

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<i>DAVID MANDRAVELIS,</i>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<i>v.</i>	)	<i>Docket No. 98-3-B</i>
	)	
<i>KENNETH S. APFEL,</i>	)	
<i>Commissioner of Social Security,</i>	)	
	)	
<i>Defendant</i>	)	

**REPORT AND RECOMMENDED DECISION<sup>1</sup>**

This Social Security Disability (“SSD”) appeal raises the issues of sufficiency of the evidence to support the Commissioner’s conclusions that the plaintiff did not suffer from a disabling mental condition prior to his date last insured and that the plaintiff was able at that time to engage in light work. I recommend that the court affirm the Commissioner’s decision.

In accordance with the Commissioner’s sequential evaluation process, 20 C.F.R. § 404.1520; *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5, 6 (1st Cir. 1982), the administrative law judge found, in relevant part, that the plaintiff met the disability insured status requirements of the

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<sup>1</sup> This action is properly brought under 42 U.S.C. § 405(g). The Commissioner has admitted that the plaintiff has exhausted his administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which he seeks reversal of the Commissioner’s decision and to complete and file a fact sheet available at the Clerk’s Office. Oral argument was held before me on June 12, 1998 pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

Social Security Act on December 30, 1985, the date the plaintiff stated that he became unable to work, and had acquired sufficient quarters of coverage to remain insured only through December 31, 1985, Finding 1, Record p. 23; that the plaintiff had not engaged in substantial gainful activity since September 1, 1980, Finding 2, Record p. 23; that on the date his insured status expired the plaintiff suffered from low back strain, an impairment that was severe but did not meet or equal the criteria of any of the impairments listed in Appendix 1 to Subpart P, 20 C.F.R. § 404, Finding 3, Record p. 23; that the plaintiff's statements concerning his impairment and its impact on his ability to work on the date his insured status expired were not entirely credible, Finding 4, Record p. 23; that on the date his insured status expired the plaintiff was unable to perform his past relevant work as a sign painter, Finding 6, Record p. 23; that on the date his insured status expired the plaintiff had the residual functional capacity to engage in light work, diminished by his inability to bend repeatedly, crawl, or more than occasionally climb, balance, kneel or crouch, Finding 7, Record p. 23; that based on his age (35), education (high school graduate), exertional capacity for light work, and work experience, application of Rules 202.20, 202.21, and 202.22 in Appendix 2, Table 2, to Subpart P, 20 C.F.R. § 404 ("the Grid") would direct a conclusion that the plaintiff was not disabled, Findings 8-10, Record pp. 23-24; that the plaintiff's capacity for light work was not significantly compromised and a finding of "not disabled" was therefore reached within the framework of the Grid, Finding 11, Record p. 24; and that the plaintiff was not under a disability at any time through the date upon which his insured status expired, Finding 12, Record p. 24. The Appeals Council declined to review the decision, Record pp. 5-6, making it the final decision of the Commissioner, 20 C.F.R. § 404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the Commissioner's decision is whether the determination made is

supported by substantial evidence. 42 U.S.C. § 405(g); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The plaintiff does not dispute that his date last insured was December 31, 1985 and that he must demonstrate that he suffered from a disabling impairment on or prior to that date. He presents argument concerning a claimed mental impairment and the finding of the administrative law judge that he had a residual functional capacity for light work, with certain limitations, at the relevant time.

### **I. Mental Impairment**

The plaintiff relies on the reports of Dr. Paul Goldring, a psychologist, to support his claim that the administrative law judge improperly determined that his mental impairment prior to the date last insured was not severe. This is a determination made at Step 2 of the evaluative process, where the burden of proof is on the claimant, 20 C.F.R. § 404.1520(c), but that burden is *de minimis*, a requirement designed to screen out groundless claims, *McDonald v. Secretary of Health & Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986). Although the burden is *de minimis*, the plaintiff must still establish that his impairment significantly limited his mental ability to do basic work activity. *Bowen v. Yuckert*, 482 U.S. 137, 145-46 (1987). At Step 2, only medical evidence is evaluated in order to assess any limitations caused by an impairment. Social Security Ruling 85-28, reprinted in *West's Social Security Reporting Service*, Rulings 1983-1991 at 393.

The administrative law judge completed a Psychiatric Review Technique Form (“PRTF”), as required by 20 C.F.R. § 404.1520a(b)(2), in which he found the presence of an affective disorder and

dysthymia with anxiety, neither of which caused functional limitations in excess of the “slight” or “seldom” level. Record pp. 25-27. Such findings support a conclusion that the mental impairments were not severe. 20 C.F.R. § 404.1520a(b)(3). The plaintiff contends that the administrative law judge reached these findings only by misinterpreting Dr. Goldring’s records.

Dr. Goldring’s records show that he treated the plaintiff from April 1, 1982 through March 13, 1986, with weekly visits from April 29 or May 17, 1982 through September 16, 1982 and yearly follow-up thereafter. Record pp. 175, 177, & 179. The plaintiff contends that the evidence of weekly visits for a period of four months in 1982 establishes that Dr. Goldring “treated this Plaintiff intensively through psychotherapy for an extended period of time,” Statement of Specific Errors (Docket No. 3) at 4, and that, coupled with Dr. Goldring’s statement that the treatment was not “overwhelmingly helpful,” Record p. 178, and his checking in 1986 of a box marked “Class 4 — Patient is unable to engage in stress situations or engage in interpersonal relations (marked limitations)” under the heading “Mental/Nervous Impairment” on an “Attending Physician’s Statement of Continued Disability” Form issued by an insurance company, *id.* at pp. 175-76, the evidence required the administrative law judge to find a severe impairment.

In Dr. Goldring’s first report, signed on November 29, 1982, the box for “moderate limitations” under the “Mental/Nervous Impairment” heading is checked and his remarks include “If successful [in training in relaxation, assertiveness, cognitive control of pain] p[atien]t c[oul]d be expected to resume work as painter or seek collateral employment” and “He should consider changing his vocation and seeking further education.” *Id.* at pp. 179-80. In the second report, dated July 11, 1983, Dr. Goldring states “It has been over a year since I have actively worked with this man and I cannot say with certainty what he is or is not capable.” *Id.* at p.178. The diagnoses of adjustment

disorder and depressive reaction are the same in both reports. *Id.* at pp. 177 & 179. In the third report, dated March 16, 1986, Dr. Goldring states that “David has been in to see me a few times since 1982,” increases the level of “Mental/Nervous Impairment” to “marked limitations,” and diagnoses post traumatic stress disorder and dysthymic disorder. *Id.* at pp. 175-76. None of the reports addresses the limiting factors on which the finding of severe mental impairment must be based: understanding, carrying out and remembering simple instructions; use of judgment; responding appropriately to supervision, and dealing with changes in a routine work setting. 20 C.F.R. § 404.1521(b).

The Commissioner is not required to accept a doctor’s conclusion that a claimant is disabled. 20 C.F.R. § 404.1527(e). The guidelines for evaluation of a medical opinion are set forth at 20 C.F.R. § 404.1527(d). One of the factors listed is the length of the treatment relationship and the frequency of examination. 20 C.F.R. § 404.1527(d)(2)(i). Here, the sections of Dr. Goldring’s reports upon which the plaintiff seeks to rely were based upon a single annual contact, one a year after the four-month course of treatment and another four years later. The administrative law judge’s conclusion that the evidence of a severe mental impairment at the relevant time is “scant” and that therapeutic sessions were “infrequent,” Record p. 20, is not without substantial evidentiary support. In addition, the brief two-page reports do not provide much in the way of medical signs and laboratory findings to support Dr. Goldring’s conclusions, another factor to be evaluated by the administrative law judge. 20 C.F.R. § 404.1527(d)(3). The plaintiff has failed to carry his burden at Step 2 to demonstrate a severe mental impairment.

## **II. Residual Functional Capacity**

The plaintiff also challenges the administrative law judge’s determination at Step 5 of the

evaluative process that he had the residual functional capacity for light work, with certain limitations. He relies on the April 1982 report of Dr. Robert C. Leaver, a neurosurgeon, who notes a first visit of June 9, 1980 and a last visit of March 5, 1982 with frequency “prn;” a diagnosis of possible disc protrusion; treatment of “neurosurgical evaluation, myelogram” and “Darvon Compound 1/22/82;” physical limitations of 20 pounds lifting, 20 pounds carrying, 4 hours standing and no climbing of stairs or ladders; and a finding that the plaintiff is totally disabled from his regular occupation with candidacy for further rehabilitation services and modification of the current job “to allow for handling with impairment.” Record pp. 181-82. He also relies on a report dated January 12, 1990 of Dr. Carl W. Irwin, a neurosurgeon, as evidence that this disability continued through December 31, 1985. *Id.* at p. 183. Dr. Irwin offers his impression of chronic pain syndrome and “question of vertebrogenic disorder,” apparently after a single meeting with the plaintiff, and states “I do not believe that Mr. Mandravelis has any work capacity at the present time.” *Id.* at p. 185. He also states that the chronic pain syndrome “has persisted for many years.” *Id.* at p. 186.

The administrative law judge notes that Dr. Leaver’s report conflicts with the report of Dr. Charles A. Fager, included in progress notes from the Lahey Clinic, dated February 23, 1982, which states, *inter alia*, that the plaintiff reports that “he is able to get through his days at work reasonably well . . . but around 5 p.m. the pain becomes unbearable, he has to go home and get off his feet” and that the plaintiff “really has a good range of back movement” with “no neurological signs to suggest nerve root compression.” *Id.* at p. 142. The plaintiff seizes on the administrative law judge’s statement that he “concurred with previous assessments of the claimant’s residual functional capacity” by consulting physicians who did not examine him, *id.* at p. 21, to argue that the administrative law judge’s failure to explain why he accepted these assessments over that of Dr. Leaver requires remand.

The plaintiff contends that Dr. Leaver's limitation of the plaintiff to 4 hours standing is incompatible with the definition of light work found at 20 C.F.R. § 404.1567(b) as "requir[ing] a good deal of walking or standing."

Social Security Ruling 83-10 provides that "the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday." Social Security Ruling 83-10, reprinted in *West's Social Security Reporting Service*, Rulings 1983-1991, at 29. Dr. Leaver's report imposes no limits on walking, and it is unclear whether the limit on standing is for a total of four hours in an eight-hour workday or for four consecutive hours. While an administrative law judge may not reject a treating physician's conclusions unless he explains on the record the reasons for doing so, *Allen v. Bowen*, 881 F.2d 37, 41 (3d Cir. 1989), the administrative law judge in this case meets this requirement by discussing internal inconsistencies in Dr. Leaver's report and its contradiction by the contemporaneous findings of Dr. Fager, Record p. 19.

There are also two reports from non-examining medical consultants in the record that assess the plaintiff's residual functional capacity. Dr. Paul Brinkman found that the plaintiff could "stand and/or walk (with normal breaks) for a total of . . . about 6 hours in an 8-hour workday," *id.* at p. 89, and Dr. Charles E. Burden found the same limitation, *id.* at p. 110. Dr. Fager's report, while it does not specifically mention walking or standing, provides the basis for some of the findings by Dr. Brinkman and Dr. Burden, *id.* at pp. 95 & 116, and is certainly inconsistent with a four-hour limit on standing.

In *Berrios Lopez v. Secretary of Health & Human Servs.*, 951 F.2d 427, 431 (1st Cir. 1991), the First Circuit upheld the decision of an administrative law judge based on the findings of two non-examining consulting physicians in opposition to the finding of a treating physician. I do not see any

basis upon which the record in this case may be distinguished from that in *Berrios*. There is substantial evidence in the record to support the Commissioner's decision.

### III. Conclusion

For the foregoing reasons, I recommend that the decision of the Commissioner be **AFFIRMED**.

#### NOTICE

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated this 19th day of June, 1998.*

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*David M. Cohen  
United States Magistrate Judge*