

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN P. CAREY,

Plaintiff,

v.

Case No. 8:12-cv-2362-T-33EAJ

CAROLYN W. COLVIN, Acting
Commissioner of the United
States Social Security
Administration,¹

Defendant.

_____ /

ORDER

This matter is before the Court on consideration of the Report and Recommendation of United States Magistrate Judge Elizabeth A. Jenkins (Doc. # 17), filed on February 18, 2014, recommending that the decision of the Commissioner denying benefits be reversed and the case be remanded for further proceedings consistent with the Report and Recommendation. Judge Jenkins further recommended that:

The Clerk of Court shall enter final judgment in favor of Plaintiff pursuant to 42 U.S.C. § 405(g) as this is a "sentence four remand" and close the file. Shalala v. Schaefer, 509 U.S. 292, 302-03

¹ Carolyn W. Colvin became Acting Commissioner of Social Security on February 14, 2013. Pursuant to Federal Rule of Civil Procedure 25(d), Ms. Colvin is substituted for Michael J. Astrue as the defendant in this lawsuit.

(1993); Newsome v. Shalala, 8 F.3d 775, 779-80 (11th Cir. 1993). The final judgment shall state that if Plaintiff ultimately prevails in this case upon remand to the Social Security Administration, any motion for attorney's fees under 42 U.S.C. § 406(b) must be filed no later than thirty (30) days after the date of the Social Security letter sent to the [P]laintiff's counsel of record at the conclusion of the Agency's past due benefit calculation stating the amount withheld for attorney[\'s] fees. See In re Procedures for Applying for Attorney Fees under 42 U.S.C. §§ 406(b) and 1383(d)(2), No. 6:12-mc-124-CRL-22 (M.D. Fla. Nov. 13, 2012).

(Id.).

As of this date, no objection to the Report and Recommendation has been filed, and the time to do so has now passed. After careful consideration, the Court adopts the Report and Recommendation of the Magistrate Judge.

Discussion

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983).

In the absence of specific objections, there is no requirement that a district judge review factual findings de novo, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions de novo, even in the absence of an objection. See Cooper-Hous. v. S. Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994).

After conducting a careful and complete review of the findings, conclusions, and recommendations, and giving de novo review to matters of law, the Court accepts the factual findings and legal conclusions of the Magistrate Judge, and adopts the recommendation of the Magistrate Judge.

Accordingly, it is

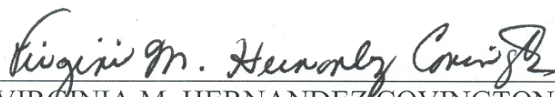
ORDERED, ADJUDGED, and DECREED:

- (1) The Report and Recommendation of Elizabeth A. Jenkins, United States Magistrate Judge (Doc. # 17) is **ADOPTED**.
- (2) The decision of the Commissioner of Social Security denying benefits is **REVERSED** and the case is **REMANDED**

for further proceedings consistent with the Report and Recommendation.

- (3) The Clerk of Court shall enter final judgment in favor of Plaintiff pursuant to 42 U.S.C. § 405(g) as this is a "sentence four remand" and thereafter **CLOSE THIS CASE**. The final judgment shall state that if Plaintiff ultimately prevails in this case upon remand to the Social Security Administration, any motion for attorney's fees under 42 U.S.C. § 406(b) must be filed 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.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 10th day of March, 2014.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel of Record