

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

JEAN E. GRUBB,)	
Plaintiff)	
)	
v.)	Civil Action No. 1:05cv00050
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Jean E. Grubb, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claims for disability insurance benefits, (“DIB”), and supplemental security income, (“SSI”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. §§ 423 and 1381 *et seq.* (West 2003 & Supp. 2005). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g) and § 1383(c)(3). This case is before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). As directed by the order of referral, the undersigned now submits the following report and recommended disposition.

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 Grubb filed her applications for DIB and SSI¹ on January 29, 1994, alleging disability as of September 13, 1989,² based on back pain, numbness in her legs, arms and hands and headaches. (Record, (“R.”), at 59-62, 92, 100.) Grubb’s claims were denied initially and on reconsideration. (R. at 67, 72.) Grubb then requested a hearing before an administrative law judge, (“ALJ”). (R. at 84.) The ALJ held a hearing on March 13, 1995, at which Grubb was represented by counsel. (R. at 37-58.) By decision dated March 25, 1995, the ALJ denied Grubb’s claims. (R. at 12-20.) Grubb filed a civil action in this court challenging the ALJ’s decision. *Jean E. Grubb v. Shirley S. Chater, Commissioner of Social Security*, Civil Action No. 96-0015-A. This court remanded the case on September 30, 1996, for further consideration of Grubb’s mental condition and its impact on her ability to perform other work in the national economy. (R. at 242-49.) On remand, the ALJ ordered a consultative mental status examination and held a second hearing on February 12, 1997, at which Grubb was represented by counsel. (R. at 264-77.)

By decision dated August 5, 1997, the ALJ again denied Grubb’s claims. (R.

¹The record indicates that the exhibits for Grubb’s SSI application are unavailable for inclusion.

²Grubb later amended her alleged onset date to September 13, 1994. (R. at 106-07.)

at 211-18.) The ALJ found that Grubb met the disability insured status requirements of the Act through December 31, 1994, but not thereafter.³ (R. at 216.) The ALJ found that Grubb had not engaged in substantial gainful activity since September 13, 1989. (R. at 216.) The ALJ also found that the medical evidence established that Grubb suffered from severe impairments, namely traumatic back and neck injury residuals and a mild affective disorder, but he found that Grubb 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 216-17.) The ALJ found that Grubb retained the residual functional capacity to perform light work.⁴ (R. at 217.) The ALJ also found that Grubb was seriously limited, but not precluded, in her ability to relate to co-workers, to deal with the public or work stresses, to manage complex job instructions and to demonstrate reliability. (R. at 217.) Thus, the ALJ found that Grubb was unable to perform her past relevant work. (R. at 217.) Based on Grubb's age, education and work history and the testimony of a vocational expert,⁵ the ALJ concluded that Grubb could perform jobs existing in significant numbers in the national economy. (R. at 217.) Thus, the ALJ found that Grubb was not disabled under the Act and was not eligible for benefits. (R. at 217-18.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2005).

After the ALJ issued his opinion, Grubb pursued her administrative appeals, (R.

³Thus, in order to be eligible for DIB benefits, Grubb must prove that she was disabled at some point on or prior to December 31, 1994.

⁴Light 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 an individual can do light work, she also can do sedentary work. *See* 20 C.F.R. §§ 404.1567(b), 416.967(b) (2005).

⁵The ALJ relied upon the testimony of the vocational expert taken at Grubb's initial hearing on March 13, 1995. (R. at 55, 216.)

at 6), but the Appeals Council denied her request for review. (R. at 3-4a.) Grubb 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, 416.1481 (2005). The case is before this court on Grubb's motion for summary judgment filed November 18, 2005, and the Commissioner's motion for summary judgment filed December 14, 2005.

II. Facts

Grubb was born in 1958, (R. at 59), which classifies her as a "younger person" under 20 C.F.R. §§ 404.1563(c), 416.963(c) (2005). She has an eighth-grade education⁶ and past relevant work experience as a janitor. (R. at 44, 96.)

Barry R. Yates Jr., M.D., a medical expert, testified at Grubb's initial hearing. (R. at 50-51.) He stated that, based on his review of the record, Grubb had the residual functional capacity to perform light work. (R. at 51.) He stated that she would have the ability to perform medium work⁷ if she were allowed to work back into it. (R. at 51.)

Arthur Ballas, M.E., a psychological expert, also testified at Grubb's initial hearing. (R. at 51-54.) Ballas stated that he would judge Grubb's restriction of activities of daily activities as being slight. (R. at 52.) He also stated that Grubb was

⁶On her Disability Report, Grubb reported that she had a ninth-grade education. (R. at 96.) However, she testified at her hearing that she completed only the eighth grade. (R. at 44.)

⁷Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If an individual can do medium work, she also can do sedentary and light work. *See* 20 C.F.R. §§ 404.1567(c), 416.967(c) (2005).

slightly limited in her ability to maintain social functioning. (R. at 52.) He stated that she seldom to often had deficiencies of concentration. (R. at 53.) Ballas also completed a mental assessment indicating that Grubb had a more than satisfactory ability to understand, remember and carry out simple instructions. (R. at 189.) He reported that Grubb had a limited but satisfactory ability to follow work rules, to relate to co-workers, to use judgment, to interact with supervisors, to function independently, to maintain attention/concentration, to understand, remember and carry out detailed instructions, to maintain personal appearance, to behave in an emotionally stable manner and to relate predictably in social situations. (R. at 189.) He found that Grubb had a seriously limited, but not precluded, ability to relate to co-workers,⁸ to deal with the public, to deal with work stresses, to understand, remember and carry out complex instructions and to demonstrate reliability. (R. at 189.)

Jean Hambrick, a vocational expert, also was present and testified at Grubb's hearing. (R. at 54-58.) Hambrick was asked to assume a hypothetical individual of Grubb's age, education and past work experience who was restricted to light work and who was limited as described by Ballas. (R. at 55.) Hambrick testified that such an individual could perform jobs existing in significant numbers in the national economy, including those of a child care worker, a house cleaner, a light janitorial worker, a watchman and a parts inspector. (R. at 55.)

In rendering his decision, the ALJ reviewed records from Dr. Daniel P. Noble, M.D.; Dr. Edward M. Litz, M.D., an orthopedic surgeon; Bluefield Regional Medical

⁸I note that Ballas actually checked both the box for limited but satisfactory ability and the box for seriously limited, but not precluded, ability in assessing Grubb's ability to relate to co-workers. (R. at 189.)

Center; Willis Chiropractic; Alice Bageant, P.T., a physical therapist; Gary Williams, M.A., a licensed psychologist; and Bede A. R. Pantaze, Ph.D., a licensed psychologist. Grubb's attorney submitted additional medical records to the Appeals Council from Bluefield Regional Medical Center.⁹

The record shows that Dr. Daniel P. Noble, M.D., treated Grubb in 1989 for complaints of back and neck pain. (R. at 122-23.) Grubb reported in October 1989 that she injured her back when she fell off of a ladder at work. (R. at 122.) She had good range of motion, and x-rays of her cervical spine showed no evidence of bony pathology. (R. at 122.) Dr. Noble diagnosed cervical strain. (R. at 122.) On December 6, 1989, Grubb had full range of motion, and Dr. Noble planned to release her to return to work after her next office visit. (R. at 123.) On December 20, 1989, Grubb complained of thoracic and cervical spine pain. (R. at 123.) Dr. Noble reported that Grubb had no radicular symptoms into her upper extremities. (R. at 123.) Dr. Noble diagnosed cervical strain versus thoracic outlet syndrome. (R. at 123.) He reported that he found no real objective findings to warrant further diagnostic testing. (R. at 123.)

In February 1990, Grubb saw Dr. Edward M. Litz, M.D., an orthopedic surgeon, for complaints of thoracolumbar symptoms. (R. at 124.) Grubb's paraspinal bending was restricted. (R. at 124.) She had no point tenderness or focal deficit suggestive of disc impairment. (R. at 124.) Dr. Litz diagnosed traumatic thoracolumbar sprain. (R. at 124.) In March 1990, Grubb reported that she was doing quite well with therapy, but had recurrent right parathoracic pain. (R. at 124.) In May

⁹Since the Appeals Council considered this evidence in reaching its decision not to grant review, (R. at 3-4a), this court also should consider this evidence in determining whether substantial evidence supports the ALJ's findings. *See Wilkins v. Sec'y of Dep't. of Health & Human Servs.*, 953 F.2d 93, 96 (4th Cir. 1991).

1990, Dr. Litz reported no evidence of residual impairment. (R. at 125.)

The record shows that Grubb presented to the emergency room at Bluefield Regional Medical Center, (“BRMC”), on February 10, 1991, for complaints of neck pain following an automobile accident. (R. at 129-32, 195.) X-rays of Grubb’s cervical spine were normal and she was diagnosed with cervical sprain. (R. at 129, 132, 195.) Grubb participated in physical therapy at BRMC on February 13, 1991, February 19, 1991, and February 21, 1991, for her complaints of neck pain. (R. at 126-28.) It was noted on February 30, 1991, that Grubb did not return to therapy and, therefore, was discharged. (R. at 128.) Grubb was admitted to BRMC in February 1995 for a hysterectomy, removal of an ovary and an appendectomy. (R. at 191-92.)

The record shows that Grubb received treatment from Willis Chiropractic in 1991 for complaints neck and back pain. (R. at 140-42.) In February 1991, Grubb was diagnosed with cervical and lumbar sprain. (R. at 141.) She was treated with spinal adjustments, high voltage galvanic current and intersegmental traction. (R. at 141.) In July 1991, Grubb’s cervical and thoracolumbar movements were normal and pain free. (R. at 142.) All orthopedic and neurological tests were negative. (R. at 142.) She was released from care after reaching maximum medical improvement. (R. at 142.)

On April 14, 1994, Alice Bageant, P.T., a physical therapist, saw Grubb for complaints of back, leg and neck pain. (R. at 143-46.) Grubb also complained of numbness in her arms. (R. at 143.) Grubb rode a stationary bicycle for 10 minutes and had no apparent exertion or complaints of pain. (R. at 144.) Bageant reported that Grubb was tanned, lean and well-nourished. (R. at 144.) She showed no painful facial expressions or grimaces with transfers. (R. at 144.) Grubb had no redness, thickening

or swelling of any joints. (R. at 145.) No weakness was noted in any muscle groups. (R. at 145.) No tremor, abnormal motor functioning, atrophy or fatigue was noted with bike riding. (R. at 145.) Grubb was able to walk on heels and toes without difficulty. (R. at 145.) She was able to move from a sitting to standing position and from a standing to supine position without guarding and grimacing. (R. at 145.) Bageant reported that no specific dysfunction could be identified. (R. at 146.) She reported that Grubb had the potential to return to work. (R. at 146.)

On September 29, 1994, Gary Williams, M.A., a licensed psychologist, evaluated Grubb at the request of Grubb's attorney. (R. at 149-53.) Grubb denied previous mental health services. (R. at 149.) She reported that she used over-the-counter pain medication. (R. at 149.) Williams reported that Grubb was restless and nervous. (R. at 150.) No indication of memory impairment was noted. (R. at 150.) The Wechsler Adult Intelligence Scale-Revised, ("WAIS-R"), test was administered, and Grubb obtained a verbal IQ score of 79, a performance IQ score of 90 and a full-scale IQ score of 84, placing her in the low-average range of intellectual functioning. (R. at 151.) The Minnesota Multiphasic Personality Inventory-2, ("MMPI-2"), test was performed, and Williams reported that some caution should be used when reviewing the results. (R. at 151-52.) Williams reported that, although a valid profile was obtained, Grubb may have been attempting to present herself in an unrealistically favorable light and she seemed to have a "rather naive or unsophisticated view of herself and situation." (R. at 152.) He reported that Grubb tended to magnify minor physical dysfunctions and to easily become anxious. (R. at 152.) Williams diagnosed major depression, single episode, mild. (R. at 152.) He indicated that Grubb had a

Global Assessment of Functioning, (“GAF”), score of 65.¹⁰ (R. at 152.)

Williams completed a mental assessment indicating that Grubb was limited but satisfactory in her ability to follow work rules, to use judgment, to function independently, to understand, remember and carry out simple instructions and to maintain personal appearance. (R. at 154-56.) He indicated that Grubb was seriously limited, but not precluded, in her ability to relate to co-workers, to deal with the public, to interact with supervisors, to maintain attention/concentration, to behave in an emotionally stable manner and to relate predictably in social situations. (R. at 154-55.) Williams indicated that Grubb had no useful ability to deal with work stresses, to understand, remember and carry out complex or detailed instructions and to demonstrate reliability. (R. at 154-55.)

On May 29, 1997, Bede A. R. Pantaze, Ph.D., a licensed psychologist, evaluated Grubb at the request of Disability Determination Services. (R. at 252-58.) Pantaze reported that she did not observe evidence of thought content and/or organizational difficulties. (R. at 253.) She reported that she observed Grubb approach the examination site, including climbing two steps, without any difficulties. (R. at 253.) She also reported that she observed Grubb sitting in the examining room for over an hour without excessive signs of discomfort. (R. at 253.) Grubb changed positions and did not show facial grimaces. (R. at 254.) Grubb reported that she was not taking psychotropic medication. (R. at 254.) Pantaze reported Grubb’s affect as

¹⁰The 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 61-70 indicates “[s]ome mild symptoms ... OR some difficulty in social, occupational, or school functioning ... , but generally functioning pretty well, has some meaningful interpersonal relationships.” DSM-IV at 32.

“totally appropriate.” (R. at 254.) Grubb did not display mood dysfunction. (R. at 254.) No evidence of apprehension, anxiety or panic attacks was noted. (R. at 254.) Grubb’s judgment was adequate. (R. at 254.) The WAIS-R test was administered, and Grubb obtained a verbal IQ score of 86, a performance IQ score of 85 and a full-scale IQ score of 85. (R. at 258.) Pantaze diagnosed a pain disorder associated with psychological factors. (R. at 256.) She indicated that Grubb had a GAF score of 70-80.¹¹ (R. at 257.)

Pantaze completed a mental assessment indicating that Grubb was not limited in her ability to function independently, to maintain attention/concentration, to understand, remember and carry out simple instructions and to maintain personal appearance. (R. at 259-61.) She indicated that Grubb had a more than satisfactory ability to follow work rules, to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to understand, remember and carry out detailed instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability . (R. at 259-60.) Pantaze reported that Grubb had a limited but satisfactory ability to understand, remember and carry out complex instructions. (R. at 259-60.) She found that Grubb had between a more than satisfactory ability and a limited but satisfactory ability to deal with work stresses. (R. at 259.) Pantaze reported that she observed and tested Grubb and could not document any emotional dysfunction beyond reported pain. (R. at 261.)

¹¹A GAF of 71-80 indicates that “[i]f symptoms are present, they are transient and expectable reactions to psychosocial stressors ...; no more than slight impairment in social, occupational, or school functioning....” DSM-IV at 32.

III. Analysis

The Commissioner uses a five-step process in evaluating DIB and SSI claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2005). *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 her past relevant work; and 5) if not, whether she can perform other work. *See* 20 C.F.R. §§ 404.1520, 416.920 (2005). 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), 416.920(a) (2005).

Under this analysis, a claimant has the initial burden of showing that she is unable to return to her past relevant work because of her 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)(A), 1382c(a)(3)(A)-(B) (West 2003 & Supp. 2005); *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 August 5, 1997, the ALJ denied Grubb's claims. (R. at 211-18.) The ALJ found that the medical evidence established that Grubb suffered from severe impairments, namely traumatic back and neck injury residuals and a mild

affective disorder, but he found that Grubb 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 216-17.) The ALJ found that Grubb retained the residual functional capacity to perform light work. (R. at 217.) The ALJ also found that Grubb was seriously limited, but not precluded, in her ability to relate to co-workers, to deal with the public or work stresses, to manage complex job instructions and to demonstrate reliability. (R. at 217.) Thus, the ALJ found that Grubb was unable to perform her past relevant work. (R. at 217.) Based on Grubb's age, education and work history and the testimony of a vocational expert, the ALJ concluded that Grubb could perform jobs existing in significant numbers in the national economy. (R. at 217.) Thus, the ALJ found that Grubb was not disabled under the Act and was not eligible for benefits. (R. at 217-18.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2005).

In her brief, Grubb argues that the ALJ's decision is not based on substantial evidence. (Plaintiff's Brief In Support Of Motion For Summary Judgment, ("Plaintiff's Brief"), at 6.) In particular, Grubb argues that the ALJ failed to comply with the court's remand order. (Plaintiff's Brief at 6-8.) Grubb also argues that the ALJ erred by failing to call a vocational expert to testify at her second hearing to establish that other work existed in the economy that she could perform. (Plaintiff's Brief at 7-11.) Grubb does not challenge the ALJ's finding that she can exertionally perform light work.¹²

As stated above, the court's function in this case is limited to determining

¹²This court previously found that substantial evidence supported the Commissioner's finding that Grubb could exertionally perform light work. (R. at 244.)

whether substantial evidence exists in the record to support the ALJ's findings. This 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 his findings and his rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Thus, it is the ALJ's responsibility to weigh the evidence, including the medical evidence, in order to resolve any conflicts which might appear therein. *See Hays*, 907 F.2d at 1456; *Taylor v. Weinberger*, 528 F.2d 1153, 1156 (4th Cir. 1975). Furthermore, while an ALJ may not reject medical evidence for no reason or for the wrong reason, *see King v. Califano*, 615 F.2d 1018, 1020 (4th Cir. 1980), an ALJ may, under the regulations, assign no or little weight to a medical opinion, even one from a treating source, based on the factors set forth at 20 C.F.R. §§ 404.1527(d), 416.927(d), if he sufficiently explains his rationale and if the record supports his findings.

Based on my review of the record, I find that substantial evidence exists to support the ALJ's finding with regard to Grubb's mental residual functional capacity. The ALJ relied upon the testimony of psychological expert, Ballas, to determine Grubb's mental residual functional capacity. By doing so, he rejected psychologist Williams's assessment. While Ballas did not examine Grubb, he had the opportunity to observe and listen to Grubb's testimony. (R. at 51-54.) He also had the opportunity to review Grubb's medical reports. (R. at 52.) Williams denied reviewing any of Grubb's medical records before his evaluation. (R. at 150.) Based on my review of the

record, Ballas's opinion was consistent with the record as a whole. Grubb had no history of psychological treatment or counseling. (R. at 149, 252, 272-73.) In 1997, Pantaze reported that Grubb was not on any type of psychotropic medication at the time of her evaluation and Pantaze found, nonetheless, that Grubb's affect and general attitude were totally appropriate. (R. at 252, 254-55.) Pantaze reported that Grubb displayed no mood dysfunction. (R. at 254, 261.) Even Williams found Grubb had an unremarkable mental health history and exhibited only a mild depressive presentation. (R. at 153.) Williams and Pantaze both reported that Grubb could follow directions and that she showed no evidence of memory deficits. (R. at 150, 253.) Pantaze found that Grubb exhibited no decrease in her concentration and she was goal-task oriented. (R. at 254, 256.) The ALJ noted that Ballas's opinion was more restrictive in several aspects than Pantaze's opinion. (R. at 232.) While Williams opined that Grubb had more significant functional limitations, the ALJ reasonably found that the record as a whole was insufficient to establish all of the functional losses which he depicted. (R. at 154-56, 232.) Based on this, I find that substantial evidence exists to support the ALJ's decision not to give controlling weight to Williams.

Grubb argues that the ALJ erred by failing to call a vocational expert to testify at her second hearing to establish that other work existed in the economy that she could perform. (Plaintiff's Brief at 7-11.) Based on my review of the record, I find that substantial evidence exists to support the ALJ's finding that a significant number of jobs exist in the economy that Grubb could perform. The ALJ relied upon the testimony of the vocational expert who testified at Grubb's initial hearing to determine that a significant number of jobs existed in the economy that Grubb could perform. The ALJ presented the limitations as found by Ballas to the vocational expert in order to determine if jobs existed in significant numbers that Grubb could perform. The

vocational expert was present during Ballas's testimony. The ALJ asked Ballas:

Q Do we have sufficient information to rate the claimant's mental ability to make occupational performance and social adjustments?

A Well based entirely upon Mr. Williams' evaluation, we do.

(R. at 53.) The ALJ asked Ballas to rate Grubb's mental ability to make occupational, performance and social adjustments.¹³ (R. at 53.) Ballas responded:

A Yes. Again, following the evaluation eluded to in Exhibit 26,

(R. at 53.) The record shows that Exhibit 26 is the mental assessment of Williams. (R. at 154-56.) Based on my review of Ballas's testimony, it appears that he was following Williams's assessment as he offered his testimony and evaluation. (R. at 53-54.) The vocational expert testified that she had seen the assessment completed by Williams and that she had read the definitions as indicated on the assessment form. (R. at 57-58.) Based on this, I believe that the vocational expert was aware of and understood the definitions of "good" and "fair." Therefore, I find that substantial evidence exists to show that a significant number of jobs existed in the economy that Grubb could perform.

PROPOSED FINDINGS OF FACT

As supplemented by the above summary and analysis, the undersigned now

¹³Ballas's assessment was made a part of the record and marked as Exhibit 33. (R. at 53, 189.)

submits the following formal findings, conclusions and recommendations:

1. Substantial evidence supports the ALJ's finding with regard to Grubb's residual functional capacity; and
2. Substantial evidence supports the ALJ's finding that Grubb was not disabled under the Act and was not entitled to benefits.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Grubb's motion for summary judgment, grant the Commissioner's motion for summary judgment and affirm the Commissioner's decision denying benefits.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(c) (West 1993 & Supp. 2005):

Within ten days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of

the 10-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, Chief United States District Judge.

The Clerk is directed to send certified copies of this Report and Recommendation to all counsel of record at this time.

DATED: This 7th day of February 2006.

/s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE