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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VIVIAN HENRIQUEZ, Plaintiff, vs. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	CASE NO. ED CV 09-00776 (RZ) MEMORANDUM OPINION AND ORDER

Plaintiff makes four arguments in challenging the Commissioner's determination that she is not disabled, the first of which is that the Commissioner did not defer to the opinion of the treating physician. The law on this point, identified by the Commissioner in his Memorandum to this Court, is familiar: the treating physician's uncontroverted opinion must be respected unless the Administrative Law Judge gives clear and convincing reasons, *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989), and the treating physician's controverted opinion must be respected unless the Administrative Law Judge gives specific and legitimate reasons supported by the record. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996). The opinion to which Plaintiff refers is a document entitled "Medical Opinion Re: Ability to Do Work-Related Activities (Physical)," dated September 4, 2007, in which the person filling out the form restricted Plaintiff to standing and walking less than two hours in an eight hour day, sitting less than two hours in an eight

hour day, lifting and carrying less than ten pounds frequently, and other similar restrictions. [AR 133-35]

The Administrative Law Judge said two things about this evaluation: that he could not read the signature on the form, and that "there is no objective support anywhere in the record for such restrictions." [AR 12] The report itself, however states that "multiple lumbar disc herniations" support the limitations [AR 134] and that "noted cervical, thoracic & lumbar myospasms" are medical findings supporting certain physical functions limitations. [AR 135] As Plaintiff notes in his memorandum to this Court, the record contains evidence of these findings. [AR 120] The Court does not understand the Commissioner's argument that such information is not medical source information.

The fact that the signature on the form is illegible should not be the end of the matter. The Administrative Law Judge, after all, has the obligation to develop the record, even where the applicant is represented by counsel, *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001), *citing Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) and *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983), and it would seem a simple matter to inquire of Plaintiff's counsel as to whose signature is on the form, and where the medical records came from. In this Court, the Commissioner argues that it is not even clear that the opinion is that of a treating physician, citing *Matney on behalf of Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992), but the cited case does not support rejection of the opinion in this case; in *Matney*, the Ninth Circuit upheld the Commissioner's rejection of a medical opinion that was based on a one-time visit and a brief report, and where the doctor had agreed to be an advocate for the claimant. *Id*. No similar situation exists here.

The Administrative Law Judge should have taken the steps necessary to ascertain if the report, in fact, was made by a treating physician, and if so, to accord it the weight due opinions of treating physicians. This case seems to have been given a fairly perfunctory review; not only is the record sparse, as the Commissioner notes in his Memorandum to this Court, but also the hearing itself was extremely brief, lasting four minutes. The transcription covers a mere three and a half pages, and the Administrative

Law Judge asked only a single question. Only Plaintiff testified. Perhaps a more extended development of the record would have clarified the issues identified here.

The decision is reversed, and the matter is remanded to the Commissioner for further development of the record and exploration of the treating physician issue. This disposition makes it unnecessary to assess the other arguments Plaintiff makes to this Court. On remand, the Commissioner may wish to reconsider the matters addressed by those arguments as well.

IT IS SO ORDERED.

DATED: November 12, 2009

RALPH ZAREFSKY
UNITED STATES MAGISTRATE JUDGE