

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

SHAWN BAILEY	:	CIVIL ACTION
	:	
v.	:	
	:	
KENNETH S. APFEL, COMMISSIONER	:	
SOCIAL SECURITY ADMINISTRATION	:	NO. 99-2670

MEMORANDUM AND ORDER

HUTTON, J.

June 26, 2001

Presently before this Court are the Plaintiff's Motion for Summary Judgment (Docket No. 13), the Defendant's Motion for Summary Judgment (Docket No. 17), the Plaintiff's Reply Brief in Support of their Motion for Summary Judgment (Docket No. 19), the Magistrate's Report and Recommendation (Docket No. 20), and the Plaintiff's Written Objections to the Report and Recommendation (Docket No. 21).

I. BACKGROUND

The Plaintiff, Shawn Bailey, filed an application for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) on December 8, 1994 alleging a disability dating back to October 28, 1992 resulting from degenerative arthritis, insulin dependent diabetes, sleep apnea, and obesity. (R. 16). The claim was denied initially and then again upon reconsideration. (R. 54, 59). Following a timely request by the Plaintiff, a hearing was held before an Administrative Law Judge (ALJ) on February 12, 1997.

(R. 29-51). The ALJ denied the Plaintiff's claim on May 12, 1997 in a written opinion which was affirmed and adopted by the Appeals Council on April 30, 2000. (R. 6-7, 13-24). As a result of the Appeals Council's decision, the February 12, 1997 ALJ opinion is the final decision of the Commissioner. (R. 6).

Having exhausted his administrative remedies, the Plaintiff filed a complaint with this Court seeking judicial review of the Commissioner's final decision pursuant to 42 U.S.C. § 405(g) (West 2001). The Commissioner answered the complaint. On December 28, 2000, the Plaintiff filed a motion for summary judgment arguing the following errors: (1) the ALJ failed to properly evaluate the medical opinions of the Plaintiff's treating physicians; (2) the ALJ failed to find that the Plaintiff's arthritis was a severe impairment; (3) the ALJ failed to find that the Plaintiff met or equaled a listed impairment; (4) the ALJ failed to properly evaluate the Plaintiff's residual functional capacity; and (5) the ALJ erred by using the grids to find that the Plaintiff was not disabled instead of employing a vocational expert. In response, the Commissioner filed a motion for summary judgment on February 28, 2001. Subsequently, the Plaintiff filed a reply brief to the Defendant's motion for summary judgment.

On March 6, 2001, the Court referred this matter to a Magistrate Judge for a Report and Recommendation. On March 30, 2001, a Report and Recommendation was issued denying the

Plaintiff's contentions and granting the Defendant's motion for summary judgment. On April 6, 2001, the Plaintiff filed written objections to the Report and Recommendation claiming that it incorrectly affirmed the ALJ's decision in that it failed to find that the ALJ erred in: (1) rejecting the Plaintiff's treating physician's diagnosis, (2) failing to consider the combination of impairments that contributes to the Plaintiff's disability, (3) determining that certain of the Plaintiff's impairments were not severe, (4) failing to properly analyze the Plaintiff's impairment to determine if it met the severity of a listing, (5) failing to consider nonexertional impairments in his residual functional capacity assessment, and (6) failing to take vocational expert testimony.

II. DISCUSSION

The Social Security Act provides that someone is disabled if they are unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C.A. § 423(d)(1)(A) (West 2001). To determine if someone is disabled, the Social Security Administration has adopted the following five-step sequential analysis: (1) if the claimant is working in substantial gainful activity their claim will be denied; (2) the claimant must have an impairment or combination of

impairments which amount to a severe impairment by significantly limiting their physical or mental ability to do basic work activities, otherwise their claim will be denied; (3) if the severity of the impairment or impairments equals that of an impairment listed in Appendix 1, the claimant will be considered disabled; (4) if the claimant can still perform work they have done in the past, they will not be considered disabled; and (5) if the claimant cannot perform their past relevant work, their residual functional capacity will be considered to see if the claimant can perform other work, if they cannot then they will be considered disabled. See 20 C.F.R. § 404.1520(b)-(f)(West 2001); see also Fargnoli, 247 F.3d at 39 (quoting Plummer, 186 F.3d at 428). The original burden is on the claimant to establish the existence of an impairment and its severity. See 42 U.S.C.A. § 423(d)(5)(A); see also Fargnoli, 247 F.3d at 39 (quoting Plummer, 186 F.3d at 428). However, once that burden is met by showing an inability to return to the claimant's former employment, the burden shifts to the Commissioner to show that the claimant has the ability to perform specific jobs that exist in the national economy. See Fargnoli, 247 F.3d at 39 (quoting Plummer, 186 F.3d at 428).

A. The ALJ's Decision

The ALJ applied the five-step sequential analysis to determine if the Plaintiff was disabled. At step one, the ALJ found that the Plaintiff had not engaged in any substantial gainful activity since

the onset of his disability. (R. 17). At step two, the ALJ determined that while some of the alleged physical impairments were not severe, the Plaintiff's obesity did amount to a severe impairment. (R. 19-20). The ALJ decided that the Plaintiff's obesity did not meet the severity of a listed impairment at step three of the analysis. (R. 20). At step four, the ALJ's residual functional capacity assessment illustrated that the Plaintiff could no longer perform the work he had done in the past. (R. 21). Therefore, the burden shifted to the Social Security Administration to establish that the Plaintiff can perform specific jobs that exist in significant numbers in the national economy. Using the "grids," the ALJ found that there are jobs which the Plaintiff could perform which exist in significant numbers in the national economy. (R. 22). Therefore, the ALJ determined that a finding of "not disabled" was warranted. (R. 23).

B. The Magistrate's Report and Recommendation and the Plaintiff's Written Objections

Upon consideration of the Plaintiff's motion for summary judgment, the Defendant's motion for summary judgment, and the Plaintiff's reply brief, the Magistrate concluded that (1) the ALJ's analysis of the medical evidence was supported by substantial evidence, (2) the ALJ's decision that certain physical impairments alleged by the Plaintiff were not severe was supported by substantial evidence, (3) the ALJ thoroughly analyzed the

Plaintiff's conditions to determine if they met the severity of a listing, (4) the ALJ's residual functional capacity assessment was proper based upon his analysis of the medical evidence, and (5) use of the grids was proper based upon the ALJ's residual functional capacity assessment. The Plaintiff objects to the Report and Recommendation claiming that the ALJ erred in: (1) rejecting the Plaintiff's treating physician's diagnosis, (2) failing to consider the combination of impairments that contributes to the Plaintiff's disability, (3) determining that certain of the Plaintiff's impairments were not severe, (4) failing to properly analyze the Plaintiff's impairment to determine if it met the severity of a listing, (5) failing to consider nonexertional impairments in his residual functional capacity assessment, and (6) failing to take vocational expert testimony. The Court agrees with the Report and Recommendation to the extent that it approves of the ALJ's analysis of the severity of the Plaintiff's impairments, and the applicability of any listed impairments. However, upon independent review, the Court finds that the ALJ did not properly consider the combination of impairments that contributes to the Plaintiff's disability, and the treating physician's diagnosis of nonexertional impairments caused by the combination of impairments.

In the instant case, the ALJ's discussion of the medical evidence concedes that the Plaintiff has arthritis in his spine and knees in addition to obesity. (R. 19, 20). The ALJ then determined

that the obesity was a severe impairment while the arthritic knees and back were not. (R. 20). After deciding that the arthritis is not severe, the ALJ never discusses it again. "The ALJ must consider the combined effect of multiple impairments, regardless of their severity." Burnett v. Commissioner of Soc. Sec Admin., 220 F.3d 112, 122 (3d Cir. 2000). The ALJ's opinion is deficient in that it contains no discussion of the effects of the Plaintiff's arthritis when combined with his severe obesity when determining the Plaintiff's residual functional capacity.

In addition, the ALJ fails to discuss the treating physician's diagnosis of nonexertional impairments. This appears to be an oversight because the ALJ's residual functional capacity assessment claims to be consistent with the conclusion of the Plaintiff's treating physician. (R. 21). However, the ALJ did not factor in any nonexertional impairments when assessing the Plaintiff's residual functional capacity because the ALJ found that the Plaintiff suffers from no significant nonexertional impairments. (R. 23). Meanwhile, the Plaintiff's treating physician stated that the Plaintiff can never climb, balance, stoop, crouch, kneel, or crawl, all nonexertional impairments. (R. 186). In addition, the ALJ asked the Plaintiff at the hearing whether he was able to stoop and the Plaintiff responded "no". (R. 48). The diagnosis of nonexertional impairments is extremely important because "if an individual is limited in balancing even when standing or walking on

level terrain, there may be a significant erosion of the unskilled sedentary occupation base," "[a]n ability to stoop occasionally . . . is required in most unskilled sedentary occupations," and "[a] complete inability to stoop would significantly erode the unskilled sedentary occupational base and a finding that the individual is disabled would usually apply." Soc. Sec. Rul. 96-9p, 61 Fed. Reg. 34,478 (July 2, 1996). If the ALJ had determined that nonexertional impairments existed, it is likely that additional evidence would have been necessary from a vocational expert. See Sykes v. Apfel, 228 F.3d 259, 267-71 (3d Cir. 2000).

While the ALJ does use broad phrases such as "having considered the entire evidence of record" and "based on all of the above information," this cannot suffice when faced with the treating physician's diagnosis. See Burnett, 220 F.3d at 121. To the same extent, the previous rejection of the treating physician's opinion regarding the severity of the impairments cannot stand as a rejection of his opinion regarding the nonexertional impairments. Simply because the Plaintiff's arthritic knees and spine may not be considered severe in isolation does not mean that combined they don't result in the nonexertional impairments diagnosed by the Plaintiff's treating physician. Certainly, the ALJ should have addressed this issue in his opinion. See id.

The Court should direct a verdict for the claimant as opposed to remand "only when the administrative record of the case has been

fully developed and when substantial evidence on the record as a whole indicates that the claimant is disabled and entitled to benefits." Podeworny v. Harris, 745 F.2d 210, 221-22 (3d Cir. 1984). As discussed above, the record in this case is likely not fully developed. If, on remand, the ALJ decides that the combination of impairments results in nonexertional impairments, additional evidence may be needed. For that reason, remand is the appropriate remedy for the ALJ's deficient opinion.

III. CONCLUSION

Based upon the forgoing, the Magistrate's Report and Recommendation is rejected. Because the Court finds that the administrative record is not fully developed regarding specific issues relevant to the determination of disability in this case, the Court will grant the Plaintiff's motion for summary judgment to the extent that it requests a remand for further administrative proceedings consistent with this memorandum. The Plaintiff's motion for summary judgment is denied in all other respects, as is the Defendant's motion for summary judgment.

An appropriate Order follows.

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

SHAWN BAILEY	:	CIVIL ACTION
	:	
v.	:	
	:	
KENNETH S. APFEL, COMMISSIONER	:	
SOCIAL SECURITY ADMINISTRATION	:	NO. 99-2670

O R D E R

AND NOW, this 26th day of June, 2001, upon consideration of the Plaintiff's Motion for Summary Judgment (Docket No. 13), the Defendant's Motion for Summary Judgment (Docket No. 17), the Plaintiff's Reply Brief in Support of their Motion for Summary Judgment (Docket No. 19), the Magistrate's Report and Recommendation (Docket No. 20), and the Plaintiff's Written Objections to the Report and Recommendation (Docket No. 21), IT IS HEREBY ORDERED that:

- (1) the Report and Recommendation is **REJECTED**;
- (2) the Plaintiff's Motion for Summary Judgment is **GRANTED IN PART and DENIED IN PART**; and
- (3) the Defendant's Motion for Summary Judgment is **DENIED**.

IT IS HEREBY FURTHER ORDERED that the above titled action is **REMANDED** to the Social Security Administration for further proceedings consistent with this memorandum.

BY THE COURT:

HERBERT J. HUTTON, J.