

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

NICOLE TURNETINE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 09-1183-WEB
)	
MICHAEL J. ASTRUE,)	
Commissioner of)	
Social Security,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

The Commissioner of Social Security denied the plaintiff disability insurance benefits and supplemental security income payments. 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 (Doc. 19) was filed on June 3, 2010. Neither party filed an objection to the Report.

Plaintiff argues the Administrative Law Judge (ALJ) erred in failing to properly evaluate whether Plaintiff meets or equals Listing of Impairments 12.04 at step 3 of the sequential evaluation process, and the ALJ erred in failing to properly determine Plaintiff's RFC in violation of SSR 96-8p and in dismissing the only opinion of a treating source.

Magistrate Judge Cohn ruled that the ALJ set forth sufficient findings to show the claimant did not meet the impairments set out in 12.04(B). Plaintiff argues that the ALJ should have given greater weight to the opinions of Dr. Xu. However, as noted by the Magistrate Judge, "Dr. Xu did not find that plaintiff had marked impairments in activities of daily living or maintaining social functioning, and also did not find episodes of decompensation." (Doc. 19, p. 9). The ALJ set forth a reasonable explanation for the basis of his findings. Plaintiff did not

present argument on the 12.04(C) criteria, and therefore the argument is waived.

Magistrate Judge Cohn found that the ALJ sufficiently reviewed all the medical records, statements of the Plaintiff, and a state agency assessment. The ALJ relied on the medical opinions of Dr. Schloesser. The ALJ considered the opinions of Dr. Xu, and set forth legitimate reasons for giving Dr. Xu's opinions little weight. There was sufficient evidence in the record to support the ALJ's RFC findings.

IT IS ORDERED that the Recommendation and Report of Magistrate Judge Cohn (Doc. 19) be adopted by this Court; and

IT IS FURTHER ORDERED that the decision of the Commissioner be AFFIRMED.

SO ORDERED this 12th day of October, 2010.

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