

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PHILLIP ANDREW LUCAS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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CASE NO. 1: 11 CV 2497

JUDGE DONALD C. NUGENT

ORDER ADOPTING
MAGISTRATE'S REPORT AND
RECOMMENDATION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert. The Report and Recommendation (ECF # 17), issued on February 15, 2013, is hereby ADOPTED by this Court. Plaintiff sought review of the Commissioner’s decision denying his application for Disability Insurance Benefits and Supplemental Security Income under 42 U.S.C. § 405(g) and 42 U.S.C. § 1383, respectively.

Plaintiff’s first assignment of error fails because ALJ was not required to order physical or additional psychological consultative examinations in this case. Ordering a consultive exam lies in the discretion of the ALJ. *Foster v. Halter*, 279 F.3d 348, 355 (6th Cir. 2001). The burden of providing a complete record, that is, complete and detailed enough to enable the Secretary to make a disability determination, rests with the claimant and the claimant is responsible for

furnishing evidence to show that he is disabled. *Landsaw v. Secretary of Health and Human Services*, 803 F.2d 211, 214 (6th Cir. 1986). Therefore, the Court ADOPTS the Magistrate Judge's Recommendation to affirm the ALJ's decision as to Count One.

Plaintiff's second, third, and fifth assignments of error, are dismissed because the Magistrate Judge found that the medical, and in second assignment of error non-medical, evidence indicates that the ALJ did properly consider and analyze that evidence in adopting her position. The fourth assignment of error, using Plaintiff's appearance and demeanor as justification for Plaintiff's adverse credibility determination, is also dismissed as the Magistrate Judge found that the ALJ determined the Plaintiff's credibility from a number of sources.

The Magistrate recommended that the Commissioner's decision be affirmed, and the Plaintiff's Complaint be dismissed in its entirety, with prejudice. The Defendant has failed to timely file any objection to the Report and Recommendation.. Thus, Plaintiff has waived the right to appeal the Magistrate Judge's recommendation. L.R. 72.3(b).

The Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. The Commissioner's decision is affirmed and Plaintiff's Complaint is dismissed in its entirety in accordance with this opinion and the reasoning set forth in the Magistrate's Report and Recommendation.

IT IS SO ORDERED.

DATED: March 8, 2013


DONALD C. NUGENT
United States District Judge