

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

ROSALIND L. DEMIRANDA	:	CIVIL ACTION
	:	
v.	:	NO. NO. 04-4199
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 5th day of July, 2005, upon consideration of the cross-motions for summary judgment filed by the parties, the response thereto, the Report and Recommendation of United States Magistrate Judge Peter B. Scuderi, and the objections and reply thereto (Doc. Nos. 5, 6, 7, 9, 10, 11, and 12), the court makes the following findings and conclusions:

1. The findings contained in the Report and Recommendation are supported by the record and, *inter alia*, the Administrative Law Judge (“ALJ”) failed to explicitly consider Rosalind L. Demiranda’s (“Demiranda”) obesity at step two of the sequential analysis.

2. In her objections, the Commissioner contends that the ALJ indirectly considered Demiranda’s obesity by relying on medical records in which obesity was considered and that the holding of Rutherford v. Barnhart, 399 F.3d 546 (3d Cir. 2005) dictates that the Report and Recommendation be rejected. I disagree. In Rutherford, the Third Circuit explained that even though recordations of height and weight in the record were sufficient to notify the ALJ of an obesity impairment, the ALJ was not required to explicitly consider obesity when the plaintiff failed to specifically allege obesity as an impairment and where the ALJ’s explicit consideration would not have affected the outcome of the case. Rutherford, 399 F.3d at 552-553 (quoting Skarbek v. Barnhart, 390 F.3d 500 (7th Cir. 2004) (per curiam)). Rutherford, provides some guidance on when an explicit instead of indirect consideration of obesity would not affect the outcome of the case. First, the Court noted that the plaintiff had failed to specify how her obesity affected her ability to work, beyond a generalized claim that her weight made it more difficult for her to stand, walk and manipulate her hands and fingers. Id. Second, the Court noted that the ALJ relied on voluminous medical records and adopted the findings of physicians who were aware of the plaintiff’s obesity and, thus, the ALJ indirectly considered obesity. Id. Third, the Court noted that the records on which the ALJ relied did not mention obesity as contributing to any limitation. Id.

Although Demiranda did not formally allege obesity as an impairment in proceedings before the ALJ and the ALJ did rely on medical evidence in which Demiranda’s obesity was considered, I find that an explicit consideration of that impairment is necessary in this case. I so find because I am unable to conclude that the ALJ’s explicit consideration of obesity would not have affected the outcome of the case. First, I note that unlike in Rutherford, Demiranda was diagnosed with morbid obesity by several different doctors. (Tr. 111-12, 126,

133). Also the ALJ specifically noted that Demiranda was obese in his decision and discussed her weight at the hearing but did not explicitly perform any analysis involving obesity. (Tr. 25 ¶ 5, 153). Moreover, Demiranda specifically contended that her obesity affected her ability to work because it: increased her chronic fatigue and pain and contributed to her depression; decreased her mobility because it exacerbated her osteoarthritis; exacerbated her diabetes mellitus and coronary artery disease and put her at risk for recurrent pulmonary embolization; and that it adversely impacted her already impaired cardiovascular system. (Doc. Nos. 5 pages 4, 15, 16; 7 page 2; and 12 page 3). Finally, and most importantly, several medical records indicate that Demiranda's obesity contributed to her limitations: one of Demiranda's treating physician opined that she was disabled in part due to morbid obesity and that her mobility was limited due to degenerative osteoarthritis exacerbated by obesity; the consultative examiner found that her obesity was a contributing factor to her cardiovascular disease; and another treating physician stated that there were multiple reasons why removing Demiranda's panniculus¹ would be beneficial to her health. (Tr. 102, 112, 122, 126, 135).

Because Demiranda opined how her obesity affected her impairments and, thus, her ability to work, because she was diagnosed with morbid obesity and medical records conclude that her obesity contributed to her impairments, and because the ALJ recognized that Demiranda suffered from obesity, an explicit analysis of Demiranda's obesity impairment must be performed by the ALJ and the case must be remanded as a result.

Therefore, it is hereby **ORDERED** that:

3. The Report and Recommendation is **APPROVED** and **ADOPTED**;

4. The Commissioner's Objections are **OVERRULED**;

5. The motion for summary judgment filed by Rosalind L. Demiranda is

GRANTED to the extent that the matter is **REMANDED** for further proceedings consistent with the Report and Recommendation and with this order;

6. The motion for summary judgment filed by the Commissioner is **DENIED**;

and

7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

LOWELL A. REED, JR., S.J.

¹ Panniculus is a fatty layer of subcutaneous tissue of abdomen. *Stedmans Medical Dictionary* (27th ed. 2000).