



## **Gamradt v. Barnhart**

2003 | Cited 0 times | D. Minnesota | March 10, 2003

### MEMORANDUM OPINION AND ORDER

#### I. INTRODUCTION

This matter is before the undersigned United States District Judge pursuant to Defendant Commissioner of Social Security Jo Anne B. Barnhart's ("Defendant") Objections [Docket No. 20] to the Report and Recommendation ("R&R") of Magistrate Judge Raymond L. Erickson [Docket No. 19]. The R&R recommends that Plaintiff's Motion for Summary Judgment [Docket No. 15] be denied, that Defendant's Motion for Summary Judgment [Docket No. 17] be denied, and that the case be remanded for further proceedings. For the reasons set forth below, the R&R is adopted. The factual and procedural background of this case is set forth at considerable length in the R&R and is incorporated by reference for the purposes of Defendant's present Objections.

#### II. DISCUSSION

The district court must undertake an independent, de novo, review of those portions of the R&R to which objection is made and "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); see also D. Minn. LR 72.1(c)(2).

Defendant objects to the R&R's denial of summary judgment for Defendant, and specifically to Magistrate Judge Raymond L. Erickson's determination that the decision of the Administrative Law Judge ("ALJ") [Tr. at 13-27; Docket No. 4] failed to adequately address conflicting evidence. Judge Erickson found that the ALJ did not acknowledge or discuss the totality of the evidence when discrediting Plaintiff's subjective claims of pain, but rather selectively ignored evidence that countered his conclusion, thereby abdicating his duty to consider and explain certain factors relevant to the credibility determination. Defendant argues that the ALJ's denial of disability benefits was supported by substantial evidence in the record as a whole and should therefore be affirmed.

A reviewing court must affirm the decision of the Commissioner if it is supported by substantial evidence on the record as a whole. 42 U.S.C. § 405(g); *Holley v. Massanari*, 253 F.3d 1088, 1091 (8th Cir. 2001). While less than a preponderance, substantial evidence is enough that a reasonable mind would find it sufficient to support the conclusion reached. *Holley*, 253 F.3d at 1091. As long as substantial evidence of record exists, the court may not reverse the ruling of the Commissioner even if it would have reached a different decision. *Id.* Both evidence that detracts from and evidence that



## Gamradt v. Barnhart

2003 | Cited 0 times | D. Minnesota | March 10, 2003

supports the Commissioner's determination is to be considered. Id.

When assessing the Plaintiff's subjective assertions of pain and impairment and weighing their credibility, the ALJ must make an explicit credibility determination, and if discrediting the testimony, must state his reasons for doing so. *Shelton v. Chater*, 87 F.3d 992, 995 (8th Cir. 1996); *Robinson v. Sullivan*, 956 F.2d 836, 839 (8th Cir. 1992) (stating that when discrediting a claimant's complaints of pain the ALJ must expressly "set forth on the record inconsistencies that lead to this conclusion"). Credibility findings must be supported by substantial evidence. *Robinson*, 956 F.2d at 839.

As expounded in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984), the examination of the plaintiff's subjective claims of pain requires the ALJ to evaluate and explain his conclusions regarding the observations of third parties and physicians as to:

1. the claimant's daily activities;
2. the duration, frequency, and intensity of the pain;
3. precipitating and aggravating factors;
4. dosage, effectiveness, and side effects of medication;
5. functional restrictions. Id. at 1322; *Shelton*, 87 F.3d at 995.

The ALJ may not disregard subjective testimony of symptoms solely based on the absence of objective medical evidence, though lack of such evidence may be a factor in discounting a plaintiff's claims. *Jones v. Chater*, 86 F.3d 823, 826 (8th Cir. 1996). Defendant contends the ALJ properly found certain statements and activities of Plaintiff inconsistent with her allegations of pain and adequately explained his conclusion that "the objective medical evidence does not support the claimant's allegations." Tr. at 22. However, as Judge Erickson discusses in the R&R, the condition of Chronic Fatigue Syndrome ("CFS") presents a particularly difficult fact pattern because it cannot be diagnosed by a simple "dipstick test" and therefore is addressed on a case-by-case, symptomatic basis rather than by objective laboratory procedures. *Sisco v. United States Dept. of Health and Human Serv.*, 10 F.3d 739, 743-45 (10th Cir. 1993); see R&R at 54-55; Secretary's Program Operations Manual System ("POMS") § DI 24575.005 (1993) (establishing policy for CFS claims and stating that "there are no generally accepted criteria for the diagnosis" of CFS and accordingly "[i]ndividual cases must be adjudicated on the basis of the totality of evidence").

Thus, when evaluating a claim of CFS, lack of objective medical evidence has less significance and may be seen as normal rather than aberrational. See *Cook v. Liberty Life Assurance Co. of Boston*, No. 02-1656, 2003 WL 245402, at \*8 (1st Cir. Feb. 5, 2003) (Insurance decision finding that "[g]iven the



## Gamradt v. Barnhart

2003 | Cited 0 times | D. Minnesota | March 10, 2003

nature of [CFS]" it is not reasonable to expect a claimant to produce "convincing 'clinical objective' evidence" of the disease); see also *Sisco*, 10 F.3d at 745 (noting that it is not unusual for a CFS patient to have "an extended history of 'nothing-wrong' diagnoses").

While the reviewing court should not substitute its credibility assessment for that of the ALJ, the ALJ must expressly enunciate on the record the reasons for rejection of Plaintiff's assertions, including examination of the Polaski factors. *Johnson v. Chater*, 87 F.3d 1015, 1018 (8th Cir. 1996); *Shelton*, 87 F.3d at 995. Because of its nature, when CFS is implicated in a disability claim it is particularly important for the ALJ to consider the full spectrum of evidence in weighing the credibility of the claimant's subjective testimony of symptoms. *Vogt v. Chater*, 958 F. Supp. 537, 544-45 (D. Kan. 1997) (examining medical characteristics of and difficulties with CFS and attendant evaluative implications for claim adjudication); cf. *Rose v. Shalala*, 34 F.3d 13, 16-17 (1st Cir. 1994) (quoting POMS in expressing difficulty with diagnosing CFS).

In discounting the doctors' diagnoses of probable CFS and CFS and rejecting Plaintiff's reports of severe pain, the ALJ stated only that "the objective medical evidence does not support" her claims, and listed in a one-paragraph summary self-reports of behavior in Plaintiff's record that the ALJ found to be inconsistent with her assertion of inability to work. Tr. at 21-22. While providing some insight into what evidence the ALJ did and did not credit, the decision fails to detail his reasons for discrediting Plaintiff's subjective complaints of pain, beyond the mere conclusion that they were not affirmed by objective medical criteria. As noted above, subjective assessments may not be rejected solely for lack of objective medical findings and take on increased significance in CFS cases. See *Jones*, 86 F.3d at 826; *Vogt*, 958 F. Supp. at 545. The ALJ did not fully articulate and explicate his basis for discounting Plaintiff's claims of pain and chronic, debilitating fatigue, as required by Polaski and subsequent decisions of this Circuit. This task takes on enhanced importance in a claim involving CFS. The R&R identifies a list of evidence supporting Plaintiff's subjective statements that, while not necessarily determinative, should have been evaluated as part of a full, express assessment of why Plaintiff's testimony is to be discredited. See *Polaski*, 729 F.2d at 1322; see also *Reddick v. Chater*, 157 F.3d 715, 722-23 (9th Cir. 1998) (reversing denial of benefits in CFS case where ALJ did not take full context of evidentiary materials into account). As the R&R states, it is the process, not the result, that calls for remand.

### III. ORDER

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. Defendant's Objections [Docket No. 20] are DENIED,
2. The R&R [Docket No. 19] is ADOPTED,



## **Gamradt v. Barnhart**

2003 | Cited 0 times | D. Minnesota | March 10, 2003

3. The Plaintiff's Motion for Summary Judgment [Docket No. 15] is DENIED,
4. Defendant's Motion for Summary Judgment [Docket No. 17] is DENIED, and
5. The matter is REMANDED to the Commissioner for further proceedings in accordance with this Memorandum Opinion and Order and with the R&R.

LET JUDGMENT BE ENTERED ACCORDINGLY.

