UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

BERNADETTE CAPPA,

Plaintiff,

v.

MICHAEL ASTRUE, Commissioner of Social Security,

Defendant.

APPEARANCES

OLINSKY & SHURTLIFF 300 South State Street, 5th Floor Syracuse, New York 13202 Attorneys for Plaintiff

SOCIAL SECURITY ADMINISTRATION OFFICE OF REGIONAL GENERAL COUNSEL, REGION II 26 Federal Plaza – Room 3904 New York, New York 10278 Attorneys for Defendant OF COUNSEL

HOWARD OLINSKY, ESQ.

5:09-CV-583

(FJS/VEB)

MICHELLE L. CHRIST, ESQ. SUZANNE M. HAYNES, ESQ.

SCULLIN, Senior Judge

ORDER

Plaintiff filed this action on May 19, 2009, seeking judicial review of the Commissioner's

final decision pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). See Dkt. No. 1. Defendant filed his

answer on December 14, 2009. See Dkt. No. 9. Plaintiff filed a supporting brief on February 18,

2010, see Dkt. No. 12; and Defendant filed a brief in opposition on May 14, 2010, see Dkt. No.

17. Pursuant to General Order No. 18, Magistrate Judge Bianchini proceeded "as if both parties

had accompanied their briefs with a motion for judgment on the pleadings." See General Order

No. 18. On June 29, 2011, Magistrate Judge Bianchini issued a Report and Recommendation, in which he recommended that the Court grant Plaintiff's motion, deny Defendant's motion, reverse the Commissioner's decision and remand this matter to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). *See* Dkt. No. 19 at 24. Neither party filed any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge." *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's motion is **GRANTED**; and the Court further

ORDERS that Defendant's motion is DENIED, the Commissioner's decision is

REVERSED; and this case is remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with Magistrate Judge Bianchini's Report and Recommendation.

IT IS SO ORDERED.

Dated: July 28, 2011 Syracuse, New York

aulter

Frederick J. Scullin, Jr. Senior United States District Court Judge