

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID M. LAWTON,

Plaintiff,

v.

7:10-CV-256
(FJS/ATB)

MICHAEL ASTRUE, Commissioner of
Social Security,

Defendant.

APPEARANCES

CONBOY, MCKAY, BACHMAN
& KENDALL, LLP
307 State Street
Carthage, New York 13619
Attorneys for Plaintiff

OF COUNSEL

LAWRENCE D. HASSELER, ESQ.

SOCIAL SECURITY ADMINISTRATION
OFFICE OF REGIONAL GENERAL
COUNSEL, REGION II
26 Federal Plaza – Room 3904
New York, New York 10278
Attorneys for Defendant

ELLEN E. SOVERN, ESQ.

SCULLIN, Senior Judge

ORDER

Plaintiff commenced this action on March 5, 2010, seeking judicial review of Defendant's final decision denying his application for benefits. *See* Dkt. 1. In a Report-Recommendation dated November 2, 2010, Magistrate Judge Baxter recommended that this Court reverse Defendant's decision and remand this case for further proceedings, pursuant to sentence four of 42 U.S.C. § 405(g). *See* Dkt. No. 15 at 30. The parties did not file any objections to this Report-

Recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Baxter's November 2, 2010 Report-Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

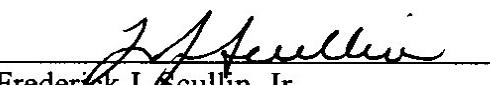
ORDERS that Magistrate Judge Baxter's November 2, 2010 Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant's decision is **REVERSED** and this case is **REMANDED**, pursuant to sentence four of 42 U.S.C. § 405(g), "for a proper determination of [P]laintiff's residual functional capacity to perform his past work and other further proceedings," *see* Dkt. No. 15 at 30, consistent with Magistrate Judge Baxter's Report-Recommendation; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

IT IS SO ORDERED.

Dated: November 18, 2010
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge