

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

JOSEPH C. DELL'OSA, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
KENNETH S. APFEL, Commissioner :
of Social Security, :
Defendant : NO. 98-1638

MEMORANDUM ORDER

Plaintiff has appealed defendant's decision to deny his application for social security disability benefits. The parties submitted cross-motions for summary judgment. The Magistrate Judge rendered a thorough report and recommended that defendant's motion be granted. Plaintiff filed timely objections on April 8, 1999 and requested an order directing defendant to find him disabled or remanding the case for further appropriate administrative proceedings.

The court cannot conscientiously conclude on the record presented that plaintiff is entitled to a finding of disability. Plaintiff's objections, however, are well-founded.

Dr. Tardibuono made a "provisional" diagnosis of attention deficit disorder. Dr. Mayekar's diagnosis, however, was not provisional. Plaintiff was found to have continuing concentration problems and given the supported finding of the ALJ regarding plaintiff's good work attendance, this would appear to

have something to do with his inability to retain more than thirty jobs over a fifteen year period. The ALJ should adequately consider the limitations from that disorder.

The Magistrate Judge not unreasonably hypothesized that "it appears" the ALJ gave little weight to Dr. Mayekar's GAF score for plaintiff in view of other evidence. The Magistrate Judge should not be forced to speculate.

Dr. Mayekar reported that plaintiff's GAF score was 50 not only at intake but for the prior year. Dr. Donovan reported a GAF score of 35 and also described functional limitations seemingly incompatible with sustained gainful employment. Even Dr. Tardibuono indicated he would need further evaluation and testing to identify any appropriate area of employment for plaintiff. The ALJ should make clear whether he evaluated the GAF score reported by Dr. Mayekar which indicated plaintiff was incapable of working and why he attached so little weight to it.

The ALJ could reasonably attach less weight to Dr. Donovan's opinion than would ordinarily be accorded to the opinion of a treating physician because she had treated plaintiff for only two months. The implication that Dr. Donovan rendered a false opinion to help plaintiff secure a public housing benefit is another matter. It is based on assumptions that Dr. Donovan was aware of the notation by a therapist regarding plaintiff's chances for public housing, that she credited it and that she was

influenced by it to alter or misreport her true medical opinion.* This is a serious implication to base upon assumption or speculation. Absent other evidence or opportunity for explanation on the point, the ALJ should not have discounted the opinion of a treating physician for this reason.

There is support for the ALJ's finding that plaintiff's emotional condition was responsive to medication. Plaintiff's testimony that the medication "doesn't help my concentration," however, is supported by the medical reports. Also, the ALJ should have assessed the effects of the medication on plaintiff's functioning. The ALJ states he considered, inter alia, the side effects of plaintiff's medication but does not address his testimony that it respectively made him drowsy and caused his body "to drag."

The ALJ should also reassess his findings in the PRTF and consider whether additional factors should appropriately be included in hypotheticals to the VE in view of the foregoing.

ACCORDINGLY, this day of April, 1999, **IT IS**
HEREBY ORDERED that insofar as it recommends the granting of defendant's motion for summary judgment, the Report and Recommendation is not adopted; defendant's motion for summary

* The ALJ referred to the therapist's notation of advice that qualification for SSI "would" place plaintiff "at the top" of the housing list. The notation actually states that this "may" move plaintiff up on the list.

judgment is **DENIED**; plaintiff's motion for summary judgment is **DENIED**; and, this case is **REMANDED** to the Commissioner for appropriate administrative action consistent with the foregoing.

BY THE COURT:

JAY C. WALDMAN, J.