IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

SCOTT B. TRUMPY,

Plaintiff,

v. MEMORANDUM AND ORDER

JO ANNE BARNHARDT, 06-C-329-S
Commissioner of Social Security,

Defendant.

Plaintiff Scott B. Trumpy brings this action pursuant to 42 U.S.C. § 405(g) for review of the defendant Commissioner's final decision denying him Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI). He asks the Court to reverse the decision of the Commissioner or to remand the case for further proceedings.

Plaintiff applied for benefits on July 27, 2001 alleging disability since December 31, 1998 due to arm pain, depression, anxiety and a learning disorder. His applications were denied initially and upon reconsideration.

A hearing was held on May 18, 2004 before Administrative Law Judge (ALJ) Arthur Schneider. In a written decision dated May 27, 2004 the ALJ found plaintiff not disabled. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied plaintiff's request for review on April 21, 2006.

FACTS

Plaintiff was born on July 24, 1962. He has an 11th grade education and no vocational training. He last worked as a detailer at Fagan Chevrolet.

Plaintiff had a 1995 injury to his left wrist and then injured his right wrist in 1998. Dr. Paul Mannino commenced treating plaintiff in 2000. On plaintiff's first visit Dr. Mannino noted as follows:

> Patient is a 37 year old white male, new patient here to me at the clinic, who was being seen at Riverview but transferred his case here. Dr. Avery left over at Riverview. He has chronic pain in his arms. Looking back through his notes, nobody can really find anything wrong with him.

In June 2001 Dr. Mannino reported that plaintiff's exam revealed normal sensation, reflexes and muscle strength.

Beginning in September 2001 plaintiff was treated at the Pain Clinic at Mercy Hospital in Janesville. He received numerous injections to relieve his chronic pain. On September 24, October 8, October 22 and November 5, 2001 plaintiff had Bretylium Bier blocks administered to his right upper extremity. He was diagnosed with reflex sympathetic dystrophy (RSD). On November 14, 2001 plaintiff had a stent-like angioblock to his right upper extremity. An interscalene block was administered to plaintiff's left upper extremity on December 3, 2001.

M. J. Baumblatt, MD, a medical consultant for the Social Security Administration, completed a physical residual functional capacity assessment for plaintiff on December 26, 2001. He concluded that plaintiff was capable of a full range of light work.

On January 9, January 21 and February 25, 2002 plaintiff received stellate ganglion blocks to his upper extremities to address symptoms of RSD. He received interscalene blocks to his left upper extremity on January 18 and March 11, 2002.

On May 21, 2002 plaintiff saw Dr. Mannino and reported that the pain clinic injections were not really helping. On June 26, 2002 plaintiff reported to Dr. Mannino that he had stopped going to the pain clinic.

On August 16, 2002 Joan Crennan, MD, a medical consultant for the Social Security Administration, reviewed plaintiff's medical record and found plaintiff restricted to lifting 20 pounds occasionally and ten pounds frequently, standing, walking and sitting 6 hours in an eight hour workday but limited in pushing, pulling, reaching, handling and fingering with the upper extremities.

On March 5, 2003 Dr. Mannino indicated that plaintiff was essentially unable to use his arms at all and unable to work due to severe chronic pain. Tinel's and Phalen's signs were negative and plaintiff had no tenderness in either wrist or forearm.

Plaintiff's strength, sensation and reflexes were normal. Dr. Mannino prescribed Percocet and Oxycontin for plaintiff.

In Dr. Mannino's opinion plaintiff was restricted to lifting and carrying 10 pounds occasionally and less than 10 pounds frequently and unable to perform any gross or fine manipulation or reaching. Dr. Mannino diagnosed plaintiff with chronic pain due to RSD in his upper extremities. Dr. Mannino concluded that plaintiff is incapable of even low stress jobs because his symptoms frequently interfere with his attention and concentration.

Robert Gordon, PhD., conducted a psychological evaluation of plaintiff on June 12, 2000 at the request of the Bureau of Disability Determination. Dr. Gordon noted that he had previously seen plaintiff as part of the sex offender treatment program. Dr. Gordon indicated that plaintiff had a history of substance abuse and a criminal history. Plaintiff told Dr. Gordon that he had remained drug free until early 2000 when he used drugs for one month.

Dr. Gordon diagnosed plaintiff with a mildly depressive affect, monotone speech, limited general fund of knowledge and concrete thoughts. Dr. Gordon diagnosed plaintiff with a history of alcohol and marijuana abuse and dysthymia.

Plaintiff began psychological treatment in September 2001 at Mercy Counseling. His treating psychiatrist was Dr. William J. Sullivan. Plaintiff was hospitalized two days with depression and

was diagnosed with Major Depression. On December 6, 2001 plaintiff was admitted to Mercy Hospital for electroconvulsive therapy. The current GAF score was 50 and 20 previously.

Jack Spear, PhD, a psychological consultant for the Social Security Administration, assessed plaintiff's mental impairments on December 21, 2001. Dr. Spear concluded that plaintiff suffers from a severe affective disorder resulting in mild limitations of daily activities and moderate impairment of social functioning and concentration, persistence and pace. No episodes of decompensation were noted. Spear determined that plaintiff retained the mental functional capacity for simple work that involves little contact with others.

On May 23, 2002 plaintiff saw his psychiatrist at Mercy Health and reported having panic attacks three times a week. Plaintiff returned on June 24, 2002 and voiced frustration with his learning disability.

On August 16, 2002 Keith E. Bauer, PhD, conducted a psychological review of plaintiff's file at the request of the Commissioner. He concluded that plaintiff had severe affective and anxiety related disorders that moderately limited his daily activities, social functioning and concentration, persistence and pace. He noted the presence of one or two episodes of decompensation. Dr. Bauer concluded that plaintiff was capable of

performing simple work that does not involve much contact with others.

On October 6, 2003 plaintiff was admitted to the WINGS Program at Mercy Hospital to treat his anxiety and depression. At the request of Lisa Broll, a licensed professional counselor, plaintiff saw Dr. Oduwole, a psychiatrist. Dr. Oduwole indicated plaintiff had a depressed mood, but intact memory, average intellect, fair judgment and no hallucinations or delusions.

In January 2004 Lisa Broll and Dr. Oduwole co-signed a questionnaire concerning plaintiff's mental status. The questionnaire indicated that plaintiff had been in therapy with Ms. Broll since September 2002 two times a month and had seen Dr. Oduwole since December 2003. They wrote that plaintiff suffered major depression and reflex sympathetic dystrophy, describing signs of depression including that his thoughts were clouded at times. They assessed the claimant as having marked and extreme mental limitations with one or two periods of decompensation. They found that plaintiff was unable to complete a normal workday or workweek without interruption from psychologically based symptoms.

At the May 18, 2004 hearing before the ALJ plaintiff appeared with counsel and testified that he had a learning disability and that he is unable to work due to RSD in his arms and severe depression. He further testified that he takes narcotic medications for chronic pain.

Kenneth Sherry, a psychological expert, testified that plaintiff exhibited substance abuse and personality disorders. He further testified that plaintiff is mildly to moderately impaired in daily activities, social functioning and concentration, persistence and pace. Dr. Sherry also testified that plaintiff had one or two episodes of concentration.

Gregory Wisniewszki, a vocational expert, was present at the hearing and had reviewed the record. The ALJ asked the expert whether an individual of plaintiff's age, education and work experience who was limited to lifting and carrying twenty pounds occasionally and 10 pounds frequently, sitting and standing six hours in an 8-hour workday, and performing simple, routine, repetitive, low stress jobs. The expert testified that such an individual would be able to do any of plaintiff's past jobs as an automobile detailer, truck washer and machine operator.

In his May 27, 2004 written decision the ALJ concluded that plaintiff had a technically "severe" overuse syndrome of the upper extremities and a mental impairment that resulted in mild to moderate limitations of daily living and concentration, persistence and pace with moderate limitations of social functioning and one possible episode of extended decompensation. The ALJ found that plaintiff's subjective complaints lack a reasonable medical basis and are not credible. The ALJ concluded that plaintiff's

impairments did not meet or equal the requirements of any impairment listed in Appendix 1, Subpart P, Regulations No. 4.

The ALJ then found that plaintiff could perform simple, routine, repetitive, low stress forms of work activity but limited to light work not requiring the lifting of more than twenty pounds occasionally or ten pounds frequently and sitting or standing for six hours in an eight hour work day. The ALJ concluded that plaintiff retained the residual functional capacity to perform his past work together with other jobs available in the Wisconsin economy and was not disabled. The ALJ discounted Lisa Broll's assessment of plaintiff's mental status because she did not cite substance abuse as a factor. The ALJ also discounted Dr. Mannino's opinion that plaintiff was unable to use his hands at all and was incapable of work because it was based on plaintiff's self description.

The ALJ made the following findings:

> 1. The claimant met the disability insured status requirements of the Act on December 31, 1998 the date the claimant stated he became unable to work, and continues to meet them only through December 31, 2001.
>
> 2. The claimant has not engaged in substantial gainful activity since his alleged onset of disability.
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> 3. The medical evidence establishes that the claimant has severe overuse syndrome of the upper extremities and affective, substance abuse, and personality disorders, but that he does not have an impairment or combination of impairments listed in, or medically equal to

> one listed in Appendix 1, Subpart P, Regulations No. 4.
>
> 4. The claimant's subjective complaints lack a reasonable medical basis and are not credible.
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> 5. The claimant has the residual functional capacity to perform simple, routine, repetitive, low stress light work not requiring the lifting of more than twenty pounds or ten pounds with frequency. He can sit or stand for as much as six hours each during and eight-hour day (20 CFR §§ 404.1545 and 416.945).
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> 6. The claimant's past relevant work as automobile detailer, truck washer, and machine operator did not require the performance of work-related activities precluded by the above limitation(s) (20 CFR §§ 404.1565 and 416.965).
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> 7. The claimant's limitations do not prevent the claimant from performing his past relevant work.
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> 8. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of this decision (20 CFR §§ 404.1520(c) and 416.920(c).

OPINION

This Court must determine whether the decision of the Commissioner that plaintiff was not disabled is based on substantial evidence pursuant to 42 U.S.C. § 405(g). See Arbogast v. Bowen, 860 F. 2d 1400, 1402-1403 (7th Cir. 1988). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

Disability determinations are made pursuant to a five-step sequential evaluation procedure. 20 CFR § 404.1520(a)-(f). First, the claimant must not be performing substantial gainful activity. Second, the claimant must have a severe, medically determinable impairment. Third, a claimant will be found disabled if his or her impairment is equal in severity to a listed impairment in 20 C.F.R. Subpart P, Appendix 1. Fourth, if the claimant does not meet the third test, he/she must not be able to perform his/her past work. Fifth, if the claimant cannot perform his/her past work, he or she must not be able to perform any existing jobs available in the national economy given his or her educational background, vocational history and residual functional capacity.

The ALJ concluded that plaintiff had a technically "severe" overuse syndrome of the upper extremities and a mental impairment which did not meet or equal the requirements of any impairment listed in Appendix 1, Subpart P, Regulations No. 4. The ALJ then found that plaintiff could perform simple, routine, repetitive, low stress forms of work activity but was limited to light work not requiring the lifting of more than twenty pounds occasionally or ten pounds frequently and sitting or standing for six hours in an eight hour work day. The ALJ concluded that plaintiff was not disabled because he retained the residual functional capacity to perform his past work together with other jobs available in the Wisconsin economy.

Plaintiff argues that the ALJ did not properly consider the plaintiff's diagnosis of RSD. The ALJ found that plaintiff had a severe medically determinable impairment of overuse syndrome of the upper extremities. This is consistent with plaintiff's diagnosis of RSD.

The Commissioner has specifically addressed the issue of RSDS/CRPS by creating SSR 03-2p directing ALJ's on how to evaluate this condition for determination of "disability". The regulation further states that once an impairment has been established, "an individual's symptoms and the effects of those symptoms on the individual's ability to function must be considered...in assessing the individual's residual functional capacity."

The ALJ found that plaintiff had a severe impairment of RSD. He then evaluated the plaintiff's symptoms of this impairment to determine his residual functional capacity. The ALJ complied with the SSR 03-02.

Plaintiff also claims that the ALJ erred in discrediting the opinions of plaintiff's treating physicians, Dr Mannino and Dr Oduwole. Although it is not clear form the record whether Dr Oduwole is plaintiff's treating psychiatrist, he did treat plaintiff in late 2003. The ALJ never mentioned Dr. Oduwole or that he had cosigned the questionnaire with Lisa Broll when he discounted the opinion of Ms. Broll. The Court cannot find that the ALJ properly considered Dr. Oduwole's opinion.

The opinion of Dr. Mannino, plaintiff's treating physician, is to be given controlling weight if it is well-supported by medically accepted clinical and laboratory diagnostic techniques and not inconsistent with the other substantial evidence in the record. See 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2); SSR 96-2p. The ALJ did not discuss the weight to be accorded Dr. Mannino's opinion but discounted Dr. Mannino's conclusion that plaintiff could not use his hands at all because it was based only on plaintiff's self-description.

Dr. Mannino also concluded that plaintiff was unable to perform any gross or fine manipulation or reaching. The ALJ did not address this specific finding by Dr. Mannino. This finding is supported by Joan Crennan, MD, a medical consultant for the Social Security Administration, who also found that plaintiff was limited in pushing, pulling, reaching, handling and fingering with the upper extremities. Dr. Mannino's opinion that plaintiff was limited in the use of his upper extremities was not inconsistent with other substantial evidence in the record.

Failure to provide good reasons for discrediting a doctor's opinion is alone grounds for remand. Clifford v. Apfel, 227 F.3d 863, 870 (7th Cir. 2000). The ALJ must "minimally articulate his reasons for crediting or rejecting evidence of disability." Scivally v. Sullivan, 966 F.2d 1070, 1076 (7th Cir. 1992). It is the responsibility of the ALJ and not the Commissioner's attorney

to articulate the weight to be given the opinions of the plaintiff's treating physicians. See Dixon v. Massanari, 270 F.3d 1171, 1176 (7th Cir. 2001). The ALJ has failed to provide good reasons for not giving the opinions of Dr. Oduwole and Dr. Mannino controlling weight. Accordingly, this case will be remanded for further proceedings. On remand the ALJ shall specifically articulate the weight to be given the opinions of Dr. Mannino and Dr. Oduwole and the reasons for his conclusion.

Plaintiff also argues that the ALJ did not properly determine plaintiff's RFC. Specifically, he argues that the ALJ's finding that plaintiff had a severe impairment of his upper extremities but no functional limitations on the use of his upper extremities is contradictory. On remand the ALJ should also reconsider the RFC based on the weight he gives the opinion of Dr. Mannino on the limited ability of plaintiff to use his upper extremities.

This case will be remanded to the Commissioner for those further proceedings as aforesaid.

ORDER

IT IS ORDERED that the above entitled matter is REMANDED to the Commissioner for further proceedings consistent with this opinion.

Entered this 22nd day of November, 2006.

BY THE COURT:

___s/_____
JOHN C. SHABAZ
District Judge