

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANTHONY C. COLEMAN,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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Cause No. 4:10 CV 1871 RWS

MEMORANDUM AND ORDER

This matter is before me on a Report and Recommendation to grant Defendant’s Motion to Reverse and Remand and to reverse and remand the Commissioner’s decision pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration of plaintiff’s claims. Plaintiff filed an objection to the Report and Recommendation and Defendant filed a Response to Plaintiff’s objection. Because I find that Defendant’s motion is well taken, I will reverse the decision of the Administrative Law Judge and remand this case pursuant to sentence four of 42 U.S.C. § 405(g).

This matter was referred to United States Magistrate Judge Frederick R. Buckles for a Report and Recommendation pursuant to 28 U.S.C. § 636(b). Judge Buckles issued a Report and Recommendation on January 19, 2011 that recommended that the Commissioner’s Motion to Reverse and Remand be granted. The Commissioner’s motion requested that I reverse and remand the decision of the Administrative Law Judge (“ALJ”) pursuant to sentence four of section 205(g), 42 U.S.C. § 405(g). The Commissioner’s motion indicates that remand is necessary to ensure the Commissioner properly considers Plaintiff’s claims.

Judge Buckles found that the Commissioner's motion is well-taken and that Plaintiff's arguments are most appropriate for presentation to the Social Security Administration upon remand and/or during rehearing. Plaintiff filed an Objection to Judge Buckles' Report and Recommendation on January 19, 2011 on the basis that Plaintiff would not consent to the remand of his case unless the ALJ's decision would be reviewed in its entirety.

The Commissioner filed a Response to Plaintiff's Objection. Defendant indicates that upon my remand order, the Appeals Counsel will vacate the ALJ's decision and remand this case to the ALJ with instructions to consolidate this claim with Plaintiff's currently pending claims for disability insurance benefits and Supplementary Security Income. The Commissioner indicates that once the case is remanded to the ALJ, the ALJ will hold a new administrative hearing and address all issues de novo. Further, if necessary, the ALJ will obtain vocational expert testimony.

"The [district] 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." 42 U.S.C. § 405(g). A district court may remand to the Commissioner with specific instructions. See DiMasse v Barnhart, 88 Fed. Appz. 956, 957-58 (8th Cir. 2004).

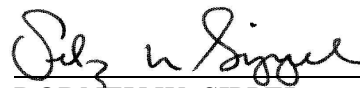
Both parties agree the Commissioner did not properly consider Plaintiff's claims and Plaintiff consents to the reversal and remand of this case if the ALJ will consider Plaintiff's claims de novo in a new hearing. As a result, I will grant Defendant's Motion to Reverse and Remand [#11]. The ALJ's decision is reversed and the case is remanded pursuant to sentence four of 42 U.S.C. § 405(g). The Appeals Counsel is to vacate the ALJ's decision and remand

this case to the ALJ with instructions to consolidate this case with Plaintiff's currently pending claims for disability insurance benefits and Supplementary Security Income. The ALJ shall hold a new administrative hearing and address all issues de novo. If necessary, the ALJ shall obtain vocational expert testimony.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge Buckles is **SUSTAINED, ADOPTED AND INCORPORATED** herein. The Defendant's Motion to Reverse and Remand [#11] is **GRANTED**.

IT IS FURTHER ORDERED that the decision of the Administrative Law Judge is **REVERSED** and the case is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings in accordance with the instructions above.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 7th day of February, 2011.