

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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HENRIETTA SORRELLS, for
DERRICK SORRELLS (CHILD)

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vs.

SHIRLEY S. CHATER, Commissioner
of Social Security

NO. A 94 CA 623 SS

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ORDER

Before the Court is the plaintiff's motion for summary judgment [#16], the plaintiff's motion for remand pursuant to sentence four of 42 U.S.C. § 405(g) [#17], and the defendant's motion for remand pursuant to sentence six of 42 U.S.C. § 405(g) [#22]. In this cause, the plaintiff seeks review of a final decision of the Secretary of Health and Human Services pursuant to § 205 of the Social Security Act, 42 U.S.C. § 405(g). All matters in this case were referred to the Honorable Alan Albright, United States Magistrate Judge, for resolution or report and recommendation pursuant to 28 U.S.C. § 636(b) and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges, effective January 1, 1994, as subsequently amended. On April 18, 1995, the Magistrate Judge issued his recommendation that this case be remanded to the Secretary of Health and Human Services for further proceedings in accordance with sentence four of 42 U.S.C. § 405(g). Neither party has filed objections to the Magistrate Judge's report and recommendation. The Court, having reviewed the file, concurs with the Magistrate Judge's recommendation.

The plaintiff child applied for Supplemental Social Security Income on January 15, 1992. His

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claim was denied. His request for reconsideration of the denial was rejected on August 12, 1992. He subsequently requested an administrative hearing on his claim, which was held on April 8, 1993. The ALJ issued his decision on April 14, 1994, denying the claim because the plaintiff child's impairments were not of comparable severity to those that would disable an adult. The plaintiff child has undergone two consultative psychological examinations as part of the application process, the most recent in November 1993 at the request of the ALJ. The Appeals Council denied the plaintiff's request for review of the ALJ's decision on August 5, 1994, and the ALJ's decision became the final decision of the Secretary.

The plaintiff has moved for summary judgment or, alternatively, remand, contending that the ALJ's findings that the plaintiff child is not disabled as defined by the Social Security Act is not supported by substantial evidence and is based on application of incorrect legal standards. Specifically, the plaintiff contends the ALJ erred because substantial evidence exists in the record to find the plaintiff child is at least moderately limited in three domains and did have a combination of impairments that were of comparable severity to those that would disable an adult. The plaintiff asserts, in the alternative, that the arguments raised by the summary judgment motion establish good cause for a sentence-four remand. The defendant did not file a response to the plaintiff's motion for summary judgment but filed a motion asserting that good cause exists for a sentence-six remand to obtain additional expert testimony to clarify the nature and severity of the plaintiff's impairments.

The Supreme Court summarized the two types of remand as follows:

Under sentence four, a district court may remand in conjunction with a judgment affirming, modifying or reversing the Secretary's decision. Under sentence six, the district court may remand in light of additional evidence without making any substantive ruling as to the correctness of the Secretary's decision, *but only if the claimant shows good cause for failing to present the evidence early.*

Melkonyan v. Sullivan, 501 U.S. 89, 99-100 (1991) (emphasis added).¹ In this cause, the Secretary has made no showing of good cause for the failure to obtain additional medical expert testimony regarding the plaintiff child's impairments during the more than two years the claim was before the Social Security Administration. The Court, therefore, finds a section-six remand inappropriate in this cause.

The ALJ made the following findings with regard to the relevant domains of the plaintiff child's individualized functional assessment: 1) there was no evidence of limitation of cognitive development; 2) there was no evidence of limitation of communicative development; 3) there was a moderate limitation on motor development; 4) there was a less than moderate limitation on social development; 5) there was a less than moderate limitation on personal and behavioral development; and 6) there was a moderate limitation on concentration, persistence, and pace. The Court finds no consistency in the ALJ's application of the standard determining the degree of limitation for each area and, indeed, wonders if the ALJ reviewed the same record as that before the Court. For example, there is evidence in the record before the Court of some limitation of communicative development. Although the degree of the limitation may be insufficient to reach the moderate standard, the statement that no evidence existed in the record is incorrect. (See AISD assessment report, Transcript at 166). The most glaring discrepancy in the ALJ's findings, however, stems from his analysis of personal and behavioral development and motor skills. The picture a reasonable person draws from this record is that of an emotionally disturbed child exhibiting significant behavioral problems at schools and inappropriate behaviors. (See Transcript at 168, 180). The ALJ found,

¹ Under sentence six, a remand may also be ordered when the Secretary requests the remand before answering the complaint, a circumstance not present in this cause. See *Shalala v. Schaefer*, 113 S. Ct. 2625, 2629 n.2 (1993).

however, a less than moderate limitation in this area. Yet, in the area of motor development, the ALJ found moderate limitation despite significantly less evidence (and less compelling evidence) than that indicative of behavioral limitations. While giving due deference to the congressional intent of the Social Security Act, the Court cannot conscientiously find the evidence supported the ALJ's application of the legal standards and findings.

The Court, however, cannot grant summary judgment as the plaintiff requests. Although the Court does not believe the ALJ reached a reasonable decision under the facts presented in this record, genuine issues of material fact remain as to the magnitude of limitations in the respective areas. Nonetheless, the Court finds the plaintiff has established good cause for remanding this cause under sentence four.

Therefore, IT IS ORDERED that the Report and Recommendation of the United States Magistrate Judge [#24] is ADOPTED;

IT IS ORDERED that Defendant's Motion for Remand [#22] is DENIED;

IT IS ORDERED that the Plaintiff's Motion for Summary Judgment [#16] is DENIED;

IT IS ORDERED that the Plaintiff's Motion to Remand [#17] is GRANTED; and

IT IS FURTHER ORDERED that this matter is REMANDED to the Secretary of Health and Human Services pursuant to sentence four of 42 U.S.C. § 405(g) for a new hearing and reconsideration under the proper legal standards.

SIGNED this 26th day of May 1995.


UNITED STATES DISTRICT JUDGE