IP 01-0161-C T/F Wright v. Barnhart
Judge John D. Tinder Signed on 5/15/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WRIGHT, ELIZABETH,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
BARNHART, JO ANNE B,	)	CAUSE NO. IP01-0161-C-T/G
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELIZABETH WRIGHT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	IP 01-0161-C-T/F
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant,	)	

Entry Reviewing Commissioner's Decision[1]

Plaintiff requests judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying her application for Disability Insurance Benefits ("DIB"). The court rules as follows.

I. Background

Plaintiff, Elizabeth Wright, claiming a disability as of April 1, 1996, filed for DIB on May 16, 1997. The Social Security Administration denied her application initially and again following her request for reconsideration. Administrative Law Judge ("ALJ") James R. Norris held a hearing and ultimately denied Wright benefits on July 7, 1998. The ALJ

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[1] This entry is a matter of public record and is being made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in the Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

found that Wright could perform a significant number of jobs in the national economy, and thus she was not eligible for DIB. The Appeals Council denied her request for review, making the ALJ's decision the final opinion of the Commissioner.

Wright, born on October 18, 1950, is a high school graduate who, before the alleged disability, worked as a clerical worker, customer service representative, switchboard operator, and babysitter. (R. at 66.) She continued to work as a babysitter until December of 1996. (*Id.)*

On July 30, 1996, a radiologist at the Wishard Memorial Hospital, Dr. Vincent Matthews, did an MRI on Wright's head. The results were consistent with 1) small vessel ischemic disease[2]; 2) mild cerebral atrophy[3]; and, 3) focal areas of hypointensity within the cerebellum possibly representing calcification, hemosiderin[4], or cavernous angioma[5]. (R. at 163.) Dr. Karen Caldemeyer performed an MRI on Wright's back on February 10, 1997, which discovered mild degenerative changes in Wright's lumber spine and, at L3-L4 and L5-S1, disc bulges or small herniations abutting the exiting nerve roots. (R. at 161.)

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[2] A local anemia due to mechanical obstruction of the blood supply. Stedman's Medical Dictionary 894 (26th ed. 1995).

[3] A degeneration of the cerebellum. *Id*. at 165, 313.

[4] An insoluble protein produced by phagocytic digestion of hematin; found in most tissues, especially the liver. *Id*. at 782.

[5] Vascular malformation composed of sinusoidal vessels without a large feeding artery. *Id*. at 86.

Wright received treatment at Wishard Memorial Hospital on May 30, 1997. At this time, Dr. Momen Wahidi's diagnosis included degenerative joint disease of the cervical and lumber spine, with a disc herniation at L3-L4 and L5-S1, resulting in chronic back pain. It was noted that Wright had previously been seen by the neurosurgery department for evaluation of surgery to her right upper extremity. Wright was taking Percocet[6] for pain. (R. at 160.)

At the request of the Social Security Administration, Dr. Kaissar[7] examined Wright on June 26, 1997. This examination revealed that Wright had 3/5 muscle strength in her left biceps, but 5/5 muscle strength in her right upper extremity and both lower extremities. Her grip was significantly weaker with her left hand than with her right. She could not completely separate the fingers on her left hand and could not resist pressure on her abducted fingers. Dr. Kaissar found that her deep tendon reflexes were symmetrical and normal. The doctor found no evidence of fasiculations, atrophy, or rigidity and that fine finger movements were normal. (R. at 125-29.)

Dr. Kaissar also examined Wright's back. She could stand on her toes without difficulty. She had a normal gait. Wright's forward flexion of her lumbar spine was 20 degrees, as opposed to a norm of 90 degrees, and tenderness to palpitation existed over the area. However, she had normal extension, lateral flexion, and rotation of her lumber

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[6] Used for the relief of moderate to moderately severe pain. Physician's Desk Reference 1326 (56th ed. 2002).

[7] Dr. Kaissar's specialty is not indicated in the record.

spine. Dr. Kaissar reported normal range of motion in her cervical spine, elbows, wrists, hands, hips, knees, and ankles. Wright could not stand on her heels and was unwilling to try squatting. (R. at 125-29.) Dr. Kaissar's opinion was that Wright had "significant limitation in movement of her lumber spine and left shoulder secondary to pain and also weakness in her left arm." (R. at 127.)

On July 10, 1997, Dr. S. Davis completed a residual functional capacity ("RFC") at the request of the Disability Determination Service ("DDS"). He concluded that Wright could do medium work.[8] (R. at 92-99.) Dr. Bastnagel confirmed this determination at the request of the DDS on September 23, 1997. Neither doctor had received the MRI on Wright's back or head when they completed the RFC. (*Id.* at 99.)

On July 23, 1997, during a visit to the Regenstrief Health Center, Wright complained that she could not put weight on her lower left extremity and, while sitting for longer periods of time, she suffered a burning sensation from her ankle all the way through her buttocks and her anal region. (R. at 159.)

[8] "Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work." 20 C.F.R. § 404.1567(c).

For an unrelated ailment, Dr. Neuro scheduled and performed a cubital tunnel release surgery[9] on July 28, 1997. (*Id*. at 154-55, 159.)

At a visit to Wishard Memorial Hospital on September 26, 1997, Dr. Wahidi noted that Wright still suffered from back and left arm pains. Muscle strength in her right upper extremity was reduced to 4/5. Dr. Wahidi noted that Wright was taking Percocet and Nortriptyline[10] for pain. He diagnosed chronic back pain and left ulnar neuropathy[11]. Dr. Wahidi also recommended that Wright attempt physical therapy. (R. at 139.)

On October 29, 1997, Wright had a follow-up visit after her cubital tunnel release surgery. Dr. Neuro noted that Wright still had pain and weakness in her left hand, but that she was not wearing her wrist splint. He also noted that a carpal tunnel release might become necessary in the future. (R. at 138.)

Wright found a job as a cashier in December of 1997 at a second-hand store. (R. at 184-85.) She worked five days a week, for five hours a day. After eighty days at work, Wright quit, claiming that she was unable to stand due to her back pain. (*Id*. at 187-89.)

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[9] A surgical procedure designed to relieve pressure on a pinched nerve at the lower portion of the elbow. http://www.bergmancosmeticsurgery.com/Procedures/CubitalTunnel.htm.

[10] An antidepressant. Stedman's Medial Dictionary 1220 (26th ed. 1995).

[11] A disorder affecting the nervous system in the left forearm. *Id*. at 1204, 1882.

On March 4, 1998, Dr. Neuro reported that Wright had chronic left ulnar neuropathy. (R. at 176.) An Electromyography confirmed the diagnosis on March 24, 1998. (*Id*. at 173-75.) On March 25, 1998, Dr. Neuro reported that Wright had no significant swelling in her left hand, but that all muscle groups in the hand were still weak. During this visit, Wright declined his offer of medication to help her sleep. (*Id*. at 172.)

II. Discussion

This court must except the ALJ's findings of fact as conclusive if they are supported by substantial evidence and there has been no error of law. *Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001). Substantial evidence means such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001). A reviewing court may not decide the facts anew, reweigh evidence, or substitute its judgment for that of the ALJ. *Kepple v. Massanari*, 268 F.3d 513, 516 (7th Cir. 2001).

When determining disability, the ALJ makes a five-step inquiry: (1) whether the claimant is currently employed, (2) whether the claimant has a severe impairment, (3) whether the claimant's impairment is one that the Commissioner considers conclusively disabling, (4) if the claimant does not have a conclusively disabling impairment, whether she can perform her past relevant work, and (5) whether the claimant is capable of

performing any work in the national economy.[12] *Dixon*, 270 F.3d at 1176 (summarizing the agency regulations set forth in 20 C.F.R. § 404.1520). In making his determination, the ALJ must clearly articulate his analysis of the evidence, building an accurate and logical bridge between the evidence and his conclusion. *Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000). The ALJ does not need to address every document in the record, but he must not select only those documents for review that support his analysis. "His written decision should contain, and his ultimate determination must be based upon, all of the relevant evidence in the record." *Garfield v. Schweiker*, 732 F.2d 605, 609 (7th Cir. 1984). It is essential for meaningful review of his decision that the ALJ articulate reasons for crediting or rejecting evidence. *Zblewski v. Schweiker*, 732 F.2d 75, 78 (7th Cir. 1984).

Wright contends that the ALJ erred by 1) omitting discussion of MRIs done of her head and back in 1996, which were not reviewed by the physicians responsible for the RFC determination in this case; 2) finding Wright not credible as to her back pain by relying solely on the objective medical evidence; and, 3) relying on an RFC determination that was formulated by physicians who did not enjoy the benefit of having the majority of the evidence before them at the time. Plaintiff's third contention need not be discussed, at this time, to reach a conclusion in this case.[13]

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[12] The ALJ does not specifically state at what step he made his final determination. Because his decision rests on a finding that Wright could perform numerous available jobs in the national economy, the court assumes a final determination was made at step 5.

[13] This issue should be cleared up on remand as the ALJ will clearly articulate his reasons for weighing the evidence as he did. It will then be easier to determine to what extent the ALJ relied on any particular piece of evidence in formulating an RFC in this

case.

A.

Did the ALJ assess all of the relevant evidence?

Whether Wright experiences a great amount of pain is the key question in determining if she is disabled under the SSA. Interrogatories sent to a vocational expert acknowledge that if Wright's back problems are as severe as she alleges, then there are no jobs in the national economy which she could be expected to perform. (R. at 113.) However, if Wright is not limited by her back, then a significant number of jobs would be available in the national economy that would be suitable for someone with her left-arm problems. (*Id*.) Thus, it was essential for an accurate determination of Wright's disability status that the ALJ carefully consider all of the evidence concerning her back complaints.

In his decision, the ALJ only discusses the findings of Dr. Kaissar, which suggest minimal back impairment. The ALJ omits any mention or discussion of the MRI of Wright's back, which revealed "disc bulges or small herniations which abutt the exiting nerve roots." (R. at 161.) The ALJ also does not mention the diagnosis of Dr. Wahidi that Wright suffers from degenerative joint disease of the cervical and lumber spine, with a disc herniation at L3-L4 and L5-S1, resulting in chronic back pain. Since the findings of Dr. Kaisser might be in conflict with the findings of Dr. Wahidi and the MRI, it is essential for a review of the decision by this court that the ALJ articulate his reasons for discounting the MRI and Dr.

Wahidi's diagnosis.[14] "[A]ll medical evidence that is credible, supported by clinical findings, and relevant to the question at hand should be considered and discussed by the ALJ. The decision should contain and should be based upon a fair and impartial presentation of the medical evidence submitted by the claimant or obtained from other sources." *Garfield v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

This court will not decide the facts anew, but it cannot say that the evidence is such that a reasonable mind would find it substantial enough to reach the ALJ's conclusion when the court cannot be certain whether the ALJ considered relevant evidence. "In the absence of an explicit and reasoned rejection of an entire line of evidence, the remaining evidence is 'substantial' only when considered in isolation." *Zblewski v. Schweiker*, 732 F.2d 75, 78-79 (7th Cir. 1984).

The Commissioner argues that Wright does not articulate how the MRI is inconsistent with the ALJ's RFC finding and that the mere diagnosis of an impairment says nothing about the extent of the limitation that an impairment imposes. Both arguments may be correct, but they miss the point. This court does not decide the facts or weigh the evidence. *Kepple*, 268 F.3d at 516. Wright is asking this court merely to take notice that facts have not been decided and evidence has not been weighed below. The question of

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[14] That is, of course, assuming that the ALJ did not simply ignore the MRIs and the findings of Dr. Wahidi. This court has no way of determining if either were even considered. The ALJ, however, deserves the benefit of the doubt, and the court assumes that the evidence was diligently reviewed, but that a discussion of it was mistakenly left out of the decision.

how the MRI is inconsistent with the RFC is properly brought up before the ALJ. In this court, the question is were the inconsistencies *permissibly resolved*, if at all? The essential point the Commissioner fails to recognize is that the ALJ does not appear to have decided these issues, leaving this court no basis on which to review a decision.

Additionally, the MRI done on Wright's head on July 30, 1996, deserves more consideration by the ALJ. The MRI is objective medical evidence that could either corroborate or contradict Wright's subjective complaints of severe headaches. Dr. Matthews' notes that the head MRI indicates small vessel ischemic disease, mild cerebral atrophy, and calcifications, hemosiderin or possibly cavernous angina. (R. at 163.) The severity of these disorders is not mentioned in the record. Under questioning by her attorney, Wright testified that she was never informed of their severity either.[15] (R. at 208.) To ignore this MRI is tantamount to completely disregarding an entire line of evidence that could have a significant impact on a final determination of Wright's disability status.

The court is especially troubled by this omission because it was mentioned at the hearing and no effort has been made to describe the severity of Dr. Matthews' impressions. For the court to review the ALJ's decision that Wright's complaints of headaches are inconsistent with the objective medical evidence, the ALJ needs to

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[15] Wright also testified that she was taking Oxycodone for her headaches, and that the medication was not working. (R. at 208.) Oxycodone is an opoid agonist and a Schedule II controlled substance with an abuse liability similar to morphine. It is prescribed for moderate to severe chronic pain. Physician's Desk Reference 2912-13 (56th ed. 2002.) Dr. Wahidi gave Wright prescriptions for the drug in 1997. (R. at 123, 131.)

describe what the objective medical evidence indicates and how severe any abnormalities are. In the absence of such a description, the court cannot say whether it is substantial evidence supporting the ALJ's decision.

B.

Did the ALJ properly assess Wright's credibility?

The ALJ articulated the correct standard in this case:

> [A]n Administrative Law Judge must consider in addition to the objective medical evidence when assessing the credibility of an individual's statements: 1. The individual's daily activities; 2. The location, duration, frequency, and intensity of the individual's pain or other symptoms; 3. Factors that precipitate and aggravate the symptoms; 4. The type, dosage, effectiveness, and side effects of any medication, the individual takes or has taken to alleviate pain or other symptoms; 5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms; 6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms; and 7. Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

(R. at 14-15); *see also* 20 C.F.R. § 404.1529(c)(3); *Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995).

It is not at all clear, however, whether the ALJ followed this standard in his analysis of Wright's credibility. His decision merely states that Wright's allegations are inconsistent with the objective medical evidence and "other evidence of record. If these conditions [back pain and headaches] had actually been present, it would be difficult to reconcile them with the normal physical findings on examination." (R. at 15). First, it must be noted that the record is not at all clear that "normal physical findings" were found on examination. Even the report of Dr. Kaissar upon which the ALJ heavily relies records that Wright's back

flexibility was significantly limited, secondary to pain, that she could not stand on her heels, and that she refused to attempt squatting. (R. at 126-27.) Dr. Kaissar reported that forward flexion in Wright's lumber spine was limited to 20 degrees and that normal flexibility was 90 degrees. (R. at 128.) Also, the MRIs done on her back and head do not show "normal" findings.

Perhaps, if the ALJ had considered the MRIs, then he might have found Wright's subjective evidence of her pain more persuasive. If those MRIs do show that Wright's physical condition was abnormal, it is possible to find her disabled within the meaning of the Social Security Act ("SSA.") "Despite a paucity of objective medical evidence directly supporting a disability, the claimant may prove that she is 'disabled' within the SSA by subjective complaints if she shows: 1) evidence of an objectively adduced abnormality *and, either* 2) objective medical evidence supporting the subjective complaints issuing from that abnormality, *or* 3) that the abnormality is of a nature in which it is reasonable to conclude that the subjective complaints are a result of that condition." *Veal v. Bowen*, 833 F.2d 693, 698 (7th Cir. 1987) (emphasis in the original). Thus, if the problems revealed by the MRIs could reasonably be believed to support Wright's subjective complaints, she might be disabled under the SSA.

Despite numerous mentions in the record of Wright's pain medications and daily activities, the ALJ does not attempt to describe how he weighed that evidence against the objective medical evidence. The ALJ cannot solely discount Wright's subjective

complaints because of a lack of objective evidence,[16] but must also take into account the factors listed above. *See* 20 C.F.R. § 404.1529(c)(3). This court cannot effectively review his decision unless the ALJ describes what evidence he took into account and how he weighed it. It is not enough for the ALJ to simply write, "other evidence of record," and leave the matter at that. This court needs to know precisely on what evidence the ALJ relied. The Commissioner's decision to deny Wright DIB cannot adequately be reviewed without a more fully developed opinion from the ALJ.

III. Conclusion

For the foregoing reasons, the final decision of the Commissioner of Social Security in this case is **REVERSED** and this case is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for proceedings consistent with this Entry to allow the ALJ to (1) evaluate the MRI done in 1996 of Wright's back and articulate how it weighs against the examination of Dr. Kaissar; (2) evaluate and weigh the MRI of Wright's head; and, (3) articulate, in light of (a) the MRIs, (b) Wright's medications, (c) her daily activities and, (d) any other subjective evidence in the record, whether Wright's subjective complaints are accurate and credible.

ALL OF WHICH IS ORDERED this 15th day of May 2002.

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[16] This is particularly true where the ALJ omitted an entire line of evidence from the discussion, including laboratory findings.

John Daniel Tinder, Judge
United States District Court

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