

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ELLIOT L JONES,

Plaintiff,

v.

CASE NO. 1:08-cv-00188-MP -AK

MICHAEL J ASTRUE,

Defendant.

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ORDER

This matter is before the Court on Doc. 41, Mandate of the Eleventh Circuit Court of Appeal. In the Mandate, the Eleventh Circuit indicated that the government had agreed that this matter should be remanded under sentence four of 42 U.S.C. § 405(g) to the Commissioner of Social Security for further administrative proceedings in order to evaluate appellant's alcohol and drug abuse, to reassess appellant's residual functional capacity, and to issue a new decision regarding disability.

A remand under sentence four is considered a final judgment. Bergen v. Commissioner, 454 F.3d 1273 (11th Cir. 2006). Thus, absent a court order stating otherwise, a successful Plaintiff's counsel would normally have fourteen days after the order of remand to file a motion with the District Court requesting an award of attorney fees. Fed. R. Civ. P. 54(d)(2)(B). This Rule has been interpreted by the Eleventh Circuit to even apply to a request for fees to be paid from Plaintiff's past due benefits pursuant to 42 U.S.C. § 406(b)(1). Bergen, 454 F.3d at 1277-78. However, Plaintiff's counsel in such a case will not know the amount of benefits - and therefore fees - until after the Commissioner awards benefits, which typically takes longer than

fourteen days after the entry of judgment. Therefore, an extension of time to seek such fees is warranted, and was recommended by the Bergen opinion. Id. Accordingly, it is hereby

ORDERED AND ADJUDGED:

This Clerk is directed to enter final judgment remanding this case to the Commissioner under sentence four of 42 U.S.C. § 405(g) for further administrative proceedings in order to evaluate appellant's alcohol and drug abuse, to reassess appellant's residual functional capacity, and to issue a new decision regarding disability.

Pursuant to Bergen, proceedings on attorney fees under the Social Security Act, 42 U.S.C. § 406(b) are stayed until the matter is fully adjudicated upon remand. The Plaintiff shall file a motion to award fees under 406(b) within 30 days after counsel receives notice from the Defendant Commissioner as to Plaintiff's past due benefits.

This stay relates only to attorney fee proceedings under § 406(b) of the Social Security Act, not to attorney fee proceedings under the Equal Access to Justice Act, 28 U.S.C. § 2412, the latter of which may be adjudicated at this time.

DONE AND ORDERED this 9th day of May, 2011

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge