

A. Incomplete Administrative Record

As part of the statutory appeal process, the Commissioner is mandated to " file a certified copy of the transcript of record including the evidence upon which the findings and decision complained of are based." 42 U.S.C. § 405(g). It is then the court's obligation to review the record as a whole to determine whether the administrative findings are supported by substantial evidence. (Id.; *Thomas v. Comm'r. of Soc. Sec.*, 24 Fed. Appx. 158, 162 (4th Cir. 2001) ("[w]e are obliged to review the record as a whole'). Therefore, unless the court is able to exercise an informed judicial review on the incomplete record now before it, it must be remanded to the agency for further consideration. See *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 594 (1980).

In the case now before the court, the plaintiff's appeal is both narrow and focused. It is her contention that the administrative law judge ("ALJ") erred at the second decisional step¹ by concluding that her bipolar condition was not a *severe*² medically determinable impairment which did not limit significantly her ability to do basic work activities. Of necessity, central to this determination was the ALJ's consideration of the medical record, including certain missing treatment notes (exhibits 13F, 14F, 15F, and 16F) and a missing mental status assessment (exhibit 17F). (See

¹ To facilitate a uniform and efficient processing of disability claims, the Social Security Act has by regulation reduced the statutory definition of "disability" to a series of five sequential questions. An examiner must consider whether the claimant (1) is engaged in substantial gainful activity, (2) has a severe impairment, (3) has an impairment which equals an illness contained in the Social Security Administration's Official Listings of impairments found at 20 C.F.R. Part 4, Subpt. P, Appx. 1, (4) has an impairment which prevents past relevant work, and (5) has an impairment which prevents her from doing substantial gainful employment. 20 C.F.R. § 404.1520. If an individual is found not disabled at any step, further inquiry is unnecessary. 20 C.F.R. §.404.1503(a); *Hall v. Harris*, 658 F.2^d 260 (4th Cir. 1981)

² Quoting *Brady v. Heckler*, 724 F.2^d 914, 920 (11th Cir. 1984), the Fourth Circuit held in *Evans v. Heckler*, 734 F.2^d 1012, 1014 (4th Cir. 1984), that "an impairment can be considered as 'not severe' only if it is a *slight abnormality* which has such a *minimal effect* on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education, or work experience." See also 20 C.F.R. § 404.1520(c).

R.13-18) Likewise, these missing records were properly considered by the ALJ as part of his assessment of the weight to be given to the plaintiff's statements about the nature and functional impact of her mental impairment. (*See* R.16.) Given the significant decisional relevance of these missing records, the record before the court is inadequate to permit an informed and meaningful judicial review. *See Harrison.*, 446 U.S. at 594

B. Proposed Findings of Fact

As supplemented by the above summary and analysis and on the basis of a careful examination of the administrative record, albeit incomplete, the undersigned submits the following formal findings, conclusions and recommendations:

1. The administrative record submitted to the court is significantly incomplete;
2. The incomplete record does not permit a meaningful and informed judicial review of the Commissioner's final decision;
3. The incomplete record does not permit an informed review of the Commissioner's finding that the plaintiff's bipolar condition is *non-severe*;
4. The final decision of the Commissioner should be reversed and the case remanded pursuant to Sentence Four of 42 U.S.C. § 405(g) for further consideration and, if necessary, further development of the record;³ and
5. The case should be dismissed from the court's docket with leave granted to the parties to have the case be restored to the active docket of the court upon motion of either party, provided such motion is made in connection with the filing of a full and accurate transcript of the entire administrative record.

C. Recommended Disposition

³ In *Melkonyan v. Sullivan*, 501 US 89, 101-102 (1991), the Supreme Court stated that in § 405(g) actions, such as the instant case now before this court, "remand orders must either accompany a final judgment affirming, modifying, or reversing the administrative decision in accordance with sentence four, or conform with the requirements outlined by Congress in sentence six."

For the foregoing reasons, it is RECOMMENDED as follows: the summary judgment motions of both parties be DENIED; the Commissioner's decision denying benefits be VACATED; the case be REMANDED pursuant to Sentence Four of 42 U.S.C. § 405(g) for further consideration in accordance with this Report and Recommendation; and leave be granted for this case to be restored to the active docket of the court upon motion of either party, if such motion is made in connection with the filing of a full and accurate transcript of the entire administrative record .

The clerk is directed to transmit the record in this case immediately to the presiding district judge and to transmit a copy of this Report and Recommendation to all counsel of record.

D. Notice to the Parties

Both sides are reminded that, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, they are entitled to note objections, if any they may have, to this Report and Recommendation within fourteen (14) days hereof. **Any adjudication of fact or conclusion of law rendered herein by the undersigned to which an objection is not specifically made within the period prescribed by law may become conclusive upon the parties.** Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1) as to factual recitals or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objections.

DATED: 25th day of March 2010.

/s/ James G. Welsh
United States Magistrate Judge