

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**MAY 20 1999**

**PATRICK FISHER**  
Clerk

MILDRED OWEN, o/b/o  
HUGHLAN R. HAYS,

Plaintiff-Appellant,

v.

KENNETH S. APFEL, Commissioner  
of Social Security Administration,

Defendant-Appellee.

No. 98-7107  
(D.C. No. 97-CV-307-S)  
(E.D. Okla.)

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**ORDER AND JUDGMENT** \*

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Before **PORFILIO** , **McKAY** , and **LUCERO** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant Mildred Owen appeals the denial of social security benefits to her now-deceased son, Hughlan R. Hays. Hays filed applications for both disability insurance benefits and supplemental security income in November 1994, alleging he had been disabled since December 1984 due to a heart condition and a mental impairment. After his applications were denied initially and on reconsideration, Hays received a de novo hearing before an administrative law judge (ALJ). Hays, who elected to proceed pro se, attended the hearing with his mother and stepfather, both of whom testified on his behalf. After reviewing the evidence of record, the ALJ issued a decision denying Hays' applications for benefits. The ALJ concluded that Hays did not have a severe impairment or combination of impairments and, therefore, denied benefits at step two of the sequential analysis. See generally 20 C.F.R. §§ 404.1520, 416.920 (describing steps).

Hays then retained present counsel and appealed the ALJ's decision to the Appeals Council. When the latter denied review, the ALJ's decision became the final decision of the Commissioner. Hays died while this action was pending in the district court,<sup>1</sup> and his mother was substituted as the plaintiff on Hays' behalf.

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<sup>1</sup> The record does not reflect, and the parties have not told us, the cause of Mr. Hays' death.

The district court affirmed the Commissioner's denial of benefits and this appeal followed.

On appeal, appellant raises three broad challenges to the Commissioner's decision: (1) the ALJ's decision was not supported by substantial evidence; (2) the ALJ failed to develop the record; and (3) the ALJ failed to follow the proper legal framework when he failed to prepare a psychiatric review technique form. Our review of the Commissioner's decision is limited to determining whether the decision is supported by substantial evidence and whether the correct legal standards were applied. See Castellano v. Secretary of Health & Human Servs., 26 F.3d 1027, 1028 (10th Cir. 1994). "[T]he scope of our review [is further] limited to the issues the claimant properly preserves in the district court and adequately presents on appeal . . . ." Berna v. Chater, 101 F.3d 631, 632 (10th Cir. 1996).

We note that a number of the specific arguments appellant now advances in support of these three broad challenges were not properly preserved in the district court. Therefore, we decline to consider them. See Soliz v. Chater, 82 F.3d 373, 375 (10th Cir. 1996) (declining to consider issues not raised in objections to magistrate's report and recommendation); Crow v. Shalala, 40 F.3d 323, 324 (10th Cir. 1994) (declining to consider issue not raised in district court).

As to the arguments that appellant has preserved for appeal, our careful review of the record and the pertinent law reveals no error in the Commissioner's decision. The Commissioner applied the correct legal standards in denying Hays' applications for benefits, and his decision is supported by substantial evidence. Therefore, we AFFIRM the judgment of the United States District Court for the Eastern District of Oklahoma.

Entered for the Court

John C. Porfilio  
Circuit Judge