

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

Earl W. Fuqua, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Nancy A. Berryhill, Acting )  
 Commissioner of Social Security )  
 Administration, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No.: 1:17-cv-00699-JMC

**ORDER**

This matter is before the court for a review of the Magistrate Judge’s Report and Recommendation filed on October 19, 2017, addressing Plaintiff Earl W. Fuqua’s (“Plaintiff”) claims for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. (ECF No. 11.) The Administrative Law Judge (“ALJ”) determined that Plaintiff is not disabled within the meaning of the Act and thus not entitled to benefits. (*Id.* at 2.) The Magistrate Judge concluded that he was unable to determine whether the ALJ’s decision was supported by substantial evidence. (*Id.* at 41.) Therefore, the Magistrate Judge recommended that the Commissioner’s decision be reversed and remanded for additional administrative proceedings in accordance with 42 U.S.C. § 405(g) (providing that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.”). (*Id.*)

Specifically, the Magistrate Judge found that the ALJ did not: (1) consider the evidence that informed the VA’s decision; (2) comply with the provisions of 20 C.F.R. § 404.1527(c) in evaluating Dr. Hurley’s opinion; (3) adequately assess Dr. McClain’s opinion in accordance with

the provisions of 20 C.F.R. § 404.1527(c); (4) consider the VA examiners' opinions; (5) consider the state agency consultants' opinions; and (6) adequately consider the severity of Plaintiff's mental impairments. (ECF No. 40.) The Report and Recommendation sets forth the relevant facts and legal standards which this court incorporates herein without a recitation. (*Id.*)

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The parties were fully apprised of their right to object to the Report and Recommendation. (ECF No. 11 at 42.) On November 2, 2017, the Commissioner filed Defendant's Notice of Not Filing Objections to the Report and Recommendation wherein she stated her intention not to file any objections. (ECF No. 12.) In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal

from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 11) and incorporates it herein. It is therefore ordered that the Commissioner's decision be **REVERSED** and **REMANDED** for further administrative action in accordance with 42 U.S.C. § 405(g).

**IT IS SO ORDERED.**

Handwritten signature of J. Michelle Childs in black ink.

United States District Judge

November 27, 2017  
Columbia, South Carolina