LIST OF AVAILABLE MATERIAL

JANUARY – DECEMBER 2016

ITEM NUMBERS – 2116-2150

Abuse of Discretion

2148. An ALJ told counsel that all evidence must be submitted five days before a hearing and made a threat of sanctions if evidence was submitted after that deadline. After the ALJ issued a denial in the claim, the claimant requested Appeals Council review. The Appeals Council found that the ALJ had made errors of law in citing "to non-existent evidence requirements"; threatening sanctions "was erroneous as a matter of law and constitutes abuse of discretion." The Appeals Council vacated the decision and remanded the claim for a hearing before a different ALJ. The claimant was represented by Suzanne J. Hayden of Canonsburg, Pennsylvania.

Notice of Order of Appeals Council Remanding Case to Administrative Law Judge (September 8, 2016) – 4 pages

ALJ's Duty to Develop

2122. The District court remanded the claim for SSA for development of the record and a new disability determination. The claimant had applied for SSI, been denied after an ALJ hearing, and appealed to the Appeals Council, who remanded the case. The subsequent ALJ hearing took place over three days before the ALJ again denied benefits, and the claimant appealed to the Appeals Council again and ultimately to federal court. The court remanded the case to SSA because it held that the ALJ had failed to fully develop the file: the ALJ failed to subpoena certain records, did not enforce other subpoenas, and issued one subpoena that listed the wrong name and address for a hospital where the claimant was treated. When the additional evidence is obtained, it may necessitate a new analysis of the weight that should be given to the claimant's treating physician. The court also found that the ALJ had improperly assessed the claimant's credibility, questioned the vocational expert in a manner that yielded legally insufficient testimony, and did not consider the combined impact of the claimant's multiple impairments. The claimant was represented by Max D. Leifer of New York, New York.

McClinton v. Colvin, No. 13cv8904 (CM) (MHD) (S.D.N.Y), Magistrate Judge's Report & Recommendation endorsed by District Court Judge (October 16, 2015) – 105 pages

Appeals Council

2140. The claimant was 52 years old on her alleged onset date, and had musculoskeletal and cardiac impairments, as well as diabetes. The ALJ had found that she could perform a limited range of sedentary work and that she was not disabled. After the ALJ hearing, the claimant was re-examined by her treating provider and underwent a MRI and other testing. She also twice had x-rays taken at emergency room visits after falling down. The additional evidence was submitted to the Appeals Council, who upheld the ALJ's decision. The magistrate judge found that the additional evidence was "new" because it did not exist at the time of the ALJ hearing, and this was also good cause for not submitting it to the ALJ. The magistrate judge also found that the additional evidence was "material" because it established a diagnosis of coccydynia, a condition that the medical expert at the hearing testified had no objective evidence in the record. The ALJ relied on this expert's testimony in finding that the claimant had no limitation in her ability to sit. Since there was "a reasonable probability that the Commissioner would have reached a different disposition" if the evidence had been considered at the ALJ hearing, the case was remanded for further proceedings. The magistrate judge's decision also notes that the Commissioner's Memorandum in Opposition misquoted the claimant's doctor in a way that changes the meaning of his statement. The doctor wrote that the claimant "does not just have coccydynia, but rather has pain in mid back and down the right leg."

The memorandum quotes the doctor as saying the claimant "does not have coccydynia…" The claimant was represented by Margolius Margolius and Associates LPA of Cleveland, Ohio.

Borden v. Commissioner, Case No. 2:15-CV-1867 (S.D. Ohio, E.Div.) Opinion and Order (April 28, 2016) – 18 pages

Child Disability

2135. The claimant was nine years old at the time of his SSI application. His impairments included vision problems in both eyes, albinism, and attention deficit disorders. The ALJ concluded that the child did not meet a listing, but had a marked limitation in the domain of health and physical well-being. The ALJ did not find a marked limitation in the domain of moving about and manipulating objects, basing this finding on the child's testimony that he enjoyed playing sports and video games. Nor did the ALJ find a marked or extreme limitation in any other domains. Since child SSI is only awarded when there is a marked limitation in two or more domains, or an extreme limitation in at least one domain, the claimant was denied benefits. The court held that the ALJ's determination in the moving about and manipulating objects domain was not supported by substantial evidence: a check-box form indicating that the child could use scissors, for example, did not support the ALJ's finding that the child could do so without any difficulty. Similarly, the ALJ did not appropriately consider testimony that the child routinely fell when attempting to play sports and could only play video games if he sat six inches from the screen. The ALJ also made a flawed credibility assessment and did not correctly assess the effects of the claimant's combination of impairments. Therefore, the case was remanded for further proceedings. The claimant was represented by Deborah Spector of Chicago, IL.

Van Ness ex rel. C.V. v. Colvin, Case No. 3:14-cv-02076 (N.D. Ind., S.Bend Div.) Opinion and Order (March 23, 2016) – 13 pages

2145. The claimant is a child whose grandmother applied for him to receive SSI benefits. The denial of benefits was at first upheld by a magistrate judge, but the claimant's attorney filed objections. The magistrate judge's recommendations were overturned because it was found that the ALJ had not articulated the analysis used in determining whether the claimant met or medically equaled listings 112.04 and 112.06 (mood disorders and anxiety disorders, respectively). The court held that although the ALJ had conducted a functional equivalence analysis, this could not substitute the need for a medical equivalence analysis. "Although the same evidence may be considered when engaging in both analyses, the analyses and their respective criteria are wholly distinct. Indeed, under the current framework, an ALJ can dispense with a functional equivalence analysis altogether if a claimant's impairment meets or medically equals an Appendix listing, but not vice versa" (citations omitted). The magistrate judge's attempts at fact-finding on the issue of whether the claimant met or equaled a listing were not sufficient because "fact-finding and credibility determinations, however, are more appropriately reserved for the ALJ." Therefore, the case was remanded for further proceedings. The claimant was represented by Jonathan M. Stein and Robert J. Lukens of Philadelphia, Pennsylvania.

Pizarro o/b/o A.P. v. Colvin, Civil Action No. 15-2644 (E.D. Pa.) Claimant's opening brief, Commissioner's brief, claimant's reply brief with appendices, Magistrate Judge Report and Recommendations, claimant's objections to Report and Recommendations, Commissioner's response to objections, and Memorandum Opinion (September 21, 2016) – 186 pages

Credibility

2118. The district court rejected the Report and Recommendation of a magistrate judge and remanded the claim to SSA for further proceedings. The court found that the ALJ should have considered the claimant's long work history, which included 24 years of consecutive employment before the onset of disability, in assessing the claimant's credibility. The ALJ was also found to have erred in finding that the claimant was less credible because of treatment non-compliance without considering the claimant's lack of insurance coverage. In addition, the court held that the ALJ erred

in failing to consider third party statements from a Social Security field office employee and the claimant's fiancée. The claimant was represented by Meyer Silver of Ardmore, Pennsylvania.

Diggs v. Colvin, 2015 U.S. Dist. LEXIS 69786, 2015 WL 3477533 (E.D. Pa.), Magistrate Judge's Report and Recommendation (July 31, 2014), District Court Memorandum and Order (May 28, 2015) – 37 pages

2131. SSR 16-3p became effective on March 16, 2016. The court applied it to a claim that was decided at the ALJ and Appeals Council level before the SSR's effective date, because "the application of a new social security regulation to matters on appeal is appropriate where the new regulation is a clarification of, rather than a change to, existing law." The court found that the ALJ "failed to build a logical bridge between the evidence and her subjective symptom evaluation" because she did not question the claimant about alleged inconsistencies. The ALJ's analysis merely recited the medical evidence and implied that it did not support the claimant's testimony. The ALJ also used flawed reasoning in determining that inconsistencies between the claimant's testimony and evidence existed: the ability to occasionally complete household chores, socialize with friends, and work a part-time job with significant accommodations are different than the ability to work full-time. The case was remanded for further proceedings. The claimant was represented by John E. Horn of Tinley Park, IL.

Turner v. Colvin, Case No. 14 CV 02237 (N.D. Ill, E. Div.) Memorandum Opinion and Order (June 2, 2016) – 24 pages

2146. The claimant had a variety of physical impairments as well as borderline intellectual functioning. He had a seventh-grade education and was 51 years old at the time of his ALJ hearing. The ALJ determined that the claimant was not fully credible and had the residual functional capacity to perform medium work, with some non-exertional limitations. However, the magistrate judge found that the ALJ improperly assessed the claimant's subjective complaints. The magistrate judge's report and recommendations discusses Eighth Circuit precedent on this topic. It notes the five factors an ALJ must use when making assessments about subjective complaints and notes "The ALJ is not required to methodically discuss each factor as long as the ALJ acknowledges and examines these factors prior to discounting the claimant's subjective complaints. As long as the ALJ properly applies these five factors and gives several valid reasons for finding that the Plaintiff's subjective complaints are not entirely credible, the ALJ's credibility determination is entitled to deference. The ALJ, however, cannot discount Plaintiff's subjective complaints 'solely because the objective medical evidence does not fully support'" them (citations omitted). Given that the ALJ failed to perform a proper evaluation of the subjective complaints, the case was remanded for further proceedings. The claimant was represented by Jim Carfagno, Jr. of Russellville, Arkansas.

Turner v. Colvin, Case No. 2:15-cv-2119 (W.D. Ark., Fort Smith Div.) Plaintiff's Amended Brief, Plaintiff's Reply Brief, Report and Recommendation of the Magistrate Judge (May 18, 2016), Order Regarding EAJA Fees (August 29, 2016) – 41 pages

2147. The claimant was 33 years old on his alleged onset date and had an associates' degree. He had several physical and mental impairments that when combined, gave him a 100 per cent disability rating from the Department of Veterans' Affairs. However, when he applied for Social Security disability benefits, an ALJ denied him at step 5 of the sequential evaluation process. The federal district court's order found "The ALJ gave little weight to plaintiff's statements regarding the intensity, severity and limiting effect of his impairments…. While the ALJ's characterization of plaintiff's statements to his provider and SSA give an appearance of a conflict, returning to the record, it is clear the supposed conflict rests on mischaracterizations and cherry-picked evidence." The court also found that the ALJ erred in finding that the claimant's history of prior work undermined the credibility of his testimony about his functional limitations. Given that the claimant testified about the difficulties he had while working and the fact that he was subsequently laid off, "The plaintiff should not be punished because he attempted and failed to maintain a job. To the contrary, a plaintiff's unsuccessful attempts to work may actually favor a finding of disability." The

ALJ failed to mention medical evidence from six treating doctors and two nurse practitioners, and did not provide an appropriate rationale for not giving the VA rating great weight. Therefore, the case was remanded with instructions that "the ALJ must consider all medical opinions" and "the ALJ must give great weight to the VA's disability finding or provide a persuasive, specific, and valid reason for giving the rating less weight." The claimant was represented by Art Stevens of Medford, Oregon.

Rosa v. Colvin, Case No. 1:15-cv-01180-AA (D. Or., Medford Div.) Opinion and Order (August 1, 2016) – 16 pages

2149. The District Court ordered remand after consideration of objections to the Report and Recommendation of the Magistrate filed by the claimant. The District Court found that the ALJ failed to appropriately assess the opinions of a consultative examining physician. The consultative physician opined that the claimant could not even carry ten-pound objects without experiencing pain. The ALJ gave great weight to the opinions of the consultative physician but did not explain how he reconciled the limitation on carrying by the consultative physician with his own finding that the claimant has the RFC to perform light work requiring frequent carrying of up to ten pounds. The Court found that the ALJ's failure to reconcile the inconsistency or explicitly reject the carrying/lifting opinion violated Third Circuit case law including Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981) and Burnett v. Comm'r of Soc. Sec., 220 F.3d 112, 122 (3d Cir. 2000). The District Court also found that the ALJ erred in assessing credibility. The Court noted that courts generally afford great deference to assessment of credibility by the ALJ. Nevertheless, the Court concluded that the ALJ improperly rested his credibility determination almost exclusively on the claimant's failure to pay taxes on earnings during his boxing career. The Court found that remand was required because the ALJ failed to assess other mandated factors related to credibility. The plaintiff was represented by Meyer Silver, Esq., Silver & Silver, of Ardmore, Pennsylvania.

Wilson v. Colvin, No. 15-3409, 2016 U.S. Dist. LEXIS 150957, at *8 (E.D. Pa.). Magistrate Judge's Report and Recommendations (R&R), Plaintiff's Objections to R&R, Defendant's response to Plaintiff's objections to R&R, District Court Opinion (Nov. 1, 2016) – 73 pages

2150. After a 2011 ALJ denial, a 2012 Appeals Council remand, a 2013 ALJ denial, and a 2016 federal court remand, a new ALJ determined that the claimant met listing 3.02A based on pulmonary function tests dating back to 2010. The claimant's subsequent medical records show a worsening of her respiratory impairments, and she also had numerous musculoskeletal impairments that further reduced her functioning. In addition, although the claimant's record shows large amounts of income for several years after her alleged onset date, the ALJ took note of documentation showing that the income stemmed from pension and annuity payments and the settlement of a lawsuit, and therefore did not indicate substantial gainful activity. The claimant was represented by John Horn, Horn & Kelley, P.C. of Tinley Park, Illinois.

Fully Favorable ALJ Decision (September 21, 2016) – 5 pages

Disparate Treatment Mortgage Lending Discrimination

2116a. The Ninth Circuit reversed in part and affirmed in part the district court's dismissal of the Plaintiff's complaint. The Plaintiff suffered from a disability and derived part of his income from SSDI. He had applied for a mortgage from Quicken Loans, Inc. ("lender"), and was informed that he must provide medical proof of disability beyond his award letter. The Plaintiff brought suit arguing that the request violated a variety of federal laws, including FHA, ECOA, FEHA, and Unruh, which prohibit discrimination in the housing or credit transaction context based on disability or on the basis of whether an individual receives income from public assistance. The Ninth Circuit held that the Plaintiff had made a claim for disparate treatment discrimination. The Court also held that the Plaintiff failed to state a claim for disparate impact discrimination, but that the Plaintiff should be granted leave to amend the complaint to cure the deficiencies in that claim. The Court explained that, "indeed, underwriting materials published by Fannie Mae emphasize that SSDI income is 'considered stable, predictable, and likely to continue' and that a lender 'is not expected to request additional

documentation from the borrower.'" The Plaintiff was represented by the Northwest Fair Housing Alliance, after being referred by Ken Isserlis, Esq., Spokane WA.

Gomez v. Quicken Loans, Inc., D.C. No. 2:12-cv-10456-RGK-SH, (9th Cir. November 2, 2015), Memorandum Opinion – 6 pages

Due Process

2125. The claimant received a second hearing after federal court remand. After that second hearing, the claimant was sent for a consultative examination. The ALJ issued interrogatories to a vocational expert; when the claimant's attorney requested a supplemental hearing to question the expert the ALJ said he would schedule one but instead issued an unfavorable decision. The Appeals Council upheld the ALJ's decision, but the case was once again remanded by a federal court, which held that the claimant's right to due process was violated. The court also found that the ALJ's failure to consider the opinions of several doctors was not harmless error. This case also addresses a choice of law issue. The ALJ's decision was issued from a state in the 10th Circuit, where the claimant resided at the time. The appeal was filed in the Middle District of Florida (11th Circuit), where the claimant moved after the second ALJ denial. The court held that it would apply 11th Circuit law in this matter. However, the court noted that choice of law would not affect their decision because it believed there was no conflict between the circuits on any issue in the case. The claimant was represented by Carol Avard and Mark Zakhvatayev of Coral Gables, Florida.

***Johnson v. Commissioner of SSA*,** No. 3:14-cv-1331 (M.D. Fla.), Plaintiff's Memorandum in Opposition to the Commissioner's Decision (April 6, 2015), Memorandum Opinion and Order (March 9, 2016) – 51 pages

Headaches

2127. The court remanded for a new hearing based on the ALJ's improper evaluation of evidence regarding the claimant's headaches. The ALJ gave little weight to claimant's treating family doctor and neurologist, who each offered evidence about the functional limitations that the claimant's frequent and severe headaches caused. The ALJ did not "build an accurate and logical bridge between the evidence and his conclusion." The remand was granted under sentence four of 42 U.S.C. 405 (g); the claimant had also sought a sentence six remand for administrative consideration of new and material evidence, but the court found that the additional evidence was "largely cumulative" and would not have affected the ALJ's decision. The court did direct SSA to instruct the ALJ to consider the additional evidence at the new hearing. The claimant was represented by Margolius, Margolius, and Associates of Cleveland, Ohio.

Crouch v. Colvin, Case No. 1:14-cv-995 (S.D. Ohio), Memorandum of Opinion and Decision (March 31, 2016) – 13 pages

Intellectual Disability

2134. At the time of the ALJ hearing, the claimant was a 33-year-old with a tenth grade education. He had received mostly Ds and Fs despite special education services. He had a performance IQ of 62, with verbal and full-scale test scores each above 70. In addition, the claimant's range of motion in his right leg was limited by the effects of a gunshot wound to his knee. The ALJ had found that the verbal IQ score was the most indicative of the claimant's abilities and that the claimant was able to perform a limited range of light work, so the claimant was denied. The magistrate judge held that Listing 12.05 indicates that when multiple scores can be derived from one administration of an IQ test, the lowest score is the one that should be considered. Given the claimant's score of 62 and additional impairment to his leg, the magistrate judge found that the ALJ's decision was not supported by substantial evidence and the claimant met listing 12.05C. The case was therefore remanded solely for an award of benefits. The claimant was represented by Tod W. Read of Read & Read in Miami, Florida.

Merrick v. Colvin, Case No. 14 CV 24735 (S.D. Fla.) Report and Recommendations, (March 4, 2016) – 14 pages

Listing 1.02

2126. The claimant had severe cardiovascular dysfunction, diabetes, polyneuropathy, carpal tunnel syndrome, obesity, degenerative disc disease, kidney disease, and liver disease. The ALJ found that the claimant's carpal tunnel syndrome and diabetic neuropathy affected his upper extremities in a manner that equaled Listing 1.02, and that these impairments in combination with his other conditions, "aggregately supported" a finding that the claimant equaled the listing. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully Favorable ALJ Decision on Listing 1.02, ALJ Notice of Decision and Decision (March 4, 2016) – 9 pages

Medical Improvement

2128. The claimant had PTSD and anxiety. The court held that the ALJ erred in denying benefits on non-exertional impairments, which were found to be severe. The ALJ found that the claimant's condition may improve and might not be expected to last for a continuous period of 12 months, but the court held this to be purely speculative and based on the ALJ's belief that, "it is possible that the claimant's symptoms can improve with treatment". The claimant had experienced a general worsening progression of symptoms including flashbacks of mangled bodies and deaths while deployed to Iraq. The district court did not address 11 other assignments of error but remanded the case for further proceedings. The claimant was represented by sustaining member Bill Aldred of Clarksville, TN at the ALJ, Appeals Council, and in the U.S. District Court.

Burger v. Social Security Administration, Case No. 3:14-2393 (M.D. Tenn.), Magistrate Report and Recommendations (February 17, 2016) and Judge's Order (March 9, 2016) – 13 pages

Mental Impairments

2121. The ALJ, hearing the case after a federal court remand, issued a fully favorable decision. The ALJ found that the claimant met listing 12.03 and had been disabled since June 1986. The remote onset date was critical for the claimant to be eligible for disabled adult child benefits on his parent's earnings record, which requires the disability to have begun before the child attained the age of 22. At issue in the federal court case was whether the Commissioner had engaged in spoliation of the evidence by losing the file used for a 1983 determination that the claimant met a listing. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully favorable ALJ decision on adult disabled child benefits (December 16, 2015) Notice of Decision – Fully Favorable, Order of Administrative Law Judge, and Decision – 9 pages

2123. The district court remanded the claim to SSA for further proceedings. Given this decision, the court denied plaintiff's motion to submit additional evidence because it could be submitted to the record on remand. The court found that the ALJ's analysis in determining whether the claimant's mental health impairments met Listings 12.04 and 12.06 was flawed because it "consisted merely of a recitation of the criteria and an assertion that the criteria were not met." Furthermore, the ALJ erred in assigning less weight to the treating physician's opinion: the ALJ stated that the claimant last saw the physician in December 2010 when there were records showing visits to that doctor nearly two years after that. The claimant was represented by Andrew N. Sindler of Severna Park, Maryland.

Copes v. Commissioner, Social Security Administration, Civil No. SAG-14-3010 (D. Md.), Plaintiff's Motion in Support of Motion for Judgment on the Pleadings and Letter to Counsel (Docketed as Opinion an Order) (December 21, 2015) – 25 pages

2130. The ALJ issued a fully favorable decision on the record, finding that the claimant's major depressive disorder, fibromyalgia, and migraine headaches, in combination, met listing 12.04. The claimant had a 100% service-connected disability rating from the VA and the file also contained narrative statements from the claimant's treating psychiatrist and rheumatologist. A consultative psychiatrist noted the claimant's difficult with memory and concentration. The claimant was represented by John E. Horn of Tinley Park, IL.

Fully Favorable ALJ Decision on listing 12.04, ALJ decision (April 14, 2016) – 7 pages

2132. Originally, the magistrate judge found that it was harmless error for an ALJ to find that the claimant had no severe mental impairments. After the claimant's attorney filed objections, the magistrate judge issued an amended report and recommendations finding that the ALJ had not appropriately considered medical evidence showing a GAF score indicating moderate mental limitations. Furthermore, the ALJ failed to include any mental limitations in her residual functional capacity findings, and did not ask the vocational expert any questions other than whether the claimant had past relevant work. Therefore, the case was remanded for further proceedings. The claimant was represented by Lawrence Weinstein of Silver & Silver, Ardmore, PA.

Reid v. Colvin, Civil Action No. 12-5709 (E.D. Pa.), Plaintiff's Objections to the Magistrate's Report and Recommendations, Magistrate Judge's Amended Report and Recommendations (March 31. 2016) – 42 pages

Overpayments

2129. SSA determined that the beneficiary was overpaid by over $8000, could have known that he was being overpaid, and therefore was not without fault. The beneficiary's request for a waiver of overpayment was denied. The district court upheld the agency's determination. However, the Ninth Circuit held that SSA sending the beneficiary "a routine booklet on reporting requirements when he initially received his award cannot, on its own, be sufficient. This would render a waiver of overpayment virtually unobtainable." In addition, a routine notice SSA sent well before the overpayments at issue, and which the government cannot locate in the record, is also insufficient to show that the beneficiary was aware he was being overpaid. The Ninth Circuit also held that collecting the overpayment would be against equity and good conscience because the beneficiary needed the money for ordinary living expenses. The beneficiary was pro se.

Bass v. Colvin, No. 15-35287 (9th Cir.), Memorandum (May 16, 2016) – 3 pages

Past Relevant Work

2142. The hearing decision was vacated and the claimant's case was remanded by the Appeals Council to an ALJ for the resolution of two issues. The first issue was whether the claimant's past relevant work was a composite job. The ALJ's decision stated that the claimant's past work as an operations coordinator was a combination of a customer service representative, secretary, and personnel clerk. As the Appeals Council decision says, "Since a composite job does not have a DOT counterpart, it is not to be evaluated at the part of step 4 considering work 'as generally performed' in the national economy" and the ALJ's decision found that the claimant could work at step 4 doing work as generally performed. The second issue was whether the claimant acquired any skills from his past relevant work that are transferrable with very little, if any, vocational adjustment to other jobs, in keeping with SSR 82-41. The ALJ was asked to obtain vocational expert testimony on this point, if warranted by the expanded record. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Notice of Order of Appeals Council Remanding Case to Administrative Law Judge (July 25, 2016) – 3 pages

Region I Evidence

2119. The district court rejected the Report and Recommendation of a magistrate judge and remanded the claim to SSA for further proceedings. The court found that the ALJ had abused her discretion in refusing to accept medical evidence submitted less than five days before the ALJ hearing. The hearing took place in SSA's Region I, which for many years has participated in a demonstration project that requires evidence to be submitted no later than five business days before the scheduled hearing. The claimant's representative submitted a "highly relevant medical record" from the claimant's treating neurosurgeon four calendar days before the hearing; the representative stated that the document had inadvertently been clipped to another document and therefore had not been timely submitted. The court held that SSA regulations do not allow ALJs to exercise discretion

to exclude evidence "if unusual, unexpected, or unavoidable circumstances cause the delayed submission." The court found that the representative's error was just this sort of circumstance and that to allow the claim to be adjudicated without highly probative evidence would "raise form over substance [and] be an abuse of discretion, especially in light of the ALJ's complete failure to explain her rationale for rejecting the document." The five-day rule found in Region I is "not meant to be applied rigorously or rigidly." The claimant was represented by Stephen M. Rappoport of East Providence, Rhode Island.

Howe v. Colvin, C.A. No. 14-544-M-LDA (D. R.I.), Order (December 4, 2015) – 6 pages

Remand v. Reversal

2117. The district court remanded an SSI claim solely for the award of benefits, and SSA filed a Rule 59(e) motion requesting that the case be remanded for additional proceedings. The district court denied SSA's motion and upheld the award of benefits, given that the record was complete. The claimant and a vocational expert had testified at the ALJ hearing. The ALJ erred in evaluating this testimony but that does not require an additional hearing. In addition, the district court found that it did not err in considering evidence that was submitted to the Appeals Council after the ALJ hearing, because such evidence was part of the administrative record submitted to the court. The district court also did not err in choosing not to remand the case for further proceedings given this new evidence; SSA possessed the evidence at the Appeals Council stage of the case and could have ordered a new hearing if it had so desired. The claimant was represented by Arthur W. Stevens III of Medford, Oregon.

Huffman v. Colvin**,** No. 1:14-cv-00861-AC (D. Or.), District Court Opinion and Order (August 25, 2015), Plaintiff's Memo in Opposition to Defendant's Rule 59(e) Motion (October 9, 2015), District Court Opinion and Order on Rule 59(e) Motion (February 22, 2016) – 78 pages

Remote Onset Date

2124. The claimant was 46 years old in 2010, when she applied for child's insurance benefits (disability) on the record of her deceased father. When the case was at the hearing level, attorney Barry Simon of Elmhurst, New York was able to locate and submit medical records from the claimant's childhood and early adult years. These records, combined with more current medical examinations and the testimony of a medical expert at the hearing, were sufficient for the ALJ to find that the claimant met listing 1.02 when she was 18 years old. By virtue of meeting the standard for disability before age 22, the claimant was awarded Title II benefits as of her initial application date. However, the claimant had applied for SSI in 1998 and had been receiving those benefits ever since. The Title II determination was appealed to the Appeals Council, which determined that SSA "should have offered the claimant protective filing for child disability benefits (or CDB) under her father's account number when she filed for supplemental security income (or SSI)" in 1998. Therefore, the claimant was awarded over 17 years of retroactive Title II benefits.

ALJ decision and Appeals Council Award on remote onset date, Letter requesting supplemental hearing regarding onset date (September 18, 2014), ALJ Notice of Decision and Decision (November 7, 2014), Request for Appeals Council Review (January 7, 2015), Notice of Appeals Council Decision – Fully Favorable (March 10, 2016) – 19 pages

Residual Functional Capacity

2116b. The Appeals Council remanded for an additional ALJ hearing. The claimant's impairments included a significant injury to the right shoulder, but the ALJ's residual functional capacity assessment found that the claimant could perform all sedentary work that is limited to simple and repetitive tasks involving one and two step tasks. The ALJ did not include any reaching limitations and did not explain the discrepancy between this RFC finding and that of the State Agency medical consultants. Additionally, the claimant submitted new and material evidence of a cervical discectomy, which might indicate that the claimant had additional limitations not addressed in the ALJ's RFC findings. The claimant was represented by Douglas C.J. Brigandi of Bayside, New York.

Appeals Council Remand on substantial evidence and new and material evidence (February 3, 2016), Notice of Order of Appeals Council Remanding Case to Administrative Law Judge, Order of Appeals Council – 2 pages

2138. The claimant applied for SSDI in March 2005 alleging disability due to several musculoskeletal impairments. The alleged onset date was in October 2003. The claim was denied at the first ALJ hearing; after an Appeals Council denial and a federal court remand, it was denied again at the second hearing with the same ALJ. During the second federal court appeal, it was determined that the claimant was part of the *Padro et al. v. Colvin* class action involving cases heard by certain ALJs in the Queens, NY ODAR. The case was therefore remanded for a third ALJ hearing with a different ALJ. At the third ALJ hearing, the ALJ subpoenaed over 1500 pages of Worker's Compensation records that had not previously been part of the record. The ALJ found that the claimant did not meet a listing, but had a residual functional capacity that restricted her to a limited range of sedentary jobs. Therefore, she could not return to her past relevant work. If she could perform all sedentary jobs, grid rule 201.21 would direct a finding of "not disabled," but the additional limitations reduced the range of work the claimant could perform to a point that a finding of disability was appropriate. The claimant received a fully favorable decision back to her alleged onset date nearly 13 years before. She was represented in the third ALJ hearing by Douglas C. J. Brigandi of Bayside, New York.

Fully Favorable Decision (May 24, 2016) – 9 pages

Same-Sex Marriage

2133. The claimant and wage-earner were married in Iowa in September 2009. At the time of their marriage, and until the wage earner's death in 2012, the couple lived in Illinois. In July 2013, the claimant applied for survivor's benefits on his husband's record. This application was denied initially and upon reconsideration, because at the time of the wage-earner's death, Illinois did not celebrate same-sex marriages and did not recognize same-sex marriages performed in other states. However, SSA issued Emergency Message (EM)-15029, which became effective in September 2015. This message stated that SSA should consider marriages based on the state in which they were celebrated, not the state in which the couple was or is domiciled. Because Iowa began celebrating same-sex marriages in April 2009, the couple's marriage there five months later was valid. The claimant is entitled to survivor's benefits on the wage-earner's record, as well as lump-sum death benefits.

Fully Favorable decision on survivor benefits in a same-sex marriage, ALJ decision (March 10, 2016) – 8 pages

Transferable Skills

2139. The ALJ had found that the claimant, despite several severe musculoskeletal disorders as well as lupus and obesity, could perform a reduced range of sedentary jobs and was not disabled. The claimant made several arguments about severe impairments, whether the ALJ appropriately considered several listings, the ALJ's credibility determinations, and the weight of medical evidence, but the magistrate judge either rejected these or found them to be harmless error. The magistrate judge agreed that the ALJ failed to meet his burden at step 5 of the sequential evaluation process. The VE only offered semi-skilled jobs (those with a Specific Vocational Preparation of 3 or above) when answering the ALJ's hypothetical questions. However, the ALJ never obtained testimony about, or otherwise found, that the claimant developed transferable skills in her previous semi-skilled work, and whether those skills would transfer to the jobs described by the VE. The case was therefore remanded for further proceedings in which "the ALJ should determine whether Ms. Coleman has the transferable skills required to perform the semi-skilled jobs listed by the VE, or determine whether there are unskilled jobs available in substantial numbers in the national economy that Ms. Coleman is able to perform." The claimant was represented by Andrew Sindler of Severna Park, Maryland.

Coleman v. Commissioner, Case No. 1:14-cv-2592 (D. Md.) Magistrate Judge's Letter to Counsel (November 6, 2015) and Plaintiff's Memorandum in Support of Motion for Judgment on the Pleadings (July 6, 2015) – 29 pages

Treating Physician Opinion

2120. The district court remanded the claim to SSA for further proceedings. The ALJ had given the treating physician's opinion "only some weight" but the court held that the physician's opinion had "significant indicia of reliability." For example, the doctor was a specialist whose opinions are consistent with his diagnosis and the evidence. The fact that the doctor saw the claimant three times per year rather than more often, and that the claimant had not been hospitalized in many years, does not indicate that the doctor's opinion deserved less weight than the opinion of the state agency's medical consultants. The claimant has a chronic condition and thrice-yearly appointments may provide as much benefit as can reasonably be expected, or as insurance will cover. Finally, the court noted that upon remand, SSA should approach steps 3 and 4 of the sequential evaluation process distinctly because even before the ALJ performs a residual functional capacity determination, there is much evidence that the claimant's impairments may meet a listing. The claimant was represented by Agnes S. Wladyka of Mountainside, New Jersey.

Smeraldo v. Commissioner of Social Security, Civ. No. 14-7394(KM) (D. N.J.), Order and Opinion (January 6, 2015) – 17 pages

2137. The claimant is a younger individual with several severe mental health impairments. The ALJ found that she did not meet a listing, and although she could not return to her past work, there were a sufficient number of jobs she could perform both nationally and locally. The ALJ found that evidence from a treating physician, although new, was not material because it did not show that the claimant's limitations had increased from those present at a prior denial. The magistrate judge did not address whether the new evidence was material, but remanded the case for further proceedings on that topic. In addition, the decision provides a lengthy discussion of Sixth Circuit precedent on the treating physician rule. The magistrate judge held that the treating physician's evidence deserved controlling weight. Although the claimant was treated by a team including social workers, therapists, and physicians, a report co-signed by a physician and a non-physician, both of whom treated the claimant, should be given controlling weight. The fact that the physician was not the only one to treat the claimant, and not the sole author of reports submitted as evidence, does not mean the doctor's opinion should be given less weight. Finally, the ALJ erred in giving the doctor's opinion less weight because it said the claimant had difficulty leaving the home and the claimant was able to leave her home to attend the hearing. Ability to attend a singular event does not contradict the long-standing limitations described in the record. The case was remanded for further proceedings. The claimant was represented by Marcia Margolis of Cleveland, Ohio.

Pater v. Commissioner of Social Security, Case No. 1:15 CV 1295 (N.D. Ohio, E.Div.) Memorandum Opinion and Order (June 27, 2016) – 20 pages

Unemployment Benefits

2136. The claimant's impairments included prostate cancer, obesity, degenerative joint disease, and lumbar degenerative disease. The ALJ found that the claimant could perform a full range of medium work and could return to his past relevant work as a machine operator. The ALJ found that the claimant's impairments could be expected to cause his symptoms, but "the intensity, persistence, and limiting effects of these symptoms are not entirely credible." One of the bases for the ALJ's credibility determination was the claimant's application for unemployment benefits. The magistrate judge held that the ALJ failed to build a logical bridge between the claimant's testimony about his activities of daily living and his residual functional capacity. Driving a car and washing household dishes are not similar to doing medium work. Although the claimant stated he performed some chores and yard work, the ALJ did not "explore the manner or duration" of these activities. The magistrate judge found that that error alone would require remand, but discussed the unemployment issue as well. The ALJ erred in finding that the claimant's unemployment benefit

application reduced his credibility. The ALJ did not consider the ways in which claimant's condition had progressed over time, and did not use the "significant care and circumspection" required by the Seventh Circuit when making credibility inferences based on unemployment compensation. The case was remanded for further proceedings. The claimant was represented by John E. Horn of Tinley Park, IL.

Castaneda v. Colvin, Case No. 14 C 7023 (N.D. Ill., E.Div.) Opinion and Order (February 4, 2016) – 7 pages

Visual Impairments

2141. The claimant's protective filing date was in October 2014. After amending his onset date to April 2015, he received a fully favorable ALJ decision. The case is notable for its prompt disposition: an ALJ hearing was requested in September 2015, the hearing was held at the Orland Park ODAR in January 2016, and the decision was issued the following month. The ALJ found that the claimant had the severe impairments of central vein thrombosis, diabetes, obesity, and amblyopia of the right eye. The claimant was found to meet listing 2.02: in addition to vision problems in his right eye, a central vein occlusion of his left eye caused blurry vision. The claimant's vision got progressively worse over time: for example, in September 2014, the month before his protective filing date, the claimant's vision in his right eye was 20/80 without correction, but by a June 2015 consultative examination, it was 20/100 with correction. Blurriness, floaters, and a cataract all contributed to the ALJ's finding. The ALJ also noted that the claimant's statements were "generally credible" and that the "claimant has a compelling work history." The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully Favorable Decision (February 23, 2016) – 10 pages

Weight of Medical Evidence

2143. The claimant was 53 years old at the ALJ hearing and had diabetic retinopathy and lumbar degenerative disc disease. The ALJ found that the claimant did not meet a listing and could not return to past relevant work; however, the ALJ found the claimant not disabled at step 5. After the Appeals Council upheld the ALJ's decision, the case was appealed to federal court. The magistrate judge's decision provides an overview of Sixth Circuit jurisprudence on the treating physician rule and holds that the ALJ did not provide "good reasons" why a physician's opinions were not due controlling weight. The ALJ did not make a finding that the doctor was a treating source, although he did mention that the opinion was written three months after the treatment relationship began. The ALJ also did not mention any of the functional limitations in the doctor's treatment notes; and, if not, what weight it was to be accorded and why. "These multiple, glaring failures to even attempt to consider [the doctor's] opinion according to the clear, long-standing requirements of the regulations and case law prevents meaningful judicial review" and therefore the case was remanded to SSA for further proceedings. The claimant was represented by Margolius Margolius and Associates LPA of Cleveland, Ohio.

Abram v. Commissioner, Case No. 1:15-cv-34 (S.D. Ohio, E.Div) Memorandum Opinion and Order (February 29, 2016) – 14 pages

2144. The claimant was 34 years old when she applied for disability benefits. The ALJ found that the claimant's anxiety and depression were not severe impairments. Although the ALJ found that the claimant could not return to her prior job as a bus driver, she had the residual functional capacity to do other work. However, the magistrate judge held that the ALJ's determination about the non-severity of the claimant's mental impairments was not supported by substantial evidence. The claimant's treating psychiatrist found that the claimant had extreme limitations in activities of daily living; social functioning; and concentration, persistence, and pace. But the ALJ found that the claimant only had mild limitations in concentration, persistence, and pace, and also found that the claimant's mental impairments were not severe. In making this finding, the ALJ did not cite to or address any evidence from the claimant's providers. "As a result, the Undersigned finds that the ALJ's superficial labeling of Smith's mental impairments is not supported by the record because, for such a threshold determination, only the most trivial impairments are considered non-severe." In addition,

the court held that the ALJ did not adequately explain why the opinions of the claimant's treating physicians were not given substantial weight. "Although the ALJ explained that she gave the treating physicians reports and opinions 'appropriate weight,' (emphasis added), this non-descript explanation is too general to provide any real insight into what weight was afforded to the treating physicians' reports and opinions." In addition, the ALJ said she gave less than great weight to medical evidence because the opinions were issued as part of a worker's compensation claim. This was not true for some providers, and for the others it is not a sufficient reason to give reduced weight. The case was remanded for further proceedings. The claimant was represented by David W. Batchelder, Jr. of Miami, Florida.

Smith v. Colvin, Case No. 1:15-23010-CIV-GOODMAN (S.D. Fl., Miami Div.) Order on Cross-motions for Summary Judgment, (September 26, 2016) – 25 pages