

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

TIMOTHY JONES,

Plaintiff,

v.

MEMORANDUM AND ORDER

MICHAEL ASTRUE,
Commissioner of Social Security,

06-C-588-S

Defendant.

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

On October 3, 2003 plaintiff applied for DIB and SSI alleging disability beginning September 2003 due to headaches, diabetes, hemorrhoids, pituitary problems, liver problems and vision problems. His application was denied initially and upon reconsideration. A hearing was held on September 15, 2005 before Administrative Law Judge (ALJ) George M. Bock. In a December 19, 2005 written decision 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 August 8, 2006.

FACTS

Plaintiff was born on February 25, 1966. He had more than a high school diploma and had worked as a correctional officer, forklift operator, tax preparer, office manager, computer teacher, census crew leader and salesman.

Plaintiff has a longstanding history of headaches. He has received emergency treatment for headaches and has taken prescription medication for them. In September 2003 plaintiff's carotid doppler scan, electroencephalogram and spinal tap were normal.

On November 25, 2003 plaintiff's treating physician, Timothy Bredlove, M.D., noted plaintiff had a pituitary tumor, diabetes and migraines. He found plaintiff had no limitation on standing, could lift fifty pounds and could participate in work/classroom activities for eight to ten hours per day.

In September 2005 Ralph Knudson, M.D., saw plaintiff for high cholesterol, headaches and back pain. He recommended a refill on pain medications and cholesterol lowering medications. Dr. Knudson completed a Medical Assessment of Ability to do Work-Related Activities for plaintiff. He indicated that plaintiff could only stand or walk for two hours a day and could sit no more than six hours a day. He further found that plaintiff could lift no more than ten pounds and was limited to occasional postural activities.

On February 12 and April 21, 2004 state agency consultants concluded that plaintiff could perform medium work.

At the September 15, 2005 hearing before the ALJ plaintiff appeared with counsel and testified that he had severe headaches three or four times a week for which he takes medication. He also testified that he had nausea and dizziness with the headaches. He testified that he took Nortriptyline as a blocker every day and Fioricet at the onset of a headaches. Plaintiff testified that the headaches last one or two days and when it gets too severe he takes Vicodin and goes to the emergency room.

Steve Benjamin, a vocational expert, testified at the hearing after listening to the testimony and reviewing the record. The ALJ asked the expert whether an individual of plaintiff's age, education, past work experience and the residual functional capacity to perform medium work could perform plaintiff's past work.

The vocational expert testified that the hypothetical individual could perform plaintiff's past work as an industrial truck operator, corrections officer, census clerk, tour guide, private teacher, furniture salesman, and office manager/tax preparer.

The ALJ found that plaintiff had severe impairments of hepatitis C, early cirrhosis and migraine headaches but that he did not have an impairment or combination of impairments that meets or

equals a listed impairment found in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ considered the opinion of Dr. Ralph Knudson but gave it little weight.

In his decision the ALJ discussed plaintiff's activities briefly which included taking care of his children and cleaning. The ALJ also indicated that plaintiff had worked in the past despite the headaches. He noted in a footnote that the plaintiff stated his medication reduced the frequency and severity of his headaches. The ALJ concluded, "while the claimant experiences headaches and other symptomology, his allegations are exaggerated as to both the severity and frequency of his symptoms."

The ALJ concluded that plaintiff had the residual functional capacity to perform medium work. The ALJ found that in the past plaintiff had worked as a retail store manager, industrial-truck operator, corrections officer, census clerk, tour guide, private teacher, furniture salesman, office manager/tax preparer and automobile mechanic. Based on the testimony of the vocational expert the ALJ found that plaintiff was not disabled because he could perform all of his past occupations except the retail store manager and automotive mechanic.

The ALJ made the following findings:

1. The claimant meets the non-disability requirements for a period of disability and Disability Insurance Benefits set forth in Section 216(I) of the Social Security Act and is insured for benefits through the date of this decision.

2. The claimant has not engaged in substantial gainful activity since the alleged onset of disability.

3. The claimant's chronic hepatitis C, early cirrhosis, and headaches/migraines are considered "severe" based on the requirements in the Regulations 20 CFR §§404.1520(c) and 416.920(c).

4. These medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation NO. 4.

5. The undersigned finds the claimant's allegations regarding his limitations are not totally credible for the reasons set forth in the body of the decision.

6. The claimant has the following residual functional capacity: medium work.

7. The claimant is able to perform his past relevant work (20CFR §§ 404.1565 and 416.965).

8. The claimant was not under a "disability," as defined in the Social Security Act, at any time from September 10, 2003 through the date of this decision (20CFR §§404.1520(g) and 426.920(g)).

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 Arboqast 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 found that plaintiff had severe impairments of hepatitis C, early cirrhosis and migraine headaches but that he did not have an impairment or combination of impairments that meets or equals a listed impairment found in 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ concluded that plaintiff had the residual functional capacity to perform medium work and was not disabled because he could perform his past relevant work as industrial-truck operator, corrections officer, census clerk, tour guide, private teacher, furniture salesman and office manager/tax preparer.

Plaintiff contends that the ALJ did not give a sufficient reason for disregarding Dr. Knudson's opinion of plaintiff's restrictions. There is no evidence in the record that Dr. Knudson

was plaintiff's treating physician. The ALJ correctly found that this opinion should be given little weight because it was only supported by plaintiff's self-reporting of symptoms. See 20 C.F.R. §404.1527(d) (3); SSR 96-2p.

Plaintiff contends that the ALJ erred in his assessment of plaintiff's credibility. The ALJ found that "while the claimant experiences headaches and other symptomology, his allegations are exaggerated as to both the severity and frequency of his symptoms."

The ALJ's credibility decision must be upheld unless it is "patently wrong." Powers v. Apfel, 207 F.3d 421, 435 (7th Cir. 2000). Social Security Ruling 96-7p requires the ALJ to consider the claimant's daily activities, the duration, frequency and intensity of the pain, precipitating and aggravating factors, the dosage, effectiveness and side effects of the medication and functional restrictions. 20 C.F.R. 404.1529(c).

In his decision the ALJ discussed plaintiff's activities briefly which included taking care of his children and cleaning. The ALJ also indicated that plaintiff had worked in the past despite the headaches. He noted in a footnote that the plaintiff stated his medication reduced the frequency and severity of his headaches. He did not, however, discuss why plaintiff's daily activities made his testimony about his symptoms not credible. The ALJ failed to build an accurate and logical bridge between the evidence of plaintiff's daily activities and his credibility

finding pursuant to Sarchet v. Chater, 78 F.3d 305, 307 (7th Cir. 1996).

Although the ALJ mentions in a footnote that medications reduced the frequency and severity of the headaches he does not address the three pain medications that plaintiff takes, Nortriptyline, Fioricet and Vicodin, and their side effects. Plaintiff's use of these prescribed pain medications may suggest his subjective complaints of pain are credible. The fact that plaintiff is taking prescribed pain medications for his pain should have been considered by the ALJ in determining plaintiff's credibility. The ALJ should also have considered the side effects of the medication.

The Court cannot uphold the ALJ's credibility determination because the ALJ has not addressed the strength or side effects of plaintiff's medications. Further, the ALJ has not made a sufficient finding that plaintiff's daily activities are inconsistent with his allegations of pain.

The Court will remand the above entitled matter to the Commissioner for further proceedings. On remand the Commissioner should address plaintiff's credibility and the reasons for his determination, specifically addressing plaintiff's pain medications and their side effects together with his daily activities. Depending on the ALJ's re-determination of plaintiff's credibility, he may have to change his determination of plaintiff's residual

functional capacity and his hypothetical question to the vocational expert.

This case will be remanded to the Commissioner for those further proceedings described herein.

ORDER

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

Entered this 19th day of March, 2007.

BY THE COURT:
/s/
JOHN C. SHABAZ
District Judge