

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CASE NO. 5:16-cv-00086-RLV-DCK**

VIVIEN WAYNE BROOKS,            )  
  )  
                          Plaintiff,        )  
  )  
                          v.                    )  
  )  
NANCY A. BERRYHILL, Acting        )  
Commissioner of Social Security,   )  
  )  
                          Defendant.        )  
\_\_\_\_\_                                  )

**ORDER**

**THIS MATTER IS BEFORE THE COURT** on Plaintiff Vivien Wayne Brooks’s Motion for Summary Judgment (Doc. 9); Defendant Acting Commissioner Nancy A. Berryhill’s Motion for Summary Judgment (Doc. 11); and the March 7, 2017 Memorandum and Recommendation (“M & R”) of Magistrate Judge David C. Keesler (Doc. 13), to whom this case was referred pursuant to 28 U.S.C. § 636(b)(1)(B). In the M & R the Magistrate Judge recommended that Plaintiff Brooks’s summary judgment motion be denied; that Defendant Berryhill’s summary judgment motion be denied; and that the Commissioner’s decision be vacated and this matter be remanded for further consideration. (Doc. 13 at 10). The M & R advised the parties of their right to object as well as the effect of failure to file a timely objection. (*Id.* at 10). Neither party filed an objection within the time allotted.

The Federal Magistrates Act requires a district court to “make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting 28 U.S.C. § 636(b)(1)) (emphases and brackets omitted). However, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but

instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.* (internal quotation marks omitted). After a careful review of the record, including the briefs of the parties and the M & R, the Court has not found clear error. Accordingly, the Court hereby accepts the M & R and adopts it as the final decision of this Court for all purposes relating to this case.

**IT IS, THEREFORE, ORDERED THAT**

- (1) The Memorandum and Report of the Magistrate Judge (Doc. 13) is **ADOPTED**;
- (2) Plaintiff’s Motion for Summary Judgment (Doc. 9) is **DENIED**<sup>1</sup>;
- (3) Defendant’s Motion for Summary Judgment (Doc. 11) is **DENIED**;
- (4) The Commissioner’s decision is **VACATED**; and
- (5) This matter is **REMANDED** under Sentence Four of 42 U.S.C. § 405(g) for further proceedings consistent with this Order and with the Magistrate Judge’s Memorandum and Recommendation (Doc. 13).

Signed: June 16, 2017



Richard L. Voorhees  
United States District Judge



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<sup>1</sup> Although this Court’s order grants Plaintiff favorable relief in the form of a remand for further administrative proceedings, the M & R recommended that Plaintiff’s Motion for Summary Judgment, which seeks judgment as a matter of law generally, be denied. (Doc. 13 at 10). Plaintiff has not objected to that recommendation.