

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DEBRA BOONE O'BRIEN,

Plaintiff,

v.

Civil Case No. 18-10396  
Honorable Linda V. Parker

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S  
AUGUST 16, 2019 REPORT AND RECOMMENDATION [ECF NO. 24]; (2)  
DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [ECF  
NO. 20]; (3) GRANTING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT [ECF NO. 22]; AND (4) AFFIRMING DEFENDANT'S  
DECISION**

On February 1, 2018, Plaintiff filed this lawsuit challenging the Commissioner of Social Security's ("Commissioner") final decision denying Plaintiff's application for social security benefits under the Social Security Act. (ECF No. 1.)

This lawsuit comes after Plaintiff's May 17, 2012 application for social security benefits, (R. at 116-24), Administrative Law Judge ("ALJ") Anthony R. Smereka's October 24, 2013 opinion finding that Plaintiff was not disabled under the Social Security Act, (R. at 16-29), and the Appeals Council's subsequent denial of Plaintiff's request for review, (R. 1-6). In response, Plaintiff appealed to this

Court, Case No. 15-12200, and on November 17, 2016, Judge Thomas L. Ludington adopted Magistrate Judge Elizabeth A. Strafford's report and recommendation ("R&R"), remanding Plaintiff's action for the ALJ "to clarify which evidence in the record is considered relevant and to explain the basis for that conclusion, to scrutinize the consistency between the claimant's testimony and the objective medical findings, and to consider the correct age and age group of the claimant." (R. at 736 (citing R. at 825-40; R. at 841-44).) The Appeals Council then remanded this matter to ALJ Smereka for further proceedings consistent with the order of the Court. (R. at 847.)

On August 24, 2017, ALJ Smereka held a new hearing, at which Plaintiff and a vocational expert, Michele D. Robb, testified. (R. at 763-806.) On October 2, 2017, ALJ Smereka issued an opinion, which again determined that Plaintiff was not disabled within the meaning of the Social Security Act. (R. at 733-62.) The Appeals Council subsequently denied Plaintiff's request for review, and thus ALJ Smereka's October 2, 2017 decision became the Commissioner's final decision.

Plaintiff timely filed the instant lawsuit on February 1, 2018. (ECF No. 1.) On February 5, 2018, this Court referred the matter to Magistrate Judge Anthony P. Patti 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 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, 22.)

On August 16, 2019, Magistrate Judge Patti issued an R&R recommending that this Court grant the Commissioner’s motion and deny Plaintiff’s motion. (ECF No. 24.) In the R&R, Magistrate Judge Patti rejects Plaintiff’s argument that the ALJ’s decision is unsupported by substantial evidence and that the ALJ failed to properly evaluate opinion evidence. At the conclusion, Magistrate Judge Patti advises the parties that they may object to and seek review of the R&R within 14 days of service upon them. (*Id.* at Pg. ID 1396-97.) He further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.* at Pg. ID 1396 (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991)).) 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 Patti. The Court therefore adopts Magistrate Judge Patti’s August 16, 2019 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. 22) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant's decision finding Plaintiff not disabled under the Social Security Act is **AFFIRMED**.

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

Dated: September 18, 2019