

FILED
JAN 22 2010

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JERRY DAY,

Civil Case No. 08-944-JE

Plaintiff,

OPINION AND ORDER

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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KING, Judge:

The Honorable John Jelderks, United States Magistrate Judge, filed Findings and Recommendation on December 15, 2009. Defendant filed timely objections to the Findings and Recommendation.

When either party objects to any portion of a magistrate's Findings and Recommendation concerning a dispositive motion or prisoner petition, the district court must make a de novo determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). This court has, therefore, given de novo review of the rulings of Magistrate Judge Jelderks.

This court ADOPTS the Findings and Recommendation of Magistrate Judge Jelderks dated December 15, 2009 in its entirety, with the following clarification:

Plaintiff's entitlement to an award of benefits cannot be determined until the Commissioner determines the date on which plaintiff became disabled, which can be no later than October 1995. Plaintiff will not be awarded Title II disability benefits (DIB) unless the Commissioner determines that he was disabled on or before his date last insured for Title II disability benefits. Plaintiff will not be awarded Title XVI disability payments (SSI) unless he meets the financial eligibility requirements set out in the regulations for each possible month of payment, based on his SSI application date.

IT IS HEREBY ORDERED that the decision of the Commissioner is reversed. The case is remanded for a finding of disability and for rehearing to determine the date on which plaintiff became disabled.

Dated this 22nd day of January, 2010.


Garr M. King
United States District Judge