

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

MARY KATHERINE DAY-PETRANO,

Plaintiff,

v.

CASE NO. 1:12-cv-00097-MP-CAS

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
et al.,

Defendants.

REQUEST FOR REMAND

This matter is before the Court on plaintiff's Notice of Appeal (doc. 38) and Motion to Proceed *in forma pauperis* on Appeal (doc. 39). Both documents were filed on May 1, 2013, prior to entry of the Court's order adopting the magistrate judge's Report and Recommendation. (See doc. 40). As the magistrate judge has pointed out, if the Report and Recommendation has "not been adopted by the district court at the time" the notice of appeal is filed, then "the report and recommendation is not final and appealable." *Perez-Priego v. Alachua County Clerk of Court*, 148 F.3d 1272, 1273 (11th Cir. 1998). Nevertheless, plaintiff's notice of appeal was transmitted to the United States Court of Appeals for the Eleventh Circuit.

The timing of plaintiff's notice of appeal has created some confusion within the Court and the magistrate judge has entered an order directing the plaintiff to file an amended notice of appeal if they desire to appeal the Court's order adopting the Report and Recommendation. However, plaintiff's notice of appeal divests this Court of jurisdiction over the matters at issue in the appeal, except to the extent that this Court must act in aid of the appeal. *United States v. Hitchmon*, 602 F.2d 689, 692 (5th Cir. 1979) (*en banc*). As such, the Court lacked jurisdiction to

adopt the magistrate's Report and Recommendation and that order shall be vacated by separate order.

The Court respectfully requests that the United States Court of Appeals for the Eleventh Circuit relinquish jurisdiction and remand this case to the district court so that this matter may be resolved in the most expedient manner. Despite the magistrate judge's order, the parties are directed not to file an amended notice of appeal or amended motion to proceed *in forma pauperis* on appeal until this matter is remanded and a final order is entered.

DONE AND ORDERED this 8th day of May, 2013

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