LIST OF AVAILABLE MATERIAL

JANUARY – DECEMBER 2019

ITEM NUMBERS – 2201-2225

Back Impairments

2224. The ALJ issued a fully favorable decision, finding based on evidence in the file and medical expert testimony that the claimant equals listing 1.04A. The claimant had had two back surgeries but continued to have low-back pain radiating down his legs and a foot drop that affected his balance while walking. These symptoms persisted despite the use of pain medication and medical marijuana. An MRI showed disc bulges and foraminal narrowing. Physical examination from treating and consultative physicians showed gait problems, positive straight-leg raising, and positive Romberg sign indicating balance problems. The claimant was on permanent disability retirement from his past work as a pipefitter and was compliant with prescribed treatments. The ALJ considered SSR 19-2p, finding that the claimant's obesity led to greater restrictions in function than would be expected from the other impairments alone. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully Favorable ALJ Decision [by ALJ Patricia Witkowski Supergan at the Orland Park (IL) OHO] (October 16, 2019)

Borderline Age

2219. The claimant was 49 years and 8 months old on the date of the ALJ decision. The ALJ found that the claimant was unable to communicate in English, that this was equivalent to illiteracy, that the claimant was limited to less than the full range of light work, and that there was no past relevant work. The ALJ denied the claim because the grid rules dictated a finding of non-disability when the claimant was a younger individual, but the ALJ did not follow SSA rules about considering borderline age situations. In this case, the claimant had additional vocational adversities such as a limitation to short and simple tasks, inability to perform fast-paced work, and difficulty walking on non-level surfaces. This could have qualified the claimant for non-mechanical application of the grid rule. The Appeals Council agreed with the ALJ's findings at steps 1-4 of the sequential evaluation process, except that they held that obesity was also a severe impairment. However, the Appeals Council found that the ALJ's decision was not supported by substantial evidence because of the failure to consider the effects of evaluating the claimant under the older age category. Interestingly, rather than performing a nonmechanical application of the grid rule and awarding benefits when the claimant was a younger individual, the AC found that the claimant's disability began the day before the claimant's 50th birthday, when the claimant attained the age needed for "closely approaching advanced age," and proposed to award benefits as of that date. The claimant was represented by Lori Johnson of Salt Lake City, Utah.

Notice of Appeals Council Action (August 12, 2019)

Collateral Estoppel

2222. The claimant was receiving SSI disability benefits and applied for Title II benefits. The ALJ denial stated "In the prior adjudication, the Social Security Administration found that the claimant had a remote date last insured in 2014 and was not disabled prior to that date. I am unable to reopen that decision. As the claimant testified that his conditions are currently the same as they were at the time of the prior date last insured, I note that the Social Security Administration should consider reevaluation of that decision." The Appeals Council could not discern precisely when the claimant's SSI benefits began, but noted that the claimant was found to have an onset date in 1993. The Appeals Council could not find the file for the claimant's SSI claim, but did locate the records from a 2004 continuing disability review where agency staff also could not locate the claims file but found that disability continued. The claimant applied for SSDI in 2007 and was denied because he was not insured at that time. However, he subsequently became insured. The Appeals Council noted

that the 2007 denial could not have known that the claimant would become insured in the future and would have a date last insured in 2014. The 2007 Title II denial did not address the medical requirements for disability at all, just his insured status at that point. The Appeals Council cited HALLEX I-2-2-30 on collateral estoppel and "accepts the prior finding made in 2004 that there had been no medical improvement in the claimant's mental impairments and that disability continues. This finding is binding in the current claim." Therefore, the claimant was awarded Title II disability benefits. The claimant was represented by Lori Johnson of Salt Lake City, Utah.

Notice of Appeals Council Action (September 25, 2018)

Epilepsy/Seizures

2214. The claimant's severe impairments included complex partial seizures and headaches. After the hearing, the ALJ sent interrogatories to a medical expert who opined that the claimant's condition met listing 11.02B, and the ALJ agreed. The ALJ found that the doctor's opinion was supported by medical evidence in the record, including abnormalities on an EEG, and records of frequent absence/ dyscognitive seizures. The ALJ gave less weight to the opinions of state agency consultants because they based their opinions on an incomplete record, and because the medical expert was a neurologist and therefore had the specialized knowledge to opine on the claimant's functionality. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Fully Favorable ALJ Decision [by ALJ Mario Silva at the Valparaiso (IN) OHO] (December 14, 2018)

2215. The claimant was found by the ALJ not to be performing SGA and to have the severe impairments of seizure disorder, affective disorder, and right shoulder injury. The ALJ did not find that the claimant met a listing, but the Appeals Council, while adopting the facts found by the ALJ, disagreed with the ALJ's conclusion about whether the claimant met a listing. The Appeals Council determined that the ALJ made legal errors by not acknowledging, discussing, or considering much of the medical evidence submitted in this case, including most of the more recent records and anything about the nerve stimulator. The ALJ's rationale "does not provide citation to any evidence of record in support of these conclusions, identify any specific conflicts in the evidence, or reference any other basis upon which [medical and non-medical opinions in the file] should be given less weight pursuant to the regulatory factors described above." Therefore, the Appeals Council found that the claimant met listing 11.02A and was disabled as of his alleged onset date; no additional hearing was necessary to award benefits. The claimant was represented by Sam Schad of New Albany, Indiana.

Notice of Appeals Council Action (November 20, 2018)

Fibromyalgia

2212. The claimant's impairments included lupus, fibromyalgia, migraines, emphysema, arthritis of the knees, and affective disorder. The ALJ found that she could perform a limited range of light work, allowing her to return to some of her past relevant work or to do other work. However, the ALJ decision only considered whether the claimant met musculoskeletal or lupus listings; it did not consider her fibromyalgia under listing 14.09 or whether her migraines equaled the epilepsy listing at 11.03. Seventh Circuit precedent requires ALJs to discuss each relevant listing by name and provide more than a perfunctory analysis. The court held that the ALJ's statement that the claimant's "condition fails to meet any of the requirements set forth in the14.00 series of listings for immune system disorders, including 14.02 for systemic lupus erythematosus" was perfunctory and did not mention listing 14.09 for fibromyalgia. The ALJ also did not mention the epilepsy listing or any listings in the 11.00 section at all. As such, remand for further proceedings was required. Although the court did not rule on the claimant's other arguments about how the ALJ assessed medical evidence and the claimant's subjective reports about her symptoms, the decision includes useful dicta on fibromyalgia symptoms and how they should be assessed. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Alison M. v. Berryhill, Case No. 18 C 1248 (N.D. Ill., E.Div.) (May 28, 2019) – Memorandum Opinion and Order

Five-Day Rule

2206. The ALJ hearing was held in February 2018. The claimant visited an orthopedist in April 2018 and promptly submitted records from that visit. In a June 2018 decision, the ALJ did not consider the orthopedic records or discuss whether there was good cause for inclusion of the records. However, SSA regulations require evidence to be considered if some unavoidable circumstance beyond the claimant's control precluded the claimant from submitting or informing the ALJ about evidence five business days before the hearing. The fact that the evidence did not exist five business days before the hearing fits into this category, and therefore remand to consider the evidence is necessary. The Appeals Council "specifically notes that the claimant has an ongoing duty to provide additional evidence until the decision is issued (20 CFR 404.1512). To find evidence generated after the hearing decision is inadmissible because it was submitted after the five-business day deadline is inconsistent with this responsibility. Therefore, this evidence must be admitted and considered." The claimant was represented by Ann Atkinson of Parker, Colorado.

Appeals Council Order Remanding Case to ALJ (April 23, 2019)

2207. The claimant submitted 118 pages of evidence, from six different providers, seventeen days before an ALJ hearing. However, the ALJ did not address or exhibit any of it in the unfavorable decision. According to the Appeals Council, "This evidence is relevant to the period at issue, is not duplicative, and was received at least five days prior to the hearing. This evidence also constitutes a significant portion of the overall medical evidence available. Therefore, the Administrative Law Judge should have exhibited and addressed this evidence. Further evaluation of this evidence is required." The case was remanded. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Appeals Council Order Remanding Case to ALJ (April 4, 2019)

2208. The claimant and representative were sent a notice of hearing 64 days before the hearing. On the date of the hearing, the representative submitted a questionnaire from a treating provider which the provider did not send to the representative until less than five business days before the hearing, despite multiple requests. In her decision, the ALJ excluded the questionnaire as untimely. The ALJ found that the representative's letter did not satisfy the "inform" provision of the regulations because although it explained that the questionnaire had been sent but not received it did not provide additional information about what the medical source statement included, and also found that there was no good cause to admit the questionnaire. The court held that "while the 75-day notice of hearing and the five-day rule for submission of evidence are two separate regulatory provisions, [they] are not distinct from one another." As the Federal Register notice of the rule indicates, SSA intended the two provisions to balance each other. The questionnaire was received by SSA 11 days before the hearing should have been scheduled if it were scheduled 75 days after the notice was sent, and is therefore "arguably timely." In addition, the ALJ had not issued a decision when the evidence was received "and thus is could have been fairly considered under the Regulations without sacrificing efficiency." Since "the Commissioner's determination did not result from the application of proper legal rules and was not supported by substantial evidence," the case was remanded. The claimant was represented by Peter Gorton of Endicott, New York.

Ana C.-M. v. Berryhill, Case No. 3:18-CV-0073 (N.D.N.Y.) (March 11, 2019) – Order and Transcript of a Decision held during a Telephone Conference

2221. After a federal court remand, the same ALJ who had originally denied the case issued a new denial in June 2019. The claimant filed exceptions in July 2019 and the federal court again remanded. In September 2019, the Appeals Council issued an order remanding the case to a different ALJ for a third hearing. In the remand order, the Appeals Council found that the claimant's representative advised the ALJ of outstanding medical evidence eight calendar days before the second ALJ hearing, mentioned additional outstanding medical evidence at the hearing, and asked to submit additional evidence rebutting the vocational expert's testimony at the hearing. Despite

telling the claimant's representative that she would accept and consider the additional submissions and stating in the decision that the requirements submitting evidence fewer than five business days before the hearing were met and the documents were admitted into the record, the decision did not admit or consider that evidence. The new ALJ was directed to do so, and also to use a medical expert to fully consider whether the claimant met or equaled listing 4.05 for recurrent arrhythmias. According to the Appeals Council, the ALJ's "decision did not discuss the objective findings and longitudinal record when analyzing whether the claimant's impairments met or equaled" this listing. The claimant was represented by Nicholas Coleman of Cave Springs, Arkansas.

Appeals Council Order Remanding Case to ALJ (September 27, 2019)

Headaches

2202. The claimant's treating physician completed a questionnaire in 2013 indicating the claimant experienced day-long migraines two to three times per week and needed to lie in a quiet room for six to eight hours each time. The doctor opined that the claimant would require unscheduled breaks throughout a workday and would miss more than four days of work each month due to his impairments. The ALJ gave this opinion "very little weight" because the frequency and severity of the migraines were not "supported by the record." The ALJ cited medical records from 2010 and 2015 in support of this finding, but the court notes that these shed little light on the claimant's condition in 2013 and include vague descriptors like the headaches being "better." Additionally, even if the ALJ finds the treating source's opinions not entitled to controlling weight, the ALJ should have gone through the checklist in 20 C.F.R. 404.1527(c) to determine what weight the opinion deserved. Given the ALJ's error here, in evaluating the opinion of the claimant's treating psychiatrist about his mental impairments, and in evaluating the claimant's testimony in light of SSR 16-3p, the claim was remanded for further proceedings. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Costa v. Berryhill, No. 17 CV 5068 (N.D. Ill., E.Div.) (December 18, 2018) – Memorandum Opinion and Order

Illiteracy

2219. The claimant was 49 years and 8 months old on the date of the ALJ decision. The ALJ found that the claimant was unable to communicate in English, that this was equivalent to illiteracy, that the claimant was limited to less than the full range of light work, and that there was no past relevant work. The ALJ denied the claim because the grid rules dictated a finding of non-disability when the claimant was a younger individual, but the ALJ did not follow SSA rules about considering borderline age situations. In this case, the claimant had additional vocational adversities such as a limitation to short and simple tasks, inability to perform fast-paced work, and difficulty walking on non-level surfaces. This could have qualified the claimant for non-mechanical application of the grid rule. The Appeals Council agreed with the ALJ's findings at steps 1-4 of the sequential evaluation process, except that they held that obesity was also a severe impairment. However, the Appeals Council found that the ALJ's decision was not supported by substantial evidence because of the failure to consider the effects of evaluating the claimant under the older age category. Interestingly, rather than performing a nonmechanical application of the grid rule and awarding benefits when the claimant was a younger individual, the AC found that the claimant's disability began the day before the claimant's 50th birthday, when the claimant attained the age needed for "closely approaching advanced age," and proposed to award benefits as of that date. The claimant was represented by Lori Johnson of Salt Lake City, Utah.

Notice of Appeals Council Action (August 12, 2019)

Intellectual Disability

2209. The claimant argued that the ALJ's step-two analysis, which failed to mention the claimant's intellectual disability or determine whether it was severe, was flawed and that the flaws infected the rest of the ALJ's decision. The court said that in general, failure to incorporate an impairment at step two is harmless if another severe impairment is found and the limitations imposed by all

impairments are included in the RFC. However, here the ALJ did not include the claimant's limitations from borderline intellectual functioning and an IQ of 74 into the RFC or consider it at step five of the sequential evaluation process. Therefore, remand is appropriate. The claimant was represented by E. David Harr of Greensburg, Pennsylvania.

Grady II v. Berryhill, Civil Action No. 18-334 (W.D. Pa.) (March 7, 2019) – Opinion, Order of the Court, and Judgment

Mental Impairments

2216. The claimant's severe impairments included anxiety, PTSD, a seizure disorder, and head and neck pain. Her treating social worker and psychiatrist opined that she would be unable to complete a normal workday or workweek without intrusion of her symptoms, and that she would have difficulty interacting with supervisors or coworkers or adapting to changes in the workplace. One opined she would be off-task 25% of the time and the other opined 33% of the time. At the hearing, the claimant explained that in a recent work attempt, she was "very, very slow" and her performance varied substantially day to day, leading to complaints by her supervisor. The ALJ found that the claimant could perform a limited range of light work including her past relevant work as a document imaging specialist. The district court found "that the ALJ necessarily relied on his lay opinion in formulating the RFC as there was no substantial evidence in the parts of the record on which he relied that could have reasonably supported his findings." The ALJ also improperly relied on GAF scores when formulating the RFC and gave improper weight to the treating sources. Finally, the ALJ did not provide adequate reasons for finding the claimant's testimony non-credible; comparing it to the faulty RFC and disregarding what was found to be lacking is not acceptable. The case was remanded for a new hearing. The claimant was represented by Nicholas J. Ellis of Worcester, Massachusetts.

Ericka V. Kem f/k/a Ericka V. Sandoval v. Nancy A. Berryhill, Civil Action No. 16-40172-TSH, D.Mass. (December 12, 2018) – Order and Memorandum on Plaintiff's Motion for Order Reversing Decision of Commissioner and Defendant's Motion for Order Affirming Decision of Commissioner

Multiple Sclerosis

2225. The claimant was 27 years old at his alleged onset date and his impairments include multiple sclerosis, hypertension, and cognitive impairments with depression and poor social skills. He has numbness and tingling in his hands and drops items; he also has impaired tandem gait, difficulty speaking, fatigue, and frequent urinary urges. He reported to doctors that he sometimes took his mother's Percocet for pain and that he sometimes cut his own prescribed medication in half because he could not afford full doses. The ALJ found that there were a significant number of jobs he could perform. New evidence was submitted while the case was at the Appeals Council, including a neurofunctional capacity evaluation performed by a physical therapist showing that the claimant tripped twice while walking 1,075 feet and had moderate to severe coordination deficits with his left arm and mild deficits with his (dominant) right arm. The court found that the ALJ erred in applying the treating physician rule: the ALJ stated he gave "little weight" to the physician's opinion because the claimant's medical records showed mild to moderate abnormalities rather than the marked ones the doctor described in his opinion, and because imaging showed the claimant's MS was stable, and because the claimant takes care of certain household tasks. However, the court noted that two of the records cited by the ALJ predate the alleged onset date; others were from doctors examining the claimant for reasons other than MS. The court found that the ALJ decision "glosses over" evidence from examinations and MRIs that the claimant's condition worsened over time to a level matching the treating physician's opinion. As the court noted, the claimant "was repeatedly non-compliant with treatment," may not have put forth full effort in his neuropsychological exam, and might not have been disabled until a point after his alleged onset date. But given the problems with the ALJ's application of the treating physician rule, "these are all questions the ALJ will have an opportunity to take up on remand." The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Hampton v. Commissioner of Social Security Administration, Case No. 1:18-cv-1433, N.D.Ohio., E.Div. (May 10, 2019) – Memorandum Opinion and Order

Pain

2211. The claimant had multiple musculoskeletal impairments. The ALJ found that he did not meet a listing but could perform a limited range of sedentary work; given his age, education, and work experience this led to a step-5 denial. The court agreed with the plaintiff that the ALJ erred in not fully evaluating the effects of his pain. The ALJ used language that is frequently found in denials, stating that the claimant's "medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the [claimant's] statements concerning the intensity, persistence, and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record." The denial disregarded opinion evidence from the claimant's girlfriend, son, and treating providers, as well as a state agency medical consultant who found that the claimant's spine disorders could "reasonably be expected to produce the [claimant's] pain or other symptoms," and that his "statements about the intensity, persistence, and functionally limiting effects of [his] symptoms [were] substantiated by the objective medical evidence alone." The ALJ used the fact that the claimant had occasional flare-ups of pain to justify this decision, but the court noted that evidence that pain was sometimes at a higher level is not evidence that the pain was non-existent or manageable at other times. Since the "Court cannot allow the ALJ' s decision to stand as it was based upon a misreading of the medical evidence in the record" the case was remanded for additional proceedings. The claimant was represented by Ashley Norton of Waterbury, Connecticut.

[Redacted] v. Berryhill, Case No. 3:18-cv-[redacted]RMS (D.Conn.) (March 1, 2019) – Joint Statement of Material Facts, Memorandum of Law in Support of Plaintiff's Motion for Order Reversing the Decision of the Commissioner, Ruling on the Plaintiff's Motion to Reverse the Decision of the Commissioner and on the Defendant's Motion to Affirm the Decision of the Commissioner, and Judgment

Remand v. Reversal

2210. The claimant has anxiety, depression, psychotic disorder, anorexia, and other medical conditions that have led to multiple hospitalizations and attempts at suicide and self-harm. Her treating physician opined about her diagnoses, medications and their side effects on the claimant, and the extreme limitations these would have on concentration, attendance at work, and time off-task. However, the ALJ gave limited weight to the treating source because if the claimant attended multiple therapies, she could work at all exertional levels as long as she was limited to "simple routine and repetitive tasks" and "simple work-related decisions." The court found that the ALJ's decision was not supported by substantial evidence and did not meet the Second Circuit's requirements for giving a treating source's opinion less than controlling weight. The claimant did not regularly attend therapy and needed much prompting and assistance to make and keep appointments; even if her therapy attendance were more consistent, the court held this would not be evidence of her ability to work because therapy and work are different. The court stated that the ALJ's citation of a therapy note in which the claimant reported being "happy" as a reason to reduce the weight given to the treating source's opinion "reflects an alarming misunderstanding of mental illness" and held that "the deferential standard of review that this Court is required to apply in this proceeding does not require it to turn a blind eye to what is readily apparent from a fair reading of this record: [the plaintiff] is disabled from competitive full-time employment." As such, the case was remanded solely for the calculation of benefits. The claimant was represented by Peter Gorton of Endicott, New York.

Rosalyn Fountaine v. Commissioner of Social Security, Case No. 18-CV-6033-JWF (W.D.N.Y.) (March 29, 2019) – Decision & Order

Residual Functional Capacity

2223. The claimant applied for disability benefits in 2010. After ALJ denials in 2012 and 2014, the federal court remanded. A different ALJ issued another denial in 2018, and the claimant appealed again. At the most recent ALJ hearing, the claimant's severe impairments were found to be major depressive disorder and arthritis of the toe. The ALJ did not find that she met or equaled a listing, and determined her RFC (light work with several additional exertional impairments) would allow her to return to past relevant work as a cashier. However, the ALJ found that being a cashier required five hours of standing a day but gave great weight to a medical expert who opined that the claimant could stand for one hour at a time for up to three hours per day. The ALJ cited the claimant's medical records showing her gait was normal at a doctor's appointment, but the court found that ability to walk for a brief time does not equate to the ability to stand for five hours. The ALJ's finding that the claimant could stand for five hours because she did not seek follow-up treatment for her arthritis was "even more problematic" to the court because the claimant testified at her second ALJ hearing that she did not have Medicaid and could not afford additional treatment, the Appeals Council directed the ALJ to consider this issue at the third ALJ hearing, and that ALJ failed to do so. Despite not asking the claimant about her absence of treatment, the ALJ for the third hearing cited SSR 82-59p and found the claimant had not met the burden of explaining why she did not seek care. The court found that this "reasoning turns the table on Claimant by shifting the ALJ's own responsibility – under both the caselaw and the District Court's directive – to initiate questioning about the lack of follow-up care and placing it directly on Claimant herself. The ALJ did so, moreover, by relying on a Ruling that has no relevance to this case" because "the ALJ did not find that Claimant had a disabling impairment and Claimant's podiatrist did not prescribe a treatment plan for her toe or any other condition." Although the flaws in the ALJ's decision about ability to walk themselves necessitated remand, the court also noted that the ALJ's questioning about the claimant's fatigue and daily activities was also insufficient given previous court and Appeals Council orders. The case was therefore remanded for a fourth ALJ hearing. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Dolores R. v. Saul, Case No. 1:18-cv-03711, N.D.Ill., E.Div. (November 13, 2019) – Memorandum Opinion and Order

Severity

2217. The ALJ did not consider whether the claimant's diabetes (or pre-diabetes) and thyroid disease were severe. The ALJ did consider the claimant's treating physician's opinion about the claimant's severe impairments of Sjogren's disease and lupus in the RFC analysis (giving it "little weight") but did not consider the opinion evidence at all when determining whether the claimant met a listing. The claimant was also found to have severe mental impairments: the ALJ found the claimant to have "moderate" and "mild" limitations on the paragraph B criteria when determining that she did not meet a listing, but did not include specific limitations in the RFC analysis. The Appeals Council noted that "limiting the claimant to 'performing simple, routine, and repetitive tasks' and making 'simple, work-related decisions,'… do not specifically address the ability to maintain focus, stay on task, or maintain a given rate or speed…. Social Security Ruling 96- 8p requires that the mental residual functional capacity assessment provide a more detailed assessment of the claimant's limitations by specifying how those limitations will affect particular work-related functions." The ALJ also said that the claimant could perform work that allowed for a sit-stand option at will, but did not follow SSR 83-12 noting unskilled jobs with this option are rare and did not indicate how long the claimant could sit or stand before needing to change position. For these reasons, the Appeals Council remanded the case for a new hearing. The claimant was represented by Winona Zimberlin of Manchester, Connecticut.

Appeals Council Order Remanding Case to ALJ (August 30, 2019)

Significant Number of Jobs

2205. An ALJ denied the claimant disability benefits, finding at step 5 of the sequential evaluation process that she could work as an agricultural produce sorter (with 1550 jobs in the national economy), riveting machine operator II (1151 jobs), cleaner and polisher (5593 jobs), or gluer (1199

jobs). Although the court rejected the claimant's argument that the ALJ's hypothetical misrepresented the claimant's residual functional capacity, the case was remanded because the ALJ did not meet his burden of showing there were a significant number of jobs available to the claimant. The jobs identified totaled 9,493 jobs; the court notes "this number is still below 10,000 jobs in the national economy and…the VE did not identify the regional numbers for jobs available…although the VE testified that there were quite a few jobs meeting he parameters of the hypothetical question, he indicated that '[s]ome of these occupations are outdated, and not practiced in high numbers[.]'" The claimant was represented by Peter Gorton of Endicott, New York.

Terri G. v. Commissioner of Social Security, Case No. 3:18-cv-0066 (CFH) (N.D.N.Y.) (March 22, 2019) – Memorandum-Decision & Order

SSI: Disabled Children

2213. The claimant is a minor child. In denying her SSI benefits, the ALJ gave great weight to the opinion of the doctor who performed a consultative examination—as the court notes, "at least to the extent it was consistent with the ALJ's decision." The CE lasted three days and resulted in what the court called "a thorough and complex written opinion"; however, the report did not "speak in terms of the Social Security Administration's regulatory domains for determining disability in children between six and twelve years of age [but] speaks in areas of functioning: cognitive; adaptive; executive; and social-emotional." According to the court, the ALJ acknowledged the report as evidence of the claimant's limitations but only provided one sentence in support of the opinion, despite noting that the doctor who performed it was an expert and had examined the claimant. The ALJ, however, "made no effort to analyze how [the doctor's] observations, test findings, or recommendations relate to the degrees of limitation in the relevant domains." Indeed, "the information and findings contained within [the report] constitute 'raw' medical/psychiatric data that the ALJ cannot interpret—let alone convert from areas of functioning into the six specific regulatory domains—without the opinion of a medical expert." As such, the ALJ's denial lacks substantial evidence and the claim is remanded for additional proceedings. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Melissa English on behalf of A.E. v. Commissioner of the Social Security Administration, Case No. 1:18-CV-00886-WHB (N.D.Ohio, E. Div.) (June 4, 2019) – Memorandum Opinion and Order and Judgment

Vocational Expert Testimony

2201. At an ALJ hearing, a VE testified that an individual limited to occasional handling, fingering, and feeling with the dominant hand could perform the jobs of a table worker, final assembler, and bonder. This conflicts with the DOT, which says these jobs all require frequent handling and fingering. The ALJ had asked the VE to indicate when any of his testimony contradicted the DOT and the VE did not do so in his response to the question. The ALJ did not ask further questions about a potential DOT conflict and wrote in the unfavorable decision that the VE's testimony "is consistent with information contained" in the DOT. The Court said the Commissioner's argument that the VE's testimony does not conflict with the DOT "is not well taken." Unlike the VE's response to questions about a sit-stand option, which is not discussed in the DOT, handling and fingering are addressed in the DOT, in a way that directly contradicts the VE's testimony. Therefore, the District Court reversed and remanded for further proceedings. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Dawson v. Berryhill, Case No. 1:17-cv-02090 (N.D. Ohio, E.Div.) (November 26, 2018) – Magistrate Judge's Report and Recommendation and District Judge's Order Adopting Magistrate Judge's Report and Recommendation

2203. The claimant was injured in a 2011 automobile accident and applied for disability benefits in 2013. At an ALJ hearing, a vocational expert testified about three jobs the claimant could do without any overhead reaching. However, the Dictionary of Occupational Titles and its companion publication the Selected Characteristics of Occupations stated that each of the three jobs identified

required "reaching." The District Court held in 2017 that there was no meaningful conflict between the VE's testimony and the DOT because the VE testified that she had observed these jobs and it was therefore "possible to reasonably infer" that the observations were the basis for the VE's testimony that a person who lacked the residual functional capacity for overhead reaching could perform the jobs. The Circuit Court held that the VE's testimony could not be based on substantial evidence because it "contains an apparent, unresolved conflict with" the DOT. According to the Court, this required resolution under SSR 00-4p before such testimony could be relied upon. The Court further held that a "catch-all" question regarding conflicts did not suffice to satisfy this duty. Therefore, the Circuit Court reversed the district court decision and remanded for further proceedings before the Commissioner. The claimant was represented by Patrick Radel of Utica, New York at the Second Circuit Court of Appeals and Steven R. Dolson of Syracuse, New York at the District Court for the Northern District of New York.

Lockwood v. Commissioner of Social Security Administration, Case No. 17-2591-cv (2d Cir.) (January 23, 2019) – Second Circuit Opinion

2218. The ALJ found at step 5 that the claimant had acquired transferrable skills in his past work. The past work consisted of three jobs: one unskilled, one semi-skilled, and one skilled. However, the vocational expert did not identify any skills the claimant had acquired in the latter two jobs, and unskilled jobs do not provide transferrable skills. The case was remanded for a new hearing with VE testimony. The claimant was represented by John E. Horn of Tinley Park, Illinois.

Appeals Council Order Remanding Case to ALJ (September 21, 2019)

Weight of Medical Evidence

2204. The claimant's amended onset date for an SSDI claim was May 1, 2011. On July 25, 2013, the ALJ found that the claimant was not disabled from the amended onset date to the date of the decision. The Appeals Council upheld the denial and the claimant both filed an appeal in federal court and applied for SSI. The new SSI claim was filed November 3, 2014 and alleged an onset date of April 3, 2011. The federal court upheld the ALJ's denial, and the new claim was denied at initial, reconsideration, by the ALJ, and the Appeals Council. The new claim was then appealed to federal court, where the court held that remand was appropriate because the ALJ violated the treating physician rule by "failing to provide proper evaluation, analysis and reasons for affording less than controlling weight" to a treating doctor. The court held that this failure is not harmless error. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Nelson-Wooten v. Berryhill, Case No. 1:17CV2387 (N.D. Ohio, E. Div.) (March 28, 2019) – Memorandum Opinion and Order and Judgment Entry

2220. The claimant's treating physician's assistant (PA) said the claimant could rarely reach, push/pull, or perform fine and gross manipulation with the left arm. The ALJ decision said the PA's limitations were given "great weight," but that "the overall evidence supports that the claimant retained the ability to perform at the light exertional level" with occasional reaching, handling, and fingering with the left arm. The court held that the "ALJ's treatment of [the PA's] opinion is confusing at best." Although attorneys for SSA correctly noted that an ALJ does not need to adopt all limitations opined by an acceptable medical source whose opinion is given great weight, "an ALJ must explain the reason behind the omission… That was not done here." The agency's other arguments on the topic were impermissible post-hoc rationalizations. Because the ALJ failed to "build an accurate and logical bridge" between the evidence and his findings, remand for additional proceedings is necessary. The claimant was represented by Margolius, Margolius and Associates of Cleveland, Ohio.

Campbell v. Commissioner of Social Security Administration, Case No. 1:18-CV-00767-WHB, N.D.Ohio, E.Div. (June 25, 2019) – Memorandum Opinion and Order and Judgment