

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**JOSHUA AARON CRUMPTON,**

**Plaintiff,**

**v.**

**CAROLYN W. COLVIN, *Commissioner  
of Social Security Administration,***

**Defendant.**

**CIVIL ACTION NO. 5:13-CV-166 (MTT)**

**ORDER**

This matter is before the Court on the Recommendation of United States Magistrate Judge Charles H. Weigle. (Doc. 14). The Magistrate Judge, having reviewed the case, recommends affirming the decision of the Commissioner because the Plaintiff's asserted sole ground for relief does not warrant reversal. Specifically, the Magistrate Judge recommends affirming the Commissioner's decision because the record as a whole indicates the Commissioner's decision to deny the Plaintiff's application for benefits was based on proper legal standards and supported by substantial evidence. Further, the ALJ committed harmless error in failing to weigh on the record the findings of the consultative medical examiner, Dr. William Hatchings.

The Plaintiff has objected to the Recommendation. (Doc. 15). Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Plaintiff's objections and has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects. Specifically, the Plaintiff contends the Magistrate Judge incorrectly determined that the Commissioner's failure to assign any weight to the opinion of Dr. Hutchings was

harmless error. Citing *Markell v. Astrue*, 2007 WL 4482245 (M.D. Fla.), the Plaintiff urges the Court to adopt the proposition that a “consultative evaluator must be considered and given proper weight,” and failure to do so functionally amounts to a *per se* harmful error.

However, *Markell* more accurately stands for the proposition that harmful error *may* result if the ALJ does not expressly address the conclusions of a non-treating, consultative examining physician.<sup>1</sup> Here, unlike in *Markell*, the Magistrate Judge could determine from the record whether the ALJ’s conclusions were rational and supported by substantial evidence, even without express, articulated reasons why Dr. Hutching’s conclusions were not adopted. *Cf. Winschel v. Commissioner of Social Sec.*, 631 F.3d 1176, 1179 (11th Cir. 2011) (remanding to the ALJ because the ALJ’s failure to expressly consider the conclusions of both the treating physician and consultative examiner prohibited the reviewing court from determining based on that *particular* record whether substantial evidence supported the ALJ’s decision). Therefore, the Court agrees with the Magistrate Judge that the ALJ’s failure to weigh the consultative examiner’s opinion was harmless error.

Accordingly, the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and

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<sup>1</sup> Because both the Magistrate Judge and the Plaintiff cite *Markell* as support, the Court further discusses the decision here. In *Markell*, the ALJ gave significant weight to two non-examining, reviewing doctors and failed to address the weight given to the conclusions of an examining, consultative examiner, contrary to regulation and Eleventh Circuit precedent. 2007 WL at \*4 (“In principle, as an examining doctor, the testimony of Dr. Kalin was entitled to more weight than that of the non-examining doctors. (See 20 C.F.R. §§ 404.1527(d)(1), 416.927(d)(1)). At a minimum, the ALJ was obliged to explain this conclusion.”) (internal citation omitted)); *see also Lamb v. Bowen*, 847 F.2d 698, 703 (11th Cir. 1988). This was reversible error because without the ALJ’s addressing Dr. Kalin’s report and reasons for giving it less weight, the Magistrate Judge could not determine from the record whether there was substantial evidence to support the ALJ’s decision. *Id. Markell*, however, neither stands for the proposition nor persuades this Court that failure to address the conclusions of a non-treating, examining physician is *per se* harmful error.

made the **Order** of this Court. Therefore, the decision of the Commissioner is  
**AFFIRMED.**

**SO ORDERED**, this 16th day of September, 2014.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT