

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Beverly K. Johnson,)
Plaintiff,) C/A No. 6:10-0252-MBS
vs.)
Michael J. Astrue, Commissioner of)
Social Security,)
Defendants.)

)

Plaintiff Beverly K. Johnson, appearing pro se, brought this action to obtain judicial review of a final decision of Defendant Commissioner of Social Security denying Plaintiff's claims for benefits. See 42 U.S.C. § 405(g).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling. On November 12, 2010, the Commissioner filed a motion to dismiss for lack of prosecution (ECF No. 41). Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the dismissal procedure and the possible consequences of failing to respond adequately. On February 4, 2011, Plaintiff filed a motion for voluntary dismissal (ECF No. 52). On February 9, 2011, the Magistrate Judge issued a Report of Magistrate Judge in which he recommended that Plaintiff's motion to dismiss be granted pursuant to Fed. R. Civ. P. 41(a)(2), and that the Commissioner's motion to dismiss be denied. No party filed objections to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report of Magistrate Judge to which a specific objection is

made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report of Magistrate Judge and incorporates it herein by reference. For the reasons stated hereinabove and in the Report, Plaintiff’s motion to dismiss (ECF No. 52) is **granted**, without prejudice. The Commissioner’s motion to dismiss (ECF No. 41) is **denied**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

March 3, 2011.