

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FRANK J. MINEO,

Plaintiff,

v.

Case No.: 8:10-cv-02716-MSS-MAP

MICHAEL J. ASTRUE

Defendant.

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ORDER

THIS CAUSE comes before the Court for consideration of the Plaintiff's Complaint seeking review of the denial of his claims for disability insurance benefits. (Dkt. 1) On January 24, 2012, United States Magistrate Judge Mark A. Pizzo issued a Report and Recommendation, recommending that the decision of the Commissioner of Social Security "be reversed and judgment be entered for the Plaintiff with instructions remanding the matter for further administrative proceedings" because the Commissioner failed to meet the regulatory demands for considering opinions of the Plaintiff's treating physicians "at step five of the sequential analysis." (Dkt. 20) No objection was filed to the Report and Recommendation and the deadline to do so has passed.

In the Eleventh Circuit, a district judge may accept, reject or modify the magistrate judge's report and recommendation after conducting a careful and complete review of the findings and recommendations. 28 U.S.C. § 636(b)(1); see Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A

district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). This requires that the district judge “give fresh consideration to those issues to which specific objection has been made by a party.” Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir.1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo* and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C); see Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994).

Upon consideration of the Report and Recommendation, and in conjunction with an independent examination of the file, the Court is of the opinion that the Report and Recommendation should be adopted, confirmed, and approved in all respects. Accordingly, it is **ORDERED** that:

1. The Report and Recommendation (Dkt. 20) is **CONFIRMED** and **ADOPTED** as part of this Order;
2. The decision of the Commissioner of Social Security is hereby **REVERSED** and **REMANDED** for further consideration;
3. The Clerk is directed to enter judgment in favor of the Plaintiff; and,
4. The Clerk is directed to **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida, this 15th day of February 2012.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any unrepresented party