

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

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**KAREEM LEE,**

**Plaintiff,**

**v.**

**9:13-CV-1022**

**DAVID O'HARER, et al.,**

**Defendants.**

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**DECISION & ORDER**

Thomas J. McAvoy, Senior District Judge.

This action, in which Plaintiff seeks review of a decision by the Commissioner of Social Security denying her son's application for Supplemental Security Income ("SSI"), was referred to the Honorable Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In the Report-Recommendation, dated May 28, 2014, Magistrate Judge Baxter recommends that Defendants' motion to dismiss (dkt. # 23) be granted and the complaint dismissed in its entirety without prejudice for failure to exhaust administrative remedies. Magistrate Judge Baxter also recommends that Plaintiff's First Amendment retaliation claim be dismissed without prejudice for failure to exhaust and for failure to state a claim, and that Plaintiff's claims against Defendants in their official capacities be dismissed with prejudice, as they are barred by the Eleventh Amendment.

Plaintiff has filed objections to the Report-Recommendation. Because objections have been filed, the Court has reviewed the record *de novo*. See 28 U.S.C. § 636(b)(1).

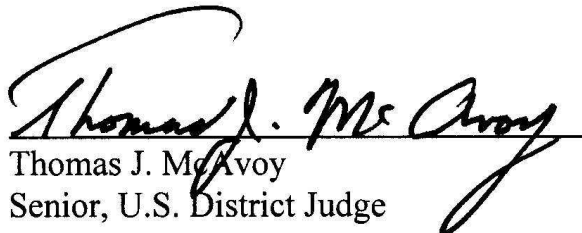
After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The Court may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id. Having reviewed the record *de novo*, the Court has determined to accept and adopt the recommendation for the reasons stated therein.

It is therefore ordered that:

- (1) The Report-Recommendation, dkt. # 33, is hereby ADOPTED;
- (2) Defendants’ motion to dismiss, dkt. # 23, is hereby GRANTED;
- (3) Plaintiff’s complaint is hereby DISMISSED WITHOUT PREJUDICE for failure to adopt administrative remedies;
- (4) Plaintiff’s First Amendment retaliation claim is DISMISSED WITHOUT PREJUDICE for failure to exhaust and for failure to state a claim upon which relief can be granted; and
- (5) Plaintiff’s claims against Defendants in their official capacities are DISMISSED WITH PREJUDICE.

**IT IS SO ORDERED.**

Dated: December 23, 2014

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