

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

<p>CYNTHIA A. McINTIRE,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>MICHAEL J. ASTRUE, Commissioner of Social Security,</p> <p style="text-align: center;">Defendants.</p> <hr style="width: 40%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CV-08-20-BLG-RFC</p> <p>ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE</p>
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On October 6, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends that McIntire’s motion for summary judgment be denied, the Commissioner’s motion for summary judgment be granted, and the Commissioner’s decision denying disability insurance benefits (“DIB”) and supplemental security income (“SSI”) be affirmed.

Upon service of a magistrate judge’s findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the October 6, 2008 Findings and Recommendation. Failure to object to a magistrate judge’s findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge’s conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

McIntire presented no evidence that her obesity sufficiently exacerbates her other conditions to such a degree that they render her disabled. The Administrative Law Judge ("ALJ") recognized that "the claimant's obesity is a significant factor in the limitations cause by her other severe impairments. However, she still does not have [an] impairment, or combination of impairments, that meet or equal in severity any listed impairment. *Tr. at 22*. Additionally, McIntire offered no evidence that her obesity caused or contributed to her functional limitations. In fact, McIntire did not even allege obesity as an impairment. Further, McIntire presented no evidence in the administrative proceedings that her obesity impaired her ability to work. McIntire has not pointed the Court to any evidence in the record showing obesity-related functional limitations that should have influenced the ALJ's analysis.

As the ALJ acknowledged, McIntire's obesity is documented in various medical reports in the record. The evidence, however, is merely that "treating sources have repeatedly instructed her to try to lose weight, as it is likely contributing to her chronic pain symptoms, and [instructed her] to begin an exercise program." *Tr. at 22*. This evidence is not sufficient to require this Court to conclude that the ALJ committed reversible error. *See Burch v. Barnhart*, 400 F.3d 676 (9th Cir. 2005).

Based upon these considerations, Magistrate Judge Ostby correctly concluded that the ALJ did not commit reversible error. Evidence in the record, as summarized by the ALJ's written decision, supports his conclusions.

Therefore, IT IS HEREBY ORDERED that McIntire's Motion for Summary Judgment [doc. #16] is **DENIED**, the Commissioner's Motion for Summary Judgment [doc. #19] is **GRANTED**, and the ALJ's decision denying DIB and SSI is **AFFIRMED**.

The Clerk of Court is directed to enter judgment and close this case accordingly.

DATED the 6th day of November, 2008.

/s/ Richard F. Cebull _____
RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE