

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

CHARLES GRESHAM, III,

Plaintiff,

v.

CASE NO. 1:09-cv-00200-MP -GRJ

MICHAEL J ASTRUE,

Defendant.

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ORDER

This matter is before the Court on Doc. 34, Report and Recommendation of the Magistrate Judge, recommending that the decision denying benefits be reversed and this matter remanded under Sentence Four of 42 U.S.C. § 405(g). Both parties agree to this reversal and remand. The Report and Recommendation shall be adopted and the motion to remand granted.

Absent a court order stating otherwise, a successful Plaintiff's counsel has fourteen days after final judgment 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 v. Commissioner, 454 F.3d 1273, 1277-78 (11th Cir. 2006). 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:

Defendant's Motion to Remand (Doc. 32) is **GRANTED**, and the Commissioner's decision denying benefits to Plaintiff is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) so that an ALJ may further evaluate the nature and severity of Plaintiff's impairments, and issue a decision fully explaining the disposition of Plaintiff's claims.

On remand the ALJ should assess thoroughly the effects of Plaintiff's mental impairments, including Plaintiff's limitations in social functioning, on Plaintiff's ability to perform work-related activities.

The Clerk is directed to enter judgment accordingly, terminate any pending motions, and close the file.

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 7th day of January, 2011

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge