

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARRIE LYNN THOMASON,

Plaintiff,

v.

Civil Case No. 16-10288
Honorable Linda V. Parker

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S
FEBRUARY 13, 2017 REPORT AND RECOMMENDATION [ECF NO. 27];
(2) DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
[ECF NO. 20]; AND (3) GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT [ECF NO. 26]**

On January 27, 2016, Plaintiff filed this lawsuit challenging the final decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act. On January 29, 2016, this Court referred the matter to Magistrate Judge R. Steven Whalen for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. §636(b)(1)(A) and/or a report and recommendation (“R&R”) on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). (ECF No. 4.) The parties subsequently filed cross-motions for summary judgment. (ECF Nos. 20, 26.) On

February 13, 2017, Magistrate Judge Whalen issued his R&R recommending that this Court grant the Commissioner's motion and deny Plaintiff's motion. (ECF No. 27.)

In his R&R, Magistrate Judge Whalen concludes that the Administrative Law Judge's determination was well-reasoned and within the "zone of choice" accorded to the fact-finder at the administrative hearing level. (*Id.* at Pg ID 840.) Specifically, the magistrate judge found that Plaintiff failed to provide support that her condition of morbid obesity required the same sequential analysis as when the ALJ is tasked with determining whether the disability is caused by substance abuse. (*Id.* at Pg ID 836.) Magistrate Judge Whalen also notes that Plaintiff rejects the Vocational Expert's conclusion that there are 4,300 jobs in Southeastern Michigan that Plaintiff could perform without providing any support. (*Id.* at Pg ID 839.) Magistrate Judge Whalen therefore concludes that the ALJ's decision should not be disturbed by the Court.

At the conclusion of the R&R, Magistrate Judge Whalen advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 840.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.*, citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of*

Health and Human Servs., 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Whalen. The Court therefore adopts Magistrate Judge Whalen's February 13, 2017 R&R.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment (ECF No. 20) is **DENIED**;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment (ECF No. 26) is **GRANTED**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: March 21, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, March 21, 2017, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager