

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

JUAN CORDOVA,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 01-2323
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
Defendant.	:	

MEMORANDUM AND ORDER

YOHN, J. JUNE , 2002

Pursuant to 42 U.S.C. § 405(g), Juan Cordova appeals the final decision of the Commissioner of Social Security (“the Commissioner”) denying his claims for social security disability benefits and supplemental security income under Titles II and XVI of the Social Security Act (“the Act”), 42 U.S.C. §§ 401 - 33, 1381-83d. Cordova and the Commissioner both moved for summary judgment. These cross motions for summary judgment were referred to a Magistrate Judge who recommended that I grant the Commissioner’s motion for summary judgment, and deny Cordova’s motion. Mag. Judge’s Rep. and Rec. at 1 [hereinafter Rep. and Rec.].

Cordova files two objections to the Magistrate Judge’s Report and Recommendation. Pl’s Objections to the Magistrate Judge’s Report and Recommendation [hereinafter Objections]. His first objection is that the Magistrate Judge erred in finding that the Administrative Law Judge’s determination of residual functional capacity was supported by substantial evidence. *Id.* at 2. Cordova’s second objection is that the Magistrate Judge erred in failing to recognize that

Cordova's occupational base should have been evaluated in terms of sedentary work and therefore that Social Security Ruling 96-9p should have applied. *Id.*

The government did not file a separate objection. For the following reasons, I decline to accept the Magistrate Judge's Report and Recommendation, and will remand Cordova's case to the Commissioner for further proceedings consistent with this Memorandum.

Background

Procedural History

Cordova's initial claims for disability insurance benefits (DIB) and supplemental security income (SSI) were filed on April 13, 1989 and May 10, 1989, and were granted. R.324. An Administrative Law Judge (ALJ) in those hearings found Cordova disabled by chronic alcohol abuse with cirrhosis of the liver and seizures, as well as a history of drug abuse. *Id.* Cordova collected benefits under the programs.

Congress passed Public Law 104-121 on March 29, 1996, which mandated that "an individual shall not be considered disabled . . . if alcoholism or drug addition would[,] but for this [provision,] be a contributing factor material to the Commissioner's determination that the individual is disabled." Pub. L. No. 104-121, § 105, 110 Stat. 847 (1996) (codified as amended at 42 U.S.C.A. § 423(d)(2)(C) (2001)). In light of this change in the law, the Commissioner re-examined Cordova's case, and terminated his benefits January 1, 1997. Cordova's appeal to this court is for the payment of DIB and SSI after that date.

In a decision dated July 16, 1999, the ALJ found that Cordova was able to perform light work with limitations.¹ R.13. The ALJ, however, structured his opinion in an unusual manner.

¹ The ALJ's full findings were that:

1. "The claimant met the disability insured status requirements of the Act on January 1, 1997, the date the State Agency found he became able to work (pursuant to Pub. L. 104-121), and continues to meet them through December 31, 2001.
2. "The claimant has not engaged in substantial activity since January 1, 1997.
3. "The medical evidence establishes that the claimant has severe back, left ankle, and alcoholism impairments as well as nonsevere hypertension, gastrointestinal, and hepatic impairments or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
4. "The claimant's allegations of pain, edema, and limitation of function are not sustained to the degree alleged and are thus not fully credible.
5. "The claimant has the residual functional capacity to perform the physical exertion and nonexertional requirements of work except for lifting and carrying more than 20 pounds at a time or more than ten pounds frequently, sitting or standing up to six hours per workday without the option to sit or stand at will, and inability to understand, remember and carry out more than very short, simple instructions (due to substance abuse) (20 C.F.R. 404.1545 and 416.945).
6. "The claimant is unable to perform his past relevant work as a presser.
7. "The claimant's residual functional capacity for the full range of light work is reduced by the limitations enumerated in Finding 5, above.
8. "The claimant is currently 42 years old, which is defined as a younger individual (20 C.F.R. 404.1563 and 416.963).
9. "The claimant has a limited education, and is fully conversant and literate in English (20 C.F.R. 404.1564 and 416.964).
10. "The claimant does not have any acquired work skills which are transferrable to the skilled or semiskilled work functions of other work (20 C.F.R. 404.1568 and 416.968).
11. "Based on an exertional capacity for light work and the claimant's age, education, and work experience, section 404.1569 of Regulations No. 4 and section 416.969 of

He surveyed the medical evidence presented by three doctors — Dr. Jaffe, an agency physician who met with Cordova; Dr. Kushner, a reviewing physician; and Dr. Diamond, a pain management specialist who met with Cordova a single time on his lawyer’s initiation — and reached a conclusion on the medical evidence that was some compromise of their positions.

R.18. Dr. Jaffe’s and Dr. Kushner’s opinions both supported the conclusion that Cordova could perform medium level work.² Exhibits B-9, B-19; R.18. Dr. Diamond, by contrast, opined that Cordova could do so little that he should be found completely disabled. R.19; Exhibit B-25.

Nevertheless, the ALJ concluded in his opinion that Cordova could perform light work, a determination that none of the doctors had advanced and for which he did not explain the basis.³

R.18. The ALJ did discuss why he chose not find Dr. Diamond’s conclusion credible, but never discussed why there should be modification of Dr. Jaffe’s and Dr. Kushner’s findings. Also,

Regulations No. 16 and Rule 202.17, Table No. 2 of Appendix 2, Subpart P, Regulations No. 4 would direct a conclusion of ‘not disabled.’

12. “Although the claimant’s additional nonexertional limitations do not allow him to perform the full range of light work, using the above-cited rule as a framework for decisionmaking, there are a significant number of jobs in the national economy which he could perform. Examples of such jobs are: assembler (4,000 jobs locally and 100,000 nationally) and cashier (40,000 jobs locally and 1.2 million nationally).

13. “The claimant was not under a ‘disability’ as defined in the Social Security Act, from January 1, 1997 through the date of this decision (Pub. L. 104-121).” R.20 - 21.

² Medium level work is defined here as the capacity to occasionally lift 50 lbs., frequently lift 25 lbs., stand and/or walk 6 hours in an 8-hour workday, sit 6 hours in an 8-hour workday, and push and/or pull controls (including the operation of hand or foot controls) an unlimited amount. R.358; R.18.

³ In the ALJ’s opinion, he announced without further support that “I see nothing to preclude walking or standing for up to six hours per workday (so long as the claimant has the option to sit or stand at will), . . . frequently lifting and carrying up to 10 lbs., . . . [and] sitting, lifting and carrying up to 20 lbs. at a time.” R.18.

because the ALJ found that Cordova retained the residual functional capacity to work and was thus not disabled, he never applied Public Law 104-121. The Appeals Council denied Cordova's request for review, making the ALJ's decision on Cordova's disability status the final decision of the Commissioner. R.6 - 7.

Factual Background

At the time of his hearing before the ALJ on December 31, 2001, Cordova was a 42-year old man with an eleventh-grade education, past relevant work as a suit presser, and a 35-year history of alcoholism and polysubstance abuse. R.20, 484, 539, 542. Although Cordova's alcoholism and polysubstance abuse were not the primary basis of the ALJ's opinion,⁴ they were mentioned by the ALJ as background, to explain his frequent contacts with the health care

⁴ Note that PL 104-121 applies only once an ALJ has otherwise found a claimant to be disabled. Pub. L. No. 104-121, § 105, 110 Stat. 847 (1996) (codified as amended at 42 U.S.C.A. § 423(d)(2)(C) (2001)); 20 C.F.R. § 404.1535 (2001).

system, and to assess his credibility.⁵ R.15 - 17; Exhibits 17, 18, 19, 21, 23, B-20 and B-26 as attached to the ALJ's opinion.

As the ALJ found, confusion in this case arose as Cordova's voluminous medical records document his often contradictory reports to health care providers. R.15 - 17. For example, on May 20, 1996, Cordova reported drinking a case of beer and three pints of wine a day. R.16; Exhibit B-17. A week and a half later, he told another doctor that he only drank a can of beer a day. R.16; Exhibit B-18. Less than two weeks later, he was hospitalized for alcoholism and admitted to drinking one-half gallon of wine a day. R.16; Exhibit 20.

The record that the ALJ cites also documents that Cordova convincingly misled medical professionals into delivering mistaken diagnoses. For example, on September 8, 1996, a mental health clinic pronounced Cordova to be in remission from substance abuse. R.16; Exhibit B-16. Four days earlier, however, Cordova had conceded to health care professionals that he was

⁵ The ALJ was understandably perplexed and saddened by Cordova's dependency on alcohol as well as his unrepentant attitude towards that dependency. Consider, for example, the following exchanges from the transcript of the hearing:

ALJ: "Why are you still drinking?"

Cordova: "Because I'm an alcoholic." (R.555)

ALJ: "Well, why are you still drinking?"

Cordova: "Because I, you know, I like it." (R.557)

ALJ (Reading from medical records dated November 9, 1998): "... [P]atient says he's fighting for his Social Security benefits, believes he's unable to work, seems very . . . worried about his Social Security benefits, but doesn't seem concerned about his health. Could you comment on that?"

Cordova: "I worry about my health but, I mean, my health — it's because I keep drinking." (R.558 - 59)

drinking three quarts of beer a day. R.16; Exhibit B-26. Indeed, on November 22, 1996, Cordova admitted drinking a six-pack of beer just before presenting at a clinic. R.16; R.623.

Cordova's medical records even after this incident continue to be riddled with inconsistencies as he drank while reporting otherwise. He was drinking in December 1996, and had alcohol on his breath on January 17, 1997. R.16; Exhibit B-27. He admitted to a doctor in June 1997, October 1997, and March 1998 that he was drinking heavily. R.16; Exhibit B-28. In other medical notes, Cordova admitted on July 10, 1997 to only drinking two beers a day. R.16; Exhibit B-30. He told a psychiatrist in January 1998 both that he had been sober for the past year and never used drugs. R.16. Cordova repeated the assertion that he had been sober for the past year in May 1998, and health care providers believed him to be sincere. *Id.* Nonetheless, in September 1998, Cordova was confronted with a blood test that came back positive for alcohol. R.16; Exhibit B-29. After initially denying that the results were true, Cordova admitted to drinking. *Id.* He had a strong odor of alcohol on his breath during a medical examination in October 1998. *Id.* Cordova has also been convicted for driving under the influence three times in the past three years. R.16.

Finally, the ALJ notes that Cordova's checkered history of less-than-truthful reports to medical professionals is similar regarding his use of cocaine and marijuana. R.15; *see, e.g.*, Exhibit 23. His use of heroin is even more sporadically documented. R.15; *see* Exhibits 17, 18, 19, 21, 23, B-20 and B-26.

Given this record, and Cordova's inconsistent testimony at the hearing,⁶ it is rather obvious how the ALJ reached his conclusion not to credit Cordova's self-assessed level of disability.⁷ R.18.

As the ALJ discussed, the other health problems Cordova has been examined for are injuries to his legs and feet, problems with his back, and seizures related to his alcoholism. R.14 - 15, 17 - 19. Cordova was treated several times for various problems with his legs and feet including an avulsion fracture in his right foot in May 1995 (R.455), a sprained ankle in August 1994 (R.449), a calcaneal fracture in his left leg in September 1996 (R.604), and cellulitis of his left foot and ankle in February 1997 (R.600). R.15. Cordova's problems with his back are

⁶ It might have been a basis of the ALJ's conclusion that Cordova could perform light work that Cordova agreed with the ALJ at the hearing that he could perform a job lifting 10 lbs with the option to sit or stand occasionally. R.554. (These were the essentially disputed elements of Cordova's residual functional capacity.) But Cordova then reneged on his statement, and the ALJ nowhere refers to this exchange with Cordova in his opinion. R.554, R.13 - 22. As the ALJ does not provide an explanation in the opinion for his conclusion that Cordova could perform light work, I cannot read this explanation into its text, and therefore must find that he did not support his findings with substantial evidence. *Plummer v. Apfel*, 186 F.3d 422, 427 (3d Cir. 1999); *Adorno v. Shalala* 40 F.3d 43, 46 (3d Cir. 1994).

⁷ By Cordova's own final admissions at the hearing, however, he could have been capable of sedentary work. *See* R.588 (reporting the vocational expert's conclusion on the requirements of sedentary work). After much reversal, Cordova agreed that he could lift two pounds (at least a container of cream cheese). R.552. Later, he admitted that he could lift a half gallon container of wine, which the attorneys agreed by consensus weighs about 5 lbs. R.569, 587. Given his television-watching habits, Cordova could be seated at least half-an-hour at an hour at a time. R.553. He also climbs a flight of stairs six times per day for meals. R.553. Although he told Dr. Diamond that he could not operate foot controls, he regularly drove a car and operated its foot controls until three months before the hearing. R.584. He suggested to the ALJ that he stopped driving because he did not have insurance after convictions for three DUIs in the last two years. R.585.

The ALJ did not mention this evidence in his opinion though, even suggesting that Cordova asserted that he was completely disabled. R.18. The ALJ then proceeded to make a separate finding that Cordova could perform light work. R.20 - 21.

documented only in brief. He asserts that he injured his back in a car accident in the early 1990s, but there is no report of this injury in the medical record. R.14 - 15; R.489. An x-ray of his spine was taken on June 1, 1996 during Cordova's hospitalization for alcoholism showed only "mild to moderate" degenerative disease with severe disc space narrowing at L5-S1 and mild disc space narrowing at L4-5. R.14; R.495. In an examination the same day, Cordova had limited back motion, a positive straight-leg raising test at 45 degrees, and stiffness of the left leg with a foot drop. R.14; Exhibits B-18 and B-19. He does not appear to have followed through though on treatment for his back with such tests as a CAT scan or an MRI, and has never been prescribed medications indicated for severe pain. R.15; Exhibit B-32.

Cordova's seizures appear to be linked to his alcoholism. R.17 - 18. A June 1996 EEG of his brain was not inconsistent with epilepsy, R.498, but doctors concluded that, based on this test and a CAT scan that showed Cordova's brain had not substantially changed since July 1994, that his seizure disorder was "related to alcohol abuse and withdrawal" (R.499). R.18. Moreover, his cerebral atrophy and organic brain syndrome were also related to the abuse of alcohol. *Id.* Finally, under questioning, the medical expert who testified at his hearing reaffirmed that no evidence in the medical record established that Cordova's brain damage would continue to exist separate and apart from his active drinking.⁸ R.18; R.577.

⁸ If Cordova had attempted to argue that his brain damage was permanent and would exist even if he stopped drinking, he would have borne the burden to provide the results of the medical tests necessary for that determination. R.575 - 77 (noting the lack of a specialized EEG or dementia work-up in the record); 20 C.F.R. § 404.1512(a) (2001) (establishing that the claimant has the burden of production).

Standards of Review

I review *de novo* the parts of the Magistrate Judge's report and recommendation to which Cordova objects. 28 U.S.C. § 636(b)(1)(C) (2001). I have the option to accept, reject or modify, in whole or in part, the Magistrate Judge's findings or recommendations. *Id.*

The standard by which I review the ALJ's underlying determinations of disability is one of whether there is substantial evidence to support his decision.⁹ *Plummer v. Apfel*, 186 F.3d 422, 427 (3d Cir. 1999) (citing *Adorno v. Shalala* 40 F.3d 43, 46 (3d Cir. 1994)). Substantial evidence to support the ALJ's decision means "more than a mere scintilla" but somewhat less than a preponderance of the evidence. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Brown v. Bowen*, 845 F.2d 1211, 1213 (3d Cir. 1988). The ALJ's decision must present "such relevant evidence as a reasonable mind might accept as adequate" to reach his conclusion.¹⁰ *Richardson*,

⁹ This is not a *de novo* review of the ALJ's decision, but rather consideration of whether the evidence from the record as a whole supports his decision, not just the evidence that is consistent with his findings. *Monsour Medical Center v. Heckler*, 806 F.2d 1185, 1190 - 91 (3d Cir. 1986).

¹⁰ To establish a disability under the Act, a claimant must prove that he is unable to "engage in 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. § 423(d)(1)(A) (2001). To determine whether the claimant can satisfy this standard, the Commissioner applies a five-step process of evaluation under 20 C.F.R. § 404.1520. The first two steps of the analysis involve threshold determinations whether the claimant is working, 20 C.F.R. § 404.1520(a) (2001), and whether the claimant's impairment is of required duration and severity to significantly limit his ability to work, 20 C.F.R. § 404.1520(c) (2001). The third step is comparing the evidence of medical impairment against a list of impairments that would permit the claimant to qualify for disability without further inquiry. 20 C.F.R. § 404.1520(d) (2001). If the claimant does not qualify for benefits automatically according to this list, the Commissioner proceeds to the fourth and fifth steps of his analysis. In the fourth step he determines whether the claimant retains the residual functional capacity to perform work similar to that he has performed in the past. 20 C.F.R. § 404.1520(e) (2001). In the fifth and final step, if the Commissioner finds that the claimant is unable to perform any other work that exists in the national or regional

402 U.S. at 401; *Plummer*, 186 F.3d at 427 (citing *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995)); *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000).

Discussion

1. *Cordova's First Objection*

Cordova's first objection is that the Magistrate Judge erred in finding that the Administrative Law Judge's determination of residual functional capacity was supported by substantial evidence. Objections at 2. There are two parts to this argument. First, he objects to the Magistrate Judge's finding that the ALJ properly supported his decision that the opinion of an examining physician, Nicolas Diamond, D.O., was not to be fully credited. *Id.* at 2 -3. Second, he contends that the Magistrate Judge's rationale for finding that the ALJ's conclusion on Cordova's residual functional capacity for light work was not contained in the ALJ's opinion. *Id.* at 2 - 3. I agree with the Magistrate Judge that the ALJ properly explained why he did not find Dr. Diamond's opinion to be fully credible, but disagree that the ALJ properly supported his conclusion that Cordova could perform light work.

As the Magistrate Judge documented, the ALJ properly supported his decision not to find Dr. Diamond's opinion fully credible with substantial evidence. *Plummer v. Apfel*, 186 F.3d at 427; *Adorno v. Shalala* 40 F.3d at 46. As the ALJ noted, Dr. Diamond saw Cordova on a single occasion on November 25, 1998. R.15; Exhibit B-25. Dr. Diamond was a specialist in pain

economies, he must find the claimant to be disabled. 20 C.F.R. § 404.1520(f) (2001). *See also Sullivan v. Zebley*, 493 U.S. 521, 525 (1990) (expounding on the application of this five-step process).

management who opined that Cordova could sit for less than six hours in a eight-hour work day, and could walk or stand less than two hours. R.595. Although he opined that Cordova could not perform even sedentary work, Dr. Diamond found that Cordova could get on and off an examination table without difficulty and exhibited no protective stance typical of people who experience pain. R.755.

Dr. Diamond's testimony was also directly contradicted by the finding of other doctors. R.15, 19. In medical records from June 9, 1996, for example, Dr. Jaffe found that Cordova's motor examination was 5/5 throughout, except for not lifting or dorsi-flexing his left ankle. R.493 - 94. He also found that, although Cordova's straight leg raises were positive at 45 degrees and he had some difficulty arising from a chair due to pain, all of Cordova's many other problems stemmed from his long history of alcohol abuse. R.489, 492.

Dr. Kushner reviewed Cordova's medical record in November 1996 and concluded that Cordova could engage in a full range of medium work. R.357. He wrote that Cordova could occasionally lift 50 lbs., frequently lift 25 lbs., could stand for about six hours in an eight-hour workday, and had an unlimited capacity to push or pull. R.358.

The ALJ properly discussed the conclusions of these doctors and others in ultimately finding Dr. Diamond's lone opinion that Cordova would be incapable of even sedentary work was not supported by the record as a whole. R.19. When an ALJ rejects the opinion of a physician, he must explicitly weigh it against other evidence and explain the basis of his decision in the record. *Allen v. Bowen*, 881 F.2d 31, 41 (3d Cir. 1989); *Podedworny v. Harris*, 745 F.2d 210, 217 - 18 (3d Cir. 1984). Here the ALJ explained that Dr. Diamond had only met Cordova once and that his conclusions appeared contrary to the vast amount of material in the medical

record from other doctors who had treated Cordova over the years. R.15. For example, although Dr. Diamond reported that Cordova had an antalgic gait when using a cane, there was no other substantiation of the medical need for Cordova to use a cane after 1997, nor had one ever been prescribed by a physician. *Id.* Furthermore, the ALJ noted that there had been no further treatment by later doctors for the alleged effusion and instability in the leg found by Dr. Diamond, and by Dr. Diamond alone. *Id.* Finally, there is the issue of pain medication. Dr. Diamond is a pain specialist, and was the only doctor to find Cordova to be disabled. R.593. But the ALJ found it telling that he did not prescribe any type of pain medication for the symptoms that allegedly disabled Cordova. R.754 - 757. Accordingly, I agree with the Magistrate Judge that the ALJ provided substantial evidence to support his decision not to find Dr. Diamond's testimony fully credible.

But I disagree with the Magistrate Judge that the ALJ properly supported his conclusion that Cordova could perform light work. On this point, there was the qualified medical opinion of Dr. Kushner before the ALJ, and upon which the ALJ relied extensively, concluding that Cordova could perform medium level work. R.18; Exhibit B-19. There was a second qualified medical report from Dr. Jaffe, upon which the ALJ also relied, providing the bulk of the evidence that Dr. Kushner used to reach his conclusion that Cordova could perform medium level work. R.18; Exhibits B-9, B-19. A third medical source that the ALJ found not to be credible opined that Cordova could perform no work at all. R.19. The ALJ cites no evidence at all, however, for his conclusion that Cordova could perform work at a light level. R.18. His solution appears to represent some compromise between the two sets of medical opinions. *Id.*

I therefore agree, as the claimant objects, that it seems from the ALJ's opinion as though he "simply concoct[ed] his own RFC." Objections at 3. The specific pronouncement that Cordova's appropriate residual functional capacity only enables him to perform light work arrives from out of the blue. The ALJ's full explanation on this point is that "I see nothing to preclude walking or standing for up to six hours per workday (so long as the claimant has the option to sit or stand at will), unlimited sitting, lifting and carrying up to 20 pounds at a time, and frequently lifting and carrying up to ten pounds." R.18. At no point had any expert mentioned that Cordova's appropriate residual functional capacity was lifting ten pounds; at no point had either party argued in the record for this outcome; and indeed at no point in the opinion is there a reference to how the ALJ arrived at a ten pound figure. R.18. Moreover, in reviewing the transcript of the hearing, it is clear that the ALJ originated this figure himself and pushed for acceptance of it throughout Cordova's testimony. *See, e.g.*, R.554 (documenting that the ALJ posited ten pounds as the hypothetical weight that Cordova could lift in a job, to which Cordova initially agreed, and then changed his mind).

The law is clear in the Third Circuit that an ALJ is not free to set his own expertise against that of physicians who present competent medical evidence. *Gilliland v. Heckler*, 786 F.2d 178, 184 (3d Cir. 1986); *Dennis v. Heckler*, 756 F.2d 971, 976 (3d Cir. 1985); *Fowler v. Califano*, 596 F.2d 600, 603 (3d Cir. 1979). He may not make "purely speculative inferences from medical reports," *Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981), nor may he make medical findings based on "amorphous impressions, gleaned from the record and from his evaluation of [the claimant]'s credibility." *Kent v. Schweiker*, 710 F.2d 110, 115 (3d Cir. 1983)

(Becker, J. for the court). *See also, e.g., Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000) (defining substantial evidence and citing *Kent*).

An ALJ is simply not authorized to evaluate medical conditions himself. *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999); *Ferguson v. Schweiker*, 765 F.2d 31, 37 (3d Cir. 1985). To support his decision with substantial evidence, he must cite to the opinion of a physician for medical conclusions when there is contradictory evidence in the record. *Id.* (“By independently reviewing and interpreting the [medical evidence], the ALJ impermissibly substitute[s] his own judgment for that of a physician; an ALJ is not free to set his own expertise against that of a physician who presents competent evidence. Again, if the ALJ believe[s] that [a doctor’s] reports [are] [not satisfactory], it [is] incumbent upon the ALJ to secure additional evidence from another physician.”). Above all, an ALJ may not reach a decision about a claimant’s medical condition solely on his own “non-expert observations at the hearing — in other words, by relying on the roundly condemned ‘sit and squirm’ method of deciding cases.” *Van Horn v. Schweiker*, 717 F.2d 871, 874 (3d Cir. 1983) (citing *Freeman v. Schweiker*, 681 F.2d 727, 731 (11th Cir. 1982) and *Aubeuf v. Schweiker*, 649 F.2d 107, 113 n.7 (2d Cir. 1981)); *see also Burnett v. Commissioner of Social Sec. Admin.*, 220 F.3d 112, 122 (3d Cir. 2000) (citing *Van Horn*). Although the ALJ may have had good intentions in effectively splitting the difference between medical opinions, he did not have the authority to do so, and his decision in this regard is not supported by substantial evidence as understood in the Third Circuit.

For this reason, I sustain Cordova’s objection to the Magistrate Judge’s Report and Recommendation, and will remand the case to the Commissioner for further proceedings consistent with the points discussed herein.

2. *Cordova's Second Objection*

Cordova's second objection is that the Magistrate Judge erred in failing to recognize that Cordova's occupational base should have been evaluated in terms of sedentary work and therefore that Social Security Ruling 96-9p should have applied. Objections at 2. Because I agreed with Cordova's first objection to the Magistrate Judge's Report and Recommendation, however, I need not reach this argument as a basis for my decision, and decline to do so.

Conclusion

For the reason stated above, I sustain Cordova's objection to the Magistrate Judge's Report and Recommendation. The ALJ did not provide substantial evidence for his determination that Cordova's residual functional capacity was for light work. I deny both parties' motions for summary judgment, and remand the case to the Commissioner for proceedings consistent with the points discussed in this Memorandum. An appropriate order follows.

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

JUAN CORDOVA,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 01-2323
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
Defendant.	:	

ORDER

YOHN, J. JUNE , 2002

AND NOW, this day of June 2002, upon consideration of the parties' cross-motions for summary judgment, and after careful review of the Report and Recommendation of the Magistrate Judge and the plaintiff's objections thereto, IT IS HEREBY ORDERED that:

1. The motion of plaintiff Juan Cordova for summary judgment is DENIED.
2. The motion of defendant Jo Anne B. Barnhart, Commissioner of Social Security, for summary judgment is DENIED.
3. The case is REMANDED to the Commissioner for further proceedings consistent with this Memorandum and Order.

BY THE COURT:

William H. Yohn, Jr.