

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|   |   |                                  |
|---|---|----------------------------------|
| MELANIE BAILEY,   | ) | CASE NO. 3:08 CV 2866            |
|   | ) |                                  |
| Plaintiff,  | ) |                                  |
|   | ) | JUDGE KATZ                       |
| v.  | ) |                                  |
|   | ) |                                  |
| MICHAEL J. ASTRUE,<br>Commissioner<br>of Social Security, | ) | MAGISTRATE JUDGE McHARGH         |
|   | ) |                                  |
|   | ) |                                  |
| Defendant.  | ) | <b>REPORT AND RECOMMENDATION</b> |

This case is before the Magistrate Judge pursuant to Local Rule. The issue before the undersigned is whether the final decision of the Commissioner of Social Security (“Commissioner”) denying Plaintiff Melanie Bailey’s application for Period of Disability and Disability Insurance benefits under Title II of the Social Security Act, [42 U.S.C. §§416\(i\)](#) and 423 is supported by substantial evidence and, therefore, conclusive.

On October 6, 2009, the parties filed a Joint Stipulation for Remand ([doc. 25](#)), petitioning the Court to enter an order and judgment reversing and remanding this case to the Commissioner for further proceedings pursuant to the fourth sentence of [42 U.S.C. § 405\(g\)](#). A sentence four remand under [42 U.S.C. § 405\(g\)](#) is a remand after a final decision by the Court reversing the denial of benefits by the Secretary in order to correct an error by the Secretary, even if the rehearing to correct the error requires the taking of additional evidence. [Shalala v. Schaefer, 509 U.S. 292, 296-98 \(1993\)](#).

The parties’ Joint Stipulation for Remand reads in relevant part:

The parties agree that this case shall be remanded. On remand, the ALJ will update the medical evidence and determine the claimant's RFC. If a fully favorable decision can be rendered by the ALJ, based upon a review of the updated record without the benefit of additional testimony, then a hearing will not be necessary. Otherwise, the ALJ will conduct a supplemental hearing where Plaintiff will be allowed to present any additional evidence and will be afforded the opportunity to testify. The ALJ will obtain comprehensive testimony from a vocational expert following the directions in SSR 00-4p, properly post the claimant's exact functional limitations to the vocational expert to determine if there are a significant number of jobs that the claimant can perform despite her limitations, and then issue a de novo decision.

([Doc. 25](#), at 1).

Accordingly, the Court recommends that the parties' Joint Stipulation for Remand be GRANTED and that the decision of the Commissioner be reversed and remanded for further proceedings pursuant to sentence four of [42 U.S.C. § 405\(g\)](#).

s/ Kenneth S. McHargh  
Kenneth S. McHargh  
United States Magistrate Judge

Date: October 6, 2009.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Courts within ten (10) days of mailing of this notice. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. See [Thomas v. Arn, 474 U.S. 140 \(1985\)](#); see also [United States v. Walters, 638 F.2d 947 \(6th Cir. 1981\)](#).