

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**LESLIE A. VISSEPO-LINERA,**  
**Plaintiff,**

v.

**CIVIL NO. 11-1881 (GAG)**

**COMMISSIONER OF SOCIAL  
SECURITY,**  
**Defendant.**

**ORDER**

This case is hereby **REMANDED** to the Commissioner for proceedings consistent with this order.

The ALJ below rejected the opinion of SSA consultative psychiatrist, Dr. Juan G. Batista Reyes, who concluded plaintiff suffered from severe major depression with psychotic traits (Tr. 353-356). The ALJ, at pages 4-5 of his decision (Tr. 19-20), rejected Dr. Batista Reyes' conclusion:

In this respect, I have not been persuaded by the diagnosis of the claimant having severe major depression with psychotic features . . . Thus Dr. Batista Reyes' objective mental status findings of the claimant were not consistent with his own diagnosis . . .

This finding is not supported by substantial evidence of record. The same appears to be a substitution by the ALJ of his own criterion for that of Dr. Batista Reyes. This is not permissible. Rather, the ALJ "overstepped his bounds." "Although the ALJ was not required to credit [Dr. Batista Reyes' opinion], he could not render a contrary judgment without expert opinion that controverted the medical opinions in the record . . ." George v. Astrue, No. 11-cv-356-PB, 2012 WL 2061699, at \*8 (D.N.H. June 7, 2012) (Barbadoro, J.) (holding likewise in analogous scenario). Accordingly, upon remand, the ALJ may only discredit Dr. Batista Reyes' opinion by crediting that of another medical expert.

Alternatively, the Commissioner, in his brief at pages 7-16 (Docket No. 11), points to a salmagundi of reasons referenced to the record as to why the ALJ could discredit Dr. Batista Reyes' ultimate conclusion. Such evidence, however, was not considered by the ALJ in his decision, and

cannot now be considered as supporting his decision. See Maritnez v. Comm'r of Soc. Sec., 306 F. Supp. 2d 98, 99 (D.P.R. 2004) (Gelpí, J.) (holding that Commissioner's explanations in memorandum of law is not evidence of record, given that decision cannot be amended in this manner at judicial review level).

In synthesis, this case, upon remand, may warrant the same result. However, because of the above discussed procedural flaws, the decision of the ALJ cannot stand as it is not supported by substantial evidence of record. Upon remand, the ALJ is free to accept any additional evidence of mental and/or physical condition, and reopen the hearing accordingly. The present ruling should not be interpreted as one on the ultimate merits of plaintiff's claims.

**SO ORDERED.**

In San Juan, Puerto Rico this 1st day of August, 2012.

*s/ Gustavo A. Gelpí*  
GUSTAVO A. GELPI  
United States District Judge