

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BERNALDINO PADILLA,	:	
Plaintiff,	:	
	:	<u>MEMORANDUM OPINION</u>
v.	:	<u>AND ORDER</u>
	:	
NANCY A. BERRYHILL, ¹ Acting	:	15 CV 9312 (VB)
Commissioner of Social Security,	:	
Defendant.	:	
-----X	:	

Briccetti, J.:

Before the Court is Magistrate Judge Lisa Margaret Smith’s Report and Recommendation (“R&R”), dated June 22, 2018 (Doc. #30), on the parties’ cross-motions for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). (Docs. ##19, 23). Citing the need for further findings or a clearer explanation for the weight assigned to the various medical sources of record so as to assure the proper disposition of plaintiff’s claim, Judge Smith recommended denying defendant’s motion, granting plaintiff’s motion, and remanding the case for further administrative proceedings consistent with the R&R.

For the following reasons, the Court adopts the R&R. Defendant’s motion is DENIED, and plaintiff’s motion is GRANTED. This case is REMANDED for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

Familiarity with the factual and procedural background of this case is presumed.

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

¹ Pursuant to Fed. R. Civ. P. 25(d), Acting Commissioner Berryhill has been substituted for former Acting Commissioner Carolyn W. Colvin as the defendant in this case.

judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail, see Fed. R. Civ. P. 6(d).

Insofar as a report and recommendation addresses a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, 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); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge Smith’s thorough and well-reasoned R&R.

The Court has reviewed the R&R and finds no error, clear or otherwise.

CONCLUSION

The R&R is adopted as the opinion of the Court.

Defendant’s motion for judgment on the pleadings is DENIED. (Doc. #19).

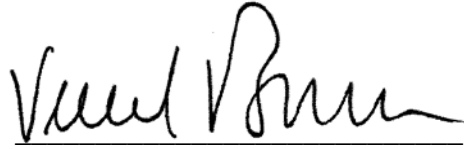
Plaintiff’s motion for judgment on the pleadings is GRANTED. (Doc. #23).

The case is REMANDED to the Social Security Administration for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

The Clerk is instructed to enter Judgment accordingly and close this case.

Dated: July 26, 2018
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge