

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

CHERYL GREENE,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	NO. 05-1719
Commissioner of Social Security,	:	
	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JUNE 26, 2006

Plaintiff, Cheryl Greene, filed this action pursuant to 42 U.S.C. §§ 1383(c)(3) and 405(g), for review of the final decision of the Commissioner of Social Security (“Commissioner”), who denied plaintiff’s applications for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) under Titles II and XVI, respectively, of the Social Security Act (“Act”), 42 U.S.C. §§ 1381-1383f, 401-433. The parties filed cross-motions for summary judgment which were referred to United States Magistrate Judge David R. Strawbridge for a Report and Recommendation.

Plaintiff’s summary judgment motion requests that the Commissioner’s denial of benefits be reversed and that the matter be remanded for the calculation of benefits, or in the alternative, that the case be remanded for further consideration. The Commissioner’s motion requests that the denial of benefits be affirmed on the basis that it is supported by substantial evidence. By Report and Recommendation dated April 27, 2006 (cited herein as “R&R”), Judge Strawbridge

recommended that plaintiff's motion be granted, that the Commissioner's motion be denied, and that the case be remanded to the Commissioner for proper evaluation of the evidence.

The Commissioner has filed Objections to the Report and Recommendation on the ground that "substantial evidence supports the [Commissioner's] decision." See Def.'s Objections to R&R (cited herein as "Def.'s Obj.") at 1. For the reasons which follow, the Commissioner's Objections are overruled, the Report and Recommendation is approved and adopted as supplemented herein, and the case is remanded for further proceedings.

I. BACKGROUND

Plaintiff was 44 years old at the time of the November 25, 2002 decision of the administrative law judge ("ALJ") denying plaintiff's claims for benefits. (R. 24, 54.) She graduated high school and was also trained as a medical assistant. (R. 73, 104.) Her past relevant work was as a hospital unit clerk and bank commercial customer service representative. (R. 99.) She also has experience as a nursing assistant. (R. 68.)

In May 2001, plaintiff filed applications for DIB and SSI alleging disability as of July 31, 2000 due to back and neck pain, a pulmonary embolism, a thoracectomy, and "heart failure." (R. 17, 54-56, 98, 458-59, 460.) After the initial denial of her applications, she requested an administrative hearing. (R. 53.) Plaintiff and a vocational expert ("VE") testified at the November 6, 2002 hearing, (R. 27-47), and the ALJ thereafter issued her decision denying plaintiff's claims, (R. 17-24).

In her decision, the ALJ found that plaintiff had not engaged in substantial gainful activity since the alleged onset of disability, (R. 23, Finding No. 2), and that she suffered from

severe back and neck disorders, (R. 19). However, the ALJ further found that plaintiff's "allegations regarding her limitations [were] not totally credible," (R. 23, Finding No. 5), and that although she was "unable to perform any of her past relevant work," (R. 23, Finding No. 8), there were a "significant number of jobs in the national economy that she could perform," (R. 24, Finding No. 13). Therefore, the ALJ found plaintiff was not entitled to DIB and not eligible for SSI under the Act.¹ (R. 24.)

The Appeals Council subsequently denied plaintiff's request for review, (R. 5-8,12-13), and the ALJ's decision consequently became "the final decision of the Commissioner," (R. 5). See Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001). Plaintiff then initiated this action, and the parties filed their respective cross-motions for summary judgment.

Plaintiff's summary judgment motion states that the ALJ failed to properly analyze all the evidence in the record in making findings regarding plaintiff's subjective complaints and residual functional capacity ("RFC").² See Pl.'s Summ. J. Mot. at 19-30. Among other things, plaintiff argues that "the ALJ cursorily referred to (only) 7 out of 28 medical exhibits." See Pl.'s

¹The Act defines "disability" in terms of the effect a physical or mental impairment has on a person's ability to function in the workplace. Heckler v. Campbell, 461 U.S. 458, 459-60 (1983). Under the Act, a disability is established where the claimant demonstrates that there is some "medically determinable basis for an impairment that prevents [her] from engaging in any 'substantial gainful activity' for a statutory twelve-month period." Fargnoli v. Massanari, 247 F.3d 34, 38-39 (3d Cir. 2001) (citing Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999)). The process employed to determine whether a plaintiff is entitled to benefits involves shifting burdens of proof. Olsen v. Schweiker, 703 F.2d 751, 753 (3d Cir. 1983). The claimant bears the initial burden of establishing that she is unable to return to her prior work. Once this proof is met, the burden shifts to the Commissioner who must prove that the claimant, given her age, education, and work experience has the capacity to perform specific jobs that exist in the national economy. Brown v. Yuckert, 482 U.S. 137, 146-47 n.5 (1987).

²Under the regulations, RFC is defined as "what [an individual] can still do despite [the individual's] limitations." 20 C.F.R. §§ 404.1545(a), 416.945(a); see Fargnoli, 247 F.3d at 40.

Reply Supp. Pl.'s Summ. J. Mot. at 1-2 (parenthetical added).

In his well-reasoned Report and Recommendation, Judge Strawbridge found that the ALJ's analysis in support of the findings challenged by plaintiff was inadequate. See R&R at 14-18. In particular, Judge Strawbridge found that the ALJ failed to properly evaluate the evidence in support of her RFC determination and her credibility finding that plaintiff's "allegations regarding her limitations [were] not totally credible," (R. 23, Finding No. 5). See R&R at 14-15. Judge Strawbridge pointed out, among other things, that the ALJ failed to discuss the reports and findings of many of the physicians who treated or evaluated plaintiff, as well as the report of a state agency physician who reviewed the medical records. Id. at 17.

II. STANDARD OF REVIEW

A district court judge makes a de novo determination of those portions of a magistrate judge's report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.; see Drake v. Barnhart, 2005 WL 3078195, at * 1 (E.D. Pa. Nov. 15, 2005).

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. See Knepp v. Apfel, 204 F.3d 78, 83 (3d Cir. 2000). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate." Burns v. Barnhart, 312 F.3d 113, 118 (3d Cir. 2002) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). It consists of more than a mere scintilla of

evidence but may be less than a preponderance of the evidence. Burns, 312 F.3d at 118; Jesurum v. Secretary of HHS, 48 F.3d 114, 117 (3d Cir. 1995).

The ALJ must comport with proper procedure and apply proper legal standards. Coria v. Heckler, 750 F.2d 245, 247 (3d Cir. 1984). Therefore, despite the deference to administrative decisions in disability benefit cases, the Court “retain[s] a responsibility to scrutinize the entire record and to reverse or remand if the [Commissioner’s] decision is not supported by substantial evidence.” Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (quoting 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, 710 F.2d 110, 114 (3d Cir. 1983) (quoting Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981)).

III. DISCUSSION

The Commissioner objects to Judge Strawbridge’s Report and Recommendation on the basis that “substantial evidence supports the ALJ’s findings on all issues,” see Def.’s Obj. at 1. However, the ALJ’s factual findings are only proper if they are supported by substantial evidence and decided according to correct legal standards. See Knepp, 204 F.3d at 83; see also Coria, 750 F.2d at 247 (ALJ must comport with proper procedure and apply proper legal standards).

“‘Substantial evidence’ can only be considered as supporting evidence in relationship to all other evidence in the record.” Kent, 710 F.2d at 114 (quoting Cotter, 642 F.2d at 704). Here, Judge Strawbridge found that the ALJ provided an inadequate analysis in support of her RFC finding and her credibility finding regarding plaintiff’s subjective complaints of pain.

The Third Circuit has emphasized that “the special nature of proceedings for disability

benefits dictates extra care on the part of the agency in developing an administrative record and in explicitly weighing all evidence.” Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979) (emphasis added); see Fargnoli, 247 F.3d at 42; Coleman v. Chater, 1997 WL 452192, at *3 (D. N.J. July 22, 1997). “In the absence of such an [explanation], the reviewing court cannot tell if significant probative evidence was not credited or simply ignored.” Burnett, 220 F.3d at 121 (quoting Cotter, 642 F. 2d at 705); see also Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993) (quoting Cotter, 642 F.2d at 707) (ALJ “cannot reject evidence for no reason or the wrong reason”). Thus, the Court of Appeals has held that “unless the [Commissioner] has analyzed all evidence and has sufficiently explained the weight [she] has given to obviously probative exhibits, to say that [her] decision is supported by substantial evidence approaches an abdication of the court’s ‘duty to scrutinize the record as a whole to determine whether the conclusions reached are rational.’” Gober v. Matthews, 574 F.2d 772, 776 (3d Cir. 1978) (quoting Arnold v. Secretary of HEW, 567 F.2d 258, 259 (4th Cir. 1977)) (emphasis added); see Burnett, 220 F.3d at 121; Plummer, 186 F.3d at 429; Cotter, 642 F.2d at 705.

In this case, the ALJ acknowledged that plaintiff “ha[d] underlying medically determinable impairments that could reasonably be expected to result in some of the symptoms as alleged.” (R. 21.) The ALJ stated that she had “reservations . . . as to whether [plaintiff’s] assertions concerning her impairments, and their impact on her condition, [could] be considered fully credible.” (R. 21.) However, as Judge Strawbridge pointed out in his Report and Recommendation, in support of the ALJ’s credibility and RFC findings, she failed to even discuss evidence from several physicians who treated or evaluated plaintiff. See R&R at 17.

For example, the ALJ failed to specifically address evidence from F. Michael Ferrante,

M.D., one of plaintiff's treating physicians, including an October 9, 2000 report indicating, among other things, straight leg-raising tests to only 30 and 40 degrees revealing pain in the right and left lower back, respectively, as well as "trigger points in the lower back bilaterally on deep palpation." (R. 161.) Dr. Ferrante reported that the MRI of the lumbar spine "reveal[ed] disc herniation at L5-S1 with narrowing of the right neural foramina" and "also a central disc herniation at L4-L5." (R. 161.) The doctor further reported "chronic reinnervation of the right S1 myotome, consistent with chronic radiculopathy," and he confirmed plaintiff's complaints of "chronic low back pain," "intermittent neck pain with radiation to both arms," and that the "pain is worsened with movement, prolonged standing and prolonged walking." (R. 160.)

Dr. Ferrante's March 26, 2001 report confirmed that, upon physical examination, there was "positive tenderness to palpation of the lumbar spine and lumbar paraspinal musculature, right greater than left" with "decreased and painful extension, rotation and lateral bending of the lumbar spine." (R. 154.) It was the doctor's opinion that plaintiff "continue[d] to suffer from lumbar facet arthropathy, lumbar herniated nucleus pulposus and myofascial pain." (R. 154.)

Kevin A. Dolan, M.D. examined plaintiff on May 16, 2001 and reported plaintiff's complaints of "pain in her right side" and lower back pain. (R. 361.) Dr. Dolan report that "[t]he pain [was] still in her upper shoulder and low back radiating out to her extremities which [was] throbbing, shooting, stabbing pain with a sharpness, burning, aching tenderness, numbness and pins and needles." (R. 361.)

Dr. Dolan's physical examination also revealed a "[p]ositive straight leg raising test bilaterally," and it was the doctor's opinion that plaintiff "continued to suffer from chronic back pain" with the "etiology of her pain . . . coming from her discs." (R. 361.) The doctor noted a

positive November 11, 2000 discography “with concordant disc pain at L3-L4 with a radial tear, L4-L5 with a radial tear with concordant pain, and L5-S1 with the epidural extravasation and concordant pain.” (R. 361.) It was Dr. Dolan’s opinion that plaintiff suffered with sacroiliitis bilaterally.³ (R. 361.)

In rejecting plaintiff’s claims of disabling pain, the ALJ failed to even mention, let alone “explicitly weigh[],” see Dobrowolsky, 606 F.2d at 406, “obviously probative” evidence from Dr. Ferrante or Dr. Dolan.⁴ See Dobrowolsky, 606 F.2d at 406; Gober, 574 F.2d at 776; see also Fargnoli, 247 F.3d at 42; Burnett, 220 F.3d at 121; Plummer, 186 F.3d at 429. The ALJ also failed to discuss specific probative evidence from other treating or evaluating physicians, such as Henry H. Sherk, M.D., Roy Lerman, M.D., Adam Meyers, D.O., William H. Shull, Jr., M.D., and Gene Salkind, M.D.⁵ (R. 182-212, 260-61, 373.)

Since the ALJ failed to “analyze[] all evidence” and “sufficiently explain[] the weight

³Bilateral sacroiliitis is inflammation of the sacroiliac joint (located between the lumbar spine and the pelvis). See Phillips v. Barnhart, 357 F.3d 1232, 1236 (11th Cir. 2004); Green-Younger v. Barnhart, 335 F.3d 99, 103 n.7 (2d Cir. 2004) (citing Stedman’s Medical Dictionary 1587-88 (27th ed. 2000)).

⁴It is also noted that while the ALJ acknowledged and “considered the welfare forms completed by [plaintiff’s] treating physician (Robert Nye, M.D.) [indicating] that [plaintiff] was ‘temporarily disabled,’” (R. 20 (parenthetical added); see R. 148), the ALJ did not acknowledge Dr. Nye’s opinion almost a year later that plaintiff was “permanently disabled” in that she was “permanently preclude[d] [from] any gainful employment,” (R. 457). While a statement by a physician that a plaintiff is “‘disabled’ or ‘unable to work’ does not mean that [the Commissioner] will determine that [the claimant is] disabled,” see 20 C.F.R. § 416.927(e)(1), the Commissioner is required to provide some indication of the evidence which was rejected in arriving at her decision so that a reviewing court will know whether probative evidence was considered or simply ignored. See Cotter, 642 F.2d at 705.

⁵In addition, while the ALJ apparently found the state agency physician’s opinion regarding plaintiff’s RFC only partially credible, (R. 253-54), the ALJ failed to mention, let alone explicitly weigh that evidence as well.

[she] has given to obviously probative exhibits,” it cannot be said that her decision was supported by substantial evidence. See Gober, 574 F.2d at 776 (quoting Arnold, 567 F.2d at 259); see also Burnett, 220 F.3d at 121; Plummer, 186 F.3d at 429; Cotter, 642 F.2d at 705. Accordingly, the case should be remanded for a proper analysis of the evidence.⁶ See, e.g., Cotter, 642 F. 2d at 707; Gober, 574 F.2d at 778; Rudolph v. Apfel, 1998 WL 42269, at *1 (E.D. Pa. Jan. 14, 1998).

Not only did the ALJ fail to properly explicitly weigh probative evidence, but she also mischaracterized the record evidence in providing reasons supporting her findings. In support of her credibility finding, the ALJ stated:

The record fails to provide any objective medical evidence that [plaintiff’s] impairments are as severe as her hearing testimony indicates. The record fails to show [plaintiff] requiring any emergency room treatments, hospitalization, significant active treatment or significant office care other than for routine maintenance, and there have been no significant increases or changes in prescribed medications reflective of an uncontrolled condition.

(R. 21 (emphasis added).) Thus, the ALJ based her credibility and RFC findings, at least in part, on a lack of “any objective medical evidence” or evidence indicating “changes in prescribed medications” supporting plaintiff’s complaints. (R. 21 (emphasis added).)

Pursuant to the social security regulations (“regulations”), “[o]bjective medical evidence is evidence obtained from the application of medically acceptable clinical and laboratory diagnostic techniques.” Ortiz-Torres v. Callahan, 1997 WL 431016, at *6 (E.D. Pa. July 15,

⁶To the extent that the Commissioner’s brief and objections provide reasons not stated in the ALJ’s decision in support of a the denial of benefits, the Court “cannot affirm the denial of benefits by substituting the grounds proposed by the . . . Defendant [Commissioner] for those of the ALJ.” See Reynolds v. Apfel, 1999 WL 509742, at *7-8 (E.D. Pa. July 16, 1999); see also Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001); Fagnoli, 247 F.3d at 44.

1997) (quoting 20 C.F.R. § 404.1529(c)(2)) (emphasis added); see 20 C.F.R. § 416.929(c)(2).

“When present, these findings tend to lend credibility to an individual’s allegations about pain or other symptoms.” Rudolph, 1998 WL 42269, at *1 (quoting Social Security Ruling (“SSR”) 96-7p, 61 Fed. Reg. 34483, 34485-86 (July 2, 1996)).⁷

In Mason v. Shalala, 994 F.2d 1058 (3d Cir. 1993), the Court explained that while there must be objective evidence of a condition that could cause a subjective symptom, there need not be objective evidence of the symptom itself. Id. at 1067. Moreover, under the regulations, the ALJ must “always give good reasons in [the] notice of determination or decision for the weight give[n] [to a] treating source’s opinion.” 20 C.F.R. § 416.927(d)(2). An ALJ may not properly reject medical evidence based on her own “speculation or lay opinion.” See Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (citing Plummer, 186 F.3d at 429).

Here, as explained above, among other things, evidence from Dr. Ferrante and Dr. Dolan indicated positive straight leg-raising tests bilaterally revealing right and left lower back pain. (R. 161, 361.) Results of straight leg-raising tests have been held to be objective medical evidence. See Rhodes v. Barnhart, 117 Fed. Appx. 622, 630 (10th Cir. 2004) (acknowledging positive straight-leg raising tests as “objective medical findings”); Rivera v. United States, 1999 WL 316835, at *1 (2d Cir. 1999) (holding that positive straight leg-raising test was objective medical evidence of serious back and neck injuries); Gretchen v. United States, 618 F.2d 177, 180 (2d Cir. 1980) (positive straight leg-raising test demonstrated sacroiliac joint damage); Higgins v. Barnhart, 2006 WL 839256, at *12 (N.D. Iowa Mar. 29, 2006) (positive straight leg-

⁷Social Security Rulings “are binding on all components of the Social Security Administration.” Walton v. Halter, 243 F.3d 703, 708 (3d Cir. 2001); 20 C.F.R. § 402.35(b)(1).

raising test is an “objective indicator” supporting claim of low back and leg pain). Thus, contrary to the ALJ’s statement regarding the lack of any supporting objective evidence, evidence in the record, including positive straight leg-raising tests bilaterally revealing right and left lower back pain, (R. 161, 361), reflect objective medical evidence supporting plaintiff’s complaints. See Rhodes, 117 Fed. Appx. at 630; Rivera, 1999 WL 316835, at *1; see also Burnett, 220 F.3d at 122 (failure to discuss contradictory objective evidence is error); Gober, 574 F.2d at 778 (remanding case where ALJ’s credibility finding was based on improper reasons and ALJ’s errors thus may have “infected” his conclusion that the claimant was not entitled to benefits); Rudolph, 1998 WL 42269, at *1 (remanding case where ALJ’s “weighing of [the claimant’s] credibility . . . appear[ed] to have been faulty”).

In addition, in support of the ALJ’s findings, she stated: “The record fails to show [plaintiff] requiring any emergency room treatments . . . and there have been no significant increases or changes in prescribed medications reflective of an uncontrolled condition.” (R. 21 (emphasis added).) However, even assuming arguendo that a lack of emergency room visits is a proper reason for discrediting complaints of back pain, contrary to the ALJ’s statement, as Judge Strawbridge pointed out, see R&R at 15 n.5, evidence (not mentioned in the ALJ’s decision) indicates that plaintiff was treated and prescribed medication during emergency room visits for severe back and leg pain, (R. 229, 438, 446). Furthermore, progress reports in the record reflect that prescribed medications were varied in both type and dosage in response to her continual complaints of pain. (R. 130, 154, 344, 351, 430, 446.) Indeed, Dr. Nye reported on December 20, 2001 that despite an “aggressive treatment regimen she continue[d] to have chronic pain,” (R. 455 (emphasis added)). Thus, in addition to failing to explicitly analyze all of the probative

evidence, the ALJ appears to have mischaracterized the evidence.

For the reasons explained in Judge Strawbridge’s Report and Recommendation as supplemented above, the ALJ failed to sufficiently explain the weight given to the reports of the treating medical sources and plaintiff’s subjective complaints. See, e.g., Cotter, 642 F. 2d at 707; Gober, 574 F.2d at 778; Rudolph, 1998 WL 42269, at *1. Therefore, since it cannot be said that the ALJ’s decision is supported by substantial evidence, see, e.g., Gober, 574 F.2d at 776 (quoting Arnold, 567 F.2d at 259); see also Burnett, 220 F.3d at 121; Plummer, 186 F.3d at 429; Cotter, 642 F.2d at 705, the case should be remanded, see id. at 707. On remand, the Commissioner must satisfy her duty to “explicitly weigh[] all evidence,” see Dobrowolsky, 606 F.2d at 406 (emphasis added); see also Coleman, 1997 WL 452192, at *3; SSR 96-5p, 61 Fed. Reg. 34471, 34472 (1996), and provide a sufficient explanation for disregarding evidence,⁸ see Burnett, 220 F.3d at 121; see also Plummer, 186 F.3d at 429; Adorno, 40 F.3d at 48; Cotter, 642 F.2d at 705.

⁸In support of the claim that the ALJ properly considered all of the evidence, the Commissioner’s Objections to Judge Strawbridge’s Report and Recommendation point to the ALJ’s boilerplate language that: “After having given careful consideration to all the evidence and testimony of record, including exhibits of records not specifically cited in the opinion, the [ALJ] conclude[d] that” plaintiff was not disabled, (R. 18 (emphasis added); see Def.’s Obj. at 11 (citing R. 18)). However, such a conclusory statement is insufficient in developing an administrative record to support the denial of benefits. As explained in SSR 96-7p, 61 Fed. Reg. at 34485-86: “The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision. It is not sufficient to make a conclusory statement that ‘the individual’s allegations have been considered’ or that ‘the allegations are (or are not) credible.’ . . . This documentation is necessary in order to give the individual a full and fair review of his or her claim, and in order to ensure a well-reasoned determination or decision.” Id. (emphasis added). As the Third Circuit has “repeatedly emphasized,” the Commissioner must take “extra care” in “developing an administrative record and in explicitly weighing all evidence.” Fagnoli, 247 F.3d at 42 (quoting Dobrowolsky, 606 F.2d at 406) (emphasis added); see Coleman, 1997 WL 452192, at *3.

IV. CONCLUSION

Under the fourth sentence of 42 U.S.C. § 405(g): “The [district] court shall have power to enter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g) (“Judicial review”); see Matthews, 239 F.3d at 593. Here, the ALJ failed to provide a proper analysis of all the probative evidence in the record. See Fagnoli, 247 F.3d at 42; Cotter, 642 F.2d at 705. As explained above, the ALJ failed to satisfy her duty to “explicitly weigh[] all evidence,” see Dobrowolsky, 606 F.2d at 406 (emphasis added); see also Coleman, 1997 WL 452192, at *3, and provide a sufficient explanation for disregarding evidence, see Burnett, 220 F.3d at 121; see also Plummer, 186 F.3d at 429; Adorno, 40 F.3d at 48; Cotter, 642 F.2d at 705. She also mischaracterized the evidence in the record in explaining her findings regarding plaintiff’s credibility and the ALJ’s RFC finding.

Since it is the function of the ALJ, not the courts, to evaluate the evidence, see Fagnoli, 247 F.3d at 42, a remand is appropriate to give the ALJ a further opportunity to properly analyze all of the evidence of record. See Cotter, 642 F.2d at 707; see also Walton, 243 F.3d at 709. Accordingly, the Commissioner’s Objections to the Report and Recommendation of Judge Strawbridge are overruled, the Report and Recommendation is approved and adopted as supplemented herein, plaintiff’s motion for summary judgment is granted insofar as plaintiff requests a remand, defendant Commissioner’s motion is denied, and the case is remanded to the Commissioner for further proceedings consistent with this Memorandum. Since the remand is pursuant to sentence four of 42 U.S.C. § 405(g), the final decision of the Commissioner denying benefits to plaintiff is reversed with a remand, and a judgment to that effect shall be entered. See

Kadelski v. Sullivan, 30 F.3d 399, 402 (3d Cir. 1994); see also Shalala v. Schaefer, 113 S. Ct. 2625, 2629 (1993).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

supplemented by the accompanying Memorandum;

2. Defendant Commissioner's Objections to the Report and Recommendation are overruled;

3. Plaintiff's Motion for Summary Judgment is GRANTED insofar as plaintiff requests a remand;

4. Defendant Commissioner's Motion for Summary Judgment is DENIED;

5. The matter is REMANDED to the Commissioner, pursuant to sentence four of

42 U.S.C. § 405(g), for further proceedings consistent with this Memorandum and Order.

BY THE COURT:

/s/ Robert F. Kelly

ROBERT F. KELLY

SENIOR JUDGE

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

CHERYL GREENE,	:	
	:	CIVIL ACTION
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Plaintiff,	:	
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v.	:	
	:	
JO ANNE B. BARNHART,	:	NO. 05-1719
Commissioner of Social Security,	:	
	:	
Defendant.	:	
	:	

J U D G M E N T

AND NOW, this 26th day of June, 2006, in accordance with Kadelski v. Sullivan, 30 F.3d 399 (3d Cir. 1994), and Rule 58 of the Federal Rules of Civil Procedure, it is hereby ORDERED that JUDGMENT is entered REVERSING the final decision of the Commissioner of Social Security and REMANDING the matter to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with United States Magistrate Judge David R. Strawbridge's Report and Recommendation, as supplemented by my Memorandum and Order of today approving and adopting the Report and Recommendation.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY

SENIOR JUDGE