

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>LOWMAN D. McBREAIRTY,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
v.	)	<i>Docket No. 01-174-B</i>
	)	
<b>JO ANNE B. BARNHART,</b>	)	
<i>Commissioner of Social Security,</i>	)	
	)	
<i>Defendant</i>	)	

**RECOMMENDED DECISION ON DEFENDANT’S MOTION FOR REMAND**

The defendant has moved for entry of judgment reversing her decision and remanding this case, in which the plaintiff’s application for disability insurance benefits was denied, to the Social Security Administration for further proceedings. Defendant’s Motion . . . for Entry of Judgment Under Sentence Four<sup>1</sup> of 42 U.S.C. § 405(g), etc. (Docket No. 4). The plaintiff opposes the motion, contending that the evidence set forth in the administrative law judge’s decision “establishes disability without any doubt.” Plaintiff’s Objection to Defendant’s Motion for Remand (“Plaintiff’s Objection”) (Docket No. 5) at 3.<sup>2</sup>

The motion is governed by the First Circuit’s decision in *Seavey v. Barnhart*, 276 F.3d 1 (1st Cir. 2001). As was the case in *Seavey*, 276 F.3d at 10, here the commissioner essentially “agrees that

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<sup>1</sup> The fourth sentence of 42 U.S.C. § 405(g) provides: “The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.”

<sup>2</sup> The plaintiff also argues that remand is not appropriate under the sixth sentence of section 405(g), Plaintiff’s Objection at 2, but that is not the basis on which the defendant seeks remand.

the A[dm]inistrative L[aw] J[udge] was in error because the ALJ ignored relevant and material evidence,” *see* Defendant’s Reply to Plaintiff’s Objection to Motion to Remand (Docket No. 6) at 1-2.

Unlike the claimant in *Seavey*, 276 F.3d at 11, the plaintiff here does advance the argument that “the record, as it currently stands, conclusively shows that he is disabled under the meaning of the statute.”

However, the plaintiff in support of this assertion merely quotes the findings of the administrative law judge to the effect that he “has a marginal education and is illiterate in the English language” and that he “has semi-skilled work experience.” Plaintiff’s Objection at 1; Administrative Record at 20. Even if the plaintiff had directed this court’s attention to evidence of record supporting these findings, the two findings, taken alone or together, do not and cannot establish that the plaintiff is disabled under Social Security law, let alone that he is clearly entitled to benefits. Under *Seavey*, if there is not clear entitlement to benefits on the basis of the record before the court, “the court must remand for further proceedings.” 276 F.3d at 11. “When an agency has not considered all relevant factors in taking action, or has provided insufficient explanation for its action, the reviewing court ordinarily should remand the case to the agency.” *Id.* at 12. For all that appears from the record before this court, *see, e.g.*, Defendant’s Reply at 1-2, that is the case here.

Accordingly, I recommend that the defendant’s motion be **GRANTED** and judgment enter reversing the commissioner’s decision and remanding the cause for further proceedings.

#### **NOTICE**

*A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.*

Dated this 26th day of February, 2002.

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David M. Cohen  
United States Magistrate Judge

LOWMAN D MCBREAIRTY            WILLIAM J. SMITH, ESQ.

plaintiff            [COR LD NTC]  
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