

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RICHARD J. FLECHSENHAAR, III,

Plaintiff,

-vs-

CAROLYN COLVIN, Acting  
Commissioner of Social Security,

Defendant.

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**DECISION AND ORDER**  
**No. 1:15-cv-00005 (LGF) (MAT)**

This matter comes before the Court following a Report and Recommendation (Dkt #16) filed on June 16, 2017, by the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72(b) and (c) of the Western District of New York. In his Report and Recommendation ("R&R"), Judge McCarthy recommended that the decision issued by Carolyn Colvin, Acting Commissioner of Social Security<sup>1</sup> ("Defendant") denying Disability Insurance Benefits to Richard J. Flechtsenhaar, III ("Plaintiff") be affirmed in full, that Defendant's motion for judgment on the pleadings be granted, and that Plaintiff's motion for judgment on the pleadings be denied.

The parties were given until June 30, 2017, to file objections to the R&R. To date, no objections have been filed, and neither

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Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

party has sought an extension of time in which to file objections.

When reviewing a magistrate judge's report and recommendation, a district court is required to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made[,]" 28 U.S.C. § 636(b), and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge[,]" id. Where no "specific written objection" is made to portions of the magistrate judge's report, the district court may adopt those portions, "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." Eisenberg v. New England Motor Freight, Inc., 564 F. Supp.2d 224, 226 (S.D.N.Y. 2008) (citing Fed. R. Civ. P. 72(b); Thomas v. Arn, 474 U.S. 140, 149 (1985); other citation omitted). The district court is not required to review any portion of a magistrate judge's report that is not the subject of an objection. Eisenberg, 564 F. Supp.2d at 227 (citing Thomas, 474 U.S. at 149).

As noted above, no objections were made to any portion of the R&R, which the Court has reviewed and finds to be thorough and well-reasoned. Finding no error in the R&R, the Court accepts all of the findings and recommendations therein.

Accordingly, it is hereby

**ORDERED** that the R&R (Dkt #16) is adopted in its entirety; and it is further

**ORDERED** that Defendant's motion for judgment on the pleadings (Dkt #14) is granted; and it is further

**ORDERED** that Plaintiff's motion for judgment on the pleadings (Dkt #9) is denied.

The Clerk of Court is directed to close this case.

**IT IS SO ORDERED.**

S/Michael A. Telesca

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HONORABLE MICHAEL A. TELESCA  
United States District Judge

DATED: August 18, 2017  
Rochester, New York