

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

TEDDY J. WOODZELL, JR,)	CIVIL ACTION NO. 5:00CV00041
)	
Plaintiff,)	
)	
v.)	
)	<u>MEMORANDUM OPINION</u>
WILLIAM A. HALTER,)	
Commissioner of Social Security,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

By order dated April 6, 2001 this case was referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, for proposed findings of fact and a recommended disposition. The Magistrate Judge filed his report on April 19, 2001. The Magistrate Judge recommended that an order enter affirming, in part, and reversing, in part, the Commissioner’s final decision and remanding the case to the Commissioner for further proceedings. The plaintiff entered a motion for summary judgment that this court will construe as an artfully titled objection to the Report and Recommendation. This court “shall make a de novo determination of those portions of the report ... to which the objection is made.” 28 U.S.C.A. § 636 (b)(1)(C) (West 1993) . For the reasons set forth below, the Magistrate Judge’s recommendation shall be accepted and the case remanded to the Commissioner for further proceedings to determine the date of plaintiff’s SSI disability onset.

I.

On June 5, 1996, the plaintiff applied to the Social Security Administration (SSA) for Disability Insurance Benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-33, and Supplemental Security Income (SSI) under Title XVI of the Act, 42 U.S.C. §§ 1381-83f. Plaintiff claimed that he became disabled and unable to work on April 1, 1989, due to panic attacks and agoraphobia. Under the Act, an individual is entitled to benefits if he is insured for disability insurance benefits, has not attained retirement age, has filed an application for disability insurance benefits, and is under a disability. *See id.* § 423(a). Likewise, an individual generally is entitled to supplemental security income payments if he is aged, blind, or disabled, and has resources that do not rise above the relevant statutory levels. *See id.* § 1382. Under the Act, “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.” *Id.* § 423(d)(1)(A) (West Supp. 2001). Under the sequential evaluation process, the claimant bears the burden of producing evidence sufficient to demonstrate that he suffers from a disability. *See* 20 C.F.R. §§ 404.1520 and 416.920.

After the plaintiff’s application was denied initially and upon reconsideration, he filed a timely request for an administrative hearing. Later, the plaintiff waived his right to

an oral hearing and requested a decision on the record.¹ The specific issue before the Administrative Law Judge (“ALJ”) was whether the plaintiff was under a disability as defined by the Act. In order to establish a period of disability, a claimant must have disability insured status in the quarter of the disability onset or in a later quarter. *See* 20 C.F.R. § 404.131. The plaintiff had sufficient quarters of insurance coverage to remain insured through December 31, 1994. (R. at 21). Accordingly, to receive an award of disability insurance benefits, the plaintiff must establish that he was under a disability on or before December 31, 1994. *See id.* The ALJ determined that on the date that the plaintiff’s insured status expired, plaintiff suffered from anxiety-related panic disorder with agoraphobia and osteoarthritis, which were severe impairments, but not severe enough to meet the criteria of a listed impairment or prevent performance of his past relevant work. (R. at 28). On February 19, 1998, the ALJ issued his decision that plaintiff did not establish a disability thereby, denying the benefits sought.

The plaintiff sought review of the ALJ’s decision by the Appeals Council, however, the council denied that request and thus the findings of the ALJ were adopted as the final decision of the Commissioner. The plaintiff sought review in this court pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) (West Supp. 2001 & West 1992). The matter was

¹Plaintiff waived the oral hearing because his psychiatrist believed that his panic disorder was so crippling and handicapping as to prevent travel and attendance at the hearing. (R. 237-238).

referred to the Magistrate Judge to set forth findings, conclusions, and recommendations for its disposition. *See* 28 U.S.C.A. § 636(b)(1)(B) (West Supp. 2001).

On April 19, 2001 the Magistrate Judge found that the Commissioner's decision to deny plaintiff's claim for a period of disability and disability insurance benefits under Title II of the Act was supported by substantial evidence. The Magistrate Judge reasoned, in part, that plaintiff had not discharged his burden in the sequential process to demonstrate disability before the expiration of his insured status. Plaintiff established that he suffered from a disabling psychiatric condition with evidence from his medical record, but the onset was not before June 5, 1996, well after his insured status expired. Because no hearing was conducted, there was no testimony before the court to provide a historical context for determining the progression of plaintiff's condition better than what was contained in the medical record. As a result, there was little factual evidence in the record and no medical evidence that would suggest that at the time plaintiff's insured status expired, his condition produced severe enough symptoms or effects to be disabling. The Magistrate Judge recommended that the court affirm the Commissioner's decision and deny plaintiff's claim for disability benefits.

Concerning the SSI claim, the Magistrate Judge found that the Commissioner's determination of a disability onset date was not supported by substantial evidence because the ALJ had not fully and fairly evaluated the evidence in the record. The Magistrate Judge referred to the documents in the plaintiff's medical record as unrebutted evidence that the plaintiff's symptoms had persisted longer than the onset date determined by the

ALJ. (Rep. & Recomm. at 5) The medical evidence demonstrated plaintiff's inability to work for "several years" and a progression of severity in his symptoms from 1989 to 1996. (Rep. & Recomm. at 4). Just after the beginning of 1996, the medical records also indicated that plaintiff's mental impairment was "significant." (R. 209). Finding that the medical evidence could not be overlooked or not given serious weight in determining disability onset, the Magistrate Judge recommended that the court reverse the Commissioner's final determination of SSI disability onset and remand the case for further proceedings on that issue. The Magistrate Judge also recommended that the case be recommitted in the event that the Commissioner was not able to fix SSI disability as claimed by the plaintiff.

The plaintiff raises one objection to the Magistrate Judge's Report and Recommendation pursuant to Federal Rule of Civil Procedure 72(b). Plaintiff argues that he was improperly denied disability insurance benefits since he suffered a severe mental impairment and was unable to work prior to the disability onset date established by the Commissioner. Plaintiff asserts that the medical evidence provided clearly supports a disability onset date of April 1, 1989 and that the Commissioner's determination of a June 5, 1996 onset date is not supported by substantial evidence.

II.

The court reviews *de novo* those portions of the report or specified proposed findings or recommendations to which objection was made. *See* 28 U.S.C.A. § 636(b)(1) (West 1993). The court must determine whether the Commissioner's findings are

supported by substantial evidence, and whether the correct legal standards were applied. *See* 42 U.S.C.A. § 405(g) (West Supp. 2001); *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). As the presiding officer at the administrative hearing, the ALJ makes factual determinations and resolves evidentiary conflicts, including inconsistencies in the medical evidence. *See Hines v. Bowen*, 872 F.2d 56, 58 (4th Cir. 1989). The court gives great deference to the ALJ’s factual determinations and reviews them only for clear error. *See Estep v. Richardson*, 459 F.2d 1015, 1017 (4th Cir. 1972). Nonetheless, the court is not restrained by deference to the administrative decision in determining whether the correct legal standards were applied—a *de novo* determination of legal issues is obligatory. *See Hines*, 872 F.2d at 58; *Meyers v. Califano*, 611 F.2d 980, 982 (4th Cir. 1980). Determining whether the evidence presented by the ALJ to support his decision amounts to substantial evidence is a question of law and therefore will be considered anew. *See Hicks v. Heckler*, 756 F.2d 1022, 1024-25 (4th Cir. 1985).

Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). It “consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is ‘substantial evidence.’” *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966)). The

court must consider evidence that both supports and detracts from the Commissioner's conclusion; it may not affirm by isolating a specific quantum of supporting evidence. *See NLRB v. Consolidated Diesel Elec. Co.*, 469 F.2d 1016, 1021 (4th Cir. 1972); *see also Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). The Commissioner's decision, "if supported by substantial evidence [in the record as a whole], must be affirmed even though the reviewing court believes that substantial evidence also supports a contrary result." *Estep v. Richardson*, 459 F.2d 1015, 1017 (4th Cir. 1972). In making his decision, the ALJ must "explicitly indicate the weight given to all the relevant evidence." *Gordon v. Schweiker*, 725 F.2d 231, 235 (4th Cir. 1984). *See also Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190 (4th Cir. 2000) ("ALJs have a duty to analyze 'all of the relevant evidence' and to provide a sufficient explanation for their 'rationale in crediting certain evidence.'" (quoting *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998))). When reached by means of an improper standard or misapplication of the law or in the event that substantial evidence does not support the Commissioner's decision, factual findings made by the ALJ are neither conclusive nor binding. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987); *Meyers v. Califano*, 611 F.2d 980, 982 (4th Cir. 1980).

The remand powers of a district court when reviewing a final decision of the Commissioner are described in two sentences of 42 U.S.C. § 405(g), commonly referred to as "sentence four" and "sentence six." *See Melkonyan v. Sullivan*, 501 U.S. 89, 99 (1991); *Riley v. Apfel*, 88 F. Supp. 2d 572, 576 (W.D. Va. 2000). Sentence four provides: "The court shall have power to enter . . . a judgment affirming, modifying, or reversing the

decision of the Commissioner . . . with or without remanding the cause for a rehearing.” 42 U.S.C.A. § 405(g) (West. Supp. 2001) (“sentence four”). The Supreme Court has held that a remand pursuant to sentence four must be done “in conjunction with a judgment affirming, modifying, or reversing the [Commissioner’s] decision.” *Melkonyan*, 501 U.S. at 99-100. Sentence six provides: “The court . . . may at any time order additional evidence to be taken before the Commissioner . . . but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding” 42 U.S.C.A. § 405(g) (West Supp. 2001) (“sentence six”). “A sentence six remand includes no ruling as to correctness of the administrative determination.” *Riley*, 88 F. Supp. 2d at 576.

Bearing the aforementioned in mind, the court turns to the application of the law to the facts of the instant case.

III.

The plaintiff principally argues that the medical record supports a disability onset date of April 1, 1989 and that the ALJ did not adequately consider this evidence when he determined that the disability onset date was June 5, 1996. Plaintiff supports this argument by pointing to his documented medical treatment for panic attacks dating back to March 16, 1989² and a 1996 Mental Residual Functional Capacity Assessment that he

²Plaintiff’s objection and memorandum of law incorrectly states that the medical evidence dates back to March 16, 1987. The record to which he refers is dated March 16, 1989.

believes indicates a more severely limited capacity to perform work in the economy than determined by the ALJ. The issue, therefore, is whether the plaintiff's evidence substantiates a disability onset date prior to June 5, 1996, as determined by the ALJ. The basis by which an award of disability benefits will be made is whether that onset date is prior to December 31, 1994, the date on which plaintiff's insured status expired.

The ALJ's determination of disability is based on a sequential evaluation process that decides whether the plaintiff is (1) gainfully employed, (2) has a severe impairment that limits ability to perform basic work functions, (3) has an impairment that makes him disabled as a matter of law, (4) is able to perform past relevant work, and (5) can perform work available in significant numbers in the national economy. *See* 20 C.F.R. § 416.920. The plaintiff bears the burden of proof during the first four steps of the inquiry. If the plaintiff is able to carry the burden through the fourth step, the burden shifts to the Commissioner in the fifth step. *Hunter v. Sullivan*, 993 F.2d 31, 35 (4th Cir. 1992).

In the instant case, the plaintiff has not met his burden of proof in step two of the sequential evaluation process. While the plaintiff's evidence shows that he has not been gainfully employed since April 1, 1989, it does not show that he suffered from a severe impairment that limited his ability to perform basic work functions at that time. The record shows periodic treatment for his condition from 1989 through 1994 but no indication that it had reached the required level of severity prior to the date his insured status expired. (R. 78-86, 100-108, 192-200). In fact, in May of 1994, a psychiatric evaluation diagnosed that plaintiff's panic attacks with agoraphobia were in remission. (R.

106). The record contained no evidence that this diagnosis changed prior to when the plaintiff's insured status expired in December of that year. The Mental Residual Functional Capacity Assessment concluded that the plaintiff's capacity was either "not significantly limited" or "moderately limited" in "understanding and memory," sustained concentration and persistence," and "social interaction.". (R. 167-168). Under the category of "Adaptation," the plaintiff was listed as moderately limited in his ability to respond appropriately to changes in the work setting, and he showed no evidence of limitation in the other areas of this category. (R. 168). The report shows no indication of a "more severe residual functional capacity" as the client claims. (Pl.'s Obj. at 2).

The plaintiff's medical history is lengthy and the court does not doubt that he suffers from a psychiatric condition. Substantial evidence does not indicate, however, that this condition was disabling prior to when the plaintiff's insured status expired on December 31, 1994. It follows that plaintiff's objection, that the Magistrate Judge erred by failing to find that the Commissioner inadequately considered the evidence in setting a disability onset date, must be overruled.

IV.

Finally, on the issue of plaintiff's SSI claim, the Magistrate Judge recommended that the court reverse the Commissioner's final determination of SSI disability onset and remand the case for further proceedings on that issue. The plaintiff did not object to this recommendation. After careful review of the record in this case, the court also finds that

the ALJ did not properly weigh the evidence in determining a disability onset date for plaintiff's SSI claim and therefore adopts this recommendation .

V.

For the reasons stated above, the court finds that ALJ properly weighed the evidence before him to deny disability insurance benefits where the period of disability began after the expiration of the plaintiff's insured status. His decision was supported by substantial evidence, therefore, the court shall overrule the plaintiff's objections. The court adopts the Magistrate Judge's Report and Recommendation. Therefore, the Commissioner's decision shall be affirmed, in part, reversed, in part, and remanded for further proceedings to determine the date of plaintiff's SSI disability onset.

An appropriate Order this day shall issue.

ENTERED: _____
Senior United States District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

TEDDY J. WOODZELL, JR.)	CIVIL ACTION NO. 5:00CV0041
)	
Plaintiff,)	
v.)	<u>FINAL ORDER</u>
_____)	
WILLIAM A. HALTER,)	
Commissioner of Social Security,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

By order dated April 6, 2001, the court referred the above-captioned case to the presiding United States Magistrate Judge for proposed findings of fact and a recommendation disposition. On April 19, 2001, the Magistrate Judge filed his Report and Recommendation. He recommended that the court affirm, in part, and reverse, in part the final decision of the Commissioner of Social Security and that the case be remanded to the Commissioner for further proceedings. *See* 42 U.S.C. § 405(g). The plaintiff filed timely objections to the Report and Recommendation. The Commissioner did not respond to the objections. The court reviews *de novo* those portions of the report or specified proposed findings or recommendations to which objection was made. *See* 28 U.S.C.A. § 636(b)(1) (West 1993 & Supp. 2001). Having thoroughly considered the Report and Recommendation, the plaintiff's objections, the applicable

law, and the documented record, and for the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

as follows:

1. The plaintiff's objections to the Report and Recommendation shall be, and they hereby are, OVERRULED;

2. The findings and decision recommended in the Magistrate Judge's April 19, 2001 Report and Recommendation shall be, and they hereby are, ACCEPTED;

3. The final decision of the Commissioner, made by action of the Social Security Administration Appeals Council on March 10, 2000, shall be, and it hereby is, AFFIRMED insofar as it denied plaintiff's claim for Title II benefits, and REVERSED, insofar as it did not apply substantial evidence in determining plaintiff's SSI disability onset;

4. This above-captioned civil action shall be, and hereby is, REMANDED to the Commissioner for further proceedings solely to determine plaintiff's SSI disability onset; in the event that the Commissioner cannot determine the onset date on the extant record, the Commissioner shall recommit the case to an Administrative Law Judge for further proceedings at which both parties may introduce additional evidence;

5. This case shall be, and it hereby is, stricken from the docket of the court. The Clerk of Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date