

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 9/12/18

KEMPTHON MCINTOSH,

Plaintiff,

-against-

NANCY BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

OPINION AND ORDER

17 Civ. 5403 (ER) (DF)

Ramos, D.J.:

Kempton McIntosh (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) challenging the decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits. Pending before the Court are Plaintiff’s Rule 56(a) motion for summary judgment and Defendant’s Rule 12 (c) cross-motion for judgment on the pleadings. On July 16, 2018, Magistrate Judge Debra Freeman issued a Report and Recommendation (“Report”), recommending that the Plaintiff’s motion be granted and Commissioner’s motion be denied, 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 14 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 has 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 Freeman's thorough and well-reasoned Report and finds no error, clear or otherwise. Accordingly, the Court adopts the Report in its entirety. The Plaintiff's Rule 56(a) motion is GRANTED, and Commissioner's Rule 12(c) cross-motion is DENIED.

Commissioner's failure to file written objections precludes appellate review of this decision. *See PSG Poker, LLC v. DeRosa-Grund*, No. 06 CIV. 1104(DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)).

The Clerk of Court is respectfully directed to terminate the motions, Docs. 10 and 12, and to close the case.

It is SO ORDERED.

Dated: September 12, 2018
New York, New York



Edgardo Ramos, U.S.D.J.