

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EMMA L. ROBERSON o/b/o)
ELMER DARNELL ROBERSON,)
(Deceased))
)
Plaintiff,)
)
-vs-)
)
CAROLYN W. COLVIN,)
COMMISSIONER OF SOCIAL SECURITY,)
)
Defendant.)

Civil Action No. 16-1110

AMBROSE, Senior District Judge.

OPINION AND ORDER

Background

Plaintiff Emma Roberson (“Plaintiff”) brings this action pursuant to [42 U.S.C. §§ 405\(g\)](#) and [1383\(c\)\(3\)](#) for review of the ALJ’s decision denying her late husband Elmer Darnell Roberson’s (“Roberson”) claims for disability insurance benefits (DIB) and supplemental security income (SSI) under Titles II and XVI of the Social Security Act, [42 U.S.C. §§ 401-34](#), [1381-1383f](#). This case has a lengthy procedural history. Roberson initially filed his claim in April of 2010, alleging that he suffered from both physical and mental impairments that prevented him from engaging in substantial gainful activity. In March of 2012, an ALJ denied his claim, finding him capable of certain light work. (R. 39) Roberson appealed to this Court. Tragically, during the pendency of the appeal, Roberson died of an apparent “self-induced drug overdose.” (R. 900, 1219) Ultimately, Judge Cohill remanded the case, finding the ALJ’s conclusions regarding Roberson’s mental impairments to be wanting. (R. 947-968)

Following remand, the ALJ held another evidentiary hearing, during which Plaintiff Emma Roberson and Roberson's niece Adiena Russel, appeared and testified. (R. 889) A vocational expert ("VE") also testified. (R. 889) The ALJ ultimately concluded that Roberson had the residual functional capacity ("RFC") to perform a limited range of light work, such as a document preparer, a telephone solicitor, and a table worker. (R. 901) Plaintiff appealed. Pending are Cross Motions for Summary Judgment. See ECF Docket Nos. [13] and [19]. After careful consideration, the case is remanded for further consideration.

Legal Analysis

1. Standard of Review

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen*, 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Determining whether substantial evidence exists is "not merely a quantitative exercise." *Gilliland v. Heckler*, 786 F.2d 178, 183 (3d Cir. 1986) (citing *Kent v. Schweiker*, 710 F.2d 110, 114 (3d Cir. 1983)). "A single piece of evidence will not satisfy the substantiality test if the secretary ignores, or fails to resolve, a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence – particularly certain types of evidence (e.g., that offered by treating physicians)." *Id.* The Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano*, 606

[F.2d 403, 406 \(3d Cir. 1979\)](#). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. [Palmer v. Apfel, 995 F.Supp. 549, 552 \(E.D. Pa. 1998\)](#). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. [Hartranft v. Apfel, 181 F.3d 358, 360 \(3d Cir. 1999\)](#). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. See, 5 U.S.C. §706.

To be eligible for social security benefits, the claimant must demonstrate that he cannot engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. [42 U.S.C. § 423\(d\)\(1\)\(A\)](#); [Brewster v. Heckler, 786 F.2d 581, 583 \(3d Cir. 1986\)](#). The Commissioner has provided the ALJ with a five-step sequential analysis to use when evaluating the disabled status of each claimant. [20 C.F.R. § 404.1520\(a\)](#). The ALJ must determine: (1) whether the claimant is currently engaged in substantial gainful activity; (2) if not, whether the claimant has a severe impairment; (3) if the claimant has a severe impairment, whether it meets or equals the criteria listed in 20 C.F.R., pt. 404, subpt. P, appx. 1; (4) if the impairment does not satisfy one of the impairment listings, whether the claimant's impairments prevent him from performing his past relevant work; and (5) if the claimant is incapable of performing his past relevant work, whether he can perform any other work which exists in the national economy, in light of his age, education, work experience, and residual functional capacity. [20 C.F.R. § 404.1520](#). The claimant carries the initial burden of demonstrating by medical evidence that he is unable to

return to his previous employment (steps 1-4). *Dobrowolsky*, 606 F.2d at 406. Once the claimant meets this burden, the burden of proof shifts to the Commissioner to show that the claimant can engage in alternative substantial gainful activity (step 5). *Id.* A district court, after reviewing the entire record, may affirm, modify, or reverse the decision with or without remand to the Commissioner for rehearing. *Podedworny v. Harris*, 745 F.2d 210, 221 (3d Cir. 1984).

2. Roberson's Mental Health Impairments and the RFC

Plaintiff attacks the ALJ's assessment of Roberson's mental health impairments. More specifically, Plaintiff urges that the ALJ's RFC, which is not supported by any medical opinion of record, lacks substantial evidentiary support.¹ Plaintiff urges that the ALJ's RFC analysis lacks substantial evidentiary support and ignores Roberson's suicide. After careful consideration, I agree.

Here, in fashioning the RFC, the ALJ opined that Roberson's mental impairments would limit him to:

Simple, routine, and repetitive tasks, performed in a stable work environment where the workplace and work processes remain generally the same day to day. He could have no public contact, meaning he would work with things not people. Only taking instruction or redirection from a supervisor where no immediate response is needed of the worker unless clarification is needed.

(R. 893-94) Yet, as stated above, the ALJ reached her conclusions without the benefit of any medical expert's opinion relating to these conditions. (R. 893-900)² The lack of a

¹ Plaintiff makes a passing reference to the ALJ's failure to cite to a medical opinion in support of her findings at the third step of the analysis, but the argument focuses solely upon alleged deficiencies with respect to the formulation of the RFC. As such, I will limit my review to the RFC analysis.

² The ALJ does make a passing reference to the opinion of Jeannette South-Paul, M.D., stating that, "[w]hile Dr. South-Paul treated the claimant, he admitted in testimony that he had not discussed any of his mental health difficulties with her, calling into question the basis for her mental health limitations." (R. 898) A review of the record clearly reveals that Dr. South-Paul treated Roberson for his back pain. (R. 532) Dr. South-Paul did not offer any opinion as to Roberson's mental impairments. At most, she opined that Roberson suffered from "sleep

medical opinion as a basis for the ALJ's RFC is troublesome. As I stated in *Terner v. Colvin*, Civ. No. 14-1603, * 2 (W.D. Pa. Aug. 13, 2015):

[t]he ALJ, of course, must make the ultimate disability and RFC determinations. See 20 C.F.R. §§ 404.1527(e)(1), 404.1546(c). "The [RFC] assessment is a medical one and must be determined on the basis of medical evidence." *Warfle v. Astrue*, 2011 U.S. Dist. LEXIS 150692 (M.D. Pa. May 5, 2011) "Rarely can a decision be made regarding a claimant's [RFC] without an assessment from a physician regarding the functional abilities of the claimant." *Gormont v. Astrue*, 2013 U.S. Dist. LEXIS 31765, at * 27 (M.D. Pa. 2013); *Goodson v. Colvin*, 2015 U.S. Dist. LEXIS 58100, 2015 WL 2065328 (W.D. Pa. May 4, 2015). As stated with respect to physical limitations, for example, "[o]nce the doctor has determined how long the claimant can sit, stand or walk ... then the ALJ, with the aid of a vocational expert if necessary, can translate that medical determination into a residual functional capacity determination." *Gormont*, 2013 U.S. Dist. LEXIS 31765, at * 27 (quoting Carolyn A. Kubitschek & Jon C. Dubin, *Social Security Disability Law and Procedure in Federal Courts*, 287-88 (2011)). Thus:
If an administrative law judge makes a residual functional capacity assessment on the basis of his or her review of the evidence, including the medical records, without the benefit of an expert opinion from a physician or other qualified medical professional regarding the exertional abilities of a claimant, the administrative law judge has improperly substituted his or her own lay medical opinion for that of a physician or other qualified medical professional.

Warfle, 2011 U.S. Dist. LEXIS 150692 at * 16.

Terner v. Colvin, Civ. No. 14-1603, 2015 WL 4873929 at * 2 (W.D. Pa. Aug. 13, 2015).

Indeed, ALJ "lacks the expertise to ascertain a claimant's residual functional capacity from raw medical data." *Moffatt v. Astrue*, Civ. No. 10-226, 2010 WL 3896444, at * 6 (W.D. Pa. Sept. 30, 2010) (citations omitted).

Certainly, there may be instances where a medical opinion is unnecessary. I do not believe, however, that this case presents as one. Here, the ALJ recognized at the second step of the analysis that Roberson suffered from severe mental impairments.

disturbance" because of pain from his back and that he suffered marked restrictions of activities of daily living and marked difficulty in maintaining social functioning because of the pain associated with his back impairment. (R. 544) According, this Court is confused as to the ALJ's reference to Dr. South-Paul's alleged statements regarding mental health impairments.

Then, in explaining his RFC formulation, ALJ noted that Roberson himself had “reported paranoia, hallucinations, and nervousness,” that he had “anger and vindictive tendencies,” that he “felt taken advantage of, lied about,” and that he had “depression, limited family, and no friends.” (R. 894) The ALJ acknowledged that Roberson refused inpatient treatment and that his “paranoia and depression worsened in 2013.” (R. 895) The ALJ also referenced Roberson’s behavior of “locking the bedroom door ... one month prior to his death due to paranoia” as well as his reports of suicidal ideation. (R. 895) The ALJ stated that the “record indicates that the claimant complained of anger, anxiety, depression, hallucinations with command components, panic attacks, paranoia, suicidal ideation with history of attempt, a history of narcotic use, self-isolative behavior, worry, flashbacks, mood swings, anger, memory disturbances, and anxiety.” (R. 899) The record reveals that Roberson suffered from auditory hallucinations, had a history of violence toward others and himself, had past suicide attempts, and suffered from both suicidal and homicidal thoughts. (R. 499-516) Additionally, the Physician Progress notes indicate that Roberson was “strongly” advised on at least three occasions that he should be hospitalized on an inpatient basis. (R. 522-23) Roberson had previously been hospitalized based upon mental impairments in 1998 and 2000. (R. 1209)

Despite this evidence, the ALJ found Roberson capable of performing simple, routine, and repetitive tasks based, apparently, on the fact that Roberson was “generally noted to have a normal attention and concentration, normal thought forms, normal memory, motor activity, and orientation ... normal speech ... judgment and insight” and because he had “appropriate grooming and good hygiene.” (R. 897) I cannot find these citations to constitute “substantial evidence,” particularly in light of the fact that, the ALJ

follows these findings with a sentence acknowledging that “[t]here were less optimal findings as well, including poor insight and judgment, hallucinations, and a blunt affect.” (R. 897) Finally, I am confused as to how the ALJ arrived at the conclusion that the “claimant’s mental health allegations are not wholly consistent with the record.” (R. 900) The ALJ again cites to normal attention and concentration, normal speech and thought process, and appropriate grooming and good hygiene, in support of this conclusion. (R. 900) Yet she makes no mention of the fact that Roberson seems to have committed suicide.³

Although there may be instances where the ALJ is able to make a decision regarding a claimant’s RFC with respect to mental impairments without an assessment from a physician regarding the functional abilities of a claimant, this is not such an instance. As stated above, the ALJ did not rely upon any medical opinions regarding Roberson’s mental limitations. As suggested by case law, there may be cases in which the ALJ may make an RFC assessment without any medical opinion regarding a Plaintiff’s functional capacity. This case, which involves a claimant with a history of psychiatric issues and multiple diagnoses, does not present one of those rare instances.

An ALJ must order a consultative examination where “such an examination is necessary to enable the ALJ to make the disability decision.” *Thompson v. Halter*, 45 Fed. App’x. 146, 149 (3d Cir. 2002). On remand, the ALJ should further develop the

³ The ALJ observes that Roberson declined inpatient treatment during the relevant period of time and that Roberson’s wife may have been manipulating him. (R. 900) The ALJ cites to these findings as evidence that there was “at least some, external exacerbation of the claimant’s condition, not attributed to the impairments themselves, which is inconsistent with the claimant’s allegations.” (R. 900) This Court is not sure how the ALJ has the expertise to assess what impact, if any, a spouse’s alleged manipulation of a mentally impaired claimant would have had on his willingness to participate in inpatient treatment.

record in order to assure that the RFC is based on expert opinion. This development may, if appropriate, include a consultative exam.⁴

⁴ Because a remand is appropriate on this issue, I need not address the other issues Plaintiff raises.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EMMA L. ROBERSON o/b/o, ELMER DARNELL ROBERSON, (Deceased))	
Plaintiff,)	
)	
-vs-)	Civil Action No. 16-1110
)	
CAROLYN W. COLVIN, COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	

AMBROSE, Senior District Judge.

ORDER OF COURT

Therefore, this 21st day of July, 2017, it is hereby ORDERED that the decision of the ALJ is reversed. It is further ORDERED that Plaintiff’s Motion for Summary Judgment (Docket No. 13) is granted and Defendant’s Motion for Summary Judgment (Docket No. 16) is denied. This case is remanded for further proceedings consistent with the Opinion issued in conjunction with this Order.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge