

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EBONY LOPEZ,

Plaintiff,

- v. -

CAROLYN W. COLVIN
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/13/17

ORDER

15 Civ. 5258(PGG) (JLC)

PAUL G. GARDEPHE, U.S.D.J.:

Pro se Plaintiff Ebony Lopez filed this action on July 6, 2015, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking review of a final decision of the Commissioner of the Social Security Administration denying her disability insurance and Supplemental Security Income (“SSI”) benefits on the ground that she was not disabled. (Dkt. No. 2) On July 22, 2015, this action was referred to Magistrate Judge James L. Cott for a Report and Recommendation (“R & R”). (Dkt. No. 5) On December 14, 2015, the Commissioner moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. (Dkt. No. 12) Plaintiff did not file a response to the Commissioner’s motion.

On March 1, 2016, Magistrate Judge Cott issued an R & R recommending that this Court grant the Commissioner’s motion for judgment on the pleadings and dismiss the Complaint. (Dkt. No. 15) The R & R recites the requirement that the parties must file objections within fourteen days of service, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, and that a failure to timely object “will result in a waiver of objections and will preclude appellate review.” (Id. at 21) (emphasis omitted); see 28 U.S.C. § 636(b)(1)

(“[w]ithin fourteen days after being served with a copy [of a magistrate judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations”); Fed. R. Civ. P. 72(b)(2) (“[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations”).

The R & R was mailed to Plaintiff on August 2, 2016. (Id. at 22) No objections have been filed.

This Court “may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). ““The district judge evaluating a magistrate judge’s recommendation may adopt those portions of the recommendation, without further review, where no specific objection is made, as long as they are not clearly erroneous.”” Gilmore v. Comm’r of Soc. Sec., No. 09 Civ. 6241 (RMB) (FM), 2011 WL 611826, at *1 (S.D.N.Y. Feb. 18, 2011) (quoting Chimarev v. TD Waterhouse Inv’r Servs., Inc., 280 F. Supp. 2d 208, 212 (S.D.N.Y. 2003)). Because no objections have been filed, this Court will review the R & R for clear error.

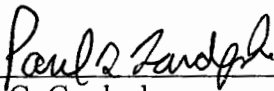
Having conducted a review of the R & R, the Court finds that the R & R is not clearly erroneous and, in fact, is in conformity with the law. Judge Cott finds, inter alia, that the Commissioner “reasonably concluded that [Plaintiff] engaged in substantial gainful activity” during the period for which she seeks benefits. (R & R (Dkt. No. 15) at 17-21) This Court agrees that, as a result, Plaintiff is not eligible for benefits. Accordingly, the R & R’s recommendations are adopted in their entirety, and the Commissioner’s motion for judgment on the pleadings will be granted.

CONCLUSION

For the reasons stated above, the Commissioner's motion for judgment on the pleadings is granted. The Clerk of Court is respectfully directed to terminate the motion (Dkt. No. 12), close this case, and mail a copy of this order to pro se Plaintiff Ebony Lopez, 1034 E. 219th Street, Bronx, NY 10469. Because the parties did not object to the R & R adopted herein, appellate review of this Order is precluded. See, e.g., Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988).

Dated: New York, New York
March 13, 2017

SO ORDERED.



Paul G. Gardephe
United States District Judge