

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-60854-CIV-ZLOCH/ROSENBAUM

DAVID RUBIN,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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**REPORT AND RECOMMENDATION FOR REMAND AND ENTRY OF JUDGMENT**

This matter is before the Court on Defendant's Motion to Remand [D.E. 16] and Plaintiff's Motion for Summary Judgment [D.E. 15]. This case was referred to me by the Honorable William J. Zloch pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the United States District Court for the Southern District of Florida. [D.E. 3].

On June 8, 2009, Plaintiff filed a Complaint seeking review of the final decision of the Commissioner of Social Security denying benefits under the Social Security Act ("Act"). [D.E. 1]. Defendant, the Commissioner of Social Security ("Commissioner"), filed an Answer to the Complaint on September 8, 2009 [D.E. 10], as well as the Transcript of the proceedings below [D.E. 11]. Thereafter, Plaintiff filed her Motion for Summary Judgment. [D.E.15]. On October 16, 2009, Defendant filed his Motion to Remand [D.E.16] along with a Memorandum in Support of the motion. [D.E. 17].

The Commissioner is dutifully requesting a remand based upon the request of agency counsel for the Appeals Council to accept remand voluntarily for further consideration of the case. The

Appeals Council determined, after review, that a remand for further administrative proceedings is appropriate.

The Commissioner, therefore, requests that the Court enter a final judgment pursuant to Rule 58, Fed. R. Civ. P., reversing the decision of the ALJ and remanding this case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff does not object to the Motion to Remand and, furthermore, the Appeals Council has agreed to reconsider the Commissioner's underlying decision.

Accordingly, having considered the record in this case and being fully advised in the premises, the undersigned hereby **RECOMMENDS** as follows:

1. That Defendant's Motion to Remand [D.E. 16] and Plaintiff's Motion for Summary Judgment [D.E. 15] be **GRANTED**;

2. That a Final Judgment be entered in favor of Plaintiff under Rule 58, Fed. R. Civ. P., **REVERSING AND REMANDING** the decision of the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), and directing the Commissioner to rehear this matter and conduct further proceedings in accordance with the Judgment as follows:

- A. The ALJ shall further evaluate the severity of Plaintiff's mental impairment.
- B. If the ALJ determines that Plaintiff has a severe mental impairment, the related mental limitations shall be included in the ALJ's residual functional capacity determination.
- C. After addressing these issues, the ALJ shall render a new decision.

3. Pursuant to Local Magistrate Rule 4(b), the parties have ten days from service of this Report and Recommendation to serve and file written objections, if any, with the Honorable William

J. Zloch, United States District Judge. Failure to file objections timely shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the report and bar the parties from attacking on appeal the factual findings contained herein. *R.T.C. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11<sup>th</sup> Cir. 1993); *LoConte v. Dugger*, 847 F.2d 745, 750 (11<sup>th</sup> Cir. 1988); *Nettles v. Wainwright*, 677 F.2d 404, 410 (5<sup>th</sup> Cir. Unit B 1982) (*en banc*); 28 U.S.C. § 636(b)(1).<sup>1</sup>

**FILED AND SUBMITTED** in Chambers at Fort Lauderdale, Florida, this 19<sup>th</sup> day of October, 2009.

  
ROBIN S. ROSENBAUM  
United States Magistrate Judge

cc: Hon. William J. Zloch  
Counsel of Record

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<sup>1</sup>Pursuant to *Stein v. Reynolds Secs., Inc.*, 667 F.2d 33, 34 (11<sup>th</sup> Cir. 1982), all cases of the Fifth Circuit Unit B are binding precedent in the Eleventh Circuit.