

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

YVONNE TYSON,
Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,
Defendant.

: 2010 OCT 22 A. 10: 08
:
: U.S. DISTRICT COURT
: NEW HAVEN, CT
: Civil No. 3:09-CV-1736 (CSH)
:
:
:
:
:

RULING ACCEPTING AND ADOPTING RECOMMENDED RULING

Plaintiff's action seeks review of the final decision of the Commissioner of Social Security to deny Plaintiff's claim for Supplemental Security Income ("SSI") disability benefits. The Social Security Administration ("SSA") denied Plaintiff's claim both initially and upon reconsideration. Plaintiff then had a hearing before an Administrative Law Judge ("ALJ") who found Plaintiff not to be entitled to SSI.

The ALJ concluded that the medical evidence supported a finding that Plaintiff has the following severe combination of impairments: congenital stenosis with degenerative disc disease of the cervical and lumbar spine, and hypertension. However, the ALJ also concluded that Plaintiff has the Residual Functional Capacity ("RFC") to perform the full range of medium work, defined as involving lifting no more than 50 pounds at a time, with frequent lifting or carrying of objects weighing up to 25 pounds. The ALJ found that she could perform this work on a regular and continuing basis, meaning for eight hours a day, five days a week, or an equivalent work schedule. Plaintiff contends that there is not substantial evidence to support the finding that she can perform the full range of medium work, in light of her limitations in lifting and carrying and in prolonged standing and walking resulting from her spinal problems, back

pain, and other medical conditions.

The Appeals Council denied Plaintiff's request for review, rendering the ALJ's decision the final decision of the Commissioner. Plaintiff then brought this action, and filed a motion seeking reversal of the Commissioner's final decision. [Doc. 13] A motion to affirm that decision was filed by Defendant [Doc. 14], and both motions were briefed.

The motions were referred to Magistrate Judge Joan Glazer Margolis for consideration and a ruling. Her decision was rendered on June 15, 2010 [Doc. 22], familiarity with which is assumed. In sum, the Magistrate Judge concluded that Dr. Bailey's functional capacity report, upon which the ALJ relied, was not supported by substantial evidence in the record because it did not reference a November 2005 radiological report which revealed spinal degeneration, nor did Dr. Bailey have the benefit of Plaintiff's 2006 MRI, for which Plaintiff had been referred at the time Dr. Bailey issued his findings, but which had not yet been conducted. Therefore, and for other reasons enumerated in the ruling, the Magistrate Judge recommended that the matter be remanded pursuant to 42 U.S.C. § 405(g) to the ALJ for further proceedings, "during which a thorough RFC assessment and credibility determination will be made with the benefit of plaintiff's entire medical record." [Doc. 22 at 29]

Defendant objected to that ruling [Doc. 23], raising many of the same arguments that it had previously advanced in support of its motion to affirm the decision of the Commissioner, and in opposition to Plaintiff's motion to reverse that decision, which arguments were duly considered and addressed by Magistrate Margolis in the decision at issue. The recommended ruling of the Magistrate Judge, Defendant's objections thereto, and the relevant portions of the record have been reviewed. The Court concludes that the Magistrate Judge's ruling fully,

thoroughly and carefully reviewed the administrative record and reached the correct result based thereon. Accordingly, the ruling of the Magistrate Judge [Doc. 22] is **accepted and adopted**. Plaintiff's Motion for Order Reversing or Remanding the Decision of the Commissioner [Doc. 13] is **granted in part and denied in part**, as set forth in the recommended ruling. Defendant's Motion for Order Affirming the Decision of the Commissioner [Doc. 14] is **denied**. The case is remanded for further proceedings, as described in the recommended ruling.

SO ORDERED.

Dated at New Haven, Connecticut, this 21st day of October, 2010.


/s/ Ellen Bree Burns, SUSDJ

Ellen Bree Burns
Senior United States District Judge