

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MICHAEL REILLY,

Plaintiff,

vs.

Case No. 2:09-cv-129-FtM-29SPC

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**OPINION AND ORDER**

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #21), filed April 15, 2010, recommending that the Commissioner's Motion to Dismiss (Doc. #19) be granted. On April 23, 2010, plaintiff filed an Objection to Report & Recommendations (Doc. #22).

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990)(quoting H.R. 1609,

94th Cong. § 2 (1976)). Even in the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

The Magistrate Judge found a failure to exhaust, and found that the appeal process was in place but not utilized by plaintiff. Plaintiff objects that the state court failed to produce documentation showing that plaintiff's probation was reinstated and the Social Security Administration's reliance on the state docket in denying benefits was improper. Whether the state court erred is not at issue in this Court, but rather the issue is exhaustion of remedies in the Social Security process. After conducting an independent examination of the file and upon due consideration of the Report and Recommendation and Objection thereto, the Court accepts the Report and Recommendation of the magistrate judge and will overrule the objection.

Accordingly, it is now

**ORDERED:**


1. The Report and Recommendation (Doc. #21) is hereby **adopted** and the findings incorporated herein.

2. The Objection to Report & Recommendations (Doc. #22) is **overruled**.

3. The Commissioner's Motion to Dismiss (Doc. #19) is **GRANTED** and the case is dismissed without prejudice.

4. The Clerk shall enter judgment **dismissing** the case without prejudice, terminate all deadlines, and close the case.

**DONE AND ORDERED** at Fort Myers, Florida, this 24th day of May, 2010.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
Hon. Sheri Polster Chappell  
United States Magistrate Judge

Counsel of Record  
Unrepresented parties