

March 12, 2007

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-51066
Summary Calendar

ROBIN D HOSEA,

Plaintiff-Appellant,

versus

LINDA S. MCMAHON, Acting COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
No. 1:05-CV-676

Before JONES, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Robin Hosea appeals the district court's remand of her case to the Commissioner of the Social Security Administration for further proceedings. Hosea argues that the district court lacked the authority to remand the case to the Commissioner because the court had a duty to determine whether substantial evidence supported the Appeals Council's decision. We disagree and, essentially for the reasons well stated in the lower court's decisions, AFFIRM.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The fourth sentence of 42 U.S.C. § 405(g) grants district courts the power to "enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." Contrary to Hosea's misreading of § 405(g), sentence four authorizes a district court to remand a case for further proceedings. See Shalala v. Schaefer, 509 U.S. 292, 296-97, 113 S. Ct. 2625, 2629 (1993); Istre v. Apfel, 208 F.3d 517, 519 (5th Cir. 2000). Hosea does not contend that the district court's decision was not a substantive ruling. See Istre, 208 F.3d at 520. Accordingly, the court's reverse with remand order relieved it of any duty to review the record for substantial evidence. See § 405(g).

Moreover, the district court's decision to remand the case to the Commissioner was not an abuse of discretion.¹ Concluding that it was unable to review the Appeals Council's decision because the Council failed to explain the evidence upon which it relied to determine that Hosea's medical condition had improved on March 31, 2003, the district court acted within its discretion to allow the Appeals Council to clarify its decision. See Sullivan v. Finkelstein, 496 U.S. 617, 624-26, 110 S. Ct. 2658,

¹ Although our published cases have not clearly established the appropriate standard, our unpublished cases have reviewed § 405(g) sentence four remands for abuse of discretion. See Bordelon v. Barnhart, 161 F.App'x 348, 352 n.12 (5th Cir. 2005) (unpublished); Thomas v. Barnhart, 31 F.App'x 838 (5th Cir. 2002) (unpublished); Davis v. Apfel, 234 F.3d 706 (5th Cir. 2000) (table).

2663-64 (1990). Finding no abuse of discretion in the district court's order, we **AFFIRM**.