

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

WILLIAM B. TURNER,)	
Plaintiff)	
)	
v.)	Civil Action No. 1:06cv00087
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
MICHAEL J. ASTRUE,¹)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, William B. Turner, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for supplemental security income, (“SSI”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 1381 *et seq.* (West 2003 & Supp. 2007). 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

¹Michael J. Astrue became the Commissioner of Social Security on February 12, 2007, and is, therefore, substituted for Jo Anne B. Barnhart as the defendant in this suit pursuant to Federal Rule of Civil Procedure 25(d)(1).

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 Turner protectively filed his application for SSI on or about February 18, 2003,² alleging disability as of September 4, 2002, based on three herniated discs, hip, back, leg and joint pain, nervous tension, headaches and depression . (Record, (“R.”), at 79-82, 102, 111.) The claim was denied initially and upon reconsideration. (R. at 52-54, 58, 60-62.) Turner then requested a hearing before an administrative law judge, (“ALJ”). (R. at 63-64.) The ALJ held a hearing on April 21, 2004, at which Turner was represented by counsel. (R. at 217-58.)

By decision dated August 3, 2005, the ALJ denied Turner’s claim. (R. at 20-32.) The ALJ found that Turner had not engaged in substantial gainful activity since September 4, 2002. (R. at 31.) The ALJ also found that the medical evidence

²The record shows that Turner filed an application for disability insurance benefits, (“DIB”), on September 22, 1993. (R. at 161.) By decision dated August 10, 1995, the ALJ denied this claim. (R. at 161.) The record also shows that Turner filed previous applications for SSI and DIB on April 7, 1997. (R. at 161.) By order dated November 19, 2003, this court affirmed the ALJ’s January 5, 2001, decision denying benefits. (R. at 68-69, 158-59.) The record further shows that Turner filed an application for SSI on July 27, 2002. (R. at 38.) The claim was denied initially and on reconsideration. (R. at 38.) By decision dated September 3, 2002, the ALJ denied Turner’s claim. (R. at 38-44.)

established that Turner suffered from severe impairments, namely degenerative disc disease, left sacroiliitis and pain disorder with depression, but she found that Turner 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 31.) The ALJ found that Turner's allegations regarding his limitations were not totally credible. (R. at 31.) The ALJ found that Turner retained the residual functional capacity to perform light work,¹ which allowed a sit/stand option, required only occasional climbing, balancing, stooping, kneeling, crouching and crawling, required no exposure to extreme temperature changes and no unusual exposure to dust, fumes, chemicals and poor ventilation. (R. at 31.) The ALJ also found that Turner had a mild reduction in his ability to concentrate due to depression. (R. at 31.) Thus, the ALJ found that Turner was unable to perform his past relevant work. (R. at 31.) Based on Turner's age, education, work history and residual functional capacity and the testimony of a vocational expert, the ALJ found that Turner could perform jobs existing in significant numbers in the national economy. (R. at 31-32.) Thus, the ALJ found that Turner was not disabled under the Act and was not eligible for benefits. (R. at 32.) *See* 20 C.F.R. § 416.920(g) (2007).

After the ALJ issued her decision, Turner pursued his administrative appeals. (R. at 13, 206.) The decision of the ALJ became the final decision of the Commissioner when the Appeals Council declined review on July 11, 2006. (R. at 7-10.) *See* 20 C.F.R. § 416.1481 (2007). This case is before the court on Turner's

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 an individual can perform light work, he also can perform sedentary work. *See* 20 C.F.R. § 416.967(b) (2007).

motion for summary judgment filed January 5, 2007, and the Commissioner's motion for summary judgment filed February 5, 2007.

II. Facts

Turner was born in 1954, (R. at 79, 224), which classifies him as a "person closely approaching advanced age" under 20 C.F.R. § 416.963(d) (2007). Turner has a high school education. (R. at 108, 225.) Turner has past work experience as a coal miner, a carpet layer, a mobile home repairman and a construction worker. (R. at 103, 251-53.) Turner testified at his hearing that he was disabled as a result of back and joint pain. (R. at 233.) He stated that he could walk on level ground for up to 30 minutes without interruption. (R. at 239.) He stated that he could sit and/or stand for up to one hour without interruption. (R. at 246.)

John Newman, a vocational expert, testified at Turner's hearing. (R. at 250-57.) Newman was asked to consider an individual of Turner's age, education and work experience, who had the residual functional capacity to perform medium work,² who required a sit/stand option, who could occasionally climb ladders, balance, kneel, crouch, crawl and stoop, who had a mild reduction in concentration and who could have no exposure to extreme temperature changes, dust, fumes or chemicals. (R. at 254-55.) Newman testified that there was not a significant number of jobs available at the medium exertion level that such an individual could perform. (R. at 256.) He stated that a significant number of light jobs existed that such an individual could perform, including jobs as an assembler, a packer and a cashier. (R. at 257.)

²Medium 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, he also can do sedentary and light work. *See* 20 C.F.R. § 416.967(c) (2007).

In rendering his decision, the ALJ reviewed medical records from Bede A.R. Pantaze, Ph.D., a licensed clinical psychologist; Dr. Linda Sue Cheek, M.D.; Dr. Edward Hunter, M.D.; Dr. Ranjy C. Basa, M.D.; Dr. Francis H. Shen, M.D.; Tonya McFadden, M.A., a licensed psychologist; Dr. Richard M. Surrusco, M.D., a state agency physician; Dr. Randall Hays, M.D., a state agency physician; Hugh Tenison, Ph.D., a state agency psychologist; and R. J. Milan Jr., Ph.D., a state agency psychologist. Turner's attorney also submitted medical reports from Russell County Medical Center to the Appeals Council.³

On October 29, 2001, Bede A. R. Pantaze, Ph.D., a licenced clinical psychologist, evaluated Turner at the request of Disability Determination Services. (R. at 115-20.) Pantaze reported that Turner had no apparent deficits in attention and concentration. (R. at 118.) There also was no evidence of a specific neurological impairment. (R. at 118.) Pantaze noted that Turner's level of impulse control was limited, and judgment was extremely poor. (R. at 119.) Pantaze diagnosed psychological factors affecting a medical condition and ruled out pain disorder associated with psychological factors. (R. at 120.) Pantaze assessed Turner's then-current Global Assessment of Functioning, ("GAF"),⁴ score at 75.⁵ (R. at 120.)

³Since the Appeals Council considered this evidence in reaching its decision not to grant review, (R. at 7-10), 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).

⁴ The 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).

⁵A 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,

Pantaze noted that there were many employment activities for which Turner would qualify, and that he was capable of managing his own finances. (R. at 120.)

On November 19, 2001, Dr. Linda Sue Cheek, M.D., examined Turner at the request of Disability Determination Services. (R. at 121-27.) Examination of Turner's cervical spine was normal for flexion and extension. (R. at 123.) Motor strength was normal. (R. at 123.) X-rays of Turner's lumbar spine were normal. (R. at 125.) Dr. Cheek noted that Turner had a need to alternate sitting and standing, that he could occasionally lift items weighing up to 20 pounds and that he was limited in his ability to push and/or pull with his lower extremities. (R. at 124.) Dr. Cheek also noted that Turner could occasionally bend, kneel, stoop, crouch, balance and climb. (R. at 124.)

On May 28, 2003, Dr. Edward Hunter, M.D., examined Turner at the request of Disability Determination Services. (R. at 128-33.) Turner complained of lower back pain. (R. at 128.) Dr. Hunter noted that Turner was pleasant and cooperative and was in no acute distress. (R. at 130.) Turner's range of motion was normal in all areas except the dorsolumbar spine. (R. at 132-33.) Turner had normal motor strength in both the upper and lower extremities. (R. at 130.) Dr. Hunter diagnosed chronic low back pain without evidence of muscle impairment, chronic headaches, chronic left lower extremity pain, chronic left knee pain and tobacco abuse. (R. at 131.) It was noted that Turner did not have any significant limitations in his ability to creep, to crawl, to crouch, to climb, to stoop, to bend, to lift, to carry, to travel, to speak or to hear. (R. at 131.) Dr. Hunter also did not find that Turner had any limitations in his capacity for understanding, memory, sustained concentration and persistence, social

occupational, or school functioning...." DSM-IV at 32.

interaction or adaptation. (R. at 131.)

On June 11, 2003, Dr. Richard M. Surrusco, M.D., a state agency physician, completed a medical assessment indicating that Turner had the residual functional capacity to perform medium work. (R. at 136-43.) No postural, manipulative, visual, communicative or environmental limitations were noted. (R. at 138-40.) This assessment was affirmed by Dr. Randall Hays, M.D., another state agency physician, on November 7, 2003. (R. at 143.)

On June 11, 2003, Hugh Tenison, Ph.D., a state agency psychologist, completed a Psychiatric Review Technique form, ("PRTF"), indicating that Turner had no medically determinable mental impairment. (R. at 144-57.) This assessment was affirmed by R. J. Milan Jr., Ph.D., another state agency psychologist, on November 7, 2003. (R. at 144.)

On November 24, 2003, Dr. Ranjy C. Basa, M.D., saw Turner for complaints of chronic back, hip and leg pain and depression. (R. at 191.) Turner was diagnosed as having chronic low back pain and depression. (R. at 191.)

On May 28, 2004, Dr. Francis H. Shen, M.D., saw Turner for complaints of back and bilateral lower extremity pain. (R. at 193-94.) Motor strength was normal in Turner's lower extremities. (R. at 194.) X-rays of Turner's lumbar spine showed mild degenerative spondylosis of the lower lumbar spine and a transitional vertebra. (R. at 195.) Dr. Shen diagnosed degenerative disc disease and left sacroiliitis. (R. at 194.)

On September 20, 2004, Tonya McFadden, M.A., a licensed psychologist, evaluated Turner at the request of Disability Determination Services. (R. at 197-201.) McFadden noted that there was no evidence that Turner had distorted thought processes, delusions or hallucinations, but that he seemed mildly depressed. (R. at 200.) Turner reported that Wellbutrin was “somewhat helpful.” (R. at 200.) McFadden diagnosed a pain disorder associated with both psychological factors and a general medical condition, and a major depressive disorder was ruled out. (R. at 201.) McFadden assessed Turner’s then-current GAF score at 65.⁶ (R. at 201.) McFadden reported that Turner could perform simple and repetitive tasks in addition to some detailed and complex tasks. (R. at 201.) She reported that Turner might have minimal disruptions in maintaining regular attendance and in performing work activities on a consistent basis. (R. at 201.) She further reported that Turner might have some difficulties interacting with co-workers and with the public and with dealing with usual stresses encountered in a competitive work environment. (R. at 201.)

McFadden completed a mental assessment indicating that Turner had mild limitations in his ability to remember locations and work-like procedures, to understand, remember and carry out short, simple instructions, to make simple work-related decisions, to interact appropriately with the public and to interact appropriately with supervisors. (R. at 203-05) She indicated that Turner had a satisfactory ability to understand, remember and carry out detailed instructions, to maintain attention and concentration for extended periods, to sustain an ordinary routine, to work with or near others without being distracted by them, to complete a normal workday or

⁶ 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.

workweek, to perform at a consistent pace and to respond appropriately to changes in a routine work setting. (R. at 203-04.) McFadden indicated that Turner was severely limited, but not precluded, in his ability to perform activities within a schedule, maintain regular attendance and be punctual and to respond appropriately to work pressures in a usual work setting. (R. at 203-04.)

On October 28, 2005, Turner presented to the emergency room at Russell County Medical Center for complaints of severe low back pain. (R. at 211.) X-rays of Turner's lumbar spine showed transitional SI vertebra and degenerative disc disease at the L5-S1 and S1-2 levels. (R. at 209.)

III. Analysis

The Commissioner uses a five-step process in evaluating SSI claims. *See* 20 C.F.R. § 416.920 (2007). *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. § 416.920 (2007). 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. § 416.920(a) (2007).

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. §1382c(a)(3)(A)-(B) (West 2003 & Supp. 2007); *McLain v. Schweiker*, 715 F.2d 866, 868-69 (4th Cir. 1983); *Hall v. Harris*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated August 3, 2005, the ALJ denied Turner's claim. (R. at 20-32.) The ALJ found that the medical evidence established that Turner suffered from severe impairments, namely degenerative disc disease, left sacroiliitis and pain disorder with depression, but she found that Turner 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 31.) The ALJ found that Turner retained the residual functional capacity to perform light work, which allowed a sit/stand option, required only occasional climbing, balancing, stooping, kneeling, crouching and crawling, required no exposure to extreme temperature changes and no unusual exposure to dust, fumes, chemicals and poor ventilation. (R. at 31.) The ALJ also found that Turner had a mild reduction in his ability to concentrate due to depression. (R. at 31.) Thus, the ALJ found that Turner was unable to perform his past relevant work. (R. at 31.) Based on Turner's age, education, work history and residual functional capacity and the testimony of a vocational expert, the ALJ found that Turner could perform jobs existing in significant numbers in the national economy. (R. at 31-32.) Thus, the ALJ found that Turner was not disabled under the Act and was not eligible for benefits. (R. at 32.) *See* 20 C.F.R. § 416.920(g) (2007).

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 his 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).

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. § 416.927(d), if she sufficiently explains her rationale and if the record supports her findings.

Turner argues that the ALJ erred in her evaluation of his mental impairments. (Plaintiff's Brief In Support Of Motion For Summary Judgment, ("Plaintiff's Brief"), at 8-12.) Turner argues that the ALJ erred by rejecting the opinion of psychologist McFadden and by substituting her opinion for that of a qualified psychologist. (Plaintiff's Brief at 8-12.) Turner further argues that the ALJ erred by failing to consider the effects of his physical impairments in combination with his mental

limitations. (Plaintiff's Brief at 12-13.)

Turner argues that the ALJ erred in her evaluation of his mental impairment. Based on my review of the record, I find that substantial evidence exists to support the ALJ's finding with regard to Turner's mental residual functional capacity. In October 2001, Pantaze assessed Turner's GAF score at 75, indicating only a slight impairment in his social and occupational functioning. (R. at 120.) In May 2003, Dr. Hunter reported that he found no limitations in Turner's capacity for understanding, memory, sustained concentration and persistence, social interaction or adaption. (R. at 131.) In September 2004, McFadden assessed Turner's GAF score at 65, indicating some mild symptoms or some difficulty in social or occupational functioning. (R. at 201.) In addition, Turner reported to McFadden that Wellbutrin was "somewhat helpful." (R. at 200.) "If a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986).

Turner further argues that the ALJ erred by rejecting McFadden's mental assessment and by substituting her opinion for that of a qualified psychologist. Based on my review of the record, I do not agree. The ALJ noted that she was rejecting McFadden's mental assessment, which indicated that Turner had "marked" limitations in his ability to perform activities within a schedule, maintain regular attendance and to be punctual. (R. at 26.) The ALJ noted that McFadden made these findings despite having reported in her narrative report that Turner would have only "minimal disruptions" in these areas. (R. at 26, 201.) The ALJ further noted that she was rejecting McFadden's assessment because it was inconsistent with her own narrative and her finding that Turner had a GAF score of 65, as well as the medical evidence

of record. (R. at 26.) Pantaze assessed Turner as having a GAF score that indicated that there were no mental health symptoms present. (R. at 120.) Pantaze also concluded that Turner could perform many kinds of employment activities. (R. at 120.) The evidence presented by Pantaze and the inconsistencies in the medical records of McFadden gave the ALJ substantial evidence on which to base her decision to reject McFadden's assessment. Therefore, I find that the ALJ did not err in her evaluation of Turner's mental impairments.

Turner further argues that the ALJ erred by failing to consider the effects of his physical impairments with his mental limitations. The Commissioner must consider the combined effects of all of a claimant's impairments and "not fragmentize them." *Baker v. Chater*, 957 F. Supp. 75, 81 (D. Md. 1996) (citing *Walker v. Bowen*, 889 F.2d 47, 50 (4th Cir. 1989)). Based on review of the ALJ's decision, I find that the ALJ considered the combined effects of Turner's various ailments in accordance with the regulations. In this case, the ALJ did consider each impairment, both singly and in combination with other impairments. It was found that Turner's impairments, singly or in combination, did not meet or medically equal one of the impairments listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 31.) The ALJ reached this decision by examining the medical opinions of Turner's treating and examining physicians, state agency medical consultants and Turner's daily activities. (R. at 26.)

For these reasons, I find that substantial evidence exists to support the ALJ's finding that Turner was not disabled.

PROPOSED FINDINGS OF FACT

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Substantial evidence exists to support the ALJ's finding with regard to Turner's mental impairment;
2. Substantial evidence exists to support the ALJ's finding with regard to Turner's residual functional capacity; and
3. Substantial evidence exists to support the ALJ's finding that Turner was not disabled under the Act.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Turner'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. § 636(b)(1)(c) (West 2006):

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 23rd day of July 2007.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE