

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5704
Conference Calendar

MOSES MACIAS, JR.,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-92-CV-77
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHE', Circuit Judges

PER CURIAM:*

"An order is final only when it `ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Nagle v. Lee, 807 F.2d 435, 438 (5th Cir. 1987) (citation omitted); see 28 U.S.C. § 1291.

The district court remanded the case to the Secretary pursuant to the sixth sentence of 42 U.S.C. § 405(g). "The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

action by the Secretary . . . and the Secretary shall, after the case is remanded, . . . modify or affirm his findings of fact or his decision, or both" 42 U.S.C. § 405(g).

In a remand such as this, "[t]he District Court does not affirm, modify, or reverse the Secretary's decision; it does not rule in any way as to the correctness of the administrative determination." Melkonyan v. Sullivan, ___ U.S. ___, 111 S.Ct. 2157, 2163, 115 L.Ed.2d 78 (1991). "Since the district court remanded the case under the sixth sentence, `the Secretary must return to District Court, at which time the court will enter a final judgment.'" Richard v. Sullivan, 955 F.2d 354, 358 (5th Cir. 1992) (quoting Melkonyan, 111 S.Ct. at 2165).

Therefore, we lack jurisdiction because the appeal is not taken from a final or otherwise appealable order. See 28 U.S.C. §§ 1291, 1292. Accordingly, we DISMISS the appeal and DENY the motion for default judgment.