

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

AUDREY J. HERRING :
 :
 : CIVIL ACTION
 :
 v. :
 :
 :
 : NO. 03-CV-6464
 :
 JOANNE B. BARNHART, :
 COMMISSIONER OF SOCIAL SECURITY :

SURRICK, J.

MARCH 25, 2005

MEMORANDUM & ORDER

Presently before the Court are the Motion of Plaintiff Audrey J. Herring for Summary Judgment (Doc. No. 8) and the Motion of Defendant Joanne B. Barnhart, Commissioner of Social Security, for Summary Judgment (Doc. No. 9). After careful review of the record, we will deny Plaintiff’s Motion, deny Defendant’s Motion, and remand the matter to the Social Security Administration.

I. BACKGROUND

A. Summary of Facts

Plaintiff began to experience persistent right scapular¹ and shoulder pain in June, 2001, as well as numbness in her right arm.² (Record (“R.”) at 90.) The following month, she

¹Stedman’s Medical Dictionary (“Stedman’s”) defines scapula as “[t]he shoulder blade; blade bone; a large triangular flattened bone lying over the ribs, posteriorly on either side, articulating laterally with the clavicle and the humerus.” Thomas Lathrop Stedman, Stedman’s Medical Dictionary 1258 (1982).

²Plaintiff told Dr. Peter Neumann, a primary care physician, that she moved while lying on a sofa and “heard something pop.” (R. 90.) After that incident, she began to develop pain in

discontinued driving because “I had developed spasms in my neck and my shoulders and my right arm went completely numb that I couldn’t turn around to look, and I couldn’t feel things in my hands. I didn’t feel safe driving. I felt I was a danger to myself and to anybody else on the road.” (*Id.* at 174.) While Herring averred that her physicians agreed with her decision not to drive, the administrative law judge (“ALJ”) who reviewed the merits of her claim stated that there was no documentation of such a determination in her medical records. (*Id.*)

At some point in August, Plaintiff stopped going to her job because “her [right] hand gets numb.” (*Id.* at 89.) However, her primary care physician was “at a loss” because he could not determine a relationship between Herring’s shoulder injury and the numbness in her hand. (*Id.*) In a subsequent appointment on August 31, 2001, Plaintiff’s primary care physician noted that the numbness extended from her right forearm to her right hand and ordered an electromyography (“EMG”) test. (*Id.*) Herring’s EMG was abnormal with evidence of a C5-C6 radiculopathy³ on the right side which primarily involved the C5 distribution.⁴ (*Id.* at 88, 94.) While there was no evidence of an entrapment neuropathy⁵ involving median and ulnar nerves, the EMG test showed that the radiculopathy “seems to be of a subacute to chronic duration with ongoing denervation at this time.” (*Id.* at 94.)

On September 26, 2001, Plaintiff underwent a magnetic resonance imaging (“MRI”) test

her upper right extremity. (*Id.*)

³Stedman’s defines radiculopathy as “[d]isease of the spinal nerve roots.” Stedman’s at 1187.

⁴Dr. Shilpa R. Pradhan, a neurologist, evaluated Plaintiff’s EMG results. (R. 94.)

⁵Stedman’s defines neuropathy as “a disease involving the cranial or spinal nerves.” Stedman’s at 948.

of the cervical spine which revealed mild central disc protrusion at both the C4-C5 and C5-C6 levels that were “slightly indenting the thecal sac but not the spinal cord.” (*Id.* at 92.) There was no right-sided disc herniation. (*Id.*) While the MRI showed central disc pressure, Dr. Neumann was not sure whether that was the cause of her radiculopathy. (*Id.* at 88.) Instead of referring her to a neurosurgeon in October, 2001, Dr. Neumann referred her to a pain clinic for treatment. (*Id.*)

Dr. Allen Tyler, a neurologist, examined Plaintiff in February, 2002. (*Id.* at 105.) Herring described “frequent interscapular pain bilaterally.” (*Id.*) After she began to attend several sessions of physical therapy, she began to develop pain in her left shoulder.⁶ (*Id.*) Pinprick was hypoesthetic⁷ on the right thumb, index, and middle fingers and over the lateral portion of the right upper forearm and lower arm. Based on this examination, Dr. Tyler ordered a second EMG and treatment of Plaintiff by a pain specialist. (*Id.* at 106.) However, he did not refer her to a neurosurgeon.

According to Dr. Pradhan’s review of the EMG test, there was evidence of a C5-C6 radiculopathy on the right “with persistent and ongoing axonal injury.” (*Id.* at 104.) There was acute denervation in the C5, C6, and C7 distributions, although there was no evidence of a median or ulnar nerve entrapment neuropathy bilaterally. (*Id.*) However, there were no abnormalities in the left upper extremity that would explain the paresthesia in Plaintiff’s left arm.

⁶Dr. Pradhan believed that Herring developed parasthesia in her left arm. (R. 103.) Stedman’s defines paresthesia as “an abnormal sensation, such as of burning, pricking, tickling, or tingling.” Stedman’s at 1031.

⁷Stedman’s defines hypesthesia, or hypoesthesia, as “diminished sensitivity to stimulation.” Stedman’s at 678.

(Id.)

Dr. Thomas Hurlbutt, a neurologist, examined Plaintiff in April, 2002, and agreed with Dr. Pradhan's assessment that the second EMG test reflected "a C5-C6 radiculopathy with a persistent and ongoing axonal injury." (*Id.* at 140.) Plaintiff noted diminished depreciation to pinprick and temperature, especially in her thumb, index finger, and over the lateral portions of her right hand down to the wrist. (*Id.* at 141.)

During another examination, Dr. Robert Corba, a pain specialist, noted numbness in the third, fourth, and fifth fingers of both hands. (*Id.* at 157.) He recommended that Plaintiff undergo a second MRI exam, the results of which were normal. (*Id.* at 155.) In reviewing the MRI results, Dr. Corba stated that they do not correspond with Dr. Hurlbutt's conclusion that the EMG reflected a C5-C6 radiculopathy. (*Id.*) Ten months after the onset of Plaintiff's injury, Dr. Corba also recommended that she be evaluated by an orthopedic surgeon specializing in hand surgery. (*Id.*)

In addition to the problems which began in June, 2001, Herring developed hyperesthesia and pain in her left forearm as a result of an accident.⁸ After another examination on July 30, 2002, Dr. Corba described Plaintiff's pain as "largely neuropathic with a questionable radicular etiology but the source is unknown at this point in time." (*Id.* at 154.) He did not recommend

⁸Plaintiff experienced pain in her left arm as a result of either falling out of bed or falling off her sofa in March, 2002, and hitting her arm on a table. (R. at 119, 132, 137.) On June 26, 2002, she complained to her primary care physician about left arm pain radiating into the forearm with "some burning pain" into the third, fourth, and fifth fingers. (*Id.* at 132.) The physician advised her "to avoid lifting" because she was "using the left arm more so than the right arm because of neuropathy on right." (*Id.*) Dr. Corba referred her to Dr. Patrick McDald, an orthopedic hand specialist. He reviewed X-rays of Plaintiff's left elbow, none of which showed bony abnormalities, and concluded that Plaintiff's pain was related to lateral epicondylitis. (*Id.* at 119.) Dr. McDald referred her to a hand therapist. (*Id.*)

any additional diagnostic test to determine the source of her neuropathic pain. However, he suggested that she receive a surgical evaluation. (*Id.*)

When Dr. Corba examined Plaintiff in December, 2002 (*id.* at 147), he requested a third cervical MRI. He repeated his earlier recommendation that Plaintiff receive a surgical evaluation. Plaintiff underwent the MRI on February 11, 2003, which revealed a central disc protrusion at C5-C6, which was described as a “new finding” since her May, 2002, MRI. (*Id.* at 143.) Despite the results of this fifth test, there is no evidence that Plaintiff was examined by a surgeon.

In early 2003, Herring continued to experience atrophy and significant loss of strength in her upper extremities. (*Id.* at 183.) When she holds an object, “at first I register the weight and then all of a sudden it feels like an elephant sits on my arm, and it just begins to sink.” (*Id.* at 183.) However, the ALJ was unable to find documentation of these limitations in her medical records. (*Id.* at 185-86.)

Plaintiff’s prescribed medications also negatively affect her ability to function. Since the onset of her July, 2001, injury, Plaintiff has been on different medications, including Decadron, Zanaflex, Celebrex, Neurontin, Topamax, Zonegran, Lidoderm, and Trileptal. (*See, e.g., id.* at 109, 149, 154.) According to Herring, everything she uses has some adverse side effect on her:

They really made me like an Alzheimer’s patient. I couldn’t even put a sentence together. The Trileptol is okay, but I can’t remember things. At times, my balance seems to be off. I’m the only person I know that can stand - feel like you’re standing up straight and tip off the back of your heels, like you feel like you’re falling over.

(*Id.* at 197.) Her husband has also observed a marked adverse effect of the medication on his wife’s behavior: the “[m]edication she’s been on has been a big change. Disoriented, not being

able to keep track of tasks.”⁹ (*Id.* at 213.) Even though Plaintiff and her husband told her physicians about the side effects of her medication (*id.* at 213-15), these problems are not documented in Herring’s medical records. (*Id.* at 197, 214.)

Plaintiff frequently rides on the back of her husband’s Harley motorcycle. (*Id.* at 186-87.) She also smokes several packs of cigarettes a day. (*Id.* at 119). However, there is no medical opinion about the extent to which these activities may relate to or exacerbate Plaintiff’s condition.¹⁰

B. Procedural History

As a result of Plaintiff’s alleged August 1, 2001, disability, she applied for Disability Insurance Benefits on November 23, 2001. (*Id.* at 42-44.) At the time she applied for benefits, she was forty-eight (48) years old.¹¹ After the Commissioner of Social Security (“Commissioner”) initially denied Herring’s application, ALJ Diane C. Moskal conducted a hearing regarding the merits of her claim. (*Id.* at 28-32.) The ALJ concluded that Plaintiff was not entitled to receive disability benefits. (*Id.* at 11-24.) The Social Security Appeals Council denied Herring’s request for review. On November 26, 2003, Plaintiff filed her civil action in this court. (Doc. No. 1.) After this matter was referred to Magistrate Judge M. Faith Angell, the Magistrate Judge issued a Report and Recommendation affirming the ALJ’s decision to deny

⁹Plaintiff’s husband accompanied her to at least half of her appointments. (R. 214.)

¹⁰Dr. Pradhan notes that Plaintiff’s husband brought her to the appointment on the back of his Harley Ultra Classic Electra Glide touring bike. (R. 138, 219.) While merely mentioning this fact suggests that it may be significant, Dr. Pradhan makes no effort to explain how it is relevant to Plaintiff’s impairment.

¹¹She was born on June 10, 1953. (R. 26.)

disability benefits to Plaintiff.¹² (Doc. No. 17.)

II. LEGAL STANDARD

The Social Security Act provides that “[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action” in federal district court. 42 U.S.C.A. § 405(g) (West 2004). The decision of the ALJ is the final decision of the Commissioner if the Appeals Council denies a request for review, as in the instant case. *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001) (citing *Sims v. Apfel*, 530 U.S. 103, 106-07 (2000)). The Act provides that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, 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.A. § 405(g).

We must affirm the Commissioner’s decision if it is supported by “substantial evidence” in the record. *Id.*; *see also Doak v. Heckler*, 790 F.2d 26, 28 (3d Cir. 1986). The factual findings of the Commissioner must be accepted as conclusive, provided that they are supported by substantial evidence. 42 U.S.C.A. § 405(g); *Knepp v. Apfel*, 204 F.3d 78, 83 (3d Cir. 2000). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the conclusion of the ALJ is supported by substantial evidence, this Court may not set aside the Commissioner’s decision, even if we would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999)

¹²The Court reviews de novo those portions of the Magistrate Judge’s Report and Recommendation to which the Plaintiff has objected. 28 U.S.C. § 636(b)(1)(C) (2000); Fed. R. Civ. P. 72(b).

(citing 42 U.S.C. § 405(g)). Thus, the court may not conduct a de novo review of the record. *Palmer v. Apfel*, 995 F. Supp. 549, 552 (E.D. Pa. 1998) (citing *Monsour Med. Ctr. v. Heckler*, 806 F.2d 1185, 1190 (3d Cir. 1986)). In determining whether the ALJ’s finding is supported by substantial evidence, however, we must “review the whole record.” 5 U.S.C. § 706 (2000).

III. LEGAL ANALYSIS

Title II of the Social Security Act provides for the payment of insurance benefits to persons who suffer from a disability. 42 U.S.C.A § 423(a)(1) (West 2004). “Disability” is defined as an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” *Id.* § 423(d)(1)(A). Thus, the 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 determination must be individualized and be based on evidence adduced at the claimant’s administrative hearing. *Id.* at 467.

A. ALJ Disability Determination

When evaluating the merits of a disability claim, the ALJ applies a five-part sequential inquiry to determine whether the claimant is entitled to disability benefits. 20 C.F.R. § 404.1520(a)(4) (2004). Under this analytical framework, the ALJ must make the following determinations: (1) if the claimant is performing substantial gainful work, she is not disabled; (2) if the claimant is not performing substantial gainful work, her impairment(s) must be severe before she can be found to be disabled; (3) if the claimant is not performing substantial gainful work and has a severe impairment that has lasted or is expected to last for a continuous period of

at least twelve months, and her impairment (or impairments) meets or medically equals a listed impairment, she is disabled; (4) if the claimant is capable of performing past relevant work given her residual functional capacity (“RFC”)¹³, she is not disabled; and (5) if other work exists in the economy that accommodates her RFC and vocational factors, even if the impairment prevents her from performing her past relevant work, she is not disabled. 20 C.F.R. § 404.1520(a)(4) (2004).¹⁴

In step four, a claimant bears the initial burden of proving that she has a disability which prevents her from resuming her previous employment. *Doak*, 790 F.2d at 28. In conducting her step four analysis, the ALJ assessed Herring’s RFC and concluded that she “is and has been limited to a range of light and sedentary unskilled jobs which do not require fine repetitive bimanual dexterity.” (R. 22; *see also id.* at 24.) Thus, Herring satisfied her burden of demonstrating that she “cannot perform past relevant sedentary semi-skilled work to skilled work as a surveillance system monitor.” (*Id.* at 24; *see also id.* at 22.)

Once the claimant satisfies the requirements of step four, the Secretary must show under step five that, given the claimant’s age, education, and work experience, she is able to perform jobs that exist in the national economy. *Doak*, 790 F.2d at 28. In performing her analysis under step five, the ALJ noted that the vocational expert concluded that Herring could perform work as

¹³A claimant’s RFC is the most she can still do despite her limitations. 20 C.F.R. § 404.1545 (2004).

¹⁴In applying steps one, two, and three of this sequential analysis to Plaintiff’s disability claim, the ALJ concluded that Herring was not performing substantial gainful work because of a severe impairment. (R. 15, 23.) However, Plaintiff did not have an impairment that met or equaled a listed impairment. (*Id.*)

either an unskilled surveillance systems monitor¹⁵ or a locker room attendant.¹⁶ (R. 23.) Based on this evidence, the ALJ concluded that the Secretary met her burden of showing that Plaintiff is capable of performing jobs that exist in the national economy. (*Id.* at 23-24.) As a result, the ALJ held that Herring was not disabled and that she may not recover disability benefits. (*Id.*)

B. Insufficient Diagnosis and Treatment of Plaintiff's Medical Impairments

In reviewing the ALJ decision and the supporting medical records, we conclude that the treatment notes fail to offer a complete picture of Plaintiff's ailments. Herring's records lack certain critical diagnostic and evaluative information which may affect the ALJ's step five analysis regarding Plaintiff's RFC, as well as the exertional and non-exertional limitations that may impact her ability to perform certain jobs. While it is the plaintiff's burden to show that she is disabled, the ALJ has the responsibility in a nonadversarial social security setting to develop a full and fair record. *Ventura v. Shalala*, 55 F.3d 900, 902 (3d Cir. 1995); *Dobrowolsky v. Califano*, 606 F.2d 403, 406-07 (3d Cir. 1979); *Hess v. Sec. of Health, Educ. & Welfare*, 497 F.2d 837, 840 (3d Cir. 1974). As the Third Circuit explained in *Hess*, "[a]lthough the burden is upon the claimant to prove his disability, due regard for the beneficent purposes of the legislation requires that a more tolerant standard be used in this administrative proceeding than is applicable in a typical suit in a court of record where the adversary system prevails." *Id.* Thus, "[w]here the medical documentation is unclear or insufficient, it is incumbent upon the Secretary to obtain any additional evidence needed to make a sound determination." *Manning v. Sec. of Health &*

¹⁵The vocational expert testified that this is a sedentary position that involves monitoring computer or video screens and which requires some writing. (R. 226.)

¹⁶The vocational expert testified that this is a light, unskilled position that involves distributing locker room keys and towels to health club members. (R. 226.)

Human Servs., 881 F. Supp. 201, 204 (W.D. Pa. 1995).

When a claimant's medical records fail to provide sufficient information to determine whether the claimant is disabled, the Social Security Administration will pay for a consultative examination of the claimant. 20 C.F.R. §§ 404.1512(f), 1517 (2004).¹⁷ Under the Code of Federal Regulations, a consultative examination is appropriate when: (1) "the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on [claimant's] claim"; (2) the evidence that is needed is not contained in claimant's medical records; (3) relevant medical evidence could not be obtained for reasons that were beyond claimant's control; (4) highly technical and specialized medical evidence is not available; (5) the agency is not able to resolve a conflict, inconsistency, ambiguity, or insufficiency in the evidence by contacting claimant's medical source; or (6) the claimant's condition may have changed in a way that is likely to affect her ability to work.¹⁸ *Id.* § 404.1519a(b) (2004).

Given the insufficient evidence contained in Plaintiff's medical records, a consultative examination is appropriate in this case. *Fleming v. Sullivan*, Civ. A. No. 88-8763, 1991 U.S. Dist. LEXIS 3503, at *12 (E.D. Pa. Mar. 21, 1991) ("An administrative law judge is required to order a consultative examination where necessary to a disability determination."). While the objective medical evidence documents that Plaintiff suffers from significant impairments, her problems were never clearly diagnosed. Despite Herring's two EMG tests and three MRI tests, her physicians could only point to general cervical nerve damage. They never diagnosed

¹⁷A consultative examination is a physical or mental examination from a treating physician or another medical source. 20 C.F.R. § 404.1519 (2004).

¹⁸This list is illustrative, and not exhaustive. 20 C.F.R. § 404.1519a(b) (2004).

precisely what caused each specific impairment. For instance, in July, 2002, more than one year after Plaintiff's initial injury in June, 2001, Dr. Corba explained that the source of Plaintiff's neuropathic pain "is unknown at this point in time." (R. 154.) Because of the ineffective diagnosis of Plaintiff's medical problems, her physicians have not been able to tell her what measures she should take to remedy her condition.¹⁹ Instead, her physicians focused on a course of treatment of her subjective complaints of pain involving epidural injections and physical therapy, with limited success.

Furthermore, Plaintiff's account of the effect that her condition has on her behavior often is not documented in her medical records. During the administrative hearing, Plaintiff testified that she discontinued her driving in July, 2001, because "I had developed spasms in my neck and my shoulders and my right arm went completely numb that I couldn't turn around to look, and I couldn't feel things in my hands. I didn't feel safe driving. I felt I was a danger to myself and to anybody else on the road." (R. 174.) While Herring averred that her physicians agreed with her decision not to drive, the ALJ asserted that there was no documentation of such a determination in her medical records. (*Id.*) Herring also testified that she has experienced atrophy and significant loss of strength in her upper extremities. (*Id.* at 183.) Again, the ALJ was unable to find documentation of these limitations in her medical records. (*Id.* at 185-86.)

Plaintiff also testified about the effect that her prescribed medications had on her ability to function. During the course of her treatment, she has been on different medication regimens. Herring testified that everything she uses has some adverse side effect on her:

¹⁹As of the time of her administrative hearing, there was no evidence to suggest that Plaintiff received an assessment from any surgeon. At the time of the March, 2003, hearing, Plaintiff had an April appointment with an orthopedic surgeon. (R. 133, 179.)

They really made me like an Alzheimer's patient. I couldn't even put a sentence together. The Trileptol is okay, but I can't remember things. At times, my balance seems to be off. I'm the only person I know that can stand - feel like you're standing up straight and tip off the back of your heels, like you feel like you're falling over.

(*Id.* at 197.) Her husband also testified about his observations regarding the adverse effect of medication on his wife's behavior: the "[m]edication she's been on has been a big change. Disoriented, not being able to keep track of tasks." (*Id.* at 213.) Even though Plaintiff and her husband told her physicians about the side effects of her medication (*id.* at 213-15), these problems are not documented in Herring's medical records. (*Id.* at 197, 214.) These omissions may exist because Plaintiff actually never talked to her physicians about these problems. However, since her testimony does not necessarily contradict evidence in her medical file, we will allow her the opportunity to raise these concerns during a consultative examination.

Finally, no treating physician has provided any insight into the relationship between Plaintiff's impairments and her smoking and motorcycle-riding habits. Plaintiff smokes several packs of cigarettes a day (*id.* at 119), despite her stated inability to hold other objects with her hands for more than a few seconds. During the administrative hearing, Plaintiff also testified that she frequently rides on the back of her husband's Harley motorcycle. (*Id.* at 186-87.) The ALJ relied on this evidence in discounting Plaintiff's subjective assessment of her limitations. (*Id.* at 21-22.) Even though her treating physicians were aware of these activities, there is no medical opinion about the extent to which these activities relate to or exacerbate Plaintiff's condition.²⁰

²⁰In questioning the merits of the ALJ decision, Plaintiff focuses on the ALJ's determination in step five that she is able to perform another job. Plaintiff contends that the ALJ's decision not to grant disability benefits was erroneous because: (1) the ALJ improperly rejected the opinion of Dr. Pradhan; (2) the ALJ incorrectly determined her RFC; and (3) the ALJ erred in assessing her credibility during the hearing regarding the merits of her disability claim.

Plaintiff's medical picture and her testimony related thereto is perplexing. There are many unanswered questions. An independent consultative examination by an appropriately qualified medical expert will hopefully enlighten us with regard to the diagnosis, prognosis, and cause of Plaintiff's problems and provide an explanation of the limitations, if any, these problems place on Plaintiff's activities and her ability to work. While this examination may not alter the ALJ's assessment of whether Plaintiff is disabled, it will produce further relevant and probative evidence regarding Herring's disability status. Thus, we are compelled to remand this matter to the ALJ for further proceedings consistent with this opinion.

An appropriate Order follows.

(Doc. No. 8.) Because we remand this matter for further administrative review, we decline to address the merits of these arguments. Similarly, Plaintiff raised various objections to the Magistrate Judge's Report and Recommendations (Doc. No. 18) that we will not consider at this juncture.

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

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 : NO. 03-CV-6464
 :
 JOANNE B. BARNHART, :
 COMMISSIONER OF SOCIAL SECURITY :

ORDER

AND NOW, this 25th day of March, 2005, upon consideration of Plaintiff Audrey J. Herring's Motion for Summary Judgment and Defendant Joanne B. Barnhart, Commissioner of Social Security's Motion for Summary Judgment, and all papers submitted in support thereof and in opposition thereto, it is ORDERED as follows:

1. Motion of Plaintiff Audrey J. Herring for Summary Judgment (Doc. No. 8, No. 03-CV-6464) is DENIED;
2. Motion of Defendant Joanne B. Barnhart, Commissioner of Social Security, for Summary Judgment (Doc. No. 9, No. 03-CV-6464) is DENIED; and
3. The matter is REMANDED to the Social Security Administration for further evaluation consistent with the attached Memorandum.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

