

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

AMY L. EDMONDSON,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 1:16cv142
)	
NANCY A. BERRYHILL,)	
ACTING COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

OPINION AND ORDER

This matter is before the court on the Commissioner’s “Unopposed Motion for Relief From Judgment”, filed on February 9, 2018.

The background facts are as follows. On May 3, 2016, Plaintiff sought judicial review of the Commissioner’s final decision pursuant to 42 U.S.C. § 405(g). On June 16, 2017, following briefing by the parties, the Court entered judgment for the Commissioner. On August 15, 2017, Plaintiff filed a timely notice of appeal (7th Cir. No. 17-2689).

Upon further consideration, the Commissioner has determined that the June 16, 2017 judgment should be vacated and that this matter should be remanded to the Social Security Administration for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). On remand, the Commissioner will reevaluate the medical opinions in the record, including the opinions of Dr. Booth, Dr. Rutten, and Dr. Gadiraju; reevaluate Plaintiff’s residual functional capacity; if necessary, obtain additional vocational expert evidence; and issue a new decision.

Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from a final order for “any . . . reason justifying relief” Because the Commissioner now agrees that the

case should be reversed with remand for further administrative proceedings, the Commissioner submits that Rule 60(b)(6) relief from the Court's June 16, 2017, judgment is appropriate.

Due to the pending appeal, this Court lacks jurisdiction to grant Rule 60(b) relief at this time. Seventh Circuit Rule 57, however, states that "[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." The pending appeal does not deprive this court of jurisdiction to consider the motion for an indicative ruling. *Brown v. United States*, 976 F.2d 1104, 1110 (7th Cir. 1992).

The Commissioner states that Plaintiff has been advised of, and agrees with, the nature and substance of this motion. Plaintiff has not filed any response to the motion indicating that she does not agree.

Therefore, pursuant to Seventh Circuit Rule 57, this court indicates that it is inclined to grant the motion and vacate the June 16, 2017 judgment, pursuant to Fed.R.Civ.Pro. 60(b)(6), and enter judgment reversing the Commissioner's decision with remand for further administrative proceedings.

SO ORDERED.

Entered: February 23, 2018.

s/ William C. Lee
William C. Lee, Judge
United States District Court