

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

JULIUS SMITH,

Plaintiff,

v.

CASE NO. 1:11-cv-00052-MP-GRJ

MICHAEL ASTRUE,

Defendant.

_____ /

ORDER

This matter is before the Court on Doc. 17, in which the Magistrate Judge recommends that the defendant's motion to remand (Doc. 16) be granted, and this matter be remanded under sentence four of 42 U.S.C. § 405(g). The plaintiff consented to the motion and has not filed objections to the Report and Recommendation. Upon consideration, the Court shall accept the Report and Recommendation and grant the motion to remand.

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:

The Report and Recommendation of the Magistrate Judge is adopted, the decision of the Administrative Law Judge is reversed, and this matter is remanded to the Commissioner.

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 consolidate plaintiff's first and second applications for disability benefits and issue a new decision on the consolidated applications or remand the consolidated case to an administrative law judge for further proceedings, if necessary.

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 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 5th day of August, 2011

s/Maurice M. Paul

Maurice M. Paul, Senior District Judge