

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

RICKIE BROWN

PLAINTIFF

V.

CAUSE NO. 3:14-CV-201-CWR-LRA

**CAROLYN W. COLVIN, *Commissioner,*
*United States Social Security Administration***

DEFENDANT

ORDER

Before the Court is the plaintiff's objection to the Magistrate Judge's Report and Recommendation (R&R). Docket No. 16. The R&R recommends affirming the Commissioner's denial of Supplemental Security Income. Docket No. 13.

The Court has reviewed *de novo* the portions of the R&R to which the plaintiff has objected. 28 U.S.C. § 636(b). The Court finds that remand is not warranted. Plaintiff contends that the ALJ erred in finding he did not meet the requirements of Listing 12.05(C). Although the ALJ's finding that the plaintiff's IQ scores were invalid was improper based on the evidence, this error alone is not sufficient for remand because Listing 12.05(C) also requires a "physical or other mental impairment imposing an additional and significant work-related limitation of function." The ALJ properly applied the severity standard outlined in *Stone v. Heckler* regarding plaintiff's depression and spondylosis. 752 F.2d 1099, 1101 (5th Cir. 1985). There is substantial evidence in the record to support the ALJ's conclusion that neither impairment is severe and therefore plaintiff did not satisfy the second requirement of Listing 12.05(C).

Further, pursuant to 20 C.F.R. § 416.945, the ALJ can consider plaintiff's testimony regarding his back pain and medication side effects to assist in the determination of plaintiff's residual functional capacity (RFC). The conclusion that these statements as well as other

evidence in the record supported a reduced capacity for work-related activity does not contradict the ALJ's finding that plaintiff's spondylosis is non-severe.

Accordingly, this Court adopts the R&R's findings and conclusions as its own, grants the Commissioner's motion to affirm, and denies the plaintiff's motion for summary judgment. A separate Final Judgment will issue this day.

SO ORDERED, this the 24th day of September, 2015.

s/ Carlton W. Reeves _____
UNITED STATES DISTRICT JUDGE