

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STANTON SMOOT,

Plaintiff,

v.

CASE NO. 07-15008

HON. MARIANNE O. BATTANI

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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**OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND REMANDING FOR FURTHER REVIEW**

Plaintiff Stanton Smoot brings this action pursuant to 42 U.S.C. § 405(g), challenging the final decision of the Commissioner denying his application for disability insurance benefits (DIB) under Title II of the Social Security Act, 42 U.S.C. § 423. Plaintiff filed his claim for DIB on August 27, 2004, alleging a disability onset date of February 10, 2004. On July 6, 2007, the Administrative Law Judge ("ALJ") concluded that Plaintiff was not disabled. Admin. Rec. at 26.

After the Appeals Council denied Plaintiff's request for review, Smoot timely filed this action for judicial review of the Commissioner's decision. The case was referred to Magistrate Judge Steven D. Pepe pursuant to 28 U.S.C. § 636, and subsequently reassigned to Magistrate Judge Michael Hluchaniuk. Both parties filed dispositive motions, and in a Report and Recommendation ("R&R") dated December 18, 2008, Magistrate Judge Hluchaniuk recommended that Defendant's Motion for Summary Judgment be

denied and that Plaintiff's Motion for Summary Judgment be granted in part and that the matter be remanded to the administrative law judge for further review.

In his Report and Recommendation, the Magistrate Judge informed the parties that objections to the R&R needed to be filed "within ten (10) days of service" and that a party's failure to file objections would waive any further right of appeal. Neither party filed an objection. Because no objection has been filed in this case, the parties waived their right to *de novo* review and appeal.

Accordingly, the Court **ADOPTS** the Magistrate Judge's recommendation, **DENIES** Defendant's Motion for Summary Judgment, and **GRANTS** in part Plaintiff's Motion for Summary Judgment. This matter is hereby **REMANDED** to the administrative law judge for further consideration of the nature and degree of Plaintiff's mental limitations as required by 20 C.F.R. § 404.1520a.

IT IS SO ORDERED.

s/Marianne O. Battani
HON. MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: January 30, 2009

CERTIFICATE OF SERVICE

Copies of this Opinion and Order were mailed to counsel of record on this date by e-filing and/or ordinary mail.

s/Bernadette M. Thebolt
Deputy Clerk