

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MICHAEL WAYNE WILLIAMS KELLY,

Plaintiff,

v.

CIVIL ACTION NO. 1:18-01260

ANDREW SAUL,
Commissioner of the
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Aboulhosn submitted to the court his Proposed Findings and Recommendation ("PF&R") on February 13, 2019, in which he recommended that the district court grant plaintiff's request for reversal, but not for entry of an award for benefits (ECF No. 15); deny the Commissioner's request to affirm the final decision (ECF No. 16); reverse the final decision of the Commissioner; and remand this matter back to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings in order to obtain an updated medical consultative report based on the totality of the evidence, to properly evaluate the treating

physician's opinion, and to reassess Claimant's RFC.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to the magistrate judge's PF&R. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. See Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Neither party has filed any objections to the magistrate judge's PF&R within the required time period. Accordingly, the court adopts the factual and legal analysis contained within the PF&R as follows:

1. Plaintiff's request for reversal, but not for entry of an award for benefits, is **GRANTED** (ECF No. 15);
2. Commissioner's request to affirm the final decision is **DENIED** (ECF No. 16);
3. The final decision of the Commissioner is **REVERSED**; and
4. This matter is **REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further administrative proceedings in order to obtain an updated medical consultative report based on the totality of the evidence, to properly evaluate the treating physician's opinion, and to reassess Claimant's RFC.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 16th day of August, 2019.

ENTER:

A handwritten signature in cursive script that reads "David A. Faber". The signature is written in black ink and is positioned above a solid horizontal line.

David A. Faber
Senior United States District Judge