

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARMEN L. ROSARIO,

Plaintiff,

-against-

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

USDC SDNY
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ORDER ADOPTING REPORT
AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge

Plaintiff Carmen L. Rosario brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the final decision of the Commissioner of Social Security (the “Commissioner”), which partially denied her application for disability insurance benefits (“DIB”). (ECF No. 2.)¹

This case was previously referred to Magistrate Judge Lisa M. Smith. Each party has submitted a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. (ECF Nos. 17 & 19.) On February 7, 2017, Magistrate Judge Smith issued a Report and Recommendation (“R & R”), pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), recommending that Plaintiff’s motion (ECF No. 19) be denied and the Commissioner’s motion (ECF No. 17) be granted. (*See generally* ECF No. 24.) For the following reasons, the Court adopts Magistrate Judge Smith’s R & R in its entirety, and Plaintiff’s motion is DENIED and the Commissioner’s motion is GRANTED.

¹ The ALJ found that Plaintiff was disabled for the period postdating her fiftieth birthday, but denied her claim for DIB as to any period prior to that date. (AR 36.) Plaintiff only challenges the denial.

BACKGROUND

Plaintiff seeks DIB payments, alleging March 31, 2008, as the onset date. The Court assumes familiarity with the underlying facts and prior proceedings in this case, as set forth in the R & R. Plaintiff commenced the instant action on March 11, 2013, arguing that the Commissioner's findings with respect to the time period prior to her fiftieth birthday are contrary to law and regulations promulgated pursuant to the Social Security Act and not supported by substantial evidence. (ECF Nos. 2 & 20.) Accordingly, she asks that this Court modify the decision and award and calculate benefits for that period or alternatively, remand for further proceedings. (ECF No. 2.)

On February 7, 2017, Magistrate Judge Smith issued the R & R recommending that this Court deny Plaintiff's motion and grant the Commissioner's motion. Neither party has filed written objections to the R & R.

STANDARD OF REVIEW

A magistrate judge may "hear a pretrial matter dispositive of a claim or defense" if so designated by a district court. *See* Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1). Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the 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); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, "[t]o accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need

only satisfy itself that there is no clear error on the face of the record.” *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *accord Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (“[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.”) (quoting *Small v. Sec. of HHS*, 892 F.2d 15, 16 (2d Cir. 1989)); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

DISCUSSION

Here, as neither party objected to the R & R issued by Magistrate Judge Smith, the Court reviews the recommendation for clear error.

The Court finds no error on the face of the R & R, and thus adopts Judge Smith’s R & R in its entirety. As stated more fully in the R & R, the ALJ applied the correct legal and regulatory standards, and supported his legal findings with substantial evidence. Accordingly, the Court grants the Commissioner’s motion, upholding the ALJ’s decision.

CONCLUSION

For the reasons stated above, the Court adopts Magistrate Judge Smith’s Report and Recommendation in its entirety. Plaintiff’s motion is denied and the Commissioner’s motion is granted. The Clerk of Court is respectfully directed to issue a judgment in favor of the Commissioner, to terminate the motions at ECF Nos. 17 and 19, and to close the case.

Dated: April 5, 2017
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge