissioner's

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<sup>1</sup> The docket numbers for this case are referenced by the designation "Doc. No." The transcript pages for this case are referenced by the designation "Tr."

decision is reversed, and this matter is hereby remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings. In addition, the undersigned finds that the Plaintiff's Complaint should be and hereby is dismissed without prejudice. Plaintiff may still, however, file a motion for attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. This Court directs the ALJ to make additional findings as to the nature and severity of Plaintiff's mental impairment.

A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

**ENTERED this 2<sup>nd</sup> day of December, 2008.**

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
U.S. MAGISTRATE JUDGE