

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MIGUEL A. NIEVES, :
 :
 Plaintiff, :
 :
 vs. : No. 3:14cv734(WIG)
 :
 CAROLYN W. COLVIN, :
 Acting Commissioner, :
 Social Security Administration, :
 :
 Defendant. :
 -----X

RECOMMENDED RULING ON DEFENDANT’S CONSENT MOTION FOR ENTRY
OF JUDGMENT WITH REVERSAL AND REMAND [DOC. # 21]

Defendant, Carolyn W. Colvin, Acting Commissioner of the Social Security Administration, has moved this Court to enter judgment under sentence four of 42 U.S.C. § 405(g), with a reversal and remand of this cause to the Commissioner for further action. Counsel for Defendant represents that Plaintiff’s counsel, Olia Yelner, Esq., consents to the relief sought in this motion.

Under sentence four of 42 U.S.C. § 405(g), the Court has the power to enter a judgment with a reversal and remand of the cause to the Commissioner for further proceedings. *See Shalala v. Schaefer*, 509 U.S. 292, 297 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 98 (1991). Remand for further development of the record is appropriate when gaps exist in the administrative record or when the administrative law judge (“ALJ”) committed legal error. *See Parker v. Harris*, 626 F.2d 225, 235 (2d Cir. 1980).

Here, the Commissioner has determined, and Plaintiff’s counsel concurs, that remand of this case is necessary for additional administrative action. Upon remand, Plaintiff will be given

the opportunity to submit additional evidence and have a new hearing. The ALJ should reassess Plaintiff's maximum residual functional capacity, and in so doing, reevaluate the medical and other opinions of record. The ALJ will also, if necessary, obtain testimony from a vocational expert.

Accordingly, the Court recommends that Defendant's Consent Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Cause to the Defendant [Doc. # 21] should be granted. Additionally, the Court recommends that Plaintiff's Motion to Reverse the Decision of the Commissioner [Doc. # 18] should be granted to the extent set forth in this Ruling.

This is a Recommended Ruling. *See* Fed. R. Civ. P. 72(b)(1). Any objection to this Recommended Ruling must be filed within 14 days after service. *See* Fed. R. Civ. P. 72(b)(2). In accordance with the Standing Order of Referral for Appeals of Social Security Administration Decisions dated September 30, 2011, the Clerk is directed to transfer this case to a District Judge for review of the Recommended Ruling and any objections thereto, and acceptance, rejection, or modification of the Recommended Ruling in whole or in part. *See* Fed. R. Civ. P. 72(b)(3) and D. Conn. Local Rule 72.1(C)(1) for Magistrate Judges.

It is SO ORDERED, this 3rd day of March, 2015, at Bridgeport, Connecticut.

/s/ William I. Garfinkel
WILLIAM I. GARFINKEL
United States Magistrate Judge