

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHONDA MITCHELL

CIVIL ACTION

VERSUS

NO: 19-1445

**ANDREW SAUL, COMM'R OF
SOCIAL SECURITY
ADMINISTRATION**

SECTION: "S" (1)

ORDER AND REASONS

Before the court are the Commissioner's **Objections** (Rec. Doc. 24) to the Report and Recommendation of the Magistrate Judge (Rec. Doc. 22).

IT IS HEREBY ORDERED that the Commissioner's Objections are **OVERRULED**.

Plaintiff has appealed the decision of the Commissioner of the Social Security Administration denying plaintiff disability insurance benefits and supplemental security income benefits. The United States Magistrate Judge entered a Report and Recommendation on February 4, 2020, recommending that the Motion for Summary Judgment filed by the plaintiff (Rec. Doc. 18) be granted in part and denied in part, and that the Motion for Summary Judgment filed by the Commissioner (Rec. Doc. 21) be denied in part and granted in part. In partially granting the plaintiff's motion, the Magistrate Judge found that the ALJ had erred in discounting plaintiff's treating physician's opinion without sufficiently articulating that he had considered the requirements of 20 C.F.R. § 404.1527(c), when there was no other relevant medical opinion of a treating, examining, or even record reviewing psychiatrist in the record. She further found that the matter should be remanded to the ALJ for further proceedings.

The Commissioner filed objections to the Report and Recommendation on April 2, 2020. The Commissioner contends that the ALJ did not fail to give the treating physician's opinion the weight due it, and further, that a section 404.1527(c) analysis was not required because the record includes reliable medical evidence from other treating or examining physicians. The undersigned has made an independent examination of the record in this case. It reflects that the ALJ gave "little weight to the opinions of Dr. Dunn"¹ even though plaintiff's severe impairments include a mental impairment, specifically schizoaffective disorder-bipolar type, and Dr. Dunn was her treating psychiatrist. As for the reliable medical evidence from other examining physicians, the ALJ gave "great weight to the opinions of Dr. Hersh",² who performed a consultative physical examination at the request of the state agency in March 2014, approximately three years prior to the plaintiff's assertion of the relevant psychiatric issues in 2017, which did not touch on any psychiatric issues. Considering these facts, the ALJ was required to consider the factors set forth in section 1404.1527(c), which the record reflects was not done, either implicitly or explicitly. See Newton v. Apfel, 209 F.3d 448, 453 (5th Cir. 2000). Accordingly, the undersigned hereby **OVERRULES** the Commissioner's objections to the Report and Recommendation, and **ADOPTS** the Report and Recommendation of the Magistrate Judge.


The **Motion for Summary Judgment** filed by the plaintiff (Rec. Doc. 18) be **GRANTED in part** and **DENIED in part**; and the **Motion for Summary Judgment** filed by

¹Rec. Doc. 14-2, p. 21 (SSA Decision, p. 11).

²Id.

the Commissioner (Rec. Doc. 21) is **DENIED in part** and **GRANTED in part**. The matter is hereby **REMANDED** for proceedings consistent with the Report and Recommendation.

New Orleans, Louisiana, this 15th day of April, 2020.



MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE