
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

WINTER JOY POWERS,
Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,
Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:18-cv-00333-DB-PMW

District Judge Dee Benson

Magistrate Judge Paul M. Warner

Before the court is the Report and Recommendation issued by Magistrate Judge Paul M. Warner, dated April 23, 2020. (Dkt. No. 19.) In the Report and Recommendation, Judge Warner recommends that the court dismiss this action without prejudice for lack of subject matter jurisdiction. The parties were notified of their right to file objections to the Report and Recommendation within 14 days of service pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff objected to the Report and Recommendation on May 6, 2020. (Dkt. No. 20.) Defendant responded to Plaintiff's Objection on May 20, 2020. (Dkt. No. 21.)

In her Objection, Plaintiff makes two arguments concerning the Appeals Council decision to dismiss Plaintiff's untimely request for review of the Administrative Law Judge's Order of Dismissal: 1) that the Appeals Council decision to dismiss Plaintiff's request for review was a "final decision," and therefore open to judicial review; and 2) that the Appeals Council decision violated Plaintiff's right to due process under the Fifth Amendment. These arguments were already articulated in Plaintiff's response to the Commissioner's Motion to Dismiss (Dkt. No. 17), and were considered by Magistrate Judge Warner in his Report and Recommendation.

The court has performed a de novo review of the record that was before the magistrate judge and the reasoning set forth in his Report and Recommendation. Having reviewed the record, as well as the arguments set forth in Plaintiff's Objection, the court agrees with the reasoning and assessment of Magistrate Judge Warner that the court lacks jurisdiction over Plaintiff's action. For claims arising under Title II or Title XVI of the Social Security Act, the court only has jurisdiction to review a final decision of the Commissioner after a hearing. Plaintiff is seeking judicial review prior to such a final decision by the Commissioner. Accordingly, the court finds that the analysis and conclusion of the magistrate judge are correct, and the Report and Recommendation will be adopted. Plaintiff's Objection is therefore overruled.

It is hereby ORDERED that the Report and Recommendation (Dkt. No. 19) is ADOPTED, and this action is hereby DISMISSED WITHOUT PREJUDICE for lack of subject-matter jurisdiction.

DATED this 27th day of May, 2020.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

DEE BENSON
United States District Judge