

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SARAH ROCKRIVER,)	
)	
Plaintiff,)	
)	
v.)	1:15CV811
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This matter is before the Court on the Commissioner's Motion to Remand to Agency [Doc. #14]. Plaintiff Rockriver has filed a Motion for Judgment on the Pleadings [Doc. #10]. The parties agree that the case should be remanded, but disagree on the language of the Court's remand order. For the reasons set forth below, the Court recommends that the Commissioner's Motion to Remand be granted and that Plaintiff Rockriver's Motion for Judgment on the Pleadings be terminated as moot given that the case will be remanded.

The Commissioner consents to remand of this action under sentence four of 42 U.S.C. § 405(g) for further evaluation of the record and re-evaluation of Plaintiff's claim of disability. Specifically, the Commissioner states that the Appeals Council will refer Plaintiff's case to an ALJ for further proceedings, including but not limited to, evaluating the treatment notes and opinions from Drs. Pettiman and Motyka, holding a new hearing, and issuing a new decision.

Plaintiff responded [Doc. #17] to the Commissioner's Motion to Remand, consenting to remand but urging the Court to adopt a more detailed order than that proposed by the Commissioner. Plaintiff's proposed order includes language instructing the ALJ to reevaluate Plaintiff's residual functional capacity and credibility, including Plaintiff's complaints of fatigue, to provide an appropriate rationale for his decision, and to explain the weight given to all medical opinions including those of Dr. Pittman and Dr. Motyka. Plaintiff's proposed order also contains language stating that “[n]o aspect of the Commissioner's final decision is affirmed.” The Commissioner objects [Doc. #18] to the more detailed language proposed by Plaintiff.

Having considered the parties' contentions, the Court concludes that remand is appropriate on the Commissioner's Motion to Remand, and any of the matters raised by Plaintiff may be further addressed on remand. See 20 C.F.R. § 404.983 (providing that on remand, “[a]ny issues relating to your claim may be considered by the administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in your case.”). Thus, there is no need to resolve or address the additional issues raised by Plaintiff, since all of those issues can be raised and further considered on remand. This Court cannot anticipate now how those issues will be resolved after further consideration on remand, and it would be an inefficient use of the Court's and the Parties' resources to require briefing on issues that may well be addressed differently on remand. Plaintiff will have the opportunity to appeal the Commissioner's decision following the decision on remand if she believes that any errors were not properly addressed in that process.

IT IS THEREFORE RECOMMENDED that the Commissioner's Motion to Remand to Agency [Doc. #14] be GRANTED, that the Commissioner's decision finding no disability be REVERSED, and that the matter be REMANDED to the Commissioner under sentence four of 42 U.S.C. § 405(g). The Commissioner should be directed to remand the matter to the ALJ for further consideration of Plaintiff's claims in light of the above Recommendation. Plaintiff's Motion for Judgment on the Pleadings [Doc. #10] should be TERMINATED as moot.

This, the 12th day of October, 2016.

/s/ Joi Elizabeth Peake
United States Magistrate Judge