

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

GABRIEL HUICHAN,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

ORDER

05-C-0268-C

In a report and recommendation issued on March 20, 2006, the United States Magistrate Judge recommended a remand of plaintiff Gabriel Huichan's action for review of defendant Jo Anne B. Barnhart's denial of his application for Supplemental Security Income benefits. The magistrate judge found that the administrative law judge had failed to consider a favorable report from a consulting examiner, Linda Ingison. He recommended remand to the commissioner for the sole purpose of accounting for the report in assessing plaintiff's impairment severity and his mental residual functional capacity, assuming he were not addicted to alcohol.

Plaintiff does not object to the recommendation for remand. However, he takes

exception to the magistrate judge's criticism of plaintiff's focus on the administrative law judge's failings. Plaintiff complained that the administrative law judge had failed to follow the commissioner's procedure for evaluating mental impairments set forth at 20 C.F.R. § 416.920a and had failed to track every work-related area of plaintiff's mental functioning in assessing plaintiff's residual functional capacity and in framing hypothetical questions to the vocational expert. The magistrate judge noted that plaintiff's counsel continues to raise these arguments and argue them at length despite this court's repeated refusal to accept them.

It may be that the Court of Appeals for the Seventh Circuit will adopt plaintiff's position at some time. Until it does, however, this court will continue to follow what it believes to be the court of appeals' lead and reject the argument that administrative law judges must articulate their residual functional capacity determinations in terms that are identical to those in the Social Security Administration's Mental Residual Functional Capacity Assessment Form. Instead, it will look to the substance of the administrative law judges' findings to determine whether, as to each claimant, the judge has incorporated all of the limitations supported by the medical evidence in the record. This does not mean that the court will approve every hypothetical question phrased in terms of types of work; it does mean that the court will not reject such hypotheticals so long as the record supports the conclusions contained in the questions.

ORDER

IT IS ORDERED that the report of the United States Magistrate Judge is ADOPTED as the court's own and this case is REVERSED and REMANDED to defendant Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g) for consideration of the report of Dr. Linda Ingison.

Entered this 19th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge