

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES T.,

Plaintiff,

v.

Civil Action
1:20-cv-00272-MJP

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

ORDER

Plaintiff filed an action seeking judicial review of the decision of the Commissioner of Social Security, which denied his claim for Disability Insurance Benefits pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). Both parties filed Motions for Judgment on the Pleadings, and oral argument was held on June 16, 2021.

This Court has reviewed the parties' competing motions together with their respective memoranda of law, and the arguments of Elizabeth Haungs, Esq., of the Law Offices of Kenneth Hiller, PLLC, attorney of record for Plaintiff, and Jennifer E. Whelan, Esq., Special Assistant United States Attorney for the Western District of New York, attorney of record for Defendant. Now, upon all pleadings, the administrative record, the parties' memoranda of law, and the arguments of the parties,

It is ORDERED and ADJUDGED, for the reasons stated in open Court at the oral argument of this matter on June 16, 2021, pursuant to 28 U.S.C. § 636(c) and the parties' consent, and consistent with this Court's ruling from the bench following that oral argument, the decision of defendant Commissioner is affirmed; and it is further

ORDERED and ADJUDGED, that Plaintiff's motion for judgment on the pleadings (Dkt. No. 13) is DENIED; and it is further

ORDERED and ADJUDGED, that Defendant's motion for judgment on the pleadings (Dkt. No. 15) is GRANTED; and it is further

ORDERED and ADJUDGED that Plaintiff's Complaint (Dkt. No. 1) is DISMISSED and that the transcript of these proceedings shall be filed, and the Court Clerk shall issue Judgment in favor of the Commissioner and close this case.

SO ORDERED



MARK W. PEDERSEN
UNITED STATES MAGISTRATE JUDGE

DATED: July 7, 2021
Rochester, New York

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

CHARLES C. TATE,)
) Case No. 1:20-CV-00272
) (MJP)
 Plaintiff,)
)
 vs.) June 16th, 2021
)
 COMMISSIONER OF SOCIAL SECURITY)
)
 Defendant.)

**TRANSCRIPT OF JUDGE'S DECISION
BEFORE THE HONORABLE MARK W. PEDERSON
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

For the Plaintiff: LAW OFFICES OF KENNETH HILLER
BY: ELIZABETH ANN HAUNGS, ESQ.
6000 North Bailey Avenue, Suite 1A
Amherst, NY 14226

For the Defendant: SOCIAL SECURITY ADMINISTRATION
OFFICE OF GENERAL COUNSEL
BY: JENNIFER E. WHELAN, ESQ.
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Kansas City, MO 64106

Audio Recorder: JAMES BOCK

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Proceedings recorded with electronic sound recording,
transcript prepared with computer-aided transcription.

09:48AM
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10:18AM 1 THE CLERK: Counsel, welcome back and thank you again
10:18AM 2 for your thorough preparation. I am ready to issue my
10:18AM 3 decision.

10:18AM 4 Title 42, U.S.C. Section 405(g) grants jurisdiction to
10:19AM 5 district courts to hear claims based on the denial of Social
10:19AM 6 Security benefits. Section 405(g) provides that the district
10:19AM 7 court shall have the power to enter upon the pleadings and
10:19AM 8 transcript of the record, a judgment affirming, modifying or
10:19AM 9 reversing the decision of the Commissioner of Social Security
10:19AM 10 with or without remanding the case for a rehearing.

10:19AM 11 It directs that when considering a claim, the Court must
10:19AM 12 accept the findings of fact made by the Commissioner provided
10:19AM 13 that such findings are supported by substantial evidence in
10:19AM 14 the record. Substantial evidence is defined as more than a
10:19AM 15 mere scintilla. It means such relevant evidence as a
10:19AM 16 reasonable mind might accept as adequate to support a
10:19AM 17 conclusion.

10:19AM 18 To determine whether substantial evidence supports the
10:19AM 19 Commissioner's findings, the Court must examine the entire
10:19AM 20 record including contradictory evidence and evidence from
10:20AM 21 which conflicting inferences can be drawn. Section 405(g)
10:20AM 22 limits the scope of the Court's review to two inquiries;
10:20AM 23 whether the Commissioner's findings were supported by
10:20AM 24 substantial evidence in the record and whether the
10:20AM 25 Commissioner's conclusions are based upon an erroneous legal

10:20AM 1 standard.

10:20AM 2 A person is disabled for the purposes of SSI and
10:20AM 3 disability benefits if he or she is unable to engage in any
10:20AM 4 substantial gainful activity by reason of any medically-
10:20AM 5 determinable physical or mental impairment which can be
10:20AM 6 expected to result in death or which has lasted or can be
10:20AM 7 expected to last for a continuous period of not less than 12
10:20AM 8 months.

10:20AM 9 In assessing whether a claimant is disabled, the ALJ must
10:20AM 10 employ a five-step sequential analysis as outlined in *Berry v.*
10:21AM 11 *Schweiker*, 675 F.2d 464, 467 (2d Cir. 1982). The claimant
10:21AM 12 bears the burden of proving his or her case in steps 1 through
10:21AM 13 4. In step 5, the burden shifts to the Commissioner to show
10:21AM 14 there is other gainful work in the national economy which the
10:21AM 15 claimant could perform.

10:21AM 16 The plaintiff's primary issue here is that the RFC made
10:21AM 17 a -- the ALJ made a highly-specific RFC based simply on raw
10:21AM 18 medical evidence in the record. I disagree. The MRI,
10:21AM 19 although the ALJ did find it relevant, has interpretation on
10:21AM 20 it from the radiologist and that MRI occurred three months
10:21AM 21 before Dr. Dave, the consultant examiner, did her examination.

10:21AM 22 Even if Dr. Dave had been made aware of the MRI, I don't
10:22AM 23 see how that would have changed anything because her
10:22AM 24 examination was physical. She made a physical assessment of
11:37AM 25 his ability to move his neck, for example. Contrast that, for

11:37AM 1 example, with someone appearing with a cough that could be
11:37AM 2 caused by a cold or bronchitis or lung cancer. In that case,
11:37AM 3 an image would make a huge difference because if a spot
11:37AM 4 appears on the lung, it could be considered cancer wherein the
11:37AM 5 rest of it would be based on symptoms observed by the doctor.

11:37AM 6 Here, the doctor employed mechanical and physical
11:37AM 7 examination to determine the range of motion of neck and the
11:37AM 8 ALJ is typical of the medical evidence is supported of a
11:37AM 9 decision. Therefor, I do find there is substantial evidence
11:38AM 10 supporting it and I grant the Commissioner's motion for
11:38AM 11 judgement on the pleadings and deny the plaintiff's motion an
11:38AM 12 ask the Commissioner to settle an order with the plaintiff and
11:38AM 13 attach and reference a transcript of this decision.

11:38AM 14 I direct the Clerk of the Court to enter judgment for the
11:38AM 15 Commissioner and close this case. Again, counsel, thank you
11:38AM 16 very much.

11:38AM 17 MS. WHELAN: Thank you, Your Honor.

11:38AM 18 (Proceedings concluded.)
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