

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

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| MICHAEL V. PELLICANO, | : | |
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| Plaintiff | : | CIVIL ACTION NO. 3:17-0698 |
| | : | |
| v. | : | (MANNION, D.J.) |
| | : | (SAPORITO, M.J.) |
| THE OFFICE OF PERSONNEL MANAGEMENT, INSURANCE OPERATIONS, HEALTH INSURANCE II, | : | |
| | : | |
| Defendant | : | |
| | : | |

ORDER

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr. (Doc. 15). The plaintiff has filed limited objections to Judge Saporito's report. (Doc. 16). Upon review, the plaintiff's objections will be overruled and Judge Saporito's report will be adopted in its entirety.

As the record reflects, the plaintiff is a retired federal employee who was disabled after suffering a spinal cord injury in 2002, which rendered him a quadriplegic. He is enrolled in a health benefits plan, the NALC Health Benefit Plan under the Federal Employees Health Benefits Act, ("FEHBA"), 5 U.S.C. §8901, et seq. The plaintiff initiated the instant action seeking judicial review of several OPM administrative decisions regarding his insurer's denials of coverage with respect to claims for durable medical equipment and medical supplies, i.e. Claim No. Y15099009, Claim No. Y15035005, Claim No.

Y15205005, Claim No. Y15126013, and Claim No. Y16063002, contending that each of these decisions was arbitrary and capricious. In response to the plaintiff's complaint, the defendant filed a motion to remand Claim Nos. Y15099009 and Y16063002, (Doc. 5), and a separate motion to dismiss Claims Nos. Y15035005, Y15205005 and Y15126013, (Doc. 6). Judge Saporito recommends that the defendant's motion to remand Claim Nos. Y15099009 and Y16063002 be granted. He further recommends that the defendant's motion to dismiss be granted in part and denied in part. Specifically, Judge Saporito recommends that claims Y15205005 and Y15126013 be dismissed with prejudice as untimely and Claim No. Y15035005 be remanded for reconsideration and further development of an adequate record for judicial review. The plaintiff has filed objections only as to Judge Saporito's recommendation that Claim Nos. Y15099009, Y16063002 and Y15035005 be remanded.

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review *de novo* those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is *de novo*, the extent of review is committed to the sound discretion of the district judge, and the court may rely on the recommendations of the magistrate judge to the

extent it deems proper. Rieder v. Apfel, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)).

For those sections of the report and recommendation to which no objection is made, 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.

The plaintiff does not object to Judge Saporito’s recommendation that Claim Nos. Y15205005 and Y15126013 be dismissed with prejudice. The court finds no clear error of record as to Judge Saporito’s recommendation regarding these claims. The report and recommendation will therefore be adopted in this regard.

With regard to the remand of Claim Nos. Y15099009, Y16063002 and Y15035005, the plaintiff does not argue anything in his objections to Judge

Saporito's report that he did not argue previously in response to the defendant's motion to remand. In considering the plaintiff's arguments, as well as applicable case law discussing remand of an action to an administrative agency, Judge Saporito concluded that remand is appropriate in this matter. The court agrees with the sound reasoning which led to Judge Saporito's conclusion. To this extent, and for the reasons articulated in Judge Saporito's report and recommendation, it will be adopted.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) the plaintiff's limited objections to the report and recommendation of Judge Saporito, **(Doc. 16)**, are **OVERRULED**;
- (2) the report and recommendation of Judge Saporito, **(Doc. 15)**, is **ADOPTED IN ITS ENTIRETY**;
- (3) the defendant's motion to remand, **(Doc. 5)**, is **GRANTED**;
- (4) the defendant's motion to dismiss, **(Doc. 6)**, is **GRANTED IN PART AND DENIED IN PART**;
- (5) Claim Nos. Y15205005 and Y15126013 are **DISMISSED WITH PREJUDICE**;
- (6) Claim Nos. Y15099009, Y16063002 and Y15035005 are **REMANDED** to OPM for reconsideration and development

of an adequate record for judicial review;

- (7) the instant action is **STAYED** pending the outcome of the administrative proceedings on remand; and
- (8) counsel for the defendant shall apprise the court by letter every three (3) months of the status of the administrative proceedings.
- (9) the matter is remanded to Judge Saporito.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: February 9, 2018

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