

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

WENDY LEE SPICER,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:08CV357-SRW
)	(WO)
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

ORDER

In its review of this case, the court has determined that certain exhibits are missing from the administrative transcript filed with the court. Plaintiff's counsel apparently submitted additional medical records to the Appeals Council on October 22, 2007 with plaintiff's request for review (see R. 1E, 4-9), and those records are not included in the transcript filed by the Commissioner in this court. In his decision, the ALJ cites to evidence of plaintiff's treatment by Dr. Evans on January 5, 2005, January 18, 2005, and May 4, 2005 (R. 17). The record includes a nurse's note indicating that plaintiff was scheduled for an appointment on January 5, 2005 (R. 178) but does not contain Dr. Evans' treatment notes for the referenced dates.

Additionally, plaintiff contends that the ALJ's decision is not supported by substantial evidence because, in the absence of an RFC assessment from any of plaintiff's treating or examining physicians, the ALJ relied on "specialized State agency medical source statements." (Plaintiff's brief, p. 12-13)(quoting ALJ opinion at R. 23). In addressing this

issue, the Commissioner has treated the opinion of Carra Wright at Exhibit 12F (R. 209-216) as the opinion of a non-examining physician. (Commissioner’s brief, p. 9 (“Dr. Wright relied on the whole of this medical evidence to conclude that Plaintiff was capable of medium exertional work.”); *id.* at pp. 11-13). Although the ALJ referred to Wright’s physical RFC assessment as a “State agency medical source statement,” there is no indication in the record that Carra Wright is a physician or a medical source of any sort. Rather, it appears that she is a disability examiner. (See R. 30, 77-78, 216).

For the foregoing reasons, it is ORDERED that:

(1) the Commissioner is DIRECTED to file the entire administrative transcript, with a certification that the transcript is complete, **on or before August 27, 2010**;

(2) the Commissioner is DIRECTED to file a supplemental brief, **on or before September 3, 2010**, addressing plaintiff’s substantial evidence argument and, specifically, the effect of the ALJ’s treatment of Wright’s RFC assessment as a medical source statement;

(3) plaintiff may, at her option, file a reply brief no later than **September 13, 2010**;
and

(4) the Clerk is DIRECTED to transfer this case to the administrative docket of the court until further order of the court.¹

Done, this 17th day of August, 2010.

¹ The court will enter an order reinstating this case to the court’s active docket when it is satisfied that the record is complete.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
CHIEF UNITED STATES MAGISTRATE JUDGE