

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

WILLIAM ROBERTS, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
LARRY MASSANARI, :
Acting Commissioner of the :
Social Security Administration, :
Defendant. : No. 00-6131

MEMORANDUM AND ORDER

J. M. KELLY, J. DECEMBER , 2001

Presently before the Court are Cross-Motions For Summary Judgment filed by the Plaintiff, William Roberts and Defendant, Larry Massanari, Acting Commissioner of the Social Security Administration ("Commissioner"); the Report and Recommendation of United States Magistrate Judge and; Objections To The Report And Recommendation of the Magistrate Judge filed by the Plaintiff. Plaintiff seeks to have the decision of the Commissioner reversed and have this matter remanded to the Commissioner for further proceedings. For the following reasons, Plaintiff's Motion is granted. Although portions of the Magistrate's Report and Recommendation are approved and adopted, this Court finds the Defendant has misapplied the legal standards regarding the severe impediment requirement. To the extent that the Magistrate Judge's Report and Recommendation approves of the Defendant's determination that Plaintiff does not have a severe impediment, the Court rejects the Report and Recommendation.

I. BACKGROUND

A. Procedural History

The Magistrate Judge's Report and Recommendation clearly outlines the Procedural history of this case. This Court adopts and approves the Magistrate's recitation of the procedural history, briefly summarizing the procedural history and adding the following. On May 2, 1996, Plaintiff filed his first application for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act ("Act"), claiming disability since April 23, 1996 due to head, chest, spine, and neck pain, arthritis, heart problems, high blood pressure, cholesterol and prostate problems. His application was denied and he did not appeal. On January 22, 1997, Plaintiff filed a second application for SSI, which was denied initially and upon reconsideration. Upon Plaintiff's request, a hearing was held on April 23, 1998 before an Administrative Law Judge ("ALJ"). On October 7, 1998, the ALJ denied Plaintiff's claim for benefits. Plaintiff's request for a review by the Appeals Council was denied, so the ALJ decision became the final decision of the Commissioner.

Having exhausted his administrative remedies, Plaintiff filed this action seeking judicial review of the Commissioner's denial of his claim, as provided under 42 U.S.C. § 405(g)

(1994).¹ Each side filed for summary judgment and on July 30, 2001, this Court referred this matter to a Magistrate Judge for a Report and Recommendation. On October 31, 2001, the Magistrate Judge recommended summary judgment in favor of the Defendant, finding there was substantial evidence to support the ALJ's determination that Plaintiff's impairments were non-severe and that he was therefore not under a disability as defined under the Act. Pursuant to Local Rule 72.1 IV(b), Plaintiff filed Objections to the Report and Recommendation of the Magistrate Judge, arguing that the Magistrate Judge erred by concluding: 1) that Plaintiff does not suffer from a severe heart impairment; 2) that Plaintiff does not suffer from Severe Degenerative Disc Disease; 3) that Plaintiff's Aortic Aneurysm does not

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42 U.S.C. § 405(g) provides in pertinent part: Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, . . . may obtain a review of such decision by a civil action. . . . Such action shall be brought in [a] district court of the United States As part of the Commissioner's answer the Commissioner of social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and 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. The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive, The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions.

significantly limits his Ability to Work; 4) that the ALJ properly rejected Plaintiff's Treating Physician's Opinion that Plaintiff could perform no more than Sedentary work; and 5) that the ALJ did not err in rejecting Plaintiff's subjective complaints of pain.

B. Plaintiff's History

The Court need not recite the detailed facts surrounding the Plaintiff's lifestyle and medical and employment history since they are clearly outlined in the Magistrate Judge's Report and Recommendation. Instead, the Court approves and adopts the factual history portion of the Report and Recommendation, while briefly stating some biographical facts and adding the following. Plaintiff is a black male, born on November 13, 1934.² At the time of the administrative hearing, he was sixty-three years old. He is unmarried and lives with his eighty-five year old mother and eighty-six old step-father in a two-story house. Public assistance is his sole means of financial support. He has a twelfth grade education and no past relevant work background. He has been unemployed since 1982 and leads a sedentary lifestyle.

²As noted by the Magistrate Judge, under 20 C.F.R. § 416.963(d) (West 2001), Plaintiff is classified as a "person of advanced age," whose age is considered to significantly affect his ability to do substantial gainful activity. A person close to retirement age (60 to 64) who has a severe impairment, is not considered to be able to adjust to sedentary or light work unless he has skills which are highly marketable.

Plaintiff suffers from various ailments and complains of various pains and aches. Medically, it is undisputed that Plaintiff suffers from an abdominal aortic aneurysm, hypertension and an enlarged prostate. In addition, there is some evidence that Plaintiff suffers from degenerative joint disease. Plaintiff's medical records, SSI applications, and ALJ testimony show Plaintiff has, over the years, consistently complained of chest pains, headaches, sinusitis, reflux, and problems with his neck and knees. The record also shows that Plaintiff has made repeated visits to the cardiologist regarding the pain and tightness in his chest. There is, however, no objective medical evidence that Plaintiff suffers from any severe cardiac problems.

II. STANDARD OF REVIEW

The role of this Court in reviewing the Commissioner's decisions regarding SSI claims is limited to determining whether there was substantial evidence in the record to support the Commissioner's final decisions. Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999) (citations omitted). Interpretations of legal questions and the Agency's application of law to the facts are, however, plenary. Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (3d Cir. 1986).

III. DISCUSSION

The purpose of the Social Security Act, in its broadest terms, is to provide for general welfare and to act as a kind of social insurance. Bubble Room Inc. v. U.S., 159 F.3d 553, 554 (Fed. Cir. 1998). Title XVI of the Act makes SSI available to those who are indigent and disabled. See 42 U.S.C. § 1382(a). In order to qualify for SSI, the claimant must be disabled as defined under the Act. 20 C.F.R. § 416.905 (West 2001) states that a claimant is disabled if he is unable to engage in:

any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or 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 twelve months.

In evaluating SSI disability claims, the Social Security Administration uses a five-step sequential evaluation codified under 20 C.F.R. § 416.920. Following is a summary:

(1) Step One: The Commissioner must determine whether the claimant is currently engaged in substantial gainful activity. 20 C.F.R. § 1520(a). If a claimant is found to be engaged in substantial activity, the disability claim will be denied.

(2) Step Two: The Commissioner must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that her impairments are "severe," she is ineligible for disability benefits.

(3) Step Three: The Commissioner compares the medical evidence of the claimant's impairment to a list of impairments presumed severe enough to preclude any gainful work. If a claimant does not suffer from a

listed impairment or its equivalent, the analysis proceeds to steps four and five.

(4) Step Four: The ALJ must then determine whether the claimant retains the residual functional capacity to perform her past relevant work. The claimant bears the burden of demonstrating an inability to return to her past relevant work. If the claimant is unable to resume her former occupation, the evaluation moves to the final step.

(5) Step Five: At this stage, the burden of production shifts to the Commissioner, who must demonstrate the claimant is capable of performing other available work in order to deny a claim of disability.

See Plummer v. Apfel, 186 F.3d 422, 428 (3d Cir. 1998). Here, the ALJ found that the Plaintiff did not have any severe impediments as required under step two of the five-step sequential analysis. As such, the sole issue for this Court at this time is whether the ALJ had substantial evidence to decide that the Plaintiff did not have any severe impediments.

In order to show severity, the impediments must be of sufficient magnitude to significantly limit the individual's physical or mental ability to do basic work activities. 20 C.F.R. § 416.920(c). The ability to do basic work activities is the aptitude and ability to do most jobs. § 416.921(b). Such abilities include:

walking, standing, sitting, lifting, pulling, reaching, carrying, or handling; seeing, hearing and speaking; understanding, carrying out and remembering simple instructions; use of judgment, responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

§ 416.921(b)(1)-(6).

The severity step, however, should only be used to screen out de minimis claims.³ See Bailey v. Sullivan, 885 F.2d 52, 56-7 (3d Cir. 1989). That the severity requirement under step two is a way to filter out only the de minimis claims makes sense in light of the fact that under the five-step sequential analysis, a claimant must overcome each one of the five hurdles to be deemed disabled. In fact, the Commissioner has stated:

Great care should be exercised in applying the not severe concept. If an adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation process should not end with the not severe evaluation step. Rather, it should be continued.

Social Security Rulings ("SSR") 85-28 (1985).⁴ Furthermore, if the ALJ finds the impairments

cause a limitation or restriction having more than a minimal effect on an individual's ability to do basic work activities, the adjudicator must find that the impairments is severe and proceed to the next step in the process even if the objective medical evidence would not in itself establish that the impairment is severe.

³In 1978, when the wording of the regulations changed from "slight impairment" to "not . . . severe," the Secretary stated that the change was not intended to alter the levels of severity for a finding of disabled or not disabled. Bailey, 885 F.2 at 56 (citing 43 Fed. Reg. 9279 (1978)).

⁴Social Security Rulings are agency rulings published "under the authority of the Commissioner of Social Security" and "are binding on all components of the Social Security Administration." 20 C.F.R. § 402.35(b)(1).

SSR 96-3p (1996).

In addition to the above, "[t]he ALJ must consider the combined effects of multiple impairments, regardless of their severity." See Burnett v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 122 (3d Cir. 2000). The ALJ must also give serious consideration to subjective complaints of pain, even where those complaints may not be supported by medical evidence. Roman v. Apfel, No. 98-226-SLR, 1999 WL 825601, at *12 (D. Del. 1999). There need not be objective evidence of the pain itself, only "objective medical evidence of some condition that could reasonably produce pain." Id.

The Court agrees with the Magistrate's Report and Recommendation ("RR") to the extent that the objective medical evidence reveals no severe cardiac problems with the Plaintiff's heart and that Plaintiff does not have severe degenerative disc disease. (RR 9-10). As such, Plaintiff's first two objections are overruled. Plaintiff's other objections, however, have some merit. The Court finds that the ALJ, by failing to give proper weight to the extent of the Plaintiff's chest pains, the combined effects of the Plaintiff's ailments, the Plaintiff's consistent and persistent complaints of pain, and the treating physician's opinion, applied a far more stringent standard to determine the severe impediment under step two of the five-step sequential analysis than is warranted.

There is no dispute that Plaintiff suffers from pain and extreme discomfort in his chest area. As the ALJ itself acknowledged, the medical evidence reveals that the chest pains are most likely musculoskeletal in nature or possibly stem from the abdominal aortic aneurysm. The fact that the chest pains are not related to a cardiac condition does not mean that the Plaintiff's pain is any less real. During the ALJ hearing, Plaintiff described his chest pain in this way:

when I get up, when I rise up, this pain it feels like something has got hold of me and pulling me from here. From my neck down here it's pulling me right now. It's pulling like, like something is sitting on - like an elephant sitting right here right now (Tr. 30).

In fact, Plaintiff's chest pain was so severe at one point that he underwent a heart catheterization in 1982, thinking he had suffered a heart attack. Although the test results subsequently revealed Plaintiff did not suffer a heart attack, Plaintiff continued to suffer pain in his chest area. Between May of 1994 and November 1997, Plaintiff was seen by cardiologist Pasquale Nestico at least ten times, each time complaining of chest pain and tightness.

In addition to the chest pains, Plaintiff suffers from other ailments which could also produce pain and discomfort. The ALJ found Plaintiff suffers from a history of abdominal aneurysm difficulty, benign prostate, and complained of neck, head and

hand difficulty (Tr. 14-15, Findings No. 2 and 4). There is also some evidence that Plaintiff suffers from arthritis and disc disease. While the ALJ had substantial evidence to conclude that each medical condition standing alone was not severe, it failed to consider the combined effects of these ailments on the Plaintiff's ability to perform basic work-related activities.

Furthermore, the ALJ failed to give proper weight to Plaintiff's subjective complaints of pain including his chest pains, abdominal pains, headaches, and difficulty with his hands and knees. In rejecting Plaintiff's subjective complaints of pain, the ALJ merely makes a list of the Plaintiff's daily activities, such as walking, watching T.V., the occasional drum playing and ability to keep his room neat, stating these are not the type of activities in which a person suffering from disabling pain engages. (Tr. 14). That Plaintiff is able to engage in these sedentary activities does not indicate that he does not in fact suffer disabling pain and discomfort, even where the medical cause has yet to be diagnosed. Moreover, his treating physician's opinion confirms the Plaintiff's claim that he can perform no more than sedentary work.

The above discussion reveals that rather than treating step two as a way to filter out de minimis claims, the ALJ here applied a more stringent standard. As shown above, evidence shows that the Plaintiff suffers from more than de minimis pain

and discomfort. Step two was only meant to filter out those cases failing to show even a de minimis claim. Moreover, the ALJ's determination at step two that Plaintiff failed to satisfy the severe impediment requirement denies the Plaintiff his claim altogether. As such, it is imperative that the proper standard be applied at step two. Accordingly, Plaintiff's Motion to remand for further administrative proceedings is granted.

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LARRY MASSANARI,	:	
Acting Commissioner of the	:	
Social Security Administration,	:	
Defendant.	:	No. 00-6131

O R D E R

AND NOW, this day of December, 2001, in consideration of the Cross-Motions For Summary Judgment filed by the Plaintiff, William Roberts (Doc. No. 11) and Defendant, Larry Massanari, Acting Commissioner of the Social Security Administration (Doc. No. 15); the Report and Recommendation of U.S. Magistrate Judge (Doc. No. 17) and; Plaintiff's Objections to the Report and Recommendation of the U.S. Magistrate (Doc. No. 18), it is **ORDERED** that the Plaintiff's Motion to remand for further administrative proceedings is **GRANTED**.

1. The Magistrate's Report and Recommendation is APPROVED and ADOPTED IN PART and REJECTED IN PART.

2. The Plaintiff's Motion For Summary Judgment is GRANTED to the extent that it requests a remand for further administrative proceedings. This matter is REMANDED to the Commissioner of Social Security for further administrative

proceedings consistent with this Memorandum and Order.

3. The Defendant's Motion For Summary Judgment is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.