

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

KEVIN M. SHIFFKA,	:	CIVIL ACTION NO. 1:16-CV-1506
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
NANCY A. BERRYHILL, Acting	:	
Commissioner of Social Security,¹	:	
	:	
Defendant	:	

ORDER

AND NOW, this 19th day of September, 2017, upon consideration of the report (Doc. 29) of Magistrate Judge Martin C. Carlson, recommending that the court remand the above-captioned matter to the administrative law judge for further, separate, and independent consideration of the Title II and Title XVI applications for benefits filed by plaintiff Kevin M. Shiffka (“Shiffka”), (*id.* at 25), and it appearing that neither Shiffka nor the Commissioner of Social Security (“Commissioner”) objects to the report, *see* FED. R. CIV. P. 72(b)(2), and that the Commissioner expressly waives the opportunity to do so, (*see* Doc. 30), and the court noting that failure to timely object to a magistrate judge’s conclusions “may result in forfeiture of *de novo* review at the district court level,” *Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007) (citing *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d

¹ Carolyn W. Colvin (“Colvin”) was Acting Commissioner of Social Security when the instant action was filed against her in her official capacity. On January 23, 2017, Nancy A. Berryhill succeeded Colvin as Acting Commissioner. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted as the defendant in this action. *See* FED. R. CIV. P. 25(d).

Cir. 1987)), but that, as a matter of good practice, a district court should “afford some level of review to dispositive legal issues raised by the report,” Henderson, 812 F.2d at 878; see also Taylor v. Comm’r of Soc. Sec., 83 F. Supp. 3d 625, 626 (M.D. Pa. 2015) (citing Univac Dental Co. v. Dentsply Int’l, Inc., 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010)), in order to “satisfy itself that there is no clear error on the face of the record,” FED. R. CIV. P. 72(b), advisory committee notes, and, following an independent review of the record, the court in agreement with Judge Carlson’s recommendation, and concluding that there is no clear error on the face of the record, it is hereby ORDERED that:

1. The report (Doc. 29) of Magistrate Judge Carlson is ADOPTED.
2. The Clerk of Court shall enter judgment in favor of Shiffka and against the Commissioner as set forth in the following paragraph.
3. The Commissioner’s decision is VACATED and this matter is REMANDED to the Commissioner with instructions to conduct a new administrative hearing, develop the record fully, and evaluate the evidence appropriately as pertains Shiffka’s separate applications in accordance with this order and the report (Doc. 29) of Magistrate Judge Carlson.
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania