

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

KAREN MCAFEE,	:	Case No. 3:16-cv-372
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	Magistrate Judge Sharon L. Ovington
	:	
NANCY A. BERRYHILL,	:	
Acting Commissioner of the Social	:	
Security Administration,	:	
	:	
Defendant.	:	

**ENTRY AND ORDER OVERRULING OBJECTIONS (DOC. 15) IN PART,
ADOPTING REPORT AND RECOMMENDATIONS (DOC. 14) IN PART AND
REMANDING CASE FOR FURTHER PROCEEDINGS**

This disability benefits case is before the Court on the Commissioner’s Objections (Doc. 15) to the Report and Recommendations (Doc. 14) entered by Magistrate Judge Sharon L. Ovington. Plaintiff Karen McAfee (“Plaintiff”) applied for Disability Insurance Benefits in December 2009 based on anxiety and depression with an alleged onset date of July 1, 2006. After an Administrative Law Judge (“ALJ”) denied Plaintiff’s application in 2012, she sought review from this Court, which remanded the matter to the Social Security Administration for further proceedings. A different ALJ reviewed Plaintiff’s application on remand, but she was again denied benefits. Her application is now before the Court for review of this last denial.

In the Magistrate Judge’s Report and Recommendation, she found that the ALJ erred in her analysis of the application and recommended that the Court remand the matter for an immediate award of benefits. (Doc. 14 at 17.) The Magistrate Judge

concluded that a remand for benefits was appropriate, rather than a remand for reconsideration of the application, because “the record contains overwhelming evidence, or strong evidence” that Plaintiff is under a disability, “while contrary evidence is lacking.” (*Id.*) The Commissioner filed Objections (Doc. 15) to the Report and Recommendation, in response to which Plaintiff filed a Reply (Doc. 16). This matter is therefore ripe for the Court’s review.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court agrees with the Magistrate Judge’s analysis in Parts I-V of the Report and Recommendation, but disagrees with the conclusion that remand is warranted, as set forth in Part VI, because the evidence is not overwhelming in favor of payment of benefits. Rather, there remains an issue of fact regarding the medical evidence to be resolved by the ALJ on remand. The Court therefore **OVERRULES** the Commissioner’s Objections (Doc. 15) to Parts I-V, but **SUSTAINS** her Objections (Doc. 15) to Part VI of the Report and Recommendation. The Court **ADOPTS** Parts I-V of the Report and Recommendation (Doc. 14).

The Court orders this case **REMANDED** to the Social Security Administration for further proceedings pursuant to Sentence Four of Section 205 of the Social Security Act, 42 U.S.C. § 405(g). On remand, the Appeals Council shall vacate the findings in the ALJ’s decision and conduct further proceedings and develop the record as necessary to determine if Plaintiff is disabled within the meaning of the Social Security Act.

DONE and ORDERED in Dayton, Ohio, this Monday, September 25, 2017.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE