

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RAVEN BYRD,

Plaintiff,

v.

5:05-CV-268  
(FJS/GHL)

MICHAEL J. ASTRUE,<sup>1</sup>

Commissioner of Social Security,

Defendant.

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APPEARANCES:

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OF COUNSEL:

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WILLIAM H. PEASE, ESQ.

Assistant United States Attorney

GEORGE H. LOWE, United States Magistrate Judge

**REPORT AND RECOMMENDATION**<sup>2</sup>

**I. BACKGROUND**

**A. Procedural History**

Plaintiff protectively filed an application for disability insurance benefits (“DIB”) on July 7,

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<sup>1</sup> The complaint named Jo Anne B. Barnhart as Defendant, then the Commissioner of Social Security. On February 12, 2007, Michael J. Astrue assumed that position. Therefore, he shall be substituted as the named Defendant pursuant to Fed. R. Civ. P. 25(d)(1).

<sup>2</sup> This matter was referred to me for report and recommendation by the Honorable Frederick J. Scullin, Senior United States District Judge, pursuant to 28 U.S.C. § 636(b) and Northern District of New York Local Rule 72.3.

2003, alleging disability as of February 21, 2003. (Administrative Transcript (“T”) at 43-45). Plaintiff then requested a hearing, which was held on October 8, 2004. (T. at 296-324). On December 29, 2004, the ALJ issued a decision which found that Plaintiff was not disabled. (T. at 13-22). This decision became the final decision of the Commissioner when the Appeals Council denied Plaintiff’s request for review. (T. at 9-11). Plaintiff commenced this action on March 1, 2005. (Dkt. No. 1). The Commissioner answered on June 10, 2005. (Dkt. No. 4).

On November 10, 2005, Plaintiff filed applications for DIB and supplemental security income (“SSI”), in which Plaintiff alleged disability as of February 1, 2003. These applications do not appear in the record. On May 12, 2006, an ALJ issued a fully favorable decision on both of these applications, which decision Plaintiff’s counsel submitted by letter brief to the Court. (Dkt. Nos. 9, 9-2). This decision found Plaintiff to be disabled for the time period from February 1, 2003 through the date of the decision, May 12, 2006. (Dkt. No. 9-2 at 6).

Because the Commissioner’s decision of May 12, 2006 covered all relevant time periods involved in this action, Plaintiff’s instant appeal has been rendered moot and it is recommended that the action be dismissed.

**WHEREFORE**, it is hereby

**RECOMMENDED**, that the instant action be **DISMISSED**; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Report-Recommendation and Order upon the parties to this action.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

**FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE**

**APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: February 4, 2008  
Syracuse, New York

  
George H. Lowe  
United States Magistrate Judge