

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ALTON MARTIN

PLAINTIFF

v.

Civil No. 1:18cv167-HSO-RHW

COMMISSIONER OF SOCIAL
SECURITY, *Nancy A. Berryhill, Acting*
Commissioner of Social Security

DEFENDANT

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**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND
RECOMMENDATION [16], DENYING DEFENDANT’S MOTION [15] TO
AFFIRM, AND REMANDING CASE FOR FURTHER PROCEEDINGS**

This matter comes before the Court on the Report and Recommendation [16] of United States Magistrate Judge Robert H. Walker, entered in this case on June 14, 2019, and Defendant Commissioner of Social Security’s Motion [15] to Affirm. Plaintiff Alton Martin seeks review of the final decision of the Commissioner of Social Security denying his claim for disability insurance benefits and supplemental security income. The Magistrate Judge recommended that the decision of the Commissioner be reversed and remanded for further consideration.

After due consideration of the Report and Recommendation [16], the parties’ Briefs [10] [14], the Commissioner’s Motion [15], the Administrative Record [9], and relevant legal authority, the Court finds that the Magistrate Judge’s Report and Recommendation should be adopted as the Order of the Court, the Commissioner’s Motion [15] to Affirm should be denied, and the case should be remanded for further

administrative proceedings.

I. RELEVANT BACKGROUND

On May 11, 2018, Plaintiff Alton Lee Martin (“Plaintiff”) filed a Complaint [1] seeking the reversal of an administrative decision denying him disability benefits and supplemental security income under the Social Security Act. Compl. [1]. Alternatively, Plaintiff sought remand of the case for further proceedings. *Id.* Pursuant to the Court’s briefing schedule, the parties filed briefs arguing their positions. Order [3]. Plaintiff takes the position that the Administrative Law Judge (“ALJ”) failed to “properly evaluate the medical opinion evidence from the Plaintiff’s treating physician.” Pl.’s Br. [10] at 10. Plaintiff argues that without identifying any contradictory findings, the ALJ improperly gave only partial weight to the treating physician’s opinion that Plaintiff would have four or more work absences per month. *Id.* at 10-11 (citing Admin. Record [9] at 26). Plaintiff asserts that as a result of this error, the ALJ’s finding that he maintained the residual functional capacity to perform a full range of sedentary work is not supported by the record. *Id.* at 12-13.

The Commissioner of Social Security, Nancy A. Berryhill (“the Commissioner”) responds that the treating physician’s opinions were generally consistent with an ability to perform sedentary work and that to the extent the ALJ’s failure to accord the required weight to the treating physician’s specific opinion regarding absences was erroneous, such error was harmless. Def.’s Br. [14] at 6-8. After responding to Plaintiff’s brief, the Commissioner filed a Motion [15] to

Affirm asking the Court affirm her final decision. Mot. [15] to Affirm.

On June 14, 2019, the Magistrate Judge entered the instant Report and Recommendation [16] recommending that the Court reverse and remand the Commissioner's decision for further proceedings. R. & R. [16] at 7-8. On June 28, 2019, the Commissioner notified this Court that she did not intend to file any objections to the Magistrate Judge's Report and Recommendation [16].

II. DISCUSSION

Where no party has objected to a magistrate judge's proposed findings of fact and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) (“[A] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge thoroughly considered all issues, and that the Magistrate Judge's recommendation that the Court reverse and remand the decision to the Commissioner for further consideration of its findings is neither clearly erroneous nor contrary to law. R. & R. [16] at 1. As such, the Report and Recommendation should be adopted as the opinion of the Court, and the decision of the Commissioner should be reversed and remanded under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Order and the Magistrate Judge's Report

and Recommendation [16]. *See Bordelon v. Barnhart*, 161 F. App'x 348, 352 (5th Cir. 2005) (holding case was properly remanded under sentence four of 42 U.S.C. § 405(g) where the court provided legal reasons, vacated, and remanded case to the Commissioner); *Davis v. Colvin*, 603 F. App'x 257, 259, 259 n.2 (5th Cir. 2015) (holding same where district court reversed and remanded case).

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Magistrate Judge's Report and Recommendation [16] entered in this case on June 14, 2019, is **ADOPTED** as the opinion of the Court, and Defendant's Motion [15] to Affirm is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that the decision of the Commissioner of Social Security is **REVERSED** and this case is **REMANDED** to the Commissioner for further proceedings consistent with this Order and the Magistrate Judge's Report and Recommendation [16].

SO ORDERED AND ADJUDGED this the 2nd day of July, 2019.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE