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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROBERT G. ADAMS,	*	CIV. 08-4139
	*	
Plaintiff,	*	
	*	
-vs-	*	OPINION AND ORDER
	*	
MICHAEL J. ASTRUE,	*	
Commissioner of Social Security	*	
	*	
Defendant.	*	
	*	

This Court referred the case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that the Commissioner's denial of benefits be reversed and remanded to the Social Security Administration for further administrative proceedings.

A remand pursuant to sentence four of 42 U.S.C. § 405(g) is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner's decision and remands the case in accordance with such ruling. Buckner v. Apfel, 213 F.3d 1006, 1010 (8th Cir. 2000). Remand with instructions to award benefits is appropriate "only if the record overwhelmingly supports such a finding." Buckner at 1011. The Court has carefully reviewed the Magistrate Judge's Report and Recommendation and the record of the administrative proceedings. After having reviewed the record, the Court agrees with the Magistrate Judge's Report and Recommendation. The Administrative Law Judge improperly disregarded relevant expert opinion, including that of the treating physician, Dr. Olson and psychologist Carol Kuntz. The Court agrees with the

Administrative Law Judge in disregarding the unsigned report of Dr. Buchowski. In addition there is further lay and expert evidence which the Administrative Law Judge did not have an opportunity to consider. Accordingly, it is hereby

ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 20) is ADOPTED by the Court.
2. Plaintiff's Motion for Summary Judgment (Doc. 14) is GRANTED.
3. The Commissioner's decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner for further administrative proceedings.

Dated this 21st day of December, 2009.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

By Joe Peters, Deputy