

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **14-cv-817-JLK**

JOYCE CHARNEY,

Plaintiff,

v.

CAROLYN COLVIN, acting Commissioner of Social Security,

Defendant.

ORDER DENYING PREEMPTIVE MOTION FOR SENTENCE 4 REMAND

Kane, J.

This social security disability appeal is before me on Plaintiff's Motion for Early Remand under Sentence Four (Doc. 16). Plaintiff contends the ALJ misstated the record as it pertained to the question of whether claimant met a medical listing for her migraines such that his rejection of her disability claim at Step Three was erroneous. Specifically, Plaintiff argues the ALJ's statement that "no treating or examining physician has suggested that the claimant's impairments meet or equal a Medical Listing" was wrong because Plaintiff's treating neurologist, Dr. Beverly Gilder, did in fact opine that Plaintiff met Medical Listing 11.03 regarding seizures/epilepsy, the most "analogous" listing for migraine headaches. (Citing R. 472-79.)

I have reviewed the ALJ's findings and the record excerpts cited by Plaintiff and cannot, without more, agree that the ALJ misstated Dr. Gilder's opinions or erred so

patently that a Sentence Four remand at this stage of the proceedings is appropriate. The criteria for determining whether migraine headaches are a medically determinable impairment are in flux and Dr. Gilder's opinions are not as straightforward as Plaintiff would have me believe. It may be that a Sentence Four remand is appropriate in this case given Dr. Gilder's diagnosis of migraines under criteria that may meet a Listing under the operative regulatory interpretation, but further briefing on that issue is necessary.

Accordingly,

Plaintiff's Motion for Early Remand (Doc. 16) is DENIED. Plaintiff may stand on her Motion as her opening brief on appeal or may seek a modification of the operative JCMP to file her brief out of time. If, after the Commissioner files her Response it appears that the grounds for a Sentence 4 remand are manifest, then a remand at that point may be appropriate without the need for a Reply.

Dated July 22, 2014.

s/John L. Kane
SENIOR U.S. DISTRICT JUDGE