

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ANNE MARIE DANDREA,

Plaintiff,

v.

Case No: 6:17-cv-1614-Orl-41TBS

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

REPORT AND RECOMMENDATION

This matter comes before the Court on Defendant, the Commissioner of Social Security's Unopposed Motion for Entry of Judgment with Reversal and Remand (Doc. 17). The Commissioner requests that this case be remanded pursuant to sentence four of 42 U.S.C. § 405(g) so she can take further administrative action. She advises that,

Upon remand, the Administrative Law Judge will consider the period at issue beginning on February 26, 2008; if necessary, consider the hearing decision dated May 11, 2012, in the claimant's subsequent claim filed on January 21, 2011, consistent with the applicable reopening regulations; ensure that all relevant evidence from the claimant's subsequent claims is consolidated with the present claim record; and issue a new decision on the consolidated claims. Additionally, the decision on remand will not consider the period after the established onset date of disability of March 1, 2016.

(Id. at 1). The Commissioner represents that Plaintiff's attorney has been contacted and has no objection to the requested relief (Id. at 2).

Under Title 42, United States Code, Section 405(g) the Court is empowered to reverse the decision of the Commissioner with or without remanding the case for a rehearing. Shalala v. Schaefer, 509 U.S. 292 (1993). If the case is remanded pursuant to

sentence-four of the statute, the administrative law judge must review the complete case record, including any new material evidence. Diorio v. Heckler, 721 F.2d 726, 729 (11th Cir. 1983) (finding that it was necessary for the ALJ on remand to consider psychiatric report tendered to Appeals Council); Reeves v. Heckler, 734 F.2d 519, 522 n.1 (11th Cir. 1984) (holding that the ALJ should consider on remand the need for an orthopedic evaluation).

Upon due consideration, I agree with the parties that it is appropriate to remand this matter. Accordingly, I **RESPECTFULLY RECOMMEND** that:

(1) The Commissioner's Unopposed Motion for Entry of Judgment with Reversal and Remand (Doc. 17) be **granted**.

(2) This action be **reversed and remanded** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).

(3) The Clerk be directed to **enter judgment** accordingly, **terminate** any pending motions, and **close** the file.

(4) The deadline to file a motion for attorney's fees pursuant to 42 U.S.C. § 406(b) be set thirty (30) days after Plaintiff receives notice from the Commissioner of the amount of past due benefits (if any), awarded. Upon receipt of the notice, counsel for Plaintiff shall promptly email Mr. Rudy and the OGC attorney who prepared the Government's brief to advise that the notice has been received.

Notice to Parties

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual

finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

RESPECTFULLY RECOMMENDED at Orlando, Florida on May 16, 2018.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Presiding United States District Judge
Counsel of Record
Any Unrepresented Parties