

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TRACY E. LUMM,

Plaintiff,

Case No: 1:09-cv-756

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**OPINION AND ORDER**

Plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration, which denied Plaintiff's claim for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 U.S.C. § 405(g). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R) (Dkt 15), recommending that this Court reverse the Commissioner's decision and remand for further factual findings. The matter is presently before the Court on Defendant's Objections to the R & R (Dkt 16). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R & R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Defendant argues that the Magistrate Judge erred in concluding that the decision of the Administrative Law Judge (ALJ) was not supported by substantial evidence. Defendant specifically challenges the Magistrate Judge's finding that the record lacked substantial evidence for the ALJ to discount Dr. Millermaier's opinion that Plaintiff could not work more than four hours a day or to discount Plaintiff's subjective allegations on level of activity. Defendant argues that substantial

evidence supported the ALJ's findings and the decision should be upheld.

The Court is unpersuaded by Defendant's arguments. Plaintiff's medical history is complex and, while her second kidney transplant, performed in 2003 when Plaintiff was 17 years old, was successful, she continues to suffer impairment from several medical conditions. On June 13, 2008, Dr. Millermaier, identified by Plaintiff as her treating physician, reported that Plaintiff is 'Unable to work more than 4 hours /day due to multiple medical problems.' (Tr. 461). The ALJ stated that he afforded this statement little weight and explained: "The claimant's level of activity that includes caring for herself, going to school and working on a part-time basis is not consistent with the statement." (Tr. 25). As the Magistrate Judge noted, the record does not afford support for this conclusion. Plaintiff's reported activities, including part-time work, an occasional college class, and the ability to care for herself, are consistent with Dr. Millermaier's opinion that she is not capable of full-time work.

The ALJ also discounted Plaintiff's subjective statements of the impact her medical conditions have on her activity level. This Court agrees with the Magistrate Judge that Plaintiff's subjective statements of her limitation are not inconsistent with her reported activities or the medical evidence and that the ALJ's decision to discount these statements is thus not supported by substantial evidence.

Given the record evidence and the circumstances presented, the Court finds no error in the Magistrate Judge's determination that the ALJ's decision failed to comply with the relevant legal standards and that further factual findings are required.

Accordingly:

**IT IS HEREBY ORDERED** that the Objections (Dkt 16) are DENIED, the Report and

Recommendation of the Magistrate Judge (Dkt 15) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the decision of the Commissioner of Social Security is REVERSED, and this matter is REMANDED for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g).

A Judgment will be entered consistent with this Opinion and Order.

Dated: July 7, 2011

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge