

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRA LATRESE GATES,

No. 15-14087

Plaintiff,

District Judge Marianne O. Battani

v.

Magistrate Judge R. Steven Whalen

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER DENYING MOTION TO AMEND [Doc. #31]

This is a Social Security Disability case. On November 20, 2015, Plaintiff Tyra Latrese Gates filed a complaint under 42 U.S.C. 405(g), challenging the Defendant Commissioner's denial of her claim for Supplemental Security Income ("SSI") disability benefits under Title XVI of the Social Security Act. In response to Plaintiff's June 8, 2016 Motion for Summary Judgment [Docket #17], Defendant submitted a Motion to Remand on September 2, 2016, offering to remand the case for further fact-finding. *Docket #24*. Plaintiff declined to stipulate to a remand for further fact-finding. The Court held oral argument on October 20, 2016 at which time Plaintiff's counsel argued his client was entitled to an award of benefits. On November 1, 2016, I recommended that Defendant's Motion to Remand be granted. *Docket #28*.

Currently before the Court is Plaintiff's Motion to Amend [Docket #31] her original

motion for summary judgment. Plaintiff argues that evidence in Defendant's possession establishes that before age 22, she experienced "deficits of adaptive functioning" which would dispositively establish her entitlement to benefits under the current application. *Docket #31*, 4-5. Plaintiff reiterates her entitlement to a remand for benefits under the fourth sentence of 42 U.S.C. § 405(g), which provides that "[t]he Court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." However, newer evidence which is presented subsequent to the administrative determination (such as the records Plaintiff relies upon in the present motion) is analyzed not under the fourth sentence, but under the sixth sentence of 42 U.S.C. § 405(g), which states that the court "may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding ..."

Plaintiff's motion to amend her summary judgment motion, in which she requests a sentence four remand for an award of benefits is futile, even assuming that she could show both good cause for the tardy submission *and* the materiality of the newer evidence as required for a sentence six remand. When the Appeals Council denies a claimant's request for a review of an application based on new material, the district court cannot consider that new evidence in deciding whether to "uphold, modify, or reverse the ALJ's decision." *Cotton*

v. Sullivan, 2 F.3d 692, 696–696 (6th Cir. 1993). In contrast to a remand under the fourth sentence of § 405(g), the Court cannot order a remand for benefits. Instead, the court retains jurisdiction in a sentence six remand, and enters final judgment only “after post-remand agency proceedings have been completed and their results filed with the court.” *Shalala v. Schaefer*, 509 U.S. 292, 297, 113 S.Ct. 2625, 125 L.Ed.2d 239 (1993).

However, while the Court cannot order a remand for benefits based on the newer material, Defendant has stipulated to a remand for further fact-finding and Plaintiff is not barred from presenting the newer evidence to the Administrative Law Judge upon remand. *See Huber v. Commissioner of Social Security*, 2009 WL 111738, *11 (E.D.Mich. January 15, 2009)(claimant not barred from presented newer material upon remand under Sentence Four of § 405(g); *Faucher v. Secretary of Health and Human Services*, 17 F.3d 171 (6th Cir.1994)(same).

Therefore, Plaintiff’s motion to amend [Doc. #31] is DENIED.

IT IS SO ORDERED.

s/R. Steven Whalen
R. STEVEN WHALEN
United States Magistrate Judge

Dated: January 31, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on January 31, 2017, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla

Case Manager