

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JOHN ANTHONY REILLY,

Plaintiff,

v.

Case No: 2:19-cv-917-SPC-MRM

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

ORDER¹

Before the Court is United States Magistrate Judge Mac R. McCoy's Report and Recommendation ("R&R") ([Doc. 19](#)). Judge McCoy recommends affirming the Commissioner of Social Security's decision to dismiss Plaintiff John Reilly's request for a hearing. Reilly objects to the R&R ([Doc. 20](#)), to which the Commissioner did not respond. The R&R is ripe for review.

When reviewing an R&R, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C. § 636\(b\)\(1\)](#); [Fed. R. Civ. P. 72\(b\)\(3\)](#). When a party makes specific objections to a magistrate judge's report, the district court

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engages in a de novo review of the issues raised. [28 U.S.C. § 636\(b\)\(1\)](#); [Fed. R. Civ. P. 72\(b\)\(3\)](#).

Reilly raises several objections mostly rehashing points that Judge McCoy addressed and the Court agrees with. So those are overruled without further discussion. Only one objection bears mentioning—Reilly’s argument that the April 2, 2019, fax is different than the July and September 2018 faxes. This argument was waived, and the Court will not consider it. Judge McCoy noted Reilly did not advance that position during the administrative proceedings or in this Court. ([Doc. 20 at 15 n.3](#)). That observation is correct. And a district court need not consider argument raised for the first time as objections to an R&R. [Williams v. McNeil, 557 F.3d 1287, 1292 \(11th Cir. 2009\)](#) (“Thus, we answer the question left open in *Stephens* and hold that a district court has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate judge.”). This is particularly appropriate here, where Reilly had ample opportunity to make the argument. The fact that no judges at any level of review decided to raise argument on Reilly’s behalf does not translate to legal error. So the Court exercises its discretion and will not address that objection. *See e.g., Pineda v. Commissioner of Social Security*, No. 6:18-cv-1569-Orl-41DCI, 2020 WL 1430697, at *4 (M.D. Fla. Mar. 24, 2020) (refusing to address arguments raised for first time as R&R objections).


After a careful and independent review, the Court agrees with the thorough, well-reasoned R&R in full.

Accordingly, it is now

ORDERED:

1. Plaintiff's Objections to the United States Magistrate Judge's Report and Recommendation ([Doc. 20](#)) are **OVERRULED**.
2. United States Magistrate Judge Mac R. McCoy's Report and Recommendation ([Doc. 19](#)) is **ACCEPTED and ADOPTED** and the findings incorporated herein.
3. The Commissioner of Social's decision is **AFFIRMED** pursuant to sentence four of [42 U.S.C. § 405\(g\)](#).
4. The Clerk is **DIRECTED** to enter judgment, terminate any pending motions or deadlines, and close the file.

DONE and ORDERED in Fort Myers, Florida on February 18, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record