

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RALPH EDWARD WAGNER,

Plaintiff,

-vs-

**No. 1:13-CV-00346 (MAT)**  
**DECISION AND ORDER**

CAROLYN W. COLVIN, ACTING  
COMMISSIONER OF SOCIAL SECURITY,  
Defendant.

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Represented by counsel, Ralph Edward Wagner ("plaintiff") brings this action pursuant to Title XVI of the Social Security Act ("the Act"), seeking review of the final decision of the Commissioner of Social Security ("the Commissioner") denying his application for supplemental security income ("SSI"). The Court has jurisdiction over this matter pursuant to 42 U.S.C. § 405(g). The matter was initially before the Court on the parties' cross motions for judgment on the pleadings.<sup>1</sup> The parties' motions were referred to Magistrate Judge Jeremiah J. McCarthy for consideration of the factual and legal issues presented, and to prepare and file a Report and Recommendation ("R&R") containing a recommended disposition of the issues raised.

By R&R dated March 22, 2016, Magistrate Judge McCarthy recommended that the case be remanded for further consideration, including further development of the administrative record, as

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<sup>1</sup> This case was originally assigned to Judge Richard Arcara, who referred it to Magistrate Judge McCarthy for a Report and Recommendation, which was completed and filed on March 22, 2016. Doc. 20. The case was referred to this Court by order dated March 16, 2016. Doc. 19.

described therein. Doc. 20. Both parties were notified that they were given 14 days within which to file objections; however, neither party has filed an objection.

Within fourteen days after a party has been served with a copy of a magistrate judge's report and recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b). "If no objections are made, . . . a district court need review. . . a report-recommendation only for clear error." Breinin v. Colvin, 2015 WL 7738047, \*1 (N.D.N.Y. Dec. 1, 2015). "A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id. (quoting 28 U.S.C. § 636(b)).

No objections having been filed, the Court has accordingly reviewed the R&R for clear error and finds none. Accordingly, the R&R (Doc. 20) is approved and adopted in its entirety. The Commissioner's motion for judgment on the pleadings (Doc. 16) is denied, and plaintiff's motion for judgment on the pleadings (Doc. 18) is granted to the extent that this matter is remanded for further proceedings consistent with this order and with the R&R. The Clerk of the Court is directed to close this case.

**ALL OF THE ABOVE IS SO ORDERED.**

**S/Michael A. Telesca**

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HON. MICHAEL A. TELESCA  
United States District Judge

Dated: April 20, 2016  
Rochester, New York.