

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN F. CORCORAN,

PLAINTIFF,

v.

JO ANNE B. BARNHART, COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,

DEFENDANT.

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No. 3:04CV0946 (SRU)(WIG)

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RECOMMENDED RULING ON MOTION TO REMAND [DOC. # 13]

Plaintiff, John F. Corcoran, has brought this action under § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking review of a final decision of the Commissioner of the Social Security Administration denying him disability insurance benefits and/or supplemental security income benefits. Plaintiff alleges that he became disabled on November 2, 2001, due to diabetes mellitus, sensory neuropathy, retinopathy, COPD, and macular edema.

Defendant answered and, as required by 42 U.S.C. § 405(g),¹ filed a certified copy of the administrative record [Doc. # 5]. Upon review of the record, Plaintiff's counsel determined that three of four documents that he had attached to his Request for Review of the Hearing Decision/Order of the Administrative Law Judge ("ALJ") had not been included. He then filed a

¹ Section 405(g) provides in relevant part:

As part of the Commissioner's answer, the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.

Motion to Complete the Record [Doc. # 6]. In response, Defendant's counsel advised him that representatives of the Appeals Council could not locate the missing documents. (Pl.'s Mot. to Remand at ¶ 2.) Plaintiff's counsel then provided copies to Defendant's counsel, who then supplemented the record to include the missing documents [Doc. # 11]. The "missing documents" included a 20-page curriculum vitae of Plaintiff's treating physician, Dr. William A. Petit, and 12 pages of brochures from the Joslin Diabetes Center, of which Dr. Petit is the Medical Director. Plaintiff claims that these missing documents establish that Dr. Petit is a world-renowned endocrinologist and that the Joslin Center is a world-class facility. He opines that if the Appeals Council had had the benefit of these documents, it might have given more credit to Dr. Petit's opinions. Accordingly, Plaintiff has moved to remand the case to the Appeals Council for its reconsideration in light of these missing documents.

Defendant has objected to remanding this action on the ground that Plaintiff has not shown that there is a reason to believe that the missing documents would have changed the decision of the Appeals Council. Moreover, the record suggests that the Appeals Council had these materials before it, since the Order of Appeals Council dated April 9, 2004, indicates that the Appeals Council had received "Exhibit AC-1: Reasons for Disagreement, with attachments," which were made part of the record. (Tr. at 10.) Additionally, Defendant points out that the missing documents make no reference to Plaintiff's diabetes or its impact on his functional capacity.

This is not a case where a plaintiff is seeking to include new evidence in the record for judicial review. See, e.g., Tirado v. Bowen, 842 F. 595, 597 (2d Cir. 1988). Rather, Plaintiff is asking this Court to remand this case to the Appeals Council to give them the opportunity to

consider evidence that had been submitted by Plaintiff (which is not disputed by Defendant), but which may not have been considered by them in rendering their decision.

It is not clear why the "missing documents" were not included in the administrative record originally filed with the Court, or why they could not be located by the Appeals Council's representatives. It appears to the Court that more likely than not these documents were part of the record before the Appeals Council. The Notice of Appeals Council's Action (Tr. at 6-9) specifically states that they considered "the additional evidence listed on the enclosed Order of Appeals Council." (Tr. at 7.) As noted above, the Order of Appeals Council specifically states that it included "Exhibit AC-1: Reasons for Disagreement, with attachments," plural. (Tr. at 10) (emphasis added). Exhibit AC-1, which is part of the record (Tr. at 289-93) lists the additional evidence attached as:

- Medical reports from Dr. William A. Petit, 12/11/03 - 1/12/04 (4 pages)
- Curriculum Vitae of Dr. William A. Petit (20 pages)
- Joslin Diabetes Center flyers (8 pages)
- Joslin Diabetes Center Informational document (8 pages)

Although the latter three items were not included in the administrative record filed with this Court, they may have been omitted, as Defendant suggests, because they were not specifically material to Plaintiff's condition. The statute requires only that the administrative record contain a certified copy of the transcript "including the evidence upon which the findings and decision complained of are based." 42 U.S.C. § 405(g). Clearly, the most relevant documents submitted by Plaintiff for the Appeals Council's review, Dr. Petit's medical reports, were included. (Tr. 290-93.)

However, even assuming that the Appeals Council did not have the benefit of the "missing documents," the Court finds that a remand is not warranted. Although Dr. Petit's 20-

page curriculum vitae is extremely impressive, other documents in the records provided to the Appeals Council contain ample reference to his qualifications to establish his expertise in the field of endocrinology. His letterhead on New Britain General Hospital stationary indicates:

William A. Petit, Jr., MD, FACP, FACE
Medical Director, JOSLIN Center for Diabetes
Section Director, Endocrinology, Diabetes & Metabolism

Board Certified Internal Medicine
Endocrinology, Metabolism & Diseases

Assistant Professor of Clinical Medicine, UCONN
Past President ADA, CT Affiliate

(Tr. at 290-93.) The two brochures from the Joslin Diabetes Center list the affiliated medical professionals, facts about diabetes, nutrition basics, and include advertising brochures and newspaper articles about the Joslin Diabetes Center. None of these documents pertains to Plaintiff specifically. Moreover, there is nothing in the Appeals Council's decision that would indicate that Dr. Petit's qualifications or the stature of the Joslin Diabetes Center were an issue in their decision. Rather, in addressing Plaintiff's Reason for Disagreement that the ALJ failed to properly credit the opinion of his treating physician, Dr. Petit, the Appeals Council observed that the ALJ had accepted the findings of Dr. Petit concerning Plaintiff's medical condition but had then made an administrative finding on the issue of disability, which is an issue reserved for the Commissioner. (Tr. at 7) (citing ALJ Decision at 3).²

Thus, the Court concludes that there is nothing in these "missing documents" that would

² On page 3 of his Decision, after reviewing Plaintiff's medical records including those of Dr. Petit, the ALJ stated that he had considered the August 8, 2003 opinion of Dr. Petit that Plaintiff would have trouble maintaining any type of employment because of his medical condition, but indicated that he did not agree with his conclusion and then expounded on his reasons for disagreement. (Tr. at 17.)

have changed the Appeals Council's decision denying reconsideration, assuming that these documents were misplaced and never considered by the Appeals Council. To remand this case would simply prolong a decision on the merits.

Accordingly, the Court recommends that the Motion to Remand be denied. Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; D. Conn. L. Civ. R. 72 for Magistrate Judges; FDIC v. Hillcrest Assocs., 66 F.3d 566, 569 (2d Cir. 1995). Following a decision from the District Judge, Plaintiff shall have thirty (30) days to file a motion to reverse or other dispositive motion.

SO ORDERED, this 4th day of January, 2006, at Bridgeport, Connecticut.

/s/ William I. Garfinkel
WILLIAM I. GARFINKEL,
United States Magistrate Judge