

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

JUDITH A. ROSS,

Plaintiff,

v.

CASE NO. 2:10-CV-631-FtM-36SPC

MICHAEL J. ASTRUE, Commissioner of Social  
Security, SSA,

Defendant.

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**ORDER**

**THIS CAUSE** is before the Court on the Report and Recommendation filed by Magistrate Judge Sheri Polster Chappell on September 19, 2011 (Dkt. 14). The Magistrate recommends remanding the decision of the Administrative Law Judge (“ALJ”) for further consideration. Neither party filed an objection to the Report and Recommendation, and the time to do so has expired.

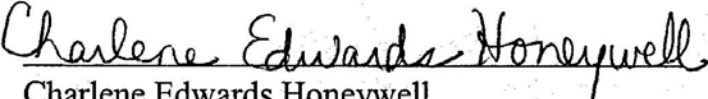
After careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge’s Report and Recommendation should be adopted, confirmed, and approved in all respects. The ALJ articulated a reason for discounting the opinion of Plaintiff’s treating physician but did not explain this reason with any specificity and did not provide any evidentiary support for his reason (Dkt. 14, p. 16); *see* 20 C.F.R. §404.1527(d); *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir. 1997). Furthermore, the ALJ’s determination that the treating physician’s opinion was based on sympathy for Plaintiff is not supported by factual determinations in the record. *Id.*; *see*

*Phillips v. Barnhart*, 357 F.3d 1232, 1240-41 (11th Cir. 2004). Because these errors are not harmless, the Court remands the decision of the ALJ.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

- 1) The Report and Recommendation of the Magistrate Judge (Dkt. 14) is **ADOPTED**, **CONFIRMED**, and **APPROVED** in all respects and is made a part of this Order for all purposes, including appellate review.
- 2) The decision of the Administrative Law Judge is **REMANDED**.
- 3) The Clerk is directed to terminate all pending motions, enter judgment accordingly, and **CLOSE** this case.

**DONE AND ORDERED** at Ft. Myers, Florida, on October 5, 2011.

  
Charlene Edwards Honeywell  
United States District Judge

**COPIES TO:**  
COUNSEL OF RECORD