

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

Stephanie Irby	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 04-3807
	:	
	:	
Jo Anne B. Barnhart	:	
	:	
	:	
Defendant.	:	

MEMORANDUM-ORDER

Presently pending are the parties cross motions for summary judgement. For the reasons set forth below, I will remand this matter at the request of the Plaintiff.

I. Factual and Procedural History

Plaintiff Stephanie Irby filed her claim for Supplemental Social Security benefits on June 3, 1998, claiming a disability commencing December 10, 1997 as a result of Plaintiff's lupus erythematosus and rheumatoid arthritis in the knees and hip exacerbated by a mental impairment. The Pennsylvania Bureau of Disability Determination, a state agency, denied Plaintiff's application at the initial and reconsideration levels of administrative review. On December 9, 1999, an administrative law judge (ALJ) denied Plaintiff's claim following an administrative hearing and Plaintiff requested Appeals Council review. On January 24, 2002, the Appeals Council remanded Plaintiff's case for a new administrative hearing because the Appeals Council could not locate Plaintiff's file. On April 21, 2003, the ALJ held a hearing at which Plaintiff was represented by counsel. Appearing to testify was Richard Saul, MD and John H. Martin, MD providing medical expert testimony. William T. Slaven, a vocational expert, also testified.

During this hearing, the ALJ stated that a consultative psychiatric evaluation would be ordered. The psychiatric evaluation was never done. The ALJ rendered a decision on June 11, 2003, nonetheless. The ALJ found that Plaintiff was not disabled because her residual function capacity allows for the Plaintiff to perform a range of light level work and that Plaintiff's mental impairment only affects Plaintiff's ability to concentrate to a slight degree. Plaintiff filed a request for review of the ALJ's decision. The Appeals Council denied Plaintiff's request for review on June 15, 2004 and adopted the ALJ's decision as the final decision of the Commissioner of Social Security. After exhausting her administrative remedies, Plaintiff filed this civil action seeking review of the Commissioner's final decision. For the reasons that follow, the record in this case is incomplete and the case will be remanded for a consultative psychiatric evaluation.

II. Legal Standard

This court's review of the Commissioner's decision is not de novo, but rather is limited to determining whether there is substantial evidence in the record to support the Commissioner's decision. 42 U.S.C. § 405(g). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate." Plummer v. Apfel, 186 F.3d 422, 427 (3rd. Cir. 1999). It is the duty of the administrative law judge reviewing the case, and not the responsibility of this court, to make findings of fact and to resolve conflicts in the evidence. Id. at 429.

III. Discussion

Plaintiff argues that this case should be remanded for a consultative psychiatric evaluation of Plaintiff's mental impairment. In 1999, Plaintiff underwent a psychological consultative evaluation at the request of the state agency and was diagnosed with an adjustment reaction but no severe mental impairment. A December 2002 psychological consultative

evaluation resulted in a diagnosis of adjustment disorder and anxiety but again no severe mental impairment. However, the testimony at the ALJ hearing reveals that psychiatric testing would develop the record for making a more accurate assessment of Plaintiff's mental impairments. The record also reveals that Plaintiff's lupus and the medication Prednisone cause emotional problems which may exacerbate Plaintiff's mental impairments. Plaintiff has been diagnosed by medical professionals as "depressed" and "suffering from anxiety." Dr Saul's testimony reveals "this is the kind of case that we need more development to really see" in order to determine the level to which Plaintiff is mentally impaired. During the hearing, the ALJ, on at least two occasions, stated that a consultative psychiatric evaluation would be ordered. There is no explanation why his decision was filed without the psychiatric evaluation the ALJ believed to be necessary at the time of the hearing. Moreover, the ALJ's statement that the evaluation was to be ordered may have resulted in the Plaintiff's counsel not exercising Plaintiff's right to complete the record on her own behalf by conducting a psychiatric evaluation. Admittedly, the ordering of a consultative psychiatric evaluation was within the ALJ's discretion initially, however, when he stated that it would be ordered the Plaintiff may have been misled. I find that the record is incomplete without a psychiatric evaluation. Justice requires that Plaintiff be given the opportunity to develop the record with said evaluation. Therefore this case will be remanded for a consultative psychiatric evaluation. An appropriate order follows.

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Defendant.	:	

ORDER

AND NOW, this __7th__ day of September, 2005, following review of the cross-motions for summary judgment and arguments of counsel, **IT IS HEREBY ORDERED** and **DECREED** that the parties motions for summary judgment are **DENIED WITHOUT PREJUDICE** at this time. Plaintiff's motion for remand for additional consultative psychiatric evaluation is **GRANTED**. A report and assessment shall be prepared by Defendant's appointed consultative psychiatrist. Thereafter, such additional proceedings will be scheduled as determined by the ALJ.

BY THE COURT:

S/Clifford Scott Green
CLIFFORD SCOTT GREEN, S.J.