

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

AMY F. MCCROY,)	
)	
Plaintiff,)	No. 07-2052 EJM
)	
vs.)	ORDER
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
Defendant.)	

Plaintiff brings this action seeking judicial review of the Commissioner’s denial of her application for social security disability benefits. The briefing schedule concluded on April 24, 2008. The court has jurisdiction pursuant to 42 USC §405(g). Reversed and remanded for payment of benefits.

Claiming an onset date of January 1, 1998, plaintiff alleges disability due to conditions including fibromyalgia, osteoporosis, diverticulitis, ulcerative colitis, and a brain tumor. Plaintiff asserts the Administrative Law Judge (ALJ) erred in failing to afford sufficient weight to the views of treating physicians, violated SSR 83-20 in inferring the onset date of her brain tumor without the aid of a medical expert, and failed to properly evaluate her credibility. Accordingly, she asserts that the Commissioner’s decision is not supported by substantial evidence on the record as a whole.

[R]eview of the agency decision is limited to whether there is substantial evidence on the record as a whole to support the [Commissioner's] decision. This requires [the court] to do more than merely parse the record for substantial evidence supporting the [Commissioner’s] decision. [The court] also must consider evidence in

the record that detracts from the weight of the decision. Substantial evidence is less than a preponderance, but enough so that a reasonable mind might find it adequate to support the conclusion.

Robinson v. Sullivan, 956 F2d 836, 838 (8th Cir. 1992) (internal citations omitted).

Upon review of the record, it is the court's view that the ALJ failed to afford appropriate weight to the views of plaintiff's treating physician, Dr. Horrigan. While the ALJ noted that in 1998 Dr. Horrigan did not then find any limitation of significance concerning plaintiff's rotator cuff surgery or her carpal tunnel surgery (not inconsistent with Dr. Mueller's assessment), it is the court's view that this does not constitute an inconsistency with Dr. Horrigan's long term and global assessment of plaintiff's condition, particularly addressing plaintiff's fibromyalgia, with plaintiff's extensive limitations summarized, which is consistent with plaintiff's other treating physicians. T. 701-108.

Moreover, it is the court's view that the ALJ did not identify inconsistencies in the record supporting undermining the credibility of plaintiff's subjective allegations. While defendant asserts that the ALJ noted plaintiff stopped working for reasons other than impairments, it appears that the context of this notation is Dr. Mueller's observation that plaintiff apparently attempted to return to work, that she was told there weren't sufficient hours, and Dr. Mueller further noted "she is working on lifting two pounds of weight. I told her she really needs to work up to the point where she can successfully lift five and ten pounds before I lift any type of weight restriction." T. 304. It is the court's view that this is not an inconsistency warranting diminution of the credibility of plaintiff's subjective allegations. Accordingly, the court finds that

the ALJ's decision is not supported by substantial evidence on the record as a whole.

When Dr. Horrigan's opinion and plaintiff's subjective allegations are given the weight to which they are entitled, it is the court's view that the record establishes that plaintiff is unable to engage in substantial gainful activity, day in and day out, in the "sometimes competitive and stressful conditions in which real people work in the real world." McCoy v. Schweiker, 683 F2d 1138, 1147 (8th Cir. 1982) (en banc).

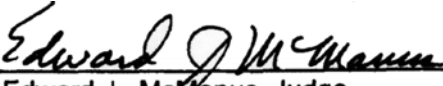
Due to the court's disposition of this matter, the court need not address plaintiff's remaining allegations, including matters raised pertaining to her brain tumor.

It is therefore

ORDERED

Reversed and remanded for payment of benefits.

September 11, 2008.


Edward J. McManus, Judge
UNITED STATES DISTRICT COURT