

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

WENDY L. MEADE, etc.,

Plaintiff,

v.

CASE NO. 8:12-CV-287-T-17MAP

MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,

Defendant.

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ORDER

This cause is before the Court on:

Dkt. 19 Report and Recommendation

Plaintiff Wendy L. Meade, a/k/a Wendy M. South filed this case to obtain judicial review of the decision of the Commissioner denying Plaintiff's claim for Disability Insurance Benefits.

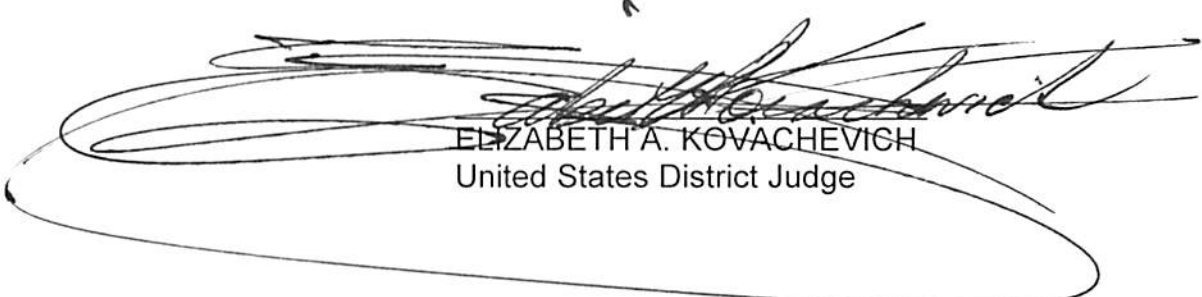
The assigned Magistrate Judge has entered a Report and Recommendation in which it is recommended that this matter be remanded for further administrative proceedings, as the Administrative Law Judge ("ALJ") erred in evaluating the medical opinions of Plaintiff's physicians, and therefore failed to abide by the Court's prior remand order (Case No. 8:09-CV-2027-T-27AEP). The assigned Magistrate Judge found that the ALJ did not address several inconsistencies in the medical record, some of which the Court specifically requested the ALJ address in its Remand Order, including the opinions of Dr. Nardone, Dr. Jones and Dr. Hodan.

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The Court has independently examined the pleadings and the Transcript. No timely objections to the Report and Recommendation have been filed. After consideration, the Court adopts the Report and Recommendation, which is incorporated herein. Accordingly, it is

**ORDERED** that the Report and Recommendation is **adopted and incorporated**. This case is remanded for further administrative proceedings. The Clerk of Court shall enter a final judgment in favor of Plaintiff Wendy L. Meade, a/k/a Wendy M. South, and close this case. Any motion for attorney's fees shall be filed in accordance with the attached order.

**DONE and ORDERED** in Chambers, in Tampa, Florida on this 15th day of February, 2013.



ELIZABETH A. KOVACHEVICH  
United States District Judge

Copies to:  
All parties and counsel of record

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

IN RE: PROCEDURES FOR APPLYING  
FOR ATTORNEY'S FEES UNDER  
42 U.S.C. §§ 406(b) AND 1383 (d)(2)

Misc. Case No. 12-MC-124-01-22

ORDER

Section 406(b) and section 1383(d)(2) with regard to Title XVI claims of Title 42 govern motions for attorney's fees in Social Security disability cases. Section 406(b) provides in relevant part that "the court may determine and allow as part of its judgment a reasonable fee for [an attorney's] representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C. § 406(b)(1)(A). However, at the time the judgment is entered, the specific amount of past-due benefits, if any, is unknown.

Federal Rule of Civil Procedure 54(d)(2)(B) applies to the filing of a request for attorney's fees, pursuant to Sections 406(b) and 1383(d)(2), and it requires a motion for attorney's fees to be filed within fourteen (14) days after judgment unless provided otherwise by statute or order of the court. Fed.R.Civ.P. 54(d)(2)(B). Because the amount of past-due benefits and attorney's fees is unknown at the time of judgment, the Court adopts the following procedures and filing schedule with regard to section 406(b) (and section 1383(d)(2)) motions for attorney's fees:

(I) If the plaintiff's attorney seeks attorney's fees under 42 U.S.C. §§ 406(b) or 1383(d)(2), he or she must file a motion for approval of such fees no later than thirty (30) days after the date of the Social Security letter sent to the plaintiff's counsel of record at the conclusion of the Agency's past-due benefit calculation stating the amount withheld for attorney's fees.


(II) Any response to the motion shall be filed within the time provided in the Local Rules. The motion shall state the amount (if any) of attorney's fees awarded or sought by Plaintiff pursuant to 42 U.S.C. § 406(a) and any amount previously awarded by the court, pursuant to the Equal Access to Justice Act.

(III) Plaintiff shall file any reply within ten (10) days of service of defendant's response.

(IV) Counsel are reminded of the requirement to comply with Local Rule 3.01(g) prior to filing any motion which often expedites disposition of the fee request.

IT IS SO ORDERED.

DONE AND ORDERED in Chambers, in Orlando, Florida, this 13<sup>th</sup> day of November, 2012.

  
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ANNE C. CONWAY  
Chief United States District Judge