

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

TRISTAN N. BISHOP,

Plaintiff,

vs.

Case No. 2:12-cv-333-FtM-29DNF

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

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**OPINION AND ORDER**

This matter is before the Court on consideration of Magistrate Judge Douglas N. Frazier's Report and Recommendation (Doc. #19), filed on August 20, 2013, recommending that the Commissioner's decision to deny social security disability benefits be reversed and remanded. 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).

The Report and Recommendation finds that the Administrative Law Judge erred in failing to consider plaintiff's limitations at Step Four and by failing to obtain the testimony of a vocational expert at Step Five. After an independent review, the Court agrees with the findings and recommendations in the Report and Recommendation.

Accordingly, it is now


**ORDERED:**

1. The Report and Recommendation (Doc. #19) 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) so that the Commissioner can consider plaintiff's limitations at Step Four, and if the claim proceeds to Step Five, to obtain the testimony of a vocational expert.

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

**DONE AND ORDERED** at Fort Myers, Florida, this 18th day of September, 2013.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
Hon. Douglas N. Frazier  
U.S. Magistrate Judge

Counsel of Record