

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-21355-CIV-KING/DUBÉ

GLADYS ARREDONDO,

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. #13), and the Motion to Remand filed by the Defendant (D.E. #17) pursuant to an Order of Reference entered by the Honorable James Lawrence King, United States District Judge. This Court has reviewed the motions and the file in this cause.

The Plaintiff has filed a complaint seeking review of a decision denying her application for supplemental security income. The present motion filed by the Defendant seeks 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. The motion indicates that the Plaintiff's counsel does not object to the relief sought. 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 as follows:

(1) The Motion to Remand (D.E. #17) 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:

- (a) For the ALJ to consider the October 2006 opinion of the Plaintiff's treating psychiatrist, Nelson D. Hernandez, M.D. and indicate what weight the ALJ is giving to that opinion;
 - (b) For the ALJ to formulate a new residual functional capacity assessment incorporating all of the Plaintiff's credible mental limitations; and
 - (c) For the ALJ to assess the Plaintiff's ability to return to her past relevant work, and obtain the testimony of a vocational expert, if necessary .
- (2) The Motion for Summary Judgment filed by the Plaintiff (D.E. #13) be **DENIED as MOOT.**

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 James Lawrence King, 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 17 day of October, 2008.



ROBERT L. DUBÉ
UNITED STATES MAGISTRATE JUDGE