

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

<b>ROGER H. YOUNG,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 00-217-B</b>
	)	
<b>WILLIAM A. HALTER, Acting</b>	)	
<b>Commissioner of Social Security,<sup>1</sup></b>	)	
	)	
<b>Defendant</b>	)	

**REPORT AND RECOMMENDED DECISION<sup>2</sup>**

This Social Security Disability (“SSD”) appeal raises the question whether the administrative law judge was required to consult a medical expert with respect to information submitted to the administrative law judge after the hearing on the plaintiff’s claim and the plaintiff’s testimony concerning alleged non-exertional limitations due to pain and fatigue. At issue is a claim for benefits for the period from April 1, 1996 through December 31, 1997. I recommend that the court remand the case for further proceedings.

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> Pursuant to Fed. R. Civ. P. 25(d)(1), Acting Commissioner William A. Halter is substituted as the defendant in this matter.  
<sup>2</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 April 6, 2001, pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to (continued on next page)

Social Security Act on April 1, 1996, the date on which he stated he became unable to work, and had acquired sufficient quarters of coverage to remain insured only through June 30, 1996, Finding 1, Record at 15; that he had not engaged in substantial gainful activity since April 1, 1996, Finding 2, *id.*; that on the date his insured status expired the plaintiff suffered from chronic obstructive pulmonary disease and ischemic heart disease, impairments that were 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. Part 404, Finding 3, *id.* at 16; that his statements concerning his impairments and their impact on his ability to work on the date his insured status expired were not entirely credible, Finding 4, *id.*; that from his alleged onset date through December 31, 1997 the plaintiff lacked the residual functional capacity to life or carry more than 20 pounds occasionally or more than 10 pounds on a regular basis, climb more than occasionally, work with vibratory equipment, or work in concentrated exposure to fumes, odors, gases, extreme cold, or other respiratory irritants, Finding 5, *id.*; that he was unable to perform his past relevant work as a warehouse worker and truck driver, Finding 6, *id.*; that from his alleged onset date through December 31, 1997 his capacity for the full range of light work was diminished by his inability to climb more than occasionally, work with vibratory equipment, or work in concentrated exposure to fumes, odors, gases, extreme cold, or other respiratory irritants, Finding 7, *id.*; that, given his exertional capacity, age (49), limited education and unskilled work experience, and with use of Table 2 of Appendix 2, Subpart P, 20 C.F.R. Part 404 (“the Grid”) as a framework, the plaintiff was able to make an adjustment to work that existed in significant numbers in the national economy until January 1, 1998, *id.* at 14, 15 & Findings 8-11, *id.* at 16; and that the plaintiff had not been under a disability at any time through December 31, 1997, Finding 12, *id.* at 17. Additional medical information was submitted to the administrative law judge after the hearing. *Id.* at 18-19, 189-90. The Appeals

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relevant statutes, regulations, case authority and page references to the administrative record.

Council declined to review the decision, *id.* at 4-5, 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).

With respect to the relevant period, the administrative law judge reached Step 5 of the sequential evaluation process, at which stage the burden of proof shifts to the commissioner to show that a claimant could perform work other than his past relevant work. 20 C.F.R. § 404.1520(f); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987); *Goodermote*, 690 F.2d at 7. The record must contain positive evidence in support of the commissioner's findings regarding the plaintiff's residual work capacity to perform such other work. *Rosado v. Secretary of Health & Human Servs.*, 807 F.2d 292, 294 (1st Cir. 1986).

Evaluations prepared by two consulting physicians provide support for the administrative law judge's conclusion that the plaintiff retained a residual functional capacity for light work with certain limitations. Record at 138-53. A report of a consulting physician who also examined the plaintiff dated October 30, 1997 imposes limitations consistent with a residual functional capacity for medium work as of the time of the examination. Record at 163-65; 20 C.F.R. § 404.1567. At the hearing, the plaintiff submitted a letter from Dr. Thomas Hayward stating that he had treated the plaintiff since April 1997 and referring to a treatment note of Dr. Richard J. Sagall dated April 2, 1996 as "the only

assistance I can give you in this case as to determining as to whether or not [the plaintiff] was suffering from a disabling condition prior to June 30, 1996.” Record at 189. The treatment note at issue, submitted after the hearing, states, in the section devoted to the patient’s report concerning his condition: “He seems to be limited by chest pain. The more activity the more pain.” *Id.* at 190.

The plaintiff’s testimony concerning pain and fatigue prior to June 30, 1996 was that he stopped working in 1994 due to chest pains spreading into his arms and shortness of breath when he was driving, *id.* at 31-32; that he did not take fewer trips due to the heart problem, *id.* at 33; that his chest pain in 1996 was “pretty surreal,” but not as severe as that which preceded his heart attack in 1988, *id.* at 37-38; that he told one of his doctors that he left his truck driving job in 1994 because he felt tired and “worn out,” *id.* at 38-39; that he had episodes of chest pain between 1994 and 1996, *id.* at 40; that Dr. Sagall told him in April 1996 not to do more than a low level of exercise and lift no more than five pounds, *id.*; that in 1996 when he was having chest pain, the pain would go away within 15 minutes after he put nitroglycerin under his tongue, *id.* at 41; and that in April 1996 he would feel pressure on his chest from stress, but not pain, *id.* at 42-43.

Citing *Berrios v. Secretary of Health & Human Servs.*, 796 F.2d 574 (1st Cir. 1986), the plaintiff contends that Dr. Sagall’s note constitutes “raw medical data” that the administrative law judge could not interpret without the assistance of a medical advisor and that his testimony also required evaluation by a medical advisor because it was “found to be related to [his] medically determinable impairment” by the nonexamining consultants. Statement of Specific Errors (Docket No. 3) at 4. The First Circuit in *Berrios* refers to a rheumatological evaluation report, “difficult to interpret” and “replete with medical terms which are not explained nor applied to any vocational criteria,” stating that “[w]e cannot decipher the medical jargon in this report and do not understand the significance of the various clinical tests.” 796 F.2d at 575-76. Concluding that “the secretary must

have relied heavily if not exclusively on the rheumatologist's report and the two normal myelograms," the court held that "the Appeals Council, composed of lay persons" was not competent to interpret and apply "this raw, technical medical data." *Id.* at 576. There is nothing in the record in this case to suggest that the administrative law judge relied exclusively, or even heavily, on Dr. Sagall's note that the plaintiff reported in April 1996 that he "seems to be limited by chest pain. The more activity the more pain." Even more significant is the fact that this statement cannot reasonably be characterized as "raw, technical medical data." Finally, the statement is not necessarily inconsistent with the conclusions of the nonexamining physicians and the consulting physician's report, upon which the administrative law judge relies. Record at 13-14.<sup>3</sup>

The plaintiff next contends that the administrative law judge failed to consider his pain and fatigue with respect to the period at issue. In support of this contention, he points to the reports of the state consultants, both of which state that symptoms alleged by the plaintiff "not previously . . . addressed" are attributable to a medically determinable impairment. *Id.* at 143, 151. The plaintiff contends the symptoms to which the reports refer could only be his pain and fatigue. The plaintiff's disability report and his wife's function report, which would have been available to the consulting physicians, do report chest pain, headaches and fatigue, *id.* at 94, 133-35, as do the medical records that apparently were available to the consulting physicians, *id.* at 159, 161. The consultants' reports do not specifically address pain and fatigue and, because there is evidence in the record supporting the

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<sup>3</sup> While the statement of errors appears to assert that the administrative law judge was required to consult a medical advisor with respect to the plaintiff's testimony about his pain and fatigue, Statement of Specific Errors at 4, counsel for the plaintiff disavowed any such claim at oral argument. Direct consideration of a claimant's testimony concerning pain by an administrative law judge is contemplated by the Social Security Regulations and rulings. *E.g.*, 20 C.F.R. § 404.1529(a) & (c)(3)-(4); Social Security Ruling 96-7p, reprinted in *West's Social Security Reporting Service Rulings 1983-1991* (Supp. 2000-01) at 133-42. There is nothing more inherently technical about the plaintiff's testimony that he was "worn out" than there is about his testimony concerning his pain and accordingly no discernible reason why that testimony required expert evaluation. *See generally Frazier v. Apfel*, 2000 WL 288246 (E.D. Pa. March 7, 2000), at \*5, \*8 (discussing administrative law judge's evaluation of claimant's testimony concerning fatigue; no medical expert involved).

plaintiff's interpretation of those reports in that regard, the failure of the administrative law judge to address the claims of pain and fatigue appears to be an error.

It is difficult to tell from the administrative law judge's written opinion to what degree and why she discounted the plaintiff's credibility with respect to the plaintiff's claims of pain and fatigue. Counsel for the commissioner argued that the plaintiff's allegations concerning the plaintiff's pain and fatigue are "included in the r[esidual] f[unctional] c[apacity] determined by the administrative law judge," but that argument does not deserve extended consideration. While the commissioner is directed to consider a claimant's allegations of pain and limitations that "go beyond the symptoms" in determining residual functional capacity, 20 C.F.R. § 404.1545(a), at Step 5 of the sequential evaluation process the administrative law judge must specifically consider the claimant's allegations and include in her written opinion specific reasons for discounting the allegations, "supported by the evidence in the case record, and . . . sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." Social Security Ruling 96-7p, reprinted in *West's Social Security Reporting Service Rulings 1983-1991, Supp. 2000*, at 134. Here, the administrative law judge apparently discounted the plaintiff's testimony about pain and fatigue in the relevant period because he did not seek medical attention for a year during that period; he told Dr. Lodato that he had not used nitroglycerin for a period of six months; and he reported walking a half-mile per day, doing work around the house and yard, stacking wood,<sup>4</sup> and driving his wife to and from work. Record at 13-14. None of this evidence is necessarily inconsistent with pain and fatigue of an intensity that would preclude a capacity for light work, even as limited by the administrative law judge. It would not be impossible for the commissioner to find in this case that the plaintiff's alleged pain and fatigue did not constitute non-

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<sup>4</sup> The amount of wood that the plaintiff reported stacking was less than a cord per year. Record at 163.

exertional limitations sufficient to preclude a finding at Step 5 of the sequential evaluation process that the plaintiff was capable of work that existed in the national economy at the relevant time; the problem is that the administrative law judge's opinion does not discuss the allegations of pain and fatigue at all. The administrative law judge in this case used the Grid as a framework in making her decision, *id.* at 15, which means that she found that the plaintiff had significant non-exertional impairments, *Ortiz v. Secretary of Health & Human Servs.*, 890 F.2d 520, 524 (1st Cir. 1989), yet she does not discuss any specific reasons why the plaintiff's alleged pain and fatigue are not among those impairments. This oversight requires remand, because it is not possible for a reviewing court to determine whether there is sufficient evidence to support the conclusions drawn when the conclusions themselves are not apparent.

### **Conclusion**

For the foregoing reasons, I recommend that the commissioner's decision be **VACATED** and the cause remanded for further proceedings consistent with this opinion, as requested by the plaintiff. Statement of Errors at 4.

### **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.*

Date this 9th day of April, 2001.

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David M. Cohen  
United States Magistrate Judge

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