

FILED

NOV 04 2014

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

DANA M. NICHOLS,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

CV 13-65-BU-DWM-JCL

ORDER

Plaintiff Dana Nichols (“Plaintiff”) brings this action under 42 U.S.C. § 405(g) seeking judicial review of the decision of the Commissioner of Social Security denying her application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-434. This matter comes before the Court on Plaintiff’s motion for summary judgment. (Doc. 13.) Magistrate Judge Jeremiah Lynch entered findings and recommendations on October 6, 2014, recommending the Court grant Plaintiff’s motion and remand for further proceedings. (Doc. 23.)

The parties are entitled to *de novo* review of the specified findings or

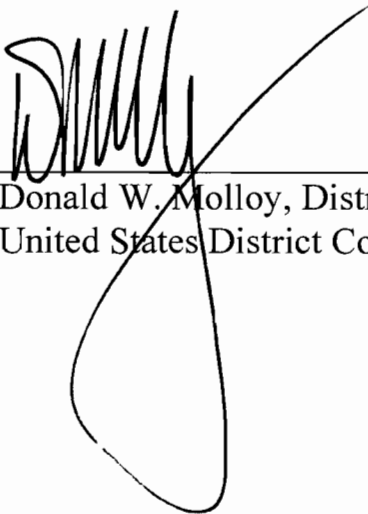
recommendations to which they object. 28 U.S.C. § 636(b)(1). As no objections have been filed, the Court reviews the findings and recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). Because the parties are familiar with the factual and procedural background, it will not be restated here.

In her motion for summary judgment, Plaintiff argues the ALJ did not provide sufficiently clear and convincing reasons for discrediting her testimony and that the ALJ erred by rejecting residual functioning capacity assessment opinions provided by two of her treating physicians, Dr. Ricardo Gonzalez and Dr. Rex Adams. Plaintiff further insists that the ALJ failed to provide germane reasons for rejecting a third party function report completed by her husband, Terry Nichols. Judge Lynch agrees with Plaintiff and recommends the matter be remanded for further proceedings. The Court finds no clear error with Judge Lynch’s analysis or conclusions.

Accordingly, IT IS ORDERED that Judge Lynch’s Findings and Recommendation (Doc. 23) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment (Doc. 13) is GRANTED. The decision of the Commissioner is REVERSED and this matter is REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this order.

Dated this 4 day of November, 2014.



Donald W. Molloy, District Judge
United States District Court