

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

OWEN M. PARKS, JR.,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

CIVIL ACTION

No. 08-4060

MEMORANDUM/ORDER

Plaintiff Owen M. Parks, Jr. appeals from the final decision of the Commissioner of the Social Security Administration (“Commissioner”) denying his request for Disability Insurance Benefits. On December 22, 2009, United States Magistrate Judge Carol Sandra Moore Wells issued a Report & Recommendation (“R&R”) recommending that plaintiff’s motion for summary judgment be granted in part and this matter remanded for further proceedings before the Administrative Law Judge (“ALJ”). The Commissioner has not filed any objections to the R&R.

Judge Wells specifically recommends holding that the ALJ’s factual conclusion that “there is no evidence of treatment” for plaintiff’s left knee condition following surgery in early 1993 is not supported by substantial evidence in the record. R&R 9. I agree. As Judge Wells suggests, there is in fact “ample evidence that Plaintiff was treated for his left knee impairment following the 1993 surgery.” *Id.* Although I express no opinion as to whether it is “likely” that this evidence will “result[] in a determination

that Plaintiff's left knee impairment is severe," *id.* at 10, this error does warrant remand so that the ALJ may "re-evaluate the severity of Plaintiff's left knee impairment" in light of the evidence specified in the R&R. *Id.*

Further, while I do not opine on the appropriateness of the ALJ's finding that plaintiff's "statements concerning the intensity, persistence and limiting effects of [his] symptoms are not entirely credible," *id.* at 12, I agree with Judge Wells that it would be appropriate for the ALJ to re-evaluate plaintiff's credibility after making a fresh determination of the severity of plaintiff's knee impairment.

AND NOW, this 19th day of January, 2010, upon consideration of plaintiff's Request for Review (docket no. 6) and the defendant's Response thereto (docket no. 7), and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells (docket no. 10) and the record herein, it is hereby ordered as follows:

- (1) The Report and Recommendation is **APPROVED** and **ADOPTED** as supplemented by the above Memorandum;
- (2) Plaintiff's motion for summary judgment (docket no. 6) is **GRANTED IN PART AND DENIED IN PART**; and
- (3) This matter is **REMANDED** to the Commissioner of the Social Security Administration, pursuant to sentence four of 42 U.S.C. § 405(g),¹ for further proceedings

¹ Because the remand is pursuant to sentence four of § 405(g), a separate judgment shall also be entered. *See Kadelski v. Sullivan*, 30 F.3d 399, 402 (3d Cir.1994); *Shalala v. Schaefer*, 509 U.S. 292, 296-98 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 101-102 (1991).

in accordance with this Memorandum and Order and with Judge Wells's Report and Recommendation.

BY THE COURT:

/s/Louis H. Pollak
Pollak, J.

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JUDGMENT

AND NOW, this 19th day of January, 2010, in accordance with *Kadelski v. Sullivan*, 30 F.3d 399 (3d Cir.1994), and Rule 58 of the Federal Rules of Civil Procedure, it is hereby **ORDERED** that **JUDGMENT** is entered **VACATING** the final decision of the Commissioner of Social Security and **REMANDING** this action to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with United States Magistrate Judge Carol Sandra Moore Wells's Report and Recommendation, as supplemented by my Memorandum and Order of today approving and adopting the Report and Recommendation.

BY THE COURT:

/s/Louis H. Pollak

Pollak, J.