

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAVID GUY EVANS,

Case No. 6:16-cv-01692-SB

Plaintiff,

OPINION AND ORDER

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

BECKERMAN, Magistrate Judge.

David Evans (“Evans”) brings this appeal challenging the Commissioner of the Social Security Administration’s (“Commissioner”) denial of his application for expedited reinstatement of his disability insurance benefits. The Court has jurisdiction over this matter pursuant to [42 U.S.C. § 405\(g\)](#). For the reasons that follow, the Court remands this case for further administrative proceedings because the Commissioner’s decision is based on a legal error.

BACKGROUND

In 1979, Evans was awarded child disability benefits because he met the statutory criteria for blindness. (Tr. 22.) In September 1992, the Social Security Administration (“SSA”) determined that Evans continued to meet the criteria for blindness, and therefore approved Evans’ application for reinstatement of his disability insurance benefits under Title II of the Social Security Act. (Tr. 160.)

In 1996, Evans earned a juris doctorate from the University of Oregon School of Law. (Tr. 221.) In 2004, Evans earned roughly \$43,000 while working as an attorney at the law firm of Vincent, Victor, and Evans. (Tr. 162, 221-22.) During 2004, Evans claims that he reduced his hours and took a reduction in pay “due to increasing health problems,” that he informed a representative of the SSA about his deteriorating health and impaired ability to work, and that the SSA representative told him “to continue with [his] benefits until the end of the year in case [he] could not continue working.” (Tr. 222.) Evans stopped practicing law at the end of the year. (Tr. 222.)

In October 2013, Evans opened a medical marijuana dispensary in Eugene, Oregon, called “Emerald City Medicinal” or “E.C. Meds.” (Tr. 200, 222.) Evans served as the sole shareholder of the business and claims to have worked on a part-time basis for no pay. (Tr. 200, 222.) He employed an office manager and “bud tender,” paid independent contractors for business recommendations, and accepted volunteer work. (Tr. 117.) Evans oversaw the business operation and had the final say on personnel decisions and vendor selection. (Tr. 117-18.)

Also in October 2013, the SSA determined that Evans' eligibility for disability benefits "ceased effective October 1, 2004, which was the first month in which [Evans] performed substantial gainful activity . . . after the completion of his trial work period."¹ (Tr. 8.)

In February 2014, Evans applied for reinstatement of his disability benefits and informed the SSA that he was no longer engaged in substantial gainful activity. (Tr. 8, 257.) In August 2014, the SSA issued a letter explaining why Evans was not entitled to reinstatement of his disability benefits. (Tr. 144-47.) The letter provided, in relevant part:

One of the basic factors for disability is that your health problems must keep you from performing any kind of substantial gainful activity. You told us you own and operate Emerald City Medicinal . . . While you report no financial gain from your business, if you were performing the same function for an employer, you would receive a paycheck or salary for your work. Thus, we must determine what your worth of work is. We evaluate all relevant factors of your work activity, such as hours, skills, output, efficiency, duties and responsibilities in determining your work worth.

In your business, you report overseeing the overall operation of the business, and the burden of any issues falls to you. You report work activities in this business to include hiring, firing, choosing the vendors (growers), counseling [customers], and making financial decisions. Your position and duties indicate you are making the management decisions for your business, as well as performing other duties.

State of Oregon occupational guides for Lane County indicate the average hourly pay for a General and Operations Manager is \$41.58, with an average annual salary of \$86,494. You also told us you worked 30 hours per week at the time you filed the [February 2014] application for expedited reinstatement. During a phone call on August 7, 2014, you told us you worked 20 to 25 hours per week. You reported that your conditions cause you difficulty in getting to the office sometimes, but noted that it is sometime[s] easier for you to work at home as you have specialized computer equipment at home. It is reasonable that

¹ A "trial work period" is designed to permit a claimant to test his "ability to work and still be considered disabled." 20 C.F.R. § 404.1592(a).

based on your management responsibilities and other duties, your work hours are closer [to] 30 hours per week. We calculate your work worth based on \$41.58 per hour at 30 hours per week. This equals \$5,405.40 per month. Income related work expenses we deducted from the work value included \$100 per month for your guide dog. The resulting countable income is \$5,305.40. Substantial gainful activity for blind individuals in 2014 is \$1,800 gross per month

(Tr. 144-45.) In March 2015, Evans executed an agreement to sell eighty percent of his interest in E.C. Meds. (Tr. 200.)

On July 20, 2015, Evans appeared and testified at a hearing before an Administrative Law Judge (“ALJ”). (Tr. 236-53.) During the hearing, the ALJ explained that he was concerned only with whether it was appropriate to reinstate Evans’ disability benefits; that Evans’ benefits appeared to have been terminated based, in part, on his ownership interest in, and work on behalf of, E.C. Meds; and that the recent sale of E.C. Meds was “probably going to be sufficient” to find Evans eligible for reinstatement. (Tr. 239-42.) In response, Evans provided the ALJ with a copy of the sales agreement he executed in March 2015, and the ALJ made it part of the record. (Tr. 239-40.) Evans also explained that he worked on a part-time basis for no pay at E.C. Meds, and agreed to have his co-workers submit statements clarifying the nature of their roles. (Tr. 242, 251.)

On July 26, 2015, Sunshine Dulaney (“Dulaney”), the office manager at E.C. Meds, and Laura Gibson (“Gibson”), a volunteer, submitted letters in support of Evans’ application for reinstatement. (Tr. 217-19.) In her letter, Dulaney explained that she has experience caring for individuals with disabilities, agreed to assist Evans with “functions that were beyond his physical abilities,” and was “responsible for all day-to-day operations, functions, and decisions” as the office manager. (Tr. 218.) Specifically, Dulaney stated that she handled cash transactions, balanced the till, obtained “change as needed from the bank,” negotiated “consignment

agreements with medicinal growers,” completed “all necessary paperwork for compliance with the Oregon Health Authority regulations and Oregon Medical Marijuana Programs laws,” assisted customers, served as the receptionist, ran errands, established “office procedures,” and handled “inventory” and “loss control.” (Tr. 218-19.) Dulaney also confirmed that Evans worked “one to three days per week.” (Tr. 218.)

Gibson explained that she had worked for eighteen months as a volunteer and spent “the bulk” of her volunteer work serving as a bookkeeper, but also tracked the daily activity in the dispensary to “ensure compliance with state laws and Oregon Health Authority regulations,” tracked the “activity of individual grower[s] . . . [and] the amounts owed to them for their cosigned products,” maintained a patient database, created a monthly newsletter, loaned money to the dispensary, and procured furniture and supplies for the office. (Tr. 217.) Gibson estimated that she performed approximately forty-two to forty-nine hours of computer work per week, which was “was not something [Evans] could do.” (Tr. 217.) She added that Evans often times left work early due to migraines, and at times “spent the majority of the day on the floor in the back office in the dark because he could not leave [the officer manager] working . . . alone.” (Tr. 217.)

On August 21, 2015, the ALJ issued two decisions: (1) a decision addressing the SSA’s decision that Evans was no longer disabled as of October 1, 2004 (hereinafter, “the disability cessation decision”) (Tr. 20-23, 23A); and (2) a decision addressing Evans’ application for reinstatement of his disability benefits (hereinafter, “the reinstatement decision”). (Tr. 257-59.)

In the disability cessation decision, the ALJ applied the eight-step sequential evaluation process used for determining whether a claimant continues to be disabled. *See 20 C.F.R. § 404.1594(f)(1)-(8).* Under the first step of that process, the ALJ will find “disability to have

ended” if the claimant has engaged in substantial gainful activity and “any applicable trial work period has been completed.” 20 C.F.R. § 404.1594(f)(1). The ALJ determined that Evans’ trial work period had been completed, and that his disability ended on October 1, 2004, “the first month after the completion of the trial work period in which [Evans] engaged in substantial gainful activity.” (Tr. 22-23.) As support for the latter finding, the ALJ observed that Evans’ earnings records cited self-employment income of \$42,490 in 2004, which was “well above the \$16,200.00 threshold for substantial gainful activity for blind individuals in that year.” (Tr. 23.) The ALJ also stated (in error) that Evans’ 2004 earnings were derived from his marijuana business. (Tr. 23.)

In his reinstatement decision, the ALJ addressed whether Evans was engaging in substantial gainful activity and whether Evans’ request for reinstatement was filed within five years “from the month benefits stopped.” (Tr. 258.) The ALJ found that Evans was engaged in substantial gainful activity on February 24, 2014, the day he filed a request for reinstatement of his benefits; Evans executed an agreement to sell his medical marijuana business on March 24, 2015, and thus was no longer engaging in substantial gainful activity as of that date; and Evans’ request for reinstatement was brought within five years of the “agency’s [October 2013] decision to stop benefits.” (Tr. 259.) Based on these findings, the ALJ determined that Evans became eligible for reinstatement on March 24, 2015, the day he stopped engaging in substantial gainful activity.

In letters dated October 14, 2015, Evans sought review of the ALJ’s disability cessation and reinstatement decisions by the SSA’s Appeals Council. (Tr. 220-26.) On April 15, 2016, the Appeals Council granted review of the ALJ’s reinstatement decision. (Tr. 227-30.)

On July 12, 2016, the Appeals Council issued a decision declining to adopt the ALJ's reinstatement decision. The Appeals Council concluded that the ALJ erred in finding that Evans was eligible for reinstatement as of March 24, 2015, because 20 C.F.R. § 404.1592d(d)(1) provides that a request for reinstatement "must be filed within the consecutive [sixty]-month period that begins with the month in which entitlement is terminated due to the performance of [substantial gainful activity].” (Tr. 9.) The Appeals Council went on to explain that: (1) January 2010 was “the last month” in which Evans could have requested reinstatement under 20 C.F.R. § 404.1592d(d)(1), even though the SSA did not terminate his benefits until October 2013; (2) Evans’ request was filed on February 24, 2014, several years after the January 2010 cut-off date; (3) the ALJ should have used January 2010 instead of October 2013 as “the controlling date” for assessing whether Evans’ request was filed within the sixty-month period; and (4) Evans was not eligible for reinstatement in February 2014 because he was engaged in substantial activity at that time (i.e., since Evans’ “countable worth of work operating his business was over the [substantial gainful activity] threshold amounts”) and, therefore, good cause did not exist to excuse Evans’ untimely request for reinstatement of his disability benefits. (Tr. 8-9.)

On August 23, 2016, Evans filed suit in federal court challenging the Appeals Council’s reversal of the ALJ’s reinstatement decision. (See Compl. ¶¶ 1-4, seeking reversal of the Appeals Council’s July 12, 2016 decision, and not addressing any final decision on the disability cessation decision.)

ANALYSIS

I. STANDARD OF REVIEW

The district court may set aside a denial of benefits only if the Commissioner’s findings are “not supported by substantial evidence or [are] based on legal error.” *Bray v. Comm'r Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d

880, 882 (9th Cir. 2006)). Substantial evidence is defined as ““more than a mere scintilla [of evidence] but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”” *Id.* (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

The district court “cannot affirm the Commissioner’s decision ‘simply by isolating a specific quantum of supporting evidence.’” *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001) (quoting *Tackett*, 180 F.3d at 1097). Instead, the district court must consider the entire record, weighing the evidence that both supports and detracts from the Commissioner’s conclusions. *Id.* If the evidence as a whole can support more than one rational interpretation, the district court must uphold the ALJ’s decision; the district court may not substitute its judgment for the judgment of the ALJ. *Bray*, 554 F.3d at 1222 (citing *Massachi v. Astrue*, 486 F.3d 1149, 1152 (9th Cir. 2007)).

II. DISCUSSION

Evans argues that the Commissioner erred by finding that he did not demonstrate “good cause” to excuse his delay in filing his reinstatement application. In support of his argument, Evans notes that the SSA did not terminate his benefits until October 2013, yet the Appeals Council found that Evans’ application for reinstatement of benefits was due by January 2010. Evans correctly points out that it would have been “impossible for [him] to request reinstatement in [January] 2010 because he was receiving benefits at that time.” (*Pl.’s Opening Br.* at 4.)

The Code of Federal Regulations lists the following nonexclusive “[e]xamples of circumstances where good cause *may* exist”:

- (1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.
- (2) There was a death or serious illness in your immediate family.

- (3) Important records were destroyed or damaged by fire or other accidental cause.
- (4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.
- (5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested reconsideration or a hearing, or within 30 days of receiving the explanation you requested Appeal Council review or filed a civil suit.
- (6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit.
- (7) You did not receive notice of the determination or decision.
- (8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.
- (9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

[20 C.F.R. § 404.911\(b\)](#) (emphasis added); *see also* [20 C.F.R. § 404.1592d\(d\)\(1\)](#) (“If we receive your request after the 60–month period we *can* grant you an extension if we determine you had good cause under the standards explained in [§ 404.911](#) for not filing the request timely.”) (emphasis added).

The SSA’s Program Operations Manual System (“POMS”), “an internal agency document used by employees to process claims,” [Carillo-Yeras v. Astrue](#), 671 F.3d 731, 735 (9th Cir. 2011), also states that good cause can excuse an untimely request for reinstatement: “If the reason(s) shows that the individual has good cause for missing the deadline, then an extension of time for requesting [expedited reinstatement] *can* be given.” POMS DI 13050.010A.2, *available*

at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0413050010> (emphasis added). The POMS cites the following example:

An individual files for [expedited reinstatement] in July 2003. The individual's entitlement to [disability insurance benefits] should have terminated in 1997 due to [the performance of substantial gainful activity]. The [agency field office] makes this determination in July 2003. The individual has not engaged in [substantial gainful activity] since 2001. As the individual was not notified that his or her benefits were terminated until July 2003, the [agency] field office establishes good cause for the late filing and processes the [expedited reinstatement] request with a filing date of July 2003.

POMS DI 13050.010A.2.

The Commissioner acknowledges that she may excuse the untimely filing of an application for reinstatement based on a finding of good cause. (Def.'s Br. at 4.) However, the Commissioner argues that a finding of good cause is not mandatory based on the use of the permissive terms "can" and "may" in the POMS and 20 C.F.R §§ 404.911(b) and 404.1592d(d)(1). (Def.'s Br. at 4-5.) The Commissioner also argues that: (1) Evans' reliance on the example provided in POMS DI 13050.010A.2 is unavailing because the POMS "does not impose judicially enforceable duties on either this court or the ALJ," *Carillo-Years*, 671 F.3d at 735 (citation omitted); (2) Evans "could have known that his benefits would cease at the end of 2004" because he was aware of his 2004 earnings and "bore an affirmative responsibility to inform" the SSA of his earnings, but ultimately failed to do so;² and (3) even assuming the Commissioner erred in finding that Evans "was engaged in substantial gainful activity at the time

² The evidence cited by the Commissioner in support of this assertion actually supports that Evans informed the SSA of his earnings in 2004. (See Def.'s Br. at 6, citing Tr. 221-22, "The Social Security Administration's representative was informed of my income of \$3,000/month," but advised Evans to "continue with [his] benefits until the end of the year," in light of his deteriorating health, reduced hours, and potential departure from the legal field.)

he filed for expedited reinstatement,” any error was harmless because the Commissioner “was not required to find good cause to extend Evans’ filing deadline.” (Def.’s Br. at 5-6.)

This appeal boils down to a single question: Is the Appeals Council’s July 12, 2016 determination that Evans lacked good cause for failing timely to file his request for reinstatement based on legal error? In finding an absence of good cause, the Appeals Council relied on the fact that Evans’ “countable worth of work operating his business was over the [substantial gainful activity] threshold amounts.” (See [Tr. 9](#), noting that a claimant is not eligible for reinstatement unless he is “not able to do” substantial gainful activity “in the month of filing,” finding that Evans was engaged in substantial gainful activity in the month of filing based on his countable worth of work, and therefore finding that “good cause for the late filing of the application cannot be found because [Evans] was not eligible for an expedited reinstatement of his benefits”).

The Code of Federal Regulations sets forth three tests to determine whether a self-employed claimant has engaged in substantial gainful activity. The first test (“Test One”) asks whether the claimant rendered “significant services” to, and received “substantial income” from, the operation of a business. [20 C.F.R. § 404.1575\(a\)\(2\)\(i\)](#). The second test (“Test Two” or the “comparability” test) assesses whether the claimant’s “work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals” in the claimant’s “community who are in the same or similar businesses as their means of livelihood.” [Id. § 404.1575\(a\)\(2\)\(ii\)](#). The third test (“Test Three” or the “worth of work” test) assesses the claimant’s “work activity” by, *inter alia*, comparing it “to the salary that an owner would pay to an employee to do the work [the claimant is] doing.” [Id. § 404.1575\(a\)\(2\)\(iii\)](#).

The Appeals Council relied on Test Three/the “worth of work” test in finding that Evans was engaged in substantial gainful activity at the time he filed his request for reinstatement. However, Social Security Ruling (“SSR”) 83-34, which “clarifie[s]” 20 C.F.R. § 404.1575, *Young v. Barnhart*, 415 F. Supp. 2d 823, 827 (M.D. Tenn. 2006), states that “[t]he self-employment activity of blind persons in 1978 or later . . . should not be evaluated in terms of the tests of comparability and worth of work[.]” SSR 83-84, 1983 WL 31256, at *10; *see also Young*, 415 F. Supp. 2d at 827 (noting that SSR 83-84 is referring to “Tests Two and Three from § 404.1575(a)”).

In his opening brief, Evans cited SSR 83-84 in support of his argument that “a blind person’s ‘worth of work’ cannot, by law, be counted” as substantial gainful activity where the claimant’s “earnings fall below the threshold” amount for blind individuals. (Pl.’s Opening Br. at 9.) The Commissioner does not dispute the merits of this assertion. Instead, the Commissioner argues that the Appeals Council’s reliance on the worth of work test constituted harmless error “because the agency was not required to find good cause to extend Evans’ filing deadline.” (Def.’s Br. at 6 n.3.) In other words, the Commissioner argues that any error was harmless because the Appeals Council would have reached the same result based on the use of the permissive terms “can” and “may” in the POMS and 20 C.F.R. §§ 404.911(b) and 404.1592d(d)(1).

The Court is not persuaded by the Commissioner’s argument. Nowhere in its decision did the Appeals Council state that it was denying Evans’ request for reinstatement simply because it could. That is significant because, in reviewing an agency action, this Court is constrained to review only the reasons the *agency* gave for its decision, not the *post hoc* justifications advanced on appeal. See *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (stating that a reviewing court

may not affirm an agency ruling for reasons not articulated by the agency). Absent a more persuasive argument to the contrary, the Court finds that the Commissioner committed legal error in denying Evans' request for reinstatement, because SSR 83-84 states that the self-employment activity of a blind individual should not be evaluated under the worth of work test. *See also Holohan*, 246 F.3d at 1202 n.1 (“SSRs do not have the force of law. However, because they represent the Commissioner’s interpretation of the agency’s regulations, we give them some deference.” (citing *Bunnell v. Sullivan*, 947 F.2d 341, 346 n.3 (9th Cir. 1991))).

Furthermore, although the Appeals Council is not required to find that good cause exists, it must at least address facially legitimate reasons that may constitute good cause under its own regulations. *See Dexter v. Colvin*, 731 F.3d 977, 981-82 (9th Cir. 2013) (“[I]f a claimant provides a facially legitimate reason that constitutes ‘good cause’ under the Commissioner’s regulations, *see* 20 C.F.R. § 404.911(b), then due process requires that the [agency] address it.”) (footnote omitted). As a result of the error discussed above, the Appeals Council did not address Evans’ assertions that: (1) his untimely filing was due to bad advice from an SSA agent (*see* Tr. 221-22, noting that Evans wanted to present evidence regarding his conversation with an agent of the SSA, and arguing that he should not be penalized for his “detrimental reliance on the agent’s advice, or any lack of action on his part” after being informed of Evans’ earnings); and (2) his case is no different than the text book example of good cause set forth in SSA’s own guidance (POMS DI 13050.010A.2). (Tr. 233.) On this record, these appear to be legitimate reasons that should constitute good cause under SSA’s applicable regulations. *See* 20 C.F.R. § 404.911(b) (setting forth a *nonexclusive* list of “[e]xamples of circumstances where good cause may exist,” including when “[u]nusual or unavoidable circumstances exists . . . which prevented you from filing timely”); POMS DI 13050.010A.2 (setting forth an example of good cause that appears

directly applicable to Evans’ current situation); *see also Ellis v. Apfel*, 147 F.3d 139, 142 n.3 (2d Cir. 1998) (“Although the POMS has no legal, binding effect, it is the authorized means for issuing official SSA policy and operating instructions regarding the agency’s interpretation of regulations.”).

Having determined that the Commissioner’s decision is based on legal error, the next issue to address is whether the Court should remand this action for benefits or further proceedings. “Although a court should generally remand to the agency for additional investigation or explanation, a court has discretion to remand for immediate payment of benefits.” *Anderson v. Colvin*, 223 F. Supp. 3d 1108, 1131 (D. Or. 2016) (citing *Treichler v. Comm’r Soc. Sec. Admin.*, 775 F.3d 1090, 1099-1100 (9th Cir. 2014)). “The issue turns on the utility of further proceedings.” *Id.* As explained below, further proceedings are necessary here.

The Appeals Council denied Evans’ request for reinstatement based solely on the fact that his worth of work amounted to substantial gainful activity in the month of filing and, therefore, rendered Evans ineligible for reinstatement. The Appeals Council never addressed Evans’ reasons why good cause exists to excuse his untimely request. This Court declines to make its own independent findings on issues not addressed in a final agency determination. *See Cummings v. Colvin*, No. 9:15-cv-00030, 2016 WL 1399665, at *9 (D.S.C. Mar. 8, 2016) (explaining that a district court “cannot on appellate review make *de novo* findings of fact on issues not addressed [in a final decision]” (citing, *inter alia*, *Bray*, 554 F.3d at 1225)). Accordingly, the Court finds that further administrative proceedings are necessary here, both to

determine: (i) if good cause existed to excuse Evans’ untimely reinstatement application; and (ii) if so, in what month Evans became eligible for reinstatement.³

The final issue to address is Evans’ request that this Court make “a judicial finding that the record shows he has not earned over the [substantial gainful activity] threshold amounts since 2004, so that he may apply to the Commissioner for a waiver of his overpayment debt.” (Pl.’s [Opening Br. at 15](#).) The SSA makes “initial determinations,” which are then “subject to administrative and judicial review.” [20 C.F.R § 404.902](#). Such determinations include whether there has been an overpayment of benefits and whether the overpayment must be repaid to the agency. *Id.* [§ 404.902\(j\)-\(k\)](#). Before an initial determination is ripe for federal court review, a claimant must complete an administrative review process. *Id.* [§ 404.900\(a\)\(5\)](#). In this case, the agency has not made an initial determination about whether there has been an overpayment or whether it must be repaid. (See [Def.’s Br. at 11](#), “The record does not show even an initial determination of overpayment, let alone a final decision, nor does Evans claim to have one.”). Accordingly, the Court declines Evans’ request to weigh-in on an issue that is not ripe for review.

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³ The Commissioner argues that further proceedings are also necessary because “[t]he record shows [Evans] had not filed any tax returns for [his] business.” ([Def.’s Br. at 6](#), citing [Tr. 122](#).) The Commissioner claims that “[w]ithout this information and only [Evans’] bare assertions to go on, the agency cannot ensure Evans met the requirements for expedited reinstatement.” ([Def.’s Br. at 6-7](#).) In response, Evans claims that the Commissioner has failed to “point to any requirement that applicants must file tax returns, nor to any reason to believe his tax returns would provide useful information given the record as it stands[.]” ([Pl.’s Reply Br. at 8](#).) The Court concludes that it need not address this issue in light of the disposition set forth above.

CONCLUSION

For the reasons stated, the Court remands this case for further proceedings because the Commissioner's decision is based on legal error.

IT IS SO ORDERED.

DATED this 31st day of July, 2017.



STACIE F. BECKERMAN
United States Magistrate Judge