

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

**ROCHELLE BROOKS, *formerly
known as Rochelle Coleman*, for F.B.**

Plaintiff,

v.

5:15-CV-0148 (BKS/CFH)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Appearances:

Rochelle Brooks
Syracuse, NY
Plaintiff, *pro se*

Richard S. Hartunian, United States Attorney
Joshua L. Kershner, Special Assistant United States Attorney
Social Security Administration
Office of Regional General Counsel
Region II
26 Federal Plaza - Room 3904
New York, NY 10278
For Defendant

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

INTRODUCTION

Plaintiff Rochelle Brooks filed this action, on behalf of her daughter F.B., under 42 U.S.C. §§ 405(g) seeking review of Commissioner of Social Security's denial of her application for Supplemental Security Income Benefits for F.B. Dkt. No. 1. Defendant filed a motion to dismiss on May 18, 2015. Dkt. No. 11. This matter was referred to United States Magistrate Judge Christian F. Hummel for a Report-Recommendation. Dkt. No. 3; Local Rule 73.2(d). On

June 15, 2016, after reviewing the parties' motion papers, Dkt. Nos. 11, 14 and 16, Magistrate Judge Hummel issued a Report-Recommendation recommending that the Commissioner's motion to dismiss be granted. Dkt. No. 17, p. 9. Magistrate Judge Hummel advised the parties that under 28 U.S.C. § 636(b)(1), they had "14 days within which to file written objections" to the Report-Recommendation and that "failure to object to th[e] report within 14 days will preclude appellate review." *Id.* (citing *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e)). Plaintiff filed objections to the Report-Recommendation on June 28, 2016 (Dkt. No. 18) and Defendant filed a response to the objections (Dkt. No. 19). On November 9, 2016, the undersigned referred this matter to Magistrate Judge Hummel for an inquiry and recommendation as to whether "Rochelle Coleman, a non-attorney parent who brings this action on behalf of her child, 'has a sufficient interest in the case and meets basic standards of competence' to bring this action 'without representation by an attorney.'" Dkt. No. 21 (quoting *Machadio v. Apfel*, 276 F.3d 103, 107 (2d Cir. 2002)). On January 23, 2017, a hearing was conducted by Magistrate Judge Hummel and on April 19, 2017, Magistrate Judge Hummel issued a Report-Recommendation recommending that pro bono counsel be appointed to represent F.B. in this matter. Dkt. No. 28.

DISCUSSION

The Court reviews *de novo* those portions of the Magistrate Judge's findings and recommendations that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); 28 U.S.C. § 636(b)(1)(C). Findings and recommendations as to which there was no properly preserved objection are reviewed for clear error. *Id.*

Neither of the parties has raised any objection to Magistrate Judge Hummel's Report-Recommendation. The Court has reviewed the Report-Recommendation for clear error and found none. Accordingly, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 28) is **ADOPTED** in all respects; and it is further

ORDERED that pro bono counsel be appointed to represent F.B. in this matter; and it is further

ORDERED that within thirty days after appointment, pro bono counsel shall file objections, if any, to the Report-Recommendation (Dkt. No. 17) recommending that the Commissioner's motion to dismiss (Dkt. No. 11) be granted; and it is further

ORDERED that the Commissioner shall have fourteen days to respond to any objections; and it is further

ORDERED that the Clerk serve copies of this Order in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 17, 2017


Brenda K. Sannes
U.S. District Judge