

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

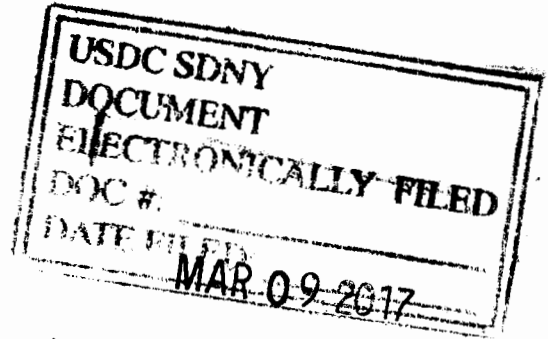
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NANCY RIVERA,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
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MEMORANDUM DECISION
AND ORDER

15 Civ. 8439 (GBD) (HBP)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Nancy Rivera brought this action seeking review of a determination by the Commissioner of Social Security that she is ineligible for disability insurance benefits under the Social Security Act, 42 U.S.C. § 405(g). (Compl., ECF No. 1, at 1.) The Commissioner and Plaintiff both moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. (See Rivera Mot. for J. on the Pleadings, ECF Nos. 17, 22; Comm’r Mot. for J. on the Pleadings, ECF No. 24.)

Before this Court is Magistrate Judge Henry Pitman’s January 12, 2017 Report and Recommendation (“Report” (ECF No. 26)), recommending that Plaintiff’s motion be granted, the Commissioner’s motion be denied, and that this case be remanded to the Social Security Administration.¹ (Report at 2, 41.) This Court adopts that recommendation.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations” set forth within a magistrate judge’s report. 28 U.S.C. § 636(b)(1)(C). The Court must review *de novo* the portions of a magistrate judge’s report to which a party properly

¹ The relevant procedural and factual background is set forth in greater detail in the Report, and is incorporated herein.

objects. *Id.* Portions of a magistrate judge's report to which no or merely perfunctory objections have been made are reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006). Clear error is present only when "upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed." *Brown v. Cunningham*, No. 14-CV-3515, 2015 WL 3536615, at *4 (S.D.N.Y. June 4, 2015) (internal citations omitted).

This Court has the "power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). This Court may set aside a decision by the Commissioner if it is based upon legal error or is not supported by substantial evidence. *See Hickson v. Astrue*, No. 09-CV-2049, 2011 WL 1099484, at *2 (E.D.N.Y. Mar. 22, 2011).

Magistrate Judge Pitman advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (Report at 41-42.) No objection to the Report has been filed. Having found no clear error, this Court adopts the Report in full.

The Report correctly found that the Administrative Law Judge committed legal errors in Plaintiff's earlier administrative proceedings, including failure to obtain necessary medical records to fully develop the record and failure to perform a function-by-function assessment of Plaintiff's Residual Functional Capacity. (*See id.* at 36-41.) Accordingly, this Court agrees that remand to the Social Security Administration is appropriate.

Magistrate Judge Pitman's Report and Recommendation is adopted. Plaintiff's motion is GRANTED, the Commissioner's motion is DENIED, and the case is remanded to the Social Security Administration for further proceedings in accordance with the Magistrate Judge's findings and recommendations.

The Clerk of Court is directed to close the motions at ECF Nos. 17, 22, and 24.

Dated: New York, New York
March __, 2017

MAR 09 2017

SO ORDERED.

George B. Daniels

GEORGE B. DANIELS
United States District Judge