

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-20556-CIV-LENARD/DUBÉ

MIGUEL A. RIVERA-RODRIGUEZ,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

REPORT AND RECOMMENDATION

THIS CAUSE is before this Court on the Motion for Summary Judgment filed by the Plaintiff (D.E. #16) and the Motion to Remand filed by the Defendant (D.E. #24) pursuant to an Order of Reference entered by the Honorable Joan A. Lenard, United States District Judge. This Court has reviewed the motion and the file in this cause.

The Plaintiff has filed a complaint seeking review of a decision denying his applications for disability insurance benefits and supplemental security income benefits. The present motions seek to have this Court remand this cause to the Commissioner under sentence four of 42 U.S.C. §405 (g) for further review of the Plaintiff's claim. Thus, there is no dispute that the cause should be remanded or as to the nature of the further proceedings to be conducted before the Commissioner.

Accordingly, based on the foregoing, this Court recommends that the Motion for Summary Judgment (D.E. #16) and the Motion to Remand (D.E. #24) be **GRANTED**; that Final Judgment under Rule 58, Federal Rules of Civil Procedure be entered and that this cause be Reversed and Remanded under sentence four of 42 U.S.C. §405(g) for the following proceedings:

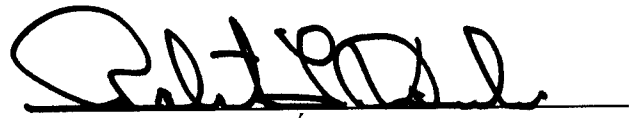
(1) For the ALJ to properly evaluate the opinion of the Plaintiff's treating psychiatrist and provide reasons for the weight given to the opinion which are supported by the record;

(2) For the ALJ to re-evaluate the Plaintiff's residual functional capacity and provide a residual functional capacity that is supported by substantial evidence; and

(3) For the ALJ, if necessary, to obtain the testimony of a vocational expert consistent with the reconsidered residual functional capacity.

Pursuant to Local Magistrate Rule 4(b), the parties have ten (10) days from service of this Report and Recommendation to serve and file written objections, if any, with the Honorable Joan A. Lenard, United States District Judge. Failure to file timely objections shall bar the parties from attacking on appeal the factual findings contained herein. Loconte v. Dugger, 847 F.2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988); R.T.C. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993).

DONE AND ORDERED this 9 day of September, 2008.



ROBERT L. DUBÉ
UNITED STATES MAGISTRATE JUDGE