IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TODD L. PARSONS, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-878-JJF
	:	
JO ANNE B. BARNHART, Commissioner of Social Security,	:	
	:	
Defendant.	:	

Gary L. Smith, Esquire of GARY L. SMITH, ATTORNEY AT LAW, Newark, Delaware.
Attorney for Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Douglas E. McCann, Esquire, Assistant United States Attorney, of the OFFICE OF THE UNITED STATES ATTORNEY, Wilmington, Delaware.
Of Counsel: James A. Winn, Esquire, Regional Chief Counsel, and Tara A. Czekaj, Esquire, Assistant Regional Counsel of the SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania.
Attorneys for Defendant.

MEMORANDUM OPINION

September 10, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g) filed by Plaintiff, Todd L. Parsons, Jr., seeking review of the final decision of the Commissioner of the Social Security Administration denying Plaintiff's application for childhood disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Plaintiff filed a Motion For Summary Judgment (D.I. 9) requesting the Court to reverse the decision of the Commissioner and remand the matter for further proceedings. In response to Plaintiff's Motion, Defendant filed a Cross-Motion For Summary Judgment (D.I. 11) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Cross-Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated July 25, 2000 will be affirmed.

BACKGROUND

I. Procedural Background

Plaintiff filed his application for childhood DIB on May 4, 1998, alleging disability as of April 1, 1995, due to bipolar disorder. (Tr. 53-55, 100, 110). Plaintiff's claim was denied initially and on reconsideration. (Tr. 37-40, 42-46). Plaintiff timely appealed the denial of his application and an administrative law judge (the "A.L.J.") conducted a hearing on

Plaintiff's claim on April 25, 2000. (Tr. 307-341). At the hearing, Plaintiff was represented by his counsel, and his mother and a vocational expert were in attendance.

By decision dated July 25, 2000, the A.L.J. denied Plaintiff's claim for childhood DIB finding that Plaintiff was not disabled, because he was functionally capable of making a vocational adjustment to work that exists in the national economy. (Tr. 9-20). Plaintiff timely requested review of the A.L.J.'s decision, but the Appeals Council denied review. (Tr. 4-8). As a result, the A.L.J.'s decision became the final decision of the Commissioner. 20 C.F.R. §§ 404.955, 404.981, 422.210; see Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001).

After completing the process of administrative review, Plaintiff filed the instant civil action pursuant to 42 U.S.C. § 405(g), seeking review of the A.L.J.'s decision denying his claim for childhood DIB. In response to the Complaint, Defendant filed an Answer (D.I. 3) and the Transcript (D.I. 4) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment (D.I. 9) and Defendant filed a Cross-Motion For Summary Judgment (D.I. 11) and a combined Answering Brief and Opening Brief (D.I. 12) requesting the Court to affirm the A.L.J.'s decision. Plaintiff filed a Reply Brief to Defendant's Cross-Motion (D.I. 14), and therefore, this matter is ripe for the Court's review.

II. Factual Background

A. Plaintiff's Condition And Medical History

At the time Plaintiff filed his application for childhood DIB, he was nineteen years old and considered a younger individual under the Social Security regulations. 20 C.F.R. § 404.1563(b). Plaintiff has not achieved a high school diploma or a GED, and has no past relevant work experience. (Tr. 13, 104, 115, 133-135).

Initially, Plaintiff became eligible for child's SSI in 1995 when he was 15 years old. The determination that Plaintiff was entitled to these benefits was based upon the standard for a child at that time, i.e. whether Plaintiff's condition was severe enough to reduce substantially his or her ability to function independently and effectively in an age appropriate manner. 20 C.F.R. § 416.924b(a) (1995). When Plaintiff turned 18, his benefits were discontinued, and he applied for disability benefits as an adult child.

1. Past Medical History Related To The Period During Which Plaintiff Collected Child's SSI Benefits

Beginning in 1987, when Plaintiff was 7-9 years old, Plaintiff was seen with his family at Delaware Guidance with problems due to the separation of Plaintiff from his father who reportedly abused him. Plaintiff's behavior included tantrums, bed-wetting, arguing with his mother and declining school performance. Plaintiff's mother was described as overwhelmed and

an inadequate parent. (Tr. 155).

In 1990 at the age of 10, Plaintiff was promoted to the 4th grade, but from that point forward he was either "assigned" or retained in school. His grades were primarily failing with only 2 passing grades that were "D's." (Tr. 77). Plaintiff was frequently absent, missing up to 74 days of school in the 1994-1995 school year. (Tr. 77).

Plaintiff had numerous discipline problems in school, including disruptive classroom behavior, fighting with classmates, and threatening and being disrespectful to teachers. Plaintiff was disciplined with detentions frequently and was suspended on several occasions. (Tr. 69, 72-73, 79-80, 82, 83-86, 88-93). Despite his behavior with some teachers; however, other teachers reported that they had no problems with Plaintiff and that he was not rude, disruptive or disrespectful. (Tr. 87, 94, 157).

Psychological evaluations conducted on Plaintiff during this time indicate that Plaintiff was diagnosed with a conduct disorder and rule out affective disorder. (Tr. 142). Plaintiff underwent nine therapy sessions in 1994 and 1995 with William Mercer, M.A., a licensed counselor for a moderate conduct disorder. (Tr. 143). Mr. Mercer's diagnostic impressions included, "[s]ignificant anxiety regarding trust of others - refusal to discuss feelings. A touch stance towards other often

results in anger and sometimes physical aggression. These behaviors are self-defeating, precipitating social rejection he fears." (Tr. 143). Mr. Mercer further observed that Plaintiff's aggressive behaviors were worsening with an attempt to choke his brother, which nearly resulted in his death. (Tr. 143). Mr. Mercer recommended that Plaintiff be removed from his home, unless he controlled his temper and aggressive behavior. (Tr. 143).

In the Fall of 1995, Plaintiff underwent court ordered[1] psychological evaluations and was diagnosed with a mild adolescent onset conduct disorder and cannabis abuse. (Tr. 144-162). Plaintiff's Global Assessment of Functioning (GAF) was 40, which is indicative of "[s]ome impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking or mood . . . ." The American Psychiatric Association Diagnostic & Statistical Manual of Mental Disorders (DSM-IV) 32 (4th ed. 1994). The evaluating psychologist recommended that Plaintiff receive either a drug and alcohol evaluation, or if no drug or alcohol treatment was needed, then intensive, home-based family treatment. (Tr. 161). It was also recommended that Plaintiff have a focused

[1] Plaintiff's evaluation was apparently conducted in connection with his sentence of Level II probation for an offensive touching charge in July 1995.

learning environment with a vocational focus and possibly a vocational assessment. (Tr. 162).

From June to July 1996, Plaintiff received drug and alcohol treatment. Following discharge from this treatment, Plaintiff received psychological treatment through a drug and alcohol treatment center in 1996 and 1997 with Edward Stanchi, M.D., a psychiatrist. Plaintiff was prescribed Lithium. However, Plaintiff resumed his use of cannabis, even though he was advised that this could render the Lithium ineffective. (Tr. 163-165). Dr. Stanchi indicated that Plaintiff was of average intelligence and that he did not show any side-effects from his medication. However, Dr. Stanchi also noted that he believed Plaintiff was not fully compliant with his medications. During this time, Plaintiff was diagnosed with cannabis dependence and bipolar type II disorder. (Tr. 164). At this time, Plaintiff's GAF score was 60, which indicates moderate symptoms or moderate difficulty in social, occupational or school functioning. (Tr. 164); DSM-IV, supra at 32. Dr. Stanchi recommended that Plaintiff receive more structured time in either a full day of school or through vocational rehabilitation. (Tr. 164).

In July 1997, at age 17, Plaintiff was hospitalized for aggressive acting out behavior, non-compliance, defiant behavior, setting fires and threatening behavior. (Tr. 183-186). During his hospitalization, Plaintiff destroyed his room and tore the

door off the hinges following an outburst precipitated by his mother's failure to show up for a family session. A psychiatric evaluation of Plaintiff at this time revealed average intelligence with a good fund of information, adequate memory and a fair degree of insight. (Tr. 185). However, it was noted that Plaintiff was not motivated with regard to his treatment. (Tr. 185). Plaintiff was diagnosed with bipolar disorder and polysubstance abuse. (Tr. 183). At the time of his hospitalization, Plaintiff's GAF score was a 30 indicative of delusions and hallucinations; however, Plaintiff's GAF score improved to a 75 upon his discharge which indicates the presence of transient symptoms which are expectable reactions to psychosoical stressors and no more than a slight impairment in social, occupational or school functioning. (Tr. 183); DSM-IV, supra at 32.

2. Medical History Related To Plaintiff's Current Application For Childhood DIB

From September 1998 until June 1999, Plaintiff was referred to Horizon House by Community Mental Health following his release from the Ferris School for Boys, a juvenile detention center. At this time, Plaintiff was taking Lithium for his bipolar disorder and attempting to complete his GED. (Tr. 202).

In October 1998, Plaintiff was also seen by Pedro M. Ferreira, Ph.D., a psychologist. (Tr. 202-204). Intelligence

testing revealed that Plaintiff had IQ scores in the borderline range of intelligence. Dr. Ferreira noted that Plaintiff had little or no experience in the world of work, and that a good staring place for his rehabilitation would be work adjustment training. (Tr. 203).

During his time at Horizon House, Plaintiff was evaluated with an impulse control disorder, bipolar disorder, and personality disorder. The records indicate that Plaintiff was in jeopardy of being dismissed from vocational rehabilitation services, because he missed appointments frequently. (Tr. 253-255, 256-259, 264-269).

Notes from Plaintiff's therapists at Horizon House indicate that they were aware that Plaintiff was applying for Social Security benefits. However, Plaintiff's therapists did not opine that Plaintiff was entitled to benefits. Therapy notes continued to recommend vocational rehabilitation for Plaintiff. (Tr. 253, 256-258). One note in December 1998 indicated that Plaintiff's "[c]urrent psych [sic] does not support need or elig[ibility] for SSI. Cont[inue] to offer [client] and mother alternative for income - i.e. OVR, job placement." (Tr. 253).

At sessions in December 1998, Plaintiff stated that he was not ready for vocational training because he was continuing to study for his GED. (Tr. 256). Plaintiff admitted using cannabis and alcohol to relax. (Tr. 252). Plaintiff's mother reported

that Plaintiff was not taking his medication, and Plaintiff was warned that he needed to comply fully with his treatment.

Several months later, Plaintiff openly admitted that he was not taking his medication and that he was occasionally drinking and smoking cannabis. However, Plaintiff's therapist noted that Plaintiff maintains an independent level in the community. (Tr. 250). The therapist noted that Plaintiff was "[c]urrently not involved w[ith] a training program; case w[ith] OVR on hold due to client's attending classes at learning center, to prepare for GED. Discussed w[ith] client his lack of motivation, and seemingly attempting to procrastinate to take the GED exam, it appears that [client] is intentionally taking his own time to prepare for the exam; this gives client an excuse not to look for work aggressively, or be enrolled in a training program." (Tr. 250).

At subsequent visits, Plaintiff again admitted that he was not taking his medications and that he was still smoking cannabis. Plaintiff also quit several jobs for a variety of excuses including the heat, inadequate wages and an unfair employer. Plaintiff's aggressive behavior continued, and his therapist recommended anger management and drug and alcohol counseling. However, Plaintiff was resistant to these treatment recommendations. (Tr. 246, 249).

In November 1998, Plaintiff's records were reviewed by a

state agency psychologist. In the mental residual functional capacity assessment, the psychologist determined that Plaintiff was "not significantly" limited in most areas of mental work functioning, but was "moderately" limited in other areas. (Tr. 207-220). The state agency psychologist did not indicate that Plaintiff was markedly limited in any areas of work functioning. In support of his assessments, the state agency psychologist noted that Plaintiff was diagnosed with bipolar disorder and cannabis dependence, but that Plaintiff's intelligence scores were in the borderline range and that his social and behavior functioning had improved. (Tr. 209). As a result, the state agency psychologist concluded that Plaintiff was able to "pay attention when needed" and perform simple tasks as long as he was compliant with treatment. (Tr. 209).

A second state agency review of Plaintiff's medical record was conducted in July 1999. (Tr. 270-283). The second psychologist opined that Plaintiff was either "not significantly limited" or only "moderately" limited in the areas of work functioning. The second psychologist also opined that Plaintiff was able to perform simple, non-stressful activities. (Tr. 272).

A third state agency review of Plaintiff's medical records was conducted in January 2000 by Charles M. Tucker, Ph.D. (Tr. 221-233). Dr. Tucker's evaluation was consistent with the July 1999 evaluation in that he opined that Plaintiff was not

significantly limited in many areas of work. Dr. Tucker did find moderate limitations in several areas, including understanding, remembering and carrying out detailed instructions, maintaining concentration, performing work within a schedule, being punctual, accepting instructions and responding appropriately to criticism from supervisors, getting along with coworkers, maintaining socially appropriate behavior and responding appropriately to changes in the work setting. (Tr. 221-222). In support of his opinion, Dr. Tucker noted that Plaintiff was not taking his medication and that he was using cannabis. Dr. Tucker opined that if Plaintiff regularly used of his medication and refrained from cannabis use, he would be able to perform simple work on a full-time basis. Dr. Tucker further noted that Plaintiff displayed this capability with a vocational rehabilitation placement program, but the attempt failed due to transportation problems. (Tr. 223).

B. The Administrative Hearing and the A.L.J.'s Decision

At the hearing on his DIB application in April 2000, Plaintiff testified that he dropped out of school in tenth grade after being sent to the Ferris School for Boys for a year based on charges of assault, terroristic threatening, conspiracy and receiving stolen property. Plaintiff stated that he had been released for three years, and that he had not had any further arrests or legal trouble since that time. Plaintiff testified

that he did not have a driver's license and never applied for one. He further testified that he quit multiple jobs, quit a vocational training program, and gave up taking the GED after he failed by six of seven points, even though he would only need to take two portions of the test again. Plaintiff also denied taking any medication for more than a year for his mental health problems, but admitted that he continued to use cannabis and alcohol. (Tr. 311-319).

A vocational expert was present during the hearing, reviewed the relevant evidence of record and testified. (Tr. 333-337). The A.L.J. asked the vocational expert to consider a hypothetical individual with Plaintiff's age, limited education and work experience, as well as a full range of exertional activity. However, the A.L.J. limited his hypothetical individual to someone with the ability to perform simple, routine, rote decision making tasks with minimal interaction with the public and coworkers. Based upon this hypothetical, the vocational expert identified three unskilled jobs in the national economy: nursery laborer, hand packager, and cleaner/housekeeper. (Tr. 334). The vocational expert was further asked to consider a person with limitations consistent with an IQ of 71, and the vocational expert opined that such an individual would still be able to perform these tasks. On cross-examination, the Vocational Expert was asked whether his opinion would change

given an individual with the limitations listed in the mental residual functional capacity assessments of the state agency psychologists reviewing Plaintiff's records, and the vocational expert testified that such an individual could still perform the jobs identified, because moderate limitations would not preclude them. (Tr. 338-339).

At the close of the hearing, the A.L.J. stated that he would obtain a consultative psychological evaluation of Plaintiff. This evaluation was conducted in June 2000 by Brian Simon, Psy. D., a licensed psychologist. (Tr. 293-306). Dr. Simon noted Plaintiff's past history of an affective disorder, borderline intellectual functioning and substance abuse. Plaintiff admitted continued alcohol and cannabis use during Dr. Simon's examination. Upon examining Plaintiff, Dr. Simon noted that Plaintiff's attention and concentration were adequate throughout the testing, but Plaintiff was somewhat withdrawn. Testing revealed that Plaintiff had no memory abnormalities, no significant overall cognitive deficits, and no learning disabilities. (Tr. 297, 298).

Dr. Simon also administered a personality test, but concluded that the results were of limited value and entitled to little weight, because Plaintiff completed the test rapidly and the results suggested that he answered in a random manner without regard to the content of the questions. Dr. Simon also concluded

that Plaintiff was over-reporting the depressive symptoms he was experiencing, because he endorsed obvious items of depression in relation to subtle ones. (Tr. 299).

Dr. Simon further concluded that Plaintiff had mild difficulty in concentration, persistence, pace and low average to average concentration abilities. (Tr. 300). Dr. Simon observed that Plaintiff had no problems following simple directions and no significant memory problems. Dr. Simon concluded that Plaintiff's test results did not support Plaintiff's assertion that his interpersonal problems were due to his bipolar disorder. Rather, Dr. Simon explained that Plaintiff's brief attempts at working indicated that he would rather give up when encountering something he perceives as stressful or challenging, instead of trying to cope. (Tr. 301). Dr. Simon observed that Plaintiff displayed the same attitude during testing when items became increasingly difficult.

Dr. Simon diagnosed Plaintiff with dysthymia, cannabis and alcohol abuse and antisocial personality disorder. (Tr. 301). Plaintiff's prognosis was described as "guarded," because it was dependent on the amount of treatment and assistance Plaintiff received for his psychological and substance abuse problems. Dr. Simon recommended counseling to address Plaintiff's problems with anger and hostility, a vocational rehabilitation referral, substance abuse counseling and supportive psychotherapy sessions.

(Tr. 301). Dr. Simon also completed a functional capacities evaluation form and indicated that Plaintiff had mild restriction in daily living activities and relating to others, and mild impairments in understanding, carrying out simple instructions and performing routine, repetitive tasks under ordinary supervision. Plaintiff also had moderate impariments in the ability to sustain work performance and attendance in a normal work setting and cope with the pressures of ordinary work. (Tr. 393-394). With regard to specific areas of work functioning, Dr. Simon concluded that Plaintiff had "excellent" or "good" ability in nearly all areas, but "fair" ability to perform activities within a schedule, maintain regular attendance, complete a normal work week, accept instructions and criticism from supervisors and respond appropriately to changes in the work setting. (Tr. 304-305).

In written statements, Plaintiff indicated that he spent part of his day engaged in part-time work, and the remainder playing basketball and video games, or talking on the phone and watching television. (Tr. 116). Plaintiff also reported that he liked shopping, playing video games, watching movies and listening to music. Plaintiff stated that he maintained social contacts by visiting friends, neighbors and relatives daily. Plaintiff reported no problems sleeping and stated that the only side effects from his medication were being thirsty and urinating

more frequently.

In his decision dated July 25, 2000, the A.L.J. found that Plaintiff had severe antisocial personality disorder, borderline intellectual functioning, dysthymia, and substance abuse. However, the A.L.J. found that Plaintiff's allegations of total disability were not entirely consistent with his testimony and statements of record. The A.L.J. noted that despite his claims of continued disability, Plaintiff refused to take his medication or attend any kind of therapy. The A.L.J. concluded that Plaintiff retained the residual functional capacity to perform simple, repetitive tasks involving minimal interaction with the public, and that work existed in the national and local economies satisfying this criteria. Accordingly, the A.L.J. concluded that Plaintiff was not disabled within the meaning of the Social Security Act, and therefore, the A.L.J. denied Plaintiff's application for childhood disability benefits.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), findings of fact made by the Commissioner of Social Security are conclusive, if they are supported by substantial evidence. Accordingly, judicial review of the Commissioner's decision is limited to determining whether "substantial evidence" supports the decision. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). In making this determination, a reviewing court may not undertake a de novo

review of the Commissioner's decision and may not re-weigh the evidence of record. Id. In other words, even if the reviewing court would have decided the case differently, the Commissioner's decision must be affirmed if it is supported by substantial evidence. Id. at 1190-91.

The term "substantial evidence" is defined as less than a preponderance of the evidence, but more than a mere scintilla of evidence. As the United States Supreme Court has noted substantial evidence "does not mean a large or significant amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 555 (1988).

With regard to the Supreme Court's definition of "substantial evidence," the Court of Appeals for the Third Circuit has further instructed, "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores or fails to resolve a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence . . . or if it really constitutes not evidence but mere conclusion." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Thus, the substantial evidence standard embraces a qualitative review of the evidence, and not merely a quantitative approach. Id.; Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981).

DISCUSSION

I. Evaluation Of Social Security Disability Claims

Within the meaning of social security law, a "disability" is defined as the "inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment." 20 C.F.R. § 404.1505(a). To be found disabled, an individual must have a "severe impairment" which precludes the individual from performing previous work or any other "substantial gainful activity which exists in the national economy." Id. The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5). In order to qualify for DIB, the claimant must establish that he or she was disabled prior to the date he or she was last insured. 20 C.F.R. §§ 404.131, Matullo v. Bowen, 926 F.2d 240, 244 (3d Cir. 1990).

In determining whether a person is disabled, the Regulations require the A.L.J. to perform a sequential five-step analysis. 20 C.F.R. § 404.1520. In step one, the A.L.J. must determine whether the claimant is currently engaged in substantial gainful activity. In step two, the A.L.J. must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that his or her impairment is severe, he or she is ineligible for benefits. Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999).

If the claimant's impairment is severe, the A.L.J. proceeds

to step three. In step three, the A.L.J. must compare the medical evidence of the claimant's impairment with a list of impairments presumed severe enough to preclude any substantial gainful work. Id. at 428. If the claimant's impairment meets or equals a listed impairment, the claimant is considered disabled. If the claimant's impairment does not meet or equal a listed impairment, the A.L.J.'s analysis proceeds to steps four and five. Id.

In step four, the A.L.J. is required to consider whether the claimant retains the residual functional capacity to perform his or her past relevant work. Id. The claimant bears the burden of establishing that he or she cannot return to his or her past relevant work. Id.

In step five, the A.L.J. must consider whether the claimant is capable of performing any other available work in the national economy. At this stage the burden of production shifts to the Commissioner, who must show that the claimant is capable of performing other work if the claimant's disability claim is to be denied. Id. In making this determination, the A.L.J. must show that there are other jobs existing in significant numbers in the national economy, which the claimant can perform consistent with the claimant's medical impairments, age, education, past work experience and residual functional capacity. Id. In making this determination, the A.L.J. must analyze the cumulative effect of

all of the claimant's impairments. It is at this step, that the A.L.J. may seek the assistance of a vocational expert. Id. at 428.

II. Whether The A.L.J.'s Decision Is Supported By Substantial Evidence

After reviewing the A.L.J.'s decision in light of the record evidence in this case, the Court concludes that the A.L.J.'s decision is supported by substantial evidence and comports with the five-step analysis for DIB claims.[2] Although the medical evidence of record suggests that Plaintiff suffers from severe mental impairments, the record also indicates that Plaintiff is capable of performing some work. None of Plaintiff's examining or treating psychologists or psychiatrists offered an opinion of disability to support Plaintiff's claim, and Plaintiff failed to offer a contrary opinion by any other mental health provider. Indeed, Plaintiff's treatment notes suggest that his therapists strongly encouraged Plaintiff to obtain employment and participate in a vocational rehabilitation program. At least one of these examining therapists knew that Plaintiff was applying for benefits in 1998, but stated, "Current psych (sic) does not

[2] Plaintiff originally advanced the argument that the A.L.J.'s decision was erroneous, because he failed to complete a Psychiatric Review Technique Form ("PRTF") and append the PRTF to his decision. Plaintiff subsequently withdrew this argument noting that the PRTF was omitted from the Transcript, but was attached to the A.L.J.'s decision as originally issued. A Supplemental Transcript was filed by the Commissioner including the PRTF. (D.I. 16).

support need or elig[ibility] for SSI. Cont[inue] to offer [client] and mother alternatives for income -- i.e. OVR, job placement." (Tr. 253). This opinion is further substantiated by the office notes of Dr. Stanchi, the psychiatrist who treated Plaintiff shortly before he stopped receiving benefits. Dr. Stanchi believed that vocational rehabilitation was warranted and that Plaintiff would benefit from more structured days. (Tr. 163-164, 173, 175).

Although Plaintiff has not advanced any medical evidence to suggest that Plaintiff is precluded from working because of a disability, the record is replete with evidence that Plaintiff lacked motivation to work. Plaintiff's therapist stated that he "[d]iscussed w[ith] client his lack of motivation, and seemingly attempting to procrastinate to take the GED exam, it appears that [client] is intentionally taking his own time to prepare for the exam; this gives client an excuse not to look for work aggressively, or be enrolled in a training program." (Tr. 250). Although Plaintiff only missed passing the GED by six or seven points and would only need to take two portions of the examination again, Plaintiff declined to pursue his degree. (Tr. 295, 317). Plaintiff himself testified that he quit several jobs because it was too hot to work, the pay was inadequate or he simply did not want to work. (Pl. Br. at 17, Tr. 242, 246, 249). Plaintiff also testified that he did not complete vocational

rehabilitation programs because he "just left" and "didn't put up with it no more." (Tr. 316-317).

In addition to failing to follow the recommendations of his treating therapists, Plaintiff also failed to comply with medications recommended to treat his mental condition. The record is replete with references that Plaintiff refused to take his medication, drank alcohol and smoked cannabis, even though he was advised that smoking cannabis could alter his mood and make his medication ineffective. (Tr. 163-164, 240, 244, 249, 250, 251, 252, 256, 320).

Plaintiff criticizes the A.L.J.'s reliance on Dr. Simon's opinions; however, Dr. Simon's opinions are consistent with the other medical evidence in the record. Dr. Simon recommended vocational rehabilitation for Plaintiff and indicated that Plaintiff did not have any problems following simple directions and only mild difficulty in concentration, persistence and pace. (Tr. 300). Plaintiff suggests that Dr. Simon's opinions are inconsistent, because one of the reasons Dr. Simon invalidated the results of Plaintiff's MMPI-2 was because Plaintiff failed to concentrate adequately on the test. However, the record demonstrates that Dr. Simon did not invalidate this test because Plaintiff had concentration difficulties. Rather, the record suggests that Plaintiff approached the test with little effort by answering the questions randomly and without regard to their

content. (Tr. 300).

Even accepting the opinions of Dr. Simon, Plaintiff argues that the mental assessment of Dr. Simon would preclude Plaintiff from performing unskilled work based on Dr. Simon's use of the word "fair" in rating Plaintiff's ability to perform activities within a schedule, maintain regular attendance, be punctual, respond to criticism and changes in the work environment and perform at a consistent pace. (Tr. 305-306). Relying on Cruse v. HHS, 49 F.3d 614 (10th Cir. 1995), Plaintiff contends that Dr. Simon's use of the word "fair" is equivalent to "marked" difficulty and a marked limitation in three of the 14 categories of functioning described in the Program Operations Manual System for evaluating social security claims renders Plaintiff disabled.

The Court has reviewed the Cruse decision and finds it to be distinguishable from this case. In Cruse, the Court found that the term "fair," defined in the testing in that case as "seriously limited, but not precluded," was essentially the same as the term "marked" in the Listing of Impairments. Id. at 618. In this case, however, the definition of the term "fair" used by Dr. Simon is quite different and less stringent. For purposes of Dr. Simon's testing, the term "fair" was defined as "capable of performing the activity satisfactorily some of the time." As such, the Court is not persuaded that Dr. Simon's "fair" assessments were the equivalent of "marked" difficulty

assessments. Further, the Court observes that Dr. Simon's position is consistent with the positions advanced by three reviewing state agency physicians who opined that Plaintiff had no "marked" limitations in any areas of work functioning. (Tr. 207-208, 220-221, 270-272). Moreover, the Vocational Expert testified that even "moderate" limitations, like those described by the state agency reviewing physicians, would not preclude Plaintiff from performing the identified jobs of nursery laborer, hand packager and cleaner/housekeeper.

Plaintiff also suggests that the A.L.J.'s hypothetical question to the vocational expert was inadequate, because it failed to take into account Plaintiff's borderline intellectual functioning. However, the A.L.J. specifically asked the Vocational Expert to consider an individual with a performance IQ of 71, and the A.L.J. responded that even mild, mentally retarded individuals could perform the work identified. (Tr. 334). To the extent that Plaintiff challenges the A.L.J.'s hypothetical for failing to consider other impairments alleged by Plaintiff, the Court observes that the A.L.J.'s hypothetical question need only contain those limitations supported by the record evidence. Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). The A.L.J. found that Plaintiff's testimony was not entirely credible regarding the severity of his conditions, and therefore, the A.L.J. was not required to accept this testimony for purposes of

his hypothetical question. As for other limiting conditions alleged by Plaintiff, the Court concludes that these conditions were either considered in the A.L.J.'s initial hypothetical or raised during cross-examination. In response to both the A.L.J.'s initial questioning and the questioning on cross-examination, the Vocational Expert concluded that an individual with the limitations supported by the evidence in this case could perform work in the national and local economies. Accordingly, the Court is not persuaded that the A.L.J.'s hypothetical question to the Vocational Expert was inadequate.

In sum, the Court concludes that the A.L.J.'s decision is supported by substantial evidence. Plaintiff has not offered any contrary medical evidence to suggest that he is disabled within the meaning of the Act, and the record evidence supports the A.L.J.'s conclusion that, while Plaintiff's conditions are severe they do not preclude Plaintiff from performing a significant number of jobs in the national economy. Accordingly, the Court will grant Defendant's Cross-Motion For Summary Judgment, deny Plaintiff's Motion For Summary Judgment, and affirm the Commissioner's July 25, 2000 decision.

CONCLUSION

For the reasons discussed, Defendant's Cross-Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the

Commissioner dated July 25, 2000 will be affirmed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TODD L. PARSONS, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-878-JJF
	:	
JO ANNE B. BARNHART, Commissioner of Social Security,	:	
	:	
	:	
Defendant.	:	

O R D E R

At Wilmington, this 10th day of September 2003, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant's Cross-Motion For Summary Judgment (D.I. 11) is GRANTED.

2. Plaintiff's Motion For Summary Judgment (D.I. 9) is DENIED.

3. The final decision of the Commissioner dated July 25, 2000 is AFFIRMED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE