

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

KAREN LYNN MOONEY,

Plaintiff,

v.

Civil Action No. 2:09-01162

MICHAEL J. ASTRUE,

Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

The court has received the Proposed Findings and Recommendation of United States Magistrate Judge Mary E. Stanley, entered on October 29, 2010, relating to the parties cross requests for judgment on the pleadings and plaintiff's motion to remand. No party has objected to the Proposed Findings and Recommendation.


The magistrate judge recommends that the court reverse the Commissioner's final decision and remand this case for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g) for reconsideration of (1) the opinion of plaintiff's treating physician, Dr. Berry, regarding plaintiff's manipulative limitations, and (2) a hypothetical question posed by plaintiff's counsel to the vocational expert which was not addressed in the Administrative Law Judge's decision. (PF&R at 8-10, 12).

Based upon the foregoing, the court ORDERS as follows:

1. That the findings in the PF&R of the magistrate judge be, and they hereby are, adopted by the court and incorporated herein;
2. That the plaintiff's request for judgment on the pleadings be, and it hereby is, granted only insofar as he requests remand to the Commissioner for further proceedings, and plaintiff's motion is otherwise denied;
3. That the Commissioner's request for judgment on the pleadings be, and it hereby is, denied; and
4. That the decision of the Commissioner be, and it hereby is, reversed and this case is remanded to the Commissioner for further proceedings pursuant to the fourth sentence of 42 U.S.C.A. § 405(g), as more fully set forth above and in the magistrate judge's proposed findings and recommendation.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and the United States Magistrate Judge.

DATED: December 15, 2010



John T. Copenhaver, Jr.
United States District Judge