IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LYNETTE M. MOORE for
JOHNATHAN MOORE,

Plaintiff,

ORDER

02-C-0401-C

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

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Plaintiff Lynette M. Moore has filed objections to the report and recommendation entered by the United States Magistrate Judge on June 3, 2003. The magistrate judge recommended affirmance of the defendant commissioner's decision that Johnathan Moore is not disabled and therefore not entitled to Supplemental Security Income benefits. Plaintiff Lynette Moore objects to the recommendation, asserting her belief that Johnathan is disabled and that defendant erred in finding that he was not.

Although neither party has raised the issue, it is necessary to consider Lynette Moore's authority to act on behalf of her son, without counsel, in a challenge to a social security disability decision. In most cases, courts do not allow individuals who are not

lawyers to appear on another person's behalf in the other's cause, even if the other person is the individual's minor child. Minors are entitled to trained legal assistance to protect their rights. As interested as parents may be in vindicating their children's rights, they do not have the training necessary to provide adequate assistance on complex legal matters. See, e.g., Cheung v. Youth Orchestra Fdn. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990) (non-lawyer father could not represent his daughter on her claim of racial discrimination in orchestra seating). Although the Court of Appeals for the Seventh Circuit has never decided whether the same rule applies to parental representation in social security cases, at least two circuits have allowed parents to proceed pro se on behalf of their children in such cases. See, e.g., Machadio v. Apfel, 276 F.3d 103 (2d Cir. 2002); Harris v. Apfel, 209 F.3d 413 (5th Cir. 2000). In Machadio, the court noted that social security challenges are distinguishable from other kinds of cases in a number of ways. The social security case does not involve the interest of multiple parties with different interests. Id. at 106. The interests of the parent and the child are closely intertwined because the parent will be paying for the costs of raising the child; any social security benefits will affect the parent's responsibility for the child's expenses. Id. Social security cases involve the review of an administrative record; they do not usually raise complex legal issues for resolution. Id. at 107. After identifying these distinctions, the court rejected a rule that parents could never represent their children in this category of cases. Instead, it left it to the district courts to decide whether to allow

unrepresented parents to pursue their children's social security actions. The court of appeals directed the district courts to consider the complexity of the case, the parent's interest in the outcome of the case, the parent's ability to act competently on behalf of his or her child and "'any special reason in that case why appointment of counsel would be more likely to lead to a just determination.'" Id. at 107-08 (quoting Wenger v. Canatota Cent. School Dist., 146 F.3d 123, 125 (7th Cir. 1998)).

In Harris, 209 F.3d 413, the court added two other reasons for allowing unrepresented parents to proceed: plaintiffs are often unable to obtain counsel and, at the same time, there is a need to vindicate the right to receive benefits in a timely manner while the benefits can help the disabled children for whom they are intended. Id. at 416 (citing Moldonado v. Apfel, 55 F. Supp. 2d 296, 305 (S.D.N.Y. 1999)). The reasoning of these courts is persuasive. Most social security appeals are relatively straightforward, requiring only a record review. They rarely raise novel issues of law and, particularly where children are involved, they may not offer potential recoveries large enough to lure a lawyer in private practice to take them on. Moreover, it would be odd to prohibit unrepresented parents from pursuing their children's claims in court when they are generally permitted to act on behalf of their children at the administrative hearing at which much of the factual basis for the claim is developed.

In this instance, Johnathan's claim is not a complicated one. His mother is not a

lawyer or even someone with experience in social security proceedings but she has her son's interests at heart. She has tried doggedly to help him obtain Supplemental Security Income benefits as well as special services at school. Her interests are intertwined with his: without the social security benefits she will have sole responsibility for his support. It is unlikely that she could afford to retain counsel privately and she has been unable to find counsel that would represent her for free or for a reduced rate. For these reasons, I am persuaded that counsel is not necessary in this case to protect Johnathan's rights. The administrative law judge took great pains to develop the factual record at the hearing and he set out his findings clearly and thoroughly. The record is easy to follow and Johnathan's evaluations give a reasonably clear picture of his situation. The case raises no complex issues of law or fact.

I turn then to the report and recommendation. After reviewing it and the administrative record, I agree with the magistrate judge that the administrative law judge did not elicit a valid waiver from Lynette Moore of her right to representation at the administrative hearing but that he developed the record fairly and fully and conducted a searching inquiry into the relevant facts. Also, I agree with the magistrate judge that the record evidence provides reasonable support for defendant's conclusion that Johnathan was not disabled as of December 1, 1997.

ORDER

IT IS ORDERED that the decision of defendant Jo Anne B. Barnhart finding plaintiff Johnathan Moore not disabled as of December 1, 1997, is AFFIRMED.

Entered this 20th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge