



Plaintiff, *inter alia*, argues that the ALJ was an unconstitutionally appointed officer, pursuant to *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018).<sup>2</sup> In *Lucia*, the Supreme Court held that ALJs of the Securities and Exchange Commission must be appointed by the President, a court of law, or the Department head. *Lucia*, 138 S. Ct. at 2053. In *Cirko*, our Court of Appeals determined that a Social Security claimant is not required to exhaust her administrative remedies before raising an appointments clause issue with the District Court. *Cirko*, 948 F. 3d at 152, 155. Presently, Defendant has filed a Status Report, stating that it will not seek Supreme Court review of *Cirko*, and disavowing an argument that *Cirko* is inapplicable here. (ECF No. 15, ¶3). Pursuant to *Lucia* and *Cirko*, the Court concludes that Plaintiff is entitled to have all claims adjudicated by a constitutionally appointed ALJ other than the ALJ who presided over the prior hearing. See *id.* at 159-60; *Bauer v. Saul*, No. 19-2563, 2020 WL 1955595, at \*2 (E.D. Pa. Apr. 23, 2020). Consequently, remand is warranted.<sup>3</sup>

An appropriate order shall follow.

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<sup>2</sup> Following *Lucia*, on July 16, 2018, the Acting Commissioner of Social Security appointed Defendant's ALJs in accordance with the Appointments Clause, United States Constitution Art. II, § 2, cl. 2. This action had no retroactive effect. *Flynn v. Saul*, No. 19-0058, 2020 WL 509164, at \*2 (E.D. Pa. Jan. 30, 2020).

<sup>3</sup> Additionally, Plaintiff asserts that the ALJ's residual functional capacity (RFC) determination is unsupported by substantial evidence because "there is no medical assessment of Plaintiff's physical or mental limitations." (ECF No. 11, p. 6). Thus, Plaintiff submits "there is no assessment of Plaintiff's limitations despite significant treatment and objective findings." (ECF No. 11, p. 9). Therefore, Plaintiff argues, remand is necessary. I need not address this issue, as the hearing on remand will be conducted *de novo*. See, e.g., *Bauer*, 2020 U.S. Dist. LEXIS 72011, at \*4. Nonetheless, for clarity, I note that "[r]arely can a decision be made regarding a claimant's [RFC] without an assessment from a physician regarding the functional abilities of the claimant." *Gormont v. Astrue*, No. 11-2145, 2013 WL 791455 at \*7 (M.D. Pa. Mar. 4, 2013), citing *Doak v. Heckler*, 790 F.2d 26 (3d Cir. 1986). While this is not a requirement, the ALJ must support his/her determination with substantial evidence.

