

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DIANE L. NELSON,

Plaintiff,

v.

JO ANNE BARNHART,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

06-C-0-249-C

Plaintiff Diane L. Nelson has filed objections to the report and recommendation issued by the United States Magistrate Judge on October 24, 2006, contending that the magistrate judge erred in recommending that the court affirm defendant commissioner's decision denying disability benefits to plaintiff. She argues that defendant's decision did not take into consideration plaintiff's obesity and its effect on her joint pain and mobility or the inadequacy of the administrative law judge's hypothetical question to the vocational expert that did not allow the expert to make an accurate evaluation of plaintiff's ability to engage in substantial gainful work activity.

In his report and recommendation, the magistrate judge considered the issue of

plaintiff's obesity and the hypothetical question. He explained carefully and persuasively why the administrative law judge's failures to evaluate plaintiff's obesity in accordance with Social Security Ruling 02-1p and to explain in his hypothetical what he meant by "unusual stress" were not sufficient reasons to remand the case for further consideration. As the magistrate judge noted, neither of these alleged errors was of the sort that would have changed the outcome of the hearing. I agree with the magistrate judge that the record contains ample evidence to support the administrative law judge's determination that plaintiff is not disabled and therefore, not eligible for social security disability benefits.

ORDER

IT IS ORDERED that the United States Magistrate Judge's recommendation is ADOPTED. FURTHER, IT IS ORDERED that the decision of defendant Jo Anne Barnhart, Commissioner of Social Security, to deny plaintiff Diane L. Nelson's application for disability insurance and supplemental security income is AFFIRMED.

Entered this 22d day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge