

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

MICHAEL W. DRACOULES

v.

LARRY G. MASSANARI,  
Acting Commissioner of Social :  
Security Administration

NO. 01-CV-4200

MEMORANDUM AND ORDER

McLaughlin, J.

August 22, 2002

This action arises from the denial of the application of the plaintiff, Michael W. Dracoules, for Supplemental Security Income ("SSI") and Disability Insurance ("DI") under Title II of the Social Security Act, 42 U.S.C. § 405(g). The plaintiff has filed a motion for summary judgment, and the defendant Commissioner of the Social Security Administration has filed a cross-motion for summary judgment. After consideration of these motions, and after a careful review of the report and recommendation filed in this case, the objection filed thereto, and after conducting a review of the administrative record, the Court Orders that this case be remanded to the Social Security Administration for further proceedings consistent with this memorandum.

## I. Procedural History

Plaintiff Dracoules first applied for SSI and DI benefits on August 31, 1998, and again on March 3 and 31, 1999. R. 52, 291, 300, 303. He was denied benefits by the state agency responsible for disability determinations, and he appealed its decision. An Administrative Law Judge ("ALJ") then held a hearing on June 6, 2000 and affirmed the agency's denial of benefits to the plaintiff on July 24, 2000. The plaintiff appealed this decision to the Appeals Council, which affirmed the ALJ on July 6, 2001.

The plaintiff brought this case on August 17, 2001, challenging his denial of SSI and DI benefits. After the plaintiff and Commissioner filed their motions for summary judgment, the case was referred to a United State Magistrate Judge for a Report and Recommendation ("R & R"). On June 27, 2002, the Magistrate Judge issued an R & R that the ALJ's findings were supported by substantial evidence and recommended that summary judgment be entered in favor of the Commissioner. The plaintiff has objected to the Magistrate Judge's R & R.

## II. Personal and Medical History

In his applications for supplemental security and disability insurance benefits, the plaintiff alleged that he had

been disabled since February 15, 1998 due to a panic disorder and depression.

The plaintiff testified before the ALJ regarding his disability on June 6, 2000. R. 30. He testified that he had previously worked as a car lot owner and had held several temporary jobs since then, but had not had a stable job since he "had a break down." R. 34. He said the breakdown made him "get anxiety around people" and disturbed his thought process. R. 40. He attributed his breakdown to the FBI investigation he underwent in 1998, resulting in the FBI asking him to testify against a business affiliate who had allegedly turned back car odometers. R. 39.

The record contains the following evidence regarding the plaintiff's mental illness diagnoses **from** February 15, 1998 to early 2000.

On December 31, 1997, plaintiff saw psychiatrist Brian Condron, **M.D.**, who diagnosed him with major recurrent depression with possible psychotic features. R. 166. **Dr.** Condron also noted that plaintiff was abusing alcohol and drugs, problems he sought treatment for in July and August 1997. R. 165. The plaintiff entered treatment again in February 1998. R. 152, 156. At that time, he was losing his business, was under criminal investigation, and was separating from his wife, which Dr.

Condrón and other psychiatrists later evaluating him found were severe stressors contributing to the decline in his mental health. R. 156, 163, 166.

The plaintiff was admitted to Lancaster General Hospital for depression with suicidal ideation on May 24, 1998, and was discharged three days later on May 27. R. 152, 154. Both of the hospital psychiatrists evaluating the plaintiff noted his polydrug abuse as well as his other potential diagnoses, schizoaffective disorder with a panic component and/or depression.' R. 154, 158. The plaintiff was then recommended for an intensive outpatient program for mental health treatment. R. 158.

In the outpatient program in June 1998, the plaintiff again saw Dr. Condrón, M.D., who diagnosed him with depressed-type schizoaffective disorder as well as cocaine dependence (though the latter was in remission at the time). R. 163. Dr. Condrón stated in his notes that the plaintiff "presented an impossible situation." R. 163. Although the doctor "offered hospitalization repeatedly" to the plaintiff and found the

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<sup>1</sup> The first evaluating psychiatrist, Richard J. Brown, M.D., also thought there might be the possibility of a psychotic component. R. 158. This possibility recurs in later diagnoses as the plaintiff's treatment progresses. Compare R. 290 (suggesting possibility of psychosis) with R. 233 and R. 263 (diagnosing plaintiff without psychosis).

plaintiff was "decompensating and may need long-term treatment," the plaintiff refused to enter the hospital because he "fear(ed) turning out like his brothers," both of whom are schizophrenic. R. 163-65.

Plaintiff was hospitalized again in August and September 1998 at St. Joseph's Hospital in Lancaster, Pennsylvania for major recurrent depression and "extreme panic disorder." R. 167. His treating psychiatrist there, Dr. Kurtis D. Jens, found it likely that the plaintiff was "self-medicating,, abusing alcohol and other drugs ("AOD") because of his mental illnesses. R. 169. Also, the clinician admitting him, ToniSue Gerhart, M.A., assessed him to be suffering from major recurrent depression. R. 175.

Plaintiff then began an AOD treatment program at White Deer Run in Williamsport from January to mid-February 1999. R. 202. In January 1999, the plaintiff also sought treatment at a substance abuse treatment facility, White Deer Run, of Williamsport, Pennsylvania. The clinical coordinator there described the plaintiff's problem saying, "Client medicates symptoms of depression with drugs and alcohol," and identified the plaintiff's short- and long-term goals as managing his depression without drugs and alcohol. R. 203.

In mid-February through early March 1999, the plaintiff

sought AOD abuse treatment at Lehigh Valley Addictions Treatment Services, Inc. R. 223. This treatment was terminated because his case manager felt that he needed mental health treatment, and that he was not functioning well in their AOD addiction treatment-focused environment. The plaintiff then entered a "dual diagnosis program" to treat mental illness and substance abuse simultaneously at Philhaven Behavioral Health Care Services in Lancaster, Pennsylvania; he was in this program from late March 1999 until late June 1999. R. 227.

During the period from February to June 1999, the plaintiff was consistently diagnosed with major recurrent depression, panic disorder, anxiety, agoraphobia and cocaine dependence. R. 227, 232, 269. In July 1999, plaintiff was evaluated as not responding to treatment for depression as of that date, and psychiatrist George Lapes, M.D., evaluated him as having psychosis in addition to his depression. R. 28.

He was again admitted to St. Joseph's Hospital in late January 2000 for suicidal ideation and possible psychotic delusions.<sup>2</sup>

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<sup>2</sup> One psychiatrist believed the plaintiff was having psychotic delusions, while another psychiatrist thought the plaintiff's complaints were not actual delusions but an attempt to achieve disability status. Compare R. 280 with R. 279.

111. Discussion

The Court must review the Commissioner's findings of fact to determine if they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 431 (3d Cir. 1999). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate" to support a conclusion. Farqnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001) (citations omitted). To allow a reviewing court to "properly exercise its responsibility under 42 U.S.C. § 405(g) to determine if the Secretary's decision is supported by substantial evidence," a finding by the ALJ must be "accompanied by a clear and satisfactory explication of the basis on which it rests." Id. at 41 (citing to Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981)).

In his objections to the Magistrate Judge's report and recommendation, the plaintiff argues that the ALJ erred in finding that he did not meet the "A" requirements of Listed Impairment 12.04 attached to 20 C.F.R. 404, that the ALJ did not have substantial evidence to conclude that the plaintiff's mental problems and impairments were caused by his drug and alcohol use, and that the ALJ presented a highly selective and misleading summary of the medical evidence.

The first of plaintiff's arguments can be easily

dismissed: in his decision, the ALJ found that the plaintiff did meet the "A" requirements under 12.04.R. 20-21.

The latter two arguments have merit. Having carefully reviewed the medical evidence, the ALJ's description of it, and the Magistrate Judge's R & R, the Court agrees with the plaintiff's characterization of the ALJ's discussion of the medical evidence.

As bases for his findings, the ALJ states that "the medical evidence shows that the claimant has a severe drug and alcohol abuse disorder producing depression and anxiety." R. 14. The evidence, however, directly contradicts this statement: three mental health facilities found that the plaintiff had AOD abuse problems due to his mental health status, i.e. he was **self-**medicating for his mental problems. **—** Section 11, supra. These findings were made repeatedly from May 1998 to May 1999. ~~See id.~~ The ALJ did not acknowledge these findings or discuss why he rejected them in favor of his conclusion that was exactly the opposite of the clinicians' opinions.

The ALJ also presented his summaries of the evidence in a confusing and misleading manner. For example, one of the bases for the ALJ's findings was that he found no evidence that the plaintiff had a thought disorder. R. 15. The ALJ clearly believed that evidence of the plaintiff's alertness, memory and

recall was evidence that he did not have any mental illness, concluding that "the record suggests that claimant's condition has improved... that he had a normal appearance and behavior with no speech abnormalities, but a full range of affect, a goal-directed thought process, and no delusions or hallucinations (Ex. 4F at 6-10)."<sup>3</sup> R. 15. The other evidence of improvement noted by the ALJ is contained in an examination of March 3, 1999, which "revealed no evidence of a thought disorder but normal speech, and a logical and coherent appearance (Ex. 15F at 1)."<sup>4</sup> R. 15.

The problem with the ALJ's above summaries of the evidence is that the plaintiff suffers from depression, anxiety and a substance abuse disorder. There is no evidence that the

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<sup>3</sup> The ALJ's reference is to an evaluation prepared by ToniSue Gerhart while the plaintiff was an in-patient at St. Joseph Hospital. R. 172-176. However, in the same evaluation Ms. Gerhart notes that the plaintiff suffers from major depression which is recurrent and severe as well as polysubstance abuse in partial remission and recommends partial hospitalization. R. 175.

<sup>4</sup> The ALJ's reference is to an evaluation prepared by Dr. Kurtis D. Jens who evaluated the plaintiff when he went to the emergency room at St. Joseph Hospital seeking help. Dr. Jens' evaluation could support a conclusion that there had been some improvement in the plaintiff's condition. Dr. Jens diagnosed the plaintiff with major depression which is recurrent but in partial remission and also with polysubstance abuse that is in remission. Dr. Jens concludes that while the plaintiff is "indeed, quite depressed with secondary anxiety," that the problem is **not** inadequate medication but rather the plaintiff's significant social problems which included being homeless having just been discharged from a halfway house.

cognitive abilities that the ALJ focuses on were ever relevant to the presence of, or diminished as a result of, the plaintiff's mental illnesses. None of the medical professionals who examined him viewed their presence as a sign of improvement.<sup>5</sup> The ALJ's statements reflect a misunderstanding of the evidence presented regarding the plaintiff's ailments. It is impossible for the court to know what findings the ALJ would have made had he understood the true nature of the plaintiff's claims.

Finally, it is troubling that the ALJ appears to take some of the medical evidence out of context. For example, when surveying Dr. David Nutter's conclusions regarding the plaintiff, the ALJ states that "[o]n September 15, 1998, he indicated that the claimant appeared alert and oriented with a good memory." R. 13. The record contains two evaluations prepared by Dr. Nutter, one a discharge summary from a partial hospitalization program

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<sup>5</sup> In fact, the first record that the ALJ reviews is a report prepared by Dr. Brian Condron in January of 1998. The ALJ notes that Dr. Condron found that the plaintiff "could answer questions in a goal directed manner, and did not have suicidal thoughts, delusions, or hallucinations but exhibited a good memory, and remote recall (Ex. 3F)." R. 13. In fact, Dr. Condron said that the plaintiff did have passive suicidal thoughts and he diagnosed him with major depressive disorder which was recurrent with possible moderate psychotic features as well as crack cocaine dependence.

**Also,** Ms. ToniSue Gerhart's conclusion that the plaintiff exhibited a full range of affect might evidence improvement, but she does not so conclude and in fact recommends that the plaintiff enter a partial hospitalization program.

and the other an evaluation and notes from the plaintiff's partial hospitalization course. R. 167-168, 179-183. In these records, Dr. Nutter concludes, among other things, that the plaintiff suffers from severe major depression which is recurrent, that he **is** anxious, that hospitalization would be warranted but that the plaintiff refused it, and that the plaintiff "failed significant serotonin re-uptake inhibitor treatment and major tranquilizers" and was "very suicidal."

Because of the misleading summary of the evidence, it is difficult for the Court to know whether the ALJ had an accurate understanding of the medical evidence in the case. **If** he did not, the Court could not know what decision the **ALJ** would have made had he accurately understood the evidence.

This Court is not empowered **to** decide the facts de novo. That is what the Court would be doing if it analyzed the real medical evidence in the case and evaluated it against the plaintiff's claims of disability. This Court must, however, review the **ALJ's** findings to ensure that there is substantial evidence supporting them. Farqnoli, 247 F.3d at **38**. The Court cannot conclude that the **ALJ's** findings **are** supported by substantial evidence because their bases fail the Cotter test stated in Farqnoli. Id. at 41.

**An** appropriate order follows.

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MICHAEL W. DRACOULES

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v.

LARRY G. MASSANARI,  
Acting Commissioner of Social :  
Security Administration

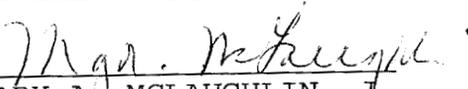
NO. 01-CV-4200

O R D E R

AND NOW, this 22<sup>d</sup> day of August, 2002, upon  
consideration of Plaintiff's Motion for Summary Judgment (Docket  
#8), and the Defendant's Motion for Summary Judgment (Docket #9),  
the Magistrate Judge's Report and Recommendation and the  
plaintiff's objections thereto, and having reviewed the record,  
it is hereby Ordered and Decreed that the Report and  
Recommendation is Not Approved, the Defendant's Motion for  
Summary Judgment is Denied, and the Plaintiff's Motion for  
Summary Judgment is Approved.

The case shall be remanded to the Social Security  
Commissioner for further administrative proceedings for the  
reasons given in a memorandum of today's date. This case is  
dismissed.

BY THE COURT:

  
MARY A. MCLAUGHLIN, J.