

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GREGORY M. SMYRNIOS,

Plaintiff,

v.

CASE NO. 1:08-cv-00121-MP-WCS

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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ORDER

This matter is before the Court on Doc. 19, Report and Recommendation of the Magistrate Judge, which recommends that the decision of the Commissioner be reversed and Plaintiff be awarded past-due benefits for disability beginning on July 26, 2001. The Magistrate filed the Report on Wednesday, December 31, 2008. The parties have been furnished copies of the Report and have been afforded an opportunity to file objections. Defendant has filed an objection at Doc. 20. Pursuant to 28 U.S.C. § 636(b)(1), the Court has completed a *de novo* review of those portions of the Report to which an objection has been made.

Upon consideration, the Court agrees with the Magistrate that the Commissioner's decision to deny benefits prior to a disability onset date of July 26, 2001, is not based on substantial evidence and is not premised on the correct legal standard. In arriving at this finding, the Magistrate did not rely on a reweighing of the evidence or a *de novo* trial of the issues; rather, the Magistrate considered the record as a whole, including contrary evidence, as is appropriate when determining whether a decision is based upon substantial evidence. The record clearly establishes that Plaintiff is entitled to benefits, and nothing in the record supports a

disability onset date later than July 26, 2001.

However, there is substantial evidence to support the Commissioner's decision to deny benefits prior to July 26, 2001. Finding no other cause for remand, it is hereby

ORDERED AND ADJUDGED:

1. The Report and Recommendation of the Magistrate Judge, Doc. 19, is ADOPTED and incorporated herein.
2. The decision of the Commissioner to deny Plaintiff's application for Social Security benefits is REVERSED. The Commissioner shall grant Plaintiff's application for benefits commencing with a disability onset date of July 26, 2001.

DONE AND ORDERED this 6th day of February, 2009

s/Maurice M. Paul
Maurice M. Paul, Senior District Judge