

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SHERIL L. MANCINO,

Plaintiff,

vs.

Case No. 2:08-cv-376-FtM-29SPC

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of Magistrate Judge Sheri Polster Chappell's Report and Recommendation (Doc. #15), filed on May 21, 2009, recommending that the Commissioner's decision to deny social security disability benefits be remanded with instructions to the Commissioner. No objections have been filed, and the time to do so has expired.

The Court reviews the Commissioner's decision to determine if it is supported by substantial evidence and based upon proper legal standards. Crawford v. Comm'r of Soc. Sec., 363 F.3d 1155, 1158 (11th Cir. 2004). Substantial evidence is more than a scintilla but less than a preponderance, and is such relevant evidence as a reasonable person would accept as adequate to support a conclusion. Moore v. Barnhart, 405 F.3d 1208, 1211 (11th Cir. 2005); Crawford, 363 F.3d at 1158. Even if the evidence preponderates against the Commissioner's findings, the Court must affirm if the decision

reached is supported by substantial evidence. Crawford, 363 F.3d at 1158-59. The Court does not decide facts anew, make credibility judgments, reweigh the evidence, or substitute its judgment for that of the Commissioner. Moore, 405 F.3d at 1211; Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). The magistrate judge, district judge and appellate judges all apply the same legal standards to the review of the Commissioner's decision. Dyer, 395 F.3d at 1210; Shinn v. Comm'r of Soc. Sec., 391 F.3d 1276, 1282 (11th Cir. 2004); Phillips v. Barnhart, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004).

After an independent review, the Court agrees with the findings and recommendations in the Report and Recommendation. Therefore, the ALJ's Decision will be reversed and the matter remanded to the Commissioner for further proceedings.

Accordingly, it is now

ORDERED:


1. The Report and Recommendation (Doc. #15) is accepted and adopted by the Court.

2. The Decision of the Commissioner of Social Security is **reversed** and the matter is **remanded** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g) with instructions to address plaintiff's ability to perform fine and gross manipulations with her hands and address the opinion of

treating rheumatologist Dr. Galang. The Commissioner may also take any additional action necessary to properly resolve the claim.

3. The Clerk of the Court shall enter judgment accordingly and close the file.

DONE AND ORDERED at Fort Myers, Florida, this 11th day of June, 2009.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
U.S. Magistrate Judge

Counsel of Record