

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CIVIL ACTION NO. 5:09CV61-J

HELEN M. REED

PLAINTIFF

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security

DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiff Helen Reed seeks Disability Insurance and Supplemental Security Income Benefits which were denied by the Commissioner. This matter was referred to United States Magistrate Judge W. David King who recommends that the final decision of the matter be affirmed and the plaintiff's claim dismissed.

The plaintiff has timely filed objections to the Magistrate Judge's Report arguing that the ALJ violated her due process rights in failing to include numerous items in the administrative record and in post-hearing procedures wherein she was denied her right to cross-examine the vocational expert upon whose testimony this fifth-step denial hinges. The claimant also contends that it was error for the ALJ to reject the disabling opinions of her treating physician, Dr. Barnes. The Court is troubled by the state of the record in this case. The first record included the hearing transcript of another claimant from Cleveland, Ohio; numerous of the claimant's medical records were not made part of that record; and the post-hearing procedures in this case do not appear to have been in compliance with the Commissioner's own HALLEX guidance. This Court's sense of fairness is offended by the claimant's limited ability to cross-examine the very evidence used to uphold the denial of benefits. The vocational expert testimony via interrogatories in this case created confusion. The testimony is not sufficiently clear to justify the ALJ's reliance. Without more definitive

testimony, it is impossible for this Court to discern which jobs would remain, and whether they would exist in sufficient numbers in the national economy.

A claimant has the expectation that a denial of benefits will be based upon a complete and fair review of their entire medical picture, and that they will have ample opportunity to challenge a vocational expert's testimony should they so desire. Accordingly, the Court finds that this case should be remanded to the Commissioner for review of a fully developed record and a new hearing where the claimant has the opportunity to fully examine the vocational expert.

Accordingly, for the reasons stated herein, IT IS ORDERED:

- 1) The Court declines to adopt the Magistrate Judge's Report and Recommendation.
- 2) The final Decision of the Commissioner denying benefits is REVERSED, and this matter is remanded to the Commissioner of Social Security for full development of the record and a new hearing.

This is a final and appealable Memorandum Opinion and Order, and there is no just cause for delay.