

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

DOUGLAS A. ATCHISON,

Plaintiff,

-vs-

Case No. 5:15-cv-138-Oc-10PRL

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

On August 8, 2016, the United States Magistrate Judge issued a Report (Doc. 22) recommending that the Commissioner's Decision denying the Plaintiff's claims for Supplemental Security Income Benefits be affirmed. The Plaintiff has filed Objections (Doc. 23) to the Report and Recommendation. The Commissioner has filed a response to the objections. (Doc. 24.) The Court will therefore conduct a *de novo* review of the case. See 28 U.S.C. § 636, M.D. Fla. Local Rule 6.02.

The Plaintiff raised one argument in his appeal: that the record was missing the opinions of state agency physicians regarding the Plaintiff's residual functional capacity, and as a result the ALJ failed to fully and fairly develop the record by not requesting a medical source statement from consultative examiner Dr. Samer Choksi. As the Magistrate Judge noted in his Report, and as the Plaintiff conceded in his objections, the two opinions at issue were in fact part of the administrative record. (Tr. 70-78, 80-91.)

The Court agrees with the Magistrate Judge that the Court should also deny Plaintiff's alternative request for remand so that Dr. Choksi can complete a medical source statement. The absence of such a statement is not dispositive, and the state agency consultants reviewed Dr. Choksi's findings in forming their assessments, which are part of the record. See 20 C.F.R. § 416.919n(c)(6). To the extent Plaintiff attempts to argue, for the first time in his Objections, that he should be awarded SSI benefits beginning August 27, 2014 (more than one year after the ALJ's decision), such argument is waived and the Court declines to consider it. See Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009) ("a district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge"); Sanchez v. Comm'r of Soc. Sec., 507 Fed. Appx. 855, 856 n. 1 (11th Cir. 2013).

Accordingly, upon due consideration, and a *de novo* review of the case, it is hereby ORDERED as follows:

(1) The Magistrate Judge's Report and Recommendation (Doc. 22) is ADOPTED, CONFIRMED, AND MADE A PART HEREOF;

(2) The Plaintiff's Objections (Doc. 23) are OVERRULED and his request for oral argument is DENIED;

(3) Pursuant to sentence four of 42 U.S.C. § 405(g), the Commissioner's Decision denying the Plaintiff's claim for Supplemental Security Income Benefits is AFFIRMED; and

(4) The Clerk is directed to enter judgment accordingly, terminate all other pending motions and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 9th day of September, 2016.

W. Penell Hodges

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Hon. Philip R. Lammens
Mari Jo Taylor