

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOYCE L. WILLIAMS,

PLAINTIFF,

v.

CASE NO. 08-13472

COMMISSIONER OF SOCIAL SECURITY,

HONORABLE SEAN F. COX

DEFENDANT.

OPINION & ORDER
ACCEPTING AND ADOPTING REPORT & RECOMMENDATION

This social security appeal is before the Court for consideration of Plaintiff's objections to the Report and Recommendation ("R&R") filed by Magistrate Judge R. Steven Whalen on July 9, 2009, relating to the parties' cross-motions for summary judgment. In the R&R, Magistrate Judge Whalen recommends that the Commissioner's motion be granted and that the Plaintiff's motion be denied. For the reasons that follow, the Court overrules the objections filed by Plaintiff and shall adopt the R&R in its entirety.

BACKGROUND

Plaintiff brought this action under 42 U.S.C. §405(g) challenging a final decision of Defendant Commissioner denying her application for disability insurance benefits under the Social Security Act. Thereafter, both parties filed cross-motions for summary judgment, which were referred to Magistrate Judge Whalen pursuant to 28 U.S.C. §636(b)(1)(B) & (C). On July 9, 2009, Magistrate Judge Whalen issued his R&R which recommends that Plaintiff's Motion for Summary Judgment be denied. It further recommends that Defendant's Motion for Summary Judgment be granted because the final decision of the Commissioner was supported by

substantial evidence.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within ten (10) days after being served with a copy of the R&R. “The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made.” *Id.*

Plaintiff filed timely objections to the R&R on July 23, 2009.

ANALYSIS

Plaintiff asserts three different objections to Magistrate Judge Whalen’s July 23, 2009 R&R.

Plaintiff first objects to Magistrate Judge Whalen’s concurrence with the ALJ’s determination regarding credibility. (*See* Objections at 1) (“The Magistrate Judge Wrongly Found That The ALJ Did Not Err In Fining Plaintiff Not Credible.”). Plaintiff asserts that the ALJ misconstrued her daily activities in finding that they are inconsistent with her allegations of disability.

The Court finds Plaintiff’s objections regarding the ALJ’s credibility determination to be without merit. Under the law of this circuit, the ALJ’s credibility determinations are “entitled to considerable deference.” *See e.g., Howard v. Commissioner of Social Security*, 276 F.3d 235, 242 (6th Cir. 2002). The ALJ’s decision contained specific reasons for his credibility findings and cited evidence in the record to support those findings, including that Plaintiff reported that “[s]he frequently goes out to dinner with her husband, goes camping with friends and family members once or twice a month .” (Admin. Record at 22 & 23; *see also* Admin. Record at 145).

In Plaintiff's Motion for Summary Judgment, Plaintiff's Counsel asserted that Plaintiff's self-reported ability to camp once or twice a month is not inconsistent with her allegations of disability and then made various assumptions about how Plaintiff may engage in camping. (*See* Pl.'s Motion at 22)("Plaintiff does not clarify for how long she camps . . . Plaintiff *may* only go camping for a day or two . . . [Plaintiff] is *likely* to stay in an RV . . .")(emphasis added).

Notably, these assertions were not supported by any references to the administrative record.

Rather, these assertions were mere speculation by counsel. This Court agrees with Magistrate Judge Whalen that substantial evidence supports the ALJ's credibility determination.

Next, Plaintiff asserts that Magistrate Judge Whalen "wrongly found that the ALJ gave proper weight to the opinion of the treating physician, Dr. Mianeki." (Pl.'s Objections at 3).

The Court agrees with Magistrate Judge Whalen that the ALJ adequately discussed the relevant factors in rejecting Dr. Mianeki's opinion, including, but not limited to, that Dr. Mianeki significantly overstated her claimed period of disability.

The Court therefore concludes that this objection, as well as Plaintiff's remaining objections, lack merit.

CONCLUSION & ORDER

For the reasons above, the Court ADOPTS the July 23, 2009 R&R in its entirety. IT IS ORDERED that Plaintiff's Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED. IT IS FURTHER ORDERED that Plaintiff's Complaint

be DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: August 20, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 20, 2009, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager