

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT MAYHEW, III,)

Plaintiff,)

v.)

Case No. 4:08CV356 HEA

MICHAEL J. ASTRUE,)

Commissioner of Social Security,)

Defendant,)

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation, of Magistrate Judge David D. Noce that the decision of the Commissioner be reversed and remanded. None of the parties have filed any objections to the Report and Recommendation within the prescribed time period.

After careful consideration, the Court will adopt and sustain the sound reasoning of Judge Noce as set forth in his December 8, 2008 Report and Recommendation.

Accordingly,

IT IS HEREBY ORDERED that the decision of the Commissioner is

reversed and remanded under Sentence 4 of 42 U.S.C. § 405(g). Upon remand, the ALJ should expressly determine the credibility of Katherine Mayhew's third-party function report, and decide whether the report is credible or not credible. If the ALJ finds the report credible, he should then determine whether the report changes the outcome of the decision. On remand, the ALJ should also discuss in greater detail the Polaski factors and their application to Mayhew's subjective complaints.

A separate judgment in accordance with this Order is entered this same date.

Dated this 30th day of December, 2008.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

