

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

TIMMY PHOVEMIRE,)	
)	Civil Action No. 1:08-CV-00248-RBC
)	
Plaintiff,)	
)	
v.)	HONORABLE ROGER B. COSBEY
)	UNITED STATES MAGISTRATE JUDGE
)	
MICHAEL ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

OPINION and ORDER

This matter is before the Court on the Commissioner's Motion for Relief from Judgment Under Rule 60(b) [Docket # 28] filed by the United States of America on November 5, 2009.

Of course, the record reflects that the matter is currently on appeal to the Seventh Circuit Court of Appeals, so this Court cannot immediately grant the relief requested. Rather, as the Commissioner recognizes, Seventh Circuit Rule 57 applies:

A party who during the pendency of an appeal has filed a motion under Fed. R. Civ. P. 60(a) or 60(b) . . . should request the district court to indicate whether it is inclined to grant the motion. If the district court so indicates, this court will remand the case for the purpose of modifying the judgment. . . .

In accordance with that Rule, the Commissioner has requested that this Court indicate whether it is inclined to grant his motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The basis for such action stems from the fact that the Commissioner now agrees with Mr. Phovemire that a remand for further administrative proceedings is warranted pursuant to 42 U.S.C.

§ 405(g), thereby justifying relief from the Court's July 28, 2009, Judgment, under Rule 60(b)(6). See *Brown v. United States*, 976 F.2d 1104, 1110 (7th Cir. 1992)("[i]n such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.").

Having thus reviewed the record, the Court agrees that further administrative proceedings are warranted and the Court will grant the relief sought by the Commissioner once the case is remanded by the Seventh Circuit for purposes of modifying the judgment.

Enter this 6th day of November, 2009.

S/Roger B. Cosby
Roger B. Cosby
United States Magistrate Judge