

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

HOLLIDAY SMITH	:	CIVIL ACTION
	:	
Plaintiff	:	NO. 02-7324
	:	
v.	:	
	:	
JO ANNE BARNHART,	:	
Commissioner of	:	
Social Security,	:	
	:	
Defendant	:	

Padova, J.

MEMORANDUM

November __, 2003

Plaintiff Holliday Smith seeks judicial review of the decision of Defendant, Social Security Commissioner Jo Anne Barnhart, which partially denied her claim for Social Security benefits. Both Plaintiff and Defendant have filed motions for summary judgment. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(d)(1)(C), the Court referred this matter to Magistrate Judge Arnold C. Rapaport for a Report and Recommendation. Magistrate Judge Rapaport recommended that Plaintiff's motion for summary judgment be denied, and that Defendant's motion for summary judgment be granted. Plaintiff filed timely objections to the Report and Recommendation. For the reasons which follow, the Court sustains Plaintiff's objections, and remands this case to the Commissioner for further proceedings consistent with this Memorandum.

I. PROCEDURAL HISTORY

Plaintiff filed concurrent applications for disability insurance benefits (DIB) and supplemental security income benefits (SSI) in both 1996 (the "first application") and 2000 (the "second application"). The first application alleged a disability beginning in August 1994, due to a broken foot. This application was denied on May 7, 1996. The second application, filed on April 17, 2000, alleged a disability as a result of a stroke that Plaintiff suffered on March 6, 2000. The second application also alleged a continuing disability beginning in August 1994, due to a broken foot, and further requested that the Administrative Law Judge ("ALJ") reopen the first application for the purpose of determining whether benefits were due for the period between August 1994 and the date of Plaintiff's stroke. On March 28, 2002, the ALJ issued a partially favorable decision granting Plaintiff SSI benefits for the period beginning March 6, 2000 (the date of her stroke) to the present. However, Plaintiff was again denied benefits for the period from August 1994 to March 6, 2000. Plaintiff challenges that portion of the ALJ's decision denying Plaintiff benefits for this period.

After Plaintiff's appeal to the Appeals Council was denied on July 16, 2002, Plaintiff sought judicial review in this Court. The Court then referred the matter to Magistrate Judge Arnold C. Rapaport for a Report and Recommendation. See 28 U.S.C. §

636(b)(1)(B) and Local Rule 72.1(d)(1)(C). The Magistrate Judge recommended that the decision of the ALJ denying Plaintiff benefits for the period before her stroke be upheld. Plaintiff filed timely objections to the Magistrate Judge's Report and Recommendation.

II. FACTUAL HISTORY

Plaintiff was born on September 5, 1955. (Tr. 78.) She has a high school education and past relevant work as a cashier and cleaner. (Tr. 20.)

Plaintiff was admitted to Temple University Hospital on August 27, 1994 with a principle diagnosis of a comminuted left calcaneal fracture. (Tr. 127.) X-ray studies on August 27, 1994 showed a severely comminuted fracture of the calcaneus. (Tr. 132.) There was said to be significant impaction of the fracture fragments. (Tr. 132.) On September 2, 1994, Plaintiff underwent a closed reduction with "pins and plaster and short leg cast." (Tr. 130.) During hospitalization, Plaintiff was taught to "crutch walk non-weight bearing." (Tr. 131.)

An x-ray taken on October 6, 1994 showed a poorly visualized left calcaneal fracture. (Tr. 237.) On that same date, Plaintiff underwent an orthopedic examination. (Tr. 235.) On January 13, 1995, an x-ray study after the removal of the cast showed a compression fracture of the calcaneus. (Tr. 230.) A fracture line was also visualized. (Id.) Dr. Craig Isrealite conducted an orthopedic examination on the same date. Dr. Israelite reported to

Plaintiff's primary physician, Dr. Donald Parks, that x-rays showed a "healed calcaneus fracture with collapse of Bohler angle." (Tr. 229.) Dr. Isrealite stated that the patient would probably need a subtalar fusion, secondary to degenerative changes resulting from the original fracture. (Tr. 229.) On July 12, 1995, an x-ray study showed a healed comminuted fracture of the left calcaneus. (Tr. 227.) In treatment notes of the orthopedic exam taken on July 27, 1995, it was noted that there was incapacitating pain. (Tr. 228.)

On September 26, 1995, Plaintiff underwent surgery for a left subtalar fusion. (Tr. 214.) On October 12, 1995, an x-ray was taken, which revealed "healing arthrodesis and calcaneal fracture." (Tr. 222.) In April, 1996, Plaintiff complained of pain which occurred with increased ambulation. (Tr. 208.) Dr. Isrealite suggested orthopedic shoes and physical therapy, as well as Naprosyn for the pain. (Id.)

On October 30, 1997, Dr. Isrealite reported that Plaintiff complained of pain in her left foot and ankle, and used a cane on an as-needed basis. (Tr. 155.)

On March 17, 1998, Dr. Paul Horenstein, an orthopedic surgeon, reported that Plaintiff was complaining of "significant" ankle pain and difficulty walking. (Tr. 152.) Dr. Horenstein recommended surgery to relieve her pain. (Id.)

On January 5, 1999, Dr. Horenstein reported that Plaintiff presented as a "pleasant woman in minimal distress." (Tr. 191.)

However, Dr. Horenstein also noted that Plaintiff's foot pain had never completely resolved, and that Plaintiff had been taking Percocet and Naprosyn for the pain, and had been utilizing a cane to walk. (Id.) On January 22, 1999, Dr. Hecht performed a left staple removal and lateral wall decompression on Plaintiff. (Tr. 241.)¹

III. STANDARD OF REVIEW

Under the Social Security Act, 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 . . . last for a continuous period of not less than twelve (12) months." 42 U.S.C. §423(d)(1)(A); 20 C.F.R. §404.1505. Under the medical-vocational regulations, as promulgated by the Commissioner, the Commissioner uses a five-step sequential evaluation to evaluate disability claims.² The burden to prove the

¹ All subsequent medical history refers to the period after March 6, 2000, and is not relevant to the instant case.

²The five steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.
2. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment.

existence of a disability rests initially upon the claimant. 42 U.S.C. §423(d)(5). To satisfy this burden, the claimant must show an inability to return to his former work. Once the claimant makes this showing, the burden of proof then shifts to the Commissioner to show that the claimant, given his age, education and work experience, has the ability to perform specific jobs that exist in the economy. Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

There is an additional process for evaluating mental impairments:

The Commissioner has supplemented this sequential process for evaluating a claimant's eligibility for benefits with additional regulations dealing specifically with mental impairments. 20 C.F.R. § 404.1520a. These

3. If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience.

4. Your impairment(s) must prevent you from doing past relevant work. If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

5. Your impairment(s) must prevent you from doing any other work. (1) If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. (2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule.

20 C.F.R. §§ 404.1520(b)-(f).

procedures require the hearing officer (and ALJ) to record the pertinent signs, symptoms, findings, functional limitations and effects of treatment contained in the case record, in order to determine if a mental impairment exists. 20 C.F.R. § 404.1520a(b)(1). If an impairment is found, the examiner must analyze whether certain medical findings relevant to a claimant's ability to work are present or absent. § 404.1520a(b)(2). The examiner must then rate the degree of functional loss resulting from the impairment in certain areas deemed essential for work. If the mental impairment is considered "severe", the examiner must then determine if it meets a listed mental disorder. § 404.1520a(c)(2). If the impairment is severe, but does not reach the level of a listed disorder, then the examiner must conduct a residual functional capacity assessment. § 404.1520a(c)(3).

Plummer v. Apfel, 186 F.3d 422, 428-29 (3d Cir. 1999) (footnote omitted).

Judicial review of the Commissioner's final decision is limited, and this Court is bound by the factual findings of the Commissioner if they are supported by substantial evidence and decided according to correct legal standards. Allen v. Brown, 881 F.2d 37, 39 (3d Cir. 1989); Coria v. Heckler, 750 F.2d 245, 247 (3d Cir. 1984). "Substantial evidence" is deemed to be such relevant evidence as a reasonable mind might accept as adequate to support a decision. Richardson v. Perales, 402 U.S. 389, 407 (1971); Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981). Substantial evidence is more than a mere scintilla, but may be somewhat less than a preponderance. Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979).

Despite the deference to administrative decisions implied by this standard, this Court retains the responsibility to scrutinize the entire record and to reverse or remand if the Commissioner's decision is not supported by substantial evidence. Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981). Substantial evidence can only be considered as supporting evidence in relationship to all other evidence in the record. Kent v. Schweiker, 701 F.2d 110, 114 (3d Cir. 1983).

IV. DISCUSSION

A. Reopening of The First Application For Benefits

As a preliminary matter, this Court must determine whether the ALJ's decision of March 28, 2002, denying Plaintiff's second application for benefits reopened Plaintiff's first application for benefits. The Magistrate Judge determined that the ALJ in this case had not reopened Plaintiff's first application, and that, therefore, this Court had no jurisdiction to reopen the application. An ALJ's decision not to reopen a claimant's prior claim is discretionary, and is not subject to judicial review by this Court. See Tobak v. Apfel, 195 F.3d 183, 187 (3d Cir. 1999) (citation omitted); 20 C.F.R. §§ 404.903(a)(8); 416.1403(a)(8). Thus, if the ALJ did not reopen Plaintiff's first application for benefits, res judicata would apply to the Commissioner's May 7, 1996 decision denying Plaintiff benefits at that time based upon her alleged disability due to a broken foot. Furthermore, unless

the Court holds that the prior decision was reopened, Plaintiff cannot receive SSI benefits for any period prior to May 2000, the month after Plaintiff filed her second application. See 20 CFR 416.335 ("If you file an application [for SSI] after the month you first meet all the other requirements for eligibility, we cannot pay you for the month in which your application is filed or any months before that month.")³ The United States Court of Appeals for the Third Circuit ("Third Circuit") has held that an ALJ may reopen a prior decision of the Social Security Commissioner either explicitly or de facto. The standard used for determining whether a de facto reopening has occurred is as follows:

A reopening, and thus a waiving of any claim of res judicata, will be found "where the administrative process does not address an earlier decision, but instead reviews the entire record in the new proceeding and reaches a decision on the merits."

Coup v. Heckler, 834 F.2d 313, 317 (3d Cir. 1987)(abrogated on other grounds by Gisbrecht v. Barnhart, 535 U.S. 789 (2002))(quoting Kane v. Heckler, 776 F.2d 1130, 1132 (3d Cir.

³A claimant can receive DIB benefits for a period commencing 12 months before her application date. However, the record indicates that Plaintiff has not worked since 1994, and the date that she was "last insured" for the purpose of determining her entitlement to DIB was June 30, 1995. Thus, Plaintiff would not be entitled to any benefits under DIB unless it was determined that the onset of her disability occurred before June 30, 1995. Because the Commissioner already determined in connection with Plaintiff's first application that Plaintiff was not disabled during this time period, a determination that the onset of Plaintiff's disability occurred before June 30, 1995 would necessarily require a reopening of the first application.

1985)); see also Lewis v. Apfel, 236 F.3d 503, 510 (9th Cir. 2001)("Res judicata does not apply when an ALJ later considers 'on the merits' whether the claimant was disabled during an already-adjudicated period.")

According to the Social Security Commissioner's own regulations, a determination may be reopened within four years of the date of the notice of that determination for "good cause." 20 C.F.R. 404.988(b). Plaintiff's second application was filed within four years of the Commissioner's determination denying her first application. Furthermore, the court need not find the presence of "good cause" before it can consider whether a de facto reopening of a prior decision occurred. See Coup, 834 F.2d at 317 ("It is not [the court's] role to determine whether the secretary had good cause for reopening, for in that respect his decision is not judicially reviewable.")

In this case, the ALJ explicitly addressed Plaintiff's request to reopen the prior determination, and specifically held that "the Administrative Law Judge does not find that good cause exists to reopen these previously filed applications." (Tr. at 12.) However, notwithstanding this finding, the ALJ reviewed the entire record in this case dating back to 1995. Specifically, in his evaluation of the five step sequential process, the ALJ explicitly referred to medical testimony and evidence concerning Plaintiff's 1994 foot

fracture.⁴ (Tr. at 15.)

Plaintiff's second application alleged that the foot injury that she suffered in 1994 had not properly healed and therefore had, along with the stroke she suffered in March, 2000, contributed to her disability at the time of the second application. Thus, in determining whether a de facto reopening has occurred, the Court must determine whether the ALJ considered Plaintiff's prior medical history solely for the purpose of determining whether the claimant was disabled during the period relevant to the second application. As the ALJ recognized, Plaintiff was only eligible for SSI, and not DIB, benefits at the time of the second application. Therefore, unless the prior claim were reopened, Plaintiff could not have received any benefits prior to May 2000, the month after Plaintiff filed her second application and two months after Plaintiff suffered her stroke. (See supra, n.1). Consequently, Plaintiff's prior medical history, including the history regarding her foot

⁴One could argue that, in this case, the ALJ reviewed prior medical evidence merely to determine whether good cause existed for a reopening, and then subsequently determined that a reopening was not warranted. However, where an ALJ chooses to engage in an in-depth analysis of the nature of a claimant's disability during the period covered by a prior determination, this is sufficient to find a de facto reopening. See Young v. Bowen, 858 F.2d 951, 955-56 (4th Cir. 1988) (rejecting the Commissioner's argument that the ALJ reviewed prior medical evidence solely to determine whether the record should have been reopened, and noting that "Since the Secretary has attempted to support his decision in some part by weighing the full range of medical evidence, we are thus free to determine whether that decision is supported by substantial evidence.")

injury, is only relevant to the second application to the extent that it worsened or exacerbated Plaintiff's disabling condition resulting from her stroke. The ALJ's opinion, however, clearly indicates that he evaluated Plaintiff's claim of disability for the period before and after her stroke. Indeed, the ALJ specifically determined that Plaintiff was not disabled for the period before March 6, 2000 (the date of the stroke), but was disabled for the period after March 6, 2000. In so doing, the ALJ evaluated and reconsidered Plaintiff's medical history from 1994 to 1996. Specifically, the ALJ wrote that:

The Administrative Law Judge has carefully considered the opinions of both of the state agency medical sources and, as it noted above, agrees that the claimant was not disabled for the adjudicatory period before the date she was last insured for disability insurance benefits.⁵ However, as of March 6, 2000, the established disability onset date, the Administrative Law Judge finds that the claimant was more limited than originally found, based on records that the State agency did not have available for review and on the claimant's testimony, which is found to be credible for the period as of the established onset date.

(Tr. at 17; see also Tr. at 15). Because the ALJ explicitly considered evidence regarding Plaintiff's medical condition which was relevant to Plaintiff's first application, and specifically determined that Plaintiff was not disabled before her stroke, and because no benefits could have been awarded during this earlier time period unless the ALJ reopened the prior determination, the

⁵ This date is June 6, 1995.

Court finds that a de facto reopening occurred. See Coup, 834 F.2d at 318. The Court must therefore review the Commissioner's determination that Plaintiff was not entitled to benefits before March 6, 2000, to determine whether the decision applied the correct legal standards and is supported by substantial evidence.

B. Review of the Merits of The Commissioner's Decision

It is not disputed that Plaintiff was not engaged in substantial gainful work at the time she applied for benefits, and thus Plaintiff has satisfied step one of the five-step sequential evaluation process. The ALJ found that Plaintiff's foot injury, along with complications resulting from Plaintiff's stroke, constituted a severe impairment for purposes of step two of the five-step sequential evaluation process. The ALJ did not specifically indicate in his opinion whether the foot impairment, standing alone, would constitute a severe impairment for purposes of step two of the five-step sequential evaluation process. However, because the ALJ went on to determine whether Plaintiff's foot injury, standing alone, restricted Plaintiff's residual functional capacity to perform work-related activities, it appears that the ALJ necessarily determined that Plaintiff's foot injury was a severe impairment for purposes of step two.

In step three, the ALJ determined that neither Plaintiff's foot injury, nor the complications resulting from her stroke, were equivalent to one of the listed impairments that the Commissioner

acknowledges are so severe as to preclude substantial gainful activity. Plaintiff objects to this determination. Plaintiff first argues that the ALJ failed to articulate the reasons for his finding, and "did not discuss this issue in his opinion at all." (Pl's Mot. at 11.) Plaintiff's assertion is clearly incorrect. The ALJ devoted four paragraphs of his decision to a discussion of this issue. (Tr. at 14-15.) In these paragraphs, the ALJ found that neither Plaintiff's foot injury nor her impairment resulting from her stroke met any of the relevant medical listings. (See id.)

Plaintiff further argues that the Court should consider the social security regulations concerning musculoskeletal impairments in effect at the time Plaintiff filed her first application, and not the ones currently in effect that were utilized by the ALJ in this case. This argument has no merit. The preamble to the new musculoskeletal regulations, which became effective on February 19, 2002, specifically states that the Commissioner would "apply these rules to the claims of applicants for benefits that are pending at any stage of our administrative review process, including those claims that are pending administrative review after remand from a Federal court." 66 Fed. Reg. 58010. The final decision of the Commissioner in this case was handed down on July 16, 2002. (Tr. at 4-6.) Thus, the ALJ properly applied the current musculoskeletal regulations to Plaintiff's case.

In step four, the ALJ found that, notwithstanding her foot

injury, Plaintiff was able to perform work at the light, unskilled level, except that she was limited to standing and balancing only on an occasional basis. (Tr. at 18) The ALJ therefore found that, before Plaintiff suffered her stroke, she had the ability to perform past relevant work as a cashier and a cleaner, jobs which are classified as light, unskilled work (Tr. 18). Furthermore, in step five, the ALJ found that, before her stroke, Plaintiff retained the residual functional capacity to perform a wide range of other light and unskilled jobs which were available in the national economy. (Id.) The ALJ based his decision on the medical evidence in the record, Plaintiff's testimony at the hearing, and the opinion of a state agency reviewing physician.

"An ALJ must give serious consideration to a claimant's subjective complaints of pain, even where those complaints are not supported by objective evidence Where medical evidence does support a claimant's complaints of pain, the complaints should then be given great weight and may not be disregarded unless there exists contrary medical evidence." Mason v. Shalala, 994 F.2d 1058, 1067-68 (3d Cir. 1993)(citations omitted). Thus, where the ALJ does not fully accept a Plaintiff's testimony concerning pain experienced, the ALJ is obligated to explain his reasoning. See id. Where the claimant has a condition which could reasonably produce the pain alleged, but the pain that the claimant complains of exceeds the level and intensity that is supported by objective

medical evidence, the ALJ must consider the following five factors: (1) the individual's daily activities; (2) the location, duration, frequency, and intensity of the individual's pain or other symptoms; (3) factors that precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness and side effects of any medication taken by the individual; (5) treatment, other than medication that the individual receives or has received for relief of pain or other symptoms; and (6) any measure other than treatment that the individual uses or has used to relieve pain or other symptoms. See Social Security Ruling 96-7p, 20 C.F.R. §§ 404.1529(c)(3)(i)-(vii).

Plaintiff testified at the December 20, 2001 hearing that she was at the time in constant pain as a result of her foot injury. (Tr. 41.) Plaintiff further testified that she took four to six tablets of percocet a day just so she could walk around. (Id.) Plaintiff further asserted that her foot pain had gotten progressively worse since stabilizing pins were removed from her foot in January, 1999. (Tr. 41-42.) Plaintiff further testified that, at least part of the time, the pain from her foot totally prevents her from walking at all:

When it rains, this foot - it just acts up real bad, and I can't walk. I have days where if it's - the weather's bad - it won't even let me put my weight on it. I have to be in bed. And then maybe the next day, or when it clears up, I'll be fine.

(Tr. 52.) Plaintiff further testified that the pain from her foot

injury in combination with the complications from her stroke prevented her from walking more than one full block. (Tr. 49-50.)

The level of pain described in Plaintiff's testimony clearly is not consistent with the ALJ's finding that Plaintiff retained the residual functional capacity to perform light work, limited only by her ability to climb and balance only on occasion. In Bennett v. Barnhart, 264 F. Supp. 2d 238, 257 (W.D. Pa. 2003), the court described light work as follows:

The "frequent" lifting and carrying of objects, which is a central requirement of light work, is defined under the Commissioner's rulings as occurring from one-third to two-thirds of the time. "Since frequent lifting or carrying requires being on one's feet up to two-thirds of a workday, the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8 hour workday.'" SSR 8310 (1983).

Furthermore, the ALJ provided virtually no explanation for his apparent rejection of Plaintiff's testimony concerning the pain she experienced because of her foot injury.

The ALJ did explicitly rely upon an opinion of a state agency reviewing physician, which indicated that Plaintiff retained the ability to perform light work. Plaintiff objects to the ALJ's reliance on this opinion, and argues that the opinion provides virtually no insight into Plaintiff's residual functional capacity before her stroke. The opinion of the state agency reviewing physician is dated August 16, 2000, five months after Plaintiff suffered her stroke, and was apparently updated and reissued on October 17, 2000. There is no other opinion of a state agency

reviewing physician in the record. The opinion itself does not discuss the status of Plaintiff's foot injury before the date of the stroke. The state agency opinion indicated that Plaintiff, even after her stroke, retained the ability to perform light work, limited only by Plaintiff's reduced ability to climb and balance. (Tr. 334.) The ALJ apparently mistook the date of this opinion as August 16, 1995, as opposed to August 16, 2000, and therefore assumed that the opinion's findings were based solely on the foot injury. Furthermore, the ALJ apparently mistook the updated October 2000 opinion as an entirely new opinion. The ALJ, relying upon the mistaken assumption that separate opinions had been issued evaluating Plaintiff's condition before and after the stroke, proceeded to reject the finding of the October 2000 opinion that Plaintiff retained the ability to perform light level work after her stroke. Because the state agency opinion failed to evaluate Plaintiff's residual functional capacity before her stroke, it is of limited probative value here. Certainly, this medical opinion by itself does not constitute a sufficient ground for the ALJ to reject the testimony of Plaintiff concerning the level of pain that she experienced as a result of her foot injury before she suffered her stroke.

Other medical evidence in the record provides very little insight into the level of pain experienced by Plaintiff due to her foot injury. On August 8, 1995 (approximately one year after the

date of her foot injury) Dr. Craig Isrealite noted that

Due to degenerative changes Holliday Smith had incurred since her ankle fracture and subsequent healing, and due to the level of pain involved, it is medically necessary to go in and fuse the subtalar joint. This should return the patient to pain free or reduced pain and normal functions of daily living.

(Tr. 224.) The surgery described by Dr. Isrealite occurred in September, 1995. Also, after examining Plaintiff on January 1, 1995, Dr. Isrealite checked a box on an evaluation form indicating that Plaintiff was temporarily incapacitated and unable to work.

(Tr. 232). Other than this document, there is no medical evaluation in the record which indicates whether or not Plaintiff's foot injury ever prevented her from working. Furthermore, there is no opinion from Dr. Isrealite or any other physician directly stating that Plaintiff was disabled or was expected to be disabled for a period of at least 12 months due to her foot injury.

However, a physician's silence regarding whether or how a claimant's impairment prevents her from working does not necessarily reflect that physician's conclusion that a claimant is not disabled. See Mason, 994 F.2d at 1068 n.15. Moreover, as noted, *supra*, an ALJ may not reject a claimant's subjective complaints of pain simply because they are not directly supported by the medical evidence in the record. Rather, he must still give serious consideration to the claimant's subjective complaints, and state his reasons for finding the claimant's testimony to be not

credible. See Mason, 994 F.2d at 1067-68. In this case, the ALJ did not adequately address Plaintiff's testimony that she could not walk more than one city block, and could not walk at all on certain days when the pain in her foot was too severe. The ALJ's task in this case was complicated by the fact that Plaintiff, at the time of the hearing, had suffered a stroke which severely impacted her ability to function. However, at the hearing, the ALJ never made any attempt to distinguish between those functional limitations caused by Plaintiff's foot injury and those functional limitations caused by her stroke. In particular, the ALJ never examined Plaintiff concerning her daily activities before she suffered her stroke. For example, the ALJ never asked Plaintiff whether she lost her ability to walk more than one city block before or after her stroke. Thus, because the ALJ did not adequately explain his reasons for rejecting Plaintiff's subjective complaints of pain, and made no attempt to distinguish between those limitations on Plaintiff's daily activities caused by her foot pain and those caused by her stroke, the Court finds that the ALJ's determination that Plaintiff was not disabled before the date of her stroke was not based upon substantial evidence. The Court therefore will remand this case to the Commissioner to allow her to determine, in accordance with the principles discussed in this memorandum, whether Plaintiff was disabled for any twelve month period between the date of Plaintiff's foot injury and the date of Plaintiff's

stroke.⁶ Specifically, the ALJ is to evaluate Plaintiff's subjective complaints of pain and level of functioning before she suffered her stroke.⁷

V. CONCLUSION

For the foregoing reasons, the Court sustains Plaintiff's objections to the Magistrate Judge's Report and Recommendation, and remands for further proceedings consistent with this memorandum.

⁶ On remand, the ALJ should consider Plaintiff's subjective complaints of pain in determining whether Plaintiff was prevented from ambulating effectively, in accordance with the definition in the medical listings found in 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00(b), and, if so, whether Plaintiff's condition equals a relevant medical listing under step three of the five-step sequential evaluation process. The ALJ should also consider Plaintiff's subjective complaints of pain in determining whether Plaintiff satisfies steps four and five of the five-step sequential evaluation process.

⁷ The most obvious source of evidence to utilize on remand is the record evidence related to Plaintiff's first application. According to Plaintiff, there are indications that this record has been lost by the Social Security Commission and is not available. Plaintiff bases this proposition on the Field Office Report related to Plaintiff's second application for benefits. Plaintiff argues that, in the entry on the form labeled "Location of prior folder," the word "lost" appears to be written. (See Tr. 93.) The Court cannot agree with Plaintiff's interpretation of the writing in the entry. Rather, the Court finds the handwriting to be completely illegible, and is therefore unable to attach any meaning to it. It is expected that the Commissioner on remand will make every effort to locate this file, or, alternatively, to reconstruct the administrative record to the extent possible.

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

HOLLIDAY SMITH	:	CIVIL ACTION
	:	
Plaintiff	:	NO. 02-7324
	:	
v.	:	
	:	
JO ANNE BARNHART,	:	
Commissioner of	:	
Social Security,	:	
	:	
Defendant	:	

ORDER

AND NOW, this __ day of November, 2003, having considered the parties' motions for summary judgment, and having reviewed the entire record, including the ALJ's written Decision, the transcript of the hearing, and the hearing exhibits, for the reasons discussed in the accompanying Memorandum, **IT IS HEREBY ORDERED AS FOLLOWS**:

- 1) Plaintiff's Motion for Summary Judgment is **GRANTED** insofar as the matter is remanded for further proceedings consistent with the Memorandum;
- 2) Defendant's Motion for Summary Judgment is **DENIED**; and
- 3) The case is **REMANDED** to the Commissioner of the Social Security Administration in accordance with the fourth sentence of 42 U.S.C. § 405(g) for further proceedings consistent with the Court's accompanying Memorandum; and

4) This case shall be closed for statistical purposes.

BY THE COURT:

John R. Padova, J.

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

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	:	
Plaintiff	:	NO. 02-7324
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v.	:	
	:	
JO ANNE BARNHART,	:	
Commissioner of	:	
Social Security,	:	
	:	
Defendant	:	

JUDGMENT

AND NOW, this __ day of November, 2003, in accordance with the Court's separate Order dated this same date, granting Plaintiff's Motion for Summary Judgment and remanding the case to the Commissioner of the Social Security Administration in accordance with the fourth sentence of 42 U.S.C. § 405(g) for further proceedings consistent with the Court's accompanying Memorandum, pursuant to Kadelski v. Sullivan, 30 F.3d 399 (3d Cir. 1994) and Federal Rule of Civil Procedure 58, **IT IS HEREBY ORDERED** that **JUDGMENT IS ENTERED** in favor of Plaintiff, Holliday Smith, and against Defendant, Jo Anne Barnhart, Commissioner of the Social Security Administration.

BY THE COURT:

John R. Padova, J.

