

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**CAROL LYNN HARMON**

**PLAINTIFF**

**v.**

**CASE NO. 4:12CV00539 BSM**

**CAROLYN W. COLVIN,  
Acting Commissioner,  
Social Security Administration**

**DEFENDANT**

**ORDER**

The proposed findings and recommended disposition [Doc. No. 13] (“RD”) submitted by United States Magistrate Judge Joe Volpe and objections thereto have been reviewed. For the reasons discussed below, the RD is adopted in part and this case is remanded for further administrative proceedings.

The RD recommends reversal of the Administrative Law Judge’s (ALJ) determination that plaintiff Carol Harmon is not disabled. The Commissioner argues that this recommendation is erroneous because Judge Volpe did not apply the proper standard of review, which asks whether the ALJ’s decision is supported by substantial evidence on the record as a whole. The Commissioner claims Judge Volpe instead determined reversal is appropriate because there was also substantial evidence to conclude that Harmon was disabled.

This argument misunderstands the RD. What Judge Volpe concluded is that the ALJ’s determination gave “no weight” to either of Harmon’s treating doctors and is not supported by the record as a whole given the MRI evidence and Harmon’s treatment history.

The RD applies the proper standard of review and Judge Volpe's recommendation to reverse the ALJ's disability determination is hereby adopted.

The recommendation in the RD that the case be remanded for calculation of disability benefits, however, is not adopted. Generally, when the ALJ's denial of benefits is determined to be improper on appeal, the district court, out of "abundant deference to the ALJ," remands the case for further administrative proceedings. *Buckner v. Apfel*, 213 F.3d 1006, 1011 (8th Cir. 2000) (internal quotation marks and citation omitted). The court will enter an immediate finding of disability and remand for calculation of benefits "only if the record overwhelmingly supports such a finding." *Id.* (internal quotation marks and citation omitted). Here, the record does not overwhelmingly support a finding of disability.

Therefore, for the reasons stated in the RD, the ALJ's finding that Harmon is not disabled within the meaning of the Social Security Act is reversed because it is not supported by substantial evidence on the record as a whole. Because there is not overwhelming evidence of disability, the case is remanded for further administrative proceedings.

IT IS SO ORDERED this 25th day of April 2013.

  
UNITED STATES DISTRICT JUDGE