UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RHONDA L. PITTS,	)	Case No.: 1:13 CV 719
	)	
Plaintiff	)	
	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant	)	ORDER OF REMAND

The Acting Commissioner of Social Security ("Commissioner") denied disability benefits to the claimant, Rhonda L. Pitts ("Pitts" or "Plaintiff"), in the above-captioned case. Pitts sought judicial review of the Commissioner's decision, and this court referred the case to Magistrate Judge James Knepp for preparation of a report and recommendation ("R&R"). Both parties submitted briefs on the merits. Plaintiff requested an order reversing the Administrative Law Judge's ("ALJ") decision and remanding her claim. The Commissioner sought final judgment upholding the decision below. Plaintiff argued, among other things, that the ALJ failed to properly weigh the opinions of treating physicians, failed to meet his burden when establishing whether Plaintiff could perform available work, and failed to properly evaluate Plaintiff's credibility. (Pl.'s Br. on the Merits, ECF No. 14.)

Magistrate Judge Knepp submitted his R&R (ECF No. 17) on April 18, 2014. The Magistrate

Judge concluded that the ALJ properly evaluated and assigned weight to the 2011 opinions of Dr. Mendoza and Dr. Rao. (R&R at 12.) However, the Magistrate Judge found that the ALJ did not assign weight to Dr. Rao's 2009 opinion, which was not harmless error. (*Id.* at 14-15.) The Magistrate Judge determined that the case should be reversed and remanded to the ALJ on this ground for a proper analysis of Dr. Rao's 2009 opinion. (*Id.* at 15.) With respect to Plaintiff's claims that the ALJ failed to meet his burden when establishing whether Plaintiff could perform available work, the Magistrate Judge found that Plaintiff's claims were without merit. The Magistrate Judge determined that the ALJ properly relied on a hypothetical question fairly setting out Plaintiff's limitations, did not misunderstand the state agency review psychologist's opinion as to Plaintiff's capabilities, and the ALJ's decision properly relied on the job-incidence figures provided to him. (*Id.* at 16-18.) Finally, the Magistrate Judge found that Plaintiff's claims regarding improper credibility determinations were without merit. The Magistrate Judge found that the ALJ used proper rationales to deny disability benefits and provided sufficient explanation for his credibility determinations. (*Id.* at 18-21.)

Plaintiff did not file objections to the R&R, thereby waiving the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985). Defendant filed a response to the R&R asserting that she would not be filing objections. (ECF No. 18.)

The court finds, after careful *de novo* review of the Magistrate Judge's Report and Recommendation and all other relevant documents in the record, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 17.) The court

hereby reverses the Commissioner's final decision and remands the matter for further proceedings consistent with the Magistrate Judge's Report and Recommendation adopted herein.

IT IS SO ORDERED.

/s/ *SOLOMON OLIVER, JR.*
CHIEF JUDGE
UNITED STATES DISTRICT COURT

May 21, 2014