

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

MARGARET ANN BLANKENSHIP,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 1:16cv222
)	
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 an Indicative Ruling on its Rule 60(b) Motion for Relief From Judgment”, filed on January 19, 2018.

The background facts are as follows. Plaintiff commenced this action pursuant to 42 U.S.C. § 405(g), seeking review of a final decision of the Commissioner. Following briefing by the parties, on June 29, 2017, the Court entered judgment in favor of the Commissioner. (Dkt. 22.) On August 28, 2017, Plaintiff filed a timely Notice of Appeal to the United States Court of Appeals for the Seventh Circuit. Upon further consideration, the Commissioner has determined that judgment should be vacated and this matter should be reversed with remand for a new administrative hearing and decision pursuant to sentence four of 42 U.S.C. § 405(g).

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 29, 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 29, 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 22, 2018.

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