

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DOUGLAS EDWARD VERGARA,

Plaintiff,

v.

Case No: 8:18-cv-1141-T-36JRK

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

This cause comes before the Court upon the Report and Recommendation filed by Magistrate Judge James R. Klindt on August 5, 2019 (Doc. 24). Magistrate Judge Klindt recommends: 1. That the Clerk of Court be directed to enter judgment pursuant to sentence four of 42 U.S.C. § 405(g), reversing the Commissioner's final decision and remanding this matter with specific instructions; 2. That the Clerk be further directed to close the file; and 3. That Plaintiff's counsel be directed that, in the event benefits are awarded on remand, counsel shall ensure that any § 406(b) fee application be filed within the parameters set forth by the Order entered in Case No. 6:12-mc-124-Orl-22 (In Re: Procedures for Applying for Attorney's Fees Under 42 U.S.C. §§ 406(b) and 1383(d)(2)). Neither party has objected to the Report and Recommendation and the time to do so has expired.

After careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

- (1) The Report and Recommendation of the Magistrate Judge (Doc. 24) is **ADOPTED**, **CONFIRMED**, and **APPROVED** in all respects and is made a part of this Order for all purposes, including appellate review.
- (2) The final decision of the Commissioner is **REVERSED**. This case is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings as follows:
 - A) Reconsider all of the opinions of Dr. Hershkowitz and Dr. Jen; state with particularity the weight afforded and the reasons why; if discounted, provide good cause;
 - (B) Adequately reflect consideration of the alleged side effects of Plaintiff's medications; and
 - (C) Take such other action as may be necessary to resolve this matter properly.
- (3) Plaintiff's counsel is directed that, in the event benefits are awarded on remand, counsel shall ensure that any § 406(b) fee application be filed within the parameters set forth by the Order entered in Case No. 6:12-mc-124-Orl-22 (In Re: Procedures for Applying for Attorney's Fees Under 42 U.S.C. §§ 406(b) and 1383(d)(2)).
- (4) The Clerk is directed to terminate any pending motions, enter a judgment in favor of Plaintiff, and close this case.

DONE and ORDERED at Tampa, Florida on August 21, 2019.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:
Counsel of Record
U.S. Magistrate Judge James R. Klindt