LIST OF AVAILABLE MATERIAL

JANUARY – DECEMBER 2017

ITEM NUMBERS – 2151-2179

Credibility

2157. The claimant has degenerative disc disease. The ALJ found that his testimony was less than fully credible. However, the ALJ based this determination on the claimant's lack of medical treatment without raising any questions about the reasons for it. The ALJ also used the claimant's reluctance to take narcotic pain medication in the credibility determination, but the claimant testified that side effects from Vicodin made it difficult for him to tolerate, but he would do so when pain was particularly intense. Although OGC argued that the claimant's statements were not credible because he took other pain medication, the magistrate judge found that the ALJ never raised these arguments so they were not appropriate now. Furthermore, only one of the medications OGC discussed was a narcotic. The magistrate judge also found that the claimant's receipt of unemployment benefits, online job searching, and performance of minimal household and child-care tasks were insufficient reasons for the ALJ to make a negative assessment of credibility. In addition, the ALJ did not fully explain why she disregarded two experts' opinions about the claimant's ability to walk and stand when she made her RFC assessment. At one point, she used an opinion she had otherwise disregarded to discredit the opinion of another provider. The Commissioner's decision was remanded to SSA for further proceedings. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Jones v. Colvin, 15-c-10272 (N.D.Ill.) (February 8, 2017) – 6 pages

2161. The ALJ repeatedly "cast doubt" on the credibility of the claimant's statements about the intensity, persistence, and limiting effects of his symptoms. The ALJ's decision was made before SSR 96-7p was superseded by SSR 16-3p in March 2016, and the court considered only the earlier SSR. The court held that the ALJ failed to properly consider the claimant's testimony that his limited treatment was due to inability to afford additional medical care. The claimant addressed his back problems and asthma with over-the-counter medication and occasional emergency room visits. By failing to consider the claimant's explanation for failing to pursue additional treatment, not clearly explaining whether he explored the claimant's access to low-cost medical care, and apparently drawing negative inferences from the claimant's failure to seek treatment, the ALJ acted "in direct contradiction of SSR 96-7p." This is error warranting remand, because the ALJ's actions had a significant impact on the RFC analysis, which in turn affected the ALJ's determination at Step 5 of the sequential evaluation process. The claimant was represented by Agnes S. Wladyka of Mountainside, New Jersey.

Torres v. Commissioner of Social Security, 15-6344 (ES) (D.N.J.) (September 23, 2016) – 9 pages

Employment

2164. The claimant received a fully favorable ALJ decision. His learning disorder and intellectual disability were severe. His IQ was 69, and the ALJ found that he had more limitations in adaptive function than state agency doctors had concluded. Although the claimant had a history of part-time work, one job was arranged because the claimant's sister was his manager, and another was obtained with the assistance of an organization that helps people with disabilities find employment. The claimant's mother testified about his limitations in activities of daily living and social function, which were supported by findings from consultative examiners and found by the ALJ to be at the marked level. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully favorable ALJ decision (June 3, 2016) – 6 pages

Fibromyalgia

2173. The claimant was diagnosed with fibromyalgia, but the ALJ determined that disorder was not severe or a medically determinable impairment. The ALJ stated that the claimant's physical and mental symptoms were caused by other impairments and did not impede her from performing light work. The court held that "the ALJ erred in summarily concluding, without relying on any medical opinion, that plaintiff's doctors were wrong in diagnosing her with fibromyalgia." The ALJ also misinterpreted SSR 12-2p to require tender point findings. The Commissioner argued that these errors were harmless because claimant's symptoms were addressed when the ALJ considered her other impairments. The court disagreed: "The ALJ's belief that plaintiff did not have fibromyalgia could have affected the ALJ's subsequent analysis about what medical findings and specific treatments were relevant, and also about what daily activities plaintiff could be expected to engage in, all of which in turn could have affected how the ALJ assessed plaintiff's credibility." The claimant presented evidence of an assessment by a specialist for evaluation. The ALJ glossed over the specialist's fibromyalgia diagnosis and instead focused on the doctor's determination that the claimant did not have inflammatory arthritis. The court called this "a classic example of cherry-picking. It is also improper doctor playing." A remand for additional proceedings is required for these reasons. In addition, the court found that the ALJ interpreted the claimant's "daily activities in a one-sided, black-and-white manner." For example, the ALJ noted that the claimant "cooks" but did not note that she reported an inability to cut or flip food. The ALJ also made repeated mention of the claimant's ability to care for her children, but they were teenagers and the evidence suggests they provided her with assistance, rather than her taking care of them. The ALJ also improperly disregarded information about the claimant's lack of productivity at her former job. The claimant was represented by Deborah Spector with drafting by Joseph Sellers. Both are from Spector and Lenz of Chicago, Illinois.

Preusser v. Berryhill, No. 16 CV 50288 (N.D.Ill. W.Div.) (August 29, 2017) – 11 pages

2175. The claimant's impairments included fibromyalgia, but the ALJ did not consider whether the condition equaled a listing. This was reversible error. The court found that the ALJ did not err in failing to consider non-exertional limitations imposed by fibromyalgia when determining the claimant's residual functional capacity, because she does not identify any record evidence of such limitations. The ALJ also erred in giving "little weight" to the claimant's treating provider. The ALJ did so based on the claimant's normal neurological findings and a statement from the claimant's psychiatrist that she rode a bicycle three times a week (which the claimant denies). No medical professional connected these facts to the claimant's fibromyalgia or the work-related limitations described in the medical source statement. The ALJ's evaluation of the treating physician's opinion was therefore in error, because the opinion should have been given controlling weight or been appropriately weighed according to SSA regulations. The case was remanded for additional proceedings. The claimant was represented by John E. Horn of Tinley Park, Illinois.

McDonald v. Berryhill, 17-C-2344 (N.D.Ill.) (September 25, 2017) – 5 pages

Intellectual Disability

2155. The claimant was tested at age 28 and received a full-scale IQ score of 67. She had several other severe impairments as well. The ALJ disregarded the IQ scores, noting that previous tests when the claimant was ages 5 and 6 showed higher scores. The ALJ also considered the fact that the claimant graduated from high school and does certain social and self-care activities. The Court held that substantial evidence did not justify the ALJ's rejection of the most recent test score, given that the tester went into some detail to explain why the score was valid. The daily activities that the claimant performed were not inconsistent with a mild intellectual disability and should not have been used to reject the IQ score. Even if the score is valid, however, the Court explained that SSA would still need to determine whether the claimant's intellectual disability satisfied the introductory section of listing 12.05, requiring deficits in adaptive functioning to manifest before age 22. The ALJ did not make a meaningful consideration of whether the claimant had such deficits and, if so, when

they began, so the case was remanded for additional proceedings. The claimant was represented by E. David Harr of Greensburg, Pennsylvania.

Davis v. Colvin, Civil Action No. 16-112 (W.D.Pa.) (March 30, 2017) – 15 pages

2171. The claimant, who was 32 years old at the time of this Circuit Court decision, applied for SSI and submitted evidence showing a full-scale IQ of 70 and verbal comprehension score of 68. The ALJ found he did not meet listing 12.05C (which, at the time of the decision, had not yet been updated to its current version) or any other listings, and that he should not be found disabled at Step 5 of the sequential evaluation process either. The ALJ's decision stated there was "no evidence indicating the Claimant's [borderline intellectual functioning] was present in school" or before age 22. However, in the Eleventh Circuit, there exists a rebuttable presumption that the claimant's intellectual disability began before age 22 if a valid low IQ test taken after age 22 is submitted. The ALJ did not apply the presumption here. Furthermore, the claimant provided evidence of low scores on other standardized testing and that he was required to repeat second grade. An expert witness reviewed the claimant's school records and testified at the hearing that they were consistent with borderline intellectual functioning. The case was remanded for further proceedings, with the court noting that listing 12.05C requires in addition to low IQ scores, other physical or mental impairments that cause additional and significant limitations in work-related function. The claimant was represented by Douglas I. Friedman of Birmingham, Alabama.

Rudolph v. Comm'r, Soc. Sec. Admin., No. 17-10190 (11th Cir.) (September 14, 2017) – 8 pages

Musculoskeletal Impairments

2158. The claimant's severe impairments were hypertension, COPD, failed back syndrome, and left foot drop. The ALJ gave great weight to the testimony of the medical expert, who relied on a MRI and other medical evidence to testify that the claimant met listing 1.04A. The ALJ also gave great weight to the medical source statement submitted by the claimant's treating neurosurgeon. The claimant received a fully favorable decision from the ALJ. She was represented by John E. Horn of Tinley Park, Illinois.

Fully favorable ALJ decision (April 27, 2017) – 5 pages

2166. The claimant had back pain and weakness in his extremities, which he testified had caused him to stop working and to stop taking courses towards a social work degree. He also experienced depression and anxiety. The ALJ found that he did not meet any listings and could perform a limited range of light work, which provided for a substantial number of jobs. However, the court found that the ALJ erred in finding that the claimant did not meet listing 1.04. The ALJ said that there was no evidence the claimant had nerve root compression, but a doctor's review of the claimant's MRI showed "some compression on left L5 nerve root." The claimant also argued that he met other requirements of listing 1.04, such as the inability to ambulate effectively, but the court determined that remand was necessary based on the nerve root compression issue, and therefore declined to address the other aspects of the listing. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Dix v. Commissioner of Social Security, (N.D.Ohio, E.Div.) (May 22, 2017) – 25 pages

2179. The court found that the ALJ erred in determining that the claimant did not meet listing 1.04, and then erred in assessing the claimant's residual functional capacity. The claimant, formerly a taxi driver, injured his neck and back when a drunk driver caused a head-on collision with the claimant's cab. The ALJ found he did not meet listing 1.04 because his motor loss was not caused by atrophy, but the listing allows motor loss to be demonstrated by muscle weakness, which the claimant did have. The ALJ also found that the claimant did not meet the listing's requirement for positive straight-leg raising tests because some of the claimant's tests were negative, but the listing establishes that such test results can be intermittent, and that most of the claimant's tests, including all the more recent ones, were positive. The ALJ did not explain why he rejected the

positive results in favor of the negative ones. The ALJ also erred in analyzing the claimant's RFC by discounting the opinion of the claimant's treating physician of long standing by using "boilerplate" and "a non-specific platitude." When the ALJ did consider the doctor's opinion, it was error to speculate that the opinion was based on the claimant's allegations rather than objective evidence. The ALJ also erred by reducing the weight of the doctor's opinion because it differed from an opinion the doctor issued the previous year. The claimant's condition was not static, so each opinion could be accurate for the time it was written. The court also rejected the Commissioner's arguments, both because they were post-hoc rationalizations and because they failed on the merits. The claim was remanded for additional proceedings. The claimant was represented by Radosevich & Dixon of Denver, Colorado.

Garcia v. Berryhill, Civil Action No. 16-cv-02797-LTB (D.Colo.) (November 11, 2017) – 18 pages

New and Material Evidence

2169. Medical evidence submitted to the Appeals Council was new, material, and relates to the period at issue. The claimant showed good cause for not submitting it earlier. The evidence, which was the results of an EMG test and a cervical CT scan, has a reasonable probability of changing the outcome in the case because it suggests an additional erosion of the established light residual functional capacity and the claimant could be found disabled on the grids with a sedentary RFC. The claim was remanded for an additional ALJ hearing with vocational expert testimony as needed. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Appeals Council remand (August 3, 2017) – 3 pages

Past Relevant Work

2178. The Appeals Council found that, contrary to the ALJ's decision, the claimant has been disabled since her alleged onset date. The Appeals Council adopted the ALJ's findings that the claimant had not engaged in substantial gainful activity since her alleged onset date; had several severe impairments; and did not meet or equal a listing. The Appeals Council also agreed that the claimant's residual functional capacity allowed her to perform less than the full range of light work. However, the Appeals Council disagreed with the ALJ's finding that the claimant could return to her past relevant work as an office clerk as it was actually and generally performed. The claimant's job was a composite including medium and heavy work. Given the claimant's RFC, she could not perform that work. The claimant was 56 years old on her alleged onset date and has a high school education and no transferrable skills. She is disabled according to the grids. The claimant was represented by Radosevich & Dixon of Denver, Colorado.

Appeals Council decision (November 17, 2017) – 9 pages, including claimant's brief to the Appeals Council

Pulmonary Impairments

2165. The claimant had musculoskeletal impairments in her low back and shoulder, depression and anxiety, and asthma. She was 45 years old on her alleged onset date. The ALJ found that the claimant was not disabled and that asthma was not a severe impairment. The court found that the ALJ erred in finding asthma to be a non-severe impairment, because "there is significant evidence in the record of asthma exacerbation and treatment since the alleged onset date" and the evidence was supported by pulmonary function testing. Although the claimant's smoking supports the ALJ's finding that she can tolerate airborne irritants, her asthma attacks may affect her RFC in other ways that should have been considered. In addition, the ALJ found that the claimant's "medically determinable impairments could reasonably be expected to cause the alleged symptoms; however [her] statements concerning the intensity, persistence, and limiting effects of these symptoms are not entirely credible." The ALJ discussed the claimant's receipt of unemployment benefits and failure to have bloodwork and x-rays among the bases for this finding. Given that the court already decided to remand the case because of errors in assessing pulmonary function, the court chose not to address the credibility issue and merely cautioned SSA to follow its regulations and SSRs when assessing

claimant testimony. The claimant was represented by Agnes S. Wladyka of Mountainside, New Jersey.

Braker v. Commissioner of Social Security, 16-0170-BRM (D.N.J.) (January 25, 2017) – 32 pages

Remand v. Reversal

2159. The claimant applied for SSI and SSDI in February 2006, alleging disability stemming from a work-related back injury that occurred in August 2005. After repeated denials, in June 2008 the claimant filed both an action in district court and a new application for disability benefits. In the new application, she was found to be disabled as of June 1, 2008. The district court remanded her original claim and she had a second ALJ hearing in 2010. That resulted in a denial issued in 2011, which was appealed to the Appeals Council and then district court. After a second federal court remand in 2014 and a third ALJ hearing in 2015, which also resulted in a denial, the case returned for a third time to district court. In the latest district court decision, the Court found that the ALJ did not comply with the Appeals Council's remand order in evaluating medical evidence. The third ALJ denial did not appropriately apply the treating physician rule to the opinions submitted by the claimant's treating neurosurgeon and pain management physician. Instead, the ALJ stated that she gave "no evidentiary weight" to the treating doctor's opinion of how much the claimant could lift, "some evidentiary weight" to the rest of the doctor's opinion, and "the greatest weight" to the non-examining medical expert who testified at the hearing. The Court found that the ALJ did not include several limitations mentioned by treating doctors, misinterpreted some evidence that was provided, and failed to reconcile inconsistencies between evidence supplied by treating and examining doctors and the testimony of the medical expert. Given the ALJ's repeated failure to follow remand orders' directions to apply the treating physician rule, the Court refused to remand the case for a possible fourth ALJ hearing. Further proceedings "would serve no productive purpose, would not produce findings contrary to this Court's conclusions, and would only cause further delay" in a claim that has been pending for more than ten years. Therefore, the remand was solely for the calculation of benefits. The claimant was represented by Peter Gorton of Endicott, New York.

Dommes v. Colvin, 3:15-CV-0977 (GTS) (N.D.N.Y) (December 6, 2016) – 20 pages; published at 225 F.Supp.3d 113 (N.D.N.Y. 2016)

Vocational Expert Testimony

2151. The plaintiff experienced several mental impairments, including borderline IQ. The ALJ found that despite these impairments, he had the residual functional capacity to work with limitations including the ability only to "perform routine, repetitive, simple tasks with occasional interaction with coworkers, supervisors and the public." The case was remanded to the agency on two grounds: "the ALJ's failure to address Mr. Brown's visual deficits and the ALJ's failure to comply with the dictates of [the Fourth Circuit case] *Mascio v. Colvin*." The record included evidence from a doctor that the plaintiff was blind in one eye and had amblyopia. The plaintiff testified about the effects of these impairments at the hearing. However, the ALJ did not address visual impairments at all, which was reversible error. In addition, the ALJ found that the plaintiff would have "moderate difficulties" in concentration, persistence, and pace, but did not discuss the effect this would have on ability to sustain work over an eight-hour work day or add any limitations to the plaintiff's RFC to address these difficulties. In light of *Mascio*, which held that including a restriction to simple, routine tasks or unskilled work in hypothetical questions did not address difficulties in concentration, persistence, and pace, remand is required. The magistrate judge noted that the plaintiff's allegation that he received child SSI benefits was not a reason for remand. The record is unclear about whether the plaintiff did receive SSI as a child, and "because the standard for children's SSI is entirely different from that applicable to adult SSI, it is unclear that a prior award of Children's SSI would have or should have any meaningful effect on the ALJ's analysis in this case." The plaintiff was represented by Andrew Sindler of Severna Park, Maryland.

Brown v. Commissioner, Civil No. SAG-16-501 (D. Md.). Magistrate Judge's Letter to Counsel (January 20, 2017), Plaintiff's Memorandum in Support of Motion for Judgment on the Pleadings (August 27, 2016) – 25 pages

2152. The claimant applied for survivor's benefits, which are available to people of her age who are disabled. An ALJ issued an unfavorable decision in 2010, and the Appeals Council remanded it for another hearing that addressed new evidence about the claimant's spine and addressed problems with the translator provided to the claimant. The ALJ at the second hearing also issued an unfavorable decision, indicating that the claimant had the residual functional capacity to perform light, simple, unskilled, low-stress work. This decision was upheld by the Appeals Council. When the claim reached federal court, it was remanded for further development of the claimant's past relevant work—specifically, whether a sewing operator/ribbon maker who puts rosettes on clothing has performed semiskilled or unskilled work. The vocational expert had testified that the claimant's past relevant work had a SVP of 2, making it unskilled, and should be classified as light. But the vocational expert described this work with a DOT code that does not exist, and the ALJ's decision indicated that the work was semi-skilled. At a third ALJ hearing, the claimant's representative supplied a statement from one vocational expert and testimony was taken from another. The ALJ determined that the RFC found in the prior decision was accurate. But both of the ways the vocational experts' testimony could be interpreted (either that the claimant's past relevant work was a composite job that she could not do as actually performed, or that the main duties of her work were a job with a SVP of 3) led to a finding of disability at Step 4 of the sequential evaluation process. The claimant has been under a disability since May 2003. The claimant was represented by Maryjean Ellis of Newton, New Jersey.

Unpublished District Court Decision (plaintiff's name redacted) (June 2, 2015) and ALJ decision after remand (December 14, 2016) – 16 pages

2153. At an ALJ hearing, a vocational expert testified that an individual with the same age, education, work experience, and RFC as the claimant could perform several jobs, including Medical Hand Packer, Appointment Clerk, Small Parts Assembler, Photo Hand Mounter, and Jewelry Production Preparer. Testimony regarding sit-stand options in these jobs, which is required based on the claimant's RFC, was based on the vocational expert's experience. After the Appeals Council upheld the decision, a District Court magistrate judge found that the ALJ had not specifically determined how frequently the claimant would need to switch between sitting and standing, in violation of SSR 96-9p. Asking about the need to change positions "every 15 minutes or as needed" was not specific enough. This led to improper questions posed to the vocational expert. In addition, the magistrate judge found that the ALJ had not articulated adequate reasons for giving a treating physician's opinion less than controlling weight. Had the opinion been given the appropriate weight, the claimant's RFC would likely have been different. Therefore, the case was reversed and remanded. The claimant was represented by Carol Avard and Mark Zakhvatayev of Cape Coral, Florida.

Williams v. Commissioner, 2:16-cv11-FtM-MRM (M.D.Fla, Ft. Myers Div.) (February 23, 2017) and Plaintiff's Memorandum in Opposition to Commissioner's Decision – 39 pages

2162. At an ALJ hearing, a vocational expert testified that there were 894,000 housekeeper jobs nationally and 15,600 in Louisiana. However, these numbers were not for a specific code in the Dictionary of Occupational Titles (DOT), but for the entire Standard Occupational Classification (SOC) code. SOC codes can encompass multiple DOT codes: there are nine DOT codes included in the SOC code that the vocational expert cited. It is therefore not possible to determine how many housekeeping jobs there are nationally from the vocational expert's testimony. Furthermore, the vocational expert did not know how many jobs within the SOC code were unskilled, or how many were at various exertional levels. This error was repeated with the other jobs the vocational expert suggested, which were garment sorter and basket filler. Given the limitations in the vocational expert's testimony, substantial evidence does not support the ALJ's conclusion that work exists in

significant numbers that the claimant can perform. This makes the decision incorrect as a matter of law. The court rejected several additional arguments, holding that the ALJ properly weighed the opinion evidence supplied by several acceptable medical sources and a licensed professional counselor. In addition, the court found that the ALJ did not err in the RFC determination and that the Appeals Council did not err in refusing to consider additional evidence. However, the errors in relying on vocational expert testimony merit remand to determine whether jobs that the claimant could perform exist in sufficient numbers in the national economy. The claimant was represented by Peter J. Lemoine of Cottonport, Louisiana.

[Redacted] v. U.S. Commissioner of Social Security, (W.D.La., Alexandria Div.) Magistrate Judge Perez-Montes Report and Recommendation (March 2, 2017) – 37 pages

2176. The claimant's past work was as an administrative assistant and a data communications analyst. The first was sedentary and the second was light; both were skilled. When given a hypothetical question about whether an individual who was precluded from "high production quotas…, strict time requirements, arbitration, negotiation, confrontation, directing the work of others" and other duties could perform the claimant's past relevant work, the vocational expert responded "both of those, not necessarily the issue would be fast paced by [sic] they do have like negotiating and some of the higher level activities associated with performance of the job but I would not preclude them for fast paced." The ALJ relied on this testimony to find that the claimant could perform her past relevant work and denied the claim. The court noted that the vocational expert's testimony noted that the claimant's past relevant work would involve negotiations, and that the claimant's residual functional capacity as determined by the ALJ precluded her from negotiating. The expert's statement is not substantial evidence that the claimant can perform her past relevant work. However, the burden of proof at Step four lies with the claimant, and there is no evidence in the record as to whether the claimant's past job in fact required negotiating and whether it would preclude her from performing the job. The ALJ did not fully articulate the reasons behind the RFC determination. The court is therefore unable to perform a meaningful review and must remand for additional proceedings. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Jackson v. Comm'r. Soc. Sec., 2:16-cv-307 (S.D.Ohio, E.Div.) (September 28, 2017) – 27 pages

Weight of Medical Evidence

2154. The claimant has optic neuritis, depression, and multiple sclerosis. The patient's treating neurologist submitted an opinion that described the claimant's impairment in a way that would meet listing 11.09, citing to an MRI that showed brain lesions. The doctor's opinion also mentioned exertional and non-exertional limitations that would leave the claimant unable to perform the full range of even sedentary work. However, the ALJ found that the claimant did not meet a listing and had the residual functional capacity to perform light work. The claimant was not found to be disabled at Step 5. The ALJ found that the claimant's "statements concerning the intensity, persistence, and limiting effects of [her] symptoms are not entirely credible." The ALJ also failed to give "controlling or even significant weight" to the treating physician on the grounds that his opinion was "inconsistent with his own treatment notes." A consultative examiner and state agency physician were each given greater weight than the treating source. A federal court judge found that the ALJ did not provide sufficient reasons for the weight given the treating physician's opinion. Simply stating that the opinion was inconsistent with treatment records does not describe precisely where the inconsistencies lie, and thus fails to build the "logical bridge" required by the 7th Circuit. The ALJ cannot consider only the evidence that supports her conclusions without also addressing the evidence that supports the treating physician's opinion. Although the ALJ is not required to give controlling weight, if she finds that less weight is merited she must at least account for the factors in 20 CFR 404.1507. Remand is necessary so that the medical evidence can be appropriately weighed. Therefore, it was not necessary for the court to address the claimant's other arguments. However, the decision did note that SSR 96-7p on credibility has been superseded by SSR 16-3p and that on

remand, the ALJ should use the new SSR to assess the intensity and persistence of the claimant's symptoms. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fox v. Berryhill, 15-c-8543 (N.D.Ill.) (February 27, 2017) – 16 pages

2156. The ALJ gave "some" weight to the opinion of claimant's treating physician, but ultimately found that the claimant did not meet or equal a listing and had the residual functional capacity to work. The magistrate judge held that substantial evidence supported the ALJ's decision at Step 3. However, the magistrate judge found that the ALJ failed to apply the treating physician rule properly. Although the ALJ said that the treating source's opinion "approach[ed] the light level of exertion," that is insufficient reason to give it less than "controlling" weight. The ALJ's decision also did not reflect the fact that the treating source's opinion was based on objective clinical diagnostic techniques, namely a MRI that was performed after another doctor's opinion to which the ALJ gave greater weight. Therefore, the claim was remanded for further proceedings. The claimant was represented by Andrew L. Margolius of Cleveland, Ohio.

Figueroa v. Commissioner, 1:16-cv-1126 (N.D.Ohio, E.Div.) (March 16, 2017) – 26 pages

2160. The claimant had a variety of lower extremity impairments, some relating to diabetes and others musculoskeletal in origin. She also experienced depression and had difficulty reading that made her unable to pass the GED. She was 47 years old on her alleged onset date and was closely approaching advanced age at her ALJ hearing. The ALJ found that the claimant's mental impairments were not severe and that regardless of whether the claimant could return to her past relevant work (first operating a machine that made cotton balls and swabs, and later performing quality control by counting and measuring these beauty products), there were a significant number of jobs that she could perform. The magistrate judge recommended a finding that the ALJ erred in deeming the claimant's mental impairments non-severe. Two physicians indicated that the claimant had more than mild limitations in concentration, persistence, and pace; the facts that the claimant could drive and had improved after taking medication do not support the ALJ's findings that the claimant only had mild limitations. The ALJ also did not give sufficient consideration to the claimant's mental impairments when assessing her residual functional capacity. The ALJ did not sufficiently articulate good reasons for failing to give controlling weight to the claimant's treating psychologist. Instead, the ALJ decision read "Based on, the undersigned gives less weight to" that doctor's opinion. This appears to be a typographical error, but it does not allow the district court to understand the ALJ's rationale. Therefore, the case was reversed and remanded for additional proceedings. The claimant was represented by Margolius & Margolius of Cleveland, Ohio.

Collins v. Commissioner, 1:15-cv-02305 (N.D.Ohio, E.Div.) Magistrate Judge's Report and Recommendations (September 12, 2016) – 27 pages

2163. The ALJ heard this case pursuant to a remand from the U.S. District Court, District of Maryland. The claimant's severe impairments are a loss of visual acuity and keratoconus of the left eye with chronic pain. The ALJ did not find that the claimant met a listing, but found that her residual functional capacity included an ability to be productive only 80 percent of an eight-hour work day due to dizziness, headaches, eye pain, sensitivity to light, and other factors. This, combined with her other limitations, made it impossible for her to return to past relevant work as a bus driver, cashier, or school bus attendant. The vocational expert testified that there are no jobs in the national economy that will tolerate productivity only 80 percent of the time, and the ALJ determined that the claimant is unable to adjust to work that exists in significant numbers in the national economy. In addition, the ALJ re-opened the claimant's prior SSI and Title II claims, which had initial determination dates less than a year before the instant claims were filed. The fully favorable decision provides benefits back to the claimant's alleged onset date in October 2010. The claimant was represented by Albert Carrozza of Olney, Maryland.

Fully favorable ALJ decision (January 12, 2017) – 8 pages

2167. The claimant's alleged onset date was in March 2007. His treating psychiatrist provided a medical source statement in April 2008 describing the impact of the claimant's PTSD. In 2013, the claimant obtained a new psychiatrist, who issued a medical source statement diagnosing the claimant with depression as well as PTSD and described the claimant's signs and symptoms. The case required two federal court remands, but at the final ALJ hearing (which was performed in two parts to obtain testimony from a medical expert) the ALJ gave significant weight to both treating doctors as well as to the medical expert. The ALJ issued a fully favorable decision, which resulted in a retroactive payment of over $195,000. The claimant was represented by Douglas J. Brigandi of Bayside, New York.

Fully favorable ALJ decision (February 23, 2015) – 5 pages

2168. The suit was filed by the claimant's sister, who served as her legal guardian. The claimant had several psychiatric and cognitive impairments. Among the evidence included in the file at the time of the ALJ denial was a medical source statement form completed and signed by the claimant's social worker. It included the instruction "if completed by LISW, counselor or psychiatric nurse, please have Psychiatrist or Psychologist co-sign." There was another signature on the form but no additional printed name or date and therefore it was unclear who had signed the form. The claimant's representative made several requests for treatment records from the claimant's mental health provider and asked the ALJ to subpoena the records. She did not subpoena them, which the court found did not follow HALLEX. Although this was not reversible error because the Sixth Circuit has found the HALLEX to be non-binding, the ALJ's failure to fulfill her duty to develop the record is grounds for reversal and remand. When the records were obtained, they showed that the other signature on the medical source statement was that of the claimant's treating psychiatrist. Had the ALJ known this when issuing a decision, her assessment of the medical source statement may have been different. The case is remanded for additional proceedings. The plaintiff was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Charna McCoy for Juliette McCoy v. Commissioner of Social Security, 1:16 CV 1301 (N.D.Ohio, E. Div.) (August 18, 2017) – 24 pages

2170. The ALJ gave inappropriate weight to the claimant's treating physician, and thus incorrectly determined the claimant's residual functional capacity. The ALJ's RFC determination was the claimant could perform light work with a sit-stand option, but the treating source (who was given "partial weight") opined that the claimant could stand or walk for just two hours and could lift 10 pounds occasionally. Although there were some inconsistencies among claimant's testimony, visit notes, and the doctor's medical source statement (MSS), and although the checkbox MSS form did not include elaborations from the doctor about the grounds for his opinion, these did not dictate the opinion receiving such low weight. The ALJ did not explain where he found discrepancies between documentary evidence and the doctor's opinion. The opinion was broadly consistent with the claimant's testimony. Finally, the ALJ's findings that the doctor displayed bias, supplied an "advocacy opinion", or responded based on a perception that the claimant wanted "supportive notes" were erroneous. Such a finding might be appropriate where a doctor's opinion deviates substantially from other evidence in the record, but that was not the case here. In fact, the ALJ's RFC was fairly similar to the limitations found by the treating physician. The court noted that the statements made by the ALJ in this case were identical to those made by an ALJ in Maine in another case that reached federal court. The decision also includes a lengthy discussion of the outdated nature of the Dictionary of Occupational Titles and how SSA considers O*NET, the Department of Labor's successor to the DOT. The court determined that two of the three positions described by the vocational expert were obsolete and the claimant was unable to perform the third in the manner it is performed in modern times. Therefore, SSA erred in relying on the VE's testimony in Step 5 of the sequential evaluation process. The claim was remanded for additional proceedings. The claimant was represented by Francis M. Jackson of South Portland, Maine.

Sinclair v. Berryhill, 16-10875-WGY (D. Mass.) (July 21, 2017) – 41 pages; published at 266 F.Supp.3d 545 (D.Mass. 2017)

2172. The claimant was diagnosed with several musculoskeletal impairments, idiopathic neuropathy, and a personality disorder. The ALJ's residual functional capacity determination was that the claimant could perform less than a full range of sedentary work: she was "limited to lifting and carrying from waist to chest level. The claimant can walk no longer than one block at a time on a flat even surface at a slow pace. The claimant requires a sit and stand option about every 15-30 minutes, and she needs to use a cane as necessary. The claimant has to avoid crawling, kneeling, crouching and climbing ladders, ropes and scaffolds, but she can stoop occasionally. The claimant requires work involving no more than limited education. The claimant has to avoid constant interpersonal interaction with the public, coworkers and supervisors. The claimant has to avoid constant fingering, grasping and handling. The claimant has to avoid working around hazards, such as moving dangerous machinery and unprotected heights." Nonetheless, the ALJ found that there were a significant number of jobs the claimant could perform and found her not disabled. The court finds that the ALJ did not appropriately consider the opinion of the claimant's treating physician. The ALJ did not assign a specific weight to the doctor's opinion or explain why that weight was appropriate. The ALJ merely stated that the doctor's opinion that the claimant "can do less than sedentary exertional level work is not supported by his own progress notes and physical examination findings. Also, [the doctor's] opinion is not consistent with [the claimant's] good activities of daily living." The ALJ did not cite to specific inconsistencies within the record. The ALJ also, without explanation, included some but not all of the limitations found by the doctor when determining the claimant's RFC. These errors require remand for additional proceedings. The claimant was represented by Andrew Sindler of Severna Park, Markland.

Kirkland v. Comm'r, Soc. Sec. Admin., Civil No. SAG-16-3194 (D. Md.) (August 1, 2017) – 27 pages, including Plaintiff's Memorandum in Support of Motion for Judgment on the Pleadings

2174. Among other physical and mental impairments, the claimant was injured when a heavy box fell on her at work. Although the ALJ erred in stating that there was "no evidence of nerve root compression" meeting listing 1.04, the claimant did not demonstrate that she met each medical criterion of the listing and thus this was not reversible error. However, the case was reversed and remanded for additional proceedings because the ALJ erred in evaluating the opinion of the claimant's treating source. The ALJ gave "limited weight" to the medical source statement provided by the claimant's doctor because it was a "form" that was "not supported by treatment notes" and "was only an estimate and not based on testing." These are all errors. The instructions on the medical source statement say that doctors are not required to perform tests of functional capacity in order to render their opinions on the form, and should instead base their opinions on clinical evaluations and existing test findings. The treating physician here did just that, recording nearly monthly visits with the claimant over more than two years and performing many tests along the way. The treatment notes do not conflict with the medical source statement, both of which show limited mobility in the neck as well as the need for a sit-stand option and frequent rest breaks. The treating physician's opinion therefore should have either been given controlling weight, or the ALJ should have followed SSA regulations to determine how much weight it deserved. The claimant was represented by Max D. Leifer of New York, New York.

Medrano v. Colvin, 15-CV-3081 (MKB) (E.D.N.Y.) (September 21, 2016) – 41 pages

2177. The district court remanded on the recommendation of the Magistrate Judge, finding that the ALJ misinterpreted treatment records from a pain management specialist and failed to properly analyze an opinion by the primary care physician. The pain management physician made the following statement quoted by the court: "Functionally she is very limited. Pain interferes with standing, walking, bending, lifting and carrying, sleep and endurance." The ALJ gave the opinions of the pain management physician "significant weight" but failed to note increases in pain medication, and improperly found that treatment records showed relief of symptoms with treatment. In an assessment completed for the County Assistance Office, the primary care physician checked a box indicating that the claimant was disabled and listed numerous severe impairments. The opinion did

not include specific functional limitations such as limitations on ability to lift and carry or walk/stand. The ALJ mistakenly found that this opinion was authored by one of the pain management physicians which "led the ALJ to ignore the long-term treatment being provided" by the primary care physician. The court concluded that the ALJ failed to properly analyze the opinion of the primary care physician that the claimant was disabled, finding that the primary physician's opinion "is corroborated by other medical evidence in the record." The claimant was represented by Meyer Silver of Ardmore, Pennsylvania.

Sewell v. Berryhill, Civil Action No. 2:15-cv-3876-JHS (E.D.Pa.) (October 13, 2017) – 59 pages, including plaintiff's brief, defendant's response, and Magistrate Judge's report and recommendations