

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

SUE ANN ALEXANDER,

Plaintiff,

v.

CASE NO. 1:10-cv-00125-MP -GRJ

MICHAEL J ASTRUE,

Defendant.

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**ORDER**

This matter is before the Court on Doc. 16, 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. On remand the administrative law judge should obtain psychological testing regarding Plaintiff's level of intellectual functioning and to further evaluate Plaintiff's mental functioning under Listing 12.05(B).

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 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. Thus, 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:**

1. The Report and Recommendation of the Magistrate Judge, Doc. 16, is ADOPTED and incorporated herein.
2. Defendant's Motion to Remand, Doc. 15, 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).
3. On remand the administrative law judge should obtain psychological testing regarding Plaintiff's level of intellectual functioning and to further evaluate Plaintiff's mental functioning under Listing 12.05(B).
4. The Clerk is directed to enter final judgment accordingly, terminate any pending motions, and close the file.
4. 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.
5. 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 13th day of January, 2011

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