

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL W. BENTLEY,

Plaintiff,

CASE NO. 16-11314

HON. DENISE PAGE HOOD

v.

CAROLYN W. COLVIN,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**OPINION AND ORDER ADOPTING REPORT AND
RECOMMENDATION [#15] TO GRANT DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT [#12] AND TO DENY
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [#11]**

I. BACKGROUND

This matter is before the Court on a Report and Recommendation (Doc # 15) filed by Magistrate Judge Elizabeth A. Stafford to grant the Motion for Summary Judgment filed by Defendant Commissioner of Social Security (“Commissioner”) (Doc # 12) and to deny the Motion for Summary Judgment filed by Plaintiff Michael W. Bentley (“Bentley”) (Doc # 11). Bentley has timely filed two objections to the Report and Recommendation. (Doc # 16) The Commissioner has filed a response to the objections. (Doc # 17) Having conducted a *de novo* review of the parts of the Magistrate Judge’s Report and Recommendation to which valid

objections have been filed pursuant to 28 U.S.C. § 636(b)(1), the Court ACCEPTS and ADOPTS the Report and Recommendation, GRANTS the Commissioner's Motion for Summary Judgment, and DENIES Bentley's Motion for Summary Judgment.

The background facts of this matter are adequately set forth in the Magistrate Judge's Report and Recommendation, and the Court adopts them here.

II. ANALYSIS

A. Standard of Review

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(b)(1)(C). The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* In order to preserve the right to appeal the magistrate judge's recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

B. Bentley's Objections

1. First Objection

Bentley first objects to the Magistrate Judge's analysis of the administrative law judge's ("ALJ") decision to not give the opinions of Bentley's treating physician controlling weight. Bentley argues that the weight the ALJ gave the treating physician's opinion evidence was improperly based on a determination that the treatment notes and records the treating physician relied on to make his opinion were not his own, and the treatment physician's notes were inconsistent. Bentley argues that the ALJ failed to provide substantial evidence for the assessment of Bentley's residual functional capacity ("RFC") because of this error. The Commissioner responds that the Magistrate Judge correctly found that substantial evidence supported the ALJ's decision to give the treating physician's opinion partial weight. The ALJ considered opinion evidence from Bentley's treating physician, Dr. Freestone ("Freestone"), and agreed that Bentley would not be able to return to his past job. (Doc # 8-2, Pg ID 58-59) However, the ALJ found that Freestone's opinion evidence was only entitled to partial weight because of "inconsistencies with other substantial evidence in the case record." *Id.* at 58.

The Court agrees with the Magistrate Judge that the ALJ was correct in finding that the inconsistencies in the record provided substantial evidence to not give controlling weight to Freestone's opinion. *See Warner v. Comm'r of Soc. Sec.*,

375 F.3d 387, 391 (6th Cir. 2004) (concluding substantial evidence supported Commissioner's decision to disregard opinion evidence of treating physician where his conclusions were not based on his own medical opinions among other inconsistencies). The Court further agrees with the Magistrate Judge that the ALJ correctly accorded Freestone's opinion partial weight and provided substantial evidence for Bentley's RFC. The Court agrees with the Magistrate Judge, and finds that substantial evidence supported the ALJ's conclusion that Bentley failed to show that he could not maintain employment in a field that met his RFC. Bentley's first objection is overruled.

2. *Second Objection*

Bentley also objects to the Magistrate Judge's recommendation that the Court affirm the ALJ's finding that Bentley's conclusions regarding his condition were partially credible. The Commissioner responds that this challenge is not a specific objection to the Report and Recommendation because it is merely a verbatim rehashing of arguments already presented in Bentley's Motion for Summary Judgment (*compare* Doc #16, Pg ID 8-10 *with* Doc #11, Pg ID 25-27), which were addressed and rejected in the proposed recommendations of the Magistrate Judge.

This challenge is not a proper objection to the Report and Recommendation, as required by Fed. R. Civ. P. 72(b), because it merely rehashes Bentley's

arguments. *Davis v. Caruso*, No. 07-10115, 2008 WL 540818, at *2 (E.D. Mich. Feb. 25, 2008) (Hood, J.) (“Plaintiff does not raise specific objections to the [R&R] . . . and merely rehashes his arguments.”). The Court incorporates the Magistrate Judge’s analysis of Bentley’s restated arguments. (*see* Doc # 15, Pg ID 14-16) Bentley’s second objection is overruled.

III. CONCLUSION

For the reasons set forth above,

IT IS ORDERED that Magistrate Judge Elizabeth A. Stafford’s Report and Recommendation (Doc # 15) is ACCEPTED and ADOPTED as this Court’s findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Defendant Commissioner of Social Security’s Motion for Summary Judgment (Doc # 12) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff Bentley’s Motion for Summary Judgment (Doc # 11) is DENIED.

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

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: August 31, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 31, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager