

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Dale L. Spencer,

Plaintiff,

v.

Case No. 2:17-cv-218

Commissioner of  
Social Security,

Defendant.

ORDER

This matter is before the court for consideration of the October 31, 2017, report and recommendation of the United States magistrate judge to whom this case was referred pursuant to 28 U.S.C. §636(b). The magistrate judge recommended that the case be remanded to the Commissioner pursuant to 42 U.S.C. §405(g), sentence four, for further proceedings. The magistrate judge concluded that the administrative law judge's acknowledgment of plaintiff's right foot disorder of acquired hallux rigidus with lack of mobility as a severe impairment was internally inconsistent with the residual functional capacity ("RFC") finding that plaintiff is capable of light work. Doc. 15, pp. 7-8. The magistrate judge further noted that the administrative law judge's confusing discussion of plaintiff's foot disorder was not clarified through reliance on the opinions of experts who did not consider that disorder in rendering their opinions. Doc. 15, p. 8. The magistrate judge recommended remanding this case based on these internal inconsistencies which rendered the RFC decision unsupported by substantial evidence. Doc. 15, p. 8.

The report and recommendation specifically advised the parties

that failure to object to the report and recommendation within fourteen days of the report "will result in a waiver of the right to have the district judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation." Doc. 15, p. 9. The time period for filing objections to the report and recommendation has expired, and no party has objected to the report and recommendation.

The court adopts the report and recommendation of the magistrate judge (Doc. 15). The decision of the Commissioner is reversed, and this case is remanded to the Commissioner pursuant to §405(g), sentence four, for further proceedings and a new decision. The court makes no ruling on the ultimate issue of disability. The clerk shall enter judgment vacating the decision of the Commissioner and remanding this case pursuant to 42 U.S.C. §405(g), sentence four for further proceedings.

Date: November 17, 2017

s/James L. Graham  
James L. Graham  
United States District Judge