

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

SHARON DOUGHERTY

PLAINTIFF

v.

Case No. 3:11-CV-03032

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

J U D G M E N T

Currently before the Court is the Report and Recommendation (Doc. 7) filed on May 3, 2012, by the Honorable James R. Marschewski, Chief United States Magistrate Judge for the Western District of Arkansas. Also before the Court are Plaintiff's objections (Doc. 9).

The Court, having reviewed this case *de novo*, finds that Plaintiff's objections offer neither law nor fact requiring departure from the Report and Recommendation.

Plaintiff's first objection is that the Magistrate did not properly weigh the report of one of Plaintiff's physicians, Dr. Vann Smith. After reviewing the evidence, the Court finds that the Magistrate carefully evaluated the ALJ's failure to give Dr. Smith's opinion controlling weight and observed that Dr. Smith's opinions were not due the same deference as those of medical experts who took into account Plaintiff's past medical records without relying solely, as Dr. Smith did, on Plaintiff's subjective medical complaints.¹ The Magistrate cited to *Kirby v. Astrue*, 500 F.3d 705,

¹ Plaintiff also draws the Court's attention to a footnote in the Magistrate's opinion, which states that, in general, "Dr. Smith's diagnoses are rarely supported by the overall medical evidence of record and are, quite often, the only evidence of a neuropsychological impairment contained in the record." (Doc. 7, p. 21). Plaintiff alleges that this footnote demonstrates that Dr. Vann's opinions were "ignored [by the Magistrate] merely because Dr. Smith has made the same or similar findings in other cases." (Doc. 9, p. 2). On the contrary, as discussed above, the Magistrate both substantively addressed Dr. Smith's findings as to Plaintiff's particular medical ailments and analyzed how Dr. Smith's medical opinion was considered by the ALJ.

709 (8th Cir. 2007), for the proposition that the opinion of a consulting physician is not entitled to special deference, especially when it is based largely on a claimant's subjective complaints. The Magistrate also found, after a review of the administrative record, that Dr. Smith's medical assessment was directly contradicted by two other doctors, both of whom had reviewed Plaintiff's medical records. Finally, the Magistrate concurred with the ALJ that the fact that Plaintiff continued to work part-time at McDonald's undermined Dr. Smith's conclusion that Plaintiff was too disabled to work. For all of these reasons, the Court finds that the Magistrate's opinion regarding Dr. Vann's medical determinations is well reasoned and properly supported.

Plaintiff's second objection is that the Administrative Law Judge ("ALJ") did not make a credibility finding that conformed with the relevant standards of law. Although Plaintiff concedes that "[t]he Magistrate's Report engages in a thorough discussion defending the ALJ's finding that the claimant was not credible..." (Doc. 9, p. 3), Plaintiff contends that the Magistrate failed to consider whether the ALJ properly applied the five-factor credibility test set forth in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984). Again, the Court finds Plaintiff's objection to be without merit, as the Magistrate's discussion specifically referenced *Polaski's* five-factor test and properly analyzed whether the ALJ's findings with regard to Plaintiff's credibility were supported by substantial evidence. *See* Doc. 7, pp. 9-10.

Accordingly, the Court finds that the Report and Recommendation is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. The decision of the Administrative Law Judge is **AFFIRMED**, and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED this 16th day of July, 2012.

P. K. Holmes, III
P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE