

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

ASHLEY L. VANCUREN

PLAINTIFF

V.

NO. 13-5279

CAROLYN W. COLVIN,
Acting Commissioner of the Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Plaintiff, Ashley L. Vancuren, 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 supplemental security income (SSI) benefits. (Doc. 1). Defendant filed an answer (Doc. 10), and both parties filed appeal briefs. (Docs. 12, 13).

On May 19, 2013, the Commissioner filed a Motion to Remand, requesting that Plaintiff's case be remanded pursuant to "sentence four" of section 405(g) in order to conduct further administrative proceedings. (Doc. 15). Defendant states that it requests remand to an ALJ to "hold a hearing to reconsider whether the Circuit Judge's Order dated July 12, 2011, permits withdrawal of any funds prior to Plaintiff reaching the age of majority (Tr. 23)," and that the ALJ "should reconsider whether the account was an available resource to Plaintiff, and if not, find that there was no overpayment and reinstate benefits as appropriate." (Doc. 15). Defendant sets forth further instructions for the ALJ upon remand. On May 21, 2014, Plaintiff filed a response to the motion, stating that she has no objection to Defendant's Motion to Remand. (Doc. 16).

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).

Here, the Court finds remand for the purpose of the ALJ to further evaluate the evidence as addressed above appropriate.

Based upon the foregoing, the Court finds remand appropriate and grants the Commissioner’s motion to remand this case to the Commissioner for further administrative action pursuant to “sentence four” of section 405(g).

DATED this 27th day of May, 2014.

1/s/ Erin L. Setser

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE