

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

PAMELA DEGRAPHENREED, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
JO ANNE B. BARNHART, :  
Commissioner of Social Security, :  
Defendant. : NO. 04-1802

**MEMORANDUM**

This Social Security appeal was decided by the late Honorable Charles R. Weiner in a Memorandum Opinion and Order dated May 25, 2005. Judge Weiner granted the plaintiff's Motion for Summary Judgment, denied the defendant's Motion for Summary Judgment and remanded the case to the Commissioner for further proceedings consistent with his Memorandum Opinion. Specifically, Judge Weiner noted that the ALJ failed to mention the plaintiff's diagnosis of obesity and concluded, therefore, that not all the medical evidence was considered. Judge Weiner directed the ALJ to conduct a thorough analysis taking into consideration plaintiff's obesity.

On May 31, 2005, the defendant filed a Motion to Alter Judgment, based upon the recent Third Circuit decision in Rutherford v. Barnhart, 339 F.3d 546 (3d Cir. 2005). Essentially, Rutherford held that remand was not required for the ALJ to explicitly consider plaintiff's obesity. In Rutherford, the plaintiff was apparently obese, but her obesity did not contribute to her inability to work. In this case, Dr. Thakarar diagnosed Pamela Degraphenreed with "mild obesity" but went on to say that she had the ability to work. Following Dr. Thakarar's diagnosis, the ALJ in this case restricted plaintiff to light work and, it appears, accommodated her limitations by restricting her work requirements.

On June 8, 2005, the plaintiff filed a response to the first Motion to Alter Judgment. On June 28, 2005, Judge Weiner entered an Order granting the defendant's Motion to Alter or Amend the Judgment and Judge Weiner entered summary judgment in favor of the defendant, Commissioner of Social Security, and against the plaintiff.

On July 1, 2005, the plaintiff filed her Motion to Alter Judgment. This case was then reassigned to me, and the defendant was ordered to respond to the plaintiff's Motion to Alter. In the interim, Judge Weiner passed away.

Plaintiff's Motion to Alter essentially complains that Judge Weiner's June 28, 2005 Order, reversing his May 25, 2005 decision, was without explanation or accompanying opinion, and that due process requires that the parties be given an explanation for Judge Weiner's decision to alter the judgment.

I have conducted an independent review of Judge Weiner's Memorandum and Order of May 25, 2005, and I have reviewed the motions, briefs and memoranda filed by the parties since that time, as well as the applicable law. The Memorandum Opinion and Order of May 25, 2005 demonstrates that the Court understood the issues in the case and had a solid knowledge of the factual background to the plaintiff's appeal. Judge Weiner made it very clear that his remand was for a limited purpose: for the ALJ to consider Dr. Thakarar's obesity diagnosis. Immediately after Judge Weiner's decision, the Commissioner/defendant filed a Motion to Alter which challenged the remand in light of Rutherford v. Barnhart. After receiving a reply from the plaintiff, Judge Weiner changed his decision. There can be no question based upon a review of this record that Judge Weiner's June 28, 2005 decision was based upon the Commissioner's

argument that remand to the ALJ for a consideration of the “obesity diagnosis” was improper under Rutherford v. Barnhart.

My independent review of the facts and the law lead me to conclude that Judge Weiner was absolutely correct in changing his decision in light of the Rutherford v. Barnhart decision. There has been no change in the law and the Court is not aware of any new facts which would suggest the need to reverse or alter Judge Weiner’s decision of June 28, 2005. Therefore, the plaintiff’s Motion to Alter will be DENIED. An appropriate Order follows.

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**ORDER**

**AND NOW**, this 16th day of August, 2006, upon consideration of the plaintiff's Motion to Alter or Amend Judgment, and after considering the motion and the defendant's brief in opposition, the Motion to Alter is hereby **DENIED** for the reasons set forth in the accompanying Memorandum.

This case shall be marked closed by the Clerk of Court.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.