

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL H. LEE,

Plaintiff,

v.

NANCY BERRYHILL,

Defendant.¹

ORDER

16-cv-365-bbc

Plaintiff Michael Lee filed this case under 42 U.S.C. § 405(g), seeking review of a final administrative decision denying his request for Social Security benefits. After plaintiff filed his motion for summary judgment, dkt. #11, the commissioner agreed to remand the case to the administrative law judge for a new decision, dkt. #13. Believing that the commissioner's motion to remand was unopposed, I granted the motion and directed the clerk of court to enter judgment. Dkt. #14.

Now plaintiff has moved to amend the judgment to direct the administrative law judge to award benefits. Dkt. #16. In the alternative, plaintiff asks that the court give more specific instructions regarding the proceedings that should occur after remand.

I am denying plaintiff's request to award benefits. Plaintiff says that he is entitled to an award because the case has been appealed to the district court three times and has been

¹ I have amended the caption in accordance with Fed. R. Civ. P. 25(d).

pending for 11 years. He cites Wilder v. Apfel, 153 F.3d 799, 802–04 (7th Cir. 1998), for the proposition that “the Commissioner is not entitled to endless opportunities to get it right, and a court may step in and award benefits when the agency has displayed ‘obduracy’ in complying with the law of the case.” Dkt. #16 at 2.

Plaintiff’s view of the law is outdated. In Briscoe ex rel. Taylor v. Barnhart, 425 F.3d 345, 356 (7th Cir. 2005), the court stated that “Wilder did not hold . . . that obduracy alone could ever warrant an award of benefits.” Rather, “an award of benefits is appropriate only if all factual issues have been resolved and the record supports a finding of disability.” Id. The court reaffirmed this holding in Allord v. Astrue, 631 F.3d 411, 417 (7th Cir. 2011), and again in Israel v. Colvin, 840 F.3d 432, 441 (7th Cir. 2016). Despite the commissioner’s citation to Israel in its response brief, plaintiff simply ignores the circuit rule in his reply brief and asks this court to follow cases from other circuits, something I obviously cannot do. Because plaintiff made no effort to show in his summary judgment brief or his motion to amend the judgment that an award of benefits is required by the evidence, he is not entitled to that relief at this time.

The commissioner does not oppose plaintiff’s alternative request to direct the administrative law judge “to give further consideration to opinion evidence, consider Plaintiff’s obesity, further evaluate Plaintiff’s subjective complaints and give further consideration to Plaintiff’s maximum RFC.” Dkt. #16 at 3; dkt. #17 at 2. I will grant that request. Further, as the court did in Israel, 840 F.3d at 442, I “strongly encourage the Agency to expedite the proceedings in order to resolve [plaintiff’s] claims once and for all.”

ORDER

IT IS ORDERED that plaintiff Michael Lee's motion to amend the judgement, dkt. #16, is GRANTED IN PART. The clerk of court is directed to AMEND the judgment to include the following language: "The administrative law judge is directed to give further consideration to the opinion evidence in the record, consider the effect of plaintiff's obesity on his ability to work, further evaluate plaintiff's subjective complaints and give further consideration to plaintiff's maximum residual functional capacity." Plaintiff's request for an award of benefits is DENIED.

Entered this 9th day of February, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge