

1 The commissioner in his memorandum of law (Dtk12 at page 9) notes that on January 29,
2 1996 a Disability Determination Services physician reviewed plaintiff's medical records on behalf
3 of the agency and completed a physical RFC assessment (Tr. 81-85). This is the only physical RFC
4 assessment of record. In the same, contrary to the ALJ's determination that a severe impairment was
5 present, Dr. Lorena Díaz Trancón determined that plaintiff had no exertional limitations. (Tr. 82).
6 The ALJ, thus must have either (i) discredited Dr. Díaz Trancón's medical determination, or (ii) seen
7 other more favorable evidence of disability. Notwithstanding, the ALJ, as a lay fact-finder, was not
8 at liberty to determine plaintiff's RFC as he did, without a proper medical basis in the record.
9 Rivera-Torres v. S.H.H.S., 837 F. 2d 47 (1st Cir. 1988). Here, no medical expert (examining or non-
10 examining) has reached the same RFC determination as the ALJ.¹

11 This case accordingly must be REMANDED to the Commissioner for further proceedings.
12 Specifically, the ALJ must properly determine plaintiff's RFC between the dates object of this
13 judicial review claim. The ALJ's final RFC determination must be based on a medical evidence of
14 record, that is, a proper RFC finding, physical and/or mental,² by a medical expert.

15 **SO ORDERED.**

16 In San Juan, Puerto Rico this 23rd day of December, 2008.

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18 *S/Gustavo A. Gelpí*

19 GUSTAVO A. GELPI
20 United States District Judge

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23 ¹ The ALJ correctly noted that on June 16, 1996 the Commonwealth State Insurance Fund
24 granted plaintiff total disability. (Tr. 26, 305). The state agency documents, however, do not
25 provide a RFC determination which could in fact support the ALJ's exact conclusion.

26 ² The Court notes that on June 26, 1996 Dr. Enrique Vassallo personally evaluated plaintiff,
27 completed a psychiatric evaluation and diagnosed her with a dysthymic disorder (Tr. 108-111). The
ALJ, however, does not mention this in his decision, only noting that a diagnosis of major disorder
was not reached until after December 31, 2000 (Tr. 27).