

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TAMAI L. BARRAGER

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of
Social Security,

Defendant.

Case No. 06-1150-WEB

ORDER ADOPTING RECOMMENDATION AND REPORT

Now before the court is the review of the final decision of the Commissioner of Social Security denying the plaintiff disability insurance benefits under the Social Security Act. The matter was referred to the Magistrate Judge for a recommendation and report pursuant to Rule 72 (b), Federal Rules of Civil Procedure. The Recommendation and Report was filed on April 23, 2007. Neither party filed an objection to the Report.

The Magistrate Judge recommended the decision of the Social Security Commissioner be reversed and remanded (sentence four remand) for further proceedings. The Recommendation states that on remand, the Administrative Law Judge (ALJ) must consider two issues. The first issue is whether the ALJ gave proper consideration to the opinions of treating physicians. Specifically, the ALJ must weigh the opinion of the treating physicians and the opinion of the consulting physician pursuant to *Robinson v. Barnhard*, 366 F.3d 1078, 1084 (10th Cir. 2004). The second issue is whether the ALJ erred in his credibility analysis and in the weight given to plaintiff's daily activities. Findings as to credibility should be closely and affirmatively linked to substantial evidence and not just a conclusion in the guise of findings. *Kepler v. Chater*, 68 F.3d

387, 391 (10th Cir. 1995), citing *Huston v. Bowen*, 838 F.2d 1125 (10th Cir. 1988). The ALJ should consider the medical evidence provided as well as the testimony of the plaintiff. The ALJ should set forth the specific evidence relied upon in the evaluation of the plaintiff's credibility pursuant to *Kepler*.

The record supports the findings of the Magistrate Judge and his legal conclusions. It is therefore ORDERED that the decision of the Commissioner be REVERSED, and that the case be REMANDED for further proceedings (sentence four remand) for the reasons set forth in the Magistrate Judge's Recommendation and Report.

The Clerk of the Court is directed to enter Judgment accordingly.

SO ORDERED this 13th day of August, 2007.

s/ Wesley E. Brown
Wesley E. Brown
U.S. Senior District Judge