

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

DONNA JEAN FALZINI,)
)
 Plaintiff,)
)
 v.)
)
 NANCY A. BERRYHILL,)
 Acting Commissioner)
 of Social Security,)
)
 Defendant.)

CASE NO. 1:16CV02779

JUDGE DONALD C. NUGENT

MAGISTRATE JUDGE
JONATHAN D. GREENBERG

MEMORANDUM OPINION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg (ECF #11). On November 15, 2016, Plaintiff, Donna Falzini, filed her Complaint (ECF #1) challenging the final decision of the Acting Commissioner of Social Security denying her claim for Disability Insurance Benefits. Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Greenberg.

On October 26, 2017, the Magistrate Judge issued his Report and Recommendation. The Magistrate Judge found that the ALJ failed to properly review Plaintiff's treatment history with Dr. Onder and evaluate his medical opinion. Accordingly, the Magistrate Judge recommends that the case be vacated and remanded for further proceedings consistent with his decision.

Magistrate Judge Greenberg found that the ALJ erred by construing that Dr. Onder based his assessment strictly on notes from a previous physician. From this, the ALJ reasoned that the accuracy of the questionnaire was questionable and granted it little weight. After careful review of the record and the questionnaire, Magistrate Judge Greenberg found substantial evidence that

Dr. Onder's did in fact, rely on *his own* examinations and findings when assessing Plaintiff's functional capacity.

In light of the ALJ's faulty reasoning for discounting Dr. Onder's opinion and because abnormal findings were reflected in his treatment notes, Magistrate Judge Greenberg found that the ALJ failed to "build an accurate and logical bridge between the evidence and the result." *Fleischer v. Astrue*, 774 F. Supp. 2d 875, 877 (N.D. Ohio 2011) (quoting *Sarchet v. Charter*, 78 F.3d 305, 307 (7th Cir. 1996)). Thus, Magistrate Judge Greenberg concluded that the matter must be remanded for a reevaluation of Dr. Onder's medical opinion. Any objections to the Report and Recommendation were to be filed within 14 days of service. The Defendant Acting Commissioner of Social Security filed a response to the Report and Recommendation stating that the Commissioner will not be filing objections to the Report and Recommendation.

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review of a magistrate judge's 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 the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of portions of reports to which timely objections have been made; it does not indicate the appropriate standard of review for portions of the report to which no objections have properly been made. The Advisory Committee on Civil

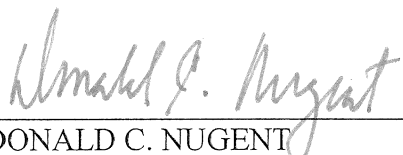
Rules commented on the standard of review stating, “when no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s notes (citations omitted).

The U.S. Supreme Court stated: “It does not appear that Congress intended to require district court review of magistrate judge’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to these findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, no objection was filed by either party. Accordingly, this Court reviews the Report and Recommendation for a finding of clear error on the face of the record.

Conclusion

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Greenberg (ECF #11) is ADOPTED. The decision of the Commissioner denying Petitioner’s request for Disability Insurance Benefits is VACATED and the case REMANDED for further proceedings consistent with the Magistrate Judge’s decision.

IT IS SO ORDERED



DONALD C. NUGENT
United States District Court

DATED: March 6, 2018