IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

Olga Malave,	**Case No. 1:18cv2747**
Plaintiff,	**JUDGE PAMELA A. BARKER**
-vs-	**Magistrate Judge Jonathan D. Greenberg**
Andrew Saul, Commissioner of Social Security,	**MEMORANDUM OPINION AND ORDER**
Defendant.	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg (Doc. No. 20), recommending that the decision of the Commissioner be remanded for further proceedings. The Commissioner has indicated that he will not be filing Objections to the Report and Recommendation. (Doc. No. 21.) For the following reasons, the Report and Recommendation is ADOPTED. The decision of the Commissioner is VACATED and the case is REMANDED for further consideration consistent with the Report & Recommendation.

I. Background

On November 28, 2018, Plaintiff Olga Malave filed a Complaint (Doc. No. 1) challenging the final decision of the Defendant, Andrew Saul, Commissioner of Social Security ("Commissioner"),[1] denying her application for Period of Disability ("POD") under Title II of the Social Security Act, 42

[1] Andrew Saul is now the Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d).

U.S.C. §§ 416(i), 423, and 1381 *et seq*. ("Act"). Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Greenberg.

On October 22, 2019, the Magistrate Judge issued a Report and Recommendation, in which he found that the ALJ's evaluations of the opinions of treating physicians Dr. Vazquez and Dr. Freiss are not supported by substantial evidence. (Doc. No. 20.) The Magistrate Judge, therefore, recommended that the decision of the Commissioner denying Malave's application for benefits be vacated and the case remanded for further proceedings consistent with the Report & Recommendation. (*Id*.) Objections to the Report and Recommendation were to be filed within 14 days of service. On October 28, 2019, the Commissioner filed a Response, in which he indicated he would not be filing Objections. (Doc. No. 21.)

II. Standard of Review

The applicable standard of review of a Magistrate Judge's Report and Recommendation depends upon whether objections were made to that report. When objections are made, the district court reviews the case *de novo*. Specifically, Federal Rule of Civil Procedure 72(b) states in pertinent part:

> The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instruction.

Although the standard of review when no objections are made is not expressly addressed in Rule 72, the Advisory Committee Notes to that Rule provide that "[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *See* Fed. R. Civ. P. 72, Advisory Committee Notes. Moreover, in *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the United States Supreme Court explained that "[i]t does not appear that

Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."

III. Analysis and Conclusion

Here, as stated above, no objections were filed to the Report and Recommendation of Magistrate Judge Greenberg that the decision of the Commissioner be vacated and the case remanded. This Court has nonetheless carefully and thoroughly reviewed the Report and Recommendation, and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Greenberg is, therefore, ADOPTED. The decision of the Commissioner denying Plaintiff's application for benefits is VACATED and the case is REMANDED for further proceedings consistent with the Report & Recommendation.

IT IS SO ORDERED.

s/Pamela A. Barker
PAMELA A. BARKER
U. S. DISTRICT JUDGE

Date: October 28, 2019