

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW L. JOHNSON,

Plaintiff,

CASE NO. 1:15-CV-74

v.

HON. ROBERT J. JONKER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Carmody's Report and Recommendation in this matter (docket # 18); the Commissioner's Objection (docket # 19); and Plaintiff's Response (docket # 20). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

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 in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; Defendant's Objection; and Plaintiff's Response. The Court finds the Magistrate Judge's Report and Recommendation (docket # 18) factually sound and legally correct.

The Magistrate Judge found that the ALJ's rationale for discounting treating physician Palella's opinion is not supported by substantial evidence, and recommended that the Court remand the matter for further factual findings under sentence four of 42 U.S.C. § 405(g). Defendant premises the Objection on Defendant's speculation about what the ALJ might have meant to say about his reasons for discounting Dr. Palella's opinion. Defendant's speculation is simply no substitute for the ALJ's articulation of his own reasons. Here, the record does not disclose a proper basis for discounting Dr. Palella's determination as a treating physician of physical and behavioral restrictions and limitations. The Court agrees with the Magistrate Judge that the matter must be remanded, for precisely the reasons detailed in the Report and Recommendation.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 18) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that the Commissioner's decision is **VACATED** and this matter **REMANDED** for further factual findings under sentence four of 42 U.S.C. § 405(g).

Dated: January 13, 2016

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE