

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LISA TRACY,

Plaintiff,

v.

Case No: 2:23-cv-415-JES-KCD

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of Magistrate Judge Kyle C. Dudek's Report and Recommendation (Doc. #24), filed on April 30, 2024, recommending that the Decision of the Commissioner be reversed and remanded for further administrative proceedings. 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. Walker v. Soc. Sec. Admin., Comm'r, 987 F.3d 1333, 1338 (11th Cir. 2021); Crawford v. Comm'r of Soc. Sec., 363 F.3d 1155, 1158 (11th Cir. 2004). 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. Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019);

Pupo v. Comm'r, Soc. Sec. Admin., 17 F.4th 1054, 1060 (11th Cir. 2021); Buckwalter v. Acting Comm'r of Soc. Sec., 5 F.4th 1315, 1320 (11th Cir. 2021). The Court does not decide facts anew, make credibility judgments, reweigh the evidence, or substitute its judgment for that of the Commissioner. Simon v. Comm'r, Soc. Sec. Admin., 7 F.4th 1094, 1104 (11th Cir. 2021); Buckwalter, 5 F.4th at 1320. The Court reviews the Commissioner's conclusions of law under a *de novo* standard of review. Pupo, 17 F.4th at 1060.

A district court must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made and to matters of law. See 28 U.S.C. § 636(b)(1)(C). "Most circuits agree that in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006) (internal quotations marks and citation omitted) (collecting cases). See also Thomas v. Arn, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.").

The Magistrate Judge addressed the first argument that the ALJ erred by accepting two consultative exam reports from Midwest CES as "a winner." (Doc. #24, p. 4.) The Magistrate Judge found that the Midwest CES reports contained canned language and the doctors recorded events that simply did not happen, yet the ALJ ignored the discrepancies. The Magistrate Judge rejected the argument by the Commissioner that other evidence supports the ALJ's conclusion because the consultative exams were obtained as necessary to resolve plaintiff's claim. Further, the Magistrate Judge found that the ALJ's decision was built using the Midwest CES reports. The Magistrate Judge declined to consider the remaining arguments because the record could change on remand and the remaining arguments could be deferred if the case returns. "Given how the Midwest CES reports were used, the Court cannot say the ALJ's error was harmless or did not impact her decision. That makes remand necessary." (Id. at 7.) The Court agrees with the findings and recommendations in the Report and Recommendation.

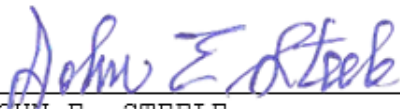
Accordingly, it is now

ORDERED:

1. The Report and Recommendation (Doc. #24) is **accepted and adopted** by the Court.
2. 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) for further proceedings consistent with this Opinion and Order and the Report and Recommendation. The Clerk of the Court shall enter judgment accordingly and close the file.

DONE and ORDERED at Fort Myers, Florida, this 17th day of May 2024.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Hon. Kyle C. Dudek
U.S. Magistrate Judge

Counsel of Record