

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRIAN KEITH FITZGERALD,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of the Social Security Administration,
Defendant.

:
:
: **CIVIL ACTION**
:
: **NO. 12-4145**
:
:

ORDER

AND NOW, this 28th day of February, 2013, upon independent consideration of the complaint and administrative record,¹ and after careful review of the Report and Recommendation of United States Magistrate Judge David R. Strawbridge (Doc. No. 9), to which no objections were filed pursuant to Local Rule of Civil Procedure 72.1.IV, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED AND ADOPTED**;
2. Judgment will be entered **AFFIRMING** the decision of the Commissioner of Social Security denying disability benefits;
3. The Clerk of Court shall mark this case **CLOSED** for all purposes, including statistics.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge

¹ Plaintiff, who is represented by counsel, initiated this action by filing a complaint July 20, 2012, seeking review of a final administrative decision of Defendant Commissioner denying Plaintiff's 2009 claim for disability benefits. The matter was referred to Magistrate Judge Strawbridge for a Report & Recommendation [Doc. No. 3]. Pursuant to the Procedural Order for Social Security Review issued by this Court on September 5, 2012 [Doc. No. 4], Defendant filed and served an answer and a certified copy of the administrative record on September 25, 2012 [Doc. Nos. 5-7]. Pursuant to the Procedural Order, Plaintiff was to file his Brief & Statement of Issues in Support of Request for Review within 45 days of service of Defendant's answer; however, Plaintiff did not file such a brief, which would have been due on or about November 12, 2012. On January 15, 2013, more than 100 days after service of Defendant's answer, Judge Strawbridge issued an Order directing Plaintiff to submit a brief or show cause by January 25, 2013, why the matter should not be dismissed for lack of prosecution, or submitted for determination without the benefit of a brief [Doc. No. 8]. As of the date of this Order, Plaintiff has failed to respond or submit any brief in support of his request for review. Nonetheless, Judge Strawbridge did *not* dismiss the matter for lack of prosecution, but assessed the merits of Plaintiff's request for review on the available record documents.