

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

RANDY C. BREEDING,)	
Plaintiff)	
)	
v.)	Civil Action No. 1:04cv00061
)	<u>MEMORANDUM OPINION</u>
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

In this social security case, I vacate the final decision of the Commissioner denying benefits and remand the case for further proceedings.

I. Background and Standard of Review

Plaintiff, Randy C. Breeding, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for disability insurance benefits, (“DIB”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 423 (West 2003). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). This case is before the undersigned magistrate judge upon transfer pursuant to the consent of the parties under 28 U.S.C. § 636(c)(1).

The court’s review in this case is limited to determining if the factual findings of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987). Substantial evidence has been defined as “evidence which a reasoning

mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). “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*, 368 F.2d at 642).

The record shows that Breeding protectively filed his application for DIB on or about July 11, 2003, alleging disability as of June 25, 2003, based on problems with his back, legs and feet, as well as headaches. (Record, (“R.”), at 50, 51-53, 65.) The claim was denied initially and upon reconsideration. (R. at 22-24, 30, 32-34.) Breeding then requested a hearing before an administrative law judge, (“ALJ”). (R. at 35.) The ALJ held a hearing on February 25, 2004, at which Breeding was represented by counsel. (R. at 170-221.)

By decision dated April 12, 2004, the ALJ denied Breeding’s claim for benefits. (R. at 12-19.) The ALJ found that Breeding met the disability insured status requirements of the Act through at least December 31, 2007. (R. at 18.) The ALJ found that Breeding had not engaged in substantial gainful activity since June 25, 2003. (R. at 18.) The ALJ also found that the medical evidence established that Breeding had severe impairments, namely degenerative joint disease and obesity, but she found that Breeding did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 18.) The ALJ further found that Breeding’s allegations regarding his limitations were not totally credible. (R. at 18.) The ALJ found that Breeding had the residual

functional capacity to perform simple, light¹ unskilled work, subject to a sit/stand option, limited exposure to temperature and humidity extremes, a mild to moderate loss of ability to concentrate and a very mild hearing loss. (R. at 18.) The ALJ found that Breeding could not perform his past relevant work. (R. at 18.) Based on Breeding's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that other jobs existed in the national economy that Breeding could perform, including those of a night watchman, a cashier and a parking lot attendant. (R. at 19.) Therefore, the ALJ found that Breeding was not disabled at any time through the date of her decision. (R. at 19.) *See* 20 C.F.R. § 404.1520(g) (2004). Thus, the ALJ found that Breeding was not eligible for DIB benefits. (R. at 19.)

After the ALJ issued her decision, Breeding pursued his administrative appeals, (R. at 7), but the Appeals Council denied his request for review. (R. at 4-6.) Breeding then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. § 404.981 (2004). The case is before this court on the Commissioner's motion for summary judgment filed December 22, 2004.

II. Facts

Breeding was born in 1952, (R. at 51, 176), which classifies him as a "person closely approaching advanced age" under 20 C.F.R. § 404.1563(d) (2004). Breeding

¹Light work involves lifting items weighing up to 20 pounds at a time with frequent lifting or carrying of items weighing up to 10 pounds. If someone can perform light work, he also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b) (2004).

has a high school education and past work experience as a car salesman, a coal miner and a truck driver. (R. at 177, 179-80.)

Breeding testified at his hearing that he received grades mainly in the 70th percentile in school in regular education classes, noting that special education classes were not available. (R. at 178.) He stated that he sustained two work-related injuries in the 1970s and 1980s to his back. (R. at 181-83.) He stated that he quit working in the coal mines in 1994 after the mine closed. (R. at 184.) Breeding testified that he obtained his commercial driver's license and began driving a truck. (R. at 185.) He stated that he worked as a truck driver for approximately only one month because it caused back pain. (R. at 185-86.) Thereafter, Breeding testified that he began working as a car salesman. (R. at 186-88.) He stated that he stopped working on June 25, 2003, due to back pain and an inability to deal with others. (R. at 190-91.)

Breeding testified that he underwent back surgery in 1974. (R. at 199.) He testified that an MRI performed in 2003 showed four bulging discs. (R. at 193.) He stated that Dr. Hulvey prescribed Vioxx in October 2003, but that he could not take it in combination with pain medication. (R. at 194.) Thus, Breeding testified that he took only over-the-counter pain medications. (R. at 194.) Breeding testified that he experienced constant back pain, which physical therapy had not helped. (R. at 195-96.) Breeding also testified that he was seeing a counselor for anxiety. (R. at 196.) However, he stated that he had not been prescribed any anti-anxiety medications. (R. at 196.)

Breeding stated that he did not do anything during the day. (R. at 197.) He

testified that he paced around his house and sat in an easy chair for approximately one hour before having to get up and walk around. (R. at 197.) Breeding testified that his wife mowed their yard, but that he was able to make himself a sandwich. (R. at 198.) He stated that he drove approximately one mile to the post office each day. (R. at 198.) Breeding testified that he watched 30 minutes to one hour of television each day. (R. at 198.)

Breeding further testified that he could not hear well, but had not seen a hearing specialist or discussed the problem with his family doctor. (R. at 199.) He stated that his leg would become numb, causing it to give way, that his knees would “pop and crack” and his feet would swell. (R. at 201.) He stated that he was approximately 5 feet 8 inches to 5 feet 9 inches tall and weighed approximately 250 pounds. (R. at 201.) Breeding testified that his doctor had advised that weight loss would help his back pain. (R. at 201-02.) He stated that he was trying to lose weight, but had difficulty exercising due to his back pain. (R. at 208.) He stated that he experienced sharp pains and numbness in his left leg as a result of walking. (R. at 210.) Breeding further testified that standing and walking for an hour caused his feet to swell and his knees to pop and crack. (R. at 210.) Breeding also testified that he experienced arm pain and weakness, but that an electrocardiogram, (“EKG”), had yielded normal results. (R. at 211-12.)

Breeding testified that he began having difficulty dealing with customers, as well as the owners, when he worked as a car salesman as a result of pain. (R. at 213.) He further noted that he had begun seeing a counselor, who opined that he needed 12 months of treatment. (R. at 213.)

Robert Jackson, a vocational expert, also was present and testified at Breeding's hearing. (R. at 214-20.) Jackson classified Breeding's past work as a car salesman as light and skilled, his work as a truck driver as medium² and semi-skilled and his work as a coal miner as medium and semi-skilled. (R. at 214-15.) Jackson was asked to assume a hypothetical individual of Breeding's age, education and past work experience, who could perform light work diminished by a sit/stand option, a mild limitation in the ability to concentrate due to pain and medications, who could only occasionally climb, balance, kneel, crouch, crawl and stoop and who had a mild hearing loss. (R. at 216.) Jackson testified that such an individual could perform jobs existing in significant numbers in the national economy, including those of a night watchman or unarmed security guard, a cashier and a parking lot attendant. (R. at 216-17.) Jackson was next asked to assume a hypothetical individual who was restricted as set forth in either psychologist Lanthorn's or Dr. Sutherland's assessments. (R. at 218.) Jackson testified that such an individual could perform no jobs. (R. at 218.)

In rendering his decision, the ALJ reviewed records from Buchanan County Public Schools; Clinch Valley Clinic Hospital; Dr. F. Chaudhry, M.D.; Dr. Clinton Sutherland, M.D.; Johnston Memorial Hospital; Dr. Frank M. Johnson, M.D., a state agency physician; B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist; University of Virginia Physical Medicine and Rehabilitation Clinic; Dickenson County Community Services; and University of Virginia Department of Orthopaedic Surgery.

²Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of items weighing up to 25 pounds. If someone can perform medium work, he also can perform light and sedentary work. *See* 20 C.F.R. § 404.1567(c) (2004).

The record shows that Breeding underwent back surgery on January 7, 1975, after suffering a work-related injury. (R. at 106-09.) He was diagnosed with interspinous bursitis and kissing spines.³ (R. at 107.) He was released in good condition. (R. at 107.)

On January 17, 2001, Breeding saw Dr. F. Chaudhry, M.D., with complaints of severe low back pain without radiation. (R. at 116-17.) He denied any bowel or urinary incontinence. (R. at 116.) A physical examination revealed no pedal edema and neurological functioning was grossly intact. (R. at 116.) Paravertebral muscle spasm was noted, and straight leg raising was positive bilaterally at 45 degrees. (R. at 117.) Breeding was diagnosed with acute lumbosacral strain with lumbosacral degenerative joint disease. (R. at 117.) He received an injection of Decadron and Xylocaine and was prescribed Neurontin, Zanaflex and Vioxx. (R. at 117.) Heat application was advised. (R. at 117.) On January 25, 2001, Breeding saw Carol A. Looney, a family nurse practitioner for Dr. Chaudhry, with continued complaints of low back pain without radiation into the lower extremities. (R. at 115.) A physical examination revealed tenderness over the lumbosacral spine and paraspinal muscle tenderness. (R. at 115.) He had no edema of the extremities and his neurological functioning was grossly intact. (R. at 115.) Breeding was diagnosed with acute back pain and lumbosacral disc disease. (R. at 115.) He was given a prescription for physical therapy and was instructed to avoid bending, lifting or pulling and to apply a heating pad. (R. at 115.)

³Kissing spines refers to a condition in which the spinous processes of adjacent vertebra are in contact. *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, ("Dorland's"), 1561 (27th ed. 1988).

On October 21, 2002, Breeding saw Marta Prupas, another family nurse practitioner for Dr. Chaudhry, with complaints of cervical pain, shoulder pain and low back pain. (R. at 113.) A physical examination revealed good rotation of the neck to the left, slight decreased rotation to the right, some tenderness of the right cervical area near the shoulder on deep palpation, good flexion and some decreased extension. (R. at 113.) No evidence of peripheral edema was noted. (R. at 113.) Breeding exhibited tenderness of the right lower back to palpation, but his neurological functioning remained grossly intact. (R. at 113.) Breeding was diagnosed with cervical pain and right shoulder pain and lumbosacral disc disease. (R. at 113.) Breeding was prescribed Bextra and Voltaren for chronic pain. (R. at 113.) On November 21, 2002, Breeding again saw Prupas. (R. at 112.) At that time, he exhibited some tenderness of the right cervical area with spasms toward the right shoulder. (R. at 112.) No erythema or lesions were noted. (R. at 112.) Paravertebral muscle spasm was noted in the lumbosacral spine, but Breeding's neurological functioning remained grossly intact. (R. at 112.) He was diagnosed with right cervical and shoulder pain, low back pain and osteoarthritis. (R. at 112.) Breeding's dosage of Bextra was discontinued, his dosage of Neurontin was increased, and he was prescribed Celebrex and Skelaxin. (R. at 112.) On November 25, 2002, Breeding saw Dr. Chaudhry. (R. at 111.) Breeding denied urinary complaints. (R. at 111.) Dr. Chaudhry noted muscle spasm of the neck and tenderness at the S1-S2 level of the back. (R. at 111.) Breeding was diagnosed with neck muscle spasm and cervical degenerative joint disease. (R. at 111.) His dosage of Skelaxin was increased. (R. at 111.)

On April 1, 2003, Breeding presented to the emergency department at Johnston Memorial Hospital with complaints of mild right arm pain exacerbated by movement.

(R. at 133-37.) He was diagnosed with left arm pain and was discharged. (R. at 135, 137.) An EKG ruled out cardiac etiology. (R. at 135-36.) Breeding again presented on April 3, 2003, with complaints of mild left shoulder and hand pain. (R. at 128-32.) Testing revealed a positive Tinel's sign⁴ and a positive Phalen's sign.⁵ (R. at 130.) An x-ray revealed no bone or joint abnormality. (R. at 131.) Breeding was diagnosed with left wrist pain, suspected to be carpal tunnel syndrome. (R. at 130, 132.) He was given a Medrol dose pack and a splint to wear. (R. at 132.)

On June 6, 2003, Breeding again saw Prupas, noting that he had not been taking his Celebrex due to insurance difficulties. (R. at 110.) At that time, Breeding denied neck stiffness. (R. at 110.) He exhibited tenderness in the lumbosacral spine on the left with left leg radiculitis, but no peripheral edema was noted. (R. at 110.) Breeding was diagnosed with chronic low back pain with left leg radiculitis, borderline hypertension and obesity. (R. at 110.)

On July 1, 2003, Breeding saw Dr. Clint Sutherland, M.D., with complaints of back pain. (R. at 124.) Dr. Sutherland noted tenderness at the L4-L5 level of the spine. (R. at 124.) Breeding was diagnosed with lumbar disc disease. (R. at 124.)

Breeding again presented to the emergency department at Johnston Memorial Hospital on July 23, 2003, with complaints of low back pain with radiation into the left

⁴Tinel's sign is a tingling sensation in the distal end of a limb when percussion is made over the site of a divided nerve. It indicates a partial lesion or beginning regeneration of the nerve. *See* Dorland's at 1526.

⁵Phalen's maneuver is a test for carpal tunnel syndrome. *See* Dorland's at 978.

leg at times. (R. at 126-27.) X-rays revealed degenerative joint disease, especially at the L5-S1 level with marginal osteophytes diffusely. (R. at 126-27.)

On September 2, 2003, Dr. Frank M. Johnson, M.D., a state agency physician, completed a physical residual functional capacity assessment, finding that Breeding could perform medium work. (R. at 138-46.) Dr. Johnson further found that Breeding could stand, walk and/or sit for six hours each in an eight-hour workday, but he found that Breeding was limited in his ability to push and/or pull with his lower extremities. (R. at 139.) Dr. Johnson concluded that Breeding could frequently climb, balance, stoop, kneel, crouch and crawl. (R. at 141.) He found no manipulative, visual, communicative or environmental limitations. (R. at 142-43.) This assessment was affirmed by Dr. Randall Hays, M.D., another state agency physician, on October 17, 2003. (R. at 146.)

On October 10, 2003, Breeding saw Dr. J. Thomas Hulvey, M.D., at the University of Virginia Department of Orthopaedic Surgery. (R. at 168-69.) A physical examination revealed forward bending to 30 degrees with discomfort, no spasm of the back, a level pelvis, painful side-to-side bending, normal heel-toe gait, essentially negative bilateral straight leg raising, symmetric deep tendon reflexes and no sensory alteration to direct testing. (R. at 168.) Dr. Hulvey reviewed an MRI which Breeding brought to the evaluation. (R. at 168.) Dr. Hulvey opined that it revealed extensive degenerative change in the L5-S1 segment and that Breeding had degenerative changes throughout with disc bulges. (R. at 168.) Breeding was diagnosed with degenerative arthritis of the lumbar spine, left knee pain that could be radicular and foraminal encroachment. (R. at 169.) Dr. Hulvey opined that Breeding did not have a surgical

problem with his back. (R. at 169.) He ordered a psychiatric evaluation. (R. at 169.)

Breeding was seen at University of Virginia Physical Medicine and Rehabilitation Clinic on October 21, 2003, at the request of Dr. Hulvey. (R. at 158-59.) At that time, Breeding noted that his back pain had worsened since June 2003. (R. at 158.) He further noted that he had received an epidural steroid injection approximately six months previously, but had not undergone any formal physical therapy. (R. at 158.) Breeding denied any bowel or bladder incontinence, chest pain or headaches. (R. at 158.) A physical examination revealed no cyanosis, clubbing or edema of the extremities. (R. at 158.) However, a musculoskeletal examination showed point tenderness over the spinous processes of the lumbar vertebrae. (R. at 158.) Straight leg raising was positive to 45 degrees on the left. (R. at 158.) Range of motion and strength testing around the hip, ankle and knee joints bilaterally were normal. (R. at 158.) Sensation was diminished to light touch in the left thigh and shin, but muscle reflexes were equal bilaterally. (R. at 158.) Breeding's mood and affect were described as normal and he was fully oriented. (R. at 158-59.) Breeding was diagnosed with L5-S1 disc herniation, lumbar degenerative joint disease, chronic low back pain and lumbar radiculopathy. (R. at 159.) He was continued on Vioxx and was prescribed two weeks of physical therapy to be followed by a home physical therapy program. (R. at 159.) Breeding also was advised to consider a weight loss program in order to help alleviate his back pain. (R. at 159.)

Breeding was seen at Dickenson County Community Services from November 2003 through February 2004 for counseling. (R. at 161-65.) It was estimated that Breeding would need 12 months or more in treatment. (R. at 163.) Breeding was

diagnosed with an anxiety disorder, not otherwise specified, and a mood disorder due to deteriorating and bulging discs. (R. at 162, 165.) He was diagnosed with a then-current Global Assessment of Functioning, (“GAF”), score of 56.⁶ (R. at 162, 165.)

On December 12, 2003, B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist, saw Breeding for a psychological evaluation at the request of Breeding’s counsel. (R. at 147-55.) Lanthorn administered the Wechsler Adult Intelligence Scale-Third Edition, (“WAIS-III”), on which Breeding obtained a verbal IQ score of 77, a performance IQ score of 64 and a full-scale IQ score of 69. (R. at 147-48, 151.) Lanthorn also administered the Wide Range Achievement Test-3, (“WRAT-3”), on which Breeding obtained a seventh-grade reading level and third-grade spelling and arithmetic levels. (R. at 148, 152.) Lanthorn also administered the Pain Patient Profile, (“P/3”), on which Breeding scored in the highest range on the depression and anxiety scales, while he scored in the mid-range on the somatization scale. (R. at 152-53.) Finally, Lanthorn administered the Personality Assessment Inventory, (“PAI”), which indicated that Breeding met the criteria for a major depressive episode. (R. at 153.) Lanthorn further noted that testing revealed that Breeding was experiencing a discomforting level of tension and anxiety. (R. at 153.) Lanthorn noted that Breeding was fully oriented and exhibited no signs of psychotic processes or delusional thinking. (R. at 148.) Breeding’s speech was clear and intelligible, but his eye contact was described as erratic or poor. (R. at 149.) However, Lanthorn opined that

⁶The GAF scale ranges from zero to 100 and “[c]onsider[s] psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness.” DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION, (“DSM-IV”), 32 (American Psychiatric Association 1994). A GAF of 51 to 60 indicates that the individual has “[m]oderate symptoms ... OR moderate difficulty in social, occupational, or school functioning” DSM-IV at 32.

Breeding was fully motivated during the administration of testing, thus, concluding that the scores were valid. (R. at 149.) Breeding reported that he had become “extremely depressed and ‘nervous,’” noting that he very critical of his wife for no reason. (R. at 151.) He denied any suicidal or homicidal ideations. (R. at 151.) Breeding reported that his memory had worsened over the previous couple of years, particularly short-term. (R. at 151.) He further reported becoming increasingly socially isolated. (R. at 151.) Breeding stated that he would become nervous at times and his hands would become shaky. (R. at 151.) Lanthorn noted moderate tremulousness. (R. at 151.) Lanthorn diagnosed Breeding with major depressive disorder, single episode, severe, pain disorder associated with both psychological factors and a general medical condition, chronic, anxiety disorder, not otherwise specified, and mild mental retardation. (R. at 154.) He placed Breeding’s GAF score at 45 to 50.⁷ (R. at 155.) Lanthorn recommended that Breeding undergo psychotherapy. (R. at 155.)

Lanthorn also completed an Assessment To Do Work-Related Activities on December 12, 2002. (R. at 156.) He concluded that Breeding had a fair ability to follow work rules, to function independently, to understand, remember and carry out simple job instructions and to maintain personal appearance. (R. at 156.) In all other areas of adjustment, Breeding’s abilities were rated as poor or none. (R. at 156.)

On January 6, 2004, Dr. Clinton Sutherland, M.D., diagnosed Breeding with lumbar degenerative disc disease and obesity. (R. at 167.) He was continued on Vioxx, and Dr. Sutherland recommended significant weight loss and regular exercise.

⁷A GAF of 41 to 50 indicates that the individual has “[s]erious symptoms ... OR any serious impairment in social, occupational, or school functioning....” DSM-IV at 32.

(R. at 167.) He opined that Breeding was “probably not capable of working.” (R. at 167.) On February 23, 2004, Dr. Sutherland completed a physical residual capacity assessment, finding that Breeding could sit and stand for a total of three hours each during an eight-hour workday, but could walk for a total of only one hour. (R. at 166.) Dr. Sutherland further found that Breeding could sit for one hour without interruption and stand and walk for less than one hour each without interruption. (R. at 166.) Dr. Sutherland noted that Breeding could occasionally lift and carry items weighing up to 10 pounds. (R. at 166.) Dr. Sutherland further found that Breeding could perform simple grasping, pushing and pulling of arm controls and fine manipulation. (R. at 166.) However, he noted that Breeding was unable to use his left foot for the pushing and pulling of leg controls. (R. at 166.) Dr. Sutherland concluded that Breeding could occasionally bend, squat and reach, but never crawl and climb. (R. at 166.) He concluded that Breeding was totally restricted from working around unprotected heights and moving machinery, was moderately restricted from working around marked changes in temperature and humidity, was mildly restricted from working around dust, fumes and gases, but was not restricted from driving automobile equipment. (R. at 166.)

III. Analysis

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (2004); *see also Heckler v. Campbell*, 461 U.S. 458, 460-62 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4th Cir. 1981). This process requires the Commissioner to consider, in order, whether a claimant 1) is working; 2) has a severe impairment; 3) has an impairment that meets or equals the requirements of a

listed impairment; 4) can return to his past relevant work; and 5) if not, whether he can perform other work. *See* 20 C.F.R. § 404.1520 (2004). If the Commissioner finds conclusively that a claimant is or is not disabled at any point in this process, review does not proceed to the next step. *See* 20 C.F.R. § 404.1520(a) (2004).

Under this analysis, a claimant has the initial burden of showing that he is unable to return to his past relevant work because of his impairments. Once the claimant establishes a prima facie case of disability, the burden shifts to the Commissioner. To satisfy this burden, the Commissioner must then establish that the claimant has the residual functional capacity, considering the claimant's age, education, work experience and impairments, to perform alternative jobs that exist in the national economy. *See* 42 U.S.C.A. § 423(d)(2) (West 2003); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4th Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated April 12, 2004, the ALJ denied Breeding's claim for benefits. (R. at 12-19.) The ALJ found that Breeding met the disability insured status requirements of the Act through at least December 31, 2007. (R. at 18.) The ALJ found that Breeding had not engaged in substantial gainful activity since June 25, 2003. (R. at 18.) The ALJ also found that the medical evidence established that Breeding had severe impairments, namely degenerative joint disease and obesity, but she found that Breeding did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 18.) The ALJ further found that Breeding's allegations regarding his limitations were not totally credible. (R. at 18.) The ALJ found that Breeding had the residual

functional capacity to perform simple, light unskilled work, subject to a sit/stand option, limited exposure to temperature and humidity extremes, a mild to moderate loss of ability to concentrate and a very mild hearing loss. (R. at 18.) The ALJ found that Breeding could not perform his past relevant work. (R. at 18.) Based on Breeding's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that other jobs existed in the national economy that Breeding could perform. (R. at 19.) Therefore, the ALJ found that Breeding was not disabled at any time through the date of her decision. (R. at 19.) *See* 20 C.F.R. § 404.1520(g) (2004). Thus, the ALJ found that Breeding was not eligible for DIB benefits. (R. at 19.)

As stated above, the court's function in the case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. The court must not weigh the evidence, as this court lacks authority to substitute its judgment for that of the Commissioner, provided her decision is supported by substantial evidence. *See Hays*, 907 F.2d at 1456. In determining whether substantial evidence supports the Commissioner's decision, the court also must consider whether the ALJ analyzed all of the relevant evidence and whether the ALJ sufficiently explained her findings and her rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Breeding argues that the ALJ erred by failing to find that he suffered from a severe mental impairment, namely that he did not meet the listing for mental retardation, found at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05(C). (Brief In Support

Of Plaintiff's Motion For Summary Judgment, ("Plaintiff's Brief"), at 13-19.) I disagree. In order to qualify as disabled under § 12.05(C), a claimant's condition must meet two requirements: (1) a valid IQ score of 60 through 70 and (2) a physical condition or other mental impairment imposing additional and significant work-related limitation of function. Additionally, the mental deficits must have manifested during the claimant's developmental stage, i.e., prior to age 22. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.05. The regulations do not define the term "significant." However, this court previously has held that it must give the word its commonly accepted meanings, among which are, "having a meaning" and "deserving to be considered." *Townsend v. Heckler*, 581 F. Supp. 157, 159 (W.D. Va. 1983). In *Townsend*, the court also noted that the antonym of "significant" is "meaningless." *See Townsend*, 581 F. Supp. at 159. The regulations do provide that "where more than one IQ is customarily derived from the test administered, e.g., where verbal, performance, and full scale IQs are provided in the Wechsler series, we use the lowest of these in conjunction with 12.05." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00(D). *See Flowers v. U.S. Dep't of Health & Human Servs.*, 904 F.2d 211 (4th Cir. 1990).

The medical evidence fails to document that Breeding meets the criteria of § 12.05(C) for mental retardation. First, I note that the record contains evidence that Breeding's IQ was in the 60 through 70 range, meeting the first prong of § 12.05(C). In particular, testing performed by psychologist Lanthorn revealed that Breeding had a performance IQ score of 64 and a full-scale IQ score of 69. (R. at 148, 151.) Even

assuming the validity of these IQ scores,⁸ however, there is no evidence in the record that such mental impairment manifested itself prior to age 22. For instance, Breeding testified at his hearing that he completed high school in regular classes, although noting that special education classes were not available at that time. In any event, not only is there no evidence contained in the record that Breeding repeated any grades, the evidence reveals that he passed regular education classes with grades mainly in the 70s, but with some in the 80s. (R. at 103.) Moreover, Breeding testified that he obtained a commercial driver's license, for which he had to pass a computerized multiple-choice test, and he worked as a car salesman, a job that the vocational expert classified as skilled and which required some usage of computers, some knowledge of financing and some negotiation skills. (R. at 185-90.) For these reasons, I find that Breeding is unable to meet the first prong of § 12.05(C). That being the case, it is unnecessary to analyze whether he meets the second prong. Thus, I find that substantial evidence supports the ALJ's finding that Breeding does not meet the criteria for mental retardation under § 12.05(C).

Breeding next argues that the ALJ erred by failing to secure the testimony of a psychological expert at his hearing, thereby improperly substituting her opinion for that of an expert in determining the severity of his mental impairments and their impact on his work-related abilities. (Plaintiff's Brief at 19.) "In the absence of any psychiatric or psychological evidence to support [her] position, the ALJ simply does not possess

⁸The ALJ noted in her decision that she was affording little weight to Lanthorn's evaluation due to internal inconsistencies and inconsistency with the record as a whole. (R. at 15.)

the competency to substitute [her] views on the severity of plaintiff's psychiatric problems for that of a trained professional." *Grimmett v. Heckler*, 607 F. Supp. 502, 503 (S.D. W.Va. 1985) (citing *McLain*, 715 F.2d at 869; *Oppenheim v. Finch*, 495 F.2d 396, 397 (4th Cir. 1974)).

The ALJ either rejected or failed to address the only evidence contained in the record from professionals regarding the impact of Breeding's psychological impairments on his work-related abilities. Specifically, the ALJ rejected psychologist Lanthorn's assessment as internally inconsistent, inconsistent with the record as a whole and based, at least partially, on Breeding's subjective complaints. Moreover, the ALJ completely failed to discuss the findings contained in the treatment notes from Dickenson County Community Services. These findings, as set forth above, are relatively consistent with those of Lanthorn. The uncontradicted psychological evidence establishes that Breeding suffers from an anxiety disorder and mood disorder, which may have been severe enough to qualify as a major depression. (R. at 154, 162.) While the ALJ's findings do not explicitly state so, she necessarily found that Breeding suffered from a severe mental impairment in that she found that he could do only simple, unskilled work subject to a mild to moderate loss of ability to concentrate. (R. at 18.) That being the case, by rejecting or not discussing this evidence, there is no psychological or psychiatric evidence contained in the record to support the ALJ's findings with regard to Breeding's mental residual functional capacity. Thus, I find that the ALJ improperly substituted her opinion regarding the severity of Breeding's mental impairments and their impact on his work-related abilities for that of an expert.

IV. Conclusion

For the foregoing reasons, the Commissioner's motion for summary judgment will be denied, the Commissioner's decision to deny benefits is vacated, and the case is remanded to the ALJ to secure expert psychological testimony regarding the severity of Breeding's mental impairments and their impact on his work-related abilities.

An appropriate order will be entered.

DATED: This 15th day of February, 2005.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE