

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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| PAULA DEDEK, | : | |
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| Plaintiff | : | CIVIL ACTION NO. 3:16-1952 |
| | : | |
| v. | : | JUDGE MANNION |
| | : | |
| NANCY A. BERRYHILL, | : | |
| | : | |
| Defendant | : | |

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick which recommends that the Commissioner's decision be vacated and that the instant action be remanded to the Commissioner to fully develop the record, conduct a new administrative hearing, and appropriately evaluate the evidence pursuant to sentence four of 42 U.S.C. §405(g). (Doc. 19). No objections have been filed to Judge Mehalchick's report. Upon review, the report will be adopted in its entirety.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept,

or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In her appeal, the plaintiff argues, in part, that the ALJ erred in her evaluation of the plaintiff's treating physician's opinion. In carefully considering the plaintiff's claim, Judge Mehalchick determined that the ALJ afforded little to no weight to the plaintiff's treating physician's opinion and discounted the plaintiff's testimony as not credible, leaving the ALJ without any opinion evidence to establish the plaintiff's physical exertional capacity. Without any independent evidence of the plaintiff's exertional capacity, Judge Mehalchick determined that the ALJ impermissibly engaged in a manner of speculation, substituting her own lay opinion to find exertional limitations not contained in the evidence of record. Because Judge Mehalchick concludes that the ALJ erred in weighing the evidence, she recommends that further development of the record is necessary and that the decision of the Commissioner be vacated and the matter remanded for further proceedings.

The court has reviewed the entire report of Judge Mehalchick and finds no clear error of record. The court further agrees with the sound reasoning which led Judge Mehalchick to her recommendation. As such, the court adopts the reasoning of Judge Mehalchick as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Mehalchick,

(Doc. 19), is ADOPTED IN ITS ENTIRETY.

- (2)** The decision of the Commissioner is **VACATED**.
- (3)** The instant action is **REMANDED** to the Commissioner to fully develop the record, conduct a new administrative hearing and appropriately evaluate the evidence pursuant to sentence four of 42 U.S.C. §405(g).
- (4)** The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

Date: February 12, 2018

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