

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

FILED

JUN 3 2005

SHERMAN ROBINSON,

Plaintiff,

U.S. DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

v.

CIVIL ACTION NO. 1:04CV92
(Judge Keeley)

JO ANNE BARNHART, COMMISSIONER
OF SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on May 19, 2004, the Court referred this Social Security action to United States Magistrate Judge John S. Kaull with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On May 19, 2005, Magistrate Kaull filed his Opinion/Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Opinion/Report and Recommendation and further directed the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

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The Magistrate Judge determined that the Administrative Law Judge's ("ALJ") evaluation of the medical opinions of the plaintiff's treating physician as required under SSR 96-2p was proper; however, the Magistrate Judge further determined that the ALJ failed to fully discuss the requirements of Listing 1.05 and to compare the requirements to the evidence of record relating to Robinson's symptoms as mandated by Cook v. Heckler, 783 F.2d 1168. Therefore, the Magistrate Judge recommended the matter be remanded for further action in accordance with the Opinion/Report and Recommendation. The Court agrees.

Upon consideration of the Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts and approves the Opinion/Report and Recommendation. Therefore, it is **ORDERED** That Magistrate Kaul's Opinion/Report and Recommendation be, and hereby are, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

¹ The failure of the parties to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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1. The plaintiff's motion for Summary Judgment (Docket No. 9) is **GRANTED-IN-PART**;
2. The defendant's motion for Summary Judgment (Docket No. 10) is **DENIED**; and
3. The plaintiff's claim is **REMANDED** to the Commissioner for consideration pursuant to the recommendations contained in the Magistrate Judge's Opinion/Report and Recommendation; and
4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58. If a petition for fees pursuant to the Equal Access to Justice Act (EAJA) is contemplated, the plaintiff is warned that, as announced in Shalala v. Schaefer, 113 S.Ct. 2625 (1993), the time for such a petition expires ninety days thereafter.

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The Clerk of the Court is directed to transmit copies of this Order to counsel of record.

DATED: June 3, 2005.


IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE