

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

STEVEN ALLEN,
 Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
 Defendant.

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CIVIL NO. 06-CV-018

MEMORANDUM OPINION & ORDER

RUFE, J.

May 1, 2007

Presently before the Court is an appeal from the denial of Social Security disability benefits to Plaintiff Steven Allen. After making numerous claims of disability in two separate petitions for benefits, Plaintiff argues on appeal only that the Administrative Law Judge (“ALJ”) erred by not finding him disabled based on his mental impairments. After careful review of the entire record, the parties’ submissions, and the applicable law, the Court concludes that this matter must be remanded so that the record can be more fully developed. Accordingly, for the reasons that follow, the Court will remand the case so that Plaintiff’s current mental condition can be properly evaluated and the Commissioner’s findings can be properly articulated.

I. FACTUAL & PROCEDURAL HISTORY

Plaintiff Steven Allen is a 49-year-old man who suffers from a variety of physical and mental impairments. His life has been a troubled one. After completing the ninth grade, he dropped out of school and failed to earn a high school diploma.¹ Between September 1982 and March 1993,

¹ R. at 160.

he was incarcerated in Pennsylvania state prison as the result of a conviction for manslaughter.² It appears that the conviction arose out of a barroom fight in which he either stabbed or shot another patron.³ After his release in 1993, Plaintiff worked as a machine operator for two years, a laborer/machine operator for two-and-a-half years, and an airport-van chauffeur for one year.⁴

On June 6, 2000, after leaving his position as a chauffeur, Plaintiff filed an Application for Disability Insurance Benefits.⁵ In his application, Plaintiff alleged that he had been disabled since November 12, 1999, as a result of: back, shoulder, and spine pain; headaches; dizziness; problems concentrating; flashbacks; and auditory and visual hallucinations.⁶ The application was denied at the initial-review level,⁷ and Plaintiff filed a timely request for a hearing before an ALJ.⁸ A hearing was held on September 12, 2001, at which evidence and testimony were presented.⁹ On November 30, 2001, the ALJ issued his determination denying Plaintiff's disability claim.¹⁰ Plaintiff timely appealed the decision.

On March 20, 2002, while the appeal was still pending, Plaintiff filed another

² R. at 109.

³ R. at 161, 297.

⁴ R. at 199.

⁵ R. at 144.

⁶ R. at 154.

⁷ R. at 427.

⁸ R. at 35.

⁹ R. at 83.

¹⁰ R. at 35-44.

application for benefits.¹¹ Because Plaintiff claimed that his disability eligibility was based on a mental impairment, the Commissioner chose and appointed a consultative examining mental-health expert, Dr. Patrick McHugh, to examine Plaintiff and to determine his mental-health status.¹² As a result of his examination, Dr. McHugh diagnosed Plaintiff as suffering from paranoid schizophrenia, and opined that he had a poor prognosis.¹³ Dr. John Chiampi, a reviewing-agency mental-health expert, considered Dr. McHugh's report and diagnosis, and found that Plaintiff met the severity requirements of section 12.04 of the Listing of Impairments, entitled "Affective Disorders."¹⁴ Consequently, in July 2002, Plaintiff was notified that he had been found disabled and that he was therefore entitled to benefits retroactive to March 2001 based on his second application.¹⁵

Irrespective of this decision, the appeal of the ALJ's decision on Plaintiff's first application was still pending with the Appeals Council. In August 2003, the Appeals Council ruled on the appeal, vacating the ALJ's decision and, at the same time, vacating the determination of eligibility made in July 2002.¹⁶ The Appeals Council consolidated both claims and remanded the case for further proceedings.¹⁷ In doing so, the Appeals Council noted the inconsistencies in the record concerning Plaintiff's mental impairment: while Dr. Chiampi found that Plaintiff's impairment met Listing 12.04 and a Psychiatric Review Technique Form ("PRTF") reflected this

¹¹ R. at 15.

¹² R. at 379.

¹³ R. at 378–83.

¹⁴ R. at 386.

¹⁵ R. at 137.

¹⁶ R. at 130–32.

¹⁷ R. at 130.

finding, a PRTF completed during the evaluation of Plaintiff's first application indicated a non-severe mental impairment.¹⁸ As a result, the Appeals Council found that, "from a longitudinal perspective[,] the current record d[id] not support either an allowance or denial determination, and further development [was] required."¹⁹ The Appeals Council then specifically instructed the ALJ to:

Obtain additional evidence concerning the claimant's medical impairment in order to complete the administrative record in accordance with the regulatory standards regarding consultative examinations and existing medical evidence (20 C.F.R. 404.1512–1513 and 416.912–913). The additional evidence may include, if warranted and available, a consultative psychiatric examination with psychological testing and medical source statements about what the claimant can still do despite the impairments. . . .

Obtain supplemental evidence from a medical expert to clarify the severity of the claimant's impairments and determine whether the impairments meet or equal the severity of an impairment listed in Appendix 1, Subpart P, Regulations No. 4, and his functional capacity in accordance with Social Security Ruling 96-8.²⁰

Upon remand, the case was reheard by the ALJ who had initially denied benefits based on the first application.²¹ Before the hearing was held, the ALJ acquired medical records from Northwestern Human Services ("NHS"), where Plaintiff was being treated for his alleged mental impairments. Thereafter, a hearing was held on May 20, 2004.²² At the hearing, the ALJ heard testimony from Dr. George Bell, a consulting medical expert, as well as Plaintiff and his

¹⁸ R. at 131.

¹⁹ R. at 131.

²⁰ R. at 131.

²¹ R. at 15.

²² R. at 48.

acquaintance, Maria Hart.²³

On July 12, 2004, the ALJ issued his decision. In a section entitled “Findings,” the ALJ stated that Plaintiff’s “depression, hypertension, disorders of the back, shoulder pain are considered severe,” but that they “do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.”²⁴ The ALJ did not make an official finding concerning Plaintiff’s alleged paranoid schizophrenia or schizoaffective disorder,²⁵ but implied in the body of his decision that Plaintiff suffered from paranoid ideation that was not as severe as reported, and that his condition improved with medication to a point where any impairment would not be considered severe.²⁶ The ALJ discounted Dr. McHugh’s report and relied upon the testifying medical expert, Dr. Bell, only inasmuch as he confirmed that Plaintiff may not meet the relevant listings if Dr. McHugh’s report was ignored entirely.²⁷ Ultimately, the ALJ found that Plaintiff was not eligible for Disability Insurance Benefits or Supplemental Security Income payments.²⁸

Plaintiff requested review of the ALJ’s decision, but the Appeals Council denied his request and allowed the decision to stand as the Commissioner’s final decision.²⁹ Thereafter, Plaintiff filed the instant action. The parties’ cross-motions for summary judgment are now ready for review.

²³ R. at 48, 49.

²⁴ R. at 29.

²⁵ R. at 29.

²⁶ R. at 24.

²⁷ R. at 23–24.

²⁸ R. at 30.

²⁹ R. at 6.

II. DISCUSSION

Generally, the Court's role in reviewing the final disability determination made by an ALJ and adopted by the Commissioner, is to consider whether the decision is supported by substantial evidence.³⁰ If the final determination is supported by substantial evidence, then the Court must affirm.³¹ If it is not, then the Court may either reverse the decision or remand for further proceedings.³²

In making his disability determination, however, an ALJ has a duty to develop the record fully and fairly.³³ This duty exists whether or not the claimant is represented by counsel at the ALJ-hearing level.³⁴ Sometimes, this duty requires the ALJ to order an initial or additional consultative examination to more fully develop the record.³⁵ According to the Commissioner's regulations, a consultative examination is "require[d]" when "[a] conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved, . . . or [t]here is an indication of a change in [the claimant's] condition that is likely to affect [his or her] ability to work, but the current severity of [the] impairment is not established."³⁶ Furthermore, when there is not sufficient medical evidence

³⁰ See, e.g., Fargnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001).

³¹ 42 U.S.C. § 405(g) (2000).

³² Id. § 405(g).

³³ See, e.g., Ventura v. Shalala, 55 F.3d 900, 902 (3d Cir. 1995); Maniaci v. Apfel, 27 F. Supp. 2d 554, 559 (E.D. Pa. 1998); Rivera v. Shalala, Civ. A. No. 94-2740, 1995 WL 495944, at *7 (D.N.J. July 26, 1995); see also 20 C.F.R. 404.1512(d)-(f) (2007).

³⁴ See, e.g., Warner v. Heckler, 722 F.2d 428, 431 (8th Cir. 1983); Schwartz v. Halter, 134 F. Supp. 2d 640, 656 (E.D. Pa. 2001) (citing Dobrowolsky v. Califano, 606 F.2d 403, 407 (3d Cir. 1979)).

³⁵ See 20 C.F.R. § 404.1519a(b)(4) (2007).

³⁶ Id. § 404.1519a(b)(4)-(5).

in the record to determine whether the claimant is disabled, “[i]t is reversible error for an ALJ not to order a consultative examination when such an evaluation is necessary for the ALJ to make an informed decision.”³⁷

Additionally, when a case is remanded to an ALJ from the Appeals Council with instructions to take certain actions, the ALJ “shall take any action that is ordered by the Appeals Council and may take any additional action that is not inconsistent with the Appeals Council’s remand order.”³⁸ Failing to abide by the Appeals Council’s instructions may also constitute reversible error.³⁹

In the instant case, the ALJ did not fulfill his duty to fully and fairly develop the record before determining that Plaintiff is not disabled and, therefore, not eligible for benefits. Moreover, the ALJ did not abide by the mandates and recommendations included in the Appeals Council’s Remand Order, specifically directing him to further develop the record through additional medical evaluation and medical source statements. Because these errors render the ALJ’s decision unreliable, the Court is compelled to remand this case for further development of the record so that the inconsistencies and ambiguities concerning the functional limitations imposed by Plaintiff’s mental impairment and the potential improvement provided by medication can be adequately considered.

³⁷ E.g., Dozier v. Heckler, 754 F.2d 274, 276 (8th Cir. 1985); Holladay v. Bowen, 848 F.2d 1206, 1209 (11th Cir. 1988) (internal quotation omitted).

³⁸ 20 C.F.R. §§ 404.977(b), 416.1477(b) (2007); see also Lok v. Barnhart, Civ. A. No. 04-3528, 2005 WL 2323229, at *6 (E.D. Pa. Sept. 19, 2005).

³⁹ See Lok, 2005 WL 2323229, at *7; see also Sullivan v. Hudson, 490 U.S. 877, 885 (U.S. 1989) (establishing the analogous principle that deviation from a district court’s remand order in a social-security-disability case is legal error mandating reversal).

When the Appeals Council vacated both the initial finding of ineligibility and the subsequent finding of eligibility, it specifically noted that the record did “not support either an allowance or denial determination, and further development [was] necessary.”⁴⁰ As a result, it instructed the ALJ to obtain additional medical evidence to complete the record, and identified appropriate sources for further development of the record. The Appeals Council specifically requested that the ALJ obtain an additional “consultative psychiatric examination with psychological testing and medical source statements about what the claimant can still do despite the impairments.”⁴¹ The Appeals Council made this suggestion, even though it knew that a consultative examination had previously been conducted by Dr. McHugh, because the record contained some ambiguity concerning Plaintiff’s then-current mental-health status. In particular, there were conflicts and inconsistencies between evidence developed for Plaintiff’s first application and evidence developed for his second application. As the Appeals Council noted, a disability determination was impossible based on the then-existing evidence.

But rather than order an additional consultative examination to compare with Dr. McHugh’s June 2002 evaluation, the ALJ obtained no additional medical evaluations. The only additional documentary evidence obtained for the purposes of the proceedings on remand were medical records provided by Northwestern Human Services (“NHS”), covering the period between January 2001 and December 2003, leaving the ALJ without evidence of Plaintiff’s condition for the

⁴⁰ R. at 131.

⁴¹ R. at 131.

seven months preceding the final disability determination.⁴² At the May 2004 hearing, the ALJ elicited testimony from a medical expert, Dr. George Bell, but his observations were not based on an examination of Plaintiff,⁴³ and they confirmed Dr. McHugh's impressions, though perhaps to a lesser degree.⁴⁴

In light of the Appeals Council's explicit directive to obtain additional evidence, including a consultative examination, and the need for such additional evidence to resolve outstanding inconsistencies in the record, the Court finds that the ALJ did not fully and fairly complete the record. Instead, he considered only Dr. McHugh's two-year-old report, but completely discounted its findings and conclusions, as well as all other findings based on its conclusions. According to the ALJ, Dr. McHugh's report was "so extreme and inconsistent with the overall record that it cannot be credited and no weight [can be] afforded it."⁴⁵ But it was just this inconsistency that the Appeals Council sought to resolve by directing the ALJ to complete the record with an additional consultative examination and supplemental medical evidence from medical experts.

Under these circumstances, the ALJ could not make an informed decision without ordering an additional consultative examination that would provide a better indication from a longitudinal perspective of Plaintiff's mental health and the resulting functional limitations caused by any mental impairment. Considering the lapse of time between the first application, the second

⁴² R. at 3. Those records overwhelmingly evidence the existence of a serious mental impairment. For example, Plaintiff consistently reported paranoia as well as auditory and visual hallucinations. See, e.g., R. at 409, 414, 417–23. Plaintiff was treated with serious antipsychotic medications, such as Risperdal, showing various levels of success with the medication. See R. at 417–23.

⁴³ R. at 53–64.

⁴⁴ R. at 63 (rating Plaintiff as mild for activities of daily living, moderate for social functioning, moderate for concentration, and one or two for episodes of decompensation, even without considering Dr. McHugh's report).

⁴⁵ R. at 20.

application, and the final determination in May 2004—approximately four years—the ALJ could not reach a decision, supported by substantial evidence, without first complying with the Appeals Council’s directive and obtaining an additional consultative examination, conducted by an unbiased medical expert chosen by the Commissioner.

III. CONCLUSION

Accordingly, this Court is compelled to vacate the Commissioner’s final decision and remand this case for further development of the record. At this juncture, the Court cannot and will not address Plaintiff’s substantive arguments that the ALJ inappropriately discounted Dr. McHugh’s report and ignored the testimony that he and his acquaintance offered at the May 2004 hearing. In the absence of a record fully and fairly developed under the Commissioner’s regulations, the Court must remand, rather than evaluate the ALJ’s ultimate decision, which is based on an incomplete record. The Court is not suggesting that, after a consultative examination is completed and additional medical records for the preceding three years are obtained, the denial of benefits will not be warranted. But this additional evidence must be obtained and considered in order for a final determination to be made in accordance with the regulations.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
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CIVIL NO. 06-CV-018

ORDER

AND NOW, this 1st day of May 2007, upon consideration of Plaintiff’s Brief and Motion for Summary Judgment [Doc. #13], Defendant’s Motion for Summary Judgment [Doc. # 16], Plaintiff’s Reply Brief [Doc. # 19], United States Magistrate Judge Jacob Hart’s Report & Recommendation [Doc. # 20], Plaintiff’s Objections thereto [Doc. # 21], and the Record in the above-captioned matter, it is hereby **ORDERED** that:

- (1) The Report & Recommendation is **NOT ADOPTED**;
- (2) Plaintiff’s Motion for Summary Judgment [Doc. # 13] is **GRANTED** inasmuch as it seeks remand for further proceedings, but **DENIED** in all other respects;
- (3) Defendant’s Motion for Summary Judgment [Doc. # 16] is **DENIED**;
- (4) The Commissioner’s decision denying Plaintiff benefits is **VACATED**;
- (5) The case is **REMANDED** to the Commissioner so that the Record can be fully and fairly developed in accordance with the Appeals Council’s August 25, 2003 Remand Order and the Commissioner’s regulations;

- (6) Specifically, the Commissioner **SHALL**:
- (a) order an independent consultative examination to evaluate Plaintiff's current mental-health status and any functional limitations resulting therefrom, including consideration of the effects, both beneficial and adverse, of any prescribed medication;
 - (b) obtain any new medical records documenting Plaintiff's mental health between December 2003 and the present;
 - (c) provide Plaintiff with an opportunity for a hearing;
 - (d) document updated findings and conclusions pursuant to the special technique for evaluating mental impairments outlined in 20 C.F.R. § 404.1520a.

It is **FURTHER ORDERED** that the Clerk of Court shall **CLOSE** this case for statistical purposes.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.