

Plaintiff, however, opposes defendant's motion to remand. Plaintiff asserts that the evidence contained in the record is sufficient enough to establish that plaintiff meets Listing 12.05C. As such, plaintiff asks the court to reverse the Commissioner's decision and grant plaintiff's motion for summary judgment, awarding benefits to the plaintiff.

The court is charged with reviewing the Commissioner's decision to determine whether there is substantial evidence to support the Commissioner's conclusion that plaintiff failed to meet the conditions for entitlement established by and pursuant to the Act. Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990); Laws v. Celebrezze, 368 F.2d 640 (4th Cir. 1966). However, before a reviewing court can determine whether substantial evidence supports an administrative determination, the court must first ascertain whether the agency has discharged its duty to consider all relevant evidence. Sterling Smokeless Coal Company v. Akers, 131 F.3d 438, 439 (4th Cir. 1997). In this case, the Commissioner seeks remand for the opportunity to consider additional relevant evidence in its determination of disability.

For these reasons, the undersigned recommends that defendant's motion for remand be **GRANTED**, and this case be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative action consistent with defendant's motion. The Clerk is directed immediately to transmit the record in this case to the Hon. James C. Turk, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or

findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk of the Court hereby is directed to send a certified copy of this Report and Recommendation to all counsel of record.

ENTER: This 23rd day of March, 2006.

/s/ Michael F. Urbanski
United States Magistrate Judge