

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JOHN E. KELLY,

Plaintiff,

v.

**JO ANNE B. BARNHART,
COMMISSIONER OF
THE SOCIAL SECURITY
ADMINISTRATION**

Defendant.

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**CIVIL ACTION NO.
3:02-cv-1063 (CFD)(WIG)**

RECOMMENDED RULING ON MOTION TO REMAND [Doc. # 14]

_____ Pending before the Court is Plaintiff’s motion to remand this Social Security appeal for further administrative proceedings, including a new hearing before an administrative law judge ("ALJ"), to allow the ALJ to consider a substantial number of medical records that were not previously considered. Plaintiff seeks this remand pursuant to the sixth sentence of 42 U.S.C. § 405(g), which provides in relevant part that the Court may, at any time, order additional evidence to be taken before the Commissioner of Social Security, "but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." The Second Circuit has interpreted this Code section as imposing upon a plaintiff a triple standard for obtaining a remand for the introduction of new evidence. Plaintiff must show that the medical records he seeks to introduce are (1) new and not merely cumulative; (2) material, that is both relevant to Plaintiff’s condition during the period for which benefits were denied, and probative, including a showing that there is a reasonable probability that the new evidence would have influenced the Commissioner to decide

the case differently; and (3) good cause for his failure to present the evidence earlier. Tirado v. Bowen, 842 F. 595, 597 (2d Cir. 1988).

The difficulties that the Court has with Plaintiff's motion to remand are the same as it had with Plaintiff's motion to correct the record. Many of the records sought to be added to the administrative record are either cumulative or duplicative, and Plaintiff has failed to show good cause for not presenting these records to the Appeals Council in a timely fashion. Plaintiff attempts to establish "good cause" based solely on the fact that the ALJ did not have the opportunity to review these hundreds of pages of medical records. That does not constitute good cause. Plaintiff has offered no explanation for why these records were not presented earlier to the ALJ or Appeals Council. Moreover, he has made no showing that these records would have influenced the ALJ's decision.

Accordingly, the Court recommends that the Motion to Remand be denied. 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 within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; D. Conn. L. Civ. R. 72 for Magistrate Judges; FDIC v. Hillcrest Assocs., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED, this 7th day of April, 2005, at Bridgeport, Connecticut.

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