

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

GREGORY PHELPS,

Plaintiff,

v.

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

Defendant.

CIVIL ACTION NO. 5:13-cv-206 (MTT)

ORDER

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle (Doc. 16). The Magistrate Judge recommends affirming the Commissioner of Social Security's decision to deny Plaintiff Gregory Phelps's application for benefits because the ALJ's failure to obtain prior claim files was not prejudicial error, and substantial evidence supported the opinions of the consultative examiner. The Plaintiff has objected to the Recommendation (Doc. 17), and the Commissioner has responded. (Doc. 18). The Court has reviewed the Recommendation and has made a de novo determination of the portions to which the Plaintiff objects. The Plaintiff's objection largely reiterates the arguments made in the initial brief (Doc. 12): the ALJ committed reversible error (1) by failing to obtain Plaintiff's prior claim file and (2) by improperly relying upon the report of consultative psychological examiner, Dr. Robbins-Brinson.

The Plaintiff argues the ALJ's failure to obtain these files resulted in a violation of the HALLEX procedure and prejudiced the Plaintiff because the files indicated the

Plaintiff had received benefits in the past due to intellectual limitations before his incarceration. Further, this failure violated the ALJ's obligation to develop the record fully and fairly. However, as correctly noted in the Recommendation, the ALJ did not violate the HALLEX procedure because the prior claim files did not include a valid IQ score under the regulation. Thus, the Plaintiff was not prejudiced, and reversal is not warranted on this ground.

The Plaintiff further argues that the ALJ erred in relying on Dr. Robbins-Brinson's conclusions because her opinion had insufficient support to provide substantial evidence for the ALJ's decision. However, as noted in the Recommendation, the record as a whole supports Dr. Robbins-Brinson's report regarding Plaintiff's intellectual functioning and provides substantial evidence to support the ALJ's decision. Thus, the Court agrees that the ALJ properly relied upon the consultative examiner's opinion.

Therefore, the Court accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the **Order** of this Court. Accordingly, the Commissioner's decision is **AFFIRMED**.

SO ORDERED, this 15th day of September, 2014.

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