



McEnteer v. Commissioner of Social Security

2015 | Cited 0 times | M.D. Florida | December 14, 2015

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION ANTHONY MCENTEER, Plaintiff, v. Case No: 2:15-cv-288-FtM-CM
COMMISSIONER OF SOCIAL SECURITY, Defendant.

ORDER This matter comes before the Court upon review of the Opposed Motion for Entry of Judgment with Remand filed by Defendant Commissioner of Social Security (“Commissioner”) on December 2, 2015. Doc. 19. Defendant requests that the Court remand this case to the Commissioner for further administrative proceedings for the following reasons:

For further evaluation of Plaintiff’s mental impairments, to obtain an updated psychological consultative examination, to consider the need for medical expert evidence, as warranted, and to take any other action as deemed necessary. Doc. 19 at 1.

Although Plaintiff does not oppose the Court remanding the case to the Commissioner nor the substantive reasons and directions proposed by Defendant, Plaintiff seeks additional grounds for remand. Doc. 20 at 2. Specifically Plaintiff requests that the Court remand the case to an administrative law judge (“ALJ”) other than ALJ Larry Butler, as ALJ Butler is subject to ongoing disciplinary proceedings by the Commissioner, some of which allegations concern cases in which Plaintiff’s counsel was involved. *Id.*, see also Doc. 16 at 15-16.

Pursuant to Title 42, United States Code, Section 405(g), the Court may reverse the decision of the Commissioner with or without remanding the case for a rehearing. Upon due consideration, Defendant’s motion will be granted in part. The decision of the Commissioner will be reversed, and the case will be remanded to the Commissioner for rehearing for the reasons stated in the Commissioner’s brief and with which Plaintiff agrees. In addition, in order to avoid any appearance or risk of actual bias or prejudice, the case should be reheard by a different ALJ. See *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

ACCORDINGLY, it is hereby ORDERED: 1. Defendant’s Motion for Entry of Judgment with Remand (Doc. 26) is GRANTED IN PART.

2. The decision of the Commissioner is REVERSED and this action is REMANDED under sentence four of 42 U.S.C. § 405(g) to the Commissioner for the Commissioner to:



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a. Re-evaluate Plaintiff's mental impairments; b. Obtain an updated psychological consultative examination; c. Consider the need for medical expert evidence, as warranted; and d. Take any other action as deemed necessary. 3. The Commissioner shall re-assign the case for rehearing to an Administrative Law Judge other than Administrative Law Judge Larry Butler.

4. The Clerk shall enter judgment accordingly and close the file. DONE and ORDERED in Fort Myers, Florida on this 14th day of December, 2015.

Copies: Counsel of record

