

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KIMBERLY A. CHIODO,)	
)	CASE NO. 1:16 CV 1482
Plaintiff,)	
)	JUDGE DONALD C. NUGENT
v.)	
)	
COMMISSIONER OF SOCIAL)	<u>MEMORANDUM AND OPINION</u>
SECURITY,)	<u>AND ORDER</u>
)	
)	
Defendant.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge David A. Ruiz (ECF #14). The Report and Recommendation (ECF #14), submitted on April 19, 2017, is hereby ADOPTED by this Court. Plaintiff, Kimberly A. Chiodo, applied for Disability Insurance Benefits (“DIB”) for a disability arising on June 1, 2013. The application was denied, and then Plaintiff requested a hearing in front of an Administrative Law Judge (ALJ). On December 2, 2014, the ALJ denied DIB to Plaintiff finding that she was not disabled. Plaintiff sought review of the Commissioner’s decision denying her claim for DIB. This matter is before the Court pursuant to 42 U.S.C. §405(g). The Magistrate Judge issued a Report and Recommendation (ECF #14) recommending that the Commissioner’s final decision be affirmed. Specifically, the Magistrate Judge determined that the Commissioner applied the correct legal standards and found the Commissioner’s decision denying Plaintiff’s application for DIB to be supported by the evidence. Plaintiff has filed an objection to the Report and Recommendation.

Standard of Review for Magistrates Report and Recommendation

The applicable standard of review of a magistrate report and recommendation depends upon whether objections were made to that report. When objections are made to a Report and Recommendation of a magistrate judge, the district court reviews the case *de novo*.

FED. R. CIV. P. 72(b) states:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return matter to the magistrate judge with instructions.

Accordingly, this Court will review the Report and Recommendation, to which timely objections have been filed, *de novo*. See *Ivy. v. Sec'y of Health and Human Servs.*, 976 F.2d 288, 289-90 (6th Cir. 1992).

It is important to note that the standard of review for a magistrate judge's report and recommendation is distinct from the standard of review for the Commissioner of Social Security's decision regarding benefits. Judicial review of the Commissioner's decision, as reflected in the decision of the ALJ, is limited to whether that decision is supported by substantial evidence. See *Smith v. Sec'y of Health and Human Servs.* 893 F.2d 106, 108 (6th Cir. 1989). "Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged conclusion, even if that evidence could support a decision the other way." *Casey v. Sec'y of Health and Human Servs.*, 987 F.2d 1230, 1233(6th Cir. 1993).

Conclusion

This Court has reviewed the Report and Recommendation of this case *de novo* and has

considered all of the pleadings, transcripts, affidavits, motions, and filings of the parties. Further this Court has reviewed the ALJ's finding in Plaintiff's administrative proceedings under the substantial evidence standard. After careful evaluation of the record, the Report and Recommendation, and Plaintiff's objections, this Court adopts the findings of facts and conclusions of law of the Magistrate Judge as its own.

Plaintiff asserts two objections to the Report and Recommendation (ECF #14). First, Plaintiff asserts that the ALJ's decision should be reversed because his determination of Mental Residual Functional Capacity was not supported by substantial evidence. Specifically, Plaintiff contends that the ALJ improperly excluded specific limitations assessed by appropriate medical sources.

The Magistrate Judge did not err in finding that there was substantial evidence to support the Mental Residual Functional Capacity of the Plaintiff. As Magistrate Ruiz noted, the Commissioner's determination must stand if supported by substantial evidence, regardless if substantial evidence also supports the opposite conclusion or this Court would have resolved the issue differently. *Bass v. McMahon*, 499 F. 3d 506, 509 (6th Cir. 2007). This Court is allowed to examine all evidence in record when evaluating this decision, regardless if the Commissioner cited the reasoning in his final decision. *See Walker v. Sec'y of Health & Human Servs.*, 884 F.2d 241, 245 (6th Cir. 1989). It is proper for the ALJ to use medical assessments as well as Plaintiff's testimony to determine Plaintiff's personal and physical limitations. The Magistrate Judge carefully and correctly determined that there was substantial evidence to support the ALJ's decision.

Plaintiff's second objection asserts that the Administrative Decision should be reversed

because it violated Social Security Ruling 06-3P by giving little weight to the opinion of the Plaintiff's Nurse Practitioner who is not classified as an "appropriate medical source" under Social Security Ruling 06-3P. Defendant correctly notes that an opinion that comes from a source which is not an acceptable medical source may be given less weight than an opinion from an acceptable medical source under Social Security Ruling 06-3P. Since a Nurse Practitioner is not considered an "acceptable medical source" the ALJ was justified in giving the opinion less weight. The Magistrate Judge correctly decided that the ALJ gave appropriate reasons for not crediting the opinion of the Nurse Practitioner. The Magistrate Judge thoroughly and exhaustively reviewed this case, applied the proper legal standards and analysis, and correctly determined the ALJ's decision should be affirmed.

For the foregoing reasons, the Report and Recommendation of Magistrate Judge David A. Ruiz (ECF #14) is hereby ADOPTED.

Consistent with this ruling, the Commissioner's final decision denying DIB is AFFIRMED.

IT IS SO ORDERED.

DATED: May 25, 2017



DONALD C. NUGENT
United States District Judge