

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DALGENA SUAREZ,

Plaintiff,

-against-

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

OPINION AND ORDER

16 Civ. 2073 (ER) (KNF)

Ramos, D.J.:

Dalgena Suarez (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) challenging the decision of the Commissioner of Social Security (“Commissioner”) denying her application for disability insurance and Supplemental Security Income benefits. Pending before the Court is the Commissioner’s unopposed motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or, alternatively, for summary judgment pursuant to Rule 56(a). On November 18, 2016, Magistrate Judge Kevin Nathaniel Fox issued a Report and Recommendation (“Report”), recommending that the Commissioner’s motion to dismiss be granted and notifying the parties that they had fourteen days from service of the Report to file written objections. No objections were subsequently filed.

I. Standard of Review

A district court reviewing a magistrate judge’s report and recommendation “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)(C). Parties may raise “specific,” “written” objections to the report and recommendation “[w]ithin fourteen days after being served with a copy.” *Id.*; *see also*

Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also DeLeon v. Strack*, 234 F.3d 84, 87 (2d Cir. 2000) (citing *United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997)). The district court may adopt those parts of the report and recommendation to which no party had timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).


II. Discussion

The Court has carefully reviewed Judge Fox's thorough and well-reasoned Report and finds no error, clear or otherwise. Accordingly, the Court adopts the Report in its entirety. The Commissioner's motion to dismiss is GRANTED. The Clerk of Court is respectfully directed to terminate the motion, Doc. 8, to mail a copy of this Opinion and Order to Plaintiff, and to close the case.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Opinion and Order would not be taken in good faith; therefore, *in forma pauperis* status is denied for purposes of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

It is SO ORDERED.

Dated: April 4, 2017
New York, New York



Edgardo Ramos, U.S.D.J.