

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

LONELLE C. PENNINGTON,	:	Case No. 1:17-cv-264
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
	:	
Defendant.	:	
	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 18) AND
TERMINATING THIS CASE IN THIS COURT**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on July 12, 2018, submitted a Report and Recommendation. (Doc. 18). Defendant Commissioner of Social Security (the “Commissioner”) filed objections on July 26, 2018. (Doc. 19). Plaintiff filed a response to Defendant’s objections on August 6, 2018. (Doc. 20).

After reviewing the Report and Recommendation, the Commissioner’s objections, and the case record, the Court finds that the Commissioner’s objections are not well-taken. The Commissioner’s raises three objections.

The Commissioner’s first and third objections to the Report and Recommendation are essentially the same, the Commissioner contends that the evidence does not establish

that Plaintiff is entitled to an outright award of benefits and that the Report and Recommendation erred in finding that a remand for benefits is appropriate. (Doc. 19 at 1–2, 10). When a court finds that substantial evidence does not support the Commissioner’s decision, benefits may be awarded immediately “only if all essential factual issues have been resolved and the record adequately establishes a plaintiff’s entitlement to benefits.” *Vorhis-Deaton v. Com’r*, 34 F. Supp.3d 809, 822 (S.D. Ohio 2014) (remanding for an immediate award under Listing 12.05C). The Court agrees with the Magistrate Judge that a remand for benefits is appropriate because (1) proof of the Plaintiff’s disability is overwhelming as Plaintiff meets or equals Listing 12.05C, (2) there is no substantial evidence supporting an opposing finding, and (3) remand without an award of benefits serves no purpose other than delay. (Doc. 18 at 33).

The Commissioner’s second objection argues that the Report and Recommendation errs in finding that the Plaintiff had the required adaptive deficits to meet listing 12.05C. The Court agrees with the Magistrate Judge that substantial evidence supports the finding that Plaintiff satisfies the adaptive functioning requirements of Listing 12.05C and that the ALJ’s finding that she did not meet or equal Listing 12.05C is not supported by substantial evidence. (Id. at 6–13).

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that the Report and Recommendation should be and is hereby adopted in its entirety.

Accordingly, for the reasons stated above:

- 1) The Report and Recommendation (Doc. 18) is **ADOPTED**;
- 2) The Commissioner's decision to deny Plaintiff SSI benefits is **REVERSED**, as that decision is not supported by substantial evidence;
- 3) This matter is **REMANDED** for an immediate award of benefits beginning on July 1, 2007, immediately following the termination of her prior SSI benefits;
- 4) The Clerk shall enter Judgment accordingly, whereupon this case shall be **TERMINATED** in this Court.

IT IS SO ORDERED.

Date: 9/5/2018

/s/ Timothy S. Black
Timothy S. Black
United States District Judge