

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

2013 APR -3 PM 2:49

CLERK
BY RC
DEPUTY CLERK

TAMMY L. BELL,)
)
Plaintiff,)
)
v.)
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
)
Defendant.)

Case No. 5:12-cv-25

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 8, 12 & 24)

This matter came before the court for a review of the Magistrate Judge's March 6, 2013 Report and Recommendation ("R & R"). Defendant has filed a motion to reverse decision of commissioner. (Doc. 8) Defendant opposes the motion and has filed a motion for order affirming decision of the commissioner. (Doc. 12) Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See*

Campbell v. United States Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his twenty-three page R & R, the Magistrate Judge carefully reviewed the factual record and the motions before the court and determined that among other things, the decision of the Administrative Law Judge (“ALJ”) is based upon an erroneous legal standard and is not supported by substantial evidence. The Magistrate Judge recommended that the matter be remanded for further proceedings and a new decision. Neither party has objected to this recommendation which the court finds well-reasoned.

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge’s R & R as the court’s Order and Opinion, and GRANTS Plaintiff’s motion to reverse decision of the commissioner, DENIES the Defendant’s motion for order affirming the decision of the commissioner, and REMANDS this matter for further proceedings and a new decision.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 3rd day of April, 2013.



Christina Reiss, Chief Judge
United States District Court