

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WANDA SMITH,

Plaintiff,

v.

Case No: 2:17-cv-90-FtM-38CM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is United States Magistrate Judge Carol Mirando's Report and Recommendation. ([Doc. 29](#)). Judge Mirando recommends reversing the decision of the Commissioner of Social Security and remanding this matter to the Commissioner under sentence four of [42 U.S.C. § 405\(g\)](#). No party objects to the Report and Recommendation, and the time to do so has expired. The Report and Recommendation is thus ripe for review.

A district judge "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#). The district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* And "[t]he judge

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may also receive further evidenced or recommit the matter to the magistrate judge with instructions.” *Id.*

After examining the file carefully and independently, and upon considering Judge Mirando’s findings and recommendations, the Court accepts and adopts the Report and Recommendation.


Accordingly, it is now

ORDERED:

- (1) The Report and Recommendation ([Doc. 29](#)) is **ACCEPTED and ADOPTED** and the findings incorporated herein.
- (2) The decision of the Commissioner is **REVERSED** and this matter is **REMANDED** to the Commissioner under sentence four of [42 U.S.C. § 405\(g\)](#), for the Commissioner to:
 - a. consider the new evidence provided to the Appeals Council;
 - b. request Plaintiff Wanda Smith’s hospital records immediately following the motor vehicle accident;
 - c. re-evaluate Plaintiff’s Residual Functional Capacity in light of the new evidence;
 - d. re-evaluate whether there is other work available in significant numbers that Plaintiff can perform given her re-evaluated Residual Functional Capacity; and
 - e. make any other determinations consistent with this Opinion and Order, or in the interests of justice.

(3) The Clerk of Court is **DIRECTED** to enter judgment pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) in favor of Plaintiff Wanda Smith and close the file.

DONE and **ORDERED** in Fort Myers, Florida this 3rd day of August 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record