

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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DANIEL APOLITO,

Plaintiff,

-vs-

1:11-CV-1065

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**Thomas J. McAvoy,  
United States District Judge**

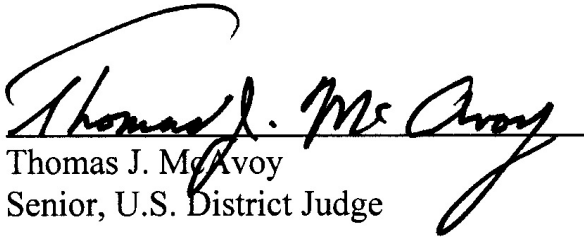
**DECISION and ORDER**

This matter was referred to the Hon. Victor Bianchini, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. No objections to the November 5, 2012 Report-Recommendation have been raised. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation and Order for the reasons stated therein.

Accordingly, Defendant's motion for judgment on the pleadings is DENIED, Plaintiff's motion for judgment on the pleadings is GRANTED, and this matter is REMANDED to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with the Magistrate Judge's Report and Recommendation..

**IT IS SO ORDERED.**

Dated: January 4, 2013

  
Thomas J. McAvoy  
Senior, U.S. District Judge