

**FILED**

NOV 27 2012

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

Clerk, U S District Court  
District Of Montana  
Billings

<b>MARK R. BARRETT,</b>  <b>Plaintiff,</b>  vs.  <b>MICHAEL J. ASTRUE,</b> <b>Commissioner of Social</b> <b>Security,</b>  <b>Defendant.</b>	<b>Case No. CV-11-143-BLG-RFC</b>  <b>ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE</b>
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United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (doc. 22) as to the parties' cross-motions for summary judgment in this action seeking an appeal of the Commissioner's denial of disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-403. Magistrate Judge Ostby recommends this matter be remanded with directions that the Administrative Law Judge consider additional evidence.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). No party filed objections to the September 26, 2012 Findings and Recommendation. The parties' failure to object waives any objection to the findings of fact, *Turner v. Duncan*,

158 F.3d 449, 455 (9th Cir. 1999), but this Court must still review de novo any conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).


After a de novo review, it is clear that Magistrate Judge Ostby properly applied *Brewes v. Commissioner of Social Security*, 682 F.3d 1157 (9th Cir. 2012) and *Mayer v. Massanari*, 276 F.3d 453 (9th Cir. 2001) in concluding that this case must be remanded to the Commissioner for consideration of Dr. Jenkins's report in light of the record as a whole. Magistrate Judge Ostby's Findings and Recommendations (doc.22) are therefore adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) Barrett's motion for summary judgment (doc. 15) is **DENIED** to the extent it seeks a remand for award of benefits, but **GRANTED** to the extent it seeks remand;
- (2) the Commissioner's motion for summary judgment (doc. 18) is **DENIED**; and
- (3) this matter is **REMANDED** to the Commissioner for further proceedings consistent with the Findings and Recommendations .

The Clerk of Court shall notify the parties of the entry of this Order and close this case.

DATED the 27<sup>th</sup> day of November, 2012.

  
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RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE