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**Recent Cases of Interest**

**December 19, 2024**

**Tom Krause, NOSSCR Litigation Director**

1. *Alonzo S. v. O’Malley*, — F.Supp.3d —-, 2024 WL 4818732 (N.D. Ill. Nov. 18, 2024)

Alonzo S. (“Claimant”) appealed the Commissioner of Social Security’s denial of his application for disability insurance benefits: the District Court, N.D. Illinois, Eastern Division, remanded the case to the Social Security Administration for further proceedings.

The Court held that substantial evidence did not support the residual functional capacity (RFC) determination because the ALJ failed to explain why the Claimant’s mild limitation in concentration, persistence, and pace did not affect his work functionality. The Court also held that substantial evidence did not support the evaluation of medical opinion evidence because the ALJ’s reasons for finding the treating physician’s opinion unpersuasive were not supported by the record. Additionally, the ALJ violated agency policy by allowing the medical expert to testify before hearing the Claimant’s testimony.

1. *Daniela Cailean v. O’Malley*, No. 24-596, 2024 WL 4824035 (9th Cir. Nov. 19, 2024)

Daniela Cailean appealed the district court’s judgment affirming the Commissioner of Social Security’s denial of her application for disability insurance benefits. The Ninth Circuit reversed and remanded.

The Court held that the ALJ improperly discounted Cailean’s symptom testimony without sufficiently considering her symptoms’ duration or chronological fluctuation. The ALJ’s reasons for discounting the testimony were only applicable to the later period of the alleged disability, not the earlier period. The Court also held that the ALJ improperly rejected Cailean’s orthopedic surgeon’s medical opinions and her friend’s third-party function reports.

1. *Gwendolyn Smith v. O’Malley*, No. 23-3220, 2024 WL 4879472 (9th Cir. Nov. 25, 2024)

Gwendolyn Smith appealed the district court’s affirmance of the denial of her Social Security disability insurance application. The Ninth Circuit reversed and remanded.

The Court held that the ALJ erred in rejecting Smith’s testimony about the extent of her pain. While Smith presented objective medical evidence of impairments that could be expected to cause pain, the ALJ’s reasons for rejecting her testimony were not specific or clear. The ALJ’s reliance on Smith’s improvement with opioid painkillers, increased activity levels, and a gap in treatment records was not supported by substantial evidence.

1. *Lori S. v. O’Malley*, 727 F.Supp.3d 78 (D. Conn. 2024)

Lori S. sought judicial review of an ALJ’s decision denying her application for Social Security Disability Insurance Benefits (DIB). The District Court, D. Connecticut, granted Lori S.’s motion, denied the Commissioner’s motion, and remanded the case for rehearing.

The Court held that the ALJ improperly formulated his decision based on an incomplete record. The ALJ noted inconsistencies between the treating sources’ opinions and their treatment notes but did not contact the treating sources to reconcile the inconsistencies. The Court also held that the evidence was insufficient to support the ALJ’s RFC determination that the claimant could perform medium work. The ALJ relied on physician opinions that did not specify the exertional level at which the claimant could work, and the record suggested that exertional limitations were warranted.

1. *Rony R. Romero v. O’Malley*, No. 23-55292, 2024 WL 4919515 (9th Cir. Nov. 29, 2024)

Rony Romero appealed the district court’s order affirming the denial of his applications for disability insurance benefits and supplemental security income. The Ninth Circuit reversed and remanded for further administrative proceedings.

The Court held that the ALJ failed to provide specific, clear, and convincing reasons for discounting Romero’s subjective symptom testimony. While the ALJ found that Romero’s mental health conditions could cause the alleged symptoms, the ALJ’s conclusion that the medical evidence and Romero’s alleged failure to follow prescribed treatment undermined his account of the symptoms was not sufficiently supported. The Court also held that substantial evidence did not support the ALJ’s determination that the state agency consultants’ reports were partially persuasive because the ALJ failed to recognize the projected nature of the findings and whether Romero’s condition had improved. Finally, the Court held that substantial evidence did not support the ALJ’s rejection of Dr. Ingram’s medical opinion as unpersuasive.

1. *Kimberly J. v. Comm’r of Soc. Sec.*, 725 F.Supp.3d 305 (W.D.N.Y. 2024)

Kimberly J. sought judicial review of the Commissioner of Social Security’s final decision, denying her applications for DIB and SSI. The District Court, W.D. New York, granted Kimberly J.’s motion in part and rejected the Commissioner’s motion.

The Court held that the ALJ failed to provide an explanation sufficient to allow for meaningful review of the determination in the RFC assessment that the claimant was limited to frequently pushing, pulling, and reaching with her bilateral upper extremities. While the ALJ credited the physician’s opinion that the claimant had moderate restrictions for reaching overhead, pushing, and pulling, the written determination included no specific discussion of why the ALJ did not adopt more stringent limitations.

1. *Hahn v. Kijakazi*, 725 F.Supp.3d 994 (N.D. Cal. 2024)

S. N. Hahn sought judicial review of the Commissioner of Social Security’s denial of her application for DIB: the District Court, N.D. California granted Hahn’s motion, denied the Commissioner’s motion, and remanded the case for further proceedings.

The Court held that the ALJ failed to provide an explanation supported by substantial evidence for rejecting the examining psychologist’s opinion that the claimant had a moderate limitation in her ability to complete a typical workday or workweek. The ALJ’s error was not harmless because the limitation could have been potentially disabling. The Court also held that the ALJ erred in failing to provide a specific, clear, and convincing reason to discount the claimant’s testimony about the severity of her migraines. Finally, the Court held that the ALJ failed to articulate reasons germane to each lay witness in rejecting third-party function reports, and the error was not harmless.

1. *Charles E. v. Comm’r of Soc. Sec.*, — F.Supp.3d —-, 2024 WL 4633422 (W.D.N.Y. Oct. 31, 2024)

Charles E. sought judicial review of the Commissioner of Social Security’s denial of his applications for DIB and SSI. The District Court, W.D. New York, granted Charles E.’s motion and denied the Commissioner’s motion.

The Court held that remand was warranted to explain any further limitation in the RFC as it pertained to the claimant’s bathroom breaks. The written determination did not adequately describe the limitation, providing that the claimant needed “reasonable access to a bathroom,” including how the limitation complied with the consultative examiner’s assessment that the claimant required frequent restroom breaks.

1. *Karen O. v. Comm’r of Soc. Sec.*, 731 F.Supp.3d 926 (S.D. Ohio 2024)

Following Karen O.’s second successful judicial appeal of the Commissioner’s denial of DIB, her counsel moved for an award of attorney fees under 42 U.S.C. § 406(b) based on a pre-existing contingency fee agreement: the District Court, S.D. Ohio, Western Division, granted the motion in part, subject to modification.

The Court held that the motions for attorney fees for the first and second appeals should have been filed as a single motion following the grant of benefits on the second appeal. The Court also held that counsel’s affidavit rebutted the presumption that a lower EAJA rate should serve as a proxy for his standard rate. The total award sought by counsel was *per se* reasonable. However, the attorney failed to file for EAJA fees on the second appeal. The Court reduced the requested fee award by the hypothetical EAJA award counsel could have received for the second appeal.