

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NICOLE M. STOCKMAN,

Plaintiff,

v.

Case No: 2:17-cv-76-FtM-38MCR

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

OPINION AND ORDER¹

This matter comes before the Court on United States Magistrate Judge Monte C. Richardson's Report and Recommendation. ([Doc. 22](#)). Judge Richardson recommends that the final decision of the Commissioner of Social Security be reversed and remanded under 42 U.S.C. § 405(g). The parties have not objected to the Report and Recommendation, and the time to do so has elapsed. This matter is ripe for review.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. See [28 U.S.C. § 636\(b\)\(1\)](#); see also [Williams v. Wainwright](#), [681 F.2d 732 \(11th Cir. 1982\)](#). Absent specific objections, there is no requirement that a

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district judge review factual findings *de novo*, [Garvey v. Vaughn](#), 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations, [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). The district judge reviews legal conclusions *de novo*, even absent an objection. See [Cooper-Houston v. Southern Ry. Co.](#), 37 F.3d 603, 604 (11th Cir. 1994).

After independently examining the file and on consideration of Judge Richardson's findings and recommendation, the Court accepts and adopts the Report and Recommendation.

Accordingly, it is now

ORDERED:

- (1) The Report and Recommendation ([Doc. 22](#)) is **ACCEPTED** and **ADOPTED** and the findings incorporated herein.
- (2) The Commissioner's decision is **REVERSED**, and this matter is **REMANDED** for rehearing under sentence four of 42 U.S.C. § 405(g), with instructions to the Administrative Law Judge:
 - a. to reconsider and resolve any apparent conflicts between the Dictionary of Occupational Title and vocational expert's testimony with respect to jobs available in the nation economy that Plaintiff can perform, and, if necessary, to further develop the record;
 - b. to reevaluate whether Plaintiff's asthma and neuropathy impairments should be considered and reevaluate Plaintiff's residual functional capacity assessment, if necessary;
 - c. to reevaluate Plaintiff's alleged onset date; and

d. conduct any further proceedings deemed appropriate.

(3) The Clerk of Court is **DIRECTED** to enter judgment accordingly, terminate any pending motions, and close this case.

(4) If benefits are awarded on remand, any § 406(b) or § 1382(d)(2) fee application should be filed within the parameters set forth in the Order entered in *In re: Procedures for Applying for Attorney's Fees under 42 U.S.C. §§ 406(b) & 1383(d)(2)*, Case No.: 6:12-mc-124-Orl-22 (M.D. Fla. Nov. 13, 2012). The Court's Order on this Report and Recommendation should not be interpreted as extending the time limits for filing a motion for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DONE and **ORDERED** in Fort Myers, Florida this 18th day of December, 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record