

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARTIN MUNSEN,

Plaintiff,

-against-

8:12-CV-0439 (LEK/CFH)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

DECISION and ORDER

I. INTRODUCTION

This matter comes before the Court following a Report-Recommendation filed on January 23, 2013, by the Honorable Christian F. Hummel, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Northern District of New York Local Rule 72.3(d). Dkt. No. 12 (“Report-Recommendation”). No objections to the Report-Recommendation were filed in the allotted time period.

II. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” FED. R. CIV. P. 72(b); N.D.N.Y. L.R. 72.1(c). “If no objections are filed . . . reviewing courts should review a report and recommendation for clear error.” Edwards v. Fischer, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006); see also Cephias v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.”); Farid v. Bouey, 554 F. Supp.

2d 301, 306 (N.D.N.Y. 2008).

III. DISCUSSION

In his Report-Recommendation, Judge Hummel recommends that the Court dismiss Plaintiff Marin Munsen's ("Plaintiff") appeal of the Commissioner of Social Security's denial of Plaintiff's request for Social Security benefits. Report-Rec. Despite being represented by counsel, Plaintiff has made no submissions to the Court since March 2012, when he initially filed his Complaint in this matter. See Dkt. After Defendant filed his Answer, Plaintiff's brief was due on August 13, 2012, but Plaintiff filed no brief. Dkt. No. 11 ("December Order") at 1. On December 6, 2012, Judge Hummel entered an Order: (1) noting that Plaintiff's brief was four months overdue; (2) granting Plaintiff a final extension to file his brief in Accordance with General Order 18; and (3) warning Plaintiff that this action might be dismissed for failure to prosecute if Plaintiff did not comply with the Order. Id. Plaintiff failed to comply with the Order or respond in any way. See Dkt. Judge Hummel subsequently entered the Report-Recommendation, which Plaintiff once again failed to respond to in any way. Id.

After a thorough review of the Report-Recommendation and the record, the Court has determined that the Report-Recommendation is not subject to attack for clear error or manifest injustice.¹ The Court therefore affirms and adopts the Report-Recommendation in its entirety.

¹ The Court notes that the language of General Order 18 may complicate matters somewhat for courts in this District when they are presented with a nonresponsive plaintiff. Pursuant to General Order 18, plaintiffs are notified that "the failure to file a brief as required by this order will result in the consideration of this appeal without the benefit of plaintiff's arguments and may result in a decision heavily influenced by the commissioner's version of the facts and subsequent dismissal of your appeal." N.D.N.Y. Gen. Order 18. While in some cases General Order 18 may impose an affirmative obligation on the reviewing district court or magistrate judges to "consider" the merits of the Commissioner's decision even absent the filing of a plaintiff's brief, see, e.g., Miles v. Barnhart, No. 06-CV-391, 2008 WL 5191589 (N.D.N.Y. Dec. 8, 2008) (Kahn, J.), the general legal principles

IV. CONCLUSION

Accordingly, it is hereby:

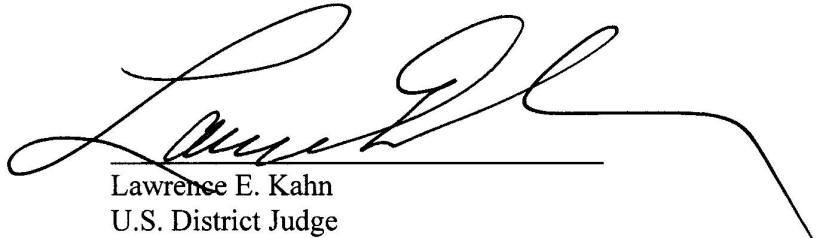
ORDERED, that the Report-Recommendation (Dkt. No. 12) is **APPROVED** and **ADOPTED in its entirety**; and it is further

ORDERED, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED in its entirety** for failure to prosecute; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Decision and Order upon the parties to this action.

IT IS SO ORDERED.

DATED: April 03, 2013
Albany, New York



Lawrence E. Kahn
U.S. District Judge

governing dismissal for failure to prosecute still apply, rendering dismissal appropriate in some cases even absent an analysis of disability determination. See, e.g., Seeley v. Comm'er of Soc. Sec., No. 11-CV-0757, 2012 WL 5334746, at *4 (N.D.N.Y. Oct. 26, 2012); Hollick v. Comm'er of Soc. Sec., No. 07-CV-1170, 2009 WL 365679 (N.D.N.Y. Feb. 11, 2009); Pompey v. Comm'er of Soc. Sec., No. 07-CV-576, 2008 WL 2097174 (N.D.N.Y. May 19, 2008). Particularly in this case where Plaintiff: (1) is represented by counsel; (2) has been granted lengthy extensions of time in which to file a brief; (3) has failed to comply with Judge Hummel's December Order; (4) has failed to object to the Report-Recommendation; and (5) has failed to in any way communicate with the Court despite clear notice of this case's imminent dismissal, the Court concludes that dismissal for failure to prosecute without further consideration of the underlying merits of the case is appropriate.