

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>DOUGLAS A. LEIBENSPERGER,</b>	:	
<b>Plaintiff,</b>	:	
<b>v.</b>	:	<b>CIVIL ACTION</b>
<b>NANCY A. BERRYHILL,</b>	:	<b>No. 15-137</b>
<b>Acting Commissioner of the</b>	:	
<b>Social Security Administration,</b>	:	
<b>Defendant.</b>	:	

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MCHUGH, J.

JULY 25, 2017

**MEMORANDUM**

Douglas A. Leibensperger appeals an administrative law judge's decision denying him Supplemental Security Income benefits. I have the benefit of a Magistrate Judge's well-reasoned Report and Recommendation (R&R), which concluded that I should uphold the ALJ's decision. I mostly agree, and so will adopt the Recommendation in all respects but one: because I find that the ALJ discounted probative evidence that supported Leibensperger's claim without adequate explanation, I will remand to the ALJ for further consideration.

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Because the R&R gives a comprehensive overview of the background of this case and all of Leibensperger's disagreements with the ALJ's opinion, I will principally focus on the sole issue that warrants remand: the ALJ's decision to discount Leibensperger's own testimony regarding his symptoms and their effects.

The basis for Leibensperger's claim for SSI benefits is that he has a host of physical and mental disabilities that he alleges preclude him from maintaining regular work. The physical disabilities include chronic arm, neck, and back problems, as well as numbness, all stemming from a motorcycle accident that Leibensperger had ten years ago. He also suffers from frequent

headaches and dizziness. Leibensperger's main mental disability is depression, which started about twelve years ago after his brother and mother died; he also has a history of alcoholism and hallucinations. Leibensperger consistently has trouble sleeping.

Leibensperger testified to all of this before the ALJ, *see* R49–71, but the ALJ ultimately concluded that Leibensperger's "statements concerning the intensity, persistence and limiting effects of these symptoms [we]re not entirely credible," R34. The ALJ supported this credibility assessment with two findings: (1) that Leibensperger was "able to care for himself, help care for his father, and do routine household chores"; and (2) that "the gravity of [Leibensperger]'s multiple complaints seem[ed] to exceed the objective medical evidence available." R36.

I find, however, that the ALJ's unfavorable view of Leibensperger's credibility is not adequately supported by the record. The relevant Social Security regulation in effect at the time of the ALJ's decision provided that an ALJ "will not reject [a claimant's] statements about the intensity and persistence of [his] pain or other symptoms or about the effect [his] symptoms have on [his] ability to work . . . solely because the available objective evidence does not substantiate [his] statements." 20 C.F.R. § 416.929(c)(2) (2013). Additionally, a separate guidance required that an ALJ give "specific reasons for the finding on credibility, supported by the evidence in the case record, and . . . be sufficiently specific to make clear . . . the weight the adjudicator gave to the individual's statements and the reasons for that weight." SSR 96-7p, 61 Fed. Reg. 34,483, 34,484 (July 2, 1996), *superseded by* SSR 16-3p, 81 Fed. Reg. 14,166 (Mar. 16, 2016).

Those rules, in other words, required that the ALJ here give specific, supportable reasons—*other than* the objective medical evidence—before discounting Leibensperger's testimony about his symptoms and their effects. Here, however, the only such evidence was Leibensperger's statements about being able to care for himself and his father and do household

chores, such as grocery shopping. The ALJ’s ultimate reasoning, then—implied if not express—was that Leibensperger’s being able to do those things contradicted his claim that his physical and mental limitations prevented him from maintaining regular work.

Leibensperger strongly objects to this finding, contending (Objections 8) that his testimony “does not even arguably undermine the reported limitations.” I agree. I do not see any contradiction between being able to do the quite limited tasks that Leibensperger reported doing,<sup>1</sup> while not being able to hold down a job that requires consistently working many hours a day, several days a week. The two seem to bear little relationship to each other. And while I review the ALJ’s decision only for substantial evidence, that standard still requires that there be “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Helen Mining Co. v. Elliott*, 859 F.3d 226, 233 (3d Cir. 2017) (citation omitted). I do not find that standard met here: the task-related evidence was patently inadequate to support the conclusion that Leibensperger’s testimony about his symptoms and their effects was unworthy of belief. And because that was the only evidence besides the objective medical evidence that the ALJ relied on in discounting Leibensperger’s testimony—and because the controlling regulations required that any negative credibility finding be supported by evidence above and beyond the

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<sup>1</sup> While the ALJ ultimately concluded that Leibensperger was “able to . . . help care for his father[] and do routine household chores,” it is worth keeping in mind the specific testimony that led to that finding. On helping his father, Leibensperger testified that in the morning, “I’ll ask him if he wants me to cook him something. . . . On a good day, I could do it. On a bad day, he just got to do it himself.” R62. And on doing chores, Leibensperger testified that: (1) he regularly gets the mail, walking the 2,000 feet from his house to the mailbox, but “halfway [back] up, take[s] a break,” R62–63; (2) he occasionally offers to do the dishes for himself and his father, but he has to “lean on the counter there . . . because [he] can’t stand straight up,” R65; and (3) he goes grocery shopping with his father, but because he relies on his father to drive, they are “limited to like once a month,” R67.

objective medical evidence—the ALJ’s determination that Leibensperger lacked credibility was not supported by substantial evidence. Remand is therefore required.<sup>2</sup>

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Leibensperger’s request for review will be granted and this case will be remanded for further consideration. On remand, the ALJ must, consistent with this opinion, provide adequate reasons for discounting Leibensperger’s own testimony about his symptoms and their effects. An appropriate order follows.

/s/ Gerald Austin McHugh  
United States District Judge

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<sup>2</sup> I also specifically note, but ultimately overrule, Leibensperger’s next-strongest objection: the ALJ’s decision to weigh more heavily the opinion of a state psychiatrist who had never personally examined him than the opinion of his own treating psychiatrist. The state psychiatrist had found (R96–105) that Leibensperger had only a “moderate” limitation in completing an uninterrupted workweek; Leibensperger’s treating psychiatrist, by contrast, had determined (R766–77) that he had a “marked” limitation in doing so. The ALJ ultimately accorded “[s]omewhat greater weight” to the views of the state psychiatrist. R36.

Leibensperger claims the ALJ committed legal error by failing to provide reasons for doing that. And the basic legal rule Leibensperger relies on is indeed a fundamental one: “Where . . . the opinion of a treating physician conflicts with that of a non-treating, non-examining physician, the ALJ may choose whom to credit but ‘cannot reject evidence for no reason or for the wrong reason.’” *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000) (citation omitted). But here the ALJ did provide those reasons, in the four sentences that immediately preceded his conclusion to give greater weight to the views of the state psychiatrist. *See* R36. And those reasons largely track what the governing regulations then in effect required an ALJ to provide whenever he decided to “not give the treating source’s opinion controlling weight.” *See* 20 C.F.R. § 416.927(c)(2)–(6) (2013). So although there is some merit to Leibensperger’s objection, I find the ALJ’s determination in this regard to be supported by substantial evidence and not in error.