DEVELOPMENT OF THE TREATING SOURCE RULE (1979-1991)

I. INTRODUCTION

This memorandum traces the development of the Treating Physician Rule (also known as the Treating Source Rule) in Social Security disability claims from 1979 through 1991. During this period, federal courts significantly refined and strengthened the rule that had emerged in earlier decades, culminating in its codification by the Social Security Administration (SSA) in 1991. Understanding this development is essential for effective advocacy on behalf of disability claimants in federal court, particularly in light of the subsequent regulatory changes that ultimately led to the demise of the rule for claims filed after March 27, 2017.

The Treating Physician Rule emerged as a judicial doctrine providing that the opinion of a claimant's treating physician should be given controlling weight in disability determinations unless contradicted by substantial evidence. This rule reflected courts' recognition that treating physicians, due to their ongoing relationship with patients, possess unique insights into claimants' conditions that cannot be replicated by consultative examiners who see claimants only once or by non-examining physicians who merely review records.

As described by Ethel Zelenske in her analysis published in the CLEARINGHOUSE REVIEW, the rule developed organically through the federal courts to ensure that disability determinations properly weighed opinions of treating physicians with longitudinal knowledge of claimants' conditions. This development stemmed from courts' duty to ensure that SSA's disability determinations were supported by substantial evidence—a statutory mandate that remained unchanged throughout this period and beyond.

II. FOUNDATIONAL PRINCIPLES (1979-1983)

A. The Binding Effect and Substantial Evidence Standard

By 1979, courts had established that treating physicians' opinions were entitled to special weight. The seminal case during the early portion of our period was *Hankerson v. Harris*, 636 F.2d 893 (2d Cir. 1980), which confirmed as "settled law in this circuit" that "in the absence of substantial contradictory evidence, the opinion of the claimant's treating physician is binding on the Secretary [now the Commissioner]." The court emphasized that this principle was particularly

important in cases involving *pro se* claimants, where the ALJ has a heightened duty to develop the record.

The court in *Hankerson*, 636 F.2d 893 found that the ALJ failed to sufficiently explore facts and did not advise the claimant to obtain a more detailed statement from his treating physician. The judgment was vacated and the case remanded for further proceedings, emphasizing the need for a thorough exploration of the claimant's condition. This case established a procedural dimension to the Treating Physician Rule—not only was the treating physician's opinion to be accorded special weight, but the ALJ had an affirmative duty to help claimants develop adequate evidence from their treating physicians.

In *Harris v. Schweiker*, 560 F. Supp. 1298 (S.D.N.Y. 1983), the court reinforced that the treating physician's findings could not be disregarded without substantial contradictory evidence. The court held that the ALJ erred in disregarding the findings of Harris' treating physician, Dr. Branche, who reported significant limitations in her ability to perform work-related activities. The ALJ's reliance on consulting physicians' opinions who had examined the claimant only once was deemed improper. The opinion stated directly that "the opinion of the treating physician, however, is binding on the fact-finder unless contradicted by substantial evidence."

Similarly, in *Edwards v. Sec'y of Dep't of Health & Hum. Servs. of U.S.*, 572 F. Supp. 1235 (E.D.N.Y. 1983), the court held that the ALJ's reliance "almost exclusively" on laboratory test results rather than the comprehensive medical evidence provided by the treating physician was "legally erroneous." The court emphasized that a treating physician's opinion is entitled to greater weight, particularly when the physician has treated the claimant over a substantial period. The court stated that "[a]n ALJ may not substitute his lay opinion of medical data for a physician's conclusions." *Edwards*, 572 F. Supp. at 1244.

In *Irvin v. Heckler*, 592 F. Supp. 531 (S.D.N.Y. 1984), the court reaffirmed that "[t]he expert opinion of the claimant's treating physician is entitled to particular weight[and i]n the absence of substantial contradictory evidence, the opinion of the claimant's treating physician is binding on the Secretary." The court found that the ALJ had failed to give proper weight to the treating physician's testimony, constituting grounds for reversal. The treating physician rule was applied in the context of termination of benefits, with the court holding that the ALJ failed to apply the medical improvement standard and did not give proper weight to the testimony of the claimant's treating physician.

B. Evidentiary Basis for Treating Physician Opinions

Bluvband v. Heckler, 730 F.2d 886 (2d Cir. 1984), highlighted the requirement that the ALJ must articulate reasons for ignoring treating physicians' opinions and cannot simply dismiss them without substantial evidence to the contrary. The court reversed the ALJ's decision, finding that the treating physician's opinion that the claimant was totally disabled was not contradicted by substantial evidence and was therefore binding on the Secretary.

Importantly, the court in *Bluvband*, 730 F.2d 886 also emphasized the ALJ's special duties toward *pro se* claimants, finding that the ALJ "failed to meet his special duties to the *pro se* claimant by not adequately developing the record and disregarding the treating physician's opinion without substantial evidence." This highlighted the intersection between the treating physician rule and the ALJ's duty to develop the record, particularly for unrepresented claimants.

III. REFINEMENT OF THE RULE (1984-1988)

A. Deference to Longitudinal Perspective

Courts increasingly emphasized the value of the treating physician's longitudinal perspective. In *Ceballos v. Bowen*, 649 F. Supp. 693 (S.D.N.Y. 1986), the court held that the ALJ failed to give proper weight to the opinion of the claimant's treating physician, who had diagnosed severe depression and other impairments. More specifically, the court found that, because even a conclusory report by a treating physician presumably rests upon encapsulated experience with the subject, the ALJ may not reject or discount a summary report without first informing the claimant of this proposed action and providing the claimant with an opportunity to submit a more detailed statement.

Maher v. Bowen, 648 F. Supp. 1199 (S.D.N.Y. 1986), similarly found that the Appeals Council violated the treating physician rule by not giving proper weight to the opinion of the claimant's treating physician who found the claimant totally disabled. The court emphasized that the treating physician's opinion is entitled to "some extra weight" due to their unique position to evaluate the claimant's condition over time and because the treating physician is generally most familiar with the claimant's medical condition. The court reversed the decision and ordered the Secretary to award benefits to Maher, showing the potentially decisive impact of proper application of the treating physician rule.

B. Limitations and Exceptions

Courts also began to delineate circumstances where the treating physician's opinion might not control. *Artrip v. Bowen*, 651 F. Supp. 376 (S.D.N.Y. 1987), held that while the treating physician's opinion must be considered, it could be outweighed by substantial contradictory evidence, including opinions from consultative and non-examining physicians as well as treatment reports. The court upheld the ALJ's decision.

In *Morales v. Bowen*, 664 F. Supp. 75 (S.D.N.Y. 1987), the court found that the ALJ violated the treating physician rule by supplanting the treating physician's determination with his own without substantial evidence to the contrary. The court emphasized that the ALJ's substitution of personal judgment for medical opinion constituted reversible error. The court also noted that the ALJ had failed to fulfill special duties owed to a *pro se* claimant by not adequately developing the record. *Morales*, 664 F. Supp. at 79.

Hidalgo v. Bowen, 822 F.2d 294 (2d Cir. 1987), reinforced that an ALJ could not give undue weight to a non-examining physician's opinion over those of treating physicians. Two years prior, the court observed that the cases in which it had reversed the denial of benefits due to the ALJ's failure to apply properly the treating physician rule were "almost legion." *See De Leon v. Sec'y of Health & Hum. Servs.*, 734 F.2d 930, 937 (2d Cir. 1984). In *Hidalgo*, 822 F.2d 294, the court found "Legion" should no longer be modified by "almost." (collecting 23 cases in which the administrative decision denying disability benefits has been either reversed or remanded). *Hidalgo*, 822 F.2d at 297

Kemp v. Bowen, 816 F.2d 1469 (10th Cir. 1987), strongly endorsed the treating physician rule, noting that the opinion of the treating physician was not contradicted by substantial evidence and should have been given decisive weight. The court found that the ALJ improperly substituted his own medical opinion for that of the treating physician and failed to provide specific reasons for rejecting the treating physician's views. The court directed an immediate award of benefits, demonstrating the power of the rule when properly applied.

C. The *Schisler* Litigation and Its Impact

The Schisler litigation represents a pivotal development in the evolution of the treating physician rule. In *Schisler v. Heckler*, 787 F.2d 76 (2d Cir. 1986), the

Second Circuit addressed a class action challenging the Social Security Administration's failure to consistently apply the treating physician rule. lthough the Secretary had never sought to challenge this rule by petitioning for certiorari in the Supreme Court, the volume of appeals from the Secretary implicating the rule raised a serious question as to whether the Secretary was actually following the rule. *Schisler v. Bowen*, 851 F.2d 43 (2d Cir. 1988) (*Schisler*, 851 F.2d 43). The court held:

> The treating physician rule governs the weight to be accorded the medical opinion of the physician who treated the claimant ... relative to other medical evidence before the fact-finder, including opinions of other physicians. The rule, which has been the law of this circuit for at least five years, provides that a treating physician's opinion on the subject of medical disability, i.e., diagnosis and nature and degree of impairment, is: (i) binding on the fact-finder unless contradicted by substantial evidence; and (ii) entitled to some extra weight because the treating physician is usually more familiar with a claimant's medical condition than are other physicians, although resolution of genuine conflicts between the opinion of the treating physician, with its extra weight, and any substantial evidence to the contrary remains the responsibility of the fact-finder.

Schisler, 787 F.2d 76

The court ordered the SSA to draft and distribute to all adjudicators within the Second Circuit instructions to apply the treating physician rule. One district court even ordered the Secretary of Health and Human Services to apply the Second Circuit's treating physician rule in all cases, which was "an unprecedented intrusion into a federal agency's right to non-acquiescence." *Stieberger v. Heckler*, 615 F. Supp. 1315 (S.D.N.Y. 1985), *vacated sub nom. Stieberger v. Bowen*, 801 F.2d 29 (2d Cir. 1986); *see* J. Farhi and M. Stretton, "Demise of the Treating Physician Rule", NYSBA HEALTH LAW JOURNAL (2021).

D. Procedural Requirements and Record Development

Crawford v. Bowen, 687 F. Supp. 99 (S.D.N.Y. 1988), addressed situations where treating physicians' opinions could be outweighed by substantial contrary evidence. The court found that the Secretary's decision was supported by substantial evidence, including testimony from a medical advisor and

evaluations that contradicted the treating physicians' opinions that the claimant was incapable of working.

In *Smith v. Bowen*, 687 F. Supp. 902 (S.D.N.Y. 1988), the court emphasized the ALJ's obligation to develop the record fully, particularly with respect to treating physicians' assessments. The court found that the ALJ failed to obtain complete records and assessments from the treating physician, warranting remand for further development of the evidence. The court found that the ALJ failed to give appropriate weight to the opinion of the treating physician, Dr. Washington, who stated that Smith should not return to work. The treating physician rule requires that the opinion of a treating physician be given extra weight, and the ALJ's failure to develop the record and consider all relevant evidence warranted remand.

George v. Bowen, 692 F. Supp. 215 (S.D.N.Y. 1988), highlighted the ALJ's obligation to obtain necessary responses from treating physicians regarding functional limitations. The court found that "the ALJ failed to apply the treating physician rule by not obtaining necessary responses from the treating physician regarding the claimant's ability to lift and carry weight." The court remanded the case for the ALJ to obtain the necessary treating source evidence and properly apply the treating physician rule.

Fernandez-Sosa v. Bowen, 701 F. Supp. 74 (S.D.N.Y. 1988), upheld an ALJ's decision where the ALJ had considered opinions from both treating and consulting physicians and found substantial evidence supporting the determination that the claimant retained the capacity to perform sedentary work. This case demonstrated that proper application of the treating physician rule required consideration of all medical evidence, not just uncritical acceptance of treating physicians' opinions.

Garcia v. Bowen, No. 86 CIV. 4925 (SWK), 1988 WL 31854, at *5 (S.D.N.Y. Mar. 22, 1988), emphasized that the ALJ's reliance on non-examining physicians' opinions over the treating physician's assessment of significant physical limitations constituted error. The court found that the ALJ failed to give proper weight to the opinion of Garcia's treating physician, Dr. Greenidge, who reported significant limitations in her physical capabilities. The case was remanded for further development of the record, emphasizing the need to adhere to the treating physician rule.

E. *Schisler II:* Expanding the Scope of Application

In *Schisler*, 851 F.2d 43 (*Schisler*, 851 F.2d 43), the Second Circuit reviewed the SSA's proposed instructional document on the treating physician rule. On remand from *Schisler I,* the Secretary proposed a draft Social Security Ruling (SSR) intended to encapsulate the treating physician rule. However, the district court found the draft SSR to be inadequate, as it failed to accurately reflect the established rule and was overly complex and ambiguous. Consequently, the district court made significant revisions, including the removal of extraneous material and the simplification of the rule's language to align with the Second Circuit's precedent . The court also modified the definition of "treating source" and added a definition of "substantial evidence," emphasizing that opinions of nonexamining medical personnel cannot, in most situations, override the opinion of a treating source. *Schisler*, 851 F.2d at 45.

The Secretary appealed the district court's revisions, arguing that the court exceeded its authority by rewriting the draft SSR and that the traditional deference to administrative rulings should apply. The Second Circuit, however, upheld the district court's deletions and revisions, affirming that the remand was not an opportunity for the Secretary to introduce new regulations or elaborate on the treating physician rule beyond what was authorized by caselaw. The court did, however, make two minor changes to the district court's revisions, including altering the language regarding the definition of "treating source" to focus on the nature of the physician's relationship with the claimant rather than its duration. *Schisler*, 851 F.2d at 46.

The plaintiffs-appellees filed a petition for rehearing, arguing that the court's deletion of language regarding the role of nonexamining medical personnel was a misstatement of the treating physician rule . The Second Circuit agreed with the plaintiffs-appellees, acknowledging that the language was justified by precedent and ordered the restoration of the pertinent portion of the SSR as modified by the district court. *Schisler*, 851 F.2d at 47.

The *Schisler*, 851 F.2d 43 decision has significant implications for the interpretation and application of the treating physician rule in disability benefits cases. The court's decision underscores the importance of the treating physician's opinion, emphasizing that it should be given substantial weight unless contradicted by substantial evidence. The ruling clarifies that the nature of the physician's relationship with the claimant is more critical than the duration of the relationship or its timing relative to the claim for benefits.

Furthermore, the decision delineates the role of nonexamining medical personnel, asserting that their opinions cannot, in themselves, constitute substantial evidence to override a treating source's opinion. This clarification strengthens the position of treating physicians in disability determinations and ensures that their insights, based on ongoing treatment relationships, are prioritized in the evaluation process.

Anderson v. Sullivan, 725 F. Supp. 704 (W.D.N.Y. 1989), provided an example where substantial evidence supported the ALJ's determination despite a contrary treating physician diagnosis. The court affirmed the ALJ's decision, demonstrating that the treating physician rule does not automatically require reversal when the ALJ's decision contradicts the treating physician's opinion, provided substantial contradictory evidence exists.

F. *Pro Se* Claimants and Special Duties

Cruz v. Sullivan, 912 F.2d 8 (2d Cir. 1990), emphasized the ALJ's heightened duty to protect *pro se* claimants' rights and to obtain detailed statements from treating physicians when initial findings were rejected. Eugenio Cruz appealed the denial of his SSI benefits, arguing that he did not receive a full and fair hearing and that the treating physician rule was misapplied. The court held that the ALJ did not adequately protect the *pro se* claimant's rights and failed to obtain a more detailed statement from the treating physician after rejecting initial findings.

The court emphasized that the treating physician's opinion binding on the fact-finder unless contradicted by substantial evidence and entitled to some extra weight, even if contradicted by substantial evidence, because the treating source is inherently more familiar with a claimant's medical condition than are other sources. *Cruz*, 912 F.2d at 12.

G. Final Refinements Before Codification

Marziliano v. Sullivan, 771 F. Supp. 69 (S.D.N.Y. 1991), applied the treating physician rule in the context of overpayment waiver, finding that the ALJ failed to give adequate deference to treating psychiatrists' opinions regarding the claimant's capacity to understand financial consequences. This demonstrated the rule's applicability beyond initial disability determinations. The court found that the ALJ failed to properly apply the treating physician rule by not giving adequate deference to the opinions of Marziliano's treating psychiatrists, Dr.

Charles M. Biller and Dr. Neil E. Berliner, who stated that she was not capable of understanding the consequences of her financial actions.

Peed v. Sullivan, 778 F. Supp. 1241 (E.D.N.Y. 1991), reinforced that the ALJ's failure to obtain opinions from treating physicians constituted reversible error, particularly given the claimant's *pro se* status. The court emphasized that the opinion of a treating physician be given substantial, if not controlling, weight, and opinions of "examining" or consulting physicians are entitled to little weight. The case was remanded for further proceedings to obtain the treating physicians' opinions.

Malave v. Sullivan, 777 F. Supp. 247 (S.D.N.Y. 1991), applied the treating physician rule to determinations of disability onset dates, finding that the Secretary's rejection of the treating physician's opinion was not supported by substantial evidence. The treating physician rule was central, as the court held that "the Secretary's rejection of the treating physician's opinion on the onset date of Malave's physical disability was not supported by substantial evidence." This case illustrated the rule's applicability to specific temporal aspects of disability determinations.

Grindle v. Sullivan, 774 F. Supp. 1501 (N.D. Ill. 1991), held that the ALJ's reliance on a non-examining physician's opinion over treating physicians' assessments constituted "plain error." The court found that "the ALJ failed to give sufficient weight to the treating physicians' opinions that Grindle could not perform medium work." The ALJ's reliance on a nonexamining physician's opinion was deemed plain error, and the decision was reversed with directions to award benefits. This demonstrated the potent remedial impact of the treating physician rule.

Bennett v. Sec'y of U.S. Dep't of Health & Hum. Servs., 769 F. Supp. 457 (E.D.N.Y. 1991), addressed the application of the treating physician rule in cases with multiple treating physicians. The court determined that certain physicians were entitled to treating physician status based on their ongoing treatment relationship, clarifying the rule's application in complex medical situations. The court determined that "Drs. Blum and Gold were entitled to treating physician status, which means their opinions should be given more weight than those of a doctor who has only seen the claimant once."

IV. THE ROAD TO CODIFICATION

A. The Proposed Rule.

In April 1987, the Social Security Administration (SSA) published a Notice of Proposed Rulemaking (NPRM) titled "Standards for Consultative Examinations and Existing Medical Evidence, 52 FR 13014-01). This NPRM was issued in response to a Congressional mandate in Section 9 of PL 98–460 (HR 3755), PL 98–460, October 9, 1984, 98 Stat 1794, which required the Secretary of Health and Human Services to establish standards for consultative examinations including when to obtain consultative examinations, what types to purchase, and monitoring procedures for both the purchase process and examination reports. The Senate Finance Committee specifically "indicated in its report that it did not intend to alter in any way the relative weight that the Secretary places on reports received from treating physicians and from physicians who perform consultative examinations." However, the SSA was "setting forth [its] policy with respect to opinions of treating sources" in response to "certain Federal Circuit Court of Appeals decisions and other statements regarding [its] policy."

The NPRM explicitly acknowledged the value of treating physicians' opinions, stating that SSA tries "to make decisions based on evidence from treating sources because of the continuing relationship between the claimant and physician." This represented a formal recognition of the special relationship between patients and their treating physicians in the disability determination process.

The proposed regulations created a framework for medical evidence within the disability determination process. Before determining that an individual was not disabled, SSA would develop a complete medical history covering at least the preceding 12 months, unless the disability began less than 12 months before application. This requirement emphasized the importance of longitudinal evidence in disability determinations.

The proposed regulations at 20 C.F.R. § 404.1527 and 416.927 specifically addressed the treatment of medical opinions from treating sources. The NPRM stated that a treating source's medical opinion would be "conclusive" on medical issues regarding the nature and severity of impairments when the SSA found that it was: (1) fully supported by medically acceptable clinical and laboratory diagnostic techniques, and (2) not inconsistent with other substantial medical evidence of record.

If a treating source opinion was not fully supported, the SSA would "make every reasonable effort" to obtain relevant evidence supporting the opinion before

making a disability determination. This provision established a duty for SSA to actively seek supporting evidence rather than simply discounting unsupported opinions.

When treating source opinions were inconsistent with other evidence, the NPRM provided that the SSA would resolve such inconsistencies by securing additional independent evidence or further interpretation from treating sources and/or consultative physicians. Importantly, in resolving these inconsistencies, "some extra weight" would be given to treating sources' supported opinions that interpreted medical findings about the nature and severity of impairments.

The proposed regulations also established clear boundaries on the weight given to treating source opinions. The SSA would not consider as conclusive, nor give extra weight to, medical opinions that were "not in accord with the statutory or regulatory standards for establishing disability." For instance, opinions that an impairment met a Listing of Impairments would not be given conclusive weight if the medical findings did not meet the specific criteria for that listing. Similarly, opinions about a claimant's residual functional capacity (RFC) that did not accord with regulatory requirements would not be considered conclusive or given extra weight. This ensured that treating source opinions would not override established regulatory standards.

B. The Final Rule.

The Social Security Administration (SSA) published proposed rules in the Federal Register in April 1987. *Standards for Consultative Examinations and Existing Medical Evidence,* 52 FR 13014-01 (April 20, 1987). After receiving and evaluating public comments, SSA published the final rules on August 1, 1991 (56 FR 36932). This four-year gap between proposal and finalization allowed for substantial revisions based on public input.

The Secretary acknowledged that the rule was guided by principles articulated by various circuit courts, though none had held that their treating physician rule was required by the Act or Constitution (56 FR 36937). The Second Circuit in Schisler had specifically invited the Secretary to use the "customary administrative process" to promulgate a treating physician policy (56 FR 36937).

Many commenters criticized the proposed rules concerning evaluation of medical opinions. They demonstrated that the proposed regulation lacked clarity and could be misinterpreted (56 FR 36936). In response, SSA revised and

expanded §§ 404.1527 and 416.927 to state their policy more clearly and in greater detail (56 FR 36936).

A significant issue was the use of the term "conclusive" weight for treating source opinions that were "fully supported by medically acceptable clinical and laboratory diagnostic techniques" and not inconsistent with other substantial medical evidence (56 FR 36938). Commenters pointed out that "fully supported" was unclear and represented an impractically high standard. Id. In response, SSA replaced "conclusive" with "controlling" and "fully supported" with "well-supported". Id.

Several commenters objected that the proposed rules permitted discounting a treating source's apparently unsupported opinion without recontacting the source (56 FR 36938). SSA clarified that recontacting treating sources to complete the record and resolve inconsistencies was one of the principal provisions of the rules (56 FR 36938).

The final rule defined "treating source" to include physicians who had treated claimants on an ongoing basis in the past, not just current treating physicians (56 FR 36935). This addressed concerns that many source opinions deserving special weight would be excluded (56 FR 36938).

The regulations explained what constituted "evidence" in disability evaluation, placing rules on evaluating medical opinions in the broader context of all medical evidence in the case record (56 FR 36932). This included defining types of evidence needed from medical sources and potentially from other sources (56 FR 36932).

The final rule established a hierarchy for weighing medical opinions based on the source's relationship with the claimant:

1. Treating sources received the most deference, with opinions on the nature and severity of impairments given "controlling weight" if "well-supported by medically acceptable clinical and laboratory diagnostic techniques and...not inconsistent with other substantial evidence". Id.
2. Even when treating source opinions did not receive controlling weight, they would still receive greater weight than opinions from non-treating sources (56 FR 36940).
3. Examining sources (who were not treating sources) received more weight than non-examining sources (56 FR 36938-36939).

4. Non-examining sources received the least weight (56 FR 36943).

When a treating source's opinion was not given controlling weight, the regulations specified factors to be considered:

1. Examining relationship - An opinion from a source who examined the claimant would generally receive more weight than one from a non-examining source.
2. Treatment relationship - Length, frequency, nature, and extent of the relationship between the treating source and claimant would be considered.
3. Supportability - The relevance of supporting evidence and quality of explanation would affect the weight given.
4. Consistency - Opinions more consistent with the record as a whole would receive more weight.
5. Specialization - More weight would generally be given to specialists in their area of expertise.
6. Other factors - Additional factors that could arise in specific cases would be considered.

The final rule clarified that certain issues were reserved to the Secretary, including determinations about whether an individual was "disabled" or "unable to work," whether impairments met or equaled listed impairments, residual functional capacity, and ability to perform past work or adjust to other work. 56 FR at 36940-36941). While treating source opinions on these issues would not be given controlling weight, they would not be disregarded. 56 FR at 36941.

The final rule required that when a treating source's medical opinion was not given controlling weight, the notice of determination or decision must provide "good reasons" for the weight given to the opinion. 56 FR at 36941.

The Secretary explained that opinions always have a subjective component, medical conditions affect individuals differently, and no two cases are exactly alike, making it impossible to create formulaic rules prescribing the weight for each piece of evidence. The weighing of evidence involves comparing intrinsic value, persuasiveness, and internal consistency of each piece of evidence, then evaluating all evidence together. 56 FR at 36939.

SSA acknowledged that treating sources usually have the most knowledge about their patients' conditions (56 FR at 36937), while recognizing that it held ultimate responsibility as the decision-maker in each case (56 FR 36937-36938). The final regulations aimed to provide a very specific and detailed process for evaluating medical opinions, taking into account concerns raised by both commenters and circuit courts. 56 FR at 36939.

The Secretary specifically rejected suggestions that treating sources should make the ultimate determination of residual functional capacity, noting this would abrogate the responsibility under the law to decide cases independentl. 56 FR at 36942).

The final rule published on August 1, 1991, represented a significant refinement of the Treating Physician Rule, balancing respect for medical expertise with the Secretary's statutory obligation to make disability determinations. It established a clear framework that recognized the special value of treating source opinions while maintaining the integrity of the disability determination process. This framework continues to influence how medical evidence is evaluated in Social Security disability claims.

CONCLUSION

The final regulations represented both a victory for disability claimants and an acknowledgment by the SSA of the sound principles underlying the judicially-created doctrine. They established a hierarchical approach to medical opinion evidence that prioritized treating sources, followed by examining sources, and finally non-examining sources. However, as Zelenske noted, the regulations also contained potential limitations on the treating physician rule as it had been developed in the courts, particularly in circuits like the Second Circuit where the judicial rule had been strongest.

BIBLIOGRAPHY

1. E. Zelenske, "Treating Physicians Evidence in Social Security Disability Cases: What Does the Future Hold?" CLEARINGHOUSE REVIEW (May 1993)
2. "Demise of the Treating Physician Rule" by Jacques M. Farhi and Michael Stephen Stretton, III, NYSBA HEALTH LAW JOURNAL (2021)