

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHELLE MORGAN,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	No. 11-2326-JWL
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Plaintiff seeks review of a decision of the Commissioner of Social Security (hereinafter Commissioner) denying disability insurance benefits (DIB) and supplemental security income (SSI) under sections 216(i), 223, 1602, and 1614(a)(3)(A) of the Social Security Act. 42 U.S.C. §§ 416(i), 423, 1381a, and 1382c(a)(3)(A) (hereinafter the Act). Plaintiff filed her Social Security Brief on September 9, 2011, asserting that the ALJ committed five errors in the decision, and seeking reversal of the Commissioner's decision and remand for further proceedings. (Doc. 7) (hereinafter Pl. Br.). The Commissioner did not file a responsive brief, but on October 6, 2011 filed a "Motion to Remand and for Entry of Final Judgment" accompanied by a "Memorandum in Support." (Docs. 8, 9) (hereinafter Comm'r Mot., Comm'r Mem.). The time for response has since

passed, and Plaintiff has not filed a memorandum in response to the Commissioner's motion. Finding that both Plaintiff and the Commissioner seek remand, and that the Commissioner's motion is uncontested, the court GRANTS the motion, and ORDERS that the decision is REVERSED, and that judgment shall be entered pursuant to the fourth sentence of 42 U.S.C. § 405(g) REMANDING the case for further proceedings.

In the Conclusion to her brief Plaintiff summarized her claims, arguing that the ALJ erred: in applying the psychiatric review technique, in evaluating the evidence regarding Plaintiff's substance abuse, in evaluating Dr. Adams's opinion regarding substance abuse and bipolar disorder, in evaluating Dr. Mintz's opinion regarding Plaintiff's mental condition, and in making a credibility analysis. (Pl. Br. 17-18). In short, Plaintiff claims the ALJ erred in his evaluation of her mental condition including substance abuse and in evaluating the credibility of her allegations of symptoms. The Commissioner did not specifically respond to any of Plaintiff's claims of error, yet in his memorandum the Commissioner asserts that on remand, the ALJ will be directed to further develop the record, re-evaluate the medical evidence, and analyze Plaintiff's substance abuse in accordance with the regulations. (Comm'r Mem. 2). He also asserts that the ALJ will further evaluate Plaintiff's credibility and residual functional capacity, and if necessary, will obtain evidence from a vocational expert and perform a new analysis at step four and/or step five of the sequential evaluation process. Id.

In accordance with Local Rule 6.1(d)(1), Plaintiff had twenty-one days to respond to the Commissioner, but it has been more than twenty-eight, and Plaintiff has not filed a

response. Therefore, the court has considered and decided the Commissioner's motion as an uncontested motion. D. Kan. Rule 7.4(b).

A comparison of Plaintiff's Brief and the Commissioner's Memorandum reveals that both parties seek reversal and remand for further proceedings before the Commissioner primarily related to the evaluation of Plaintiff's mental condition and to the credibility of Plaintiff's allegation of symptoms. Both parties seem to agree that medical evidence and credibility was not properly evaluated, and that substance abuse was not properly considered. In light of these facts, and the fact that Plaintiff did not respond to the Commissioner's Motion, the court finds that Plaintiff has no objection to the motion, and grants it as unopposed.

IT IS THEREFORE ORDERED that the Commissioner's motion (Doc. 8) is GRANTED, the decision is REVERSED, and judgment shall be entered pursuant to the fourth sentence of 42 U.S.C. § 405(g) REMANDING the case for further proceedings.

Dated this 4th day of November 2011, at Kansas City, Kansas.

s:/ John W. Lungstrum
John W. Lungstrum
United States District Judge