

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN PAUL GELSER,

Plaintiff,

v.

ORDER  
09-CV-803

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1). Both plaintiff and defendant filed motions for judgment on the pleadings on May 18, 2010. On January 31, 2011, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion be denied and plaintiff's motion be granted and the matter should be remanded for calculation of benefits. Defendants filed objections to the Report and Recommendation on February 11, 2011 and plaintiff filed a reply thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion is denied and plaintiff's motion is granted. The matter is remanded for calculation of benefits.

SO ORDERED.

*s/ Richard J. Arcara*  
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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: March 3, 2011