

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAMELA L. FARRELL,

Plaintiff,

16-CV-509(LJV)(MJR)
ORDER

v.

CAROLYN W. COLVIN,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

On September 28, 2016, the defendant moved to dismiss the complaint in accordance with Title 42 United States Code § 405(g), and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, because the plaintiff failed to timely commence this action under Section 205(g) of the Social Security Act. Docket Item 8. On October 26, 2016, this Court referred this case to United States Magistrate Judge Michael J. Roemer for all proceedings pursuant to 28 U.S.C. § 636(b)(1)(B). Docket Item 9. On April 6, 2017, the plaintiff responded to the defendant's motion to dismiss, Docket Item 17, and on May 11, 2017, Magistrate Judge Roemer heard oral argument.

On May 30, 2017, Judge Roemer issued a Report and Recommendation finding that the defendant's motion should be denied. Docket Item 20. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). In fact, on the same date that Judge Roemer issued his Report and Recommendation, the defendant gave notice that it

withdrew its motion to dismiss and requested an extension of time to file the certified administrative record.

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's Report and Recommendation. Based on that review, the absence of any objections, and the defendant's withdrawal of its motion to dismiss, the Court accepts and adopts Judge Roemer's recommendation to deny the defendant's motion to dismiss.

For the reasons stated above and in the Report and Recommendation, the defendant's motion to dismiss (Docket Item 8) is DENIED. The defendant's Request for an Extension of Time to File the Certified Administrative Record (Docket Item 21) is granted. The defendant shall have until August 10, 2017 to file the administrative record.

SO ORDERED.

Dated: July 19, 2017
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE