

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

M.A.M., A MINOR BY HIS	:	
P/N/G STACEY FLORES,	:	
Plaintiff,	:	
v.	:	No. 05-6295
	:	
JO ANNE B. BARNHART,	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

MEMORANDUM

GREEN, S.J.

July 18, 2006

Presently before the Court are Plaintiff’s Motion for Summary Judgment, Or In The Alternative, Plaintiff’s Motion for Remand, and Defendant’s Motion for Summary Judgment. Oral argument on the motions was held on July 12, 2006 and the argument of counsel heard and considered. In addition to considering the parties memoranda and the arguments of counsel, the court has carefully reviewed the record and the opinion of the Administrative Law Judge (“ALJ”). Upon consideration of the foregoing, for the reasons set forth below, I conclude that this matter shall be remanded to the Commissioner for further development of the record and a new decision. Defendant’s motion for summary judgment will be denied. Plaintiff’s motion for summary judgment will also be denied. Plaintiff’s motion for remand will be granted.

The factual and procedural background of this case are fully set forth in the parties’ respective motions; therefore, it is not necessary to recite them herein. This court is bound by the ALJ’s findings of fact if they are supported by substantial evidence in the record. See 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 (3d Cir. 1999). As both parties correctly note, in order for a child’s impairment(s) to meet or medically equal a Listed Impairment, the impairment or combination thereof must result in a “marked” limitation in two

domains of functioning or in an “extreme” limitation in one domain of functioning. 20 .C.F.R. § 416.926a(a). The ALJ has determined that Plaintiff has less than marked limitations in all six of the relevant domains of functioning.

Pursuant to an Evaluation Report prepared by the School District of Philadelphia in April 2004, Plaintiff was administered the Wechsler Individual Achievement Test II (WIAT-II). At that time Plaintiff was in the fourth grade and achieved grade equivalent scores of 1.7 in Word Reading, 2.2 in Numerical Operations, and 1.1 in Math Reasoning. R. at 116-118. The evaluation report also noted that Plaintiff was in danger of failing his grade. Id. Finally, both parties have pointed to the relevant statement made in the evaluation report that Plaintiff “...demonstrates significant discrepancy between his low average to average intelligence and his level of achievement in both reading and math.” R. at 119. Although both parties have noted Plaintiff’s achievement on the WIAT-II intelligence test, neither Plaintiff, Defendant, nor the ALJ have stated whether Plaintiff’s grade equivalent score on the WIAT-II is two or three standard deviations below the mean score of that test. This is relevant because according to the Code of Federal Regulation provisions governing the functional equivalence of a Listed Impairment for children, a “marked limitation” in a domain of functioning will be found where a child “... has a valid score that is two standard deviations or more below the mean, but less than three standard deviations on a comprehensive standardized test designed to measure ability or functioning in that domain, and your day-to-day functioning in domain related activities is consistent with that score.” 20 C.F.R. § 416.926a(e)(2)(iii). Similarly an “extreme” limitation will be found where a child “... has a valid score that is three standard deviations or more below the mean on a comprehensive standardized test designed to measure ability or functioning in that domain, and your day-to-day functioning in domain related activities is consistent with that score.” 20 C.F.R. § 416.926a(e)(3)(iii).

Although the ALJ recited the above referenced standards in his opinion, he did not discuss whether Plaintiff's performance on the WIAT-II, a valid comprehensive intelligence test designed to measure ability or functioning in the domain of acquiring and using information, fell below two or three standard deviations from the mean performance on that test for a child of Plaintiff's age. If Plaintiff's performance on the WIAT-II was greater than two standard deviations below the mean and his day-to-day functioning in domain related activities regarding using and acquiring information is consistent with that score, then he must be found to have a "marked" limitation in that domain. If Plaintiff's performance on the WIAT-II was three or more standard deviations below the mean and his daily functioning regarding using and acquiring information is consistent with that score, then he must be found to have an "extreme" limitation in that domain. The ALJ's opinion does not include any statements regarding the statistical relevancy of Plaintiff's performance on the WIAT-II and whether that performance is consistent with Plaintiff's daily functioning in the relevant domain. The court finds that this is error and also concludes that the court is unable to determine whether substantial evidence exists in the record to support the ALJ's opinion. Therefore, this matter will be remanded to the Commissioner for the purpose of determining whether Plaintiff's performance on the WIAT-II was two, three, or more standard deviations below the mean, and also to determine whether Plaintiff's daily functioning in the domain of acquiring and using information is consistent with those scores.

An appropriate order follows.

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COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

ORDER

AND NOW, this 18th day of July 2006, **IT IS HEREBY ORDERED** that:

1. Defendant's motion for summary judgment is **DENIED**;
2. Plaintiff's motion for summary judgment is **DENIED**;
3. Plaintiff's motion for remand is **GRANTED**. This matter is **REMANDED** to the Commissioner of Social Security Administration so that the Administrative Law Judge (ALJ) can conduct additional proceedings consistent with this Order. On remand, the ALJ should: (a) determine whether Plaintiff's score on the Wechsler Individual Achievement Test - II fell below two or three standard deviations from the mean; and ; (b) determine whether Plaintiff's day-to-day functioning in the domain of acquiring and using information is consistent with those scores.

BY THE COURT:

s/ _____
CLIFFORD SCOTT GREEN, S.J.