

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

JOE BARNEY,

Plaintiff,

Case No. 3:16-cv-396

vs.

COMMISSIONER OF SOCIAL SECURITY,

Magistrate Judge Michael J. Newman

(Consent Case)

Defendant.

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**DECISION AND ENTRY: (1) AFFIRMING THE ALJ'S NON-DISABILITY FINDING  
AS SUPPORTED BY SUBSTANTIAL EVIDENCE; AND (2) TERMINATING THIS  
CASE ON THE DOCKET**

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This Social Security disability benefits appeal is before the undersigned for disposition based upon the parties' consent. Doc. 8. At issue is whether the Administrative Law Judge ("ALJ") erred in finding Plaintiff not "disabled" and therefore unentitled to Supplemental Security Income ("SSI"). This case is before the Court on Plaintiff's Statement of Errors (doc. 9), the Commissioner's memorandum in opposition (doc. 10), Plaintiff's reply (doc. 12), the administrative record (doc. 6),<sup>1</sup> and the record as a whole.

**I.**

**A. Procedural History**

Plaintiff filed for SSI on January 14, 2014. PageID 209-14. He claims disability as a result of a number of alleged impairments including, *inter alia*, obesity, diabetes, and borderline intellectual functioning. PageID 68.

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<sup>1</sup> Hereafter, citations to the electronically-filed administrative record will refer only to the PageID number.

After an initial denial of his application, Plaintiff received a hearing before ALJ Mark Hockensmith on October 26, 2015. PageID 84-116. The ALJ issued a written decision on December 2, 2015 finding Plaintiff not disabled. PageID 66-78. Specifically, the ALJ found at Step Five that, based upon Plaintiff's residual functional capacity ("RFC") to perform a reduced range of medium work, "there are jobs in significant numbers in the national economy that [Plaintiff] can perform[.]" PageID 77. The Appeals Council denied Plaintiff's request for review. PageID 45-48. The case is now before the Court on Plaintiff's timely appeal. See 20 C.F.R. § 416.1484(c) and (d).

## **B. Evidence of Record**

The evidence of record is adequately summarized in the ALJ's decision (PageID 66-78), Plaintiff's Statement of Errors (doc. 9), the Commissioner's memorandum in opposition (doc. 10), and Plaintiff's reply (doc. 11). The undersigned incorporates all of the foregoing and sets forth the facts relevant to this appeal herein.

## **II.**

### **A. Standard of Review**

The Court's inquiry on a Social Security appeal is to determine (1) whether the ALJ's non-disability finding is supported by substantial evidence, and (2) whether the ALJ employed the correct legal criteria. 42 U.S.C. § 405(g); *Bowen v. Comm'r of Soc. Sec.*, 478 F.3d 742, 745-46 (6th Cir. 2007). In performing this review, the Court must consider the record as a whole. *Hephner v. Mathews*, 574 F.2d 359, 362 (6th Cir. 1978).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). When substantial evidence supports the ALJ's denial of benefits, that finding must be affirmed, even if

substantial evidence also exists in the record upon which the ALJ could have found Plaintiff disabled. *Buxton v. Halter*, 246 F.3d 762, 772 (6th Cir. 2001). Thus, the ALJ has a “‘zone of choice’ within which he [or she] can act without the fear of court interference.” *Id.* at 773.

The second judicial inquiry -- reviewing the correctness of the ALJ’s legal analysis -- may result in reversal even if the ALJ’s decision is supported by substantial evidence in the record. *Rabbers v. Comm’r of Soc. Sec.*, 582 F.3d 647, 651 (6th Cir. 2009). “[A] decision of the Commissioner will not be upheld where the [Social Security Administration] fails to follow its own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right.” *Bowen*, 478 F.3d at 746.

#### **B. “Disability” Defined**

To be eligible for disability benefits, a claimant must be under a “disability” as defined by the Social Security Act. 42 U.S.C. § 423(d)(1)(A). Narrowed to its statutory meaning, a “disability” includes physical and/or mental impairments that are both “medically determinable” and severe enough to prevent a claimant from (1) performing his or her past job and (2) engaging in “substantial gainful activity” that is available in the regional or national economies. *Id.*

Administrative regulations require a five-step sequential evaluation for disability determinations. 20 C.F.R. § 416.920(a)(4). Although a dispositive finding at any step ends the ALJ’s review, *see Colvin v. Barnhart*, 475 F.3d 727, 730 (6th Cir. 2007), the complete sequential review poses five questions:

1. Has the claimant engaged in substantial gainful activity?
2. Does the claimant suffer from one or more severe impairments?
3. Do the claimant’s severe impairments, alone or in combination, meet or equal the criteria of an impairment set forth in the Commissioner’s Listing of Impairments (the “Listings”), 20 C.F.R. Subpart P, Appendix 1?

4. Considering the claimant's RFC, can he or she perform his or her past relevant work?
5. Assuming the claimant can no longer perform his or her past relevant work -- and also considering the claimant's age, education, past work experience, and RFC -- do significant numbers of other jobs exist in the national economy which the claimant can perform?

20 C.F.R. § 416.920(a)(4); *see also Miller v. Comm'r of Soc. Sec.*, 181 F. Supp.2d 816, 818 (S.D. Ohio 2001). A claimant bears the ultimate burden of establishing disability under the Social Security Act's definition. *Key v. Comm'r of Soc. Sec.*, 109 F.3d 270, 274 (6th Cir. 1997).

### III.

In his Statement of Errors, Plaintiff argues that the ALJ erred by: (1) failing to properly evaluate his morbid obesity under Social Security Ruling 02-01p; (2) failing to provide substantial evidence in support of his decision at Step Five; and (3) failing to articulate a sustainable credibility finding. Doc. 9 at PageID 458-65.

Having carefully reviewed the administrative record and the parties' briefs, and also having carefully considered the ALJ's analysis leading to the non-disability finding here at issue, the Court finds the ALJ carefully and reasonably developed and reviewed the record; appropriately considered the medical evidence at issue including the morbid obesity evaluation; properly weighed opinion evidence based upon reasons supported by substantial evidence; reasonably assessed Plaintiff's credibility; accurately determined Plaintiff's RFC; reasonably applied applicable Social Security Rulings; and appropriately concluded that Plaintiff can perform a significant number of jobs in the national economy.

Accordingly, the Court **AFFIRMS** the ALJ's non-disability finding as supported by substantial evidence, and **TERMINATES** this case on the Court's docket.

**IT IS SO ORDERED.**

Date: September 25, 2017

s/ Michael J. Newman  
Michael J. Newman  
United States Magistrate Judge