

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRENDA EBERT,

Plaintiff,

-against-

1:07-CV-1166 (LEK/DEP)

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on October 22, 2009, by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 13).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge Peeble's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 13) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

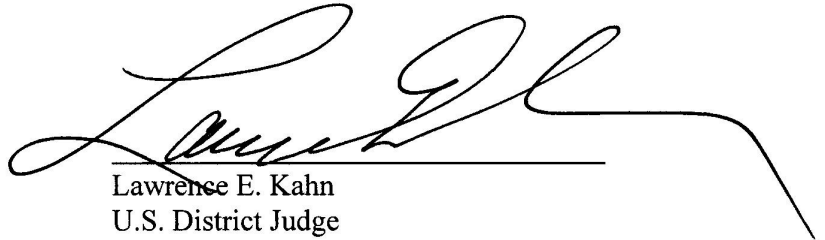
ORDERED, that Plaintiff's Motion for judgment on the pleading is **GRANTED**, the

Commissioner's determination of no disability is **VACATED**, and the matter is **REMANDED** to the agency for further consideration consistent with this Report and Recommendation; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: November 10, 2009
Albany, New York



Lawrence E. Kahn
U.S. District Judge