

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

BETHANY ANN HENDERSON SEARS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	4:17-cv-00042-RLY-TAB
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of the Social Security	)	
Administration,	)	
	)	
Defendant.	)	


**ENTRY ON DEFENDANT’S OBJECTIONS TO THE MAGISTRATE JUDGE’S  
REPORT AND RECOMMENDATION**

On November 15, 2017, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff’s request for remand be granted under sentence four of 42 U.S.C. § 405(g). He found the ALJ’s hypothetical presented to the Vocational Expert (“VE”) was fatally inadequate because it failed to address her limitations in regard to persistence and pace. He further found that, because he was recommending remand, the ALJ should consider a peer-reviewed article Plaintiff provided the ALJ after the hearing. The Commissioner objects because, she contends, the record shows no reversible error.

An ALJ’s “hypothetical posed to a VE must incorporate *all* of the claimant’s limitations supported by the medical record—including moderate limitation[s] in concentration, persistence, and pace.” *Varga v. Colvin*, 794 F.3d 809, 814 (7th Cir. 2015). Here, the ALJ found that Plaintiff had moderate difficulties in those areas, but

failed to include, in the hypothetical, any mention of persistence and pace. That was error. *Id.* The court therefore **OVERRULES** the Commissioner's Objections (Filing No. 25) and **ADOPTS** the Magistrate Judge's Report and Recommendation (Filing No. 24). This case is **REMANDED** with instructions that it be returned to the ALJ for further proceedings consistent with this opinion.

**SO ORDERED** this 13th day of December 2017.

  
RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana

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