

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EVELYN CUENCA,

Plaintiff,

v.

3:14-CV-0859
(GTS/WBC)

CAROLYN W. COLVIN,
Comm'r of Soc. Sec.,

Defendant.

APPEARANCES:

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– REGION II
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OF COUNSEL:

PETER A. GORTON, ESQ.

VERNON NORWOOD, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this Social Security action filed by Evelyn Cuenca (“Plaintiff”) against the Commissioner of Social Security (“Defendant” or “the Commissioner”) pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are (1) the Report and Recommendation of United States Magistrate Judge William B. Mitchell Carter recommending that Plaintiff’s motion for judgment on the pleadings be denied, and that Defendant’s motion for judgment on the pleadings be granted, and (2) Plaintiff’s objections to the Report and Recommendation. (Dkt.

Nos. 17, 18.) For the reasons set forth below, the Report and Recommendation is accepted and adopted in its entirety.

I. PLAINTIFF'S OBJECTIONS

First, Plaintiff essentially argues that the Court should reject Magistrate Judge Carter's finding that any error that the ALJ made at step two was harmless. (Dkt. No. 18, at 1 [Pl.'s Mem. of Law].) Plaintiff argues that the ALJ substituted his own lay opinion in finding that Plaintiff's "mental conditions" were not severe at step two. (*Id.*) More specifically, Plaintiff argues that the only mental opinions of record (from consultative psychiatric examiner, Mary Ann Moore, Psy.D., and State agency psychologist, E. Kamin) "indicated that a severe condition was established." Second, Plaintiff states that she reasserts the other arguments set forth in her brief. (*Id.*)

II. APPLICABLE LEGAL STANDARD

A district court reviewing a magistrate judge's Report and Recommendation "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)(C). Parties may raise objections to the magistrate judge's Report and Recommendation, but they must be "specific written objections," and must be submitted "[w]ithin 14 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2); *accord*, 28 U.S.C. § 636(b)(1)(C). "A judge of the court shall make a de novo determination of those portions of the [Report and Recommendation] . . . to which objection is made." 28 U.S.C. § 636(b)(1)(C); *accord*, Fed. R. Civ. P. 72(b)(2). "Where, however, an objecting party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error."

Caldwell v. Crosset, 9-CV-0576, 2010 WL 2346330, at * 1 (N.D.N.Y. June 9, 2010) (quoting *Farid v. Bouey*, 554 F. Supp. 2d 301, 307 [N.D.N.Y. 2008]) (internal quotation marks omitted).

III. ANALYSIS

The Court finds that Plaintiff's objections reiterate arguments presented in her initial brief. (*Compare* Dkt. No. 18 *with* Dkt. No. 11) Therefore the Court reviews the portions of Magistrate Judge Carter's Report and Recommendation addressed in Plaintiff's objections for clear error only. After carefully reviewing the relevant filings in this action, the Court can find no clear error in the Report and Recommendation. Magistrate Judge Carter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (Dkt. No. 17.)

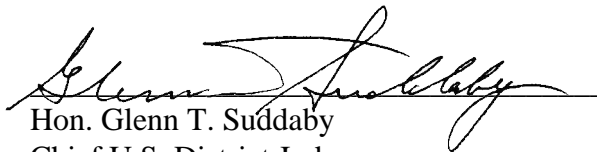
ACCORDINGLY, it is

ORDERED that Magistrate Judge Carter's Report and Recommendation (Dkt. No. 17.) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that the Commissioner's determination is **AFFIRMED**; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**.

Dated: May 16, 2016
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge