

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

VICTOR C. TELESHA, :
 :
 Plaintiff, : CIVIL ACTION NO. 3:01-CV-2371
 :
 v. : (JUDGE CONABOY)
 : (Magistrate Judge Mannion)
 JO ANNE BARNHART, :
 Commissioner of the Social :
 Security Administration, :
 :
 Defendant. :

MEMORANDUM AND ORDER

Before the Court is Magistrate Judge Malachy E. Mannion's Report and Recommendation, (Doc. 14), regarding Plaintiff Victor C. Telesha's appeal of the denial of his claim for Disability Insurance Benefits (DIB) under Title II of the Social Security Act (Act), 42 U.S.C. §§ 401-433. The Magistrate Judge recommends that Plaintiff's Appeal be denied. (Doc. 16 at 9.) Because Plaintiff has filed objections to the recommended disposition, (Doc. 15), we will make a de novo determination regarding the matters to which Plaintiff has objected. See 28 U.S.C. § 636(b)(1)(C).

After a thorough examination of the record, we conclude that the ALJ's failure to address the disability determination of the Pennsylvania State Employees' Retirement System, and his incomplete review of evidence regarding both HIV Wasting Syndrome (Listing 14.08(I)) and Plaintiff's credibility are cause for remand.

Therefore, we remand the case to the Commissioner for further proceedings consistent with this opinion.

Background

Plaintiff protectively filed the current application for Social Security Disability Insurance Benefits on August 4, 1998, alleging an inability to work since July 25, 1997, due to HIV infection, anxiety, rheumatoid arthritis and cervical strain. (R. 12, 70, 96.) His claim was denied initially, (R. 55), and on reconsideration, (R. 50). A timely request for a hearing was filed, and a hearing was conducted on November 9, 1999, before an Administrative Law Judge (ALJ). The Plaintiff was represented by counsel at his hearing. Plaintiff was denied benefits pursuant to the ALJ's decision of December 30, 1999. (R. 8-21.)

Plaintiff requested review of the ALJ's decision by the Appeals Council. (R. 5.) The request was denied on October 12, 2001, (R. 3), thereby making the ALJ's decision of December 30, 1999, the "final decision" of the Commissioner. 42 U.S.C. § 405(g). That decision is the subject of this appeal filed on December 14, 2001. (Doc. 1.) The matter was referred to Magistrate Judge Mannion who issued a Report and Recommendation, (Doc. 14), on March 7, 2003, recommending that the appeal be denied. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation, (Doc. 15), on March 19, 2003. Defendant filed a response to Plaintiff's objections on March 27, 2003. (Doc. 17.)

Discussion

A. Standard of Review

This Court's review of the Commissioner's final decision is limited to determining whether there is substantial evidence to support the Commissioner's decision. 42 U.S.C. § 405(g); Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999). A reviewing court is "bound by the ALJ's findings of fact if they are supported by substantial evidence in the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). Substantial evidence means "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971); Plummer, 186 F.3d at 427 (quoting Ventura v. Shalala, 55 F.3d 900, 901 (3d Cir. 1995)). Therefore, we will not set aside the Commissioner's final decision if it is supported by substantial evidence, even if we would have reached different factual conclusions. Hartranft, 181 F.3d at 360 (citing Monsour Medical Center v. Heckler, 806 F.2d 1185, 1190-91 (3d Cir. 1986); 42 U.S.C. § 405(g) ("[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . .").

B. Disability Determination

The Commissioner is required to use a five-step analysis to

determine whether a claimant is disabled.¹ It is necessary for the Commissioner to ascertain: 1) whether the applicant is engaged in a substantial activity; 2) whether the applicant is severely impaired; 3) whether the impairment matches or is equal to the requirements of one of the listed impairments, whereby he qualifies for benefits without further inquiry; 4) whether the claimant can perform his past work; 5) whether the claimant's impairment together with his age, education, and past work experiences preclude him from doing any other sort of work. 20 C.F.R. §§ 416.920(a)-(f); see Sullivan v. Zebley, 493 U.S. 521, 110 S.Ct. 885, 888-89 (1990).

The disability determination involves shifting burdens of proof. The initial burden rests with the claimant to demonstrate that he or she is unable to engage in his or her past relevant work. If the claimant satisfies this burden, then the Commissioner must show that jobs exist in the national economy that a person

¹ "Disability" is defined as the "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" 42 U.S.C. § 423(d)(1)(A). The Act further provides that an individual is disabled "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." 42 U.S.C. § 423(d)(2)(A).

with the claimant's abilities, age, education, and work experience can perform. Mason v. Shalala, 993 F.2d 1058, 1064 (3d Cir. 1993).

In this case, the ALJ found Plaintiff not disabled at step three. (R. 12-14.) He also found at step four that Plaintiff had the residual functional capacity to perform his past relevant work as a mail room clerk and counter attendant. (R. 14.) He therefore concluded that Plaintiff had not been under a disability as defined in the Social Security Act through the date of the decision. (R. 18.)

C. Plaintiff's Objections

Plaintiff raises three objections to the Magistrate Judge's Report and Recommendation. First, he contends that the ALJ did not evaluate all relevant evidence of record. (Doc. 15 at 2.) Second, Plaintiff maintains that the ALJ did not evaluate his case properly under the Social Security Listings of Impairments. (Doc. 15 at 4.) Third, Plaintiff argues that the ALJ did not evaluate his subjective complaints properly. (Doc. 15 at 7.)

In Defendant's Response to Plaintiff's Objections, she notes that Plaintiff's objections are the same issues raised in his initial brief. (Doc. 17.) For this reason Defendant does not set forth any specific response to Plaintiff's objections. Rather, she relies upon the reasoning set forth in the Magistrate Judge's Report and Recommendation, (Doc. 14), and Defendant's opening brief, (Doc. 12). (Doc. 17 at 1-2.)

At the outset of our review of whether the ALJ has met the substantial evidence standard on these matters, we note that the Third Circuit Court of Appeals has repeatedly emphasized the special nature of proceedings for disability benefits. See Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). These proceedings are not strictly adversarial, but rather the Social Security Administration provides an applicant with assistance to prove his claim. Id. "These proceedings are extremely important to the claimants, who are in real need in most instances and who claim not charity but that which is rightfully due as provided for in Chapter 7, Subchapter II, of the Social Security Act." Hess v. Secretary of Health, Education and Welfare, 497 F.2d 837, 840 (3d Cir. 1974). As such, the agency must take extra care in developing an administrative record and in explicitly weighing all evidence. Dobrowolsky, 606 F.2d at 406. The duty to develop the record exists whether or not the claimant is represented by counsel, although the duty is heightened when a claimant is unrepresented. Dobrowolsky, 606 F.2d at 407. "The Social Security Administration provides an applicant with assistance to prove his claim." Id. Further, the Court in Dobrowolsky noted "the cases demonstrate that, consistent with the legislative purpose, courts have mandated that leniency be shown in establishing the claimant's disability, and that the Secretary's responsibility to rebut it be strictly construed." Id.

1. Evaluation of Relevant Evidence of Record

We conclude that this case should be remanded because the ALJ did not address the determination of permanent disability by Pennsylvania's State Employees' Retirement System.

When reviewing a case where an ALJ has failed to address probative evidence, we are guided by extensive Third Circuit precedent. An ALJ is required to give some indication of the evidence which he has rejected as well as that which supports the result. See, e.g., Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1978).

Unless the Secretary has analyzed all evidence and has sufficiently explained the weight he has given to obviously probative exhibits, to say that his decision is supported by substantial evidence approaches an abdication of the court's "duty to scrutinize the record as a whole to determine whether the conclusions reached are rational."

Gober v. Matthews, 574 F.2d 772 (3d Cir. 1978) (quoting Arnold v. Secretary of HEW, 567 F.2d 258, 259 (4th Cir. 1977); see also Dobrowolsky, 606 F.2d at 407. The ALJ's duty to weigh all pertinent evidence applies to both medical and non-medical evidence before him. Burnett v. Comm'r of Soc. Security Admin., 220 F.3d 112, 121-22 (3d Cir. 2000). The Third Circuit has repeatedly held that a failure to properly consider probative evidence is cause for remand. See, e.g., Burnett, 220 F.3d at 121-123; Fargnoli v. Massanari, 247 F.3d 34, 42-44 (3d Cir. 2001).

Regarding the evidence in question here - the determination of

permanent disability by Pennsylvania's State Employees' Retirement System - the Third Circuit requires that an ALJ consider the evidence and give an explanation if he disagrees with it. "[A] determination [of disability] by another government agency is entitled to substantial weight." Kane v. Heckler, 776 F.2d 1130, 1135 (3d Cir. 1985) (citing Lewis v. Califano, 616 F.2d 73, 76 (3d Cir. 1980)).

Furthermore, the ALJ's obligation to consider all probative evidence cannot be met after the decision has been rendered. "The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." S.E.C. v. Chenery Corp., 318 U.S. 80, 87 (1943); see also Fargnoli, 247 F.3d, 44 n.7. Therefore, the obligation to consider all probative evidence cannot be met either by a defendant's responsive filing or a reviewing court.

Plaintiff argues the determination made by Pennsylvania's State Employees' Retirement System that he was permanently disabled, (R. 241), should have been addressed by the ALJ. (Doc. 9 at 6-8; Doc. 15 at 2-4.) As support for the general proposition that the ALJ has the duty to analyze all probative evidence, Plaintiff relies on Stewart v. H.E.W., 714 F.2d 287 (3d Cir. 1983) (citing Cotter, 642 F.2d at 705; Gober, 574 F.2d at 290), Burnett, 220 F.3d at 120-22, and Fargnoli, 247 F.3d at 42-44. As support for his argument that the ALJ erred in not considering the State

Employees' Retirement System's determination, Plaintiff relies primarily on Kane, 776 F.2d at 1135, Lewis, 616 F.2d at 76, and Fowler v. Califano, 596 F.2d 600, 603 (3d Cir. 1979).

Plaintiff recognizes that the findings of another agency regarding disability are not binding pursuant to 20 C.F.R. § 404.1504. (Doc. 9 at 7; Doc. 15 at 2.) However, Plaintiff maintains that this fact does not relieve the ALJ of his obligation to address the other agency's finding. (Id.) Plaintiff contends that this is particularly so in his case because his employer's determination "that he was 'permanently disabled' was an important fact that supported his inability to perform the past work to which the ALJ found he could return." (Doc. 15 at 3.)

Plaintiff acknowledges that the Magistrate Judge's Report and Recommendation provides a factual analysis of this issue. However, he maintains that the Magistrate Judge's analysis does not negate the need for this Court to take corrective action because, pursuant to S.E.C. v. Chenery Corp., the factual rationale for a decision cannot be provided by the Court. (Doc. 15 at 4 citing S.E.C. v. Chenery Corp., 332 U.S. at 196; Fargnoli, 247 F.3d at 44 n.7.)

Defendant does not contest that the determination of permanent disability by Pennsylvania's State Employees' Retirement System was before the ALJ and that the ALJ did not consider this evidence. Relying on the reasoning of the Magistrate Judge's Report and Recommendation, (Doc. 14), and her initial brief, (Doc. 12),

Defendant notes that another agency's determination regarding disability does not equate with the stringent standard of the Social Security Act and is not binding on the Commissioner. (Doc. 12 at 10.)

Defendant argues that Plaintiff's proffered evidence of disability from the State Employees' Retirement System is not a piece of medical evidence, distinguishing this case from those Plaintiff cites in support of his argument. (Doc. 12 at 10.) Rather, it is "merely an administrative notice from a clerk with absolutely no mention of any medical evidence or discussion of Plaintiff's condition." (Id.) Defendant characterizes this as "another example of how Plaintiff failed to satisfy his burden of proving a medical inability to work." (Id.)

Finally, Defendant maintains that the ALJ's decision should be upheld because the ALJ focused on the medical evidence of record and appropriately determined that Plaintiff was not disabled. (Doc. 12 at 11.)

The Magistrate Judge's analysis, upon which Defendant also relies, determined that the ALJ's failure to address the State Employees' Retirement System letter was harmless error. Citing a Seventh Circuit Court of Appeals' case, the Magistrate Judge posited that an ALJ is not required to address each piece of evidence, rather he "must articulate at some minimal level, his analysis of the evidence." (Doc. 14 at 14, citing Green v.

Shalala, 51 F.3d 96, 101 (7th cir. 1995).) The Magistrate Judge cites another Seventh Circuit case for the proposition that a physician's diagnosis is not enough to show disability; "the claimant still has the burden to provide sufficient evidence of disability under the terms of the Social Security Act." (Doc. 14 at 14 quoting Estok v. Apfel, 152 F.3d 636, (7th Cir. 1998).) The Magistrate Judge noted that various governmental agencies have different statutory tests for disability. (Doc. 14 at 15.) He then proceeded to weigh the evidence, recognizing the ALJ's duty to develop the record but noting that "if the plaintiff intended to rely heavily on the fact that he had been determined disabled by his employer's medical staff, it was incumbent upon him to develop this aspect of his own claim." (Doc. 14 at 16.)

Notwithstanding the impropriety of Defendant's reliance on the Magistrate Judge's factual analysis pursuant to S.E.C. v. Chenery and Fargnoli, based on Third Circuit precedent we are not persuaded that the ALJ's failure to address the State Employees' Retirement System's disability determination is harmless error. We agree with Defendant and the Magistrate Judge that there are different statutory tests for disability. However, the direction provided by the Third Circuit in Kane and Lewis, requiring an ALJ to consider another government agency's disability determination, takes this discrepancy into consideration.

We also agree that the evidence at issue may be seen as

conclusory. The letter to Plaintiff from the State Employees' Retirement System dated June 10, 1998, states in its entirety:

The most recent medical documentation submitted for the continuation of your temporary disability annuity has been reviewed by our medical staff, and they have now determined that your disability benefit is permanent.

You are no longer required to furnish the State Employees' Retirement System with further medical documentation to substantiate the continuance of your disability.

(R. 241.) It is clear that this letter does not detail the medical evidence upon which the disability finding was based, but it is also clear that the System's conclusion is based on medical documentation. Although Defendant distinguishes this evidence from that discussed in Plaintiff's cited cases, (Doc. 12 at 11, citing Doc. 9 at 6-8), the general direction provided in those cases is not limited to consideration of medical evidence. This issue is succinctly discussed in Kane v. Heckler:

Finally, Kane notes that the ALJ should have considered the importance of a Veterans Administration determination that he is disabled. Such a determination by another government agency is entitled to substantial weight. Lewis v. Califano, 616 F.2d 73, 76 (3d Cir. 1980). This proposition, too, should be addressed on remand.

Kane, 776 F.2d at 1135. The Kane court discussed the weight to be given another agency's "determination," and another agency's "determination" is what is at issue here. Therefore, we do not find Defendant's distinction dispositive.

Defendant's argument that Plaintiff did not satisfy his burden of proving a medical inability to work is not persuasive. In Lewis

v. Califano, the Court determined that the claimant's submission of another agency's physician's report that she could not work satisfied her initial burden of proving disability. Lewis, 616 F.2d at 76. While we distinguish between the evidence proffered in Lewis and the letter Plaintiff has provided in this case, Third Circuit precedent does not lead us to the conclusion that the instant appeal should be denied on this basis. See supra at 6-8.

We recognize that a proper analysis of the effect of the State Employees' Retirement System's disability determination would require more information than that provided in Plaintiff's proffered letter. However, because the letter states that the System's determination of permanent disability was based on medical documentation, the ALJ could have developed this information.

Other courts have concluded that the ALJ's duty to develop the record extends to exploring the basis for another agency's disability determination. In Richter v. Chater, 900 F. Supp. 1531 (D. Kan. 1995), where the ALJ did not attempt to discover the factual basis and the medical evidence on which an agency's finding of disability was based, the court directed that, on remand, the Commissioner should make every reasonable effort to obtain the agency records. Id. at 1539 (citing Baca v. Dep't of Health and Human Services, 5 F.3d 476, 480 (10th Cir. 1993)).

Our decision to remand this case is also guided by Social Security Ruling 82-62:

The decision as to whether the claimant retains the functional capacity to perform past work which has current relevance has far-reaching implications and must be developed and explained fully in the disability decision. Since this is an important and, in some instances, a controlling issue, *every effort must be made to secure evidence that resolves the issue as clearly and explicitly as circumstances permit.*

Soc. Sec. Ruling No. 82-62, 1982 WL 31386, at *3 (S.S.A.) (emphasis added).

Here, the ALJ's duty to develop the record regarding the State Employees' Retirement Board's disability determination is especially compelling because the ALJ ultimately decided Plaintiff's disability claim at the fourth step. The ALJ determined that Plaintiff could return to his past relevant work, but Plaintiff's proffered evidence - the State Employees' Retirement System's letter - demonstrates that his employer had determined over a year earlier that he was permanently disabled. While we do not say that this is necessarily a contradiction which would require a Social Security finding of disability, it is at least an issue which should have been addressed by the ALJ and which he should develop on remand.

2. *The ALJ's Conclusion that Plaintiff's Impairments Did Not Meet or Equal One of the Listing of Impairments*

We also conclude that on remand the ALJ should consider all relevant evidence regarding Plaintiff's condition and Social Security Listing 14.08.

The regulations provide that "[a]ny individual with HIV

infection, including one with a diagnosis of acquired immunodeficiency syndrome (AIDS), may be found disabled under this listing if his or her impairment meets any of the criteria in 14.08 or is of equivalent severity to any impairment in 14.08." 20 C.F.R., Pt. 404, Subpt. P, App. 1, §§ 14.00(D)(1). Therefore, Social Security benefits are not available for a claimant with positive HIV status unless it is accompanied by one of various related disorders listed under 20 C.F.R. pt. 404, subpt. P, app. 1, §§ 14.08(A)-(N).

Here, the ALJ ruled that Plaintiff's impairments did not meet or equal § 14.08(I), which discusses the HIV Wasting Syndrome.²

The ALJ reported:

While the [Plaintiff's] weight loss meets these criteria, as his weight dropped from 180 pounds in July 1997 to 161 pounds in March 1999, there is no evidence of chronic diarrhea. His diarrhea is described as intermittent and in March 1999, it is noted that the diarrhea was improving. There is no evidence of weakness with fever.

² Section 14.08(I) provides:

HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (or other significant involuntary weight loss, as described in 14.00D2) and, in the absence of a concurrent illness that could explain the findings, either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
2. Chronic weakness and documented fever greater than 38° C (100.4° F) for the majority of 1 month or longer.

20 C.F.R. pt. 404, subpt. P, app. 1, § 14.08(I).

(R. 14) (citations omitted).

Plaintiff asserts that the ALJ erred in applying an incorrect standard in evaluating his case under § 14.08(I). (Doc. 9 at 8-9). In particular, Plaintiff contends that the ALJ confused the term "chronic" with the term "constant" in determining whether he met or equaled the requirements for the frequency of experiencing diarrhea. (Id. at 9). Plaintiff argues that "a medical problem can be chronic without being constant, even if it is intermittent." (Id.)

Defendant asserts that there is no evidence that Plaintiff suffered from HIV Wasting Syndrome based on two reasons. First, Defendant states that Plaintiff's diarrhea symptoms were intermittent in nature, insufficient to satisfy the requirements in § 14.08(I). Second, Defendant contends that Plaintiff's diarrhea was "caused by an unfortunate mixture of medications," which disappeared once the medications were altered. (Doc. 12 at 11-12).

The record reveals that Plaintiff experienced diarrhea with frequent recurrence, particularly during the periods from February 24, 1998, until March 24, 1998, and July 14, 1998, until December 15, 1998. (R. 148-152, 199-207). During these periods, Plaintiff described the frequency that he experienced diarrhea as: "everyday in the morning" (R. 148); "morning in a.m." (R. 150); "everyday" (R. 199); "once or twice a week" (R. 205); or "3 or 4 times a week" (R. 201).

The ALJ did not address these records with respect to the Listing of Impairments determination under § 14.08(I), nor did he explain his reasons for failing to fully assess Plaintiff's medical records on this point. Rather, he rejected outright Plaintiff's contention that he meets the severity of Listing § 14.08(I).³

"Although the ALJ need not explicitly weigh every item of medical evidence in the file, see Fargnoli v. Massanari, 2001 WL 359353, at *6 (3d Cir. 2001), he must explain his rejection of competent evidence supporting the Plaintiff's claims." Berrios-Vasquez v. Massanari, 2001 WL 868666, *6 (E.D. Pa. 2001). By failing to mention Plaintiff's treatment records which document his bouts with diarrhea, the ALJ has made it difficult for this Court to determine if he inadvertently failed to mention the records, or

³ The ALJ acknowledges Plaintiff's symptoms of diarrhea and points to several of the above-listed instances in which Plaintiff experienced such symptoms. (R. 16 at ¶ 1). However, this acknowledgment is found in the section of the opinion dealing with the ALJ's determination of Plaintiff's credibility. See Section C3, infra. It should be noted that the ALJ does not specifically question the credibility of the particular medical reports documenting Plaintiff's diarrhea symptoms. Instead, he grouped Plaintiff's symptoms together and stated: "I find that the claimant is not entirely credible in regard to his alleged symptoms and the resulting limitation. Although the medical records indicate that he has suffered from diarrhea, fatigue, sinus and skin infections and pain in the neck and shoulders, these symptoms have not been consistent." (Id.). This does not persuade us that the ALJ sufficiently considered the documentation of Plaintiff's diarrhea symptoms, such that we could conclude that the ALJ either inadvertently failed to mention the records in the determination under § 14.08(I), or if he purposefully chose not to give them significant evidentiary weight.

if he purposefully chose not to give them significant evidentiary weight. See Carter v. Apfel, 220 F. Supp. 2d 393, 398 (M.D. Pa. 2000). We find that the ALJ erred by failing to articulate thoroughly the reasons to support his conclusion that Plaintiff did not meet the severity of § 14.08(I). Accordingly, this matter must be remanded to the Commissioner for an adequate explanation of any credible evidence that is rejected and the reasons for its rejection.

3. The ALJ's Credibility Determinations of Plaintiff's Subjective Complaints

We conclude that on remand the ALJ should consider all pertinent evidence regarding Plaintiff's credibility.

It is well settled that credibility determinations as to a claimant's testimony regarding pain and other subjective complaints are for the ALJ to make.⁴ See Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983). When assessing the claimant's credibility,

⁴ The standard to review subjective pain requires:

- (1) that subjective complaints of pain be seriously considered, even where not fully confirmed by objective medical evidence;
- (2) that subjective pain "may support a claim for disability benefits," and "may be disabling";
- (3) that where such complaints are supported by medical evidence, they should be given great weight; and
- (4) that where a claimant's testimony as to pain is reasonably supported by medical evidence, the ALJ may not discount claimant's pain without contrary medical evidence.

Green v. Schweiker, 749 F.2d 1066, 1068 (3d Cir. 1984) (citations omitted).

[I]n all cases in which pain or other symptoms are alleged, the determination or decision rationale must contain a thorough discussion and analysis of the objective medical and the other evidence, including the individual's complaints of pain or other symptoms and the adjudicator's personal observations. The rationale must include a resolution of any inconsistencies in the evidence as a whole and set forth a logical explanation of the individual's ability to work.

Social Security Ruling ("S.S.R.") 95-5P, 1995 WL 670415, at *2 (Oct. 31, 1995) (emphasis added). The Third Circuit has emphasized "the need for such specificity, holding that the ALJ must indicate in his decision which evidence he has rejected and which he is relying on as the basis for his finding." Schaudeck v. Commissioner of Social Sec. Admin., 181 F.3d 429, 433 (3d Cir. 1999) (citing Cotter v. Harris, 642 F.2d 700, 705-06 (3d Cir. 1981); S.S.R. 96-7P, 1996 WL 374186, at *4 (July 2, 1996) ("The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision.")). An ALJ's detailed explanation provides us with a basis on which to assess whether probative evidence was not credited or was simply ignored.

Here, the ALJ reported: "[i]t has been found that the claimant has HIV infection and cervical strain, which could reasonably be expected to produce the symptoms of pain in the neck and shoulders, fatigue, diarrhea, infections and poor concentration." (R. 15 at ¶ 3). The ALJ was then required to determine the extent to which Plaintiff accurately stated the degree of pain or the extent to

which he is disabled by it. See 20 C.F.R. § 404.1529(c); see also Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999); Akers v. Callahan, 997 F. Supp. 648, 658 (W.D. Pa. 1998) (citations omitted) ("Where a claimant's testimony as to pain is reasonably supported by medical evidence, neither the Commissioner nor the ALJ may discount a claimant's history of symptoms without contrary medical evidence."). Plaintiff testified about the severity of his fatigue, his symptoms of diarrhea, his continuing weight loss and frequent infections and the pain in his neck and shoulders. (R. 15). He also testified about his daily activities, including eating and sleeping habits, taking medication, watching television and cleaning. (Id.)

The ALJ determined that Plaintiff's testimony regarding the severity of his pain and Plaintiff's resulting incapacity was not credible. This determination was based on what the ALJ concluded were inconsistencies between Plaintiff's testimony, his medical records and the activities in which he was engaged. (R. 16 at ¶ 1). While the ALJ acknowledged Plaintiff's complaint about sinus infections and rashes, as well as symptoms of diarrhea, he discredited the testimony insofar as these conditions were "intermittent." (Id. at ¶¶ 1, 3). The ALJ rejected Plaintiff's neck and shoulder pain due to medical reports that revealed "tenderness and good range of motion of the neck." (Id. at ¶ 2). Additionally, the ALJ concluded that Plaintiff's fatigue did not

"interfere with [Plaintiff's] ability to care for himself, to get around, to participate in recreational activities or to shop." (Id. at ¶ 4). Finally, the ALJ recognized Plaintiff's weight loss, but noted that his HIV positive condition was reported as stable. (Id. at ¶ 5). Thus, the ALJ concluded that the limitations "would not preclude [Plaintiff] from performing all work." (Id. at ¶ 6).

The Magistrate Judge's Report and Recommendation found that the ALJ did not err in determining that Plaintiff's subjective complaints were not fully credible. (Doc. 14 at 20-23).

Plaintiff argues that "the ALJ's failure to consider relevant evidence undermines the legitimacy of his evaluation." (Doc. 15 at 7). According to Plaintiff, the ALJ's omission of relevant information and the overall lack of thoroughness in the ALJ's opinion requires a reversal of the Commissioner's final decision. In addition, Plaintiff objected to the Magistrate Judge's consideration of other inconsistencies between the record and Plaintiff's testimony regarding his ability to work. The inconsistencies cited by the Magistrate Judge include the lack of medical records supporting Plaintiff's claim that he was diagnosed with rheumatoid arthritis,⁵ that he was disabled due to depression

⁵ The ALJ found that Plaintiff's complaint regarding rheumatoid arthritis was not documented in the medical evidence, and thus is "not a medically determinable impairment." (R. 13 at ¶ 2). Apparently, this was not considered by the ALJ in the credibility determination.

and that he used a cane to alleviate pain in his knee. (Doc. 14 at 23). Plaintiff stated the fact "[t]hat there were other inconsistencies should not grant the ALJ freedom to simply disregard" the relevant evidence, including the letter to Plaintiff from the Pennsylvania Employee's Retirement System, Plaintiff's work experience,⁶ and pertinent medical documents. (Doc. 15 at 8). We agree.

In order to uphold the ALJ's decision, there must be substantial evidence to support it. As discussed in sections C1 and C2, supra, the ALJ's failure to thoroughly address the evidence has made it difficult for this Court to determine the amount of weight, if any, that was given to the Pennsylvania Employee's Retirement System letter, Plaintiff's work experience and his medical records. That, in turn, creates additional obstacles in deciphering the extent to which the Plaintiff's subjective complaints were discredited. We are not convinced that all significant evidence was considered by the ALJ and conclude that this issue should be reviewed on remand.

Conclusion

In light of the remedial nature of the statute and relevant legal authority, for the reasons set forth above, we remand this

⁶ Defendant is correct to note that claimant's prior work history is not determinative of credibility issues. (Doc. 12 at 15). Prior work experience is, however, one of many factors an ALJ must consider in assessing the credibility of a claimant's subjective complaints of disabling pain. See 20 C.F.R. § 404.1529(c)(3). In this case, the ALJ did not consider Plaintiff's work history in his credibility determination.

case for further proceedings consistent with this opinion.⁷

RICHARD P. CONABOY
United States District Judge

DATED: _____

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

⁷ Both parties have noted that Plaintiff filed a subsequent application for benefits and was determined to be disabled as of December 31, 1999. We agree with Defendant that a later award of benefits does not legally impact the review of a prior application for benefits, (Doc. 12 at 15-16). Plaintiff also agrees on this point, but notes it is an example of how he has received "irrational treatment" that he was found disabled by the Social Security Administration as of one day after the ALJ's decision that he was not disabled. (Doc. 13 at 4.) Although of no legal significance, we note that we understand Plaintiff's confusion as to how his condition could have deteriorated to the point that he became totally disabled within a one day period.

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 v. : (JUDGE CONABOY)
 : (Magistrate Judge Mannion)
 JO ANNE BARNHART, :
 Commissioner of the Social :
 Security Administration, :
 :
 Defendant. :

ORDER

AND NOW, THIS _____ DAY OF MARCH, 2003, FOR THE REASONS SET FORTH IN THE ACCOMPANYING MEMORANDUM, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Objections to the Magistrate Judge's Report and Recommendation are SUSTAINED;
2. This case is REMANDED to the Commissioner for further proceedings consistent with this Memorandum and Order;
3. The Clerk of Court is directed to close this case.

RICHARD P. CONABOY
United States District Judge