

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JENNIFER KESTER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner of the Social  
Security Administration,

Defendant.

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Case No. 3:07cv00423

District Judge Walter Herbert Rice  
Magistrate Judge Sharon L. Ovington

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**DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS FILED ON JANUARY 14, 2009 (Doc. #11); VACATING THE COMMISSIONER'S NON-DISABILITY FINDING; MAKING NO FINDING AS TO WHETHER PLAINTIFF IS UNDER A "DISABILITY" WITHIN THE MEANING OF THE SOCIAL SECURITY ACT; REMANDING THE CASE TO THE COMMISSIONER AND THE ADMINISTRATIVE LAW JUDGE UNDER SENTENCE FOUR OF 42 U.S.C. §405(g) FOR FURTHER CONSIDERATION CONSISTENT WITH THIS DECISION AND ENTRY AND WITH THE REPORT AND RECOMMENDATIONS; AND TERMINATING THE CASE ON THE DOCKET OF THIS COURT**

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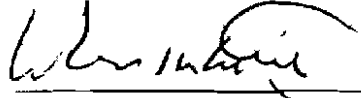
The Court has conducted a *de novo* review of the Report and Recommendations of United States Magistrate Judge Sharon L. Ovington (Doc. #11), to whom this case was originally referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) has expired, hereby **ADOPTS** said Report and Recommendations.

It is therefore **ORDERED** that:

1. The Report and Recommendations filed on January 14, 2009 (Doc. #11) is **ADOPTED** in full;
2. The Commissioner's non-disability finding is **VACATED**;
3. No finding is made as to whether Plaintiff Jennifer Kester was under a "disability"

within the meaning of the Social Security Act;

4. This case is REMANDED to the Commissioner and the Administrative Law Judge under Sentence Four of 42 U.S.C. §405(g) for further consideration consistent with this Decision and Entry and the Report and Recommendations; and
5. The case is terminated on the docket of this Court.



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Walter Herbert Rice  
United States District Judge