

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES RESPETO :
 :
 :
 V. : CIV. NO. 3:10CV623 (JCH)
 :
 MICHAEL J. ASTRUE :
 COMMISSIONER SOCIAL SECURITY :
 ADMINISTRATION :

RECOMMENDED RULING ON MOTION FOR ENTRY OF JUDGMENT

Defendant moves the Court to enter judgment, with reversal and remand of this case to the Commissioner for further action. The Government's motion is unopposed.

Defendant's Motion for Entry of Judgment **[Doc. #15]** is **GRANTED** on consent, pursuant to sentence four of 205(g) of the Social Security Act, 42 U.S.C. § 405(g), and in light of the Government's request to remand this action for further development of the record by an Administrative Law Judge ("ALJ"), who will be instructed to update the administrative record and evaluate all of the medical evidence of record, including the opinion evidence from Dr. Gorelick. As warranted by the expanded record, the ALJ will re-contact Dr. Gorelick for clarification of his opinion. Additionally, the ALJ is instructed to reassess plaintiff's residual functional capacity and provide a description of the functional limitations resulting from

plaintiff's need to work near a restroom. The ALJ will resolve the conflict between her finding that plaintiff was unable to perform his past relevant work based on the length and frequency of his bathroom breaks and her finding that such breaks would not significantly affect the occupational base of medium work. To this end, the ALJ will obtain vocational expert testimony as to the effect of plaintiff's functional limitations on his ability to perform his past relevant work and/or other work that exists in significant numbers in the national economy.

Therefore, the Court reverses the Commissioner's decision under sentence four of 205(g) of the Social Security Act, 42 U.S.C. § 405(g) with a remand of the case to the Commissioner for further proceedings. See Shalala v. Schaefer, 509 U.S. 292 (1993); see also Melkonyan v. Sullivan, 501 U.S. 89 (1991).

The Clerk of the Court will enter a separate judgment pursuant to Fed. R. Civ. P. 58.

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object with ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a) and 6(e); Rule 72.2 of the Local Rules for United States Magistrates; Small v. Sec'y of Health & Human Servs., 892 F.2d 15 (2d Cir. 1989) (per curiam); F.D.I.C. v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED at Bridgeport this 19 day of August 2010.

_____/s/_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE