
 IN THE UNITED STATES DISTRICT COURT

 DISTRICT OF UTAH

DONNA S.,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of the Social Security
Administration

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:17-cv-00954

District Judge Clark Waddoups

Plaintiff Donna S.¹ brought this action to obtain judicial review of the decision by Defendant Nancy Berryhill, Acting Commissioner of the Social Security Administration, denying her application for Title II disability insurance benefits. Now before the court is the Report & Recommendation prepared by Chief Magistrate Judge Paul M. Warner in which he recommends that the Commissioner's decision be affirmed. For the reasons briefly discussed below, the court adopts the Report & Recommendation in its entirety, dismisses this action, and directs the Clerk of Court to close this case.

BACKGROUND

“On February 28, 2014,” Plaintiff applied for Title II disability insurance benefits, alleging disability beginning on November 15, 2010. (*See* ECF No. 15-5 at 2–3; *see also* ECF No. 15-2 at 12.) Plaintiff's alleged disability onset was later amended to July 22, 2013. (ECF No. 15-2 at 34.) It appears that Plaintiff's application was “initially denied on May 30, 2014, and [again] upon reconsideration on October 15, 2014.” (ECF No. 15-2 at 12; *see also* ECF Nos. 15-

¹ Chief Magistrate Judge Warner refers to Plaintiff in his Report and Recommendation in this manner to protect her privacy. The court will continue the practice in this Order.

3 at 2, 20.) On October 23, 2014, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). (ECF No. 15-4 at 12 (“I request a hearing before an administrative law judge.”).) That hearing was held on May 25, 2016. (ECF No. 15-2 at 28.) On September 12, 2016, the ALJ issued a written decision denying Plaintiff’s claim for disability insurance benefits. (See ECF No. 15-2 at 23 (“Based on the application for a period of disability and disability insurance benefits protectively filed on February 28, 2014, the claimant was not disabled under sections 216(i) and 223(d) of the Social Security Act through December 31, 2013, the last date insured.”).) On June 27, 2017, the Appeals Council denied Plaintiff’s request for review. (See ECF No. 15-2 at 2 (“**We Have Denied Your Request for Review.**”) (emphasis in original).) This made the ALJ’s decision the Commissioner’s final decision for purposes of judicial review. See 20 C.F.R. § 404.981 (“The Appeals Council’s decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court . . .”).

On August 25, 2017, Plaintiff filed her Complaint seeking, among other things, “[r]eview [of] the decision of the Administrative Law Judge and the Appeals Council . . .” (ECF No. 3 at 3.) Plaintiff alleged that “[t]he decision of the Administrative Law Judge and the Appeals council [were] not supported with substantial evidence.” (ECF No. 3 at 2.) The court referred this case to Chief Magistrate Judge Warner on October 17, 2017, pursuant to 28 U.S.C. § 636(b)(1)(B). (See ECF No. 13.) On September 4, 2018, Chief Judge Warner filed a thorough Report & Recommendation in which he dispensed with Plaintiff’s arguments and recommended that the Commissioner’s decision be affirmed. (See ECF No. 22 at 13.) Pursuant to 28 U.S.C. § 636(b) and Rule 72(b)(2), Federal Rules of Civil Procedure, Chief Magistrate Judge Warner, in his Recommendation instructed that any Objection to it must be filed within fourteen (14) days of

service, and warned that failure to do so “may constitute a waiver of objections upon subsequent review.” (ECF No. 22 at 13.) More than three months later, neither party has filed an Objection.

ANALYSIS AND ORDER

No party timely objected to Chief Magistrate Judge Warner’s Report & Recommendation. Having reviewed the relevant materials de novo, the court finds the reasoning set forth in the Report & Recommendation to be correct. For these reasons, the court ADOPTS the Report & Recommendation in its entirety and hereby DISMISSES Plaintiff’s Complaint. The Clerk of Court is directed to CLOSE this case.

SO ORDERED this 12th day of December, 2018.

BY THE COURT:



Clark Waddoups
United States District Judge