

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARY ELIZABETH JACKSON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:19-cv-1039

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff brings this action under 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of the Social Security Administration denying her claim for Disability Insurance Benefits (DIB). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court affirm the decision of the Administrative Law Judge (ALJ) rendered on behalf of the Commissioner. The matter is presently before the Court on Plaintiff's three objections to the Report and Recommendation. Defendant filed a response to the objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), this Court has performed de novo review of the portions of the Report and Recommendation to which Plaintiff objects. For the following reasons, the Court denies the objections and issues this Opinion and Order.

Plaintiff first argues that the Magistrate Judge erred in concluding that substantial evidence supports the ALJ's decisions under the Listing of Impairments where the ALJ erroneously omitted any consideration of her obesity with regard to whether her ankle impairment satisfies § 1.02(A)

(Pl. Obj., ECF No. 15 at PageID.783-784). The Magistrate Judge determined that “there is nothing in the record suggesting that Plaintiff was considered obese prior to the expiration of her insured status” (R&R, ECF No. 14 at PageID.779). While Plaintiff asserts that “[o]besity was a diagnosis during ... the insured period” (ECF No. 15 at PageID.783), Plaintiff’s references to the record do not establish that she was considered obese during the relevant time period. Further, as Defendant points out in response, Plaintiff does not address—let alone demonstrate error in—the Magistrate Judge’s conclusion that “the record does not support Plaintiff’s argument that she lacked the ability to ambulate effectively prior to the expiration of her insured status” (R&R, ECF No. 14 at PageID.774). This objection is properly denied.

Second, Plaintiff argues that the Magistrate Judge also erred in concluding that substantial evidence supports the ALJ’s decisions under the Listing of Impairments where the ALJ “improperly disregarded” a diagnosis about her thumbs with regard to whether her thumb impairments satisfy § 1.02(B) (Pl. Obj., ECF No. 15 at PageID.784-785). The Magistrate Judge determined that Plaintiff’s doctor made the diagnosis of bilateral basilar joint arthritis “well after the expiration of Plaintiff’s insured status” (R&R, ECF No. 14 at PageID.776). Plaintiff does not dispute that the diagnosis was issued after the relevant time period and does not reference any authority or develop any argument in support of the proposition that disregarding the diagnosis is “error.” Plaintiff also wholly fails to address the Magistrate Judge’s additional conclusion that her doctor “did not conclude or observe that Plaintiff’s ability to perform fine and gross movements with her upper extremities was impaired” (*id.* at PageID.776). This objection is also properly denied.

Last, Plaintiff briefly asserts that the Magistrate Judge erred in concluding that the record supports the Residual Functioning Capacity (RFC) found by the ALJ where the ALJ failed to

consider her obesity (Pl. Obj., ECF No. 15 at PageID.785-786). Again, Plaintiff's argument fails to demonstrate any factual or legal error by the Magistrate Judge. Further, Plaintiff fails to address the Magistrate Judge's ultimate conclusion that "even if the Court assumes that Plaintiff was obese prior to the expiration [o]f her insured status, the record does not support the argument that such warranted a more restrictive RFC" (R&R, ECF No. 14 at PageID.780). This objection is also properly denied.

Having denied the objections, the Court will adopt the Magistrate Judge's Report and Recommendation as the Opinion of this Court and enter a Judgment consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 15) are DENIED, the Report and Recommendation of the Magistrate Judge (ECF No. 14) is APPROVED and ADOPTED as the Opinion of the Court, and the decision of the Commissioner of Social Security is AFFIRMED.

Dated: October 14, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge