

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARK F. GUTIERREZ,

Plaintiff,

v.

ANDREW SAUL, Acting Commissioner of
Social Security,¹

Defendant.

Case No. 2:17-cv-02365-MMD-EJY

ORDER

Plaintiff Mark F. Gutierrez (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration denying his application for disability insurance and supplemental security income under Title II and Title XVI of the Social Security Act, respectively. The Court has reviewed the parties’ briefings and the Administrative Record (“AR”) in this matter.

The Court issues this Order for the purpose of obtaining clarification from Plaintiff’s treating physician, Dr. Akindele Kolade, regarding two issues that appear to be clerical errors based on the totality of the information otherwise provided by Dr. Kolade. First, Dr. Kolade submitted a Mental Impairment Questionnaire in which he checked “no” in response to a question asking whether Plaintiff’s “impairment lasted or [is] expected to last at least twelve months.” AR 513. Given Dr. Kolade’s opinions regarding Plaintiff’s mental health, this response appears to be in error.

Second, Dr. Kolade checked a box indicating Plaintiff’s abilities, when carrying out “very short and simple instructions” and “[m]aintain[ing] attention for two hour segment[s],” were “seriously limited, but not precluded” for unskilled work. AR 510–11 (emphasis added). On the same form, Dr. Kolade checked a box indicating Plaintiff’s abilities when carrying out “detailed

¹ Andrew Saul is the current Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d). *See also* 42 U.S.C. § 405(g) (“Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.”).

1 instructions” and “[u]nderstand[ing] and remember[ing] detailed instructions” were only “[l]imited
2 but satisfactory” for more demanding semiskilled and skilled work. *Id.* (emphasis added).

3 The Court seeks clarification from Dr. Kolade regarding these two issues so that it may
4 promptly finalize its Report and Recommendation regarding Plaintiff’s Motion to Remand.

5 Accordingly,

6 IT IS HEREBY ORDERED that within fourteen (14) days Plaintiff, through counsel, shall
7 obtain a letter or, if possible, declaration by Dr. Akindele Kolade clarifying (1) whether Plaintiff’s
8 impairment lasted or is expected to last at least twelve months, and (2) the level of abilities and
9 aptitudes Plaintiff possesses when carrying out (a) unskilled work, as well as (b) semiskilled and
10 skilled work as discussed above.

11 DATED this 15th day of January, 2020.

12
13 
14 ELAYNA J. YOUCHAH
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28