

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

David J. MARAN, plaintiff :
 :
v. : No. 3:01cv2015 (JBA)
 :
Jo Anne B. BARNHART, :
 Commissioner of Social :
 Security :

RULING ON PENDING MOTIONS [## 12, 14]¹

As set forth below, the Court concludes that there is not substantial evidence supporting the ALJ's conclusion that the Commissioner satisfied her burden of proving that Maran had a residual functional capacity for medium work. Therefore, plaintiff's motion for judgment on the pleadings [Doc. #12] is GRANTED, defendant's motion affirming the commissioner's decision [Doc. #14] is DENIED, the ALJ's decision below is REVERSED, and this case is REMANDED for a calculation of disability benefits.

The law applicable to this ruling is well settled:

First, the [Commissioner] considers whether the claimant is currently engaged in substantial gainful activity. If he is not, the [Commissioner] next considers whether the claimant has a "severe impairment" [that] significantly limits his physical or mental ability to do basic work activities. If the claimant suffers such an impairment, the third inquiry is whether, based solely on medical evidence, the claimant has an impairment ... listed in Appendix 1 of the regulations. If the claimant has such an impairment, the [Commissioner] will consider him disabled without considering vocational factors such as age, education, and work experience.... Assuming the claimant does not have a listed impairment, the fourth inquiry is whether, despite

¹ Familiarity with Magistrate Judge Margolis comprehensive Recommended Ruling [Doc. #18] is assumed.

the claimant's severe impairment, he has the residual functional capacity to perform his past work. Finally, if the claimant is unable to perform his past work, the [Commissioner] then determines whether there is other work [that] the claimant could perform.

While [t]he burden is on the claimant to prove that he is disabled within the meaning of the [Social Security] Act[,]
... if the claimant shows that his impairment renders him unable to perform his past work, the burden then shifts to the [Commissioner] to show there is other gainful work in the national economy [that] the claimant could perform.

Curry v. Apfel, 209 F.3d 117, 122 (2d Cir. 2000) (quotations and citations omitted); see also Rosa v. Callahan, 168 F.3d 72, 77 (2d Cir. 1999). The Commissioner's conclusions must be supported by substantial evidence, defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Green-Younger v. Barnhart, 335 F.3d 99, 106 (2d Cir. 2003) (quotation omitted).

In the present case, the ALJ concluded that Maran satisfied his burden of proving that his impairment prevented him from performing his past work, but then found that, as of September 30, 1998, plaintiff retained the residual functional capacity to perform the full range of medium work - "lift and carry up to fifty pounds occasionally and twenty-five pounds frequently, and sit, stand and walk for up to six hours each in an eight-hour work day with normal breaks," Admin. Rec. [Doc. #6] at 15 - and therefore concluded that plaintiff was not disabled for purposes of disability benefits. Defendant does not appeal any of the ALJ's conclusions and admits "[f]urthermore, considering his age

when he last met the insured status requirement of the Act, his education, and his past work experience, plaintiff would have been properly found disabled had he had only the [residual functional capacity] for light work or even for only sedentary work...." Def.'s Memo. in Supp. [Doc. #15] at 9. Because the record does not demonstrate that Commissioner carried her burden of proving Maran could perform medium work as she found, this case must be remanded for a calculation of disability benefits.

Although not entirely clear, the ALJ's conclusion as to Maran's functional capacity appears to have been based on Maran's direct testimony, the perceived absence of medical evidence to support Maran's subjective descriptions of pain and limitations, and the review of Maran's medical records by the State Agency's medical consultant, who concluded that the medical records in the file were insufficient for assessing disability as of September 30, 1998. See Admin. Rec. [Doc. #6] Ex. at 15. As to Maran's direct testimony, the ALJ states,

"In addition, the claimant testified that he was able to take care of his own personal care needs, perform some light household chores, build models, occasionally drove a car, was able to manage his own finances, and reported no difficulties socializing with family members or friends."

Id. Maran's testimony, however, far from establishes his capability to lift twenty-five pounds on a regular basis:

Q. How much are you able to lift or carry now?

A. Well, ... I lift stuff [that weighs] like 20 pounds every once in a while, but I haven't been lifting them much at all.

- Q. Okay.
- A. (Inaudible) clothes and stuff like that.
- Q. What kind of object would weigh 20 pounds? What were you-
- A. Sometimes, you know, a couple bags of potatoes if I carry them from one place to the other or something like that, or some, you know, basket of clothes.

Id. at 47. As an initial matter, it is only Maran himself who is estimating the weight of the bags of potatoes or clothing basket as weighing twenty pounds. There is no evidence in the record that establishes whether the bag of potatoes or basket of laundry he refers to indeed weighed that much and the Court can take judicial notice of the fact that the weights of such items are quite variable. See Balsamo v. Chater, 142 F.3d 75, 81 (2d Cir. 1998) (taking judicial notice that individual can read and watch television while lying down and therefore such activity does not support ability to perform sedentary work). In addition, he states that he only lifted such weight "once in a while." Thus, this is clearly insufficient evidence on which to base a finding of frequent lifting of twenty-five pounds and the Commissioner has failed to meet her burden of proof on the issue. The ALJ's reliance on the absence or insufficiency of medical records to support Maran's claim of disability improperly shifts the burden to Maran to show that he cannot frequently carry up to twenty five pounds. At this stage, it is the Commissioner's burden to demonstrate that Maran can do such lifting and the absence of medical records on the subject is not a proper basis for drawing

medical conclusions about his capabilities.²

The Recommended Ruling pointed to an evaluation performed by Dr. Bellner on June 8, 1995, as supporting the finding of medium work capacity, see Rec. Ruling [Doc. #18] at 30-31, which provides:

"[Maran] will remain on present light duty restrictions limiting his lifting to 10 to 15 pounds until June 19, 1995. He will then attempt to return to his prior duties."

Admin. Rec. [Doc. #6] Ex. at 130 (emphasis added). From this, the Recommended Ruling inferred that, because plaintiff continued to work after June 19, 1995 until being laid off, he did in fact return to his prior duties which entailed medium work. There is, however, nothing in the record to support the inference that plaintiff actually returned to frequent lifting of twenty five pounds and occasional lifting of fifty pounds, two requirements for medium work, after having been put on light duty restrictions. First, Dr. Bellner indicated that Maran should "attempt" to return to prior duties. Simply because plaintiff continued to work after the date set for such attempt does not provide a sufficient basis to conclude that he was successful, since his employer simply may have allowed him to continue his

² In this regard, it is important to note that the ALJ's conclusions on functional capacity were drawn before concluding that Maran proved inability to perform past work and thus at a stage where the ALJ operated under the regulatory standard that "the burden is on the claimant to submit medical records in support of his claim." Admin. Rec. [Doc. #6] Ex. at 15. The ALJ did not revisit the issue of functional capacity and the burden to demonstrate it after concluding in Maran's favor on the issue of past work.

employment under the restriction of light work after having failed in the attempt to do more. Second, Dr. Bellner's June 8 statement does not define "prior duties" so that, even if Maran returned to such duties, there is nothing in the record showing what Dr. Bellner meant by "prior duties" and whether they were equivalent to the residual functional capacity to perform the full range of medium work. While Dr. Bellner stated in a letter dated October 26, 1994 that Maran reported his job entailed repetitive lifting of up to twenty five pounds, see id. at 122, there is no evidence that Dr. Bellner ever considered Maran's prior duties to include occasional lifting of fifty pounds.³

In sum, there is not substantial evidence in the record from which the Court could conclude that the Commissioner satisfied her burden of proof to demonstrate that plaintiff has the residual functional capacity to perform the full range of medium work.

As set forth above, plaintiff's motion for judgment on the

³ The Court also notes that plaintiff's statement on his Social Security Administration Disability Report dated May 25, 2000, that he frequently lifted twenty-five pounds and up to 100 pounds on the job is easily read as referring to the time period between 1976 to 1988. Compare Admin. Rec. [Doc. #6] Ex. at 81 with id. at 89, 90. Similarly, plaintiff's statement on a Social Security Administration Vocational Report dated June 14, 2000, that he frequently lifted over fifty pounds on the job was limited on its face to his job experience at Whyco ending in 1994, compare id. at 93 with 89, and there is no suggestion that Maran did not believe his statement was limited to such time period. Thus, even if the record could be read to prove that Maran in fact worked at Whyco until 1996, there is nothing from which to infer that Maran meant that he frequently lifted over fifty pounds in his job at Whyco after 1994. In any event, neither constitutes substantial evidence to support a finding that Commissioner sustained its burden of proof on the issue of Maran's functional capacity.

pleadings [Doc. #12] is GRANTED, defendant's motion affirming the commissioner's decision [Doc. #14] is DENIED, the ALJ's decision below is REVERSED, and this case is REMANDED for a calculation of disability benefits.

It is so ordered.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut this 24th day of August, 2004.