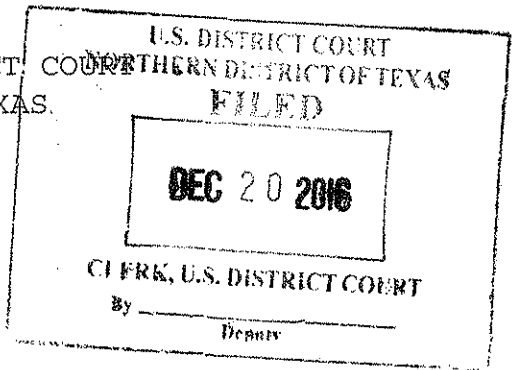


IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



DARREL WAYNE PAINTER,  
Plaintiff,

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§

VS.

NO. 4:16-CV-095-A

CAROLYN W. COLVIN, ACTING  
COMMISSIONER, SOCIAL SECURITY  
ADMINISTRATION,  
Defendant.

MEMORANDUM OPINION  
and  
ORDER

Came on for consideration the above-captioned action wherein Darrel Wayne Painter is plaintiff and the Acting Commissioner of Social Security, currently Carolyn W. Colvin, ("Commissioner") is defendant. This is an action for judicial review of a final decision of the Commissioner denying plaintiff's claim for supplemental security income benefits under the Social Security Act. On November 7, 2016, the United States Magistrate Judge issued his proposed findings and conclusions and his recommendation ("FC&R"), and granted the parties until November 21, 2016, in which to file and serve any written objections thereto. On November 21, 2016, plaintiff filed his objections. On December 19, 2016, in response to orders of the court, the Commissioner filed her response to the objections. After a

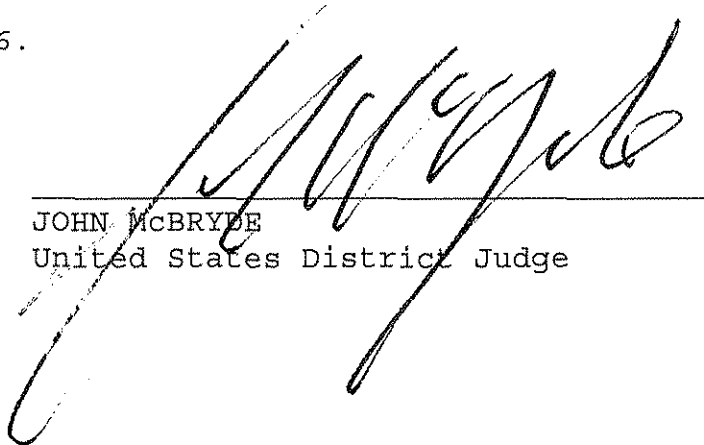
thorough study of the record, the magistrate judge's proposed findings and conclusions, and applicable legal authorities, the court has concluded that plaintiff's objections lack merit and that the recommendation of the magistrate judge should be accepted.

Plaintiff alleges that the magistrate judge has erroneously assessed new evidence he attached to his brief and that a remand is required. Plaintiff admits that the evidence must be new and material and that good cause exists for failing to provide it during the original proceedings. Further, remand is required only if there is a reasonable probability that the new evidence would change the outcome of the Commissioner's decision. Ripley v. Chater, 67 F.3d 552, 555 (5th Cir. 1995). To be "new," the evidence must not be merely cumulative of evidence already in the record. Pierre v. Sullivan, 884 F.2d 799, 803 (5th Cir. 1989). Having reviewed the documents plaintiff attached to his Mary 25, 2016, filing, the court agrees with the assessment of the magistrate judge. The documents do not constitute material evidence of such a nature that would give rise to a reasonable probability that they would change the outcome of the Commissioner's decision in this action. In particular, as the Commissioner points out, even assuming it contains a valid medical opinion, the letter of Dr. Teresa Lugo is dated January

27, 2015, after the date of the Commissioner's decision.

The court accepts the recommendation of the magistrate judge and ORDERS that the decision of the Commissioner that, based on the supplemental security income application protectively filed on April 20, 2012, plaintiff, Darrel Wayne Painter, is not disabled under Section 1614(a)(3)(A) of the Social Security Act, be, and is hereby, affirmed.

SIGNED December 20, 2016.



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JOHN MCBRYDE  
United States District Judge