

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

JULIE A. BORNTRAGER

PLAINTIFF

v.

Civil No. 08-05059

MICHAEL J. ASTRUE, Commissioner
Social Security Administration

DEFENDANT

J U D G M E N T

NOW on this 21st day of September 2009, comes on for consideration the **Magistrate Judge's Report and Recommendation**, issued on June 18, 2009 (document #13). Plaintiff Julie Borntrager has filed objections to the Report and Recommendation (document #14).

The Court has reviewed this case *de novo* and, being well and sufficiently advised, finds as follows:

* Plaintiff's objections offer neither law nor fact requiring departure from the Report and Recommendation.

* More specifically, Plaintiff's contention that the Magistrate Judge engaged in impermissible *post hoc* justification in defense of the ALJ's determination finds no support in either law or the administrative record. As held by the Eighth Circuit in HealthEast Bethesda Lutheran Hospital and Rehabilitation Center v. Shalala, 164 F.3d 415 (8th Cir. 1998), in cases where an agency fails to make a necessary determination of fact or policy, a reviewing court may not uphold said agency's decision based on reasons not articulated by the agency itself in its decision.

HealthEast, 164 F.3d at 418. The instant case does not involve a failure on the part of the Commissioner to make a necessary finding of fact or policy. Thus, Plaintiff's arguments on this point are without merit.

Accordingly, the Court hereby adopts the Report and Recommendation *in toto*; affirms the decision of the Commissioner; and dismisses Plaintiff's complaint with prejudice.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE