

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

MILTON M.,

Plaintiff,

vs.

**5:20-CV-1480
(TJM/TWD)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this civil action, brought pursuant to 42 U.S.C. § 405 to seek judicial review of the Commissioner of Social Security's denial of a request for Social Security Disability Benefits, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleged that the Commissioner improperly dismissed his request for a hearing and dismissed Plaintiff's claim. Plaintiff did not attend his scheduled hearing, and the parties dispute whether he had good cause for failing to appear.

Each side filed a brief in support of their position, and, pursuant to local rules, Judge Dancks treated those briefs as if they contained motions for judgement on the pleadings. Judge Dancks's Report-Recommendation, dkt. # 28, issued on June 8, 2022, recommends that the Court deny Defendant's motion for summary judgment and grant

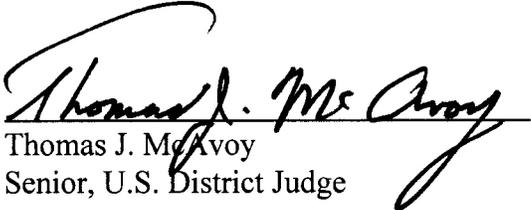
Plaintiff's. Judge Dancks finds that the Administrative Law Judge ("ALJ") assigned to the case erred by failing to evaluate whether the improper notice Plaintiff received of the hearing gave him good cause for failing to appear. Judge Dancks recommends that the Court remand the matter to the ALJ to address the issue of notice and good cause in the first instance.

No party objected to the Report-Recommendation, and the time for such objection has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 28, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's motion for judgment on the pleadings, dkt. # 18, is hereby **GRANTED**. Defendant's motion for judgment on the pleadings, dkt. # 22, is hereby **DENIED**. The matter is remanded to the Commissioner of Social Security so that the ALJ can determine in the first instance whether improper notice constituted good cause for Plaintiff failure to attend the hearing on February 20, 2020.

IT IS SO ORDERED.

Dated: August 1, 2022


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