UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMENDED
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 21st day of November, two thousand twelve.

PRESENT: JOHN M. WALKER, JR.
RICHARD C. WESLEY,
PETER W. HALL,
Circuit Judges.

Bryan William Husband,

Plaintiff-Appellant,

v. 11-4723

Social Security Administration,
Commissioner, Michael J. Astrue,

Defendants-Appellee.

FOR APPELLANT: Sarah H. Bohr, Bohr & Harrington, LLC, Atlantic Beach, FL; Judith Brownlow, Brownlow Law PLLC, Brattleboro, VT.

FOR APPELLEE: Timothy Landry, Special Assistant United States Attorney, Carol L. Shea, Chief, Civil Division, *for* Tristram J. Coffin, United States Attorney for the District of Vermont, Burlington, VT.

Appeal from the United States District Court for the District of Vermont (Sessions, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the United States District Court for the District of Vermont is **AFFIRMED**.

Plaintiff-Appellant Bryan William Husband appeals from an order of the United States District Court for the District of Vermont (Sessions, *J.*), affirming the Commissioner's decision to deny Husband's applications for disability insurance benefits and supplemental security income, and denying Husband's motion to reverse that decision. The panel has reviewed the briefs and the record in this appeal and agrees unanimously that oral argument is unnecessary because "the facts and legal arguments [have been] adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument." Fed. R. App. P. 34(a)(2)(C). We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

"When a district court has reviewed a determination of the Commissioner, we review the administrative record *de novo* to determine whether there is substantial evidence

supporting the Commissioner's decision and whether the Commissioner applied the correct legal standard." *Poupore v. Astrue*, 566 F.3d 303, 305 (2d Cir. 2009) (per curiam) (internal quotation marks and alteration omitted). "Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Burgess v. Astrue*, 537 F.3d 117, 127 (2d Cir. 2008) (internal quotation marks and citations omitted).

Upon such review, we affirm the order of the district court for substantially the same reasons set forth in the magistrate judge's thorough and well-reasoned report and recommendation dated August 5, 2011, which the district court adopted in its entirety.[1] *Husband v. Astrue*, No. 2:10-cv-228, 2011 WL 4068407, at *1 (D. Vt. Aug. 5, 2011), *adopted by* 2011 WL 4074654, at *1 (D. Vt. Sept. 12, 2011).

[1] Husband failed to raise his obesity argument in his objection to the report and recommendation, waiving further judicial review. *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003). As this waiver does not appear to result in manifest injustice, *Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133, 142 (2d Cir. 2000), the panel elects not to exercise its discretion and evaluate the claim's merits. *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 603 (2d Cir. 2008).

We have considered all of Husband's arguments on appeal and conclude that they are without merit. Accordingly, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk