

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-60750  
Summary Calendar

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YVONNE L. BERRY,

Plaintiff-Appellant,

versus

KENNETH S. APFEL,  
COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 5:97-CV-90-BrS  
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September 16, 1999

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Yvonne Berry appeals the district court's judgment which dismissed her complaint seeking review of the Social Security Commissioner's denial of disability insurance benefits and supplemental security income. Berry first argues that the Commissioner committed an "error of law" in concluding that her impairments were not severe. Specifically, she contends that the Commissioner erred in deciding her case at the second step of the five-step sequential analysis because there is evidence in the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

record indicating that she arguably meets or equals the obesity listing at § 9.09A of 20 C.F.R. pt. 404, subpt. P, app. 1, which would be sufficient to warrant a finding of "disabled" at the third step of the five-step analysis. Berry, however, did not raise this issue before the district court. Accordingly, the issue is waived. See Chaparro v. Bowen, 815 F.2d 1008, 1011 (5th Cir. 1987).

Berry also contends that the Commissioner's determination that her impairments were not "severe" is not supported by substantial evidence. After reviewing the record and the briefs of the parties, we conclude that the Commissioner's decision is supported by substantial evidence and based on the proper legal standards. See Ripley v. Chater, 67 F.3d 552, 555 (5th Cir. 1995). Accordingly, the district court's judgment is AFFIRMED.