

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

<b>JEROME MEREDITH,</b>	:	
<b>Plaintiff</b>	:	
	:	<b>Civil Action No. 03-6422</b>
<b>v.</b>	:	
	:	
<b>JO ANNE BARNHART</b>	:	
<b>COMMISSIONER OF THE SOCIAL</b>	:	
<b>SECURITY ADMINISTRATION,</b>	:	
<b>Defendant</b>	:	

**MEMORANDUM OPINION AND ORDER**

**RUFE, J.**

**October 19, 2004**

Plaintiff seeks judicial review of the decision of the Commissioner of the Social Security Administration denying his claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. § 401 et seq. The parties’ cross-motions for summary judgment are presently before the Court. United States Magistrate Judge Jacob P. Hart issued a Report and Recommendation (“R & R”) recommending that this Court deny Plaintiff’s motion, grant Defendant’s motion, and affirm the Commissioner’s decision. Upon careful independent consideration of the administrative record, the motions for summary judgment, the Magistrate Judge’s R & R, and Plaintiff’s objections to that report, the Court holds that the Commissioner’s finding that Plaintiff has the residual functional capacity to perform sedentary work was not supported by substantial evidence. Accordingly, Plaintiff’s Objections to the R & R are sustained in part and denied in part, and Plaintiff’s Motion for Summary Judgment is granted.

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff was born on July 26, 1959. He completed the eleventh grade, and his work history includes employment as a roofer and a janitor.<sup>1</sup> On August 2, 1999, Plaintiff fell approximately 40 feet when a roof he was working on collapsed.<sup>2</sup> On September 21, 1999, he had spinal fusion surgery, which involved bone grafting and the placement of rods and other hardware in his spine.<sup>3</sup> Plaintiff returned to light-duty work part-time in August 2000,<sup>4</sup> but he never worked more than five hours per day, five days a week. However, one of his doctors, Dr. Guy Fried, believed Plaintiff was capable of working full time in the spring of 2001.<sup>5</sup>

In April 2001, Dr. William King recommended magnetic resonance imaging (“MRI”), which revealed that plaintiff had progressive disc degeneration.<sup>6</sup> In May 2001, Plaintiff began receiving spinal injections for pain,<sup>7</sup> and in August 2001 he had two surgical procedures.<sup>8</sup> In September 2001, Plaintiff stopped working on the advice of Dr. Sofia Lam, his pain management specialist.<sup>9</sup> On March 11, 2002, Plaintiff applied for DIB, claiming a disabling back impairment

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<sup>1</sup> Social Security Administration Disability Report, completed by Plaintiff on 3/26/02. Record at 91.

<sup>2</sup> Thomas Jefferson University Hospital Discharge Summary, 9/29/99. Record at 111-112.

<sup>3</sup> Thomas Jefferson University Hospital Report of Operation, 9/21/99. Record at 116-117.

<sup>4</sup> Dr. Fried’s medical records dated 9/18/00 and 7/10/00. Record at 144-147.

<sup>5</sup> Dr. Fried’s medical records dated 5/7/01 and 4/2/01. Record at 129-132. Plaintiff saw Dr. Fried from August 1999 through May 2001. In March 2001, he began seeing Dr. King, and in May 2001 he began seeing Dr. Lam, a pain management specialist. Dr. King and Dr. Lam were Plaintiff’s treating doctors in September 2001, the alleged time of disability onset.

<sup>6</sup> Germantown MRI Center, MRI results dated 4/23/01. Record at 178.

<sup>7</sup> Dr. Lam’s medical records dated 7/23/01, 6/28/01 and 5/24/01. Record at 189-191.

<sup>8</sup> Elkins Park Hospital Operative Reports dated 8/22/01 and 8/15/01. Record at 185-188.

<sup>9</sup> Dr. King’s medical record dated 10/18/01. Record at 162.

with an onset date of September 28, 2001.<sup>10</sup> Plaintiff was required to show his disability began by December 31, 2001, as that was his last date insured under DIB.<sup>11</sup>

At the initial level of review, the Commissioner denied Plaintiff's claims for DIB. Plaintiff appealed and received a hearing before Administrative Law Judge ("ALJ") William J. Reddy on May 29, 2003. The ALJ found that, at all relevant times, Plaintiff has had the residual functional capacity to perform unskilled, sedentary work, and therefore denied Plaintiff's claim on June 27, 2003.<sup>12</sup> The ALJ decision was the Commissioner's final decision in Plaintiff's case.<sup>13</sup> Plaintiff then timely appealed to this Court.

On cross-motions for summary judgment, the Magistrate Judge filed his R & R, recommending that Plaintiff's motion be denied and Defendant's motion be granted. The Court now addresses those portions of the R & R to which Plaintiff objected.<sup>14</sup>

## **II. STANDARD OF REVIEW**

The Social Security Act provides for judicial review of any "final decision of the Commissioner of Social Security" in a disability proceeding.<sup>15</sup> The Court may enter a judgment "affirming, modifying or reversing the decision of the Commissioner of Social Security, with or

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<sup>10</sup> Application for Disability Insurance Benefits dated 3/28/02. Record at 78.

<sup>11</sup> Disability Report- Field Office dated 3/28/02. Record at 85.

<sup>12</sup> Hearing Decision dated 6/27/03 (hereinafter "Decision"). Record at 8-19.

<sup>13</sup> Notice of Appeals Council Action dated 9/22/03. Record at 4-7.

<sup>14</sup> See 28 U.S.C. § 636(b)(1)

<sup>15</sup> 42 U.S.C. § 405(g).

without remanding the cause for a rehearing.”<sup>16</sup> However, the Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive.”<sup>17</sup> Accordingly, the Court’s scope of review is “limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner’s findings of fact.”<sup>18</sup>

Substantial evidence has been defined as “more than a mere scintilla” but somewhat less than a preponderance of the evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>19</sup> The standard is “deferential and includes deference to inferences drawn from the facts if they, in turn, are supported by substantial evidence.”<sup>20</sup>

In reviewing the Magistrate Judge’s R & R, the Court must review *de novo* only those portions of the R & R to which Plaintiff objected.<sup>21</sup>

### **III. OBJECTIONS TO THE R & R**

#### **A. Whether the Magistrate Judge erred in adopting the ALJ’s finding that Plaintiff’s condition does not meet or equal Listing 1.04A.**

The ALJ found that Plaintiff has the symptoms of a disorder of the spine as defined

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Schwartz v. Halter, 134 F. Supp. 2d 640, 647 (E.D. Pa. 2001).

<sup>19</sup> Richardson v. Perales, 402 U.S. 389, 401 (1971); Jesurum v. Sec’y of the United States Dept. of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995).

<sup>20</sup> Schaudeck v. Comm’r of S.S.A., 181 F.3d 429, 431 (3d Cir. 1999).

<sup>21</sup> 28 U.S.C. § 636(b)(1).

by Social Security listing 1.04(A),<sup>22</sup> but ruled that Plaintiff is not disabled because he does not have the functional limitations required to meet the Social Security criteria for a musculoskeletal system disability.<sup>23</sup> Plaintiff argues that listing 1.04(A) does not require a finding of functional limitations as defined in the general language of Section 1.00(B). However, Section 1.00(B) reads: “regardless of the cause(s) of the musculoskeletal impairment,” one must also have functional limitations resulting from the disorder.<sup>24</sup> These functional limitations include: “the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment.”<sup>25</sup> Accordingly, it was proper for the ALJ to consider Plaintiff’s functional limitations. The validity of his conclusion will be discussed later in this opinion.

**B. Whether the Magistrate Judge erred in finding that the ALJ had no obligation to consider Plaintiff’s obesity in the analysis of disability and no obligation to obtain an updated medical opinion.**

The ALJ did not consider Plaintiff’s alleged obesity in his decision to deny Plaintiff DIB. Plaintiff argues that his obesity, in combination with his other impairments, may have warranted a finding of medical or functional equivalence to a listing. Social Security Ruling (“SSR”) 00-3p and the superceding SSR 02-01p direct an ALJ to consider whether obesity, alone or in

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<sup>22</sup> 20 C.F.R § 404, subpart P, App. 1, § 1.00 et seq. Subsection 1.04 provides symptomatic criteria for disorders of the spine resulting in the compromise of a nerve root or the spinal cord.

<sup>23</sup> Decision. Record at 16.

<sup>24</sup> 20 C.F.R. § 404, Subpart P, App. 1, § 1.00(B)(2)(a).

<sup>25</sup> Id.

combination with other impairments, causes a listing-level impairment in functioning.<sup>26</sup> Therefore, Plaintiff argues that the ALJ should have considered his obesity, and should have obtained an updated medical opinion from a medical expert to assist the ALJ in considering equivalency.

Plaintiff's objection cannot stand. He did not raise the issue of his obesity or discuss symptoms related to obesity at the hearing, nor do his medical records mention obesity or the need for weight loss. Nothing in the medical records suggests that obesity is a factor in Plaintiff's medical condition or his functional level. On this record, the ALJ had no obligation to consider Plaintiff's weight, no obligation to assess functional or medical equivalence, and no obligation to seek an updated medical opinion pursuant to SSR 96-6p.<sup>27</sup> Accordingly, the Court will not reverse or remand the case for further consideration of this issue.

**C. Whether the Magistrate Judge erred in concluding that the ALJ's findings that Plaintiff did not suffer debilitating pain or experience significant side effects from medication were supported by substantial evidence.**

The ALJ found that Plaintiff's back injury precluded him from returning to his past relevant work as a roofer or janitor. Therefore, Plaintiff is entitled to benefits unless substantial record evidence demonstrates that, given his age, education, work experience, and disability, Plaintiff

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<sup>26</sup> Social Security Rulings "are binding on all components of the Social Security Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that [the SSA] ha[s] adopted." 20 C.F.R. § 402.35.

<sup>27</sup> See Munoz v. Barnhart, No. 02-1516, 2002 WL 31163868 (7<sup>th</sup> Cir. Sept. 26, 2002) (where medical record was silent as to the effect of obesity on claimant's condition or ability to work and no testimony or other evidence was presented on this issue, the court did not reverse or remand the case); Hilmes v. Barnhart, No. 03-4262, 2004 WL 1899913 (7<sup>th</sup> Cir. Aug. 24, 2004) (where claimant's doctors mentioned obesity but not any effect of weight on her condition or functional abilities and claimant did not provide evidence showing that obesity, alone or in combination with her back impairment, compromised functional abilities, the court did not reverse the ALJ decision or remand the case.)

has the residual capacity to perform specific jobs that exist in the national economy.<sup>28</sup> The ALJ solicited the opinion of a vocational expert (“VE”) to assist him in his assessment of Plaintiff’s ability to perform work in the national economy. The VE testified that, if Plaintiff’s testimony was found fully credible, Plaintiff would be unable to work in any occupation.<sup>29</sup> The VE explained: “Mr. Meredith stated that he is in constant pain; when he increases his activity, greater than sitting and laying down, that he has to take his medications; and when he takes his medications, he then is very disoriented and he falls asleep. And this would preclude someone from working.”<sup>30</sup> The ALJ did not fully credit Plaintiff’s evidence about the degree and frequency of pain he experiences, and he completely discredited his testimony regarding the side effects of his pain medication.<sup>31</sup> As a result, the ALJ found that Plaintiff did not have the degree of functional limitations necessary to qualify for DIB.

Plaintiff testified that he has significant pain on a daily basis.<sup>32</sup> The ALJ found his testimony “exaggerated and only partially credible” because Plaintiff testified that his pain level is usually eight or nine on a ten-point scale, and said it was an eight on the day of the hearing. The ALJ noted that Plaintiff had not taken his medication on the morning of the hearing, and therefore, his testimony that his pain was at level eight during the hearing was inconsistent with his testimony

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<sup>28</sup> Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979); Gilliland v. Heckler, 786 F.2d 178, 182 (3d Cir. 1986).

<sup>29</sup> VE’s hearing testimony. Record at 67.

<sup>30</sup> Id.

<sup>31</sup> Decision. Record at 15.

<sup>32</sup> Plaintiff’s hearing testimony. Record at 54, 63.

about his usual pain levels.<sup>33</sup> However, looking at Plaintiff's self-reports to his doctors from August 2001 through December 2001, Plaintiff generally reported pain between seven and nine on a ten-point scale, meaning he was regularly reporting moderate to severe pain.<sup>34</sup> This medical documentation of Plaintiff's subjective experience of pain is consistent with his testimony at the hearing.

Medical examinations of Plaintiff consistently revealed muscle spasms in the his back and palpable tenderness throughout his lower back.<sup>35</sup> Dr. King also noted palpable thoracic trigger points with "typical referred pain patterns"<sup>36</sup> on April 16, 2001 and Dr. Lam made similar findings on November 4, 2002.<sup>37</sup> A magnetic resonance image ("MRI") revealed a "moderate degenerative disc disease" in April 2001, with quite substantial loss of disc signal and disc height associated with nuclear herniating.<sup>38</sup> The MRI also revealed that disc degeneration had worsened since the previous exam. Myelograms taken on August 15 and 22, 2001 showed root nerve sleeve compression.<sup>39</sup> Dr. King noted sprains and strains in the cervical, thoracic and lumbar spines.<sup>40</sup> All these objective

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<sup>33</sup> It is not clear from the hearing transcript when Plaintiff had last taken his medications, or how long the medications generally provide him with some relief.

<sup>34</sup> Dr. King's medical records dated 12/13/01, 11/15/01, 10/18/01, 9/20/01, 8/23/01, 8/14/01. Record at 160-165.

<sup>35</sup> Dr. King's medical records dated 12/13/01, 9/28/01, 8/23/01, 8/14/01. Record at 160, 163-165. Letter from Dr. Lam to Dr. King dated 9/23/01. Record at 182-183. Letter from Dr. Lam to Dr. King dated 11/4/02. Record at 274.

<sup>36</sup> Dr. King's medical record dated 4/16/01. Record at 171.

<sup>37</sup> Letter from Dr. Lam to Dr. King dated 11/4/02. Record at 274.

<sup>38</sup> Germantown MRI Center, MRI results dated 4/23/01. Record at 178.

<sup>39</sup> Elkins Park Hospital Operative Reports dated 8/22/01 and 8/15/01. Record at 185-188.

<sup>40</sup> Dr. King's medical records dated 8/25/01 and 6/7/01. Record at 167-168.

medical observations support Plaintiff's complaints of pain.

Plaintiff takes multiple daily pain medications and muscle relaxers<sup>41</sup> and receives regular spinal injections.<sup>42</sup> Although Dr. Lam noted in her September 28, 2001 letter to Dr. King that the "injections lasted between 1-4 months,"<sup>43</sup> it does not appear that Plaintiff had gone more than two months between injections at the time Dr. Lam wrote the letter.<sup>44</sup> Plaintiff underwent two operative procedures and received injection for pain in August 2001, just before he allegedly became disabled.<sup>45</sup> Plaintiff needs to sleep in a hospital bed,<sup>46</sup> and even with this special bed, Dr. Lam has noted that he wakes up from pain several times each night.<sup>47</sup> These facts also support Plaintiff's subjective complaints of pain.

Plaintiff has made persistent efforts to obtain relief from pain, including seeing Dr. Lam, a pain management specialist. When Dr. Lam met with Plaintiff on September 28, 2001, Plaintiff reported having experienced severe pain for 5-7 weeks, including constant, intense and excruciating pain in the lower back, and pain that woke him from sleep two to three times each night.<sup>48</sup> He suffered this level of pain despite receiving pain relief injections in May, June and July

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<sup>41</sup> Prescription medication log for 9/8/99-5/19/03. Record at 266-270.

<sup>42</sup> Dr. Lam's medical records show that Plaintiff received spinal injections for relief of pain in May, June, July, September, and November 2001, and in February and April 2002. Record at 179, 180, 181, 184, 189, 190, 191. The medical record does not show whether Plaintiff continued injections after April 2002.

<sup>43</sup> Letter from Dr. Lam to Dr. King dated 9/23/01. Record at 182-183.

<sup>44</sup> Id.; Record of injection by Dr. Lam dated 7/23/01, 6/28/01 and 5/24/0. Record at 189, 190, 191.

<sup>45</sup> Elkins Park Hospital Operative Reports dated 8/22/01 and 8/15/01. Record at 185-188.

<sup>46</sup> Plaintiff's response to SSA request for additional information, dated 4/22/02. Record at 100.

<sup>47</sup> Letter from Dr. Lam to Dr. King dated 9/23/01. Record at 182-183. Letter from Dr. Lam to Dr. King dated 5/24/01. Record at 192.

<sup>48</sup> Letter from Dr. Lam to Dr. King dated 9/23/01. Record at 182-183.

and undergoing surgery and injections in August. Accordingly, Dr. Lam recommended that Plaintiff stop working.<sup>49</sup>

The ALJ discredited Dr. Lam's medical advice to Plaintiff to stop working, stating that objective medical evidence did not support extreme functional limitations, and assigning "little weight to Dr. Lam's opinion in this regard."<sup>50</sup> As noted above, the medical record contains ample evidence that Plaintiff had a degenerative disc problem in his spine, and muscle spasms were evident upon medical evaluation. In August 2001, Dr. Lam performed a surgical procedure that revealed swelling in Plaintiff's left S-1 nerve root sleeve that "correlated well with the patient's subjective symptomatology."<sup>51</sup> The ALJ does not cite to particular evidence in the medical record to support his conclusion that Dr. Lam's opinion was worth "little weight."<sup>52</sup>

Plaintiff also provided testimony regarding the side-effects of his pain medication, and the ways in which these side effects impaired his ability to work.<sup>53</sup> The medical documentation shows that Plaintiff had complained to his doctors about medication side-effects, especially fatigue.<sup>54</sup> The ALJ discredited Plaintiff's testimony regarding side-effects, saying "the medical record does not

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<sup>49</sup> Dr. King's medical record dated 10/18/01. Record at 162.

<sup>50</sup> Decision. Record at 16.

<sup>51</sup> Elkins Park Hospital Operative Report dated 8/15/01. Record at 187.

<sup>52</sup> Gilliland, 786 F.2d 178, 183 (3d Cir. 1986) ("We have previously held that an ALJ may not simply ignore the opinion of a competent, informed, treating physician. And a finding of residual functional capacity for work which conflicts with such an opinion and is made without analytical comment or record reference to contradictory evidence is not supported by substantial evidence." (citations omitted))

<sup>53</sup> Plaintiff's hearing testimony. Record at 54, 58, 62.

<sup>54</sup> Dr. Fried's medical records dated 4/2/01, 1/26/01 and 12/4/00. Record at 131, 133, 137.

support his assertions of substantially limiting medication side effects.”<sup>55</sup> However, absent contrary medical evidence, the ALJ should have given Plaintiff’s subjective claims of fatigue substantial weight.<sup>56</sup> The VE testified that constant pain and fatigue from medication, together, would make Plaintiff unable to work.

The ALJ relied entirely on the medical records of Dr. Fried to support his finding that Plaintiff had the residual functional capacity to work. The medical records of Dr. Fried cannot constitute substantial evidence of Plaintiff’s functional capacity. Dr. Fried last examined Plaintiff on May 7, 2001, well before the alleged disability date, September 28, 2001. He appears to have been unaware that Plaintiff had a herniated disc. And even so, Dr. Fried noted Plaintiff’s continuing complaints of pain.<sup>57</sup> Plaintiff had submitted medical records from his subsequent treating doctors, Drs. King and Lam, who were treating him at the time of alleged disability onset, for consideration by the ALJ. As the Magistrate Judge noted, “the ALJ’s exclusive reliance on Dr. Fried for medical evidence is a weak point.”<sup>58</sup> While this Court agrees that the ALJ was entitled to consider Dr. Fried’s medical records, he should not have relied upon these records exclusively when contradictory medical records were available for the time immediately preceding and the time following the alleged date of disability.

When reviewing whether there is substantial evidence to support the ALJ’s findings of fact, the Court considers whether the ALJ ignored or failed to resolve a conflict created by

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<sup>55</sup> Decision. Record at 15.

<sup>56</sup> Mason v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993).

<sup>57</sup> Dr. Fried medical records dated 1/26/01, 12/04/00, 11/6/00 and 10/15/00. Record at 135, 137, 139, 141.

<sup>58</sup> R & R at 8.

countervailing evidence, and whether other evidence overwhelms the evidence the ALJ relied upon, particularly medical evidence provided by treating doctors.<sup>59</sup> The Court finds that the ALJ ignored or failed to resolve a conflict created by countervailing evidence from Plaintiff's former doctor, Dr. Fried, and his doctors at the time of disability onset, Drs. King and Lam. Furthermore, the ALJ did not adequately consider supporting medical evidence when assessing Plaintiff's and Dr. Lam's credibility. Since the vocational expert testified that Plaintiff could not work in any occupation if all the evidence before the ALJ was considered credible,<sup>60</sup> the outcome of this case turned on the ALJ's credibility determinations. Because the overwhelming majority of the medical evidence supports Plaintiff's testimony and Dr. Lam's opinion about Plaintiff's symptoms and functional capacity, the Court finds that the ALJ's disability determination was not supported by substantial evidence.

**D. Whether the Magistrate Judge erred in finding the ALJ was not required to resolve conflicts between the vocational expert's testimony and the Directory of Occupational Titles listings.**

Plaintiff maintains that the ALJ did not comply with Social Security Ruling 00-4p, which requires the ALJ to ask the VE if his or her testimony is consistent with the Directory of Occupational Titles ("DOT"). The ALJ must then solicit a reasonable explanation for any "apparent unresolved conflict between VE or [vocational specialist] evidence and the DOT." If the VE cannot provide a reasonable explanation for the conflict, the ALJ cannot rely upon the VE's testimony to support his or her finding regarding disability.

The VE in this case testified that a person with the functional limitations set forth in

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<sup>59</sup> Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983).

<sup>60</sup> VE's hearing testimony. Record at 67.

the ALJ's hypothetical could work as a cafeteria cashier, a ticket checker, or an alarm system monitor.<sup>61</sup> He also testified that there would be other positions but did not name them.<sup>62</sup>

Plaintiff notes that the DOT considers the position of cashier to be a semi-skilled occupation, which conflicts with the VE's characterization of the position as unskilled. However, since the VE suggested additional occupations, the failure to resolve this conflict does not constitute reversible error.

There is no conflict between the occupational evidence provided by the VE and the DOT information regarding the position of ticket checker. The VE and the DOT both consider this a sedentary, unskilled occupation. In identifying this as a potential occupation for Plaintiff, the VE considered all of the functional limitations set forth in the hypothetical. A hypothetical posed to the VE need only include the limitations found by the ALJ to be supported by the record.<sup>63</sup> The ALJ made a specific finding that Plaintiff did not have an impairment of the cervical spine, based on the lack of objective evidence of such impairment. Based on this finding, the ALJ posed an appropriate hypothetical to the VE, and no conflict between the expert's testimony and the DOT was apparent.

Plaintiff has not asked this Court to review whether the ALJ erred in finding Plaintiff had no impairment to the cervical spine, and yet asks the Court to assume that the ALJ did make such an error in analyzing whether the ALJ failed to comply with SSR 00-4p. The Court cannot make such an assumption.

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<sup>61</sup> Id. at 66.

<sup>62</sup> Id.

<sup>63</sup> Chrupacala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987).

#### IV. CONCLUSION

In this case, the Court reviewed a well developed record, and an ALJ decision which failed to adequately credit, or explain why he discredited, the opinion of a treating doctor and which also failed to reconcile conflicting medical evidence. The ALJ failed to give due consideration to the objective medical evidence when he found that Plaintiff was not fully credible. The ALJ's finding regarding Plaintiff's functional capacity was not clearly supported by substantial evidence. The Court found that substantial evidence on the record as a whole indicates that Plaintiff is disabled and entitled to benefits.

The Court has carefully considered whether this case should be remanded for further proceedings or reversed, with summary judgment entered for Plaintiff.<sup>64</sup> In Gilliland, the Third Circuit held that the decision to award benefits is appropriate “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. When faced with such cases, it is unreasonable for the court to give the ALJ another opportunity to review new evidence concerning disability because the administrative proceeding would only result in further delay in the receipt of benefits.”<sup>65</sup> In Gilliland, the ALJ ignored the opinion of a treating doctor who believed that the claimant was not able to work in any occupation, and failed to cite relevant medical evidence which contradicted the opinion of the treating doctor. In other similar cases, the Third Circuit has opted to remand rather

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<sup>64</sup> “The court shall have the power to enter, upon the pleadings and a transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g).

<sup>65</sup> Gilliland, 786 F.2d at 184-185 (citations omitted).

than award benefits,<sup>66</sup> but the court has not overruled its holding in Gilliland. This suggests that the decision to award benefits or remand this case is left to the discretion of this Court.

The medical record in this case was fully developed. Plaintiff met his initial burden of proving he was unable to return to his former occupation as a roofer. The ALJ's finding that Plaintiff has the residual functional capacity to perform sedentary work was not supported by substantial evidence. The medical evidence indicates that Plaintiff is disabled and entitled to benefits. Accordingly, the determination of the Commissioner is reversed, and Plaintiff's Motion for Summary Judgment is granted. The Commissioner is ordered to award DIB to Plaintiff, retroactive to the date of his application for benefits.

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<sup>66</sup> See Fargnoli v. Massanari, 247 F.3d 34 (3d Cir. 2001) (the court remanded when the medical record was well-developed but the ALJ failed to adequately evaluate all relevant evidence and explain the basis for his conclusions, and failed to explain his assessment of the credibility of, and the weight given to, the medical evidence and opinion of the plaintiff's treating doctors); Burnett v. Commissioner of Social Security Admin., 220 F.3d 112 (3d Cir. 2000) (remand was required to allow the ALJ to evaluate all the medical evidence and explain his conciliation of contradictory medical evidence).

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

**JEROME MEREDITH,**  
**Plaintiff**

v.

**JO ANNE BARNHART**  
**COMMISSIONER OF THE SOCIAL**  
**SECURITY ADMINISTRATION,**  
**Defendant**

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**Civil Action No. 03-6422**

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of October, 2004, upon careful consideration of Plaintiff's Motion for Summary Judgment, [Doc. #6], Defendant's Motion for Summary Judgment [Doc. #7], the Report and Recommendation of United States Magistrate Judge Jacob P. Hart [Doc. #11], and Plaintiff's Objections thereto [Doc. #14], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED**:

1. Plaintiff's Objections to the R & R are sustained in part and denied in part;
2. The R & R is not approved;
3. Plaintiff's Motion for Summary Judgment is **GRANTED**;
4. Defendant's Motion for Summary Judgment is **DENIED**;
5. The Clerk of the Court is hereby directed to **CLOSE** this case.

It is so **ORDERED**.

**BY THE COURT:**

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**CYNTHIA J. RUFÉ, J.**