

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **13-cv-521-AP**

AARON BIRTHA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner of Social Security,

Defendant.

ORDER

Kane, J.

This social security appeal is before me on Plaintiff's Contested Motion To Order Defendant To Take Additional Evidence Per Sentence Six Of 42 U.S.C. §405(g). The Motion was filed by stipulation of the parties (Doc. 19) based on their determination that the "unique facts of this case" presented an opportunity to present the sentence six issue independently of the sentence four issues. In order to conserve resources – both the Court's and, presumably, theirs – counsel asked that briefing on the sentence four issues be stayed pending a determination of the contested motion. Having reviewed the Motion and the parties' briefing for and against, I GRANT the Motion and ORDER the matter REMANDED to the agency.

The evidence submitted in the form of Dr. Czaban's report regarding Mr. Birtha's mental illness is both "new" under the standards applicable to Sentence Six and

“material” to the ALJ’s disability determination. Given Plaintiff’s mental impairment and the implication that neither his appointed representative nor his medical expert appreciated the significance of his “revolving door pattern” of leaving treatment facilities after being stabilized only to reenter them via emergency room visits, I find good cause exists for his failure to submit this evidence during the administrative hearing. It is in the interest of justice and efficiency that this evidence be considered before full briefing on the merits of Mr. Birtha’s Sentence Four issues is ordered. Accordingly,

IT IS ORDERED that this matter shall be REMANDED to the agency pursuant to Sentence 6 of 42 U.S.C. § 405(g). The ALJ shall conduct further proceedings to consider Dr. Czaban’s report and file any additional or modified findings of fact and decision with the Court.

In the interim, all briefing on the merits of Plaintiff’s appeal is STAYED. The parties shall file a Status Report on or before January 3, 2014, to apprise the Court of the status of the administrative proceedings.

Dated: October 16, 2013

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE