UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MICHAEL CHANEY,	:	Case No. 1:13-cv-199
Plaintiff,	:	Judge Timothy S. Black
vs.	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

ORDER THAT: (1) THE ALJ'S NON-DISABILITY FINDING IS FOUND SUPPORTED BY SUBSTANTIAL EVIDENCE, AND AFFIRMED; AND (2) THIS CASE IS CLOSED

This is a Social Security disability benefits appeal. At issue is whether the administrative law judge ("ALJ") erred in finding the Plaintiff "not disabled" and therefore unentitled to supplemental security income ("SSI"). (*See* Administrative Transcript ("Tr.") (Tr. 15-25) (ALJ's decision)).

I.

Plaintiff filed an application for SSI on February 27, 2009, alleging disability as of September 1, 2007 due to residual effects of cancer and chemotherapy treatment.[1] (Tr. 15, 19, 150-152). The state agency denied Plaintiff's application initially and upon reconsideration, and Plaintiff timely requested a hearing. (Tr. 15, 95-97, 101-106). In April 2011, Plaintiff and a vocational expert testified at a hearing before an ALJ. (Tr. 15,

[1] These included nausea, vomiting, fatigue, and upper and lower extremity peripheral neuropathy. (Tr. 15, 19, 150-152). Peripheral neuropathy is damage or disease affecting nerves, which may affect sensation, movement, gland or organ function, and other aspects of health depending on the type of nerves affected.

31-88). In June 2011, the ALJ determined that Plaintiff was not entitled to SSI benefits during the relevant period (from the date of the SSI application on February 27, 2009 through the date of the ALJ's decision on June 7, 2011). (Tr. 15-25). Specifically, the ALJ determined that Plaintiff had the residual functional capacity ("RFC")[2] to perform a range of medium work[3] in that he: (a) could frequently climb ramps and/or stairs, balance, stoop, crouch, kneel, and/or crawl; (b) could never climb ladders, ropes, and/or scaffolds; (c) should avoid all workplace exposure to unprotected heights or use of moving machinery; and (d) could perform work free of fast-paces production requirements and work that involved only simple work-related decisions and few (if any) workplace changes. (Tr. 18).

In February 2013, the Appeals Council denied Plaintiff's request for review. (Tr. 1-3). The ALJ's decision became the Commissioner's final decision. *See* 20 C.F.R. § 416.1481. Plaintiff now seeks judicial review of the ALJ's decision pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).

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[2] A claimant's RFC is an assessment of "the most [she] can still do despite [her] limitations." 20 C.F.R. § 416.945(a)(1).

[3] Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighting up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 C.F.R. § 416.967(c).

Plaintiff was born on January 16, 1983 and was 26 years old when his application was filed. (Tr. 23). Plaintiff has an eleventh grade education. (Tr. 38). The ALJ found that Plaintiff has no past relevant work experience. [4] (Tr. 23).

The ALJ's "Findings," which represent the rationale of his decision, were as follows:

1. The claimant has not engaged in substantial gainful activity since September 1, 2007, the claimant's alleged onset date (20 CFR 416.971 *et seq*.).

2. The claimant has the following severe impairments: pericardial effusion; nodular sclerosing Hodgkin's lymphoma; and a deep vein thrombosis (20 CFR 416.920(c)).

3. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926).

4. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform medium work as defined in 20 CFR 416.967(c) except as follows: the claimant could frequently climb ramps and/or stairs, balance, stoop, crouch, kneel, and/or crawl, but never climb ladders, ropes, and/or scaffolds. Further, he should avoid all workplace exposure to unprotected heights or use of moving machinery. Finally, due to complaints of fatigue, the claimant's work should be free of fast-paced production requirements, involve only simple work-related decisions, and few, if any, work place changes.

5. The claimant has no past relevant work (20 CFR 416.965).

[4] Past relevant work experience is defined as work that the claimant has "done within the last 15 years, [that] lasted long enough for [the claimant] to learn to do it, and was substantial gainful activity." 20 C.F.R. § 416.965(a). Plaintiff worked at McSwain Manufacturing in the shipping and receiving department from 2004-2005, but quit because he had a personal problem with someone who was working there. (Tr. 40-41). The ALJ did not consider this employment to be "past relevant work experience." (Tr. 23).

6. The claimant was born on January 16, 1983 and was 26 years old, which is defined as a younger individual age 18-49, on the date the application was filed (20 CFR 416.963).

7. The claimant has a limited education and is able to communicate in English (20 CFR 416.964).

8. Transferability of job skills is not an issue because the claimant does not have past relevant work (20 CFR 416.968).

9. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 416.969 and 416.969(a)).

10. The claimant has not been under a disability, as defined in the Social Security Act, since February 27, 2009, the date the application was filed (20 CFR 416.920(g)).

(Tr. 17-24).

In sum, the ALJ concluded that Plaintiff was not under a disability as defined by the Social Security Regulations, and was therefore not entitled to SSI. (Tr. 25).

On appeal, Plaintiff argues that: (1) the ALJ erred in not finding chronic active peripheral neuropathy to be a severe impairment; (2) the ALJ erred in not considering whether he meets, alone or in combination with other impairments, Listing 11.14; (3) the ALJ erred in interpreting the raw data from an EMG and nerve conduction study and formulating a residual functional capacity without the assistance of a consultative examination, medial interrogatories, or a medical advisor; and (4) the ALJ erred in finding the claimant was not entirely credible. The Court will address each error in turn.

II.

The Court's inquiry on appeal is to determine whether the ALJ's non-disability finding is supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In performing this review, the Court considers the record as a whole. *Hephner v. Mathews*, 574 F.2d 359, 362 (6th Cir. 1978). If substantial evidence supports the ALJ's denial of benefits, that finding must be affirmed, even if substantial evidence also exists in the record upon which the ALJ could have found plaintiff disabled. As the Sixth Circuit has explained:

> "The Commissioner's findings are not subject to reversal
>
> merely because substantial evidence exists in the record to support a different conclusion. The substantial evidence standard presupposes that there is a "zone of choice" within which the Commissioner may proceed without interference from the courts. If the Commissioner's decision is supported by substantial evidence, a reviewing court must affirm."

Felisky v. Bowen, 35 F.3d 1027, 1035 (6th Cir. 1994).

The claimant bears the ultimate burden to prove by sufficient evidence that he is entitled to disability benefits. 20 C.F.R. § 404.1512(a). That is, he must present sufficient evidence to show that, during the relevant time period, he suffered an impairment, or combination of impairments, expected to last at least twelve months, that left him unable to perform any job in the national economy. 42 U.S.C. § 423(d)(1)(A).

A.

The record reflects that:[5]

In September 2007, Plaintiff presented to Mercy Hospital with complaints of shortness of breath. (Tr. 17). Upon admission, an echocardiogram revealed a large pericardial effusion[6] and possible tamponade.[7] (*Id.*) Subsequently, Plaintiff underwent a pericardiocentesis with fluid removal. (*Id.*) Plaintiff reported breathing well in all positions with no associated dyspnea.[8] (Tr. 20). Plaintiff's pericardial fluid was negative for malignancy; however a contemporaneously obtained CR scan of Plaintiff's chest showed a large lobulated medistinal mass with compression of the trachea and the veins, thought to be lymphoma. (Tr. 17). On September 7, 2007, a needle-guided biopsy of the mass was non-diagnostic, but a second biopsy confirmed the diagnosis of nodular sclerosing Hodgkin's lymphoma, stage III, B-cell type.[9] (*Id*.) During this same period,

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[5] Neither party recounted Plaintiff's medical history, so the Court adopts the evidence as presented by the ALJ.

[6] Pericardial effusion is the normal accumulation of fluid in the pericardial cavity which can negatively affect heart function.

[7] A pericardial effusion with enough pressure to adversely affect heart function is called cardiac tamponade.

[8] Dyspnea is the subjective symptom of breathlessness.

[9] Hodgkin's disease is a type of lymphoma, which is cancer originating from white blood cells. Hodgkin's has four stages. If a person has B symptoms (loss of more than 10% of body weight over previous 6 months, unexplained fever of at least 100.4 degrees Fahrenheit, drenching night sweats), it usually means the disease is more advanced.

Plaintiff was also diagnosed with a left upper extremity deep vein thrombosis,[10] which was treated with anticoagulation medication. (*Id*.)

Plaintiff started his first cycle of chemotherapy on September 14, 2007, and ended treatment in December 2007. (*Id*.) Plaintiff tolerated chemotherapy well and had a complete response. (*Id*.) He did complain of intermittent lower extremity pain, but noted it did not cause any functional limitation. (*Id.*) In January 2008, when Plaintiff was receiving radiation treatment, Dr. Wright reported that he was doing well and experienced no significant complications. (Tr. 21). Dr. Essell's reports were not simply silent as to reported complaints, but instead affirmatively noted that Plaintiff had no significant complaints, including residual side effects from treatment. (*Id*.) Dr. Wright consistently reported "absolutely no complaints." (*Id.*) In fact, Plaintiff acknowledged in February 2008, that he felt he had sufficiently recovered. (*Id*.)

Subsequent CT scans of the claimant's chest, neck, abdomen, and pelvis showed continued decrease in size of the conglomerate lymphadenopathy in the anterior mediastinum. (Tr. 20). Moreover, repeated physical examinations continued to show no extremity edema,[11] or indication of cervical or supraclavicular lymphadenopathy. (*Id*.) In March 2009, a CT scan was negative for adenopathy[12] and there was no palpable adenopathy. (*Id.*) Similarly, routine follow-up CT scans showed no evidence of

[10] Deep vein thrombosis is the formation of a blood clot (thrombus) in a deep vein.

[11] Edema is abnormal accumulation of fluid in the interstitium, which are locations beneath the skin in one or more cavities of the body.

[12] Adenopathy is any disease or enlargement involving glandular tissue.

recurrent disease. (*Id*.) Plaintiff's treatment course also decreased to every six months beginning in November 2009. (*Id*.)

Plaintiff testified that he experiences daily nausea and vomiting. (Tr. 21). However, in August 2009, Dr. Essell noted complaints of early morning nausea and several episodes of vomiting over the previous few months, but not to the extent alleged by Plaintiff. (*Id*.) In November 2010 and March 2011, when Plaintiff alleged fatigue, exercise intolerance, and muscle weakness, he provided no particular complaint of ongoing nausea or vomiting. (*Id*.) Additionally, Plaintiff did not require anti-nausea medication, and instead opted for over-the-counter medication. (*Id.*) Plaintiff testified that he lost approximately forty to fifty pounds during his cancer treatment, but the record contradicts this allegation. (*Id*.) The record indicates that Plaintiff lost weight during the time leading up to his diagnosis in September 2007, but that he reported a normal appetite and significant weight gain while undergoing treatment. (*Id.*)

In November 2010, Dr. Essell noted fatigue and exercise intolerance, but Plaintiff's treatment course remained benign and unchanged. (Tr. 20). When the Plaintiff returned in March 2011, he did not report continued fatigue or exercise intolerance, but he did allege muscle weakness that prevented usual daily activities. (*Id*.) However, physical examination showed no difficulty walking on his toes and heels. (*Id*.) Still, Dr. Essell referred Plaintiff to Dr. Kanabar, a neurologist, who conducted an electro-diagnostic study and neurological examination that showed some abnormalities. (*Id*.)

B.

First, Plaintiff alleges that the ALJ erred in not finding chronic active peripheral neuropathy to be a severe impairment.

The ALJ found that Plaintiff had the following severe impairments: pericardial effusion, modular sclerosing Hodgkin's Lymphoma, and deep vein thrombosis. (Tr. 17). The ALJ did not find Plaintiff's chronic active peripheral neuropathy to be a severe impairment.[13] In fact, the ALJ failed to mention the words chronic active peripheral neuropathy in his decision. Plaintiff maintains that this is plain error.

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[13] Plaintiff testified at the hearing that he experienced fatigue in almost all of the muscles in his entire body. He had significant numbness and tingling in his hands immediately post chemotherapy with the inability to write. He testified that he still had a significant problem with weakness in his hands resulting in problems with squeezing and gripping which resulted in him dropping things. He further stated that the symptoms had not improved and he has difficulty standing, walking, bending, sitting, and with balance which has resulted in many falls. He testified that he cannot drive because he could not apply his foot to the brake due to weakness in his legs. (Tr. 6-12, 16, 22-25, 38-44, 48, 54-57). His testimony was supported by his mother whom he lives with and witnessed his difficulties. She described his problems with fatigue, lack of strength, inability to walk, difficulty writing, falling, and difficulties with his hands, feet, and legs. (Tr. 36-42, 68-74). Dr. Essell's records reflect severe side effects from his chemotherapy and radiation including upper and lower extremity complaints. On March 1, 2011, Plaintiff reported muscle weakness to Dr. Essell. On examination Dr. Essell found decreased strength and absent reflexes in the upper extremities and decreased reflexes in the lower extremities. (Tr. 626). These complaints led Dr. Essell to refer Plaintiff to a neurologist to further explore and evaluate his complaints. (Tr. 626).

On May 4, 2011, Plaintiff saw Dr. Kanabar in consultation. Plaintiff reported, almost immediately after finishing chemotherapy, that he noted balance problems, some instability of his limbs, difficulty grasping things with his hands, and numbness and tingling in both the hands and feet. He reported intermittent numbness and tingling in his feet which comes and goes every few minutes. He indicated that it is more noticeable when he sits and within 10-15 minutes he notices the symptoms below his knees bilaterally. He reported that when he stands for 10-15 minutes he feels like he has bruised the soles of his feet. He reported sensory symptoms in his hands with some fine motor difficulties. On examination Dr. Kanabar noted upper and lower limb weakness, decreased reflexes in the upper and lower extremities, and reduced sensory findings in the upper and lower extremities. He diagnosed Plaintiff with peripheral neuropathy.

In this case, the ALJ found that Plaintiff had three severe impairments and then he proceeded with the five-step evaluation. (Tr. 17-25). Because the ALJ continued with his analysis beyond step two, his alleged failure to find an additional severe impairment, standing alone, is not reversible error. *Anthony v. Astrue*, 266 F. App'x 451, 457 (6th Cir. 2008) ("The ALJ specifically found that Anthony's…qualified as severe impairments…The fact that some of Anthony's impairments were not deemed to be severe at step two is therefore legally irrelevant."). Moreover, the ALJ is not required to explicitly reference Plaintiff's "chronic active peripheral neuropathy." Evidence not cited by an administrative law judge may be relied upon as substantial evidence in support of the ALJ's decision. *Queen City Home Health Care Co. v. Sullivan*, 978 F.2d 236, 243 (6th Cir. 1992). Even if the ALJ cited the medical diagnosis, it, by itself, is not conclusive evidence of disability because it does not reflect the limitations, if any, that it imposes upon an individual. *Higgs v. Bowen*, 880 F.2d 860, 863 (6th Cir. 1988) ("The mere diagnosis…of course, says nothing about the severity of the condition."). In fact, the ALJ addressed the May 2011 post-hearing evidence from neurologist Dr. Kanabar

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(Tr. 641, 642). On May 7, 2011, Dr. Kanabar performed EMG and Nerve Conductions testing which revealed:

> EMG and Nerve Conduction of the left leg, nerve conduction of the right leg and right arm are consistent with chronic active generalized motor neuropathic changes in the lower extremities. Reduced amplitudes of three of the four motor nerves and borderline amplitude of the right peroneal nerve were found.

(Tr. 639, 640). Dr. Kanabar's diagnosis of peripheral neuropathy, based on Plaintiff's subjective complaints and his clinical exam findings, was confirmed by the EMG and Nerve Conduction studies on May 7, 2011. On May 7, 2011, Dr. Kanabar recommended a work up to explore possible treatment options for Plaintiff's peripheral neuropathy.

which pertained specifically to Plaintiff's peripheral neuropathy. (Tr. 20-21, 638-642). Plaintiff failed to establish that the record supported greater functional limitations stemming from Plaintiff's alleged peripheral neuropathy or any other impairment than those set forth in the ALJ's RFC determination.

Therefore, the ALJ did not err in declining to find chronic peripheral neuropathy to be a severe impairment.

C.

Next, Plaintiff maintains that the ALJ erred in not considering whether he meets Listing 11.14.[14]

For a claimant to show that his impairment matches an impairment in the Listings, he must meet all of the specified medical criteria. *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990). Additionally, the claimant must prove that the disability lasted for a continuous period of not less than 12 months to meet the Listing. 42 U.S.C. § 423(d)(1)(A). "[I]t is the claimant's burden to show that he meets or medically equals an impairment in the Listings." *Todd v. Astrue*, No. 1:11cv1099, 2012 U.S. Dist. LEXIS 91992, at *9 (N.D. Ohio May 15, 2012). "In order to be found disabled based upon a listed impairment, the claimant must exhibit all the elements of the listing. It is insufficient that a claimant

[14] Listing 11.14 requires a showing of peripheral neuropathy "with disorganization of motor function as described in section 11.04B, in spite of prescribed treatment." 20 C.F.R. pt. 404, Subpt. P, App. 1, Listing 11.14. Section 11.04B describes disorganization of motor function as "[s]ignificant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C)." 20 C.F.R. pt. 404, Subpt. P, App. 1, Listing 11.04B.

comes close to meeting the requirements of a listed impairment." *Elam ex rel. Golay v. Comm'r of Soc. Sec.*, 348 F.3d 124, 125 (6th Cir. 2003).

Plaintiff alleges that the ALJ "did not even consider" whether his impairment(s) met Listing 11.14. However, the ALJ explicitly found that Plaintiff's impairment(s) did not meet or medically equal any impairment in the Listings. (Tr. 18). The ALJ specifically discussed the May 2011 post-hearing evidence from Dr. Kanabar relating to Plaintiff's peripheral neuropathy. (Tr. 20-21). The ALJ explained that Dr. Kanabar conducted an electro-diagnostic study and neurological examination that did show *some* abnormalities, but that Dr. Kanabar's findings were "not of disabling severity" and "did not warrant limitations greater than those set forth in [his] decision." (Tr. 20).

Moreover, to the extent Plaintiff's contends that the ALJ failed to explain his listings determination, an ALJ has a minimal articulation requirement at step three. *Price v. Heckler*, 767 F.2d 281, 284 (6th Cir. 1985). *See also Bledsoe v. Barnhart*, 165 F. App'x 408, 411 (6th Cir. 2006) ("The ALJ did not err by not spelling out every consideration that went into the step three determination. The language of 20 C.F.R. Section 404.1526 does not state that the ALJ must articulate, at length, the analysis of the medical equivalency issue.").

There is evidence to support the ALJ's finding that Plaintiff's impairments or combination of impairments do not satisfy Listing 11.14. Thus, reversal is not warranted. *Jones v. Comm'r of Soc. Sec.*, 336 F.3d 469, 477 (6th Cir. 2003) ("if substantial evidence, or even a preponderance of the evidence, supports the claimant's position, so long as

substantial evidence also supports the conclusion reached by the ALJ," the Commissioner's decision cannot be overturned).

D.

Next, Plaintiff alleges that the ALJ erred in interpreting the raw data from the EMG and nerve conduction study and formulating a residual functional capacity without the assistance of a consultative examination, medical interrogatories, or a medical advisor.

The ALJ found that Plaintiff "has the residual functional capacity to perform medium work as defined in 20 CFR 416.967(c) expert as follows: the claimant could frequently climb ramps and/or stairs, balance, stoop, crouch, kneel, and/or crawl, but never climb ladders, ropes, and/or scaffolds. Further, he should avoid all workplace exposure to unprotected heights or use of moving machinery." (Tr. 18).

It is well established that Plaintiff, not the ALJ, holds the burden to produce evidence in support of a disability claim. *Wilson v. Comm'r of Soc. Sec.*, 280 Fed. Appx. 456, 459 (6th Cir. 2008). Moreover, an ALJ holds the discretion to determine whether further evidence, such as additional testimony or a consultative examination, is necessary. *Foster v. Halter*, 279 F.3d 348, 355 (6th Cir. 2001). "[T]he regulations do not require an ALJ to refer a claimant to a consultative specialist, but simply grant him the authority to do so if the existing medical sources do not contain sufficient evidence to make a determination." *Landsaw v. Sec'y of Health & Human Servs.*, 803 F.2d 211, 214 (6th Cir. 1986). In this case, the ALJ appropriately used his discretion in concluding that

obtaining further evidence was unnecessary in light of the record as a whole because there was clear and sufficient evidence to make a determination. 20 C.F.R. §§ 404.1527(e)(2)(iii), 416.927(e)(2)(iii) (An ALJ "may…ask for and consider opinions from medical experts on the nature and severity of [a claimant's] impairment.").

E.

Finally, Plaintiff maintains that the ALJ erred in finding that he was not entirely credible.

The ALJ, not the reviewing court, has the responsibility to evaluate the credibility of witnesses, including that of the claimant. *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 531 (6th Cir. 1997). An ALJ's credibility determinations about the claimant are to be given great weight. *Cruse v. Comm'r of Soc. Sec.*, 502 F.3d 532, 542 (6th Cir. 2007).

In assessing a claimant's credibility, an ALJ is required to consider a number of factors including objective medical evidence, inconsistent statements, and work history. *See* 20 C.F.R. § 416.929. First, the ALJ concluded that the medical evidence did not support disabling pain. Specifically, the ALJ noted that Plaintiff "tolerated chemotherapy well." (Tr. 20). Moreover, while Plaintiff complained of intermittent lower extremity pain, the ALJ noted that it did not cause functional limitations. (*Id.*) The ALJ explained that the CT scans showed no evidence of recurrent disease. (*Id.*) A 2011 physical exam showed four out of five strength throughout and no difficulty walking on toes and heels. (*Id*.) In fact, Plaintiff's treating physician, Dr. Essell, frequently reported that Plaintiff

was doing well and had no significant complaints/complaints after his treatment. (Tr. 21).

Next, the ALJ concluded that Plaintiff's statements were inconsistent. The ALJ noted that Plaintiff reported he had no feeling in his fingers for over a year after his initial diagnosis, such that he could not complete paperwork or sign his name. (Tr. 21). However, in November 2007, Plaintiff wrote and signed a Symptoms Report in connection with a prior benefits application.[15] (*Id*.) Also, Plaintiff maintained that he lost approximately 40 to 50 pounds during his cancer treatment, but the record shows that Plaintiff lost weight during the time leading up to his diagnosis and that he reported a normal appetite and significant weight gain while undergoing treatment. (Tr. 21).

Additionally, the ALJ found that Plaintiff's "poor work history" diminished his credibility. (Tr. 21). Plaintiff acknowledged that he stopped working for reasons that were not related to his medical problems. (*Id*.)

Plaintiff failed to establish that it was unreasonable for the ALJ to consider these facts in rendering his credibility finding. *Rutherford v. Comm'r of Soc. Sec.*, No. 2:10cv260, 2011 U.S. Dist. LEXIS 10946, at *4 (S.D. Ohio Feb. 4, 2011) ("the Commissioner has some leeway in making reasonable inferences from the record"). The ALJ properly found that Plaintiff was not entirely credible based on the objective evidence which does not confirm the severity of the alleged functional limitations.

[15] While Plaintiff's mother testified that she completed things like paperwork (Tr. 70), she did not testify that she completed the Symptoms Report at issue.

III.

For the foregoing reasons, Plaintiff's assignments of error are unavailing. The ALJ's decision is supported by substantial evidence and is affirmed.

IT IS THEREFORE ORDERED THAT the decision of the Commissioner, that Michael Chaney was not entitled to supplemental security income is found **SUPPORTED BY SUBSTANTIAL EVIDENCE**, and **AFFIRMED.** The Clerk shall enter judgment accordingly, and, as no further matters remain pending for the Court's review, this case is **CLOSED**.

Date: 1/21/14

/s/ Timothy S. Black
Timothy S. Black
United States District Judge