

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

**CASE NO. 09-61366-CIV-ALTONAGA/Dube'**

**MARIA NADAL,**

Plaintiff,

vs.

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

Defendant.

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**ORDER AFFIRMING REPORT OF MAGISTRATE JUDGE**

**THIS CAUSE** came before the Court upon the Report and Recommendation (the “Report”) [D.E. 25] of Magistrate Judge Robert Dube’, entered on May 26, 2010, following cross-motions for summary judgment. In the Report, Judge Dube’ recommends that the decision of the Commissioner of Social Security on the benefits claim of Plaintiff, Maria Nadal (“Nadal”), be reversed and remanded because the decision of the Administrative Law Judge (“ALJ”) was not supported by substantial evidence and the correct legal standards were not applied. Specifically, Judge Dube’ determined that the ALJ did not properly evaluate the opinion of chiropractor, Dr. Gerald Strauss, regarding Nadal’s health. (*See* Report [D.E. 25] 22–23). Judge Dube’ also determined that the ALJ improperly rejected the credibility of Nadal’s testimony regarding her level of pain because the ALJ did not clearly state his reasoning for doing so. (*See id.* 24–25). Last, Judge Dube’ determined that the ALJ’s decision that Nadal was capable of sedentary work was not supported by substantial evidence, and on remand the ALJ should both articulate how he applied the 8-step medical

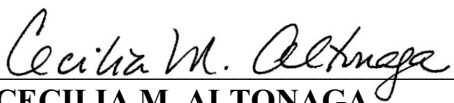
improvement sequential evaluation process to Nadal's case and obtain clarification from pulmonologist, Dr. Mario Magcalas, as to what Dr. Magcalas meant by "stable" when referring to Nadal's health. (*See id.* 25–26). Judge Dube', however, found no error with the ALJ's decision that Nadal's mental impairments were non-severe. (*See id.* 18–20).

The parties have not filed objections to the Report, and the time for filing objections has passed. The Court having reviewed the Report, the record, applicable law, and being in full agreement with the recommendations of Judge Dube', it is hereby

**ORDERED AND ADJUDGED** as follows:

1. The Report [D.E. 25] is **ACCEPTED IN WHOLE**.
2. Plaintiff's Motion for Summary Judgment [D.E. 14] is **GRANTED in part**.
3. Defendant's Motion for Summary Judgment [D.E. 20] is **DENIED**.
4. The case is **REMANDED** to the Administrative Law Judge for further consideration.

**DONE AND ORDERED** in Chambers at Miami, Florida this 15th day of June, 2010.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: Magistrate Judge Robert Dube'  
All counsel of record