

**FILED**

**APR 18 2011**

**PATRICK E. DUFFY, CLERK**

**By** DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

SHANE E. PIERSON,	)	CV 10-66-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

This is a request for judicial review under 42 U.S.C. § 405(g) of the decision of the Commissioner of Social Security which denied Plaintiff Shane E. Pierson his application for disability insurance benefits under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-433, and for supplemental security income benefits under Title XVI of the Act, 42 U.S.C. §§ 1381-1383(c). United States Magistrate Judge Jeremiah C. Lynch entered Findings and

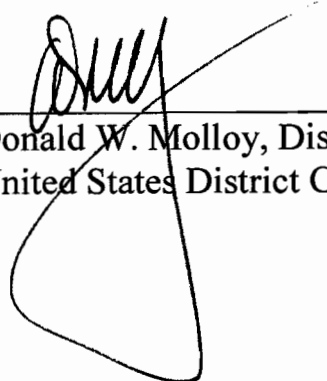
Recommendation on March 16, 2011 and recommended denying Pierson's motion for summary judgment, granting the Commissioner's motion for summary judgment, and affirming the Commissioner's decision. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Plaintiff's motion for summary judgment was filed on October 14, 2010 and requested that judgment be entered in his favor and the decision of the Commissioner be reversed and set aside or, in the alternative, that Plaintiff's case be remanded to the Commissioner for additional administrative proceedings. The Commissioner's motion for summary judgment was filed on December 30, 2010 and requested that the Commissioner's decision be affirmed. After review, Judge Lynch concluded that the ALJ's decision is based on substantial evidence and free of legal error. After a review of Judge Lynch's Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Lynch's Findings and

Recommendation (dkt #20) are adopted in full. Pierson's Motion for Summary Judgment (dkt #11) is DENIED, the Commissioner's Motion for Summary Judgment (dkt #16) is GRANTED, and the Commissioner's decision is AFFIRMED.

Dated this 18 day of April, 2011.



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Donald W. Molloy, District Judge  
United States District Court