

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

<b>KEITH E. RITCHIE,</b>	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 2:11cv00012
	)	
<b>MICHAEL J. ASTRUE,</b>	)	<b><u>REPORT AND RECOMMENDATION</u></b>
<b>Commissioner of Social Security,</b>	)	
Defendant	)	BY: PAMELA MEADE SARGENT
	)	United States Magistrate Judge

*I. Background and Standard of Review*

Plaintiff, Keith E. Ritchie, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), determining that he was not eligible for disability insurance benefits, (“DIB”), and supplemental security income, (“SSI”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. §§ 423, 1381 *et seq.* (West 2003 & West 2011). 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 (4<sup>th</sup> 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 (4<sup>th</sup> 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 (4<sup>th</sup> Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Ritchie protectively filed his applications for DIB and SSI<sup>1</sup> on March 14, 2008, alleging disability as of March 1, 2008,<sup>2</sup> due to “nerves,” back problems, depression, migraine headaches, problems sleeping and panic attacks. (Record, (“R.”), at 166-72, 197, 205, 257.) The claims were denied initially and on reconsideration. (R. at 118-19, 125-27, 132-33, 138-39, 141-42, 144-48, 150-52.) Ritchie then requested a hearing before an administrative law judge, (“ALJ”). (R. at 153.) A hearing was held on April 27, 2010, at which Ritchie was represented by counsel. (R. at 54-99.)

By decision dated August 6, 2010, the ALJ denied Ritchie’s claims. (R. at 13-27.) The ALJ found that Ritchie met the nondisability insured status

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<sup>1</sup> On January 26, 2006, Ritchie filed applications for SSI and DIB with an alleged onset date of November 14, 2005. (R. at 13.) These claims were denied initially and on reconsideration. (R. at 13.) By decision dated February 29, 2008, the ALJ denied Ritchie’s claims. (R. at 13, 103-11.) The ALJ found that the medical evidence established that Ritchie had severe impairments, namely hepatitis C, depression and a back disorder, but she found that his impairments did not meet or medically equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 105.) The ALJ also found that Ritchie had the residual functional capacity to perform simple, noncomplex light work that did not involve working with the public or close interaction with employees and which could be performed in a temperature-controlled environment. (R. at 107.)

<sup>2</sup> Therefore, Ritchie must prove disability between March 1, 2008, the alleged date of disability, and August 6, 2010, the date of the ALJ’s decision.

requirements of the Act for DIB purposes through December 31, 2010. (R. at 16.) The ALJ also found that Ritchie had not engaged in substantial gainful activity since March 1, 2008, the alleged onset date. (R. at 16.) The ALJ determined that the medical evidence established that Ritchie had severe impairments, namely back pain with mild degenerative disc disease, gastrointestinal problems, untreated hepatitis C, bipolar disorder and a history of opiate addiction, but she found that his impairments did not meet or medically equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 16.) The ALJ also found that Ritchie had the residual functional capacity to perform simple, noncomplex light<sup>3</sup> work that did not require working around the public or interactively with others and which allowed him to work in a temperature-controlled work environment. (R. at 22.) The ALJ found that Ritchie was unable to perform his past relevant work as a mine roof bolter, a correctional guard and a housekeeping/maintenance supervisor. (R. at 25.) Based on Ritchie's age, education, work history and residual functional capacity and the testimony of a vocational expert, the ALJ found that jobs existed in significant numbers in the national economy that he could perform, including jobs as a product packager, a kitchen helper, a laundry worker, a machine monitor, a clerical worker and a product inspector. (R. at 25-26.) Thus, the ALJ found that Ritchie was not under a disability as defined under the Act and was not eligible for benefits. (R. at 27.) *See* 20 C.F.R. §§ 404.1520(g), 416.920(g) (2011).

After the ALJ issued her decision, Ritchie pursued his administrative

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<sup>3</sup> Light 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), 416.967(b) (2011).

appeals, (R. at 8), but the Appeals Council denied his request for review. (R. at 1-4.) Ritchie 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 (2011). The case is before this court on Ritchie's motion for summary judgment filed September 15, 2011, and the Commissioner's motion for summary judgment filed November 22, 2011.

## *II. Facts*

Ritchie was born in 1962, (R. at 166, 171), which, at the time of the ALJ's decision, classified him as a "younger person" under 20 C.F.R. §§ 404.1563(c), 416.963(c). Ritchie has one year of college education and vocational training as an electrician. (R. at 203.) He has past relevant work as a roof bolter, a correctional officer and a housekeeping maintenance supervisor. (R. at 92-93, 218.)

Leah Perry Sawyers, a vocational expert, was present and testified at Ritchie's hearing. (R. at 92-97.) Sawyers was asked to assume a hypothetical individual of Ritchie's age, education and work experience who had the residual functional capacity to perform simple, noncomplex light work, who could not work around the general public, but who could work with other people in his work area without working cooperatively or interactively with others, and who would need to work in a temperature-controlled environment. (R. at 93-94.) Sawyers stated that such an individual could perform jobs at the light exertion level as a product packager, a kitchen helper and a laundry worker. (R. at 94-95.) She also identified jobs at the sedentary<sup>4</sup> level that such an individual could perform, including jobs as

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<sup>4</sup> Sedentary work involves lifting items weighing up to 10 pounds at a time and

a machine monitor, an unskilled clerical worker and a product inspector. (R. at 95.) Sawyers was asked to consider the same individual, but who was limited as indicated in the assessment completed by Dr. Uzma Ehtesham, M.D. (R. at 96, 581-82.) She stated that there would be no jobs available that such an individual could perform. (R. at 96.) Sawyers stated that an individual, who was limited as indicated in the assessment completed by B. Wayne Lanthorn, Ph.D., would not be able to perform substantial gainful activity. (R. at 96-97, 469-71.)

In rendering her decision, the ALJ reviewed records from Lee Regional Medical Center; Medical Associates of Southwest Virginia; Wellmont Lonesome Pine Hospital; Norton Community Hospital; Ralph Ott, L.P.C., a licensed professional counselor; Frontier Health; Amalia Collins, L.C.S.W., a licensed clinical social worker; Dr. Randall E. Pitone, M.D., a psychiatrist; Dr. Uzma Ehtesham, M.D., a psychiatrist; Indian Path Pavilion; Clinch Valley Treatment Center; Dr. Joseph Duckwall, M.D., a state agency physician; Louis Perrott, Ph.D., a state agency psychologist; Mountain Comprehensive Care Centers; B. Wayne Lanthorn, Ph.D., a licensed clinical psychologist; and Wellmont Bristol Regional Medical Center.

On August 29, 2004, Ritchie presented to Clinch Valley Treatment Center, (“Clinch Valley”), for treatment of substance abuse. (R. at 529-35.) The record does not contain any documentation for follow-up treatment. The next visit

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occasionally lifting or carrying articles like docket files, ledgers and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking or standing is often necessary in carrying out job duties. Jobs are sedentary if walking or standing are required occasionally and other sedentary criteria are met. *See* 20 C.F.R. §§ 404.1567(a), 416.967(a) (2011).

contained in the record is dated February 11, 2008, for chemical dependence bottle check. (R. at 543.) On February 16, 2008, Kelley Lambert, B.S., reported that Ritchie was not able to accept his responsibility in his failure to report for bottle check. (R. at 542.) His failure to maintain clinical contact was discussed on May 13, 2008. (R. at 539.) That same day, Lambert completed a quarterly review indicating that Ritchie continued to meet his goals and objectives. (R. at 537.) On May 27, 2008, November 25, 2008, and April 14, 2009, Ritchie reported that he was doing well. (R. at 538, 690-91.) In November 2008, Ritchie reported that he was working as a supervisor for Dorton Realty. (R. at 690.)

On July 5, 2007, Dr. Uzma Ehtesham, M.D., a psychiatrist, reported that Ritchie's mood was sad, and his affect was restricted. (R. at 443-44.) Dr. Ehtesham diagnosed major depressive disorder and generalized anxiety disorder. (R. at 444.) Dr. Ehtesham assessed Ritchie's then-current Global Assessment of Functioning, ("GAF"),<sup>5</sup> score at 60.<sup>6</sup> (R. at 444.) On July 24, 2007, Ritchie reported that his symptoms of depression had decreased with medication. (R. at 442, 486.) On September 18, 2007, Ritchie reported that his symptoms of depression and anxiety were improving. (R. at 438, 482.) In October 2007, Ritchie reported that he had fewer crying spells and that he had been feeling "happy." (R. at 481.) On December 20, 2007, Ritchie reported that he was doing well. (R. at 478.) He reported less anger and that his anxiety was improving. (R. at 478.) On January 28,

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<sup>5</sup> 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).

<sup>6</sup> A GAF score of 51-60 indicates that the individual has "[m]oderate symptoms ... OR moderate difficulty in social, occupational, or school functioning...." DSM-IV at 32.

2008, Ritchie reported that he was doing “fairly well” with his symptoms of depression. (R. at 477.) Dr. Ehtesham reported that Ritchie’s affect was depressed, and his memory was intact. (R. at 477.)

On April 15, 2009, Ritchie reported that his depressive symptoms were worse. (R. at 594.) On July 29, 2009, Ritchie reported that his depressive and anxiety symptoms had decreased. (R. at 590.) On August 24, 2009, Ritchie reported that his symptoms of depression were “off and on.” (R. at 588.) On September 30, 2009, Ritchie reported that his symptoms of depression were stable, his mood swings had decreased and his symptoms of anxiety were “off and on.” (R. at 586.)

On November 9, 2009, Dr. Ehtesham completed a mental assessment indicating that Ritchie had an unsatisfactory ability to understand and remember simple and complex instructions and to interact appropriately with the public. (R. at 581-83.) Dr. Ehtesham reported that Ritchie had no useful ability to carry out simple or complex instructions, to make judgments on simple or complex work-related decisions, to interact appropriately with supervisors and co-workers, and to respond appropriately to usual work situations and to changes in a routine work setting. (R. at 581-82.) Dr. Ehtesham reported that Ritchie was permanently disabled. (R. at 583.)

On December 9, 2009, Ritchie reported that his symptoms of anxiety were “off and on.” (R. at 627.) On March 1, 2010, Ritchie reported that he was still very nervous and that his anger was stable. (R. at 625.) On April 1, 2010, Ritchie reported that he was hallucinating a lot, his sleep was racing and his anger was

worse. (R. at 623.) On April 6, 2010, Ritchie reported that his hallucinations were worse, stating that he had increased visual hallucinations of his dead mother. (R. at 621.)

Dr. Ehtesham completed a mental assessment<sup>7</sup> indicating that Ritchie had a seriously limited ability to follow work rules and to maintain personal appearance. (R. at 435-37.) Dr. Ehtesham reported that Ritchie had no useful ability to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to deal with work stresses, to function independently, to maintain attention/concentration, to understand, remember and carry out complex, detailed and simple job instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 435-36.) Dr. Ehtesham reported that Ritchie had the ability to manage his own benefits. (R. at 437.)

Dr. Ehtesham completed a Mental Status Evaluation Form<sup>8</sup> indicating that Ritchie's depression had worsened and that he had suicidal ideations off and on. (R. at 544-48.) Dr. Ehtesham reported that Ritchie was alert and oriented. (R. at 545.) Ritchie's mood was sad, and his affect labile. (R. at 545.) Dr. Ehtesham noted that Ritchie had no problems with his memory, confusion, judgment or fund of information, experienced no delusions or hallucinations and that his ability to concentrate had decreased. (R. at 545-46.)

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<sup>7</sup> This mental assessment is not dated. (R. at 435-37.)

<sup>8</sup> This form is not dated. (R. at 544-48.)

On April 29, 2008, Ritchie was admitted to Indian Path Pavilion secondary to history of bipolar disorder and opiate dependence detoxification. (R. at 489-93.) Upon discharge on May 6, 2008, it was reported that Ritchie's mood was improving, and his affect was still slightly dysthymic. (R. at 489.) His discharge diagnoses were bipolar disorder most recent episode depressed, opiate dependence and withdrawal and anxiety disorder, not otherwise specified. (R. at 489.) His GAF score on admission was 20<sup>9</sup> with his GAF score at discharge being 60. (R. at 489.)

On July 22, 2008, Howard S. Leizer, Ph.D., a state agency psychologist, completed a Psychiatric Review Technique form, ("PRTF"), indicating that Ritchie suffered from an affective disorder, an anxiety-related disorder and a substance addiction disorder. (R. at 503-17.) Leizer reported that Ritchie had moderate restrictions on his activities of daily living, in maintaining social functioning and in maintaining concentration, persistence or pace. (R. at 513.) Leizer also reported that Ritchie had not experienced any episodes of decompensation of extended duration. (R. at 513.) Leizer reported that Ritchie appeared to be reasonably stable and capable of engaging in simple, nonstressful tasks. (R. at 517.)

That same day, Leizer completed a mental assessment indicating that Ritchie was moderately limited in his ability to understand, remember and carry out detailed instructions; to maintain attention and concentration for extended periods; to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; to sustain an ordinary routine without

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<sup>9</sup> A GAF score of 11-20 indicates that the individual has "[s]ome danger of hurting self or others ...OR occasionally fails to maintain minimal personal hygiene ... OR gross impairment in communication ...." DSM-IV at 32.

special supervision; to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; to interact appropriately with the general public; to accept instructions and respond appropriately to criticism from supervisors; to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; to respond appropriately to changes in the work setting; and to set realistic goals or make plans independently of others. (R. at 518-19.)

On December 29, 2008, Louis Perrott, Ph.D., a state agency psychologist, completed a mental assessment indicating that Ritchie was moderately limited in his ability to understand, remember and carry out detailed instructions; to maintain attention and concentration for extended periods; to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; to sustain an ordinary routine without special supervision; to work in coordination with or proximity to others without being distracted by them; to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; to interact appropriately with the general public; to accept instructions and respond appropriately to criticism from supervisors; to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; to respond appropriately to changes in the work setting; and to set realistic goals or make plans independently of others. (R. at 560-61.) Perrott reported that Ritchie retained the capacity to

perform simple, unskilled work in a setting where he did not have to interact with the general public. (R. at 563.)

That same day, Perrott completed a PRTF indicating that Ritchie suffered from an affective disorder, an anxiety-related disorder and a substance addiction disorder. (R. at 564-79.) Perrott reported that Ritchie had moderate restrictions on his activities of daily living, in maintaining social functioning and in maintaining concentration, persistence or pace. (R. at 574.) Perrott also reported that Ritchie had not experienced any episodes of decompensation of extended duration. (R. at 574.)

On April 6, 2010, Ritchie was admitted to Wellmont Bristol Regional Medical Center upon referral by Dr. Ehtesham due to history of bipolar disorder, which was not stabilized in an outpatient setting. (R. at 641-84.) It was reported that Ritchie showed improvement with medications. (R. at 683.) He was discharged on April 10, 2010, at his own request. (R. at 683.) At the time of discharge, Ritchie denied auditory or visual hallucinations. (R. at 683.) His insight and judgment were deemed intact. (R. at 683.) He was diagnosed with bipolar disorder and opiate dependence. (R. at 683.) His GAF score was assessed at 50<sup>10</sup> to 55 at time of discharge. (R. at 683.)

### *III. Analysis*

The Commissioner uses a five-step process in evaluating SSI and DIB

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<sup>10</sup> A GAF score of 41-50 indicates “[s]erious symptoms ... OR any serious impairment in social, occupational, or school functioning....” DSM-IV at 32.

claims. *See* 20 C.F.R. §§ 404.1520, 416.920 (2011); *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, 416.920. 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) (2011).

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)(A), 1382c(a)(3)(A)-(B) (West 2003, West 2011 & Supp. 2011); *see also 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).

Ritchie argues that the ALJ erred by failing to give controlling weight to his treating source, Dr. Ehtesham. (Plaintiff's Memorandum In Support Of His Motion For Summary Judgment, ("Plaintiff's Brief"), at 5-6.) As stated above, the court's function in this 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 (4<sup>th</sup> Cir. 1997).

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 (4<sup>th</sup> 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 (4<sup>th</sup> 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 she sufficiently explains her rationale and if the record supports her findings.

Ritchie argues that the ALJ erred by failing to give controlling weight to his treating source, Dr. Ehtesham. (Plaintiff's Brief at 5-6.) After a review of the evidence of record, I find Ritchie's argument on this point unpersuasive, but will, nonetheless, recommend remand on another basis. The ALJ must generally give more weight to the opinion of a treating physician because that physician is often most able to provide "a detailed, longitudinal picture" of a claimant's alleged

disability. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2) (2011). However, “[c]ircuit precedent does not require that a treating physician’s testimony ‘be given controlling weight.’” *Craig v. Chater*, 76 F.3d 585, 590 (4th Cir. 1996) (quoting *Hunter v. Sullivan*, 993 F.2d 31, 35 (4th Cir. 1992) (per curiam)). In fact, “if a physician’s opinion is not supported by clinical evidence or if it is inconsistent with other substantial evidence, it should be accorded significantly less weight.” *Craig*, 76 F.3d at 590.

Based on my review of the record, I find that substantial evidence exists to support the ALJ’s decision to not give controlling weight to Dr. Ehtesham’s opinion that Ritchie was “permanently disabled,” because it was not supported by the record, including Dr. Ehtesham’s own treatment notes. (R. at 19.) Significantly, just one day after stating that Ritchie was “permanently disabled,” Dr. Ehtesham’s treatment notes indicate that Ritchie had depression “off and on.” (R. at 584.) The record shows that Ritchie repeatedly reported that his symptoms of depression and anxiety had decreased and were improving with medication. (R. at 442, 477-78, 482, 486, 590.) In October 2007, Ritchie reported that he experienced fewer crying spells and that he had been feeling “happy.” (R. at 481.) In August 2009, Ritchie reported that his symptoms of depression were “off and on.” (R. at 588.) In September 2009, Ritchie reported that his symptoms of depression were stable, his mood swings had decreased, and his symptoms of anxiety were “off and on.” (R. at 586.) “If a symptom can be reasonably controlled by medication or treatment, it is not disabling.” *Gross v. Heckler*, 785 F.2d 1163, 1166 (4<sup>th</sup> Cir. 1986).

Dr. Ehtesham’s opinion also is not supported by the other evidence of record. Ritchie reported to Lambert in November 2008 that he was working as a

supervisor for a realtor. (R. at 690.) Ritchie reported to Dr. Ehtesham three weeks prior to the administrative hearing that he was having hallucinations, for which he was voluntarily hospitalized, by the time of discharge, however, Ritchie's behavior was appropriate, he denied auditory or visual hallucinations, his mood was euthymic, and his insight and judgment were intact. (R. at 683.) His GAF score at discharge was assessed at 50 to 55, indicating serious to moderate symptoms. (R. at 683.)

While the ALJ gave little weight to Dr. Ehtesham's opinions, she noted that she was giving significant weight to the opinions of the state agency psychologists because their opinions were consistent with the objective findings and treatment history. (R. at 25.) In July 2008, state agency psychologist Leizer reported that Ritchie appeared to be reasonably stable and capable of engaging in simple, nonstressful tasks at substantially gainful activity levels. (R. at 517.) In December 2008, state agency psychologist Perrott opined that "[d]espite some limitations resulting from [Ritchie's] mental impairments, he retains the capacity to perform simple unskilled work in a setting where he [does] not have to interact with the general public." (R. at 563.) These opinions provide support for the rejection of Dr. Ehtesham's opinions. These opinions do not, however, support the ALJ's finding as to Ritchie's mental residual functional capacity.

As stated above, the ALJ found the only mental limitations on Ritchie's work-related abilities were that he was limited to simple, noncomplex work that did not require him to work around the public or interactively with others. (R. at 22.) In reaching this conclusion, the ALJ stated that she gave significant weight to the opinions of the state agency psychologists. (R. at 25.) To the contrary, the state

agency psychologists placed many more restrictions on Ritchie's mental work-related abilities than found by the ALJ. In particular, both state agency psychologists found that Ritchie was moderately limited in his ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; to sustain an ordinary routine without special supervision; to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; to accept instructions and respond appropriately to criticism from supervisors; to respond appropriately to changes in the work setting; and to set realistic goals or make plans independently of others. (R. at 518-19, 560-61.) By not including these restrictions, the ALJ necessarily rejected them. Furthermore, she rejected them without any explanation of her reasoning.

Since the uncontradicted psychological evidence placed restrictions on Ritchie's work-related mental abilities in these areas, the ALJ was not free to reject this evidence without explanation. *See Sterling Smokeless Coal Co.*, 131 F.3d at 439-40; *King*, 615 F.2d at 1020.

Based on my review of the record, and for the above-stated reasons, I find that substantial evidence does not exist in the record to support the ALJ's findings as to Ritchie's mental residual functional capacity.

### **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 does not exist to support the Commissioner's mental residual functional capacity finding; and
2. Substantial evidence does not exist to support the Commissioner's finding that Ritchie was not disabled under the Act and was not entitled to DIB or SSI benefits.

### **RECOMMENDED DISPOSITION**

The undersigned recommends that the court deny Ritchie's and the Commissioner's motions for summary judgment, vacate the Commissioner's decision denying benefits and remand this case to the Commissioner for further consideration consistent with this Report and Recommendation.

### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(C) (West 2006 & Supp. 2011):

Within fourteen 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 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, 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: May 9, 2012.

s/ *Pamela Meade Sargent*  
UNITED STATES MAGISTRATE JUDGE