

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CARLOS RUBILDO-ROSA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Civil No. 16-02584 (ADC/BJM)

OPINION AND ORDER

Currently before the Court is U.S. Magistrate Judge Bruce J. McGiverin's Report and Recommendation ("the R&R") recommending that the Court reverse the Commissioner of Social Security's decision in the instant case, and that the same be remanded to award benefits to plaintiff Carlos Rubildo-Rosa ("plaintiff") based on his mental condition for the period from March 23, 2012, to December 9, 2013. **ECF No. 19**. Objections have not been filed to the R&R.

I. Procedural History

On September 6, 2016, plaintiff filed a complaint against the Commissioner of Social Security ("the Commissioner" or "defendant"), requesting a judicial review of a final decision of the Commissioner which denied plaintiff's application for a period of Social Security disability insurance benefits. **ECF No. 1**. In his memorandum of law in support of his complaint, plaintiff asserts, in essence, that the Commissioner erred as a matter of law "[to] adequately assess the

claimant's "Residual Functional Capacity" [and] "to deliver a Partially Favorable Decision from March 23, 2012 up to December 9, 2013[,]" given substantial evidence on the record regarding plaintiff's mental condition during that time. **ECF No. 17** at 1, 6-9. Plaintiff further contends that

[t]he [Administrative Law Judge ("ALJ")] based his decision on an incomplete hypothetical submitted to the Vocational Expert, disregarding some medical evidence and assessing in an incorrect manner other medical evidence in the file, disregarding the expert opinion of a medical expert who had an opportunity to analyze all the evidence in file and render an impartial medical opinion, therefore the ALJ's decision is not based on substantial evidence.

Id. at 9. Plaintiff requests that the Commissioner's decision be reversed and remanded for the computation of benefits to be awarded to him. *Id.*

On February 28, 2017, the Court referred the case to Magistrate Judge Bruce J. McGiverin for the issuance of a Report and Recommendation ("R&R") or for disposition of the case. **ECF Nos. 15, 16**. On February 2, 2018, the Magistrate Judge entered the R&R, recommending that the Commissioner's decision be reversed and that case be remanded for the award of benefits to plaintiff. **ECF No. 19**. No objections have been filed to the R&R.

II. Standard of Review of an Unopposed Report and Recommendation

A district court may refer pending civil actions or proceedings to a magistrate judge for a report and recommendation. 28 U.S.C. §636(b)(1)(B); Fed. R. Civ. P. 72(b); D.P.R. Local Civ. R. 72(a). The court is free to accept, reject, or modify, in whole or in part, the findings or recommendations by the magistrate judge. 28 U.S.C. §636(b)(1). A party is entitled to a de novo review of "those portions of the report . . . to which specific objection is made." *Sylva v. Culebra*

Dive Shop, 389 F. Supp. 2d 189, 191-92 (D.P.R. 2005) (citing *United States v. Raddatz*, 447 U.S. 667 (1980)). Absent a proper objection, though, the Court need only satisfy itself that there is no plain error in the Magistrate Judge's findings in order to adopt the same. *López-Mulero v. VélezColón*, 490 F. Supp. 2d 214, 217-218 (D.P.R. 2007); *see also* Fed. R. Civ. P. 72, Adv. Comm. Notes, subdivision (b) (1983). Thus, "a party's failure to assert a specific objection to a report and recommendation irretrievably waives any right to review by the district court and the court of appeals." *Santiago v. Canon U.S.A., Inc.*, 138 F.3d 1, 4 (1st Cir. 1998).

III. Conclusion

After careful consideration of the law, the record, the parties' pleadings and evidence, and the unopposed detailed analysis and factual findings within the R&R, the Court wholly **ADOPTS** Magistrate Judge Bruce J. McGiverin's findings and recommendations. **ECF No. 19**. Accordingly, the Commissioner's decision in the instant case is hereby **REVERSED AND REMANDED** for further proceedings related to the computation and award of benefits to plaintiff corresponding to the period comprehended between March 23, 2012, through December 9, 2013.

SO ORDERED.

At San Juan, Puerto Rico, this 8th day of August, 2018.

S/AIDA M. DELGADO-COLÓN
Chief United States District Judge