

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COREINE S. PITTENGER,

Plaintiff,

Case No. 17-13675

v.

HONORABLE AVERN COHN

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 15)
AND
HOLDING IN ABEYANCE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(Doc. 12)
AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 13)
AND
REMANDING MATTER FOR FURTHER ADMINISTRATIVE PROCEEDINGS
AND
ADMINISTRATIVELY CLOSING THE CASE

I.

This is a social security case. Plaintiff Coreine S. Pittenger from the final determination of the Commissioner of Social Security (Commissioner) that she is not disabled and therefore not entitled to disability insurance benefits. The matter was referred to a magistrate judge for all pretrial proceedings. Plaintiff and the Commissioner filed cross motions for summary judgment. The magistrate judge issued a report and recommendation (MJRR) recommending that plaintiff's motion be held in abeyance pending a remand and that the Commissioner's motion be denied.

Specifically, the magistrate judge recommends that the matter be remanded for further administrative proceedings under sentence six¹ of 42 U.S.C. § 405(g) so that the Administrative Law Judge (ALJ) can consider new evidence. See MJRR at p. 11-17.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Plaintiff's motion for summary judgment is HELD IN ABEYANCE. The Commissioner's motion for summary judgment is DENIED.

This matter is REMANDED for further administrative proceedings before the ALJ consistent with the MJRR.

¹ "A district court's authority to remand a case for further administrative proceedings is found in 42 U.S.C. § 405(g)." Hollon v. Commissioner, 447 F.3d 477, 482-83 (6th Cir. 2006). The statute permits only two types of remand: a sentence four (post-judgment) remand made in connection with a judgment affirming, modifying, or reversing the Commissioner's decision; and a sentence six (pre-judgment) remand where the court makes no substantive ruling as to the correctness of the Commissioner's decision. Under a sentence six remand, the administrative proceedings can be reopened so that the Commissioner may consider "new and material evidence that for good cause was not previously presented to" the Commissioner. Hollon, 447 F.3d at 483.

To avoid administrative difficulties, the case will administratively closed for statistical purposes. Either party may move to reopen the case upon conclusion of the proceedings before the ALJ.

SO ORDERED.

Dated: 2/17/2019
Detroit, Michigan

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE