

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

SANDRA J. COOK,

Plaintiff,

v.

**Civil Action No. 2:10-CV-91
(Judge Bailey)**

**MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION/OPINION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation/Opinion of United States Magistrate Judge John S. Kaull [Doc. 24] dated March 9, 2011, to which neither party filed objections. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the District Court to review the recommendation under the standards that the District Court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. See **Webb v. Califano**, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, because no objections have been filed, this report and recommendation ("R & R") will be reviewed for clear error.

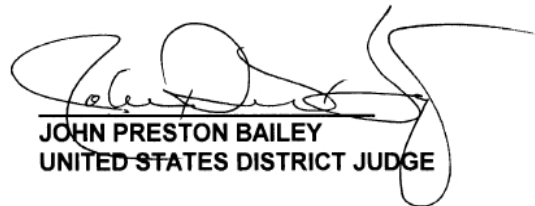
Upon review of the above, it is the opinion of this Court that the Report and Recommendation/Opinion [Doc. 24] should be, and is, hereby **ORDERED ADOPTED**. For reasons more fully stated in the Report and Recommendation, this Court finds no clear

error regarding the magistrate judge's finding that substantial evidence does not support the Commissioner's decision denying the plaintiff's application for SSI. Accordingly, the Defendant's Motion for Summary Judgment [**Doc. 19**] is hereby **DENIED**. Further, the Plaintiff's Motion for Summary Judgment [**Doc. 14**] is **GRANTED IN PART**, by reversing the Commissioner's decision under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3), with a **REMAND** of the cause to the Commissioner for further proceedings consistent with the magistrate judge's R&R.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: March 29, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE