

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WILLIAM KELLY MESSER II, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MICHAEL J. ASTRUE, Commissioner of )  
 Social Security Administration, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

4:10CV3171

MEMORANDUM AND  
ORDER ON DEFENDANT’S MOTION TO  
STRIKE AND MOTION TO SEAL AND  
MOTION TO REMAND

Before me are the Defendant’s Motion to Strike and Motion to Seal, ECF No. 26, and defendant’s Motion to Remand, ECF No. 24. For the reasons stated in its pleadings, I will grant those motions.

In the plaintiff’s Motion for Extension of Time, ECF No. 22, ¶ 2, the plaintiff says:

“[w]hile working to complete Plaintiff’s Initial Brief, counsel became aware that TR. 628-633, a portion of the physical capacity assessment performed as a part of a post-hearing consultative examination arranged for by the Defendant contains information concerning a claimant other than Plaintiff. Because that information does not relate to Plaintiff, and because present counsel did not represent Plaintiff at the administrative level, the actual evidence considered by the ALJ in this regard is not known to Plaintiff at this time.

In the Defendant’s Motion to Strike and Motion to Seal, ECF No. 26, at ¶1 the defendant says:

Defendant filed Med Records Pt.3 as part of the Social Security Administration Administrative Record on or about March 7, 2011. Med Records Pt. 3 includes a number of medical records, including a medical source statements questionnaire completed by Rajesh Kumar, M.D. In this questionnaire, a different claimant’s name and Social Security Number appears on six pages . . . rather than the Plaintiff’s name and Social Security Number.

In the defendant’s Motion to Remand, ECF No. 24, the defendant requests that this action be remanded “under sentence four of 42 U.S.C. § 405(g).” The reason given is that “the

Administrative Law Judge (ALJ) relied on a medical opinion that may describe someone other than Plaintiff.”

IT THEREFORE IS ORDERED that:

1. the Defendant’s Motion to Strike and Motion to Seal, ECF No. 26, is granted and a portion of the record filed in this case, “Med Records Pt 3 (pp. 501-638), ECF filing 12-2, is hereby stricken from the record. and ECF filing 12-2 shall be sealed;
2. the Motion to Remand, ECF No. 24, is granted pursuant to sentence four of 42 U.S.C. § 405(g), the ALJ’s decision is reversed; and
3. this case is remanded to the Commissioner of the Social Security Administration.

Dated October 17, 2011.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge