

United States District Court  
Southern District of Texas

**ENTERED**

February 23, 2018

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

SYLVIA GALLEGOS,

*Plaintiff,*

v.

NANCY A. BERRYHILL, Acting Commissioner  
of the Social Security Administration,

*Defendant.*

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CIVIL ACTION H-17-201

**ORDER**

Pending before the court is a Memorandum and Recommendation (“M&R”) in which the Magistrate Judge recommends that the court grant in part and deny in part both the plaintiff’s and the defendant’s motions for summary judgment. Dkt. 16. After reviewing the M&R, related documents in the record, and the applicable law, the court is of the opinion that there is no clear error and that the M&R should be ADOPTED IN FULL. *See* Fed. R. Civ. P. 72, Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is not clear error on the face of the record in order to accept the recommendation.”). The court therefore ADOPTS the M&R (Dkt. 16) IN FULL.

Accordingly, plaintiff Sylvia Gallegos’s motion for summary judgment (Dkt. 10) is GRANTED IN PART AND DENIED IN PART. It is GRANTED to the extent Gallegos seeks remand because the Administrative Law Judge (“ALJ”) failed to assess the transferability of skills according to the standard applicable to persons closely approaching retirement age.<sup>1</sup> It is otherwise DENIED.

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<sup>1</sup> To address this issue on remand, the ALJ should, in accordance with the instructions in the M&R, “consult a Vocational Expert on: (1) the degree of transferability between the skills [Gallegos] acquired in her past relevant work and the requirements of the cited potential occupations; and (2) the vocational adjustment required for [Gallegos] to transition to those occupations. The ALJ must explain his determinations on transferability and vocational adjustment.” Dkt. 16 at 21.

Additionally, Defendant Nancy A. Berryhill, Acting Commissioner of the Social Security Administration's motion for summary judgment (Dkt. 8) is GRANTED IN PART AND DENIED IN PART. It is GRANTED to the extent Berryhill argues that substantial evidence supports the ALJ's finding that Gallegos is capable of lifting and carrying requirements of the identified jobs despite her reliance on a cane to ambulate. It is otherwise DENIED.

In accordance with these rulings and the analysis in the M&R, the judgment of the Social Security Commissioner, which denied review of the ALJ's decision and thus fully adopted it, is AFFIRMED IN PART AND REVERSED IN PART. This case is REMANDED to the Social Security Administration for further consideration in light of the reasoning set forth in the M&R.

The court will issue a final judgment concurrently with this order.

Signed at Houston, Texas on February 23, 2018.

  
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Gray H. Miller  
United States District Judge