

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20680-CIV-SEITZ/DUBÉ

OMAR A. TABOADA,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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**REPORT AND RECOMMENDATION**

THIS CAUSE is before this Court on the Motion for Summary Judgment filed by the Plaintiff (D.E. #20), and the Motion to Remand filed by the Defendant (D.E. #27) pursuant to a Clerk's Notice of Magistrate Judge Assignment entered by the Clerk of Court, United States District Court for the Southern District of Florida. This Court has reviewed the motions 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. 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. #27) 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 further develop the record and issue a new decision;
- (b) For the ALJ to specifically consider the applicable medical listings with regard to the Plaintiff's cardiac condition and mental impairment prior to January 3, 2007, including Listing Sections 4.02 and 12.04 of 20 C.F.R. Pt. 404, Subpt. P, App. 1;
- (c) If necessary, for the ALJ to utilize the services of a medical expert to help him assess whether or not the Plaintiff meets or equals any listed impairment;
- (d) For the ALJ to specifically consider and address the opinions of the Plaintiff's treating physicians, including Dr. Alonso; and
- (e) For the ALJ to consider any potential impact of substance abuse on the Plaintiff's medical condition.

(2) The Motion for Summary Judgment filed by the Plaintiff (D.E. #20) 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 Patricia A. Seitz, 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 10 day of September, 2009.



ROBERT L. DUBÉ  
UNITED STATES MAGISTRATE JUDGE