

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

ROBERT A LOVEDAY,

Plaintiff,

v.

CASE NO. 1:10-cv-00014-MP-WCS

MICHAEL J ASTRUE,

Defendant.

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**ORDER**

This matter is before the Court on Doc. 23, Report and Recommendation of the Magistrate Judge, recommending that the decision of the Commissioner be reversed and the Commissioner be ordered to award benefits. The time for filing objections has passed, and the Commissioner has not filed objections.

The Court agrees with the Magistrate Judge that claimant meets the criteria for presumptive disability under Listing of Impairments § 12.05(C), based on his low I.Q. test scores and other impairments. That is, the Court first agrees that no substantial evidence exists to find that the claimant's I.Q. test results, showing scores of between 60 to 70, were invalid. Second, as the Magistrate Judge sets out in detail, nothing in the testimony of the claimant or other evidence shows that the I.Q. score is inconsistent with the claimant's daily activities and behavior. Finally, the Court agrees that Plaintiff's adjustment disorder, degenerative disc disease of the cervical region of the spine, left shoulder rotator cuff spring, and idiopathic gastroparesis represent physical or other mental impairments imposing additional and significant work-related limitations of function. Accordingly, Plaintiff meets all the requirements of Listing 12.05C,

Appendix 1 to Subpart P of Part 404 – Listing of Impairments, 20 C.F.R. and should have been found disabled at Step 3 by the Administrative Law Judge. It is hereby

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge is adopted and incorporated herein.
2. The decision of the Commissioner, denying benefits, is REVERSED, and the Commissioner is ordered to award benefits to the Plaintiff.

**DONE AND ORDERED** this 23rd day of November, 2010

*s/Maurice M. Paul*

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Maurice M. Paul, Senior District Judge