

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

TABITHA M. GANN

CIVIL ACTION

VERSUS

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY

NO. 14-00189-BAJ-SCR

RULING AND ORDER

On August 3, 2015, United States Magistrate Judge Stephen C. Riedlinger issued a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B), recommending that the Court reverse the Acting Commissioner of the Social Security Administration's decision denying Plaintiff Tabitha M. Gann's ("Gann" or "Plaintiff") application for disability insurance benefits, and remanding Gann's appeal to the Acting Commissioner for reevaluation. (**Doc. 13**).

The Magistrate Judge's Report and Recommendation specifically notified all parties that, pursuant to 28 U.S.C. § 636(b)(1), the parties had fourteen (14) days from the date they were served with the Report and Recommendation to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. (**Doc. 13** at p. 1). A review of the record indicates that Gann submitted written objections on August 17, 2015.¹ (**Doc. 14**).

¹ In her objections, Plaintiff makes two arguments. First, Plaintiff argues that the action should be remanded under Sentence 4 of 42 U.S.C. § 405(g), not Sentence 6, as the Magistrate Judge recommends. (**Doc. 14** at p. 2-5). Plaintiff avers that the Appeals Council's failure to consider the evidence in question was an "error of law" so that a Sentence 4 remand is more appropriate. (*Id.* at

Having carefully considered the Magistrate Judge's Report and Recommendation, the record, and the applicable law, the Court concludes that the Magistrate Judge's Report and Recommendation is correct, and hereby adopts its findings of fact and conclusions of law.

Accordingly,

IT IS ORDERED that the **Magistrate Judge's Report and Recommendation (Doc. 13)** is **ADOPTED** as the Court's opinion herein.

IT IS FURTHER ORDERED that the Acting Commissioner of the Social Security Administration's decision denying Plaintiff Tabitha M. Gann's application for disability insurance benefits is **REVERSED**.

IT IS FURTHER ORDERED that the above-captioned matter is **REMANDED** to the Acting Commissioner of the Social Security Administration for reevaluation.

Baton Rouge, Louisiana, this 14th day of September, 2015.



**BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

p. 3). Second, Gann contends that a Sentence 6 remand based on only one of the five issues she raised, without the Magistrate Judge explicitly considering the remaining four issues, "inappropriately deprives Plaintiff of the chance to obtain the remedy she actually sought and is not justified in the R&R by any citation to authority." (*Id.* at p. 6). In his recommendation, the Magistrate Judge reasoned that the evidence that the Appeals Council failed to consider is properly characterized as "new evidence" that should be reviewed as such under a Sentence 6 remand, and expressly states that Gann "may pursue any arguments related to [her four additional] claims of error in the administrative proceedings on remand." (Doc. 13 at p. 9-13).