

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Mary M. Marcum,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:08-cv-0917
	:	
	:	JUDGE GRAHAM
Commissioner of Social Security,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court to consider de novo the plaintiff's objections to a Report and Recommendation of the Magistrate Judge recommending that judgment be entered in favor of the Commissioner. For the following reasons, those objections will be overruled and judgment will be entered for the defendant.

The Report and Recommendation, while recognizing that this case is a close one, ultimately concluded that the Commissioner had articulated valid reasons for discounting plaintiff's testimony that her fibromyalgia produces disabling symptoms. In her objections, plaintiff argues that the bases upon which the Report and Recommendation relied for finding that the Commissioner properly discounted plaintiff's testimony were not, in fact, relied on by the Commissioner to do so, or that (in the case of Dr. Lee's failure to provide a residual functional capacity assessment) they were not proper reasons to find the plaintiff's testimony to be less than fully credible.

With respect to Dr. Lee's action (or inaction), the Commissioner correctly points out that the record showed that Dr. Lee refused to provide an RFC assessment even though plaintiff asked him to do so. The Commissioner was entitled to give that circumstance some weight in making a credibility finding. With

respect to the other factors cited in the Report and Recommendation, plaintiff does not mention the fact that her failure to seek aggressive treatment was one of the factors cited by the Commissioner as running counter to her claim of disabling symptoms, and relied on by the Report and Recommendation in upholding the Commissioner's decision. Further, the administrative decision did discuss the state agency reviewers' opinions, as well as Dr. Gustafson's, in the portion of the decision where the credibility of plaintiff's complaints was discussed. The Court therefore agrees that the Commissioner's credibility finding had enough legitimate support to prevent the Court from overturning it.

For these reasons, the plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED, and the Report and Recommendation is ADOPTED. The plaintiff's statement of errors is OVERRULED, the decision of the Commissioner is AFFIRMED, and the Clerk is directed to enter judgment in favor of the defendant Commissioner.

S/ James L. Graham
JAMES L. GRAHAM
United States District Judge

Date: Feb. 1, 2010