

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-61004-DIMITROULEAS/SNOW

MICHAEL CUMINALE,

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,Defendant.

ORDER APPROVING REPORT OF MAGISTRATE JUDGE;**REFERRING PART II OF THE PLAINTIFF'S OBJECTIONS TO THE
MAGISTRATE JUDGE TO CONSIDER IN THE FIRST INSTANCE**

THIS CAUSE is before the Court upon the Report and Recommendation of Magistrate Judge Snow (the "Report") [DE 28], filed herein on June 14, 2021. The Court has conducted a *de novo* review of the Report [DE 28], has carefully considered Plaintiff's Objections [DE 29], and is otherwise fully advised in the premises.

I. BACKGROUND

The Plaintiff filed an application for disability benefits on September 24, 2015, alleging disability since September 10, 2015, as a result of back pain and other ailments. The application was denied initially and upon reconsideration. The Plaintiff then requested a hearing, which was held before Administrative Law Judge James Andres on November 6, 2017. The Administrative Law Judge (ALJ) found that the Plaintiff was not disabled within the meaning of the Social Security Act. The Appeals Council remanded the case to the ALJ for further proceedings. A

second administrative hearing was held before Judge Andres on April 15, 2019, after which the ALJ again found that the Plaintiff was not disabled. The Appeals Council denied the Plaintiff's request for review on March 24, 2020. The Plaintiff then filed this action on May 21, 2020, seeking judicial review of the decision of the Commissioner.

Defendant filed a Motion for Summary Judgment, arguing that substantial evidence supports the ALJ's findings and conclusion that Plaintiff was not disabled within the meaning of the Social Security Act and that, therefore, the Court should affirm the Commissioner's decision. [DE 21]. Plaintiff filed an Amended Motion for Summary Judgment, seeking that the Court vacate the ALJ's decision and remand the case back to the Commissioner under sentence four of 42 U.S.C. §405(g) with instructions to properly weigh the treating source medical opinion under the factors set forth in 20 C.F.R. §416.927 and under binding case law within the Eleventh Circuit. [DE 25]. Magistrate Judge Snow issued a Report and Recommendation, recommending that Plaintiff's Amended Motion be denied and that Defendant's Motion be granted. *See* [DE 28] at p. 20.

II. STANDARD OF REVIEW

A party seeking to challenge the findings in a report and recommendation of a United States Magistrate Judge must file "written objections which shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection." *Macort v. Prem, Inc.*, 208 F. App'x 781, 783 (11th Cir. 2006) (quoting *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989)). "It is critical that the objection be sufficiently specific and not a general objection to the report." *Macort*, 208 F. App'x at 784 (citing *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984)). If a party makes a timely and specific objection to a finding in the report and recommendation, the district court must conduct a *de novo* review of the portions of the report to

which objection is made. *Macort*, 208 F. App'x at 783-84; *see also* 28 U.S.C. § 636(b)(1). The district court may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. *Macort*, 208 F. App'x at 784; 28 U.S.C. § 636(b)(1). Accordingly, the Court has undertaken a *de novo* review of the record and the Plaintiff's objections.

III. DISCUSSION

Plaintiff objects to the ALJ's purported error in failing to apply the correct legal standards to and failing to properly weigh the opinions of Drs. Jarolem, Young, and Herskowitz, the Plaintiff's treating physicians. A court should affirm an ALJ's decision "if the decision was supported by substantial evidence . . . defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Shinn ex rel. Shinn v. Comm'r of Soc. Sec.*, 391 F.3d 1276, 1281 (11th Cir. 2004) (internal quotations and citations omitted). In her Report, Magistrate Judge Snow explains the reasons that the ALJ gave greater or lesser weight to different portions of the Plaintiff's treating physicians' opinions. Upon review of the record, the Court agrees with the reasoning, conclusions, and recommendations of the Magistrate Judge.

However, Plaintiff raises for the first time in this case – as Part II to his Objections to the Report and Recommendation – that Plaintiff's case should have been reassigned to a properly appointed ALJ under the Appointments Clause of the United States Constitution, relying on the recent United States Supreme Court decision in *Carr v. Saul*, 141 S. Ct. 1352 (2021), which he argues implicates his constitutional rights. Plaintiff contends that the interests of justice require that either this Court rule on this constitutional issue or that the case be recommitted to the Magistrate Judge with instructions to take further briefing on this issue. As this issue was not presented to the Magistrate Judge, has not been briefed, and has not been addressed by Defendant, who did not respond to Plaintiff's Objections, the Court agrees with Plaintiff that the case should

be recommitted to the Magistrate Judge with instructions to take further briefing on this issue.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Magistrate Judge's Report and Recommendation [DE 28] is hereby **APPROVED**;
2. Plaintiff's Objections [DE 29] are hereby **OVERRULED** as to Part I of the Objections, which address the Report and Recommendation and the underlying summary judgment motions;
3. Defendant's Motion for Summary Judgment [DE 21] is hereby **GRANTED**;
4. Plaintiff's Amended Motion for Summary Judgment [DE 25] is hereby **DENIED**;
5. This case is hereby **REFERRED** to the Magistrate Judge with instructions to take further briefing and for a report and recommendation on the issue raised in Part II of Plaintiff's Objections to the Report and Recommendation – that Plaintiff's case should have been reassigned to a properly appointed ALJ under the Appointments Clause of the United States Constitution pursuant to *Carr v. Saul*, 141 S. Ct. 1352 (2021).

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this
7th day of September, 2021.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Magistrate Judge Snow
Counsel of record