

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

**JOYCE LAWRENCE,** )  
**Special Administrator of the Estate of** )  
**CAROLE B. LAWRENCE,** )  
 )  
**Plaintiff** )

v. )

**Docket No. 01-79-B**

)  
**LARRY G. MASSANARI,<sup>1</sup>** )  
**Acting Commissioner of Social Security,** )  
 )  
**Defendant** )

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

The plaintiff in this Social Security Disability (“SSD”) appeal seeks Child’s Disability Benefits (Disability) under the Social Security Act on behalf of the estate of the late Carole B. Lawrence (“Carole”) from the account of Carole’s late father, alleging disability since August 25, 1983, the day before Carole’s twenty-second birthday. The plaintiff contends that the commissioner erred by failing to consult a medical advisor to assist in determining the date of onset of disability, that he erred by relying on the Grid and that his finding that Carole could have made a successful vocational adjustment to work that existed in the national economy on the relevant date is not

---

<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d)(1), Acting Commissioner of Social Security Larry G. Massanari 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 her 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 she 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 August 9, 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 relevant statutes, regulations, case authority and page references to the administrative record.

supported by the evidence. I recommend that the decision of the commissioner be vacated and the case remanded 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 Carole, who attained the age of 22 on August 25, 1983, was the child of Richard O. Lawrence, who died in 1982 while a recipient of disability insurance benefits, Findings 1-2, Record at 22; that Carole was dependent on Richard Lawrence, had never married, and had not engaged in substantial gainful activity, Findings 3-5, *id.*; that the medical evidence established that Carole had schizophrenia and substance addiction disorders on August 25, 1983, 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 (the "Listings"), Finding 6, *id.*; that Carole's assertions concerning her impairments and their impact on her ability to work on August 25, 1983 were not credible in light of the medical history, Finding 7, *id.*; that on August 25, 1983 Carole lacked the residual functional capacity to concentrate on tasks for sustained periods, Finding 8, *id.*; that, notwithstanding Carole's age, lack of relevant work experience, limited education and residual functional capacity, she could make a successful vocational adjustment on August 25, 1983 to jobs that existed in significant numbers in the national economy, Findings 9-12, *id.*; and that Carole was therefore not under a disability, as defined by the Social Security Act, on August 25, 1983, Finding 13, *id.*<sup>3</sup> The Appeals 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).

---

<sup>3</sup> In the body of his opinion, the administrative law judge explained that he consulted Appendix 2 to Subpart P, 20 C.F.R. Part 404 (the "Grid"), in reaching this conclusion. Record at 21.

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).

### **Discussion**

As the plaintiff suggests, *see* Itemized Statement of Errors Submitted by Plaintiff pursuant to Local Rule 26 [sic] (“Itemized Statement”) (Docket No. 3) at 1-3, cases in which the commissioner must determine the onset date of a disabling condition are controlled by Social Security Ruling 83-20. The plaintiff contends that the administrative law judge detoured from the analytical path laid down by this ruling. *Id.* I agree.

SSR 83-20 defines the “onset date of disability” as “the first day an individual is disabled as defined in the Act and the regulations.” SSR 83-20, reprinted in *West's Social Security Reporting Service Rulings 1983-1991*, at 49. In cases in which (as here) onset date is critical to a determination of entitlement to benefits, an administrative law judge must grapple with and adjudicate the question of onset, however difficult. *See id.* (“In addition to determining that an individual is disabled, the decisionmaker must also establish the onset date of disability. In many claims, the onset date is critical; it may . . . even be determinative of whether the individual is entitled to or eligible for any benefits. . . . Consequently, it is essential that the onset date be correctly established and supported by the evidence, as explained in the policy statement.”).

Here, there was no dispute that, in the context of a separate application for Supplemental Security Income (“SSI”) benefits filed in 1989, Carole was determined to have been “disabled” as of

July 1, 1989 by a combination of schizophrenic disorder with paranoia, other functional psychotic disorders and polysubstance abuse. Record at 15-16. In view of that earlier SSI disability finding, the task of the administrative law judge in the instant (SSD) context was to determine onset – *i.e.*, when those conditions first became disabling. SSR 83-20 mandated that this analysis be undertaken even in the face of a complete lack of contemporaneous medical evidence documenting Carole’s condition as of 1983 and earlier:

With slowly progressive impairments, it is sometimes impossible to obtain medical evidence establishing the precise date an impairment became disabling. Determining the proper onset date is particularly difficult, when, for example, the alleged onset and the date last worked are far in the past and adequate medical records are not available. In such cases, it will be necessary to infer the onset date from the medical and other evidence that describe the history and symptomatology of the disease process.

\*\*\*

In some cases, it may be possible, based on the medical evidence to reasonably infer that the onset of a disabling impairment(s) occurred some time prior to the date of the first recorded medical examination . . . . How long the disease may be determined to have existed at a disabling level of severity depends on an informed judgment of the facts in the particular case. This judgment, however, must have a legitimate medical basis. At the hearing, the administrative law judge (ALJ) should call on the services of a medical advisor when onset must be inferred. . . .

If reasonable inferences about the progression of the impairment cannot be made on the basis of the evidence in file and additional relevant medical evidence is not available, it may be necessary to explore other sources of documentation. Information may be obtained from family members, friends, and former employers to ascertain why medical evidence is not available for the pertinent period and to furnish additional evidence regarding the course of the individual’s condition. . . . The impact of lay evidence on the decision of onset will be limited to the degree it is not contrary to the medical evidence of record.

SSR 83-20, at 51-52.<sup>4</sup>

---

<sup>4</sup>The ruling also notes that in the case of claimants currently or previously hospitalized for mental conditions (as was Carole), “onset of disability may sometimes be found at a time considerably in advance of admission. It is not unusual for the history to show that prior to hospitalization the person manifested personality changes such as refusing to go out of the house, refusing to eat, accusing others of being against him or her, threatening family and neighbors, etc. In such a case, a beginning date prior to hospitalization would be *(continued on next page)*”

The administrative law judge in this case failed to follow this formula, skirting the issue of the onset date of Carole's disability. While he did obtain lay evidence and other available medical records, he did not call upon a medical advisor at hearing to help him infer onset date. As he acknowledged in his decision, the evidence in its totality was conflicting (and thus ambiguous) concerning the severity of Carole's condition as of the relevant date (August 25, 1983). *See* Record at 18-20. The employment of a medical advisor has been held mandatory in such circumstances. *See, e.g., Bailey v. Chater*, 68 F.3d 75, 79 (4th Cir. 1995) (“[T]he date on which the synergy [of the claimant's numerous ailments] reached disabling severity remains an enigma. In the absence of clear evidence documenting the progression of Bailey's condition, the ALJ did not have the discretion to forgo consultation with a medical advisor.”); *Spellman v. Shalala*, 1 F.3d 357, 363 (5th Cir. 1993) (“[B]ecause Spellman's mental impairment was of a slowly progressive nature, and the medical evidence was ambiguous with regard to the disability onset date, the Appeals Council could not have inferred an onset date based on an informed judgment of the facts without consulting a medical advisor.”); *Morgan v. Sullivan*, 945 F.2d 1079, 1082-83 (9th Cir. 1991) (SSR 83-20 “suggests that when the evidence regarding date of onset of mental impairment is ambiguous, as it is here, the ALJ should determine the date based on an informed inference. Such an inference is not possible without the assistance of a medical expert.”) (citation omitted).<sup>5</sup>

---

reasonable unless contradicted by the work history or other evidence.”). SSR 83-20, at 53.

<sup>5</sup> While I find no reported First Circuit decision explicating the circumstances under which an administrative law judge must call upon a medical advisor in inferring date of onset, I take comfort that the foregoing authorities are cited with favor in an “unpublished” decision. *See May v. Social Sec. Admin. Comm'r*, No. 97-1367, 1997 WL 616196, at \*\*1 (1st Cir. Oct. 7, 1997). At oral argument, counsel for the commissioner suggested that a medical advisor need not be obtained unless there is ambiguity in the medical evidence regarding date of onset. She contended that in this case there is no such ambiguity inasmuch as no medical evidence demonstrates that Carole's condition was disabling prior to 1989. Even assuming *arguendo* that counsel correctly states the law, the record fairly can be said to contain conflicting medical evidence touching on the onset of disability. *Compare, e.g.,* Record at 139 (Danvers State Hospital record, discharge date of February 8, 1991, noting “two year history of a major psychiatric illness”) *with id.* at 147 (Tewksbury Hospital record, discharge date of March 25, 1993, noting “long history of schizoaffective disorder”).

Possibly because the administrative law judge eschewed the services of a medical advisor, he never made a finding as to the onset date of Carole's disability. He instead found that as of the relevant date (August 25, 1983) she suffered from schizophrenia and substance addiction disorders; that these conditions were severe but did not meet or equal the Listings; that as of the relevant date she lacked the residual functional capacity to concentrate on tasks for sustained periods; and that based on the Grid she could as of the relevant date have made a successful vocational adjustment to jobs that existed in significant numbers in the national economy. *See* Findings 6, 8 & 12, Record at 22. These are findings that as of the relevant date Carole's conditions were not disabling – they are not affirmative findings concerning when her disability began.<sup>6</sup>

Counsel for the plaintiff clarified at oral argument that she seeks remand with instructions that the commissioner employ a medical expert and a vocational expert. The commissioner should indeed obtain the services of a medical expert in determining onset date in accordance with SSR 83-20. If this is properly done, there should be no need to determine whether, as of August 25, 1983, Carole was capable of making an adjustment to work that exists in significant numbers in the national economy. However, should the commissioner again reach that question, the services of a vocational expert should be obtained.<sup>7</sup>

---

<sup>6</sup> The plaintiff also complains that the administrative law judge improperly relied on the Grid at Step 5. *See* Statement of Errors at 3-4. I agree, although for reasons other than those set forth by the plaintiff. The administrative law judge reached Step 5 of the sequential process, at which stage the burden of proof shifts to the commissioner to show that a claimant can 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). The record in this case is barren of any "positive evidence" concerning Carole's mental residual functional capacity as of the relevant date. One thus cannot conclude with any confidence that the Grid was properly employed to determine non-disability. *See, e.g., Heckler v. Campbell*, 461 U.S. 458, 462 and n.5 (1983) (use of Grid appropriate when rule accurately describes individual's capabilities, vocational profile).

<sup>7</sup> I further note that, at oral argument, counsel for the plaintiff indicated that he had at last been able to locate Dr. Glenn Dudley, a physician who treated Carole prior to 1983. If the plaintiff is able to produce any of Dr. Dudley's records, they should of course be considered on remand.



JOYCE LAWRENCE, special JAMES B. SMITH, ESQ.

Administrator of the Estate of [COR LD NTC]

Carole B. Lawrence WOODMAN EDMANDS DANYLIK &

plaintiff AUSTIN, P.A.

P.O. BOX 468

234 MAIN STREET

BIDDEFORD, ME 04005-0468

284-4581

v.

SOCIAL SECURITY ADMINISTRATION JAMES M. MOORE, Esq.

COMMISSIONER [COR LD NTC]

defendant U.S. ATTORNEY'S OFFICE

P.O. BOX 2460

BANGOR, ME 04402-2460

945-0344

PETER S. KRYNSKI, Esq.

[COR LD NTC]

SOCIAL SECURITY DISABILITY

LITIGATION - ANSWER SECTION

OFFICE OF THE GENERAL COUNSEL

5107 LEESBURG PIKE ROOM 1704

FALLS CHURCH, VA 22041-3255

(703) 305-0183

MARIA MACHIN, ESQ.

[COR LD NTC]

JFK FEDERAL BUILDING

ROOM 625

BOSTON, MA 02203-0002

(617)565-4277

