

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

ROBERT D. CLARK

PLAINTIFF

VS.

CIVIL ACTION NO. 3:16-cv-369-WHB-JCG

NANCY A. BERRYHILL, Acting Commissioner
of the Social Security Administration

DEFENDANT

OPINION AND ORDER

This cause is before the Court on Plaintiff's Objection to the Report and Recommendation ("R and R") of United States Magistrate Judge John C. Gargiulo. The Court, having considered the Objection,¹ the record in this case, as well as governing authorities, finds the Objection should be overruled, and the subject Report and Recommendation adopted in its entirety.

I. Discussion

In 2010, Plaintiff, Robert Clark ("Clark"), filed applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income Disability Benefits ("SSI") with the Social Security Administration, claiming a disability onset date of November 30, 2009. In May of 2012, Administrative Law Judge Wallace E. Weakly issued a decision denying Clark's applications on a finding that he

¹ Defendant has filed a Notice indicating that she will not respond to Plaintiff's Objection, and that she has no objections to the Report and Recommendation. See Notice [Docket No. 15].

was not disabled. Clark sought review in this Court. See Clark v. Colvin, Civil Action No. 4:14-cv-102-DPJ-FKB (S.D. Miss.). By Agreed Order, ALJ Weakly's decision was reversed, and the case was remanded for further administrative proceedings. Id. Agreed Order of Remand [Docket No. 14]. The Agreed Order required the ALJ to:

evaluate the nature and severity of the claimant's mental impairment, in order to ascertain whether it is severe or non severe pursuant to 20 C.F.R. §§ 404.1520 and 416.920; re-evaluate the claimant's residual functional capacity given the claimant's mental and physical impairments; re-evaluate the medical source opinion provided by James Lock, M.D., and provide sufficient rationale under 20 C.F.R. §§ 404.1527 and 416.927 in support of the weight he gives this opinion; and take any other action deemed necessary.

Id.

On remand, Clark's applications for DIB and SSI benefits were considered by Administrative Law Judge Lanier Williams. On May 15, 2015, ALJ Williams entered a decision concluding that Clark had not been disabled for the purpose of being awarded DIB and SSI benefits prior to April 28, 2014, but that he became disabled on that date because, *inter alia*, (1) no jobs existed in significant numbers in the national economy that he could perform, and (2) a finding of disability was directed by Medical-Vocational Rule 201.10. See Admin. Rec. [Docket No. 5], at 424-36.² Following the denial of review on administrative appeal, Clark filed suit in this Court challenging the decision of the Social Security Administration.

² Citations to the Administrative Record bear the page numbers assigned when that Record was electronically filed in this Court.

The matter came before Judge Gargiulo on competing motions, with Clark moving to vacate the decision of the Social Security Commissioner, and the Commissioner moving to affirm. On review, Judge Gargiulo entered a Report and Recommendation finding that the decisions made by the ALJ with respect to (1) the weight to be given to the Medical Source Statements of Clark's treating physician, Dr. James Lock, and (2) Clark's disability onset date, were supported by substantial evidence and, therefore, were not grounds for reversing his decision. See R and R [Docket No. 23]. After finding Clark had not shown grounds for reversal, Judge Gargiulo recommended that the decision of the Commissioner be affirmed. Id. Clark timely objected to the R and R. As to his objections, this district judge has the authority to review Judge Gargiulo's R and R, and is required to make a *de novo* determination of any portion thereof to which a specific written objection has been made. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). Thereafter, this district judge may accept, reject, or modify the R and R; receive further evidence in the case; or recommit the matter to the magistrate with further instructions. Id.

Clark first objects to Judge Gargiulo's finding/conclusion that ALJ Williams provided sufficient rational for giving little weight to the Medical Source Statements ("MSSs") of his treating physician, Dr. James Lock. As to the issue of whether the ALJ erred by giving little weight to Lock's MSSs, Judge Gargiulo first

cited ALJ Williams's reasons for so doing, namely: (1) Lock's opinions in the MSSs were not consistent with other substantial evidence in the record; (2) no other treating or examining source found the same degree of physical limitation or symptoms as had Lock; (3) the medical findings and diagnostic evidence in the record did not support the degree of restriction assigned by Lock in the MSSs; and (4) Lock's own longitudinal medical records of Clark's treatment did not "document persistent symptoms or physical abnormalities consistent" with the degree of restriction he assigned in the MSSs. See R and R, at 8 (quoting Admin. Rec. [Docket No. 5] at 432). Judge Gargiulo next considered the Newton factors as follows:

The ALJ provided sufficient rationale for giving little weight to Dr. Lock's medical source statements. While the ALJ gave the medical source statements little weight, he did so by comparing them to Dr. Lock's contemporaneous treatment records. The ALJ determined that the treatment records reflected episodic complaints and did not consistently document the severe limitations related to neck and back pain that Clark alleged or that Dr. Lock found in his medical source statements. While [Clark], on occasion complained of severe pain and Dr. Lock made abnormal findings, the ALJ concluded that the longitudinal record did not demonstrate a disabling impairment lasting for at least twelve continuous months.

R and R, at 9 (quoting Admin. Rec. [Docket No. 5] at 432-33; and 475-76). Judge Gargiulo also found the ALJ's decision was supported by Lock's medical records that showed that on twenty-two medical visits between 2012 and 2014, Clark had not reported any back, neck, joint, or pain/weakness and had a normal gait and full

range of motion in his neck. R and R, at 10 (citations to Administrative Record omitted).

Next, Judge Gargiulo found the ALJ's decision to give Lock's MSSs little weight because they were based, in part, on Clark's subjective complaints of pain, was also supported by the record. Id. at 11. Again, the record showed that Lock's own medical records noted multiple examinations during which Clark offered no complaints of pain or physical limitation. Additionally, Clark did not have any symptoms of back, leg, neck, joint, or muscle pain/weakness, and exhibited a normal gait, when he was examined by Dr. Thomas Jeffcoat during a consultive examination in June of 2013. See R and R, at 11 (citing Admin. Rec., 576).

After reviewing ALJ Williams's finding with respect to the weight to be given to Lock's MSSs as well as multiple documents in the Administrative Record, Judge Gargiulo found Williams's decision to assign little weight to Lock's MSSs was supported by substantial evidence in the record. Clark objects to this finding on the grounds that ALJ Williams did not provide a detailed analysis with respect to each of the Newton factors, namely the nature and extent of his treatment by Lock, when considering the weight to be given to Lock's MSSs. It is clear from the Administrative Record, however, that the ALJ knew that Clark had been a patient of Lock for many years, and the ALJ also knew of the nature/extent of the treatment Lock was providing. It is also clear that the ALJ was

aware that, because Lock was Clark's treating physician, his MSSs were to be "considered for controlling weight." See Admin. Rec., at 432 ("Dr. Lock is a treating source, so these medical source statements have been considered for controlling weight."). ALJ Williams, however, found Lock's MSSs could not be given controlling weight in this case because, *inter alia*, they were not supported by medical and/or diagnostic testing, and they were inconsistent with Lock's own longitudinal treatment records of Clark.

Clark also objects to Judge Gargiulo's findings with respect to the ALJ's assessment of the credibility of his (Clark's) subjective complaint. As noted by Judge Gargiulo, however, the credibility determinations made by the ALJ were fully within his province. See R and R, at 13 (citing Greenspan v. Shalala, 38 F.3d 232, 237 (5th Cir. 1994)).

As the record supports Judge Gargiulo's findings/conclusions that ALJ Williams provided sufficient rational for giving little weight to Lock's MMSs, and for his credibility determinations, the Court finds Clark's objection with respect to these findings/conclusions should be overruled.

Second, Clark objects to Judge Gargiulo's finding/conclusion that the ALJ's determination that the onset date of disability was April 28, 2014, was also supported by substantial evidence. As to this issue, Judge Gargiulo found ALJ Williams had fully explained his decision to credit and adopt the opinions and impairment-

related restrictions assigned by Dr. Cleve Johnson, an orthopedist, who examined Clark on October 28, 2014. See R and R, 12-13. Judge Gargiulo also found the ALJ's onset of disability determination was supported by Lock's contemporaneous medical treatment record as well as the opinions of Drs. Johnson, Jeffcoat, and James. Id.

Clark objects to this finding on the grounds the ALJ did not adequately consider the severity and duration of his symptoms as assigned by Lock in his MSSs, and that had Lock's opinions been properly considered, the onset date of disability would have been earlier. As discussed above, however, there is substantial evidence in the Administrative Record to support the ALJ's having given little weight to Lock's MSSs. Clark also objects to the onset of disability date on the grounds that he has a progressive illness and, therefore, the ALJ should have consulted a medical advisor when making that determination. Although use of a medical advisor is required in cases in which the date of disability is ambiguous, see Spellman v. Shalala, 1 F.3d 357 (5th Cir. 1993), no ambiguity has been shown here because (1) the finding of disability in this case was predicated on application of the Medical-Vocational Rules, and (2) and a finding of disability before April of 2014, is not supported by the medical record.

As the record supports Judge Gargiulo's finding/conclusion that the ALJ's determination that the onset date of disability was April 28, 2014, was supported by substantial evidence, the Court

finds Clark's objection with respect to this finding/conclusion should be overruled.

Having considered Clark's objections, the Court finds Judge Gargiulo's Report and Recommendation is well reasoned and supported by applicable law. The Court additionally finds that the decision of ALJ Williams was supported by substantial evidence, and includes no legal errors that would require the Court to reverse or remand it. Accordingly, the Court will adopt Judge Gargiulo's Report and Recommendation over Clark's objection. In so doing, Clark's Motion for Summary Judgment will be denied, the Commissioner's Motion to Affirm will be granted, and a final judgment dismissing this case with prejudice will be entered.

II. Conclusion

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge [Docket No. 13] is hereby accepted and adopted as the Opinion and Order of the Court.

IT IS FURTHER ORDERED that Plaintiff's Objection to the Report and Recommendation [Docket No. 14] is hereby overruled.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment [Docket No. 6] is hereby denied.

IT IS FURTHER ORDERED that Defendant's Motion for an Order Affirming the Decision of the Commissioner [Docket No. 10] is

hereby granted. A Final Judgment dismissing this case shall be entered this day.

SO ORDERED this the 23rd day of August, 2017.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE