

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

TIMOTHY K. DAVENPORT,

Plaintiff,

vs.

4:08cv416-RH/WCS

MICHAEL J. ASTRUE,
Commissioner, Social
Security Administration,

Defendant.

AMENDED¹ REPORT AND RECOMMENDATION

The Defendant has moved for entry of judgment pursuant to sentence four of 42 U.S.C. § 405(g) and remand to the Commissioner. Doc. 25. Plaintiff does not oppose a sentence four remand, but argues that the proper course is to remand for an award of benefits. Doc. 26. A sentence four remand is discretionary, but requires that the court enter "a judgment affirming, modifying, or reversing the decision of the Commissioner." Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

¹On the previously entered Report and Recommendation dated May 28, 2009, doc. 29, the Notice to the Parties' paragraph, setting a deadline for objection, was inadvertently omitted at the end of the document. Plaintiff shall have 15 days from the date this amended Report and Recommendation is entered to file objections.

The proper option in this case is to reverse the Commissioner's decision and remand for further consideration. Defendant admits error in evaluation at step 3 and in evaluation of the opinions of treating physicians. These are important steps, and decisions made as to each will affect the outcome of the case. The case should be remanded to permit the Commissioner, to reconsider these issues in the first instance.

Accordingly, it is **RECOMMENDED** that:

1. The court **GRANT** Defendant's motion for entry of judgment and remand, doc. 25.

2. The court **DIRECT** the Clerk to enter final judgment **REVERSING** the Commissioner's decision to deny benefits and **REMANDING** the application to the Commissioner for rehearing pursuant to sentence four of 42 U.S.C. § 405(g).

DONE AND ORDERED on June 19, 2009.

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

NOTICE TO PARTIES

Within 15 days after being served with a copy of this report and recommendation, a party may serve and file specific, written objections to the proposed findings and recommendations. 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.