Biegajski v. Commissioner of Social Security

2023 | Cited 0 times | S.D. Ohio | January 23, 2023

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO WESTERN DIVISION AT DAYTON LAURA B., 1

Plaintiff, vs. COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION,

Defendant.

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Case No. 3:18-cv-132 District Judge Thomas M. Rose Magistrate Judge Peter B. Silvain, Jr.

REPORT AND RECOMMENDATIONS 2

This matter has returned before the Court for review of Plaintiff Laura B. her application for Supplemental Security Income. The case is before the Court upon Doc. #20), the Doc. #21), Reply (Doc. #22), and the administrative record (Doc. #18). I. Background

The Social Security Administration provides Supplemental Security Income to individuals Bowen v. City of New York, 476 U.S. 467, 470 (1986); see 1

The Committee on Court Administration and Case Management of the Judicial Conference of the United States has recommended that, due to significant privacy concerns in social security cases, federal courts should refer to plaintiffs only by their first names and last initials. See also S.D. Ohio General Rule 22-01. 2 Attached is a NOTICE to the parties regarding objections to this Report and Recommendations. see Bowen, 476 U.S. at 469- 70.

In the present case, Plaintiff applied for benefits on March 28, 2014, alleging disability due to Attention Deficient Hyperactivity Disorder (ADHD), diabetes type 2, fibromyalgia, depression,

Syndrome, mild hypochondria, and possible bipolar disorder. (Doc. #18-6, PageID #s 264-73). onsideration, she requested and received a hearing before Administrative Law Judge (ALJ) Mark Hockensmith. The ALJ concluded that Plaintiff was not eligible for benefits because she was not defined in the Social Security Act. (Doc. #18-2, PageID #s 161-72). After the Appeals Council

denied review, Plaintiff filed the present case in the United States District Court for the Southern

District of Ohio (Docs. #s 1, 3). However, because part of located by the Commissioner, this Court remanded the case to the Commissioner pursuant to the

sixth sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). (Doc. #s 13, 14, 15). Upon remand, ALJ Gregory G. Kenyon held a second hearing via telephone and issued a written decision, addressing each of the five sequential steps set forth in the Social Security Regulations. See 20 C.F.R. § 416.920. He reached the following main conclusions:

Step 1: Plaintiff has not engaged in substantial gainful activity since March 28,

2014, the application date. Step 2: Plaintiff has the following severe impairments: diabetes mellitus; a history

of bilateral carpal tunnel syndrome with release surgery; history of bilateral cubital tunnel syndrome with release surgery; obesity; ADHD; an anxiety disorder with associated social phobia; and depression. Step 3: Plaintiff does not have an impairment or combination of impairments that

meets or medically equals the severity of o of Impairments, 20 C.F.R. Part 404, Subpart P, Appendix 1.

Step 4: Her residual functional capacity (RFC), or the most she could do despite her

impairments, , 276 F.3d 235, 239 (6th Cir. 2002), consists except: (1) occasional crouching, crawling, kneeling, stooping, and climbing of ramps and stairs; (2) frequent balancing; (3) no climbing of ladders, ropes, or scaffolds; (4) frequent use of the upper extremities for handling and fingering; (5) frequent overhead reaching; (6) limited to simple, routine, repetitive tasks; (7) occasional, superficial contact with coworkers and supervisors, where superficial contact is described as able to receive simple instructions, ask simple questions, and receive performance appraisals, but as unable to engage in more complex social interactions, such as persuading other people or resolving interpersonal conflicts; (8) no public contact; (9) no teamwork or tandem tasks; (10) no fast-paced production work or strict production quotas; and (11) limited to performing jobs that involve very little, if any, change in the job duties or the work routine from one day to the next. Plaintiff has is unable to perform her past relevant work. Step 5: Plaintiff can perform a significant number of jobs that exists in the national

economy. (Doc. #18-2, PageID #s 103-09). Based on these findings, the ALJ concluded that Plaintiff has not been under a benefits-qualifying disability since March 28, 2014. Id. at 110.

Doc. #18, PageID #s 103-10 Doc. #20 Opposition (Doc. #21) 22). To the extent that additional facts are

relevant, they will be summarized in the discussion section below. II. Standard of Review

by substantial evidence and whether the ALJ applied the correct legal standards. of Soc. Sec., 581 F.3d 399, 406 (6th Cir. 2009) (citing Key v. Callahan, 109 F.3d 270, 273 (6th Cir. 1997)); ., 478 F.3d 742, 745-46 (6th Cir. 2007). Substantial Soc. Sec., 741 F.3d 708, 722 (6th Cir. 2014) (citing Rogers v.

Id.

The second judicial inquiry al analysis may of the Commissioner will not be upheld where the [Social Security Administration] fails to follow

its own regulations and where that error prejudices a claimant on the merits or deprives the Bowen, 478 F.3d at 746 (citing , 378 F.3d 541, 546-47 (6th Cir. 2004)). III. Discussion

In her Statement of Errors, Plaintiff identifies one assignment of error, which is that ALJ reversibly erred by failing to build a logical bridge between the evidence and his conclusion

that [Plaintiff] could sustain full- (Doc. #20, PageID #1346). According to Plaintiff, the ALJ failed to cite to substantial evidence that Plaintiff could sustain light work. Id. at 1346-47. Specifically, Plaintiff alleges that, in formulating her physical RFC, the ALJ reviewer, Esberdado Villanueva, M.D., for whom he the ALJ attributed only . Id. In response, the Commissioner opinion of Dr. Villanueva by pointing out that physical PageID #1356). The Commissioner further maintains that Id. at 1353-59.

It is well-settled that the plaintiff bears the ultimate burden of proof as to the existence and severity of the limitations caused by her impairments. ., 502 F.3d 532, 545 (6th Cir. 2007). It is equally accepted, however, that it is the ALJ who bears the burden to develop the administrative record upon which his decision rests. Human Servs., 708 F.2d 1048, 1051- proceedings unlike judicial ones Chester v. Comm'r of Soc. Sec., No. 11-1535, 2013 WL 1122571, at *8 (E.D. Mich. Feb. 25, 2013); see also, Sims v. Apfel, 530 U.S. 103, 110- an adversarial.

fully develop the record, Lashley, makes a finding of work-related limitations based on no medical source opinion or an outdated

., No. 3:10 CV 25, 2011 WL 5024866, at *1 3 (N.D. Ohio Oct. 21, 2011); ., No. 12-CV-00716, 2013 WL 5487037, at *4 (S.D. es a plaintiff s RFC based these circumstances, the gation to develop the record may be satisfied, without obtaining D c.

Sec justified in drawing functional capacity conclusions from such evidence without the assistance of

., No. 15-10966, 2016 WL 8114128, at *10 (E.D. Mich. Mar. 2, 2016), report and recommendation adopted sub nom., No. 15-CV-10966, 2016 WL 2848422 (E.D. Mich. May 16, 2016) (citations omitted).

In all other cases, the ALJ must fulfill his obligation to develop a complete record by utilizing the tools provided in the regulations for ordering additional opinion evidence, such as rder[ing] a consultative examination, or hav[ing] a medical Deskin, 605 F. Supp. 2d 908 at 912. ., No. 3:15-CV-354,

2017 WL 489746, at *3 5 (S.D. Ohio Feb. 7, 2017) (Newman, M.J.) (quotation marks and citation omitted), report and recommendation adopted sub nom., No. 3:15-CV-354, 2017 WL 713564 (S.D. Ohio Feb. 22, 2017) (Rice, D.J.).

In this case, as pointed out by the Commissioner, there is only one medical opinion 3

Esberdado Villanueva, M.D, a non-examining state agency an opinion in December 2013. (Doc. #18-2, PageID #s 149-52). betes mellitus diagnosis and opined that she could occasionally lift and/or carry fifty pounds and frequently lift and/or carry twenty- five pounds. Id. at 149, 151. He also concluded that she could only stand and/or walk for a total of six hours; sit for a total of six hours; occasionally crawl and climb ladders, ropes, or scaffolds; and frequently stoop, kneel, crouch, and climb ramps or stairs. Id. at 151. Dr. Villanueva found no balancing, manipulative, visual, communicative, or environmental limitations. Id. at 151-52. Finally, he noted that Plaintiff complained of back pain but had Id. at 152.

however, [Plaintiff] did have one isolated bout of neuropathy in June 2020, and in construing the

evidence in a more favorable light to [Plaintiff] the undersigned finds that a reduction to light work -2, PageID #107).

ng out that it was insufficient and outdated. (Doc. #20, PageID #s 1346-47). Indeed, the record reflects that Plaintiff submitted additional medical

3 Notably, based on a review of the opinion from 2017, it appears that there were physical impairments from consultative examiner, Amita Oza, M.D., and record reviewing physician, Maria Congbalay, M.D.. (See Doc. # 18-2, PageID #s 161-172, 176). Presumably, these opinions were part of the claims file that the Commissioner was unable to locate when this case first came up on appeal and the basis for which this case was remanded in 2019. records extending through early 2021, for which there is no medical opinion physical limitations. (See Doc. #18, PageID #s 394-919). Significantly, this evidence included numerous examinations with abnormal findings. In fact, in her Statement of Errors, Plaintiff points to such treatment records that evidence a deterioration in her physical condition, including her neuropathy[; front-

May 2020 x-rays revealed lumbar degenerative disease, which could lead to spinal surgery; further evidence extremities, and pain; and the prescription of a Handicap Placard in January 2021 as a result of her

difficulty walking. Id. (citing Doc. #18-12, PageID #s 599-600, 608-609; Doc. #18-14, PageID #s 709, 712, 718; Doc. #18-16, PageID #804). Dr. Villanueva did not consider, thus necessitating further development of the record. Kizys, 2011 WL 5024866, at *2.

capacity without the assistance of a medical opinion. See Deskin, 605 F. Supp. 2d at 912. On the contrary, the additional medical records submitted by Plaintiff appear to show a deterioration of her bilateral extremity functioning from her ongoing diabetes and developing lumbar degenerative disease. With the exception identified above by Plaintiff was largely ignored by the ALJ. While it is the function of the ALJ to these types of Griffin v. Astrue, No. 3:07-cv-447, 2009 WL 633043, at *10 (S.D. Ohio Mar. 6, 2009) (Rose, D.J.).

appear minimal to the lay person, the ALJ was not qualified to translate this medical data into

Mabra v. of Soc. Sec., No. 2:11-CV-00407, 2012 WL 2319245, at *9 (S.D. Ohio June 19, 2012) (Preston Deavers, M.J.), report and recommendation adopted, No. 2:11-CV-00407, 2012 WL 3600127 (S.D. Ohio Aug. 21, 2012) (Sargus, D.J.). Thus, being faced with a critical body of objective medical evidence involving physical impairments, without the aid of any medical expert of record, the ALJ was obligated to develop a complete record by ordering additional opinion evidence. See Deskin, 605 pert, ordered an additional consultative exam, or sent the [imaging] records, and other records back to the state ., No. 1:17 CV 1182, 2018 WL 4305213, at *5 (N.D. Ohio Sept. 10,

2018) (internal citations and quotations omitted). Instead, the ALJ physical RFC on his own interpretation of the raw medical data. See id. As a result, his RFC determination is not supported by substantial evidence.

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4 In light of the above discussion, and the resulting need to remand this case, an in-

IV. Remand idence prejudiced the plaintiff on the merits or deprived the plaintiff of a substantial right. Bowen, 478

F.3d at 746. Remand may be warranted when the ALJ failed see Wilson, 378 F.3d at 545-47; failed to consider see Bowen, 478 F.3d at 747-50; failed to consider the combined effect see Gentry, 741 F.3d at 725-26; or failed to provide specific reasons supported by substantial evidence for finding the plaintiff lacks credibility, see Rogers, 486 F.3d at 249.

Under sentence four of 42 U.S.C. § 405(g), the Court has authority to affirm, modify, or Melkonyan v. Sullivan, 501 U.S. 89, 99 (1991). Consequently, a remand under sentence four may

result in the need for further proceedings or an immediate award of benefits. E.g., Blakley, 581 F.3d

at 410; Felisky v. Bowen, 35 F.3d 1027, 1041 (6th Cir. 1994). The latter is warranted where the evidence of disability is overwhelming or where the evidence of disability is strong while contrary evidence is lacking. , 17 F.3d 171, 176 (6th Cir. 1994).

A judicial award of benefits is unwarranted in the present case because the evidence of disability is not overwhelming and the evidence of disability is not strong while contrary evidence is lacking. However, Plaintiff is entitled to have this case remanded to the Social Security Administration pursuant to sentence four of § 405(g) due to the problems discussed above. On remand, the ALJ should be directed to evaluate the evidence of record, including the medical uired five-

step sequential analysis to determine anew whether Plaintiff was under a disability and whether her application for Supplemental Security Income should be granted.

IT IS THEREFORE RECOMMENDED THAT: 1. -disability finding be vacated; 2. the meaning of the Social Security Act;

3. This matter be REMANDED to the Social Security Administration under

sentence four of 42 U.S.C. § 405(g) for further consideration consistent with this Report and Recommendations, and any decision adopting this Report and Recommendations; and 4.

January 23, 2023

s/ Peter B. Silvain, Jr. Peter B. Silvain, Jr. United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within FOURTEEN days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless within FOURTEEN days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981).