UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANIEL ROBERT SCHOONMAKER,

Plaintiff,

v. Case No: 2:17-cv-444-FtM-29CM

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of Magistrate Judge Carol Mirando's Report and Recommendation (Doc. #32), filed on July 16, 2018, recommending that the Commissioner's Opposed Motion for Entry of Judgment With Remand (Doc. #24) be granted, and the Decision of the Commissioner be reversed and remanded with instructions to the Commissioner. No objections have been filed, and the time to do so has expired.

The Court reviews the Commissioner's decision to determine if it is supported by substantial evidence and based upon proper legal standards. Crawford v. Comm'r of Soc. Sec., 363 F.3d 1155, 1158 (11th Cir. 2004)(citing Lewis v. Callahan, 125 F.3d 1436, 1439 (11th Cir. 1997)). Substantial evidence is more than a scintilla but less than a preponderance, and is such relevant evidence as a reasonable person would accept as adequate to support a conclusion. Moore v. Barnhart, 405 F.3d 1208, 1211 (11th Cir. 2005)(citing

Crawford, 363 F.3d at 1158-59). Even if the evidence preponderates against the Commissioner's findings, the Court must affirm if the decision reached is supported by substantial evidence. Crawford, 363 F.3d at 1158-59 (citing Martin v. Sullivan, 894 F.2d 1520, 1529 (11th Cir. 1990)). The Court does not decide facts anew, make credibility judgments, reweigh the evidence, or substitute its judgment for that of the Commissioner. Moore, 405 F.3d at 1211 (citing Bloodsworth v. Heckler, 703 F.2d 1233, 1239 (11th Cir. 1983)); Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005)(citing Phillips v. Barnhart, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004)). The Court reviews the Commissioner's conclusions of law under a *de novo* standard of review. Ingram v. Comm'r of Soc. Sec. Admin., 496 F.3d 1253, 1260 (11th Cir. 2007)(citing Martin, 894 F.2d at 1529).

After an independent review, the Court agrees with the findings and recommendations in the Report and Recommendation.

Accordingly, it is now

ORDERED:

1. The Commissioner's Opposed Motion for Entry of Judgment With Remand (Doc. #24) is **GRANTED IN PART**.

2. The Report and Recommendation (Doc. #32) is **accepted and adopted** by the Court.

3. The Decision of the Commissioner of Social Security is **reversed** and the matter is **remanded** to the Commissioner of Social

Security pursuant to sentence four of 42 U.S.C. § 405(g) so that the Commissioner can:

A. Direct the Administrative Law Judge to review the claimant's prior Title XVI claim, determine if collateral estoppel applies for the period adjudicated by the Administrative Law Judge regarding the application for Title II benefits, consolidate the Title II and Title XVI claims (as appropriate), and take any further action necessary to complete the record and complete processing of the Title II claim consistent with the Title XVI claim;

B. In so doing, provide claimant the opportunity for a hearing (as appropriate); and

C. Taken any other action as deemed necessary.

4. The Clerk of the Court shall enter judgment accordingly and close the file.

DONE and ORDERED at Fort Myers, Florida, this 2nd day of August, 2018.

JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Hon. Carol Mirando
U.S. Magistrate Judge

Counsel of Record