

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD HELLER,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

ORDER

03-C-0587-C

Plaintiff Donald Heller has filed objections to the report and recommendation entered herein by the United States Magistrate Judge on May 17, 2004. The magistrate judge recommended that the court affirm the decision of defendant Jo Anne B. Barnhart's denial of plaintiff's application for supplemental security income benefits. Defendant argues that the magistrate judge erred in three respects: (1) in upholding the administrative law judge's assessment of plaintiff's mental residual functional capacity; (2) in upholding the administrative law judge's decision to place more weight on a treating physician's earlier residual functional capacity determination than on a current determination; and (3) in failing to find the administrative law judge's credibility assessment erroneous under

Carradine v. Barnhart, 360 F.3d 751 (7th Cir. 2004).

After reviewing the magistrate judge's report, defendant's objections and the record, I am persuaded that the magistrate judge's recommendation is correct. The only close question is whether the administrative law judge gave an adequate explanation of her determination that plaintiff's mental impairments would not prevent him from performing a number of unskilled jobs that existed within the state. It would have been an easy question if the administrative law judge had explained why she did not mention the consulting psychiatrist's determinations that plaintiff had moderate limitations upon his ability to make decisions, to carry out detailed instructions, to understand and remember detailed instructions and to sustain an ordinary routine without special supervision. However, as the magistrate judge noted, the record contains substantial support for her conclusion that plaintiff was capable of performing unskilled work: the consulting psychiatrist's opinion that plaintiff could perform such work despite his mental deficiencies, the evidence that plaintiff's mental limitations had not kept him from performing work successfully in the past and plaintiff's own admissions that he was able to maintain his household to the extent that his physical pain permitted. In view of the evidence in the record supporting the administrative law judge's decision, remanding the case merely to allow her to provide citations to the evidence on which she relied would serve only to delay the resolution of other applications for benefits.

As for the remaining objections that plaintiff makes, the magistrate judge explained persuasively why it was not error for the administrative law judge to rely on the treating physician's earlier report. The administrative law judge explained her decision to give it more weight, noting that the limitations the doctor described in the later report were inconsistent with plaintiff's assertions and the objective findings and were not supported by any treatment notes that would explain the reduction in residual functional capacity in the short time that elapsed between the two reports.

Finally, it was not error for the magistrate judge to find that the administrative law judge had a solid basis on which to discount plaintiff's credibility. Carradine, 360 F.3d 751, holds that administrative law judges cannot ignore social security claimants' subjective reports of pain simply because those complaints are not supported by objective medical findings. See also Donahue v. Barnhart, 279 F.3d 441, 444 (7th Cir. 2002) (citing 20 C.F.R. § 416.929(c)(2)) (agency must consider all evidence)). The administrative law judge did not limit her assessment of plaintiff's credibility to the lack of objective medical findings. She took into consideration a wide range of record evidence before reaching her decision, including plaintiff's report of his daily activities, his limited use of pain medication, his lack of need for any additional surgeries, hospitalization or participation in a pain management clinic since his alleged onset date and his unwillingness to accept the epidural steroid injections his doctors have suggested. Her approach was consistent with the holding in

Carradine.

ORDER

IT IS ORDERED that the United States Magistrate Judge's recommendation is ADOPTED; FURTHER, IT IS ORDERED that the decision of defendant Jo Anne B. Barnhart denying plaintiff Donald Heller's application for supplemental social security income benefits is AFFIRMED.

Entered this 15th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge