

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

**LEE DAVIS, III,**

**Plaintiff,**

**vs.**

**Case No. 1:09cv121-MP/WCS**

**MICHAEL J. ASTRUE,  
Commissioner, Social  
Security Administration,**

**Defendant.**

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**REPORT AND RECOMMENDATION**

The Defendant has moved for reversal of the decision of the Commissioner, entry of judgment pursuant to sentence four of 42 U.S.C. § 405(g), and remand of this cause to the Commissioner. Doc. 19. Plaintiff does not oppose a sentence four remand and the motion should be granted. A sentence four remand is discretionary, but requires that the court enter "a judgment affirming, modifying, or reversing the decision of the Commissioner." The proper option in this case is to reverse the Commissioner's decision and remand. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

Accordingly, it is **RECOMMENDED** that the court **GRANT** Defendant's motion for entry of judgment and remand, doc. 19, **DIRECT** the Clerk to enter final judgment **REVERSING** the Commissioner's decision to deny benefits, and **REMAND** the application to the Commissioner for rehearing pursuant to sentence four of 42 U.S.C. § 405(g) for the purposes stated in the motion.

**IN CHAMBERS** at Tallahassee, Florida, on January 8, 2010.

s/ William C. Sherrill, Jr.  
**WILLIAM C. SHERRILL, JR.**  
**UNITED STATES MAGISTRATE JUDGE**

**NOTICE TO THE PARTIES**

**A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.**