

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CIVIL ACTION NO. 5:10CV22-J

MARGARET RADFORD

PLAINTIFF

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security

DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiff Margaret Radford seeks Disability Insurance Benefits which were denied by the Commissioner. This matter was referred to United States Magistrate Judge W. David King who recommends that the case be remanded to the Commissioner for a new decision in which the Commissioner may 1) obtain at least one opinion from a mental health professional as to whether the plaintiff suffers from a “severe” mental impairment; 2) do an individualized assessment of the impact of plaintiff’s obesity upon her functional ability; and 3) determine whether, despite her back impairment, obesity, and any mental impairment, a significant number of jobs exist in the national economy that she can still perform. In the event that the Commissioner chooses to make the latter determination based upon a direct application of the medical-vocational guidelines contained in Appendix 1 of the Regulations, the Commissioner may identify an evidentiary basis for finding that any non-exertional impairment found to be present does not significantly limit the plaintiff’s ability to do a full range of work at a designated exertional level. The Commissioner has filed objections to which the plaintiff has responded.

The Commissioner’s objections are that the ALJ’s findings at Step Four of the sequential evaluation are supported by substantial evidence because the evidence of record supports the conclusion that plaintiff’s exertional and non-exertional limitations do not significantly limit her

ability to perform the full range of sedentary or light work. The Commissioner further objects to the Magistrate Judge's recommendation for further investigation of the claimant's mental impairment, noting that substantial evidence supports the ALJ's finding of a non-severe mental impairment given plaintiff's sporadic treatment, and relying heavily upon Dr. Sivley's examination that was done some five months prior to the plaintiff's alleged onset date. Finally, the Commissioner objects to remand for consideration of the plaintiff's obesity and whether it poses additional limitations upon her functional abilities, noting cases from foreign circuits wherein it was held that an ALJ need not discuss a claimant's obesity where the obesity was not alleged to be the source of work limitations. The Court has conducted a de novo review of the Magistrate Judge's report in light of the objections thereto and the record as a whole, and finds that the analyses and conclusions of the Magistrate Judge mirror those of the undersigned. Accordingly, the Magistrate Judge's Report is hereby adopted, and its findings and conclusions are incorporated by reference herein.

Accordingly, for the reasons stated herein, IT IS ORDERED:

- 1) The Magistrate Judge's Report and Recommendation is ADOPTED, and those findings and conclusions are incorporated by reference herein;
- 2) The final Decision of the Commissioner denying benefits is REMANDED to the Commissioner for a new decision in accordance with the Magistrate Judge's Report and Recommendation.

This is a final and appealable Memorandum Opinion and Order, and there is no just cause for delay.