

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN LEONARD FADELEY,

Plaintiff,

v. // CIVIL ACTION NO. 1:17CV129
(Judge Keeley)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 38]
AND DENYING DEFENDANT'S MOTION TO DISMISS [DKT. NO. 17]

On July 24, 2017, the pro se plaintiff, John Leonard Fadeley ("Fadeley"), filed this complaint against the Commissioner of Social Security ("Commissioner"), seeking review of the final decision denying his application for disability insurance benefits (Dkt. No. 1). Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the matter to the Honorable James E. Seibert, United States Magistrate Judge, for initial review.

The Commissioner moved to dismiss the complaint as untimely (Dkt. No. 17). Following an evidentiary hearing on April 25, 2018 (Dkt. No. 36), Magistrate Judge Seibert entered a report and recommendation ("R&R"), recommending that the Court deny the Commissioner's motion (Dkt. No. 38). The R&R also informed the parties of their right to file "written objections identifying the portions of the Report and Recommendations to which objection is made, and the basis for such objection." Id. at 3. It further warned that failure to do so would result in waiver of the right to

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appeal. Id. at 4. Despite receipt of the R&R, neither party filed objections to the recommendation.

"The Court will review de novo any portions of the magistrate judge's Report and Recommendation to which a specific objection is made . . . and the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the [parties do] not object." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W.Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Failure to file specific objections waives appellate review of both factual and legal questions. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984); see also Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

Having received no objections to the R&R, the Court has no duty to conduct a de novo review of Magistrate Judge Seibert's findings. Furthermore, following a review of the R&R and the record for clear error, the Court:

- 1) **ADOPTS** the R&R (Dkt. No. 38);
- 2) **DENIES** the Commissioner's Motion to Dismiss (Dkt. No. 17); and
- 3) **RECOMMITTS** this case to Magistrate Judge Seibert for a recommendation on the merits.

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It is so ORDERED.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the pro se plaintiff, certified mail and return receipt requested.

Dated: June 18, 2018.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE