

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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MARK DAVID KELLNER,	:	
Plaintiff,	:	
	:	
v.	:	No. 5:16-cv-06305
	:	
NANCY A. BERRYHILL, <sup>1</sup>	:	
Acting Commissioner of Social Security,	:	
Defendant.	:	

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**ORDER**

**AND NOW**, this 17<sup>th</sup> day of November, 2017, upon consideration<sup>2</sup> of Plaintiff’s Complaint, ECF No. 1; Defendant’s Answer, ECF No. 5; the Social Security Administrative Record, ECF No. 7; Plaintiff’s Brief and Statement of Issues in Support of Request for Review, ECF No. 9; Defendant’s Response to Request for Review of Plaintiff, ECF No. 10; and the Report and Recommendation (“R&R”) of Carol Sandra Moore Wells, United States Magistrate Judge, ECF No. 12, **IT IS ORDERED THAT:**

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.

2. Plaintiff’s Request for Review is **GRANTED**, and the decision of the Commissioner of the Social Security Administration is **REVERSED** to the extent that the matter

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<sup>1</sup> On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill should be substituted as the defendant in this case.

<sup>2</sup> When neither party objects to a magistrate judge’s report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). “When no objections are filed, the district court need only review the record for plain error or manifest injustice.” *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at \*2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at \*16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts “are not required to make any separate findings or conclusions when reviewing a Magistrate Judge’s recommendation de novo under 28 U.S.C. § 636(b)”); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge’s report and recommendation for clear error). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

is **REMANDED** to the Commissioner under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells.

3. Judgment is **ENTERED** in favor of Plaintiff, reversing the decision of the Commissioner for the purpose of this remand only.

4. This case is **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.

United States District Judge