

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

<p>ERIC D. SMITH,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>NANCY A. BERRYHILL, Acting Comm’r of Social Security,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 5: 16-cv-02466</p> <p>Judge Dan Aaron Polster</p> <p><u>MEMORANDUM OF OPINION</u></p> <p><u>AND ORDER</u></p>
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Before the Court is the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg (“R&R”) (**Doc #: 17**). Magistrate Judge Greenberg recommends that the Court affirm the decision of the Administrative Law Judge (“ALJ”) denying Plaintiff Eric D. Smith’s applications for Social Security Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 416(I), 423, 1381 (“the Act”). Plaintiff has filed Objections to the R&R (**Doc # 18**), and Defendant, the Acting Commissioner of the Social Security Administration (“Commissioner”), has filed a Response to Plaintiff’s Objections (**Doc. # 19**). Plaintiff’s objections are the same as the arguments made to the Magistrate Judge. The R&R correctly addresses the objections and the Court finds the objections to be without merit. The Court **ADOPTS** the R&R.

In September 2013, Plaintiff filed applications for DIB and SSI, and the Social Security Administration (“SSA”) denied his applications initially and upon reconsideration. After

Plaintiff's application was denied, he requested a hearing before an ALJ. The hearing took place on August 18, 2015 and featured testimony from Plaintiff, represented by counsel, and a vocational expert. On August 31, 2015, the ALJ issued a decision denying the Plaintiff benefits. Plaintiff filed a request for review of the ALJ's decision, but the Appeals Council denied his request. Plaintiff then filed the instant action on October 7, 2016, seeking review of the ALJ's decision.

On August 10, 2017, Magistrate Judge Greenberg issued an R&R in which he recommended that the Court affirm the ALJ's decision and dismiss Plaintiff's case with prejudice. Plaintiff filed objections on August 24, 2017, setting forth three objections to the R&R: 1) the ALJ discounted Consultative Examiner Comley's opinion without giving adequate reason for doing so; 2) the ALJ did not consider that the state agency reviewers did not have a complete record when weighing their opinion and; 3) the ALJ did not adequately consider Plaintiff's subjective claims because the ALJ did not provide significant reasons as to why Plaintiff's statements were not credible. These same objections were previously argued in Plaintiff's Brief of the Merits (**Doc. #13**) to Magistrate Judge Greenberg.

First, the ALJ properly weighed Dr. Comley's opinion and substantial evidence supports his decision to afford it "some weight." For example, Dr. Comley's opinion was not based on a clinical assessment established over a period of time; Plaintiff's treatment notes support the ALJ's conclusion that Plaintiff's impairments were not as severe as Dr. Comley opined; and Plaintiff reported improvements with medication and continued therapy. Second, while the state agency reviewers did not have the benefit of Plaintiff's counseling records, the ALJ did and he discussed them at length. Lastly, the ALJ asserted several reasons for

discounting Plaintiff's subjective reports of his impairments including, among others, his responsiveness to therapy and medications and his statements to his counselor that he had been going out in public more. For these reasons, Magistrate Judge Greenberg's R&R correctly addresses Plaintiff's objections and the Court finds Plaintiff's objections to be without merit.

IT IS SO ORDERED.

/s/Dan Aaron Polster September 25, 2017

Dan Aaron Polster

United States District Judge