

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

CRYSTAL M. SMITH,

Plaintiff,

v.

ANDREW SAUL,

Commissioner of Social Security,

Defendant.

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Cause No. 1:19-CV-371-HAB

OPINION AND ORDER

This matter is again before the Court on the Commissioner's request that the Court indicate its willingness to vacate its previous Opinion and Order affirming the ALJ's decision to deny Plaintiff's request for benefits. The Court denied the Commissioner's prior motion seeking the same relief, noting the Commissioner's failure to recognize or discuss the legal standards governing his request. (*See* ECF No. 29). The Commissioner has now addressed the Court's stated concerns and, again, seeks a decision from this Court that would allow this matter to be remanded to the ALJ for further administrative proceedings.

As the Court noted in its prior Opinion and Order¹, when a party requests an indicative ruling under Circuit Rule 57, Rule 12.1 of the Federal Rules of Appellate Procedure, and Rule 62.1 of the Federal Rules of Civil Procedure, a district court applies a balance of the equities test to determine whether vacatur is appropriate. (ECF No. 29 at 5). The Commissioner identifies several equitable considerations that he believes support vacatur, including: encouraging settlement; the limited precedential value of this Court's decision affirming the ALJ; the value of this Court's

¹ Because the application of the balance of the equities test was not at issue, the Court questions why the Commissioner devoted four pages of the instant motion to his argument that he did not need to demonstrate exceptional circumstances. (*See* ECF No. 30 at 3–6).

decision on the anticipated administrative proceedings; the benefit to Plaintiff arising out of vacatur; and the inapplicability of the Supreme Court's concerns in *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994), to cases where the party that was victorious at the district court seeks remand. (ECF No. 30 at 7–11).

The Court finds little reason to disagree with the Commissioner's thorough discussion. The Court has concerns that the Commissioner's arguments would support vacatur in *every* social security case on appeal, a result not contemplated by the Supreme Court in *Bonner Mall*. However, in this case the Court is satisfied that the Commissioner has appropriately weighed the equities, and that vacatur is appropriate.

For the foregoing reasons, the Court INDICATES that, on remand, it would vacate its Opinion and Order affirming the ALJ's denial of benefits (ECF No. 20).

SO ORDERED on February 16, 2021.

s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT