

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANTHONY LYONS,

Plaintiff,

vs.

Case No. 2:08-cv-614-FtM-29SPC

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

OPINION AND ORDER

This matter is before the Court on consideration of Magistrate Judge Sheri Polster Chappell's Report and Recommendation (Doc. #21), filed on May 26, 2009, recommending that the Commissioner's decision to deny social security disability benefits be affirmed. Plaintiff's Memorandum in Support of his Objections to Magistrate's Report and Recommendation (Doc. #22) was filed on June 5, 2009. For the reasons set forth below, the Court accepts the Report and Recommendation and affirms the decision of the Commissioner.

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). 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); Crawford,

363 F.3d at 1158. 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. 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; Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). The magistrate judge, district judge and appellate judges all apply the same legal standards to the review of the Commissioner's decision. Dyer, 395 F.3d at 1210; Shinn v. Comm'r of Soc. Sec., 391 F.3d 1276, 1282 (11th Cir. 2004); Phillips v. Barnhart, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004).

The Report and Recommendation found that the Administrative Law Judge (ALJ) did not err in finding plaintiff's impairments did not meet Listing 12.05C. Specifically, the Report and Recommendation found that there was sufficient evidence to support the ALJ's findings that plaintiff failed to establish that he had a full scale IQ of between 60 and 70, and had failed to establish that there was a physical or other mental impairment imposing an additional and significant work-related limitation of function. Plaintiff objects to both findings.

The Report and Recommendation summarized the evidence and the ALJ's findings regarding plaintiff's IQ (Doc. #21, pp. 16-18). This included the ALJ's finding of evidence of malingering and evidence of plaintiff's daily living skills and functioning and

education which were inconsistent with the opinion of Dr. Wells as to plaintiff's IQ. Given the standard of review summarized above, the Court finds that the Report and Recommendation was correct in its conclusion that substantial evidence support the ALJ's determination.

The ALJ also found that plaintiff failed to establish he had a physical or other mental impairment imposing an additional and significant work-related limitation of function. The Report and Recommendation summarized the evidence (Doc. #21, pp. 18-20) and concluded that substantial evidence supported the ALJ's determination. After reviewing the evidence and applying the appropriate standard of review, the Court concludes that this finding is correct.

Accordingly, it is now

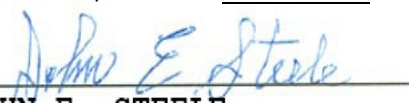
ORDERED:

1. The Report and Recommendation (Doc. #20) is **accepted and adopted** by the Court.

2. The Decision of the Commissioner of Social Security is **affirmed**.

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

DONE AND ORDERED at Fort Myers, Florida, this 10th day of June, 2009. _____



JOHN E. STEELE
United States District Judge

Copies:
Hon. Sheri Polster Chappell
U.S. Magistrate Judge

Counsel of Record