

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HATTIE M. CARTER : CIVIL ACTION
 :
 v. :
 :
 KENNETH S. APFEL, et al. : NO. 99-2066

MEMORANDUM AND ORDER

AND NOW, this 2nd day of May, 2000, upon consideration of the cross motions for summary judgment of the parties (Document Nos. 4 & 7), and plaintiff's response thereto, as well as this Court's independent review of the entire record, including the underlying medical records, and the report and recommendation of United States Magistrate Judge M. Faith Angell (Document No. 10), and the objections of defendant thereto (Document No. 11), along with the reply of plaintiff thereto (Document No. 12), and having made the following findings and conclusions:

1. The legal standards utilized by the Magistrate Judge are correct, are applicable to this case, and adopted by this Court.
2. The medical conditions and diagnoses revealed in the record by competent evidence are accurately summarized by the Magistrate Judge (Report and recommendation (R&R) at Discussion, Section A, p. 3). In addition, this court finds that it is undisputed in the record that the plaintiff continued to be treated for these conditions up to the time of the hearing before the Administrative Law Judge (ALJ) on April 23, 1997.
3. The Magistrate Judge accurately described the record to show that at least four (4) competent treating physicians found the plaintiff to be totally disabled from any employment.

The ALJ found, and ultimately the Appeals Council affirmed, that the continued complaints, pain, and disability both physical and mental complained of by plaintiff were not supported by the objective medical records and opinions of these treating physicians. The ALJ therefore relied upon the opinions resulting from two record reviews by state appointed persons, who never examined or even met the plaintiff, to the effect that plaintiff was only partially disabled and could perform limited work.

4. The Magistrate Judge recommended that the plaintiff's appeal be granted and that the record be remanded to the Commissioner for the award of benefits because there was no substantial evidence in the record to support the ALJ's decision.

5. The application regulation and ruling (20 C.F.R. § 404.1527(d)(2) (1998); Social Security Ruling 96-2p.) indicate that the opinions of a claimant's treating physicians will be given "controlling weight" as long as they are supported by medically acceptable clinical and laboratory diagnostic techniques and are not inconsistent with the other substantial evidence of record. The ALJ did not find that the opinions of plaintiff's treating physicians are not supported by medically acceptable clinical and laboratory techniques or that they are inconsistent with the evidence contained in the record. This Court finds that the opinions of plaintiff's treating doctors are abundantly supported by the medical evidence in the record.

6. As above noted, the ALJ relied on the opinions of non-examining state agency physicians as a basis for her decision that plaintiff could perform at a sedentary exertional level. The Commissioner's regulations specify that a treating physician's opinion should be given greater evidentiary weight than that of non-examining physicians. 20 C.F.R. § 404.1527(d)(1).

Thus the ALJ erred in failing to give the appropriate weight to the evidence presented from the treating physicians.

7. Both of the residual functional capacity assessments, completed by treating physicians Drs. Werther and Henry, show that plaintiff could neither sit for a minimum of six hours in an eight hour workday nor stand for a minimum of two hours in an eight hour workday. (Tr. 195, 347). The Commissioner's ruling states that for an individual to be able to perform work at the sedentary level, he or she must be able to sit for a minimum of six hours and stand for a minimum of two hours in an eight hour workday. Social Security Ruling 83-10. Thus the ALJ erred in mischaracterizing these two reports and ignored Ruling 83-10 when she found as a fact (unsupported by the evidence) that plaintiff was able to do a sedentary job that allows the option to sit or stand as desired. (See, TR. 28, 29)

8. The ALJ found that the plaintiff has since February 28, 1994 suffered from many serious and debilitating physical and mental problems causing significant disability. While the ALJ accepted the diagnoses of the treating physicians as valid, she believed plaintiff was exaggerating her symptoms of just that part of plaintiff's disability which would prevent plaintiff from working. The ALJ never articulated what substantial evidence in this record could support such a conclusion in the face of plaintiff's continuous medical and psychiatric treatment for three years prior to the hearing before the ALJ and in the face of the clear opinions of at least four treating physicians independently verifying the complaints, the treatment and the disability. This Court is not and cannot find facts, but this Court concludes that there is not substantial evidence in the record to support the Commissioner's denial of benefits.

It is accordingly hereby **ORDERED** that:

A. The Report and recommendation as supplemented herein is APPROVED and ADOPTED.

B. The objections of the defendant are OVERRULED.

C. The motion of the defendant for summary judgment is DENIED.

D. The motion of plaintiff for summary judgment is GRANTED.

E. The record is REMANDED to the Commissioner for the calculation of an award of benefits in accordance with the within memorandum and order.

LOWELL A. REED, JR., S.J.

