

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RAYMOND COREY GREEN,

Plaintiff,

v.

Case No: 6:18-cv-1095-Orl-41GJK

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant's Opposed Motion for Entry of Judgment with Remand (Doc. 17). United States Magistrate Judge Gregory J. Kelly issued a Report and Recommendation (Doc. 19), recommending that the Motion be granted in part and the case be reversed and remanded to the Commissioner for calculation and payment of past-due benefits. Judge Kelly found that Plaintiff suffered an injustice, through no fault of his own, as a result of his eleven-year-long attempt to obtain a determination as to his application for social security disability benefits. (*Id.* at 7).

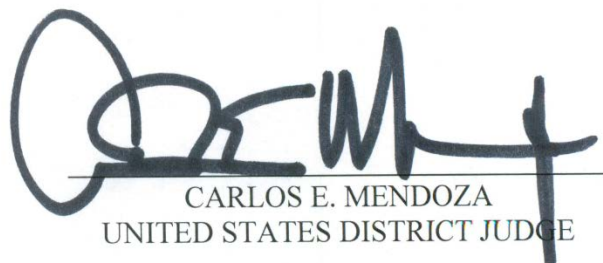
Defendant filed an Objection to the Report and Recommendation (Doc. 20). Therein, Defendant argues that the Court cannot reverse and remand the case for the immediate payment of benefits where Plaintiff's disability has not been established beyond a doubt. (*Id.* at 1–3). However, a court may reverse for an award of benefits where the claimant has suffered an injustice. *See Walden v. Schweiker*, 672 F.2d 835, 840 (11th Cir. 1982). Although Defendant makes much of the fact that the Eleventh Circuit has not held that delay suffices as an injustice, several district courts have reached that very conclusion. *See e.g., Rainey v. Comm'r of Soc. Sec.*, No. 5:17-cv-541-Oc-PRL, 2018 WL 3830069, at *3 (M.D. Fla. Aug. 13, 2018) (ten year delay); *Kelly v. Acting Comm'r*

of Soc. Sec. Admin., No. 6:16-cv-1149-Orl-40MCR, 2017 WL 9362907, at *4 (M.D. Fla. May 4, 2017), *report and recommendation adopted sub nom.*, *Kelly v. Comm'r of Soc. Sec.*, 2017 WL 2628099 (M.D. Fla. June 19, 2017) (nine year delay); *Goodrich v. Comm'r of Soc. Sec.*, No. 6:10-cv-1818-Orl-28DAB, 2012 WL 750291, at *13–14 (M.D. Fla. Feb. 7, 2012), *report and recommendation adopted*, 2012 WL 760874 (M.D. Fla. Mar. 8, 2012) (ten year delay). The Court agrees and finds that Plaintiff has clearly suffered an injustice in this case. Over the eleven-year history of this litigation, Plaintiff has slogged through three administrative hearings, three appeals, and two remands waiting for a resolution. Plaintiff shall wait no further.

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 19) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Defendant's Opposed Motion for Entry of Judgment with Remand (Doc. 17) is **GRANTED in part**.
3. The Commissioner's decision in this case is **REVERSED** pursuant to sentence four of 42 U.S.C. § 405(g), and this case is **REMANDED** to the Commissioner for the calculation and payment of past-due benefits to Plaintiff from June 30, 2005, in accordance with the Social Security Act.
4. The Clerk is directed to enter judgment accordingly and close this case.

DONE and **ORDERED** in Orlando, Florida on April 17, 2019.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record