

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SHELLY FENDER,	:	
	:	NO. 1:11-CV-0412
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION &amp; ORDER</b>
	:	
	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 18), in which she recommends that the decision of the Commissioner to deny Plaintiff's application for Supplemental Security Income be reversed and the matter be remanded under sentence four of 42 U.S.C. §405(g).

Proper notice was given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed. For the reasons indicated herein, the Court AFFIRMS the Magistrate Judge's Recommended

Decision and ADOPTS the Magistrate Judges' Report and Recommendation in most respects, REVERSES the decision of the Commissioner as not supported by substantial evidence, and ENTERS final judgment in favor of Plaintiff.

Having reviewed this matter pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation thorough, well-reasoned, and correct as to her assessment of the Administrative Law Judge's decision. Thus, to the extent her Report and Recommendation recommends that the Commissioner's decision to deny benefits be reversed, this Court agrees and adopts and affirms the Report and Recommendation. However, to the extent that the Report and Recommendation recommends that this matter be remanded for further administrative proceedings, the Court declines to adopt and affirm. Instead, the Court finds that an immediate award of benefits is warranted in this matter.

The record contains strong proof, with no significant evidence to the contrary, that Plaintiff suffers from a disability under the Act. Specifically, the Medical Expert's testimony provides substantial evidence that Plaintiff's asthma meets the definition of disability, and that evidence is uncontradicted by other evidence in the record. The Magistrate Judge's thorough analysis of the record is illuminating and her

conclusion is correct: the ALJ unequivocally committed legal error in this case in his application of the evidence provided by the Medical Expert to the relevant law.

The Magistrate Judge nonetheless recommends that the case be remanded for further administrative proceedings because she found that the record was not clear enough on whether Plaintiff suffered from her asthma "in spite of prescribed treatment". This Court disagrees and finds that the record provides strong evidence that Plaintiff's prescribed treatment was not successful in controlling her asthma, and proof to the contrary is not present. Specifically, the Medical Expert testified that her prescribed regimen failed, and there is uncontradicted evidence in the record that Plaintiff was compliant with her treatment when she was able to afford it, and on at least one occasion she was unable to take it due to an uncontrolled infection. Given the established record and the circumstances of this case, and given the strong proof of disability without proof to the contrary, a remand for further proceedings would simply be a waste of judicial resources and would not support the interests of justice. See Faucher v. Secretary, 17 F.3d 171 (6th Cir. 1994). Accordingly, this matter should be remanded to Defendant for an immediate award of benefits. Newkirk v. Shalala, 25 F.3d 316, 318 (6th Cir. 1994).

In sum, the Court adopts and affirms in part the Magistrate Judge's Report and Recommendation (doc. 18); REVERSES the decision of the ALJ pursuant to 42 U.S.C. § 405(g); and ENTERS Final Judgment in favor of the Plaintiff, finding that she is entitled to Supplemental Security Income benefits as of April 2006. The Court AWARDS Plaintiff Supplemental Security Income benefits based on that date, REMANDS the case to Defendant Commissioner for an immediate award consistent with this Opinion & Order, and closes this case on the Court's docket.

SO ORDERED.

Dated: March 21, 2013

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge