

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DANIEL L. WELSH,

Plaintiff,

v.

CIVIL ACTION NO. 2:15-cv-06061

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Plaintiff's Brief in Support of Motion for Judgment on the Pleadings ("Plaintiff's Motion"), (ECF No. 10), and Defendant's Brief in Support of Defendant's Decision ("Defendant's Motion"), (ECF No. 11). By Standing Order filed in this case on May 13, 2015, this action was referred to United States Magistrate Judge Dwane L. Tinsley for total pretrial management and submission of proposed findings of fact and recommendations for disposition. (ECF No. 4.) On June 8, 2016, Magistrate Judge Tinsley filed proposed findings of fact and recommendations for disposition (the "PF&R"), in which he recommends that the Court grant Plaintiff's Motion, deny Defendant's Motion, remand this case for further proceedings pursuant to the sixth sentence of 42 U.S.C. § 405(g), and place this action on the Court's inactive docket. (ECF No. 14 at 17.)

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file

timely objections constitutes a waiver of de novo review and the parties' right to appeal this Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to the PF&R in this case were due by June 27, 2016. (*See* ECF No. 14 at 17–18.) To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R, (ECF No. 14), to the extent it is consistent with this Memorandum Opinion and Order,¹ **GRANTS** Plaintiff's Motion, (ECF No. 10), to the extent Plaintiff requests that the Court remand this matter based on new evidence, **DENIES** Defendant's Motion, (ECF No. 11), **REMANDS** this case for further proceedings pursuant to the sixth sentence of 42 U.S.C. § 405(g), and **DIRECTS** the Clerk to remove this action from the Court's active docket. The Court further **ORDERS** Defendant to comply with the filing requirements of 42 U.S.C. § 405(g) following the conclusion of the post-remand procedures in this case.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: September 1, 2016



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Magistrate Judge Tinsley recommends that the Court both remand this matter pursuant to the sixth sentence of 42 U.S.C. § 405(g) and reverse Defendant's final decision. (ECF No. 14 at 17.) However, when remanding a case pursuant to this provision, "[t]he district court does not affirm, modify, or reverse the Secretary's decision; it does not rule in any way as to the correctness of the administrative determination." *Melkonyan v. Sullivan*, 501 U.S. 89, 98 (1991). As the Court remands this matter pursuant to the sixth sentence of Section 405(g), the Court declines to adopt the PF&R to the extent that Magistrate Judge Tinsley recommends that the Court reverse Defendant's final decision. (*See* ECF No. 14 at 17.)