

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RYAN PATRICK TABOR,

Plaintiff,

v.

Case No. 16-11273
Honorable Denise Page Hood

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**ORDER ACCEPTING REPORT AND RECOMMENDATION
AND DISMISSING ACTION**

This matter comes before the Court on Magistrate Judge Patricia T. Morris's Report and Recommendation. [#12] Plaintiff Ryan Patrick Tabor filed this action on April 7, 2016, asking this Court to review the Commissioner's final decision to deny his application for disability insurance benefits. On August 5, 2016, the Magistrate Judge ordered the parties to file their motions and briefs pursuant to a Scheduling Order—Plaintiff's motion for summary judgment was to be filed on or before September 6, 2016. [#10]

When Plaintiff failed to timely file his motion for summary judgment, the Magistrate Judge ordered Plaintiff to show cause, in writing, no later than September 21, 2016, why his cause of action should not be recommended for dismissal for want

of prosecution. [#11] Plaintiff did not respond to the order to show cause by September 21, 2016 (and still has not done so). Accordingly, on September 26, 2016, the Magistrate Judge issued a Report and Recommendation, in which she recommends that the Court dismiss Plaintiff's cause of action, with prejudice, for want of prosecution. Neither party filed any objections to the Report and Recommendation.

Judicial review of the Commissioner's decision is limited in scope to determining whether the Commissioner employed the proper legal criteria in reaching his conclusion. *Garner v. Heckler*, 745 F.2d 383 (6th Cir. 1984). The credibility findings of an administrative law judge ("ALJ") must not be discarded lightly and should be accorded great deference. *Hardaway v. Secretary of Health and Human Services*, 823 F.2d 922, 928 (6th Cir. 1987). A district court's review of an ALJ's decision is not a *de novo* review. The district court may not resolve conflicts in the evidence nor decide questions of credibility. *Garner*, 745 F.2d at 397. The decision of the Commissioner must be upheld if it is supported by substantial evidence, even if the record might support a contrary decision or if the district court arrives at a different conclusion. *Smith v. Secretary of HHS*, 893 F.2d 106, 108 (6th Cir. 1984); *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986).

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion, for the proper reasons, that this

matter should be dismissed, and the Court adopts the Report and Recommendation with respect to her recommendation that Plaintiff's cause of action be dismissed. As neither party has raised an objection to the Report and Recommendation, the Court finds that the parties have waived any objections to the Report and Recommendation, to the extent that it recommends dismissal of Plaintiff's cause of action. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987) (a party's failure to file any objections waives his or her right to further appeal); *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

In reviewing the record in this case, the Court finds that the reason for dismissal is the failure of Plaintiff—through his legal counsel—to file a motion for summary judgment. As the basis for dismissal is procedural and apparently not attributable to the merits of Plaintiff's disability claim (or attributable to any fault of Plaintiff himself), the Court finds that the interests of justice favor dismissal of Plaintiff's cause of action without prejudice.

For the reasons stated above,

IT IS ORDERED that the Report and Recommendation [Docket No. 12, filed September 26, 2016] is **ADOPTED** as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that this action is **DISMISSED** without

prejudice.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: October 18, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 18, 2016, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager