

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANNETTE NELSON,)
)
Plaintiff,)
)
vs.) Case No. 07-1191-WEB
)
MICHAEL J. ASTRUE,)
Commissioner of)
Social Security,)
)
Defendant.)
_____)

RECOMMENDATION AND REPORT AND ORDER

This is an action reviewing the final decision of the Commissioner of Social Security denying the plaintiff disability insurance benefits and supplemental security income payments. On November 26, 2007, plaintiff sought an extension of time because of missing evidence in the transcript (Doc. 7). That motion was granted (Doc. 8). On December 14, 2007, defendant filed a motion for return and replacement of pages 280-282 of the certified transcript and a motion to reverse and remand for further hearing (Doc. 9-10). The motion indicates that counsel for the plaintiff has been contacted concerning the filing of this motion and has no objection to the relief requested in the motion. Therefore, the motion will be treated as an uncontested motion.

In their motion to reverse and remand for further hearing, the defendant stated the following:

5. The Appeals Council found that the August 2006 hearing tape was blank. The Appeals Council has agreed voluntarily to remand Plaintiff's case. Plaintiff will have the opportunity to have a new hearing and to provide additional evidence.

6. Upon remand, the ALJ will also be directed to reevaluate Plaintiff's headaches and alleged mental impairments and clearly indicate whether Plaintiff's headaches cause any functional limitation. The ALJ will address the opinion of consulting psychologist ElDean V. Kohrs, Ph.D., that Plaintiff has borderline functioning and his Global Assessment of Functioning (GAF) scale score of 50 which is indicative of a severe mental impairment. If warranted and available, the ALJ will obtain consultative evaluations of any physical and/or mental limitations, with assessments of functional capabilities and limitations; obtain supplemental medical expert evidence to clarify the nature and severity of Plaintiff's impairments; and further consider Plaintiff's maximum residual functional capacity (RFC). If the RFC precludes all relevant past work, the ALJ will obtain, if warranted, evidence from a vocational expert to clarify the effects of Plaintiff's impairments on the occupational base and whether other work is available.

(Doc. 10 at 2). The court finds that defendant has shown good cause for remanding the case for further hearing, and plaintiff has indicated that she has no objection to the motion.

Therefore, the court will recommend that this case be remanded in accordance with defendant's motion to remand.

Defendant's motion also raised a second issue regarding the

erroneous inclusion in this record of medical records regarding a person other than the plaintiff:

7. Agency counsel's review of the certified transcript revealed a separate issue. Pages 280-282 of the certified record are documents containing medical information regarding a person other than Plaintiff Annette Nelson and were inadvertently submitted in error with Plaintiff's certified record.

8. To ensure protection of the privacy interests of Social Security claimants, existing pages 280-282 of the record and all copies should be replaced with blank pages numbered 280-282. Further, existing pages 280-282 should be removed from the original and all copies of the record and returned to the undersigned counsel for submission to the Defendant for proper destruction and record of destruction. Upon order of the Court, Defendant will submit a supplemental certified record with blank pages 280-282, with a revised Index to the Record, to the Court and counsel for the Plaintiff.

(Doc. 10 at 2-3). The court finds that good cause has been shown to grant the relief requested by the plaintiff.

IT IS THEREFORE RECOMMENDED that defendant's motion (Doc. 9-10) be granted, that the decision of the Commissioner be reversed, and that the case be remanded for further proceedings (sentence four remand) for the reasons set forth above.

IT IS THEREFORE ORDERED that pages 280-282 of the social security administrative record filed in this case should be removed from the original record, and all copies, and replaced with blank pages numbered 280-282. These pages, once removed, shall be returned to counsel of record for the defendant for

their destruction.

IT IS FURTHER ORDERED that counsel for defendant will submit a revised index to the administrative record to the court and counsel for the plaintiff reflecting that pages 280-282 have been removed from the administrative record.

Copies of this order and recommendation and report shall be provided to counsel of record for the parties. Plaintiff has been contacted regarding the filing of this motion and has no objection to the relief requested.

Dated at Wichita, Kansas, on December 18, 2007.

s/John Thomas Reid
JOHN THOMAS REID
United States Magistrate Judge