

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEVIN WEREDICK,

Plaintiff,

CASE NO. 16-11694
HON. DENISE PAGE HOOD

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**OPINION AND ORDER ADOPTING REPORT AND
RECOMMENDATION [#14] TO GRANT PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT [#10] AND TO DENY DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT [#12]**

This matter is before the Court on a Report and Recommendation (Doc # 14) filed by Magistrate Judge Stephanie Dawkins Davis on Plaintiff Kevin Weredick's Motion for Summary Judgment (Doc # 10), and Defendant Commissioner of Social Security's Motion for Summary Judgment (Doc # 12). To date, no objections were filed to the Report and Recommendation, and the time to file such has passed. The Court ACCEPTS and ADOPTS the Report and Recommendation, GRANTS Weredick's Motion for Summary Judgment, DENIES the Commissioner's Motion for Summary Judgment, REVERSES the findings of the Commissioner, and

REMANDS this matter back to the Commissioner for further proceedings under Sentence Four.

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

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).

After review of the Magistrate Judge's Report and Recommendation, the Court finds that her findings and conclusions are correct. The Court agrees with the Magistrate Judge that this matter must be remanded to allow the Administrative Law Judge ("ALJ") to obtain the opinion of a qualified medical advisor on the issue of

equivalence regarding Plaintiff's impairments. Many decisions from this Court have explained that Social Security Ruling 96-6p requires a medical expert opinion on the issue of equivalence. (*see* Doc # 14, Pg ID 8-10)

The Court also agrees with the Magistrate Judge that the ALJ will be required to re-assess Plaintiff's RFC findings, and Plaintiff's credibility, after the opinion of a qualified medical advisor has been obtained. The Court further agrees with the Magistrate Judge that Dr. Kornblum's statement was not a medical opinion and the ALJ was not required to give the statement controlling weight, nor was the ALJ required to re-contact Dr. Kornblum.

Accordingly,

IT IS ORDERED that Magistrate Judge Stephanie Dawkins Davis's Report and Recommendation (Doc # 14) 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 DENIED.

IT IS FURTHER ORDERED that Plaintiff Weredick's Motion for Summary Judgment (Doc # 10) is GRANTED.

IT IS FURTHER ORDERED that the findings of the Commissioner are REVERSED, and this matter is REMANDED back to the Commissioner for further proceedings under Sentence Four.

s/Denise Page Hood
DENISE PAGE HOOD
Chief U.S. District Judge

DATED: September 18, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S Mail addresses disclosed on the Notice of Electronic filing on September 18, 2017

s/Teresa McGovern
Case Manager Generalist