

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEBORAH LYNN BITTNER,

Plaintiff,

v.

Case No. 8:23-cv-2550-CPT

MARTIN O'MALLEY,
Commissioner of the
Social Security Administration,¹

Defendant.

_____ /

ORDER

Before the Court is Defendant Commissioner's amended unopposed motion to remand this action pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. 26).²

According to the Commissioner, such a remand is necessary so:

the Appeals Council [can] instruct the Administrative Law Judge . . . to further develop the record, including obtaining evidence from a medical expert, if available; further evaluate the [Plaintiff's] residual functional capacity; obtain evidence from a vocational expert; offer [the] Plaintiff the opportunity for a hearing; and issue a new decision.

Id.

¹ Mr. O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Federal Rule of Civil Procedure 25(d), Mr. O'Malley is substituted for the former Acting Commissioner, Kilolo Kijakazi, as the Defendant in this suit.


² The Plaintiff opposed the Commissioner's original request for a remand because it did not include the opportunity for a hearing before the Social Security Administration (SSA), which the Commissioner has now agreed to allow. (Doc. 26 at 2-3).

Sentence four of section 405(g) provides that a “court shall have [the] power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner . . . with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). In a sentence four remand, the appropriate procedure is for a court to enter a final judgment in the claimant’s favor. *Shalala v. Schaefer*, 509 U.S. 292, 296–97 (1993); *Jackson v. Chater*, 99 F.3d 1086, 1095 (11th Cir. 1996).

In light of the above, it is hereby ORDERED:

1. The Commissioner’s amended motion (Doc. 26) is granted.
2. The Commissioner’s decision is reversed, and the case is remanded for further proceedings before the SSA consistent with this Order.
3. The Clerk of Court is directed to enter Judgment in the Plaintiff’s favor, to terminate any pending motions, and to close the case.

SO ORDERED in Tampa, Florida, this 23rd day of April 2024.


HONORABLE CHRISTOPHER P. TUIITE
United States Magistrate Judge

Copies to:
Counsel of record