

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DAVID J. FOSKUHL,)	
)	
Plaintiff,)	
)	
)	
v.)	Case No. 06-1048-WEB
)	
)	
JO ANNE B. BARNHART,)	
COMMISSIONER OF THE SOCIAL SECURITY)	
ADMINISTRATION)	
)	
Defendant.)	

ORDER ADOPTING RECOMMENDATION AND REPORT

Plaintiff seeks review of the Defendant's denial of disability insurance benefits and supplemental security income payments. 42 U.S.C. § § 423 and 1381 *et seq.* The matter was referred to Magistrate Judge Reid for a recommendation and report pursuant to Fed. R. Civ. P. 72(b). Now before the Court is the Recommendation and Report of Magistrate Judge Reid. (Doc. 18). Neither party has filed a written objection.

The Magistrate Judge found that the administrative law judge (ALJ) erred in his finding at step two that plaintiff did not have a severe mental impairment by failing to evaluate the severity of plaintiff's mental impairment in accordance with the procedures set forth in 20 C.F.R. §404.1520a and §416.920a and case law as set forth in the recommendation and report. (*Id.* at 11). On remand, the ALJ will specifically consider the additional evidence as recommended in the recommendation and report in determining whether plaintiff has a severe mental impairment at step two. (*Id.*). The Magistrate Judge further found that the ALJ erred in his step three findings. On remand, ALJ will review the evidence in the record and make a finding as to whether plaintiff's impairments meet or

equal 14.08(I) or 14.08(N); and if the ALJ finds that plaintiff's impairment does not meet 14.08(N) on or before September 23, 2003, the ALJ shall set forth the evidentiary basis for such a finding. (*Id.* at 15).

The record supports the findings of the Magistrate Judge and his legal conclusions. It is therefore ORDERED that the decision of the Commissioner be REVERSED, and that the case be REMANDED for further proceedings (sentence four remand) for the reasons set forth in the Magistrate Judge's Recommendation and Report.

The Clerk of the Court is directed to enter Judgment accordingly.

SO ORDERED this 20th day of March, 2007.

s/Wesley E. Brown
Wesley E. Brown
U.S. Senior District Judge