

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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:
CHRISTOPHER SCHILDWACHTER,
:
Plaintiff,
:
-against-
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:
NANCY A. BERRYHILL,
:
Defendant.
:
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17-CV-7277 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

Plaintiff Christopher Schildwachter brought this action seeking review of the denial of his application for disability insurance benefits (“DIB”), pursuant to 42 U.S.C. §§ 401–434. See Compl., Dkt. 1. The parties have cross-moved for judgment on the pleadings. See Dkts. 21, 24. On February 8, 2019, Magistrate Judge Sarah Netburn issued a Report and Recommendation (“R&R”) recommending that Defendant’s motion be granted and that Plaintiff’s motion be denied. See R&R, Dkt. 27. On February 20, 2019, Plaintiff submitted a one-paragraph letter objecting to the R&R for the reasons stated in his previously-filed brief. See Dkt. 28.

DISCUSSION

In reviewing a report and recommendation, a district 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)(C). The parties may submit “specific written objections” to the R&R, Fed. R. Civ. P. 72(b)(2), but in order to preserve their objections, they must refer “to specific findings or recommendations” in the R&R and must support their positions with legal authority, *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002). Where, as here, a party

“[m]erely refer[s] the court to previously filed papers or arguments,” the party’s objection is not preserved. *Id.* In that circumstance, the district court “need only find that there is no clear error on the face of the record in order to accept the report and recommendation.” *Phillips v. Reed Grp., Ltd.*, 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (internal quotation marks omitted); see also *Adams v. New York State Dep’t of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (a district court “may adopt those portions of the [magistrate’s] report to which no ‘specific, written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” (quoting Fed. R. Civ. P. 72(b))). Failure to file adequate objections to the magistrate’s report constitutes a waiver of those objections in the district court and on appeal. See *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

The Court finds no clear error in Judge Netburn’s R&R. As the R&R explains, the findings of the ALJ that Plaintiff challenges were all supported by substantial evidence, and any errors or omissions that the ALJ made were harmless. See *Zabala v. Astrue*, 595 F.3d 402, 409 (2d Cir. 2010) (when an ALJ commits error, “[r]emand is unnecessary . . . [w]here application of the correct legal standard could lead to only one conclusion.” (collecting cases)). Accordingly, the Court adopts the R&R in full.

CONCLUSION


For all the foregoing reasons, this Court ADOPTS the R&R in its entirety. Plaintiff’s motion for judgment on the pleadings (Dkt. 21) is DENIED. Defendant’s motion for judgment on the pleadings (Dkt. 24) is GRANTED. Because the R&R gave the parties adequate warning,

see R&R at 17–18, Plaintiff’s failure to file adequate objections to the R&R precludes appellate review of this decision. See *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008).

The Clerk of Court is respectfully directed to terminate all open motions and to CLOSE the case.

SO ORDERED.

Date: March 11, 2019
New York, NY



VALERIE CAPRONI
United States District Judge