

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

JOHN WALLACE : CIVIL ACTION
 :
 v. :
 :
 :
 JO ANNE B. BARNHART, :
 COMMISSIONER OF SOCIAL :
 SECURITY : NO. 02-1267

MEMORANDUM

Giles, C.J.

July ____, 2003

I. INTRODUCTION

John Wallace brings this action pursuant to 42 U.S.C. § 405(g) for review of the final decision of the commissioner of Social Security, who denied his application for Social Security Disability Benefits and for Supplemental Security Income. The parties have filed cross motions for summary judgment. While the court denies plaintiff's argument for summary judgment, the court remands for development of the record to determine whether the plaintiff has a mental impairment that would affect his ability to perform competitive work. On remand, the ALJ shall reconsider plaintiff's eligibility for benefits in light of the record evidence and any additional medical evidence that may be submitted regarding plaintiff's mental status.

Plaintiff also asserts civil rights violations pursuant to 42 U.S.C. § 1983 against the Social Security Administration. The court dismisses these claims for lack of jurisdiction.

II. FACTUAL AND PROCEDURAL BACKGROUND

John Wallace is a 58 year old man. (Tr. 214.) He and his wife have eleven children

ranging in age from six to twenty-five years old. (Pl.'s Br., Docket #36, at 2-3.) Until 2000, all of the Wallace children were home schooled (Pl.'s Br., Docket #28, at 6), at which point the children were taken into custody with the Lehigh County Children and Youth Services, and placed in foster and adoptive homes. (Tr. 57.) Wallace has filed more than 30 lawsuits alleging deprivation of his rights. (Pl.'s Br., Docket # 36, at 3.)

Plaintiff was trained as a chemist and engineer, having developed products in the chemical engineering field. (Tr. 40.) From 1985 to 1990 he was employed full-time with a large chemical engineering company. (Tr. 41.) From 1990 to 1993, Wallace pursued short-term employment as a security guard. (Tr. 42.) During this time, he sometimes worked more than one job to support his large family. (Tr. 45.)

In 1993, Wallace alleges his health began to deteriorate and he suffered from fatigue that never abated. (Pl.'s Br., Docket #28, at 4.) Wallace contends that his deterioration in health coincides with his daughter's adverse reaction to a bad strain of polio vaccine. (Tr. 44.) Wallace alleges that his daughter's eventual death in 1994 was the result of this vaccine reaction.¹ (Tr. 118.) Wallace is unable to pay the cost of the tests necessary to confirm the presence of the virus. (Am. Compl. at 4.)

After allegedly contracting the virus, Wallace claims that he was not capable of performing his previous work and could not maintain his normal activities. (Tr. 43-44.) He

¹The autopsy report shows congestion and lymphoid hyperplasia in all lymph organs but the manner of death is undetermined. (Tr. 118.) Wallace has filed two lawsuits in federal claims court: one on behalf of his daughter and one on behalf of the family including a daughter not born until 1997. (Tr. 118.) He contends that the vaccine-strain polio virus was transferred to him and all his family members by contact with his infected daughter. (Pl.'s Br., Docket #34, at 2.) Wallace theorizes that the vaccine-strain polio virus passed from his wife and through the placental membrane to affect his unborn daughter. (Id.)

avers that he could not stay on his feet and, as a result, had to stop working in the chemical plant because it was too dangerous. (Tr. 45.) From 1994 to 1998, Wallace engaged in self-employment as an independent contractor. (Tr. 47, 48.) Plaintiff preferred to subcontract because he could work from home, work at his own pace, and was able to rest when necessary. (Tr. 48.) He stated he needed a lot of physical rest because his body was very fatigued and weak. (Tr. 48.) Plaintiff's income varied substantially from year to year, ranging between \$0 and \$57,000, due to the difficulty of finding short-term contract work. (Tr. 107, 49.) The last job plaintiff held was in September 1998 as a candy factory packer. (Tr. 49.) He held this job for about six weeks and had to quit because of exhaustion. (Tr. 121, 143.) Since 1998, plaintiff has not engaged in any substantial gainful activity. (Tr. 8.) The Wallaces received welfare assistance for a 6-month period from January to June 2000. (Pl.'s Br., Docket #35, at 2.) In November of 2000, Lehigh County determined that the Wallace's home was uninhabitable and charged the couple with endangering the welfare of their children. (Tr. 57.) Plaintiff and his wife were forced to leave their home and reside in a local motel. (Tr. 56-57.) Since that time, seven of the minor Wallace children have been in the custody of Lehigh County Children and Youth Services. (Tr. 57.)

Plaintiff filed applications for disability insurance benefits (DIB) and supplemental security benefits (SSI) on July 25, 2000, alleging that he became disabled on September 30, 1998. (Tr. 7.) Plaintiff's application was denied at the initial and reconsideration level. (Tr. 276, 284.) The ALJ hearing was held November 6, 2001. (Tr. 7.) ALJ left the record open for 48 hours at which time Plaintiff submitted additional evidence. (Tr. 209.) The ALJ rendered his decision on February 4, 2002. (Tr. 11.) Plaintiff filed this civil action seeking review of the

Commissioner's decision.

III. MEDICAL EVIDENCE AND HISTORY

Plaintiff alleges that sometime in 1993, he began to experience extreme fatigue that left him unable to work or function normally. (Tr. 43.) He slept twelve to fourteen hours a day, yet still felt exhausted by any activity, including walking, using the bathroom, or dressing. (Tr. 149, 155-56.) At the onset of this condition, he experienced dizziness, persistent headaches, and was often too weak to support himself standing. (Tr. 46, 51, 52.) Plaintiff stated that he was unable to continue working in a traditional setting due to the persistent and debilitating weakness, although he was able to work out of his home. (Tr. 47-48.) Since 1993, plaintiff has experienced varying symptoms related to his alleged illness, including fainting, dermatitis, feet and leg pain, arms and hand pain, pain around the abdomen or the base of the spine, and tinnitus (ringing in the ears). (Tr. 53-54, 58-60.) The symptoms varied over time, except that the extreme fatigue was constant. (Tr. 52.) Plaintiff can generally only be out of bed for a few hours at a time before needing to lie down again to rest. (Tr. 73.) Plaintiff testified that he has not felt refreshed in the past seven or eight years. (Tr. 63.) He claimed that he is exhausted by small activities, such as taking a shower or cooking a meal and that he must stay in bed for extended periods following these types of exertions. (Tr. 65.) In addition to his testimony at the ALJ hearing, Plaintiff supplemented the record with extensive personal notes and descriptions of his symptomatology. (Tr. 152-159, 162-163; Pl.'s Exhibits.)

Plaintiff refused to take any prescription medication for his symptoms. (Tr. 61.) He experienced partial kidney failure (Tr. 57) and did not believe his kidneys could process medications. He thinks that his kidneys and liver are "overloaded right now with the byproducts

of the virus,” so he drinks extra liquids to try and “flush” them out. (Tr. 61.) He refuses to take medications because “there are no drugs to treat a virus except for anti-viral drugs, which are probably worse [] for the side effects that they give you.” (Tr. 61.) Plaintiff does ingest vitamins, herbs, and teas. (Tr. 247.)

Despite the debilitating effects of his illness, there is no record evidence of doctor visits prior to 2000. Plaintiff testified that, during that time, he and his family did not have medical coverage and had to pay for doctors’ services in cash. (Tr. 55.) For a portion of 2000, through his wife’s employment, plaintiff obtained coverage and sought medical treatment. (Tr. 55.)

On January 20, 2000, plaintiff went to Dr. John Connelly of Connelly Family Practice for a general assessment and laboratory evaluation including immunology and virology. (Tr. 226.) The laboratory results revealed elevated IgE levels, which can indicate an atopic allergy. (Tr. 234.) Following this report, Dr. Connelly referred Plaintiff to Neil Feldman, D.O., a Board-certified allergy and immunology specialist. (Tr. 226.) Dr. Connelly diagnosed Plaintiff with lymphadenopathy and severe fatigue. (Tr. 226.) However, in March 2000, Dr. Connelly submitted a form to the Department of Public Welfare on which he asserted that the Plaintiff had an unlimited capacity to work full-time with accommodations despite his chronic illness. (Tr. 225.) Dr. Connelly also checked that the Plaintiff had physical limitations that required health sustaining medication. (Tr. 225.)

On February 23, 2000, Dr. Feldman of Allergy & Asthma Associates examined plaintiff to determine if his heightened IgE levels were the result of allergies. (Tr. 216.) Dr. Feldman’s physical examination revealed a facial erythematous rash, nonspecific dermatitis on the surfaces of both hands, and pustules on his forearms. (Tr. 217.) Allergy skin testing revealed strong

atopy for ragweed and moderate to strong atopy for dust, feathers, molds and grasses. (Tr. 217.) Dr. Feldman stated that Plaintiff's elevated IgE could have a variety of causes, including viral infection or allergy. (Tr. 217-18.) He recommended a 2-week trial of antihistamines to ensure the fatigue was not a result of allergies. (Tr. 217-18.) However, Plaintiff declined medication and wanted to find the "exact etiology for his symptom complex." (Tr. 218.) Dr. Feldman also noted that Plaintiff may need a neurological work-up in the future. (Tr. 218.)

On April 18, 2000, based upon a review of the evidence of record at this point, a state agency physician completed a Physical Residual Functional Capacity Assessment for the Plaintiff. (Tr. 235.) The state agency physician found no extreme exertional limitations and found that plaintiff was capable of sitting, with normal breaks, for six hours in an eight-hour work day, that he could stand or walk six hours in an eight-hour work day, and that he could frequently lift items weighing up to twenty-five pounds. (Tr. 236.) He found no postural, manipulative, visual, communicative, environmental limitations on plaintiff's ability to work. (Tr. 237-39.) Thus, the physician concluded that Plaintiff was capable of medium work. (Tr. 235-41.) His report labeled plaintiff's primary diagnosis as Chronic Fatigue Syndrome. (Tr. 235.)

On May 2, 2000, progress notes from the office of Dr. Brian Stello, part of plaintiff's treating office, identified Plaintiff as a new patient and gave an overview of his condition. (Tr. 248.) Dr. Stello opined that there was "some psychological component to [plaintiff's condition], given the decline in work and the death of his daughter." (Tr. 248.) Notes from throughout the year indicate that Plaintiff "feels he has improved somewhat over the past year." (Tr. 247.) He was taking sage, thyme, eucalyptus, multivitamins, and vitamin C and was searching for any

symptom-relieving medication that did not have negative side effects. (Tr. 247.) On August 3, 2000, Dr. Stello evaluated Plaintiff for chronic fatigue and reported that Plaintiff had no joint swelling or cardiovascular abnormality, possible symptoms of the disorder. (Tr. 243.) He was able to sleep. (Tr. 243.) Plaintiff believed that his physical illness derived from a viral infection (Tr. 243.) Dr. Stello also noted that Plaintiff was “not ready to explore psychogenic causes as a possibility.” (Tr. 243.)

On October 18, 2000, Jonathan Szenics, M.D., evaluated Plaintiff at the request of the Commissioner for complaints of lethargy and decreased endurance with physical tasks. (Tr. 250.) Plaintiff reported difficulty with sleeping, that he used a cane to assist with walking, and that he took alternative medications instead of prescription drugs. (Tr. 250.) Plaintiff reported that when it came to his daily activities he was self-sufficient but slow. (Tr. 250.) He was able to lift up to twenty-five pounds and was able to walk one mile but had to rest after both efforts. (Tr. 250.) Plaintiff stated he had no difficulty sitting and standing. (Tr. 250.) Dr. Szenics observed that plaintiff sat comfortably in a cushioned chair and walked with a normal gait. (Tr. 251.) Dr. Szenics completed a medical source statement of claimant’s ability to perform work-related physical activities and reported that plaintiff could frequently lift up to ten pounds and occasionally lift 25 pounds. (Tr. 256.) Dr. Szenics found no limitation in his ability to stand, walk, sit, push or pull. (Tr. 256.) In addition, he recommended a psychiatric and neuropsychological evaluation to investigate plaintiff’s “deployment and apparent phobias.” (Tr. 252.) Dr. Szenics reported that he was not convinced that plaintiff had chronic fatigue syndrome and wanted to rule out depression or another psychiatric illness. (Tr. 252.)

On October 20, 2000, Dr. Sulewski, a state agency physician, evaluated the medical

evidence, including the report of the consultative physician, and completed a Physical Residual Functional Capacity Assessment. (Tr. 258.) The report indicated that plaintiff could perform light work in that he was able to occasionally lift twenty pounds, frequently lift ten pounds, stand or walk about six hours in an eight-hour day, sit for six hours, and had an unlimited ability to push or pull. (Tr. 259.)

On December 21, 2000, Dr. Clem, part of plaintiff's treating office with Dr. Stello, wrote a letter on behalf of plaintiff "to provide medical verification of [his] disability claims." (Tr. 266.) Dr. Clem stated that plaintiff had substantial memory or concentration problems, which would "cause reduced productivity." (Tr. 266.) Dr. Clem also listed the following "clinically supported claims": tender cervical lymph nodes, joint pain without edema or erythema, complaints of headaches, unrefreshing sleep, postexertional malaise, and fainting and dizziness. (Tr. 266.) On November 7, 2001, a day after the hearing, plaintiff faxed a form for the ALJ, who had stated plaintiff's case file would be left open for 48 hours. (Tr. 209, 269.) The form was an assessment by Dr. Clem that had been furnished to the Domestic Relations Court. (Tr. 269.) The question on the form asks, "If still disabled, when should parent return to work? Are there limitations?" Dr. Clem answered, "Unsure given chronic and physically challenging nature of affliction. Perhaps over next 2-3 years." (Tr. 209, 269.)

IV. STANDARD OF REVIEW

A. Five-Step Analysis

To determine whether a plaintiff is disabled, an ALJ must follow a five-step sequential analysis set out in 20 C.F.R. § 404.1520. This analysis initiates with the ALJ making determinations as to whether plaintiff (1) has engaged in any substantial gainful activity since his

alleged onset date of September 30, 1998, and (2) whether he suffers from a severe medical impairment that limits his ability to work. A severe impairment is one that has more than a minimal effect on an individual's ability to perform basic work related activities on a sustained basis. 20 C.F.R. § 404.1520(c). The record confirmed that plaintiff had not worked since his alleged onset date and although the ALJ found "no objectively diagnosed chronic fatigue syndrome on the record," he determined that Plaintiff had a severe impairment secondary to chronic fatigue syndrome. (Tr. 8.)

Next, an ALJ must assess if the impairment meets or equals the criteria listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. In doing so, the assessment is conducted in an "inquisitorial rather than adversarial" manner in which "it is the ALJ's duty to investigate the facts and develop the arguments both for and against granting benefits." Sims v. Apfel, 530 U.S. 103, 103-04 (2000). The ALJ reviewed plaintiff's testimony and the reports of various physicians to determine whether his impairments equal a listed impairment and evaluated his chronic fatigue syndrome under sections 14.00 and 1.00 in the regulations. (Tr. 8.) The ALJ found that, even crediting plaintiff's testimony, his activity level is inconsistent with presumptive disability. (Tr. 9.)

Since the ALJ determined that plaintiff's impairment was not severe enough to meet or equal one of the listed impairments, step four requires an ALJ to determine whether plaintiff can perform his past relevant work. The ALJ determined that each of plaintiff's previous jobs—as a security guard, quality control inspector, and candy packer—required plaintiff to perform light level work. (Tr. 10.) In finding that plaintiff was able to perform his past relevant work, the ALJ

evaluated plaintiff's residual functional capacity² (RFC), to determine if plaintiff was capable of performing such light work. (Tr. 10.) The ALJ found that plaintiff was able to perform light work and, thus, could return to his past relevant work. Consequently, the ALJ found that plaintiff was not entitled to SSI benefits.

B. Standard of Review

When a district court reviews the decision of the Commissioner, review is limited to the Commissioner's final decision. 42 U.S.C. § 405(g). If the Commissioner's decision is supported by substantial evidence the decision must be upheld, even if this court would have reached a different conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971). Substantial evidence has been defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. Nat. Labor Relations Bd., 305 U.S. 197, 229 (1938). In this context, substantial evidence is more than a mere scintilla, but may be somewhat less than a preponderance of the evidence. Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir. 1971).

Additionally, the third circuit requires that an ALJ do more than simply state ultimate factual conclusions. Stewart v. Sec. of Health, Education & Welfare, 714 F.2d 287 (3d Cir. 1983). An ALJ's findings "should be as comprehensive and analytical as feasible and, where appropriate, should include a statement of subordinate factual foundations on which ultimate factual conclusions are based, so that a reviewing court may know the basis of the decision." Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981). In addition to evidence supporting the result,

²"Residual functional capacity" is that which an individual is still able to do despite the limitations caused by his or her impairments. 20 C.F.R. § 404.1545(a).

it is essential that the ALJ's statement include "some indication of the evidence which was rejected." Id. There is a particularly acute need for explanation when relevant evidence has been rejected or when there is conflicting evidence in the record. Id. at 706.

V. REVIEW OF ALJ DECISION

A. The ALJ failed to assess plaintiff's mental capacity to engage in competitive work.

Disability is defined in the Social Security Act in terms of the effect a physical or mental impairment has on a person's ability to perform in the workplace. See 42 U.S.C. § 423(d). It provides disability benefits to those claimants who are unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. Id. An ALJ is required by law to make a finding when there is a suggestion of a mental impairment. Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999). Section 8(a) of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794 (1984) and the promulgation of new regulations thereunder altered the standards for cases involving mental impairments. Section 8(a) of the Reform Act added §§ 421(h) to Title 42, which now provides that:

an initial determination . . . that an individual is not under disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

42 U.S.C. § 421(h).³ Because 42 U.S.C. § 421(d), which covers hearings before an ALJ, is excluded from 421(h)'s purview, an ALJ is not required to employ the assistance of a qualified

³ This provision applies to claims for SSI, as well as those for disability benefits. See 42 U.S.C. § 1382c.

psychiatrist or psychologist in making an initial determination of a mental impairment. Instead, the Commissioner's regulations provide an ALJ with greater flexibility than other hearing officers, affording several options to the ALJ. 20 C.F.R. § 404.1520a(d)(1)(i-iii). "In summary, the regulations allow the ALJ to remand for further review, to proceed with a determination without the assistance of a medical adviser, or to call a medical adviser for assistance with the case. In all cases, however, the ALJ has a duty to consider all evidence of impairments in the record." Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999). "While the mere presence of a mental disturbance does not automatically indicate a severe disability, it cannot be ignored by the ALJ." Plummer, 186 F.3d at 431 (citing Bernal v. Bowen, 851 F.2d 297, 301 (10th Cir. 1988)). "The ALJ has a duty to develop the record when there is a suggestion of mental impairment by inquiring into the present status of impairment and its possible effects on the claimant's ability to work." Plummer, 186 F.3d at 432.

The record contains numerous indications that plaintiff may have a mental impairment. First, the ALJ relied on the diagnostic notes of plaintiff's treating physician, Dr. Stello, and the report from the consultative examiner, Dr. Szenics. (Tr. 10.) Both physicians' reports made reference to a possible psychological component to the patient's condition. Dr. Stello noted that the plaintiff was "not ready to explore psychogenic causes" and his belief that a psychological component was underlying his claims of fatigue. (Tr. 243, 248.) Dr. Szenic's report, heavily relied on by the ALJ, stated "I am not convinced that [Mr. Wallace] has chronic fatigue syndrome and do not feel he has been appropriately worked up to arrive at this diagnosis. In view of his deployment and apparent phobias, I would recommend that he undergo psychiatric evaluation and neuropsychological evaluation to further ascertain employability." (Tr. 252.)

Second, the ALJ regarded the record as incomplete due to the lack of a psychological report or finding. At the hearing the ALJ remarked that “one of the doctor’s [sic] noted the possibility of emotional psychological overlay of this gentleman’s problems and the proximity of [plaintiff’s daughter’s] illness and her death to a time of increased stress and disease severity of the patient.” (Tr. 34.) The ALJ also was aware that he was required to consider plaintiff’s mental status, remarking, “if there’s a possibility of psychological impairment, then I have an obligation to develop the record . . . to develop that issue.” (Tr. 35.) However, the ALJ left the decision of psychiatric evaluation to plaintiff, despite that this was contrary to the third circuit precedent placing a duty on the ALJ to consider plaintiff’s mental capacity. Plummer v. Apfel, 186 F.3d 422, 432-33 (3d Cir. 1999). The ALJ noted in his decision that, “Psychological evaluation was recommended but the claimant has refused this through his course of treatment and he has refused, through his attorney, a consultative psychological examination which was offered and recommended by the undersigned.”⁴ Regardless of the plaintiff’s refusal, the ALJ had a duty to make a specific finding with regard to plaintiff’s mental ability to engage in a

⁴ The ALJ’s inquiry continued as follows:
ALJ: Yeah, I would request -- it’s not so much that I’m requesting it, I think that the record is -- has a certain void because one of the physicians has drawn reference to it, and what I would do is make every effort to complete the record as best I can by saying that you are requesting an evaluation, and if Mr. Wallace wouldbe willing to attend, we’ll complete the record in that fashion.

ATTY: Would you [Mr. Wallace] be willing to attend an evaluation if I were to request one?

CLMT: No, I believe a virus problem caused physical damage, and I’m claiming my problems initiated with a virus.....

(Tr. 35.)

competitive work. The need for further development of plaintiff's mental status was also acknowledged by plaintiff's attorney. (Tr. 35.)

Here, given the evidence in the record, the court cannot conclude that substantial evidence supported the ALJ's decision regarding claimant's residual functional capacity without addressing his mental abilities. The ALJ was obligated by law to investigate the plaintiff's mental impairments. Thus, the ALJ's failure to make findings concerning plaintiff's mental condition renders his conclusion that the plaintiff has the ability to work unsupported by substantial evidence. Under these circumstances, additional development of the psychiatric issue is warranted, and the claimant's disability claim will be remanded for further proceedings in accordance with the procedures outlined in 20 C.F.R. § 404.983.

B. The ALJ's finding that plaintiff had the physical ability to perform light work was supported by substantial evidence.

Plaintiff argues that the medical evidence relied on by the ALJ to determine his RFC, and thus ability to perform his past work, was not supported by substantial evidence. First, plaintiff contends that the ALJ dismissed his complaints of Chronic Fatigue Syndrome ("CFS") without analyzing his symptoms in accordance with the Commissioner's own regulatory protocol set out in SSR 99-2p. SSR 99-2p is the policy interpretation ruling for evaluating cases involving CFS. The ruling explains that CFS, when accompanied by appropriate medical signs or laboratory findings, is a medically determinable impairment that can be the basis for a disability. However, the regulations explicitly state that other alternative medical and psychiatric causes of such symptoms must be excluded before a diagnosis of CFS can be made. Plaintiff argues that the ALJ ignored the criteria of SSR 99-2p, in that specific laboratory testing should have been

performed.

Upon a review of the record, it is apparent that the ALJ, as particularly requested by the plaintiff, did not review the plaintiff's condition under CFS, thus making SSR 99-2p inapplicable. While plaintiff initially claimed CFS, he stated that "when allegations of mental impairment were made by SSA," plaintiff "qualified his disability" so as not to necessitate any psychological evaluation, as would have been required under the CFS protocol, or SSR 99-2p. (Pl.'s Br., Docket #25, at 11.) The plaintiff specifically amended his stated disabling condition to lymphadenopathy and severe chronic viral fatigue. (Pl.'s Br., Docket #25, at 11.) As a result of this amendment by plaintiff, the ALJ reviewed and found the Plaintiff to have a serious impairment unrelated, or at least secondary, to any diagnosis of CFS. Thus, the ALJ was not required to adhere to the factors laid out by in the regulation related to CFS, requiring particular diagnostic and psychological testing. The ALJ properly considered the record evidence by weighing the credibility of medical professionals, plaintiff's subjective complaints, and his documentation concerning his activities.

Second, the ALJ's finding that plaintiff's residual functional capacity enabled him to engage in "light work"⁵ was supported by substantial evidence. The ALJ based this

⁵The SSA has more fully defined the physical exertion requirements of "light work" in 20 CFR § 416.967(b):

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing or pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must be able to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

determination on record medical evidence, as well as admissions of the plaintiff. (Tr. 10.) He relied on Dr. Szenics's opinions that plaintiff had the physical capacity to perform such work, and relied upon his findings that plaintiff's range of motion was normal and that any fatigue he experienced was not such that light level work was precluded. (Tr. 10.) The ALJ emphasized that plaintiff had admitted that he is able to lift twenty-five pounds, and that the documentation of fatigue did not reveal any preclusive limitations. (Tr. 10.) The ALJ found Dr. Connelly's opinion that plaintiff could work but required special accommodations, to be unsupported with the record and by his own findings, which failed to show any physical limitations that would require accommodations. (Tr. 10.) Finally, the ALJ determined that Dr. Clem's opinion was used in finding that plaintiff was severely impaired, but that it did not contain any information that indicated functional limitations on plaintiff's ability to perform light work. (Tr. 10.) With regard to plaintiff's subjective complaints, the ALJ found his allegations to be "not fully credible," in that they were inconsistent with the medical records and plaintiff's own admissions therein. (Tr. 10-11.)

Based on the ALJ's analysis, the court finds his determination that plaintiff was able to perform light work and thus able to perform his previous employment was based on the proper factors and was supported by substantial evidence.

C. The ALJ's dismissal of plaintiff's subjective complaints was supported by substantial evidence.

Plaintiff objects to the ALJ's finding that he is not fully credible. He contends that if his testimony regarding pain and limitations and his physician's opinion were credited fully the ALJ could not have found him capable of performing light exertional work.

In reaching an RFC determination, the ALJ must evaluate all relevant evidence, Fargnoli v. Massanari, 247 F.3d 24, 40-41 (3d Cir. 2001), and explain his reasons for rejecting any such evidence. Burnett v. Commissioner of Soc. Sec. Admin., 220 F.3d 112, 122 (3d Cir. 2000). The third circuit requires that a plaintiff's subjective complaints be given "serious consideration," Mason. v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993); see also Burnett 220 F.3d at 120; Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981). An ALJ is required to assess a claimant's complaints of pain, but he may also consider factors such as the claimant's daily activities, measures the claimant uses to treat pain or symptoms, and credibility. 20 C.F.R. § 416.929(c)(3); see also Smith v. Califano, 637 F.2d 968, 972 (3d Cir. 1981).

Here, the ALJ did address plaintiff's testimony regarding his pain and his limitations, specifically addressing the complaints in his opinion. (Tr. 8-9.) The ALJ considered plaintiff's testimony in that he found that plaintiff suffered from a substantial impairment at step two based on such complaints. (Tr. 8.) Nevertheless, the ALJ noted that the record as a whole was not consistent with plaintiff's testimony concerning his physical limitations. (Tr. 8.) As a result, the ALJ noted that the plaintiff's allegations of disabling pain and other symptoms were "excessive, and not fully credible." (Tr. 9.) To substantiate this conclusion, the ALJ indicated that the record revealed that the plaintiff is able to care for his personal needs, perform small chores, go grocery shopping, prepare meals, and watch his children. (Tr. 9.) Plaintiff's own assertions during one of his medical examinations showed that he was able to lift up to twenty-five pounds and he had no problems standing, sitting, or walking. (Tr. 250.) The ALJ also took into consideration that the plaintiff relied on no prescribed medications that could conceivably aid his condition but instead chose to use herbal remedies that were not shown to be medically helpful.

(Tr. 9.)

D. The ALJ used the proper standard in finding that plaintiff was able to perform light work.

In contrast to plaintiff's assertions, ample medical evidence supports the ALJ's finding that plaintiff was able to engage in light work. Plaintiff argues that the ALJ dismissed his subjective complaints and based his decision on inappropriate medical tests and assessments. He contends that the Physical Residual Functional Capacity Assessment is inappropriate for assessment of an individual with a viral disorder. Plaintiff contends that viral disorders should be assessed by a totality of an individual's symptoms. Finally, plaintiff argues that a decision based on medical evidence, without a proper diagnostic assessment of his viral condition, is not supported by substantial evidence.

Although this court recognizes plaintiff's prevailing concern that proper diagnostic testing was not done, the actual presence or absence of a virus is not necessary in reaching a determination of disability benefits. Since the ALJ found that plaintiff has a severe impairment, the primary utility of medical evidence and consultative examinations is to determine whether plaintiff's symptoms make him unemployable. See 20 C.F.R. § 404.1527. Such a determination is made on a claimant's physical capabilities, not his exact diagnosis. The medical evidence is used to determine whether it supports a finding of his employability, not whether the virus is present. If substantial evidence indicates that the individual is capable of performing a particular level of work, the ALJ can make such a finding. As previously detailed, substantial medical evidence existed in the record to support the ALJ's decision that plaintiff was able to perform past relevant work and, thus, the decision was proper.

E. The ALJ's decision was not influenced by plaintiff's indigence.

Plaintiff argues that due to his poverty and lack of medical insurance his medical file is not very extensive. He claims that his limited medical record and his inability to afford extensive testing biased the ALJ against him, and caused the ALJ to “rule[] against the plaintiff’s indigence.” (Pl.’s Br., Docket #25, at 8, 13.) Plaintiff alleges that the ALJ relied on the testimony of physicians employed by the SSA, individuals who he contends are “paid to report that he was healthy.” (Id.)

Title XVI of the Social Security Act provides SSI benefits to disabled *indigent* persons. 42 U.S.C. § 1382 (placing income limitations on recipients). Because indigency is a requirement to receive such benefits, most individuals that apply are indigent at the time of their applications and reviews. Since nearly every individual to come before the ALJ is indigent, this fact alone is not sufficient to demonstrate any bias. Plaintiff does not give any specific evidence that would indicate that the ALJ negatively considered his indigent status in reaching his determination. While plaintiff alleges that by not allowing him to defer the ruling until after he had obtained the money for medical tests, the ALJ was not obligated to order such a delay. Consequently, his timely rendering a ruling does not indicate any bias or mistreatment towards plaintiff.

F. The ALJ gave appropriate weight to the treating physician's opinion.

Plaintiff objects that the ALJ failed to give appropriate weight to the opinions of his treating physicians. It is well-established that the third circuit requires the treating physician’s opinion to receive great weight and consideration. See, e.g., Gilliland v. Heckler, 786 F.2d 178, 183 (3d Cir. 1986); Wallace v. Sec’y of Health and Human Svcs., 722 F.2d 1150, 1155 (3d Cir. 1983); Smith v. Sullivan, 720 F. Supp. 62, 64 (E.D. Pa. 1989). A finding of residual capacity for

work which conflicts with a treating physician's opinion and is made without analytical comment or record reference to the contradictory evidence is not supported by substantial evidence.

Gilliland, 786 F.2d at 183.

The ALJ accepted the treating physician's testimony, relying on his opinion and notes in order to find that plaintiff possessed a serious impairment. (Tr. 10.) However, Dr. Clem's statement provided no information concerning plaintiff's functional limitations. (Tr. 10.) Because the treating physician provided no such information, the ALJ properly could rely upon the medical findings of the other examining physicians. The ALJ based his finding that plaintiff was able to perform light work on plaintiff's own activities and admissions and on the opinions of Dr. Szenics and Dr. Connelly. (Tr. 9-10.) In relying upon these other sources, the ALJ did not inappropriately dismiss the treating physician's opinion. Since the treating physician's report was incomplete with regard to plaintiff's physical capabilities, the ALJ properly relied upon the record as a whole. The treating physician's report was given appropriate weight by the ALJ.

V. PLAINTIFF'S § 1983 CLAIM

Plaintiff alleges that Social Security Administration's decision violated plaintiff's civil rights under 42 U.S.C. § 1983. (Am. Compl. at 5.) Specifically, plaintiff alleges that his rights were violated because the Administration failed to: 1) provide appropriate testing or to advance money for appropriate testing or the correct testing; or 2) to grant a stay in the decision until such time as the plaintiff was able to afford appropriate testing. (Id.)

Plaintiff fails to state any possible facts that give rise to a federal claim, in that the court does not have jurisdiction to hear § 1983 claims regarding social security determinations.

Plaintiff's allegations are based on belief that the Social Security Administration erroneously

determined that he was not entitled to funding for medical testing, or a delay until such funding was available. However, as the Social Security Administration and its employees are part of the federal government, § 1983 is inapplicable. While § 1983 authorizes federal courts to hear suits against state and local officials, it cannot be used to review actions of the federal government or its officers. Wheedlin v. Wheeler, 373 U.S. 647 (1963). Thus, plaintiff fails to state a valid cause of action against the Social Security Administration.

Moreover, the ability to challenge social security decisions under § 1983 was precluded by Congress. Judicial relief is only permitted through 42 U.S.C. § 405.⁶ Section 405(h) precludes judicial review of any “findings of fact or decision of the Commissioner of Social Security” except under § 405(g). The Supreme Court, as well as the third circuit, has held that the Act prescribes the exclusive procedures for jurisdiction over social security applications. Weinberger v. Salfi, 422 U.S. 749, 757 (1975); Abington Mem’l Hosp. V. Heckler, 750 F.2d 242, 244 (3d Cir. 1984).

VI. CONCLUSION

For the foregoing reasons the plaintiff’s and defendant’s motions for summary judgment are denied. The matter is remanded to the Commissioner for further proceedings consistent with this opinion.

⁶ 42 U.S.C. § 405(h) provides:

The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were party to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

An appropriate order follows.

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

JOHN WALLACE : CIVIL ACTION
 :
 :
 v. :
 :
 :
 JO ANNE B. BARNHART, :
 :
 COMMISSIONER OF SOCIAL :
 SECURITY : NO. 02-1267

ORDER

AND NOW, this ___ day of July, 2003, in consideration of Plaintiff's Motion for Summary Judgment, Defendant's Motion for to Summary Judgment, and the record, it is hereby ORDERED that:

1. The both Motions for Summary Judgment are DENIED;
2. This case is REMANDED in accordance with the fourth sentence of 42 U.S.C. § 405(g) to the Commissioner of the Social Security Administration.

BY THE COURT:

JAMES T. GILES C.J.

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to