

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Borden v. Bisignano

Borden · No. 25-CV-1219 · Decided March 5, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin grants the Commissioner of Social Security’s motion to remand the case for further proceedings under sentence four of 42 U.S.C. § 405(g). Although the motion was procedurally improper after filing of the administrative record and the plaintiff’s brief, the court grants it because the plaintiff did not object and directs the Appeals Council to remand for a new hearing and decision.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	Byron B. Conway
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	March 5, 2026
DOCKET	25-CV-1219
DISPOSITION	remanded
PROCEDURAL POSTURE	The Commissioner moved under sentence four of 42 U.S.C. § 405(g) to remand the Social Security case for further administrative proceedings after filing the administrative transcript and after the plaintiff filed his supporting brief. The court granted the motion because the plaintiff did not object.
PRECEDENTIAL VALUE	unpublished
PARTIES	Patrick D. Borden v. Frank J. Bisignano, Commissioner of the Social Security Administration

TOPICS

- judicial review of agency action
- administrative procedure act
- civil procedure

PRACTICE AREAS

- Social Security
- Administrative Law
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the court should grant the Commissioner's motion for a sentence-four remand under 42 U.S.C. § 405(g) despite the procedural impropriety of filing the motion after the administrative transcript and the plaintiff's brief had been filed.
2. What instructions should govern the Agency's further proceedings on remand.

HOLDINGS

1. Although it was procedurally improper for the Commissioner to file his own remand motion after filing the administrative record and after the plaintiff filed his supporting brief, the court may grant the motion when the plaintiff does not object and the parties do not dispute the details of remand.
2. The case must be remanded to the Agency for a new hearing and decision, including an opportunity for Plaintiff to have a hearing, appropriate application of the sequential disability-evaluation process, supplemental vocational-expert testimony if warranted, and issuance of a new decision.

KEY QUOTATIONS

*“That, of course, is not to say that once the transcript is filed the Commissioner is forever bound to oppose remand. The court welcomes the parties stipulating to a resolution at any time.” (*2-3)*

FACTUAL BACKGROUND

The Commissioner indicated that further review of Borden's claims warranted a new administrative hearing and decision. The administrative transcript had already been filed, and Borden had filed a brief in support of his claims. Borden did not file an opposition to the Commissioner's remand motion or otherwise indicate that he opposed remand.

PROCEDURAL HISTORY

The Commissioner filed the administrative transcript and then moved for remand for further proceedings. Although the court found that filing the Commissioner's own remand motion at that stage was procedurally improper, the plaintiff did not oppose the motion or indicate disagreement with the proposed remand. The court therefore ordered a sentence-four remand to the Agency and directed entry of judgment under Federal Rule of Civil Procedure 58.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Appeals Council must remand the matter to an administrative law judge with instructions to offer Plaintiff the opportunity for a hearing, proceed through the sequential disability-evaluation process as appropriate, obtain supplemental vocational-expert testimony if warranted, and issue a new decision.

CASES CITED

- Dehart v. Colvin, No. 15-CV-322, 2016 U.S. Dist. LEXIS 194891, at *2 (E.D. Wis. Jan. 27, 2016)
- Kwasniewski v. Saul, No. 17-cv-1445-pp, 2020 U.S. Dist. LEXIS 123402, at *3 (E.D. Wis. July 14, 2020)
- Lentz v. Berryhill, No. 16-C-1450, 2017 U.S. Dist. LEXIS 219262, at *3 (E.D. Wis. Nov. 1, 2017)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN PATRICK D. BORDEN, Plaintiff, Case No. 25-CV-1219 v. FRANK J. BISIGNANO, Commissioner of the Social Security Administration, Defendant. ORDER The Commissioner has filed a motion for remand for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (ECF No. 30.) Despite filing the administrative transcript on November 21, 2025 (ECF No. 15), the Commissioner indicates that his further review of Borden's claims warrants a new hearing and decision (ECF No. 30).

It was procedurally improper for the Commissioner to file his own remand motion after filing the administrative record (ECF No. 15) and after the plaintiff filed his brief in support (ECF No. 17). See Dehart v. Colvin, No. 15-CV-322, 2016 U.S. Dist. LEXIS 194891, at *2 (E.D. Wis. Jan. 27, 2016); see also Kwasniewski v. Saul, No. 17-cv-1445-pp, 2020 U.S. Dist.

LEXIS 123402, at *3 (E.D. Wis. July 14, 2020); Lentz v. Berryhill, No. 16-C-1450, 2017 U.S. Dist. LEXIS 219262, at *3 (E.D. Wis. Nov. 1, 2017). However, the issue that often arises with this procedural error is that the parties cannot agree to the details of a remand. That does not appear to be the case here; Borden has not filed anything with the court or otherwise indicated he opposes the motion.

Absent objection from Borden, the court will grant the Commissioner's motion. See Dehart, No. 15-CV-322, 2016 U.S. Dist. LEXIS 194891, at *2-3 ("That, of course, is not to say that once the transcript is filed the Commissioner is forever bound to oppose remand.

The court welcomes the parties stipulating to a resolution at any time."). Accordingly, IT IS THEREFORE ORDERED that this case be remanded to the Agency pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings and that judgment be entered pursuant to Federal Rule of Civil Procedure 58. Upon receipt of the Court's order, the Appeals Council will remand the matter to an administrative law judge with instructions to offer Plaintiff the opportunity for a hearing; proceed through the sequential disability evaluation process as appropriate; obtain supplemental vocational expert testimony if warranted; and issue a new decision.

Dated at Green Bay, Wisconsin this 5th day of March, 2026. s/ Byron B. Conway BYRON B. CONWAY U.S. District Judge

