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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCES GARCIA,

Plaintiff-Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security

Defendant-Appellee.

No. 06-17310

D.C. No. 2:05cv2850-HRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
H. Russel Holland, District Judge, Presiding

Argued and Submitted August 12, 2008
San Francisco, California

Before: SILER,** McKEOWN, and CALLAHAN, Circuit Judges.

Plaintiff Frances Garcia appeals the decision of the United States District Court for the District of Arizona remanding her claim for disability insurance benefits under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

Title II of the Social Security Act, 42 U.S.C. §§ 401-33, for further proceedings. We affirm the decision of the district court.

Garcia applied for social security benefits in 2000. Three times the Administrative Law Judge (“ALJ”) denied Garcia’s application, and the Appeals Council vacated and remanded the case for further proceedings each time. In the fourth hearing in 2005, the ALJ again denied Garcia’s application, and the Appeals Council denied her request for review. Garcia then filed an action in the district court seeking reversal of the ALJ’s decision and a remand with directions for an award of benefits. The district court remanded the case for further consideration of Garcia’s ability to perform other work.

The district court did not abuse its discretion by determining that further proceedings would prove useful and would not simply delay the award of benefits. In remanding for further proceedings, it noted inconsistencies in the ALJ’s decision regarding Garcia’s ability to do other work and therefore refused to affirm that conclusion. The district court determined that Garcia’s Residual Functional Capacity (“RFC”) is inconsistent with the definition of light work and is more consistent with the lowest exertional level, sedentary work. *See* 20 C.F.R. § 404.1567(a) (defining sedentary work). Additional proceedings, far from merely delaying an inevitable receipt of benefits, are necessary to allow an ALJ to determine the availability of

significant work compatible with Garcia's RFC.

The ALJ cannot determine whether Garcia is disabled without determining her ability to complete "substantial gainful work." *See* 20 C.F.R. § 404.1505(a) (defining "disability" as including inability to do substantial gainful work). Adjudication and resolution of these issues are best left to the ALJ.

Although we are affirming the district court's remand order, this case has had a long and tangled procedural history and the delay in reaching a resolution does not reflect well on the system. The nature of the remaining issue suggests that mediation may be the most appropriate means of resolving the dispute. Counsel for the parties are directed to confer and, within ten days of the filing date of this disposition, advise the clerk's office of the Court whether the parties agree to submit the matter to a Ninth Circuit mediator. If not, then the mandate will issue forthwith.

AFFIRMED. The mandate shall not issue until notice from this Court.