

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALYCIA DUNN,

Plaintiff,

Case. No. 19-CV-13133

v.

Honorable Thomas L. Ludington
Magistrate Judge David R. Grand

ANDREW SAUL,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER AND OPINION ADOPTING REPORT AND RECOMMENDATION,
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, DENYING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND DISMISSING
COMPLAINT**

Plaintiff Barbara R. Childs brought this action pursuant to 42 U.S.C. § 405(g), challenging the final decision of Defendant Andrew Saul, Commissioner of Social Security (the "Commissioner"), denying her application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under the Social Security Act. ECF No. 1. The matter was referred to Magistrate Judge R. Steven Whalen. ECF No. 3. The parties filed cross motions for summary judgment. ECF Nos. 14, 19. On November 30, 2020, Magistrate Judge Whalen issued his Report and Recommendation, recommending that Defendant's Motion for Summary Judgment be granted, and that Plaintiff's Motion for Summary Judgment be denied. ECF No. 20.

In the Report and Recommendation, Magistrate Judge Whalen recounted the procedural history of the matter:

On December 12, 2015, Plaintiff filed applications for DIB and SSI alleging disability as of July 1, 2011[.] ECF No. 8 (Tr. 496, 498). Upon initial denial of the claim, Plaintiff requested an administrative hearing, held on March 9, 2018 in Mount Pleasant, Michigan (Tr. 277). Administrative Law Judge (“ALJ”) Sarah Zimmerman presided. Plaintiff, represented by attorney John F. O’Grady, testified (Tr. 286-316), as did Vocational Expert (“VE”) Judith Findora (Tr. 316-321). On September 4, 2018, ALJ Zimmerman determined that Plaintiff was not disabled (Tr. 112-131).

On August 23, 2019, the Appeals Council declined to review the ALJ’s decision (Tr.1-7). The Appeals Council acknowledged that additional records had been submitted after the ALJ’s decision, but found that the new evidence pertaining to Plaintiff’s condition prior to the ALJ’s decision did not provide a basis for changing the non-disability finding (Tr. 2). The Appeals Council found further that evidence pertaining to Plaintiff’s condition after the administrative decision was not relevant to ALJ’s determination (Tr. 2). Plaintiff filed suit in this Court on October 25, 2019.

ECF No. 20 at PageID.2539. After reviewing the record and the cross motions for summary judgment, Magistrate Judge Whalen found that “[b]ecause the ALJ’s decision as to both Plaintiff’s physical and psychological abilities was well within the ‘zone of choice’ accorded to the factfinder at the administrative hearing level, it should not be disturbed by this Court.” *Id.* at PageID.2562.

Although the Report and Recommendation states that the parties could object to and seek review of the recommendation within 14 days of service, neither party timely filed any objections. The election not to file objections to the Report and Recommendation releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. *Id.*

Accordingly, it is **ORDERED** that the Report and Recommendation, ECF No. 20, is **ADOPTED**.

It is further **ORDERED** that Defendant’s Motion for Summary Judgment, ECF No. 19, is **GRANTED**.

It is further **ORDERED** that Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED**.

It is further **ORDERED** that the Complaint, ECF No. 1, is **DISMISSED**.

Dated: December 28, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge