

Pursuant to Federal Rule of Civil Procedure 72(b)(3), the Court may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3). The Court reviews de novo any part of the Report and Recommendation to which a proper objection has been made. Fed. R. Civ. P. 72(b)(3). If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error. Johnson v. Zema Sys. Corp., 170 F. 3d 734, 739 (7th Cir. 1999) (also noting that a party who fails to object to the report and recommendation waives appellate review of the factual and legal questions).

Judge Schanzle-Haskins found the Administrative Law Judge erred by analyzing Plaintiff's fibromyalgia under the standard set forth in SSR 03-2p for analyzing Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain Syndrome rather than SSR 12-2p for analyzing Fibromyalgia. Defendant argued that the error was harmless because the ALJ found that Plaintiff's fibromyalgia was a severe impairment, he partially credited Plaintiff's allegations of fibromyalgia-related symptoms, and he evaluated the evidence in accordance with SSR 16-3p (Evaluation of Symptoms in Disability

Claims) and 20 C.F.R. § 404.1529 (“How we evaluate symptoms, including pain”). Judge Schanzle-Haskins rejected this argument, finding that the ALJ’s decision did not demonstrate that the ALJ adequately considered the waxing and waning effect of Plaintiff’s fibromyalgia when evaluating evidence such as Plaintiff’s periodic ability to engage in certain activities, relatively normal findings at some medical examinations, and the opinion of Plaintiff’s primary care provider, nurse practitioner Mary Ely. Therefore, Judge Schanzle-Haskins recommends that the matter be remanded for further consideration under the appropriate legal standard.

After reviewing the record, the Report and Recommendation, the parties’ Motions and memoranda, as well as the applicable law, this Court finds no clear error.

IT IS THEREFORE ORDERED THAT:

(1) The Report and Recommendation (d/e 21) is ADOPTED in its entirety.

(2) Plaintiff Motion for Summary Judgment (d/e 12) is GRANTED and Defendant’s Motion for Summary Affirmance (d/e 17) is DENIED.

**(3) The decision of the Commissioner is REVERSED and
REMANDED.**

(4) This case is CLOSED.

ENTERED: September 6, 2018

FOR THE COURT:

**s/ Sue E. Myerscough
SUE E. MYERSCOUGH**