

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

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KENNETH MATZKE,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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ORDER

05-C-0606-C

Plaintiff Kenneth Matzke has filed objections to the report and recommendation entered by the United States Magistrate Judge on May 23, 2006. The magistrate judge recommended affirmance of defendant Jo Anne B. Barnhart's decision to find plaintiff not disabled and therefore not eligible for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382, 1382c. Plaintiff's objections rest on his contention that the decision of the administrative law judge is not supported by substantial evidence because he failed to account adequately for all of plaintiff's limitations and made a faulty credibility determination.

Having reviewed the report, plaintiff's objections, the briefs that the parties submitted

to the magistrate judge and the record, I am persuaded that the magistrate judge's recommendation is correct. I disagree with plaintiff that the magistrate judge erred in his handling of defendant's alleged waiver of plaintiff's claim of fibromyalgia. Defendant did not waive the issue; she addressed it in her brief at page 7, pointing out that the administrative law judge did not ignore the issue of fibromyalgia but considered it as an element of plaintiff's allegations of disabling pain and found it, along with plaintiff's other allegations, not wholly credible.

Plaintiff argues that the administrative law judge erred in not evaluating plaintiff's claim of fibromyalgia under the relevant law and in light of the objective medical evidence. As I understand plaintiff's argument, it is that because fibromyalgia lacks any objective or measurable symptoms, the administrative law judge cannot rely on the claimant's credibility as the basis for rejecting his claim of debilitating pain. He adds the puzzling statement that "[b]y definition, fibromyalgia (or myofascial pain) lacks a subjective base with regard to disabling pain." Plt.'s Objs., dkt. #11, at 3. Perhaps he meant to say "objective"; if the condition lacks both a subjective and an objective basis, how could it exist?

Given the difficulty of finding objective indications of fibromyalgia, a practitioner must rely heavily on what her patient reports about his unmeasurable symptoms such as fatigue and pain. If those reports come from a patient who is unreliable about other matters, it is not unreasonable to question their accuracy. In this case, the administrative law judge

found a number of reasons to question the accuracy of plaintiff's reporting of his medical condition, so it was not surprising that he was skeptical of plaintiff's reports of fibromyalgia-like symptoms and resulting pain. Nevertheless, he credited plaintiff with having a back impairment with myofascial pain and characterized it as one of several severe impairments that troubled plaintiff. He concluded, however, that these impairments were not listed in the regulations or equal to one listed.

Plaintiff criticizes the administrative law judge for not giving plaintiff's complaint of fibromyalgia the close analysis required under Sarchet v. Chater, 78 F.3d 305 (7th Cir. 1996). In doing so, he overstates the holding of the case. Sarchet is important for its recognition of fibromyalgia as a real condition and its related concern that administrative law judges not dismiss complaints of the condition out of hand. The court did not say, however, that they could not analyze the complaints in the same way that they analyzed complaints of other conditions whose symptoms cannot be measured readily, such as migraine headaches or chronic fatigue syndrome. In fact, the court said the opposite: "Sarchet testified that her pain has virtually immobilized her but of course the administrative law judge did not have to believe her. If the administrative law judge believed the medical reports that Sarchet has enough strength to work and disbelieved Sarchet's own testimony, this would compel the denial of the application for benefits." Id. at 307.

The court of appeals reversed the administrative law judge's decision in Sarchet

because it did not find that he had built an accurate and logical bridge between the evidence and the result. Id. In this case, by contrast, the administrative law judge's reasoning is sufficiently transparent to show how he reached his conclusion. He did not rely solely on the discrepancy between plaintiff's report of pain and the medical reports; cf. Powers v. Apfel, 207 F.3d 431, 435 (7th Cir. 2000) ("While a hearing officer may not reject subjective complaints of pain solely because they are not fully supported by medical testimony, the officer may consider that as probative of the claimant's credibility."), he took into consideration other evidence, such as reports from the Division of Vocational Rehabilitation that plaintiff did not seem motivated to work, reports from different doctors that plaintiff's main motivation seemed to be obtaining obtain narcotics and plaintiff's failure to complete physical therapy, as the magistrate judge explained in detail at pp. 17-18 of his report. That another factfinder might have viewed this evidence differently does not mean that this administrative law judge erred in his view of the evidence or that the evidence is not sufficient to support his decision.

The magistrate judge's report refutes plaintiff's contention that his arguments about his Functional Capacity Evaluation were not addressed. The magistrate judge explained that the administrative law judge's credibility determination was neither erroneous nor illogical. Despite plaintiff's belief that the Functional Capacity Evaluation was a valid measure of his abilities, the administrative law judge was within his rights in taking a different view of the

document. It is his job to weigh and interpret the evidence; if substantial evidence supports the resulting decision, that is the end of the matter. This court is not permitted to substitute its own view of the evidence for that of the administrative law judge.

ORDER

IT IS ORDERED that the report entered by United States Magistrate Judge Stephen Crocker on May 23, 2006, is ADOPTED as the court's own. FURTHER, IT IS ORDERED that the decision of defendant Jo Anne B. Barnhart, Commissioner of Social Security finding plaintiff Kenneth Matzke not disabled and therefore ineligible for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382, 1382c is AFFIRMED.

Entered this 15<sup>th</sup> day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge