UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH A. STEWARD,
Plaintiff

vs

COMMISSIONER OF SOCIAL SECURITY,
Defendant

Case No. 1:08-cv-590
Dlott, J.
Hogan, M.J.

REPORT AND RECOMMENDATION

This matter is before the Court on defendant's unilateral motion for entry of judgment with remand under sentence four of 42 U.S.C. § 405(g) (Doc. 9), to which pro se plaintiff has not responded.

On September 3, 2008, plaintiff filed a complaint challenging the Commissioner's final decision denying an application for Supplemental Security Income. (Doc. 3). On December 2, 2008, defendant filed a unilateral motion for entry of judgment with remand under sentence four of 42 U.S.C. § 405(g). (Doc. 9). Defendant states that after consultation with the Appeals Council, it was agreed that legal defects exist in the Administrative Law Judge's decision which warrant a reversal and voluntary remand of this case to the agency for further proceedings. The Court has carefully reviewed the motion and the administrative transcript in this matter and agrees that a reversal and remand for further proceedings is appropriate.

IT IS THEREFORE RECOMMENDED THAT:

1. Defendant's unilateral motion for entry of judgment with remand under sentence four of 42 U.S.C. § 405(g) (Doc. 9) be **GRANTED**.

2. The decision of the Commissioner be **REVERSED** and **REMANDED** for further proceedings under sentence four of 42 U.S.C. § 405(g).

3. Upon remand, the Administrative Law Judge will: (1) further evaluate plaintiff's mental impairment, resolve any inconsistencies with the opinion evidence, consider the evidence, and reevaluate plaintiff's maximum residual functional capacity; (2) consider plaintiff's substance abuse on his ability to work; (3) obtain any additional development deemed necessary to complete the administrative record, obtain supplemental evidence, and if necessary, obtain supplemental vocational expert testimony; and (4) issue a new decision.

Date: 1/6/09

/s/ Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH A. STEWARD,
Plaintiff

vs

COMMISSIONER OF
SOCIAL SECURITY,
Defendant

Case No. 1:08-cv-590
Dlott, J.
Hogan, M.J.

NOTICE TO THE PARTIES REGARDING FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **TEN DAYS** after being served with this Report and Recommendation ("R&R"). Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this R&R is being served by mail. That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. If the R&R is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **TEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).