

MICHAEL L. GILBERT,)
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 Plaintiff,)
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 v.) Case No. 06-1230-WEB
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 MICHAEL J. ASTRUE,)
 COMMISSIONER OF THE SOCIAL SECURITY)
 ADMINISTRATION)
)
 Defendant.)

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. 13). 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 postpolio syndrome is not a medically determinable impairment. Pursuant to SSR 03-1P, 20 C.F.R. §404.1512(e) and §416.912(e), it is the ALJ's duty to contact the treating physician about a questionable diagnosis of postpolio syndrome. The ALJ should have contacted Dr. Schneider, plaintiff's treating physician, for more information about the Dr.'s questionable diagnosis of postpolio syndrome. (*Id.* at 5-8). On remand, it is recommended that the ALJ recontact Dr. Schneider in order to complete the record of his diagnosis of postpolio syndrome. (*Id.* at 9). The Magistrate Judge further found that the ALJ did not consider SSR 85-15 when making his RFC

determination in order to determine whether he needed to consult a vocational expert based on Petitioner's exertional limitations and Dr. Estivo's assessment of additional non-exertional limitations. (*Id.* at 9-13). It is recommended that on remand the ALJ should consider consulting a vocational expert when making his RFC determination in order to comply with SSR 85-15. (*Id.* at 14).

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 3rd day of April, 2007.

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