

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**ROBERTA C. CASTO,**

**Plaintiff,**

v.

**CIVIL ACTION NO. 2:09cv56  
(Maxwell)**

**MICHAEL ASTRUE,  
COMMISSIONER, SOCIAL  
SECURITY ADMINISTRATION,**

**Defendant.**

**ORDER**

The above-styled matter is before this Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. Magistrate Judge Kaull filed his Report and Recommendation ("R & R") on August 20, 2010, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections thereto within fourteen (14) days after being served. No objections have been filed. Accordingly, this Court will review the Report and Recommendation for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to this Court that the issues raised in the cross motions for summary judgment were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Accordingly, this Court, having reviewed all matters now before it for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to this case.

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See **Wells v. Shriners Hospital**, 109 F.3d 198, 199-200 (4th Cir. 1997); **Thomas v. Arn**, 474 U.S. 140, 148-153 (1985).

Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation (Doc. 17) be, and hereby is, **ADOPTED**. Accordingly, it is

**ORDERED** that the defendant's Motion for Summary Judgment (Doc. 14) be, and the same hereby is, **DENIED**. It is further

**ORDERED** that the plaintiff's Motion for Summary Judgment (Doc. 12) be, and the same hereby is, **GRANTED in part**. It is further

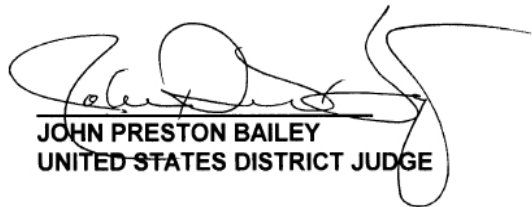
**ORDERED** that this matter is **REVERSED** and **REMANDED** to the ALJ pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further action in accordance with the Report and Recommendation. It is further

**ORDERED** that the Clerk of Court shall enter judgment reversing the decision of the ALJ and remanding this case for further proceedings and shall thereafter **DISMISS** this action from the docket of this Court.

Counsel for the plaintiff is advised that an application for attorney's fees under the Equal Access to Justice Act, if one is to be submitted, must be filed within ninety (90) days from the date of the judgment order.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

**DATED:** September 14, 2010.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE