

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

PATRICIA SULLIVAN

PLAINTIFF

v.

No. 3:14-cv-163-DPM-JTR

SOCIAL SECURITY ADMINISTRATION,  
Commissioner

DEFENDANT

ORDER

The Court overrules Sullivan's well-argued objections and, on *de novo* review, adopts Magistrate Judge Ray's recommendation, *No. 12*, as modified. FED. R. CIV. P. 72(b)(3). On two key issues, as Sullivan points out, the recommendation is phrased in categorical terms while the law is more nuanced. The ALJ, however, applied a standard rather than a rule on each of these issues, so no legal error occurred. First, applying for unemployment benefits may or may not show an ability to work. *Compare Jernigan v. Sullivan*, 948 F.2d 1070, 1074 (8th Cir. 1991) with *Spencer v. Bowen*, 798 F.2d 275, 278 (8th Cir. 1986). The ALJ recognized this and made a judgment call. Record at 20. Second, the ALJ did not overlook, or simply refuse to consider at all, the last report from Sullivan's long-time counselor. He considered but discounted the counselor's conclusions. Record at 21. This kind of evidence is important; and

it must be considered and evaluated. *Shontos v. Barnhart*, 328 F.3d 418, 426 (8th Cir. 2003); 20 C.F.R. § 404.1513(d). On the merits, this Court sees a close case; but substantial evidence supports the ALJ's contrary view.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

20 July 2015