

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH PAUL PASTORINO,

Plaintiff,

v.

Case No. 15-10918
Hon. Denise Page Hood

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
AND DISMISSING ACTION**

This matter is before the Court on Magistrate Judge R. Steven Whalen's Report and Recommendation. [**Doc. No. 22, filed January 31, 2016**] Timely objections and a response to the objections were filed in this matter. [**Doc. Nos. 25 and 26**]

Judicial review of the Commissioner's decision is limited in scope to determining whether the Commissioner employed the proper legal criteria in reaching his conclusion. *Garner v. Heckler*, 745 F.2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F.2d 922, 928 (6th Cir. 1987). A district court's review

of an ALJ's decision is not a *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F.2d at 397. The decision of the Commissioner must be upheld if it is supported by substantial evidence, even if the record might support a contrary decision or if the district court arrives at a different conclusion. *Smith v. Secretary of HHS*, 893 F.2d 106, 108 (6th Cir. 1984); *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusions for the proper reasons. Plaintiff objects to the Magistrate Judge's: (a) findings that a June 28, 2013, MRI showed the absence of lumbar nerve root impingement and was essentially normal, (b) conclusion that Plaintiff's back pain generally was "OK or fine" and that radiating pain was absent, (c) failure to give Nurse Practitioner Lisa "Lindsay's restrictions great weight pursuant to 20 C.F.R. 416.927(d) [sic] and Social Security Ruling 06-03p *2, 2006 WL 2329939 (August 9, 2006)," and (d) erroneous belief that the findings of Dr. Sayyid did not support the restrictions dictated by Nurse Practitioner Lindsay. The Court first notes that Plaintiff's objections are essentially reiterations of his arguments presented in his summary judgment brief, an approach that is not appropriate or sufficient. *See, e.g., O'Connell v. Comm'r of Soc. Sec.*, 2016 WL 537771, at *1 (E.D. Mich. Feb. 11, 2016) (citing *Betancourt v.*

Ace Ins. Co. of Puerto Rico, 313 F.Supp.2d 32, 34 (D.P.R. 2004)). Second, contrary to Plaintiff's contentions, the ALJ correctly concluded that Nurse Practitioner Lindsay is not an "acceptable medical source" under Social Security law, the "treating physician rule" does not apply to her, her opinions do not carry presumptive weight, and the ALJ did not have to explain why he discounted her opinions. *See, e.g., Smith v. Comm'r of Soc. Sec.*, 482 F.3d 873, 875-76 (6th Cir. 2007) ("Before determining whether the ALJ violated [the reason-giving requirement set forth in] *Wilson* [*v. Comm'r Soc. Sec.*, 378 F.3d 541 (6th Cir. 2004)] by failing to properly consider a medical source, we must first classify that source as a "treating source."). *See also* 20 C.F.R. 416.902 (only "acceptable medical sources" can be "treating sources" for purposes of Social Security law); 20 C.F.R. 416.913(a) (nurse practitioner not among listed "acceptable medical sources").

Third, as it relates to Plaintiff's objections in parts (b)-(d), the Court finds that there was substantial evidence in the record to support the conclusions reached by the ALJ with respect to each of those issues, including the weight he gave to the opinions and conclusions of Nurse Practitioner Lindsay and Dr. Sayyid. Specifically, the Court finds that substantial evidence supports the ALJ's finding that Nurse Practitioner Lindsay's opinion that Plaintiff was disabled was not

consistent with the overall medical record and many of her own treatment notes. Fourth, even if Plaintiff is correct with respect to part (a), *i.e.*, that the Magistrate Judge erroneously concluded that there was no lumbar nerve root impingement, the ALJ's decision reflects that the ALJ did not reach that conclusion. In addition, the medical records reflect that the physician's overall concluding "impressions" are "mild L2-L3, mild L3-L4, and mild to moderate L4-L5 stenosis." (Doc. No. 11-10, PgID 496)

For the reasons set forth above, the Court finds that the ALJ's decision was supported by substantial evidence and was not based on any legally erroneous determination. Further, the Court accepts the Magistrate Judge's Report and Recommendation as this Court's findings of fact and conclusions of law.

For the reasons set forth above,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge R. Steven Whalen [Doc. No. 22, filed January 31, 2016] is **ACCEPTED** and **ADOPTED** as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Objections [Doc. No. 25, filed February 22, 2016] are **OVERRULED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Doc. No. 17, filed August 27, 2015] is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment [**Doc. No. 20, filed October 7, 2015**] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** with prejudice.

s/Denise Page Hood

DENISE PAGE HOOD
United States District Judge

DATED: February 29, 2016

Proof of Service

The undersigned certifies that a copy of the foregoing **Order Accepting Report and Recommendation and Dismissing Action** was served on the attorneys and parties of record herein by electronic means or U.S. Mail on February 29, 2016

s/Kim Grimes

Acting in the Absence of
LaShawn Saulsberry, Case Manager