

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

MICHELLE LEE POWELL,

Plaintiff,

v.

CIVIL ACTION NO. 1:12-07781

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

**MEMORANDUM OPINION AND ORDER**

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendation regarding disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge VanDervort submitted to the court his Amended Proposed Findings and Recommendation ("PF&R") on August 28, 2014, in which he recommended that the court grant plaintiff's motion for judgment on the pleadings,\* deny defendant's motion for judgment on the pleadings, reverse the final decision of the Commissioner, remand the case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings as outlined in the PF&R, and dismiss this matter from the court's docket.

---

\*The parties actually filed briefs in support of their respective positions and not motions for judgment on the pleadings. However, Magistrate Judge VanDervort indicated that he was construing the briefs as motions for judgment on the pleadings.

In accordance with the provisions of 28 U.S.C. § 636(b), plaintiff was allotted fourteen days and three mailing days in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file such objections within the time allowed constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Neither party filed any objections to the Magistrate Judge's Findings and Recommendations within the required time period. Accordingly, the court adopts the Findings and Recommendations of Magistrate Judge VanDervort as follows:

1. Plaintiff's brief in support of the Complaint is **GRANTED**;
2. Defendant's brief in support of the Commissioner's decision is **DENIED**;
3. The final decision of the Commissioner is **REVERSED**;
4. The case is **REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in the Proposed Findings and Recommendation; and
5. This Clerk is directed to remove this case from the court's active docket.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

**IT IS SO ORDERED** this 17th of September, 2014.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written above a horizontal line.

David A. Faber

Senior United States District Judge