# LIST OF AVAILABLE MATERIAL
# JANUARY - DECEMBER 2013
# ITEM NUMBERS – 1959-2020

## ABSENTEEISM

2007. District court reversal and award of benefits. The plaintiff was diagnosed with multiple impairments, including multiple sclerosis (MS). Due to flare-ups and related treatments, she had missed work for periods from 2 to 4 months at a time, as prescribed by her treating rheumatologist. The MS is of lifelong duration and is progressively worsening, causing leg weakness, facial numbness, and constant tingling and burning. All treating physicians concluded that she would have a substantial number of absences from work each month. The VE testified that there would be no jobs available if the individual were to be off task more than 30 percent of the day, required unscheduled breaks, or was absent more than three times per month. The ALJ further erred by finding that episodic conditions could preclude a finding of disability. Since MS is incurable and progressive, the duration and frequency of flare-ups and remissions should be considered. The Appeals Council also erred by accepting additional evidence from treating doctors, but then not properly evaluating it. "When reviewing the record, the Appeals Council must follow the same rules as must an ALJ for considering opinion evidence." The court awarded benefits since in light of the entire record "further proceedings at the administrative level would be superfluous." Peter Gorton, Esq., Endicott, NY.

***Beck v. Colvin***, Case No. 6:12-cv-06495-MAT (W.D.N.Y. Oct. 7, 2013)*; 2013 U.S. Dist. LEXIS 144854; 195 SSRS* 120 – 25 pages

## ADMINISTRATIVE HEARINGS – LAY TESTIMONY

1987. Appeals Council remand after a district court remand. The remand order rejects the ALJ's credibility analysis for a lay witness. The ALJ had rejected a witness's testimony because he found that the witness was "not medically trained to make exacting observations as to dates, frequencies, types and degrees of medical signs and symptoms or frequency or intensity of unusual modes or mannerisms." The ALJ added that because the witness was in a relationship with the claimant, she could not be "considered a disinterested third party witness." The Appeals Council found that this rationale contradicted SSR 96-7p and was an improper foundation upon which to base a credibility finding. In addition, the claimant's attorney sent a letter to the ALJ, requesting that a subpoena be issued for treatment records that she could not obtain. The ALJ did not issue a subpoena or provide a written notice of the denial of the request as required by HALLEX I-2-5-78. Since the record does not include any treatment notes from the provider, "the ALJ should have issued a subpoena for these records." Winona W. Zimberlin, Esq., Hartford, CT

Appeals Council remand order (Aug 7, 2012) – 5 pages

1972. District Court remand for an award of benefits because the record was well-developed regarding the plaintiff's symptoms and limitations. The ALJ had denied the case by ignoring the opinion of the treating maxillofacial surgeon. His opinion related to a time period only a few months before the amended onset date and had probative value. "It was not harmless error for the ALJ to disregard [the treating surgeon's] testimony.

The ALJ also improperly rejected the testimony and her husband. Arthur Stevens, III., Esq., Medford, OR.

***Alexander v. Astrue***, Case No. 01:12-cv-00693-HZ (D.Ore. Apr. 1, 2013); *2013 U.S. Dist. LEXIS 47355* – 17 pages

**ALJ DUTY – SUBPOENA**

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Appeals Council remand order (Aug 7, 2012) – 5 pages

**ALJ BIAS/ REMAND TO NEW ALJ**

1977. The Appeals Council granted the request for review, finding that the ALJ abused his discretion, and remanded the case directing that it be assigned to another attorney. The Appeals Council considered the allegation that the ALJ acted as an adversary and was combative and inflammatory during the hearing under the abuse of discretion standard in 20 CFR § 416.1470 and reviewed the entire record, including the hearing recording. During the hearing the ALJ stated that the evidence did not support the claimant's upcoming back surgery and that he could deny the case even if evidence of the surgery was submitted and the claimant reported pain because the ALJ believed the surgery was not necessary. "These comments are not based on the entire medical record and do not reflect sound reasoning or judgment in making a decision on the claimant's alleged disability."

New and material evidence was also submitted, showing that the surgery occurred before the ALJ's decision and that the limitations existed that "may be more limiting than found by the Administrative Law Judge." The ALJ also found that the claimant completed high school but the record suggests that she did not complete the 12th grade. On remand, the case will be assigned to a different ALJ to carry out the instructions in the remand order. Marcia Margolius, Esq., Cleveland, OH.

Appeals Council Remand (Feb. 12, 2013) – 4 pages

**ALJ's DUTIES – CREDIBILITY**

2017. District Court remand because the ALJ's assessment of the plaintiff's credibility "does not allow judicial review." The ALJ found that the plaintiff's pain limited him to a sedentary RFC. But he failed to give a reason for rejecting the plaintiff's claim that his pain and other symptoms were totally disabling. The ALJ's finding that the plaintiff's "statements concerning the intensity, persistence and limiting effect of [his] symptoms are inconsistent with the above [sedentary RFC] assessment is just not specific enough to allow for judicial review without further explanation." As a result, the ALJ failed to comply with is obligation to provide an adequate basis for the reviewing court to determine whether the decision was based on substantial evidence. Agnes S. Wladyka, Esq., Mountainside, NJ.

***Colon v. Commissioner of Social Security***, Civil Action No. 12-4870 (JLL)(D.N.J. Nov. 19, 2013*); 2013 U.S. Dist. LEXIS 165008; 196 SSRS 576* – 15 pages

2014. Appeals Council remand because the ALJ did not adequately evaluate the claimant's credibility. She testified that she lives alone with her three young children but does not lift them due to her pain. She also stated that other family members helped care for the children. The ALJ did not acknowledge this testimony but rhetorically asked who assisted her. Further evaluation is warranted. The ALJ also stated that "every claimant should avoid the appearance of exaggeration" because of '[t]he prospect of obtaining a false reward for a false presentation or exaggeration." The Appeals Council noted that "every claimant has a pecuniary interesting[sic] in filing a disability application" and questioned whether the ALJ imposed a different standard than the regulations by requiring a claimant to "avoid the appearance of exaggeration." Mary T. Meadows, Esq., Loraine, OH.

Appeals Council remand on credibility (July 23, 2013) – 7 pages including Order of Appeals Council and Claimant's Letter Brief to Appeals Council

1961. District Court remand under sentence four of 42 U.S.C. sec. 405(g) where the ALJ erred in finding the plaintiff not fully credible. First, there was no contradiction in the plaintiff's hearing testimony regarding the activities of daily living. Second there was no contradiction between the treating doctor's findings regarding lower back pain and a clinic visit two months later for a different impairment. In context it was not reasonable to discount the treating doctor's finding that the plaintiff was limited in ability to walk, stand, sit, and lift, based on the clinic's ambiguous note. Third, the ALJ found inconsistencies in the treating doctor's findings, yet he did not seek clarification from the doctor. As a result, the ALJ failed to fully develop the record on this issue. The "ALJ has failed to point out any legitimate inconsistences in the record that would permit a finding of a lack of credibility." In addition he ALJ failed to fully develop the record. Fritzie Vammen, Esq., Conway, AR.

***Lowery v. Astrue***, No. 4:11CV00345 (JLH/HDY (E.D.Ark. Oct 29, 2012); 2012 U.S. Dist. LEXIS 154623 – 12 pages

**ALJ's DUTY TO DEVELOP THE RECORD**

1992. District Court remand for further proceedings where the ALJ erred in failing to obtain the child's psychiatric records. An ALJ has a duty to develop the record even when the claimant is represented by counsel (*Sims v. Apfel*, 530 U.S. 103, 111(2000)).

The child's school records showed a decline in the domain of attending and completing tasks during the same period covered by the psychiatric records. The ALJ also erred in failing to explain how a teacher's assessment of "a very serious problem" in attending and competing tasks on a daily basis in 10 of 13 activities does not rise to a "marked" limitation. Mike Silver, Esq. and Larry Weinstein, Esq., Ardmore, PA.

***Tina Richardson on behalf of C.D.F., Jr. v. Colvin***, Civil Action No. 12-2652 (E.D.Pa. May 22, 2013) – 46 pages including Report & Recommendation, Plaintiff's Brief and Statement of Issues in Support of Request for Review

**ALJ's DUTY - FAILURE TO FOLLOW REMAND ORDER**

1965. Fully favorable ALJ decision after remand. This case, cited in the *Padro et al v. Astrue* class action Complaint is an example of a federal court criticizing one of the ALJs named in the class action for failing to give appropriate weight to the treating physician and ignoring explicit instructions from a previous remand regarding evaluations of pain. The claim was originally filed in March 2001. The case was assigned to a different ALJ, after several unfavorable hearing decisions and two court remands. The newest ALJ issued a fully favorable decision, granting the claimant benefits dating back to April 2002, based on a residual functional capacity for less than a full range of sedentary work. Douglas Brigandi, Esq., Bayside, NY.

Fully Favorable ALJ decision on less than a full range of sedentary work (Jan. 22, 2013) – 14 pages including Decision and cover letter from counsel.

**ALJ's DUTIES – PADRO CLASS ACTION**

1965. Fully favorable ALJ decision after remand. This case, cited in the *Padro et al v. Astrue* class action Complaint is an example of a federal court criticizing one of the ALJs named in the class action for failing to give appropriate weight to the treating physician and ignoring explicit instructions from a previous remand regarding evaluations of pain. The claim was originally filed in March 2001. The case was assigned to a different ALJ, after several unfavorable hearing decisions and two court remands. The newest ALJ issued a fully favorable decision, granting the claimant benefits dating back to April 2002, based on a residual functional capacity for less than a full range of sedentary work. Douglas Brigandi, Esq., Bayside, NY.

Fully Favorable ALJ decision on less than a full range of sedentary work (Jan. 22, 2013) – 14 pages including Decision and cover letter from counsel.

**APPEALS COUNCIL: NEW EVIDENCE**

2007. District court reversal and award of benefits. The plaintiff was diagnosed with multiple impairments, including multiple sclerosis (MS). Due to flare-ups and related treatments, she had missed work for periods from 2 to 4 months at a time, as prescribed by her treating rheumatologist. The MS is of lifelong duration and is progressively worsening, causing leg weakness, facial numbness, and constant tingling and burning. All treating physicians concluded that she would have a substantial number of absences from work each month. The VE testified that there would be no jobs available if the individual were to be off task more than 30 percent of the day, required unscheduled breaks, or was absent more than three times per month. The ALJ further erred by finding that episodic conditions could preclude a finding of disability. Since MS is incurable and progressive,

the duration and frequency of flare-ups and remissions should be considered. The Appeals Council also erred by accepting additional evidence from treating doctors, but then not properly evaluating it. "When reviewing the record, the Appeals Council must follow the same rules as must an ALJ for considering opinion evidence." The court awarded benefits since in light of the entire record "further proceedings at the administrative level would be superfluous." Peter Gorton, Esq., Endicott, NY.

***Beck v. Colvin***, Case No. 6:12-cv-06495-MAT (W.D.N.Y. Oct. 7, 2013)*; 2013 U.S. Dist. LEXIS 144854; 195 SSRS* 120 – 25 pages

1997. Appeals Council remand. Evidence of an MRI performed 2 ½ months after the ALJ decision that was submitted with the request for review is new and material evidence regarding the claimant's lumbar degenerative disc disease. "Evaluation of the claimant's new lumbar impairment is necessary." Thad J. Murphy, Esq., Davenport, IA.

Appeals Council Remand Order (Aug 12, 2013) – 4 pages

1980. District Court reversal and award of benefits. The first ALJ issued a partially favorable decision, with an onset date over two years later that the plaintiff's alleged onset date. On an Appeals Council remand, the second ALJ denied the entire claim. The court made several findings. (1) Evidence submitted to the Appeals Council is part of the record before the court. "Claimants need not show 'good cause' before submitting new evidence to the Appeals Council . . . As a result, Defendant's contention that his court should decline to review the evidence submitted to the Appeals Council fails." (2) The ALJ improperly discounted the plaintiff's testimony evidencing a misunderstanding of fibromyalgia which "permeates the opinion." Also, the ALJ's reason that medication controlled the plaintiff's symptoms was not supported by the record. (3) The ALJ improperly rejected several treating and examining providers' opinions in favor of several non-examining physicians' opinions. "[T]he ALJ's unfounded speculation that a treating physician would lie or exaggerate to assist a patient, without evidence of actual impropriety, is an impermissible assumption determining Social Security disability cases." Kenneth Isserlis, Esq., Spokane, WA.

***Tully v. Colvin***, No. CV-11-00396-CI (E.D.Wash. Apr. 30, 2013); *published at 943 F. Supp. 2d 1157 (E.D.Wa. 2013)* – 30 pages

**ATTORNEYS' FEES – EAJA**

2004. District court award of EAJA fees in the amount of $7,356.74. The government's position was not substantially justified. The government argued in court that he ALJ had discussed all relevant evidence in determining the plaintiff's RFC and properly relied on the grids after finding that her nonexertional impairments did not impede her ability to perform light work. In fact, the ALJ's decision does not reflect this reasoning. The ALJ found the nonexertional impairment to be severe, but did not explain why they were excluded from the RFC. "[T]he subsequent disregard of those impaurments without a reasoned explanation was not substantially justified." The Tenth Circuit requires the use of the grids unless the claimant's RFC precisely matches the RFC specified for the grid relied upon. The fee award reflected 37.3 hours of work at an hourly rate of $177.62 and 4 hours at a rate of $182.88 per hour. Paul Radosevich, Esq., Denver, CO.

***Cordova v. Colvin***, Civil Action No. 10-cv-00264-PAB (D.Colo. Aug. 1, 2013); *2013 U.S. Dist. LEXIS 108745; 193 SSRS 12* – 6 pages

1960. District Court award of EAJA fees in the amount of $6936.00. The court rejected the Commissioner's argument that because only one issue was remanded, the government's position was substantially justified. "A plaintiff need not prevail on every issue in order to receive an award of fees." The issue triggering remand was the ALJ's failure to adequately develop the record regarding listing 12.04C. Other courts have found that the Commissioner's position is not substantially justified for EAJA purposes when the ALJ fails to develop the record fully. The Commissioner did not challenge the number of hours spent on the case or the hourly rate ($170.00). The court also ordered that the EAJA fee be paid directly to the attorney, as the plaintiff had agreed to that. But to ensure that the federal debt inquiry can occur, the court granted 60 days to determine whether any portion of the plaintiff's EAJA fee award is subject to offset. Lionel H. Peabody, Esq., Duluth, MN.

***McGrath v. Astrue***, Civil No 10-4192 (D.Minn. Oct 16, 2012); 2012 U.S. Dist. LEXIS 149464 – 13 pages

**CANCER – LISTING 13.19**

1996. Fully favorable ALJ decision, after an Appeals Council remand. The claimant first obtained representation after his ALJ hearing. He submitted new and material evidence to the Appeals Council, showing that he was diagnosed with hepatocellular carcinoma as evidenced by a CT scan. At the hearing on remand, a medical expert testified that the claimant's impairment equaled listing 13.19 (tumors of the liver, gallbladder, or bile ducts) as of July 30, 2010. John Horn, Tinley Park, IL.

ALJ decision on listing 13.19 (June 24, 2013) – 7 pages

**CONCURRENT CLAIMS**

1970. The District Court adopted the Magistrate Judge's Report and Recommendation for an award of benefits. After filing a concurrent claim, the plaintiff was awarded SSI benefits, but denied SSDI benefits due to a date last insured issue. The SSDI denial was appealed. The ALJ reopened the SSI allowance and reversed the favorable decision. The Magistrate Judge found that neither good cause nor notice requirements were followed by the ALJ and recommended that SSI benefits be reinstated. The court rejected the government's argument that the claimant, by appealing the SSDI claim, was also putting the SSI claim before the ALJ. This argument would "put any claimant who succeeds in obtaining benefits under only one of the two programs . . . in the untenable position of choosing whether to settle for the benefits awarded or risk losing those benefits merely by appealing the denial of other benefits . . .  This situation is inconsistent with the purpose of both programs." The ALJ also erred by failing to provide notice before the hearing that he intended to reopen the favorable ALJ decision. Daniel Emery, Esq., Yarmouth, ME.

***Harriman v. Colvin***, Case No, 1:12-cv-208-NT (D.Me. Mar. 31, 2013) *2013 U.S. Dist. LEXIS 59338*  – 8 pages.

**CREDIBILITY**

1993. Appeals Council remand. The ALJ found the claimant could “perform work with ‘limited’ interpersonal demands in an object-focused work setting …” However, this limitation does not adequately articulate the maximum RFC to perform basic mental work activities as required by SSR 96-8p. For limitations that occur part of the time, recognized terms such as “frequently” and “occasionally” can be sued per SSR 83-10. The ALJ also erred by finding the claimant not credible due to 1) a history of theft convictions and 2) not obtaining testimony from his girlfriend who was present at the hearing. The criminal history “does not affect the credibility of his subjective allegations … Likewise, the claimant’s decision not to elicit testimony from his girlfriend does not affect the credibility of his subjective allegations. Daniel Allen, Esq., Columbus OH.
Appeals Council remand on Mental RFC (Feb. 28, 2013) – 4 pages

1991. District Court remand for an award of benefits. The ALJ’s reasons for rejecting the treating doctor’s report based on “purported” inconsistencies lacked the “specificity and legitimacy required to reject the conclusions of a treating physician…” The ALJ’s examples of inconsistencies between the plaintiff’s testimony and the medical evidence were not supported by substantial evidence. If there is a condition that is “capable of causing pain,” then, under Ninth Circuit case law, the ALJ cannot only look to the absence of objective findings to degrade the claimant’s credibility. There were objective findings in this case, but the heart of the case is that the testimony was “credited as true,” such that remand was not the remedy, but rather payment of benefits. Arthur Stevens, III, Esq., Medford, OR.
***Free v. Commissioner***, Civ. No. 1:12-cv-00601-AC (D.Ore. June 7, 2013); *190 SSRS 492*– 15 pages

1982. Seventh Circuit decision finding that the ALJ’s credibility finding was improper because the ALJ misrepresented the plaintiff-appellant’s testimony as inconsistent. Inconsistencies can form a basis of an adverse credibility finding per SSR 96-7p; however, the plaintiff-appellant did not contradict herself. None of the evidence in the record supports the ALJ’s finding that Plaintiff-Appellant exaggerated her limitations and that she can sit regularly for 45-minute stretches. The only reference in the record to “45 minutes” was made by the VE who testified that there are not a significant number of sedentary jobs available for people who can sit for fewer than 45 minutes. The ALJ also improperly relied on boilerplate language and settled on an RFC before assessing credibility when, under Seventh Circuit case law, credibility must be assessed first. John Horn, Esq., Tinley Park, IL.
***Hamilton v. Colvin***, No. 12-3085 (7th Cir. May 3, 2013) – 8 pages

**CREDIBILITY – FAILURE TO SEEK TREATMENT**

1968. District court reversal and award of benefits for a closed period. The plaintiff was receiving benefits based on a subsequent application filed after the onset of terminal cancer. In the first claim, the ALJ faulted the plaintiff for not having an RFC form from her rheumatologist who told her that he did not complete such forms. The ALJ erred in finding that the plaintiff’s decision to stop taking on of the many medications prescribed by her treating physician is not a clear and convincing reason for discounting her credibility. Her treating rheumatologist was aware that she stopped taking prednisone for

a period because of the side effects. This does not rise to the level of "failure to follow prescribed treatment." Arthur Stevens, III, Esq., Medford, OR.

***Purnell o/b/o Purnell (deceased) v. Astrue,*** Civil No. 1:12-cv-00056-JE (D.Ore. Feb. 20, 2013); *2013 U.S. Dist. LEXIS 23084* – 22 pages

1966. District court reversal and award of benefits. "It was inappropriate for the ALJ to consider the plaintiff's failure to continue treatment with an orthopedic specialist and failure to treat for her depression as part of the basis for his credibility decision." The ALJ erred in failing to consider the plaintiff's lack of insurance in her decision not to obtain treatment with the orthopedic surgeon. The ALJ's use of boilerplate language on credibility should be discredited. The court acknowledged that the "exact same language" had been used by the ALJ in another case heard by the court earlier the same day. Reversal is warranted because the "evidence establishes without any doubt that the plaintiff was disabled." Mariam Lavoie, Esq., Providence, RI.

***Borino v. Astrue***, Civil Action No. 12-98-M (D.R.I. Jan 18, 2013); *published at 917 F.Supp.2d 166 (D.R.I. 2013)* – 13 pages

**DATE LAST INSURED**

1997. Appeals Council remand. The ALJ erred in finding the claimant's DLI to be September 2011, when, in fact, she was insured through December 31, 2017. Because the ALJ only considered the period through September 2011, there is an unadjudicated period. Thad J. Murphy, Esq., Davenport, IA.

Appeals Council Remand Order (Aug 12, 2013) – 4 pages

**FIBROMYALGIA**

1980. District Court reversal and award of benefits. The first ALJ issued a partially favorable decision, with an onset date over two years later that the plaintiff's alleged onset date. On an Appeals Council remand, the second ALJ denied the entire claim. The court made several findings. (1) Evidence submitted to the Appeals Council is part of the record before the court. "Claimants need not show 'good cause' before submitting new evidence to the Appeals Council . . . As a result, Defendant's contention that his court should decline to review the evidence submitted to the Appeals Council fails." (2) The ALJ improperly discounted the plaintiff's testimony evidencing a misunderstanding of fibromyalgia which "permeates the opinion." Also, the ALJ's reason that medication controlled the plaintiff's symptoms was not supported by the record. (3) The ALJ improperly rejected several treating and examining providers' opinions in favor of several non-examining physicians' opinions. "[T]he ALJ's unfounded speculation that a treating physician would lie or exaggerate to assist a patient, without evidence of actual impropriety, is an impermissible assumption determining Social Security disability cases." Kenneth Isserlis, Esq., Spokane, WA.

***Tully v. Colvin***, No. CV-11-00396-CI (E.D.Wash. Apr. 30, 2013); *published at 943 F. Supp. 2d 1157 (E.D.Wa. 2013)* – 30 pages

**HEADACHES**

1979. District court remand because the ALJ's rejection of a doctor's Department of Welfare employability assessment was improper. The Magistrate Judge noted, "The fact

that the Welfare form was a requirement to receive benefits is not, standing alone, a reason to view it with suspicion. After all, the RFC assessments and other evaluations submitted by treating physicians are also for the purpose of determining eligibility for cash benefits. Yet the agency regulations do not mandate an assumption that the doctors are lying every time their assessments are favorable to the claimant." The Magistrate Judge also noted that the "lack of clear evidence" that a treating physician was familiar with the SSA definition of disability was not a reason to discount the doctor's statement that the claimant continued to have frequent headaches and some double vision which caused him "to discontinue all activities." Finally, the ALJ's statement that if the claimant had "such severe headaches, he would not be able to watch television" was an impermissible lay observation by the ALJ." Lawrence J. Weinstein, Esq., Ardmore, PA.

***Anderer v. Astrue,*** Civil Action No. 12-5303 (E.D.Pa. Apr. 19, 2013) – 49 pages including Order, Report and Recommendation, Plaintiff's Motion for Summary Judgment, Plaintiff's Brief and Statement of Issues, Plaintiff's Reply Brief, Plaintiff's Objections to Magistrate's Report and Recommendation.

**INABILITY TO AMBULATE**

1969. District Court remand where the ALJ failed to provide an explanation for "his conclusory step three determination, and his finding that claimant did not meet Listing 1.08." The plaintiff had an inability to ambulate effectively. The court agreed with the plaintiff that the use of a two-handed assistive device is not necessary to establish ineffective ambulation under the listing. The court rejected the government's argument that the plaintiff's use of only a single cane was not sufficient. The regulation provides a non-exhaustive list. When the final listing was published in 2008, the Commissioner stated that '[t]he criteria do not require an individual to use an assistive device of any kind . . .[T]he . . . explanation and examples should make it clear that this applies to anyone who cannot walk adequately. Raymond Kelley, Esq., Manchester, NH.

***Hernandez-Corchado v. Astrue***, Case No. 12-cv-52-SM (D.N.H. Jan 19, 2013); *2013 DNH 10; 2013 U.S. Dist. LEXIS 11445; 186 Soc. Sec. Rep. Service 476* – 19 pages

**JUDICIAL REVIEW – MANDAMUS**

2010. District Court denial of government's motion to dismiss the plaintiff's Complaint for Mandamus based on the ALJ violating her due process rights by failing to provide notice of all issues he would consider at the hearing. The notice did not say that he would consider a subsequent favorable determination at the remand hearing on a prior claim. The plaintiff filed applications in 2007 and 2011. The 2007 claim was denied by an ALJ. In May 2011, the Appeals Council remanded the 2007 claim and directed that it be associated with the 2011 claim, but the subsequent claim was allowed before this was done. In March 2012, the ALJ sent a hearing notice on the 2007 remanded claim. Although the notice did not mention the 2011 favorable decision, the ALJ reconsidered that decision and found that the plaintiff was never disabled. Rather than exhaust administrative remedies, the plaintiff filed for mandamus, arguing that the ALJ's decision to overturn the 2011 favorable determination without notice violated her procedural due process rights. The court found that the requirements for waiving exhaustion of administrative remedies were met. Also, the notice was inadequate and "a constitutional violation exists." The hearing notice was sent 10 months after the Appeals Council

remand order. “Under these circumstances, it was reasonable for Plaintiff to rely on the Notice of Hearing.” Carol Avard, Esq., Cape Coral Fl.

***Dunnells v. Commissioner of Social Security***, Case No. 5:12-CV-484-Oc-18PRL (M.D.Fla. May 8, 2013*); 2013 U.S. Dist. LEXIS 65790* – 39 pages including Order, Report and Recommendation, Complaint for Mandamus, Defendant’s Motion to Dismiss, Plaintiff’s Response to Defendant’s Motion to Dismiss

**JUDICIAL REVIEW - MOTION TO ALTER OR AMEND JUDGMENT**

1971. Magistrate Judge denial of Commissioner’s motion or alter or amend judgment under FRCP 59(e). When the court remanded the case for further proceedings, the Commissioner requested that the court reconsider its finding that the ALJ erred in failing to address the plaintiff’s alleged side effects from medication. However, the Commissioner actually asked the court to revise its opinion, not its judgment. “Where, as here, the ALJ failed to even mention [the plaintiff’s] claim that her medications limit her ability to work, the Commissioner cannot cite evidence that the ALJ failed to mention in order to craft an [*sic*] post hoc rationale to justify the ALJ’s omission. John E. Horn, Esq., Tinley Park, IL.

***Robben-Cyl v. Colvin***, Case No. 11-cv-07501 (N.D.Ill. Mar. 14, 2013); *2013 U.S. Dist. LEXIS 35645* – 8 pages

**LUPUS**

2005. District court remand for further proceedings. The ALJ’s decision that the plaintiff was not disabled because she could perform sedentary work is not supported by substantial evidence for two reasons. First the ALJ failed to adequately evaluate all relevant evidence and explain the basis for his conclusions. Second the ALJ failed to explain the weight given to the medical opinions from the plaintiff’s treating doctors which contradicted the ALJ’s RFC findings. ON remand, the ALJ will obtain an immune system disorders medical exert to determine whether plaintiff’s lupus meets the requirements of listing 14.02. In addition, the ALJ will obtain the testimony of a VE to determine the impact of the plaintiff’s conditions on her ability to work on a sustained basis. Agnes Wladyka, Esq., Mountainside, NJ.

***Halley v. Commissioner of Social Security***, Civil Action No. 12-2754 (KSH) (D.N.J. Sept 23, 2013) – 2 pages

**MENTAL IMPAIRMENT – AFFECTIVE DISORDERS LISTING 12.04**

2019. ALJ decision finding that the claimant’s impairments met Listings 12.04 and 12.08. The claimant was diagnosed with bipolar disorder, major depressive disorder and a personality disorder. In response to interrogatories, a consulting psychologist opined that the claimant’s impairments met the “A” and “B” criteria of both listings. The treating psychologist’s findings were consistent, noting that the claimant had poor abilities with several important work-related function, and his opinion was given “significant weight.” Another consultant found a GAF of 40, which suggests serious symptoms of dysfunction, and this opinion was given “some weight.” State agency psychological consultant’s assessments were given “little weight” because the claimant’s symptoms were more limiting than these consultants found. The ALJ recommended a review within 24 months

because medical improvement is expected with appropriate treatment. John E. Horn Esq., Tinley Park, IL.

Fully favorable ALJ decision (Oct. 17, 2013) – 10 pages

**MENTAL IMPAIRMENT -INTELLECTUAL DISABILITY – LISTING 12.05C**

1989. District Court remand where the ALJ to explain which IQ scores he considered. The plaintiff was 25 years old at the time of the ALJ hearing. When she was 10 years old, IQ testing results were between 60 and 70. The government argued that these scores were invalid because as a general rule, IQ scores stabilize at age 16 and that IQ scores achieved at age 10 are "inherently unreliable." The court disagreed, noting that the ALJ did not make an express invalidity finding of IQ tests administered during the developmental period (i.e., before age 22) and cited no basis for questioning the validity of the scores. The ALJ relied on a psychologist examination conducted after the developmental period (at age 23), with scores in the "borderline intellectual functional range." That psychologist also questioned the plaintiff s motivation. The court was not persuaded that the earlier scores were invalid simply because of the more recent diagnostic description and test scores. The ALJ could have discounted the earlier tests but "failed to provide sufficient explanation for whether he even considered the initial IQ test results." Marcia Margolius, Esq., Cleveland, OH.

***Burks v. Commissioner of Social Security***, Case No. 1:12 CV 1408 (N.D.Ohio May 17, 2013) – 24 pages

1984. The district court remanded for further proceedings. The court found that the ALJ erred in finding that the plaintiff's intellectual disability did not begin prior to age 22. The evidence of record demonstrated deficits in adaptive functioning prior to age 22 in the area of academic skills. A history of poor performance in special education constitutes such a limitation. The ALJ rejected evidence that the plaintiff had a full scale IQ score of 67. His finding is not supported by substantial evidence. There was no medical suggestion questioning the accuracy of the score. As a result the plaintiff had the required IQ score (between 60 and 70) for listing 12.05C. In addition, the ALJ found that the plaintiff had a "severe impairment" of depressive disorder, which qualified as an additional significant work-related limitation under listing 12.05C. On remand the ALJ found that the plaintiff met listing 12.05C and issued a fully favorable decision. Lawrence Wittenberg, Esq., Durham, NC.

***Lane v. Astrue***, Civil Action No. 2:11-CV-33-FL (E.D.N.C. July 12, 2012); *2012 U.S. Dist. LEXIS 110260*– 19 pages including Court's Memorandum and Recommendation and Fully Favorable ALJ decision following remand.

1981. District Court reversal and remand for calculation of benefits where the ALJ erred in determining that the plaintiff, whose IQ scores were 70 or below, did not meet Listing 12.05C because she did not demonstrate deficits in adaptive functioning before age 22. The plaintiff was in special education classes throughout her years of schooling and had difficulties with all subjects. Although she worked full time for three years, the ALJ failed to consider that her employer "was extremely accommodating…" Evidence from medical sources showed adaptive functioning deficits prior to age 22. The ALJ also erred in not giving significant weight to consultative examinations by a psychologist and a

psychiatrist who noted work-related limitations due to the plaintiff's limited intellectual ability and depression. The record establishes that the plaintiff's combination of impairments did meet or equal listing 12.05C. Reversal is appropriate because evaluation of the evidence following proper legal standards would "undoubtedly result in a determination of disability. . ." Peter A. Gorton, Esq., Endicott, NY

***Fumio v. Colvin***, Civil No, 3:11-CV-339 (N.D.N.Y. June 7, 2013) – 15 pages

1978. Fully favorable ALJ decision where the claimant's impairments medically equaled listing 12.05C in light of his cognitive deficits in combination with his adaptive living deficits. Intelligence testing revealed consistently low scores, with most IQ scores below 70. The claimant has a history of a learning disorder and attended all special education classes while in school. In addition, the claimant had congestive heart failure, obesity, sleep apnea, hypertension and other physical impairments. The medical examiner at the hearing was of the opinion that the claimant's impairments equaled listing 12.05C and the ALJ agreed, finding that the evidence of record supported that opinion. John E. Horn, Esq., Tinley Park, IL.

Fully favorable ALJ decision on listing 12.05C (May 7, 2013) – 9 pages

1959. District Court reversal and award of benefits. The plaintiff, who had worked in the same position setting up mobile homes for over 22 years, alleged an onset date of disability of August 2007. In 1971 he received an IQ score of 73, following the administration of the Stanford-Binet test. In June 2009, plaintiff received a full scale IQ score of 62 on the WAIS III and another full scale score of 62 in August 2009 after additional testing. Plaintiff's school records had been destroyed by the school system. The court found that Plaintiff met the requirements of listing 12.05C and that it was error for the ALJ to rely on the Plaintiff's 22 year work history to find that he was not disabled. Brian M. Ricci, Esq. and Meredith Hinton, Esq., Greenville, NC.

***Cox v. Astrue***, Case No. 4:11-CV-153-BO (E.D.N.C. Aug 28, 2012) - 21 pages including Order, Memorandum of Law in Support of Plaintiff's Motion for Judgment on the Pleadings.

**MENTAL IMPAIRMENT – PERSONALITY DISORDER - LISTING 12.08**

2019. ALJ decision finding that the claimant's impairments met Listings 12.04 and 12.08. The claimant was diagnosed with bipolar disorder, major depressive disorder and a personality disorder. In response to interrogatories, a consulting psychologist opined that the claimant's impairments met the "A" and "B" criteria of both listings. The treating psychologist's findings were consistent, noting that the claimant had poor abilities with several important work-related function, and his opinion was given "significant weight." Another consultant found a GAF of 40, which suggests serious symptoms of dysfunction, and this opinion was given "some weight." State agency psychological consultant's assessments were give "little weight" because the claimant's symptoms were more limiting than these consultants found. The ALJ recommended a review within 24 months because medical improvement is expected with appropriate treatment. John E. Horn Esq., Tinley Park, IL.

Fully favorable ALJ decision (Oct. 17, 2013) – 10 pages

**MENTAL IMPAIRMENT – STEPS 2 AND 3**

1983. District court remand for further proceedings where the ALJ failed to properly consider the plaintiff's mental limitations. At steps 2 and 3 of the sequential evaluation, the ALJ found that the plaintiff had moderate limitations in concentration, persistence and pace. However, the ALJ's RFC only limited the plaintiff in understanding, remembering, and carrying out "simple instructions." The court found this RFC deficient and also criticized the ALJ for not discussing the plaintiff's moderate limitation in his ability to respond appropriately to changes in the workplace. The court also rejected the agency's argument that limitations found at steps 2 and 3 have no bearing on subsequent steps in the sequential evaluation process. Tenth Circuit precedent holds that limitations found at these steps should be built upon and made more precise and detailed at steps 4 and 5. The court pointed out that even "moderate" limitations may erode the occupational base for unskilled work. Paul Radosevich, Esq., Denver, CO.

***Apodaca v. Colvin***, Civil Action No. 12-cv-02508-REB (D.Colo. May 3, 2013); *2013 U.S. Dist. LEXIS 63675* – 9 pages

**MENTAL IMPAIRMENT – VALIDITY OF IQ SCORE**

1984. The district court remanded for further proceedings. The court found that the ALJ erred in finding that the plaintiff's intellectual disability did not begin prior to age 22. The evidence of record demonstrated deficits in adaptive functioning prior to age 22 in the area of academic skills. A history of poor performance in special education constitutes such a limitation. The ALJ rejected evidence that the plaintiff had a full scale IQ score of 67. His finding is not supported by substantial evidence. There was no medical suggestion questioning the accuracy of the score. As a result the plaintiff had the required IQ score (between 60 and 70) for listing 12.05C. In addition, the ALJ found that the plaintiff had a "severe impairment" of depressive disorder, which qualified as an additional significant work-related limitation under listing 12.05C. On remand the ALJ found that the plaintiff met listing 12.05C and issued a fully favorable decision. Lawrence Wittenberg, Esq., Durham, NC.

***Lane v. Astrue***, Civil Action No. 2:11-CV-33-FL (E.D.N.C. July 12, 2012); *2012 U.S. Dist. LEXIS 110260* – 19 pages including Court's Memorandum and Recommendation and Fully Favorable ALJ decision following remand.

**MIGRAINE HEADACHES**

1997. Appeals Council remand. The ALJ failed to evaluate the claimant's migraines, for which there was treatment evidence in the record. Thad J. Murphy, Esq., Davenport, IA.

Appeals Council Remand Order (Aug 12, 2013) – 4 pages

**MULTIPLE SCLEROSIS**

2007. District court reversal and award of benefits. The plaintiff was diagnosed with multiple impairments, including multiple sclerosis (MS). Due to flare-ups and related treatments, she had missed work for periods from 2 to 4 months at a time, as prescribed by her treating rheumatologist. The MS is of lifelong duration and is progressively worsening, causing leg weakness, facial numbness, and constant tingling and burning. All treating physicians concluded that she would have a substantial number of absences from work each month. The VE testified that there would be no jobs available if the individual

were to be off task more than 30 percent of the day, required unscheduled breaks, or was absent more than three times per month. The ALJ further erred by finding that episodic conditions could preclude a finding of disability. Since MS is incurable and progressive, the duration and frequency of flare-ups and remissions should be considered. The Appeals Council also erred by accepting additional evidence from treating doctors, but then not properly evaluating it. “When reviewing the record, the Appeals Council must follow the same rules as must an ALJ for considering opinion evidence.” The court awarded benefits since in light of the entire record “further proceedings at the administrative level would be superfluous.” Peter Gorton, Esq., Endicott, NY.

***Beck v. Colvin***, Case No. 6:12-cv-06495-MAT (W.D.N.Y. Oct. 7, 2013)*; 2013 U.S. Dist. LEXIS 144854; 195 SSRS* 120 – 25 pages.

**OVERPAYMENT – REPESENTATIVE PAYEE LIABILITY**

2000. Fully favorable ALJ decision, waiving an overpayment of $5499.84. The claimant, a recipient of SSI childhood disability benefits was getting food and shelter from his grandparents, who were is legal guardian. The ALJ first found that the claimant was not entitled to the excess SSI benefits because he was receiving food and shelter for part of the period of his eligibility. However, the ALJ waived the overpayment because the claimant was not at fault since he was too young to handle his benefits. Also, because he continues to be eligible for SSI, 20 C.F.R. sec. 416.553(b) applies. The grandparents, as rep payees were not liable for the overpayment. Recovery from them was waived as recovery would be “against equity and good conscience” under 20 C.F.R. sec. 416.544. The grandparents testified at the hearing that they were forthcoming and honest in their dealings with SSA and had no reason to question the amount of benefits they received for their grandson. The ALJ found their testimony “quite credible” regarding how they spent the SSI benefits to meet their grandson’s legitimate needs. “These expenditures from the claimant’s SSI benefits were made in bona fide reliance on the accuracy of the benefits. John Bowman, Esq., Davenport, IA

ALJ decision waiving overpayment (June 19, 2013) – 8 pages

**OVERPAYMENT – WAIVER**

2012. ALJ decision that the claimant was not overpaid $38,846.20 in benefits due to earnings above the SGA limit over a period of 2 ½ years. The ALJ held that the claimant was eligible for the benefits paid during the contested period. He found that her work activity was only 60% value, given a subsidy of 40%. In addition, she had only eight months of work. Thus, her trial work period was not competed. At the hearing, the claimant, who has cerebral palsy and has difficulty standing and using her right hand, testified that she currently worked only 94 hours per month at a store. Lawrence Wittenberg, Esq., Durham, NC.

Fully favorable ALJ decision on overpayment (Nov. 2013) – 8 pages

2000. Fully favorable ALJ decision, waiving an overpayment of $5499.84. The claimant, a recipient of SSI childhood disability benefits was getting food and shelter from his grandparents, who were is legal guardian. The ALJ first found that the claimant was not entitled to the excess SSI benefits because he was receiving food and shelter for part of the period of his eligibility. However, the ALJ waived the overpayment because the

claimant was not at fault since he was too young to handle his benefits. Also, because he continues to be eligible for SSI, 20 C.F.R. sec. 416.553(b) applies. The grandparents, as rep payees were not liable for the overpayment. Recovery from them was waived as recovery would be "against equity and good conscience" under 20 C.F.R. sec. 416.544. The grandparents testified at the hearing that they were forthcoming and honest in their dealings with SSA and had no reason to question the amount of benefits they received for their grandson. The ALJ found their testimony "quite credible" regarding how they spent the SSI benefits to meet their grandson's legitimate needs. "These expenditures from the claimant's SSI benefits were made in bona fide reliance on the accuracy of the benefits. John Bowman, Esq., Davenport, IA

ALJ decision waiving overpayment (June 19, 2013) – 8 pages

**PAIN**

1985. The district court remand where the ALJ based his finding regarding plaintiff s subjective complaints and credibility on factual errors. The ALJ's finding that no medical source has found any cause for plaintiff s pain is not borne out by the record where treatment providers repeatedly noted that plaintiff s abdominal pain was likely caused by scar tissue, neuropathy and nerve damage. This meets the standard contained in Social Security regulations which require a determination of whether an impairment "could reasonably be expected to produce the pain." 20 C.F.R. § 404.1529(b); 20 C.F.R. § 416.929(b). Mike Silver, Esq., and Lawrence Weinstein, Esq., Ardmore, PA.

***Eskridge v. Astrue,*** Civil Action No. 11-5499 (E.D.Pa. Oct. 12, 2012); *2012 U.S. Dist. LEXIS 147720*- 33 pages, including Order, Report and Recommendation, Plaintiff's Brief and Statement of Issues in Support of Request for Review

**PAST RELEVANT WORK – COMPOSITE JOB**

2001. Appeals Council remand. The claimant's past relevant work as a quality control worker and a double checker. At the hearing the VE did not identify a DOT listing for the job; instead she described the job as having significant elements of two or more occupations. "A claimant can be found capable of performing a composite job as actually performed only when she can perform all parts of the job." The VE testified that the claimant had the RFC to perform the quality control work but not the double checker part. Since the composite job does not have a counterpart in the DOT, "it is not to be evaluated when considering the claimant's ability to do the job as generally performed in the national economy. John Horn, Esq., Tinley Park, IL

Appeals Council remand on composite job (August 13, 2013) – 3 pages

1997. Appeals Council remand. The claimant's past relevant work as a composite job of cleaner, housekeeper/hotel clerk, where her major duties had significant elements of all three jobs and which has no counterpart in the DOT. "In order to perform past relevant work that was a composite job, the claimant must be able to do all parts of the job." The requirements of hotel clerk are outside of the claimant's RFC. Thad J. Murphy, Esq., Davenport, IA.

Appeals Council Remand Order (Aug 12, 2013) – 4 pages

**PAST RELEVANT WORK – SGA ISSUES**

1994. District Court remand where the ALJ erred in finding that the claimant could perform past relevant work as a sales associate, a job he held for only 4 months. This job did not qualify as past relevant work under SSA's regulations and SSR 05-02p. The plaintiff was eventually fired from the job due to lengthy absences caused by his health problems. A job is not considered SGA if it ends within 6 months due to the claimant's impairments. Because the job was not SGA, it cannot be considered "past relevant work" at step 4 of the sequential evaluation. Raymond Kelly, Esq., Manchester, NH

***Taylor v. Colvin,*** Civil No. 12-cv-442-JL (D.N.H. Aug 8, 2013); *2013 DNH 106; 2013 U.S. Dist. LEXIS 111921* – 7 pages.

**PROTECIVE FILING DATE**

2003. Fully favorable ALJ decision, finding the claimant entitled to child's insurance benefits effective December 2006, based on a protective filing date in June 2007. The claimant appealed the onset date of benefits that was based on a September 2011 application. On appeal, the mother stated that she had applied for both her sons years earlier, when the wage earner died, but only one son was granted benefits. The record contained a June 2007 letter from the district office to the 3 year old claimant mentioning a conversation with the boy's mother one week earlier and instructing him to file an application. While an application was not filed at that time, it can be used as a protective filing date because this communication clearly establishes that the mother inquired about entitlement. John Bowman, Esq., Davenport, IA.

Fully favorable ALJ decision (June 17, 2013) – 7 pages

**REMAND: GOOD CAUSE/ NEW EVIDENCE**

2002. District Court remand under sentence 6 of 42 USC 405(g). The plaintiff's 2005 application was denied by an ALJ in 2011, and was eventually appealed to federal court. In 2011, she filed a subsequent application, alleging an onset date one day after the ALJ denial. For the second application, she was evaluated at a psychological CE, where schizophrenia was diagnosed for the first time. The report was submitted to the Appeals Council on appeal of the first application, but the Council did not consider it, finding that it was "new information about a later time." In this decision, the court agreed with the plaintiff that it was an error of law for the Appeals Council not to remand the case to the ALJ to retrospectively consider the report. Analyzing the requirements for a sentence 6 remand under Fourth Circuit precedent, the report was relevant to the pre-ALJ decision period because schizophrenia likely affected the plaintiff before her official diagnosis. Second, the diagnosis is material. Third, there is good cause for the failure to submit the report earlier, as the CE did not exist at the time. And finally, by attaching the report to her Motion for Summary Judgment, the plaintiff made a general showing of the nature of the new evidence. Anna Hamrick, Esq., Asheville, NC.

***Wroten v. Colvin***, Case No. 112-cv-335-RJC (W.D.N.C. Aug. 20, 2013*); 2013 U.S. Dist. LEXIS 117830* – 44 pages, including Order, Memorandum in Support of Plaintiff's Motion for Summary Judgment, Defendant's Memorandum of Law in Support of Motion for Summary Judgment.

**REMAND v. REVERSAL**

2007. District court reversal and award of benefits. The plaintiff was diagnosed with multiple impairments, including multiple sclerosis (MS). Due to flare-ups and related treatments, she had missed work for periods from 2 to 4 months at a time, as prescribed by her treating rheumatologist. The MS is of lifelong duration and is progressively worsening, causing leg weakness, facial numbness, and constant tingling and burning. All treating physicians concluded that she would have a substantial number of absences from work each month. The VE testified that there would be no jobs available if the individual were to be off task more than 30 percent of the day, required unscheduled breaks, or was absent more than three times per month. The ALJ further erred by finding that episodic conditions could preclude a finding of disability. Since MS is incurable and progressive, the duration and frequency of flare-ups and remissions should be considered. The Appeals Council also erred by accepting additional evidence from treating doctors, but then not properly evaluating it. "When reviewing the record, the Appeals Council must follow the same rules as must an ALJ for considering opinion evidence." The court awarded benefits since in light of the entire record "further proceedings at the administrative level would be superfluous." Peter Gorton, Esq., Endicott, NY.

***Beck v. Colvin***, Case No. 6:12-cv-06495-MAT (W.D.N.Y. Oct. 7, 2013)*; 2013 U.S. Dist. LEXIS 144854; 195 SSRS* 120 – 25 pages

1991. District Court remand for an award of benefits. The ALJ's reasons for rejecting the treating doctor's report based on "purported" inconsistencies lacked the "specificity and legitimacy required to reject the conclusions of a treating physician…" The ALJ's examples of inconsistencies between the plaintiff's testimony and the medical evidence were not supported by substantial evidence. If there is a condition that is "capable of causing pain," then, under Ninth Circuit case law, the ALJ cannot only look to the absence of objective findings to degrade the claimant's credibility. There were objective findings in this case, but the heart of the case is that the testimony was "credited as true," such that remand was not the remedy, but rather payment of benefits. Arthur Stevens, III, Esq., Medford, OR.

***Free v. Commissioner***, Civ. No. 1:12-cv-00601-AC (D.Ore. June 7, 2013) ); *190 SSRS 492*– 15 pages

1981. District Court reversal and remand for calculation of benefits where the ALJ erred in determining that the plaintiff, whose IQ scores were 70 or below, did not meet Listing 12.05C because she did not demonstrate deficits in adaptive functioning before age 22. The plaintiff was in special education classes throughout her years of schooling and had difficulties with all subjects. Although she worked full time for three years, the ALJ failed to consider that her employer "was extremely accommodating…" Evidence from medical sources showed adaptive functioning deficits prior to age 22. The LAJ also erred in not giving significant weight to consultative examinations by a psychologist and a psychiatrist who noted work-related limitations due to the plaintiff's limited intellectual ability and depression. The record establishes that the plaintiff's combination of impairments did meet or equal listing 12.05C. Reversal is appropriate because evaluation

of the evidence following proper legal standards would "undoubtedly result in a determination of disability. . ." Peter A. Gorton, Esq., Endicott, NY

***Fumio v. Colvin***, Civil No, 3:11-CV-339 (N.D.N.Y. June 7, 2013) – 15 pages

1972. District Court remand for an award of benefits because the record was well-developed regarding the plaintiff's symptoms and limitations. The ALJ had denied the case by ignoring the opinion of the treating maxillofacial surgeon. His opinion related to a time period only a few months before the amended onset date and had probative value. "It was not harmless error for the ALJ to disregard [the treating surgeon's] testimony. The ALJ also improperly rejected the testimony and her husband. Arthur Stevens, III., Esq., Medford, OR.

***Alexander v. Astrue***, Case No. 01:12-cv-00693-HZ (D.Ore. Apr. 1, 2013); *2013 U.S. Dist. LEXIS 47355* – 17 pages

1968. District court reversal and award of benefits for a closed period. The plaintiff was receiving benefits based on a subsequent application filed after the onset of terminal cancer. In the first claim, the ALJ faulted the plaintiff for not having an RFC form from her rheumatologist who told her that he did not complete such forms. The ALJ erred in finding that the plaintiff's decision to stop taking on of the many medications prescribed by her treating physician is not a clear and convincing reason for discounting her credibility. Her treating rheumatologist was aware that she stopped taking prednisone for a period because of the side effects. This does not rise to the level of "failure to follow prescribed treatment." Arthur Stevens, III, Esq., Medford, OR.

***Purnell o/b/o Purnell (deceased) v. Astrue,*** Civil No. 1:12-cv-00056-JE (D.Ore. Feb. 20, 2013); *2013 U.S. Dist. LEXIS 23084* – 22 pages

1966. District court reversal and award of benefits. "It was inappropriate for the ALJ to consider the plaintiff's failure to continue treatment with an orthopedic specialist and failure to treat for her depression as part of the basis for his credibility decision." The ALJ erred in failing to consider the plaintiff's lack of insurance in her decision not to obtain treatment with the orthopedic surgeon. The ALJ's use of boilerplate language on credibility should be discredited. The court acknowledged that the "exact same language" had been used by the ALJ in another case heard by the court earlier the same day. Reversal is warranted because the "evidence establishes without any doubt that the plaintiff was disabled." Mariam Lavoie, Esq., Providence, RI.

***Borino v. Astrue***, Civil Action No. 12-98-M (D.R.I. Jan 18, 2013); *published at 917 F.Supp.2d 166 (D.R.I. 2013)* – 13 pages

**REOPENING –FAVORABLE DECISION**

2010. District Court denial of government's motion to dismiss the plaintiff's Complaint for Mandamus based on the ALJ violating her due process rights by failing to provide notice of all issues he would consider at the hearing. The notice did not say that he would consider a subsequent favorable determination at the remand hearing on a prior claim. The plaintiff filed applications in 2007 and 2011. The 2007 claim was denied by an ALJ. In May 2011, the Appeals Council remanded the 2007 claim and directed that it be associated with the 2011 claim, but the subsequent claim was allowed before this was

done. In March 2012, the ALJ sent a hearing notice on the 2007 remanded claim. Although the notice did not mention the 2011 favorable decision, the ALJ reconsidered that decision and found that the plaintiff was never disabled. Rather than exhaust administrative remedies, the plaintiff filed for mandamus, arguing that the ALJ's decision to overturn the 2011 favorable determination without notice violated her procedural due process rights. The court found that the requirements for waiving exhaustion of administrative remedies were met. Also, the notice was inadequate and "a constitutional violation exists." The hearing notice was sent 10 months after the Appeals Council remand order. "Under these circumstances, it was reasonable for Plaintiff to rely on the Notice of Hearing." Carol Avard, Esq., Cape Coral Fl.

***Dunnells v. Commissioner of Social Security***, Case No. 5:12-CV-484-Oc-18PRL (M.D.Fla. May 8, 2013)*; 2013 U.S. Dist. LEXIS 65790* – 39 pages including Order, Report and Recommendation, Complaint for Mandamus, Defendant's Motion to Dismiss, Plaintiff's Response to Defendant's Motion to Dismiss

1970. The District Court adopted the Magistrate Judge's Report and Recommendation for an award of benefits. After filing a concurrent claim, the plaintiff was awarded SSI benefits, but denied SSDI benefits due to a date last insured issue. The SSDI denial was appealed. The ALJ reopened the SSI allowance and reversed the favorable decision. The Magistrate Judge found that neither good cause nor notice requirements were followed by the ALJ and recommended that SSI benefits be reinstated. The court rejected the government's argument that the claimant, by appealing the SSDI claim, was also putting the SSI claim before the ALJ. This argument would "put any claimant who succeeds in obtaining benefits under only one of the two programs . . . in the untenable position of choosing whether to settle for the benefits awarded or risk losing those benefits merely by appealing the denial of other benefits . . .  This situation is inconsistent with the purpose of both programs." The ALJ also erred by failing to provide notice before the hearing that he intended to reopen the favorable ALJ decision. Daniel Emery, Esq., Yarmouth, ME.

***Harriman v. Colvin***, Case No, 1:12-cv-208-NT (D.Me. Mar. 31, 2013); *2013 U.S. Dist. LEXIS 59338* – 8 pages.

**REOPENING – GOOD CAUSE**

1988. Fully favorable ALJ decision reopening an earlier SSI application. The claimant requested a hearing after being awarded benefits at reconsideration but with a later onset date than he alleged. He also requested that a 2009 SSI application be reopened. At the time of the 2009 denial, the claimant was homeless and did not receive the denial notice. The request for hearing was filed later and the ALJ in that case found it to be untimely. Under 20 CFR sec. 316.1488, an initial determination can be reopened within two years in "good cause" is found/ The ALJ in the second claim found that the subsequent application Waa filed within two years of the initial denial and good cause exists because "new and material" evidence was submitted, including testimony that the claimant's brother received his mail at the time of the first application, and the brother's landlord interfered with the mail. The ALJ found the claimant and his brother to be credible and noted that this information was not available to the first ALJ. The ALJ found the claimant disabled as of the date of the 2009 application. Gregory T. Day, Esq., Grants Pass, OR.

ALJ decision on reopening (June 20, 2013) – 6 pages

**REOPENING – SSR 91-5p**
2013. District court remand for further consideration of the plaintiff's request to reopen her prior DIB applications. The plaintiff filed several DIB and SSI applications, appealing only one SSI application to the ALJ who issued a favorable decision, but would not reopen any other application. The court found that it had jurisdiction over the decision not to reopen. There was a colorable constitutional claim because the plaintiff was unrepresented during the earlier proceedings and her mental impairment made it impossible for her to understand and exercise her appellate rights in a timely manner. The ALJ did not consider whether these mental impairments affected the plaintiff's ability to understand and act of the denials while proceeding pro se. On remand, the Commissioner is instructed to make a determination on these factors. Ryan Woodske, Esq., Beaver, PA.

***Labate-Watterson v. Colvin***, Civil Action No. 12-1110 (W.D.Pa. Aug 7, 2013); *2013 U.S. Dist. LEXIS 110808*– 10 pages

**RESIDUAL FUNCTIONAL CAPACITY – LESS THAN SEDENTARY**
2011. Appeals Council remand where the ALJ's RFC determination did not include all of the nonexertional limitations found by the claimant's treating physician. In addition, in response to a hypothetical posed to the VE, which included the nonexertional limitations, the VE responded that there would be no jobs the claimant could perform. Lynn Stevens, Esq., Atlanta, GA.

Appeals Council remand on RFC (June 4, 2013) – 4 pages

1965. Fully favorable ALJ decision after remand. This case, cited in the *Padro et al v. Astrue* class action Complaint is an example of a federal court criticizing one of the ALJs named in the class action for failing to give appropriate weight to the treating physician and ignoring explicit instructions from a previous remand regarding evaluations of pain. The claim was originally filed in March 2001. The case was assigned to a different ALJ, after several unfavorable hearing decisions and two court remands. The newest ALJ issued a fully favorable decision, granting the claimant benefits dating back to April 2002, based on a residual functional capacity for less than a full range of sedentary work. Douglas Brigandi, Esq., Bayside, NY.

Fully Favorable ALJ decision on less than a full range of sedentary work (Jan. 22, 2013) – 14 pages including Decision and cover letter from counsel.

**RESIDUAL FUNCTIONAL CAPACITY – LOW STRESS**
1999. District Court remand for further proceedings. The ALJ gave "some probative weight, but not controlling weight" to the opinion of the treating psychiatrist that the plaintiff was "easily stressed and could not maintain concentration or attention for extended periods." The ALJ gave "great weight" to the RFC of a consultative psychologist who found most of the plaintiff's limitations to be mild, but also noted that the plaintiff's "ability to withstand the stress and pressure associated with day-to-day work activity was markedly impaired." The court found that the ALJ erred by discounting the RFC opinion of the treating psychiatrist in favor of the CE when both found marked limitations in handling work stress. The ALJ further erred by failing to include the marked limitations in handling work stress in the hypothetical posed to the VE. "[T]he

effect of [stress] on[the plaintiff's] ability to do her past relevant work as a janitor was never presented to the VE for an opinion as to what such a limitation would do to the number of janitorial jobs available. Marcia Margolius, Esq., Cleveland, OH.

***Ammons v. Commissioner of Social Security***, Case No. 5:12 CV 618 (N.D.Ohio Mar 26, 2013*); published at 936 F. Supp. 2d 860 (N.D. Ohio 2013)* – 15 pages

**RESIDUAL FUNCTIONAL CAPACITY – MENTAL IMPAIRMENTS**

1993. Appeals Council remand. The ALJ found the claimant could "perform work with 'limited' interpersonal demands in an object-focused work setting …" However, this limitation does not adequately articulate the maximum RFC to perform basic mental work activities as required by SSR 96-8p. For limitations that occur part of the time, recognized terms such as "frequently" and "occasionally" can be sued per SSR 83-10. The ALJ also erred by finding the claimant not credible due to 1) a history of theft convictions and 2) not obtaining testimony from his girlfriend who was present at the hearing. The criminal history "does not affect the credibility of his subjective allegations … Likewise, the claimant's decision not to elicit testimony from his girlfriend does not affect the credibility of his subjective allegations. Daniel Allen, Esq., Columbus OH.

Appeals Council remand on Mental RFC (Feb. 28, 2013) – 4 pages

1964. District Court remand. In her decision, the ALJ described how the plaintiff had moderate limitations in concentration, persistence or pace and also was limited to performing simple routine activities However, in her RFC determination, she only included the limitation to no more than simple, repetitive-type tasks. In her hypothetical question to the VE, the ALJ only included the limitation to simple, repetitive tasks, and did not include the limitations in concentration, persistence or pace. This is inconsistent with *O'Connor-Spinner v. Astrue*, 627 F.3d 614 (7th Cir. 2010). The court rejected the Commissioner's argument that the ALJ relied on a doctor's opinion to reach her conclusion that the plaintiff's moderate difficulties with concentration, persistence or pace allowed the plaintiff to perform simple repetitive tasks (an exception to the general rule in *O'Connor-*Spinner). The ALJ did not sufficiently articulate her assessment of the evidence and there was no reliance on any doctor's specific mental RFC. Michael DePree, Esq., Davenport, IA.

***Webster v. Astrue***, Case No 4:12-cv-4006 (C.D.Ill. Dec. 19, 2012) – 15 pages

**RESIDUAL FUNCATIONAL CAPACITY – "MODERATE"**

1962. Appeals Council remand for a new hearing. The ALJ found that the claimant's only mental limitations were "moderate" in the abilities to understand, remember, and carry out detailed instructions; maintain concentration and attention for extended periods' and interact properly with the general public. "The use of the term 'moderate' is not specific enough to provide a function by functional analysis in accordance with Social Security Ruling 96-8p." In considering the claimant's maximum RFC, "nonspecific qualifying terms (e.g. moderate, moderately severe, marked) should not be utilized since they do not describe function and do not usually convey the extent of the claimant's limitations." John Horn, Esq., Tinley Park, IL.

Appeals Council remand on use of "moderate" (December 31, 2012) - 3 pages

**RESIDUAL FUNCTIONAL CAPACITY – SIMPLE UNSKILLED WORK**
1990. District court remand where the ALJ's hypothetical questions to the VE did not include any mental limitations even though the ALJ found that the plaintiff had moderate difficulties in maintaining concentration, persistence or pace, and was moderately limited in the ability to carry out detailed instructions, maintain attention and concentration for extended periods, maintain regular attendance, and be punctual. The court rejected the government's argument that the ALJ properly accounted for the plaintiff s limitations by questioning the VE about the capacity to perform "unskilled" work. The Seventh Circuit has explicitly rejected this argument, holding that questioning about the ability to do "simple" or "unskilled" work cannot be presumed to include an assessment of the ability to overcome mental limitations, such as moderate limitations in maintaining concentration, persistence or pace. *O'Connor-Spinner v. Astrue,* 627 F.3d 614, 620-21 (7th Cir. 2010). The record shows "only a medical conclusion that the plaintiff 'is capable of simple work related tasks,' not that her impairments would be absent if she were limited to such tasks." John E. Horn, Esq., Tinley Park, IL.

***Murray v. Astrue,*** No. 10-cv-7561 (N.D.Ill. July 1, 2013) – 6 pages

**SEVERITY**
2020. District court decision overturning the U.S. Magistrate Judge's Report and Recommendation, and remanding for additional proceedings. The court held that the regulations require that even "non-severe" but documented limitations must be included in an ALJ's RFC findings and in the ALJ's hypothetical questions to the VE. Failure to include these limitations is not "harmless error." It is possible for an ALJ's failure to address an impairment at step 2 to be harmless if adequately discussed at step 4. In this case, that did not occur. A state agency medical consultant's opinion was that the plaintiff had an affective disorder of depression and found that the plaintiff had the RFC to complete 1 and 2 step simple tasks which required only limited contact with others. The ALJ fully credited this opinion but erred in failing to address the limitations at step 4. The ALJ also failed to include these limitations at step 5 in his questions to the VE. "Such a failure cannot be deemed harmless because if the ignored testimony is credited, a proper hypothetical would have included limitations which, the record suggests, would have been determinative as to the vocational expert's recommendation to the ALJ." (citation omitted). John V. Johnson, Esq., Chico, CA

***Johnson v. Colvin,*** Case No. 12cv1877- WQH-DHB (S.D.Cal. Sept. 30, 2013); *published at 949 F. Supp. 2d 1025 (S.D.Ca. 2013)* – 19 pages

**SIGNIFICANT NUMBER OF JOBS**
1973. District court remand where the Commissioner did not sustain her burden at Step five. The VE's testimony did not establish that there were a significant number of jobs available to the plaintiff in the national and regional economies. The VE provided numbers for the broad category of jobs that included the specific jobs he testified that the plaintiff could perform, bur he could not provide a number for the specific jobs listed. In addition, he testified that the board category of jobs included positions that the plaintiff would not be able to perform. As a result, "[t]his testimony does not constitute substantial evidence. Peter A. Gorton, Esq., Endicott, NY.

***Rosa v. Colvin***, Case No. 3:12-CV-0170-LEK-TWD (N.D.N.Y. Mar. 27, 2013); *2013 U.S. Dist. LEXIS 43215* – 18 pages

**SPEECH DISORDERS**
2006. Fully favorable Appeals Council decision. An Appeals Council medical consultant reviewed the record and found that the severity of the claimant's speech disorder met the criteria of listing 2.09 (Loss of Speech). The Appeals Council concluded that this was consistent with the medial record and clinical data, and gave substantial weight to this opinion. Benjamin D. Walters, Esq., Athens, GA.

Fully Favorable Appeals Council decision on listing 2.09 (Sept. 27, 2013) – 8 pages

**SSI: DISABLED CHILD – CONTINUING DISABILITY REVIEW**
2016. ALJ decision that the child continued to be disabled. In 2010, when the claimant was 4 years old, it was determined that he was no longer disabled. He was born premature, and his impairments were found to functionally equal the listings. He currently has spastic dysplasia, developmental delay, and a learning disorder. The ALJ found that he continued to be disabled because he had "marked" limitations in two domains: (1) acquiring and using information; and (2) attending and completing tasks. These marked limitations were noted by the consultative psychologist. While the claimant's physical conditions have improved, his cognitive abilities are limited. Albert B. Carrozza, Esq., Olney, MD.

ALJ decision (Sept. 18, 2012) – 14 pages including Decision, Claimants' letter brief to ALJ, Counsel's response to psychologist's report.

**SSI: DISABLED CHILD – LISTING 112.00**
1963. District Court remand because the court could not conduct meaning full review of the ALJ decision. The Court could not discern whether the ALJ actually evaluated the evidence and compared it to listings 112.04 and 112.11 or skipped the step 3 analysis altogether. At step 3, the ALJ is required to evaluate the relevant evidence, compare it to the listings, and give an "explained conclusion" whether the evidence meets the listing. "Without this evaluation, it is impossible for the Magistrate [Judge] to say that the ALJ's decision at step three was supported by substantial evidence." The court also found that the ALJ erred in assessing the plaintiff's functional equivalence to a listing. The ALJ recited the law and provided a one line conclusion that she had no limitation in the domain. But he failed to mention the evidence he considered He also failed to properly weigh the evidence, by giving "only cursory consideration" to the plaintiff's treatment or counseling. Marcia Margolius, Esq., Cleveland OH.

***Davis o/b/o D.D. v. Commissioner of Social Security,*** Case No. 1:11-CV-2749 (N.D.Ohio Dec. 10, 2012); 2012 U.S. Dist. LEXIS 174787; 185 SSRS 51 – 28 pages

**SSI: DISABLED CHILD – SCHOOL RECORDS**
1992. District Court remand for further proceedings where the ALJ erred in failing to obtain the child's psychiatric records. An ALJ has a duty to develop the record even when the claimant is represented by counsel (*Sims v. Apfel*, 530 U.S. 103, 111(2000)). The child's school records showed a decline in the domain of attending and completing

tasks during the same period covered by the psychiatric records. The ALJ also erred in failing to explain how a teacher's assessment of "a very serious problem" in attending and competing tasks on a daily basis in 10 of 13 activities does not rise to a "marked" limitation. Mike Silver, Esq. and Larry Weinstein, Esq., Ardmore, PA.

***Tina Richardson on behalf of C.D.F., Jr. v. Colvin***, Civil Action No. 12-2652 (E.D.Pa. May 22, 2013) – 46 pages including Report & Recommendation, Plaintiff's Brief and Statement of Issues in Support of Request for Review

**SUBSTANCE ABUSE**

1986. Appeals Council remand where the ALJ cited Ninth Circuit case law that in cases involving DAA and an additional impairment, the claimant has the burden of proving that he or she would remain disabled in the absence of DAA [*Parra v. Astrue*, 481 F.3d 742 (9th Cir. 2007)]. "However, the Commissioner has not acquiesced in these court decisions. It remains the policy of the Commissioner of the Social Security Administration that in a case in which an individual is disabled by a combination of impairments and it is not possible to separate the limitations imposed by substance abuse from the limitations imposed by other impairments shown by the evidence, then a finding that substance abuse was not material would be appropriate (Social Security Ruling 13-2p)." New and material evidence submitted to the Appeals Council also was considered. The new evidence from the VA indicated Rating Decisions of 70% for the mental impairments and 10% for the physical impairments. On remand, the case will be assigned to a different ALJ since this is the second remand. Manuel D. Serpa, Esq., San Bernardino, CA.

Appeals Council remand on SSR 13-2p (June 10, 2013) – 3 pages

1975. District court remand for further proceedings. The ALJ erred by failing to cite any objective evidence to distinguish the plaintiff's degree of limitation while using drugs and while not using drugs. This is insufficient to constitute substantial evidence that the plaintiff's DA&A was material to his disability. Under the four step DA&A process, it is the ALJ's responsibility to assess the impact of limitations that remain if DA&A use ceased. ". . . [I]f it is not possible to distinguish between the limitations created by the DA&A or the claimant's other impairments, [it is the ALJ's responsibility] to find that DA&A is not a contributing factor material to disability." The court cited to the 1996 Emergency Message (now superseded by SSR 13-2p). The government filed a motion to alter or amend judgment, relying on SSR 13-2p for the position that the plaintiff has the burden of proving disability throughout the DA&A materiality analysis. The court denied the motion. While the plaintiff has the burden of establishing disability, '[t]he ALJ must provide substantial evidence from the record which demonstrates that the claimant was disabled *because* of DA&A." (emphasis in original). E. David Harr, Esq., Greensburg, PA.

***Urchick v. Astrue***, Civil Action No. 12-470 (W.D.Pa. Mar. 7, 2013) – 34 pages, including Memorandum Opinion, Order of the Court, Judgment Order, Defendant's Motion to Alter or Amend Judgment, Memorandum Order (Mar. 21, 2013).

**TRANSFERABLE SKILLS**

2018. Appeals Council fully favorable decision. The claimant has a high school education (in Argentina) and past relevant work as a packager and medical assistant with the latter being skilled work. She was 54 years old at the time of her alleged onset date. The Appeals Council relied on its medical consultant who limited her to sedentary work. As a result, the Council found she could not return to her past work. Because she is now limited to unskilled work, she had no transferable skills within her RFC. The Appeals Council found her disabled within the frame work of Rules 201.06 and 201.14 as of her onset date. Douglas Brigandi, Esq., Bayside, NY.

Appeals Council decision (October 18, 2013) – 12 pages

**VOCATIONAL EXPERT TESTIMONY – COMPOSITE JOB**

2001. Appeals Council remand. The claimant's past relevant work as a quality control worker and a double checker. At the hearing the VE did not identify a DOT listing for the job; instead she described the job as having significant elements of two or more occupations. "A claimant can be found capable of performing a composite job as actually performed only when she can perform all parts of the job." The VE testified that the claimant had the RFC to perform the quality control work but not the double checker part. Since the composite job does not have a counterpart in the DOT, "it is not to be evaluated when considering the claimant's ability to do the job as generally performed in the national economy. John Horn, Esq., Tinley Park, IL

Appeals Council remand on composite job (August 13, 2013) – 3 pages

**VOCATIONAL EXPERT TESTIMONY: CONFLICT WITH DOT**

2015. District court remand for further development of the record as to whether the plaintiff's RFC precluded performing jobs with the reasoning levels of two and three as listed in the DOT. The court found that the VE misinformed the ALJ about the conflict between his testimony and the DOT. The ALJ limited the claimant to an RFC of "simple and routine tasks and would have minimal decision making about the work processes." In response, the VE identified three jobs with Specific Vocational Preparation (SVP) of 2, consistent with the DOT. However, two of the jobs had reasoning levels of 3. The court found the record silent as to how a person who is limited to "routine tasks' and minimal decision making" can perform jobs listed in the DOT with reasoning levels of 2 and 3. "Without further development of the record on this issue, substantial evidence does not support the ALJ's finding." Carol Avard, Esq., Cape Coral, FL.

***Cousins v. Colvin***, Case No. 2:12-cv-505-FTM-29DNF (M.D. Fla. Aug. 23, 2013*); 2013 U.S. Dist. LEXIS 133546* – 27 pages

**WEIGHT OF MEDICAL EVIDENCE – EXPLANATION OF WEIGHT GIVEN**

2009. District court remand where the ALJ erred in rejecting the treating physician's opinion regarding the plaintiff's moderate limitation in maintaining concentration persistence, or pace, but then assigning significant weight to the opinion regarding the plaintiff's ability to maintain social function. In addition, the ALJ did not give good reasons for rejecting the opinion and failed to apply the regulatory factors to weigh opinion evidence. On remand the ALJ shall articulate the specific weight give to the treating physician's opinion, including any evidence that may support his finding that the doctor was "overly sympathetic." The ALJ also erred in rejecting the opinion of the

plaintiff's former, but long-time, primary care physician. Even though the doctor was not a specialist, her opinions are entitled to consideration under the factors in the regulations, where specialization is only one factor. Benjamin Burton, Esq., Sevierville, TN.

***Sharp v. Colvin***, Case No 3:12-CV-467 (E.D.Tenn. Sept 27, 2013*); 2013 U.S. Dist. LEXIS 139182* – 27 pages

1995. District Court remand because the ALJ failed to properly evaluate the treating orthopedic surgeon's opinion under the treating physician rule. The ALJ failed to assign any weight to the treating surgeon's opinion and failed to provide good reasons for not giving it controlling weight. An ALJ must provide good reason for discounting a treating physician's opinion, regardless of whether the ALJ's ultimate conclusion to reject is was justified based on the record as a whole. Marcia Margolius, Esq., Cleveland, OH.

***Twyford v. Commissioner of Social Security***, Case No. 1:12 CV 796 (N.D.Ohio May 15, 2013*); 2013 U.S. Dist. LEXIS 69113* – 22 pages

1967. Sixth Circuit remand for further proceedings where the ALJ failed to provide "good reasons" for giving the treating physician's opinion "little weight" and instead relying on nontreating sources. The failure to articulate reasons "hinders a meaningful review of whether the ALJ properly applied the treating physician rule." The ALJ focused on isolated pieces of evidence in the record, which is "an insufficient basis" for according little weight to the treating physician. The ALJ failed to five the same level of scrutiny to the opinions of the consultative doctors upon which he relied. While the treating physician opinion might not be given controlling weight if evaluated properly, "this circuit has made it clear that [it] do[es] not hesitate to remand when the Commissioner has not provided good reasons for the weight given to a treating physician's opinion." (citation omitted). Robert C. Walter, Esq., Dayton, OH.

***Gayheart v. Commissioner of Social Security***, No. 12-3553 (6th Cir. Mar.12, 2013); *published at 710 F.3d 365 (6th Cir. 2013)* – 22 pages.

**WEIGHT OF MEDICAL EVIDENCE – ISSUES RESERVED FOR COMMISSIONER**

1998. The ALJ gave the opinion of the examining board certified occupational environmental medical physician "limited weight". The doctor gave opinions on issues reserved for the Commissioner - the plaintiff was unable to work due to her mental and physical impairment. Citing SSR 96-5p, the court pointed out that "opinions from any medical source about issues reserved to the Commissioner must never be ignored." The ALJ's failure to discuss this warrants remand. Also, the ALJ's reasons for rejecting the doctor's opinions on the plaintiff's physical impairments were not supported by substantial evidence since the doctor did make clinical observations that supported her opinion and her assessment was within her area of specialty. Further, the doctor's opinion is "largely consistent with the medical records from [the plaintiff's] treating physician. Raymond Kelly, Esq. Manchester, NH

***Morse v. Colvin***, Civil No. 12-c-v-446-PB (D.N.H. Aug 21, 2013*); 2013 U.S. Dist. LEXIS 153571* – 19 page

**WEIGHT OF MEDICAL EVIDENCE – STATE AGENCY OPINION**

2019. ALJ decision finding that the claimant's impairments met Listings 12.04 and 12.08. The claimant was diagnosed with bipolar disorder, major depressive disorder and a personality disorder. In response to interrogatories, a consulting psychologist opined that the claimant's impairments met the "A" and "B" criteria of both listings. The treating psychologist's findings were consistent, noting that the claimant had poor abilities with several important work-related function, and his opinion was given "significant weight." Another consultant found a GAF of 40, which suggests serious symptoms of dysfunction, and this opinion was given "some weight." State agency psychological consultant's assessments were give "little weight" because the claimant's symptoms were more limiting than these consultants found. The ALJ recommended a review within 24 months because medical improvement is expected with appropriate treatment. John E. Horn Esq., Tinley Park, IL.

Fully favorable ALJ decision (Oct. 17, 2013) – 10 pages

**WEIGHT OF MEDICAL EVIDENCE – TREATING DOCTOR BIAS**

2009. District court remand where the ALJ erred in rejecting the treating physician's opinion regarding the plaintiff's moderate limitation in maintaining concentration persistence, or pace, but then assigning significant weight to the opinion regarding the plaintiff's ability to maintain social function. In addition, the ALJ did not give good reasons for rejecting the opinion and failed to apply the regulatory factors to weigh opinion evidence. On remand the ALJ shall articulate the specific weight give to the treating physician's opinion, including any evidence that may support his finding that the doctor was "overly sympathetic." The ALJ also erred in rejecting the opinion of the plaintiff's former, but long-time, primary care physician. Even though the doctor was not a specialist, her opinions are entitled to consideration under the factors in the regulations, where specialization is only one factor. Benjamin Burton, Esq., Sevierville, TN.

***Sharp v. Colvin***, Case No 3:12-CV-467 (E.D.Tenn. Sept 27, 2013*); 2013 U.S. Dist. LEXIS 139182* – 27 pages

**WEIGHT OF MEDICAL EVIDENCE – 3rd CIRCUIT**

1979. District court remand because the ALJ's rejection of a doctor's Department of Welfare employability assessment was improper. The Magistrate Judge noted, "The fact that the Welfare form was a requirement to receive benefits is not, standing alone, a reason to view it with suspicion. After all, the RFC assessments and other evaluations submitted by treating physicians are also for the purpose of determining eligibility for cash benefits. Yet the agency regulations do not mandate an assumption that the doctors are lying every time their assessments are favorable to the claimant." The Magistrate Judge also noted that the "lack of clear evidence" that a treating physician was familiar with the SSA definition of disability was not a reason to discount the doctor's statement that the claimant continued to have frequent headaches and some double vision which caused him "to discontinue all activities." Finally, the ALJ's statement that if the claimant had "such severe headaches, he would not be able to watch television" was an impermissible lay observation by the ALJ." Lawrence J. Weinstein, Esq., Ardmore, PA.

***Anderer v. Astrue,*** Civil Action No. 12-5303 (E.D.Pa. Apr. 19, 2013) – 49 pages including Order, Report and Recommendation, Plaintiff's Motion for Summary

Judgment, Plaintiff's Brief and Statement of Issues, Plaintiff's Reply Brief, Plaintiff's Objections to Magistrate's Report and Recommendation.

**WEIGHT OF MEDICAL EVIDENCE – 6th CIRCUIT**
2008. District court remand where the ALJ failed to follow the two –step analysis required by the Sixth Circuit in evaluating treating source opinions: 1) Should controlling weight apply?; and 2) If not, did the ALJ address how much weight to give the opinions? For either, the ALJ must provide "good reasons" for discounting treating source opinions, supported by record evidence and clearly articulated. In this case, the ALJ erred in rejecting the opinion as based on "subjective complaints and not objective findings." The ALJ failed to discuss evidence of the clinical findings and, "[a]s such... collapsed the two-part test into a single inquiry…" This made it difficult for the court to address the first prong. Further, the failure to consider the second prong regarding all the doctors' opinions requires remand. Marcia Margolius, Esq., Cleveland, OH.

***Allums v. Commissioner of Social Security***, Case No. 1:12 CV 2245 (N.D.Ohio Sept. 27, 2013*); 2013 U.S. Dist. LEXIS 139324* – 18 pages

**WEIGHT OF MEDICAL EVIDENCE – 8th Circuit**
1974. District court remand where the ALJ erred by giving "no weight" to the plaintiff's treating neurologist and rheumatologist. Instead, he relied on the orthopedic report by the non-treating consultative examiner. The treatment records of the treating specialists and the MRI evidence showed that the plaintiff had marked limitations and "debilitating pain." The ALJ relied on the CE report and the plaintiff's testimony regarding day to day activities to deny her claim. While the Magistrate Judge recommended outright reversal, the district court held that remand for further proceedings was the proper remedy. Fritzie Vammen, Esq., Conway, AR.

***Harmon v. Colvin***, Case No. 4:12-cv-000539-BSM (E.D.Ark. Apr. 25, 2013); 13 *U.S. Dist. LEXIS 59292* – 23 pages including District Court Order, Proposed Findings and Recommendations, Plaintiff's Brief.

**WEIGHT OF MEDICAL EVIDENCE – 9th Circuit**
1972. District Court remand for an award of benefits because the record was well-developed regarding the plaintiff's symptoms and limitations. The ALJ had denied the case by ignoring the opinion of the treating maxillofacial surgeon. His opinion related to a time period only a few months before the amended onset date and had probative value. "It was not harmless error for the ALJ to disregard [the treating surgeon's] testimony. The ALJ also improperly rejected the testimony and her husband. Arthur Stevens, III., Esq., Medford, OR.

***Alexander v. Astrue***, Case No. 01:12-cv-00693-HZ (D.Ore. Apr. 1, 2013); *2013 U.S. Dist. LEXIS 47355* – 17 pages

**WEIGHT OF MEDICAL EVIDENCE – D.C. CIRCUIT**
1976. District Court remand for further proceedings. The ALJ gave no weight to the opinion of the treating physician because he erroneously said that the doctor's treatment notes were not in the record. The failure to consider her notes, which were "a critical source of information supporting her ultimate medical opinion, was not harmless error."

The failure to give good reasons for rejecting the treating physician's opinion warranted remand. Further the ALJ's reasoning "suffers from logical inconsistencies" because he relied on other medical opinions that were not in accord. In addition, "the Commissioner's attack on [the treating physician] for reasons not articulated by the ALJ is an illegitimate *post hoc* rationalization that may not be considered." Elliott Andalman, Esq., Silver Spring, MD.

***Kingsbury v. Astrue***, Civil Action No. 11-1901 (JDB/JMF) (D.D.C. Dec. 26, 2012) -51 pages including Order, Report and Recommendation, Plaintiff's Motion, and Memorandum in Support Thereof, Plaintiff's Reply Brief – 51 pages

**WORK INCENTIVES – SUBSIDY**

2012. ALJ decision that the claimant was not overpaid $38,846.20 in benefits due to earnings above the SGA limit over a period of 2 ½ years. The ALJ held that the claimant was eligible for the benefits paid during the contested period. He found that her work activity was only 60% value, given a subsidy of 40%. In addition, she had only eight months of work. Thus, her trial work period was not competed. At the hearing, the claimant, who has cerebral palsy and has difficulty standing and using her right hand, testified that she currently worked only 94 hours per month at a store. Lawrence Wittenberg, Esq., Durham, NC.

Fully favorable ALJ decision on overpayment (Nov. 2013) – 8 pages