Sixth Circuit Cases on Social Security

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SIXTH CIRCUIT CASES ON SOCIAL SECURITY IN 2014

Gentry, 741 F. 3d 708 (6th Cir. 2014)—Court reverses and grants benefits. The claimant has psoriasis and psoriatic arthritis causing bleeding and arthritis in the hands. The ALJ did not find this or include this in his RFC, an error (page 722). The ALJ erred in looking at intermittent improvement with treatment, failing to note that this was temporary and that the claimant had a continuing illness which was not resolved (pages 723-724). Court cites to Minor where ALJ cherry-picked select portions of the record (page 724).

The ALJ also erred in failing to consider the impairments in combination and erred when he cited to the claimant's ability to provide care for a toddler child, noting that she had help with this (pages 725, 727).

At page 726, the Court cited to 20 CFR 404.1529 (c) (2) that an ALJ may not reject the subjective complaints because the objective medical evidence does not substantiate these. The ALJ also erred when he claimed that the claimant exaggerated her subjective complaints because she said that she might need a joint replacement. The Court held that a misunderstanding or colloquial description of her multiple surgeries is hardly an example of a "subjective complaint" at pages 726-727! One of her doctors had also discussed this with her. A single hearsay statement form the claimant's mother is also not enough to discount her credibility in view of the extensive medical history (page 727).

The "treating doctor" rule of 404.1527 and Ruling 96-2p (1996) also applies to an RFC from a treating doctor (page 727), citing to Cole, 661 F. 3d at 937-938 on this. The reasons why the ALJ discounted the RFC of the treating doctor were also not "good reasons" under 404.1527 (c) (2) at page 728.

The ALJ also discounted the RFC of a treating doctor because this doctor had not seen the claimant for a number of months. The Court found that this was not a "good reason" since this doctor was a specialist and since he also reviewed the medical records from other doctors (page 729). The Court also found that the ALJ erred on this when he failed to consider or discuss the other factors of 404.1527(c) (2) and Ruling 96-7p (1996), the factors of treating relationship, specialization, supportability, and consistency (page 729). The Court reversed for an award of benefits.

SIXTH CIRCUIT CASES ON SOCIAL SECURITY IN 2013

Hughes, 705 F.3d 276 (7th Cir. 2013)—Another good opinion by Judge Posner. The ALJ had rejected the report of a consultative doctor because this was "not consistent with the medical evidence of record" without identifying which evidence it was not consistent with (page 278)! Judge Posner also noted that Emergency Rooms charge for their services, and an indigent person can only go to them if experiencing a medical emergency (page 278).

Judge Posner again criticized the ALJ's naivete (page 278) in citing to daily activities, noting the flexibility on doing these versus working, citing to Bjornson, 671 F. 3d 640, 647 (7th Cir. 2012) on this. He also remarked that the SSA brief "characteristically and sanctionably" violated the Chenery doctrine with citations not given by the ALJ (page 279) and concluded by stating that the SSA and the Justice Department should have been able to do better than they did in this case (page 279)! He remanded the case for further proceedings. Bless you Judge Posner!

Minor, 513 Federal Appendix 417 (6th Cir. Jan. 2013)—Court reverses and grants benefits. Good discussion of migraines and how these can be disabling. Court also discusses the law on fibromyalgia at pages 433-435 and notes that the ALJ "cherry-picked" portions of the medical records to discredit the pain.

The Court also discusses a "pain disorder" at pages 435-436, noting the definition of this in the DSM-IV-TR—pain is not intentionally produced or feigned under this definition (page 435). The Court also stated that the failure to seek mental health treatment is not probative of whether a mental impairment exists (page 436). The ALJ also erred when he did not mention the reports of five doctors in evaluating the weight to assign to the doctors.

In footnote 15, the Court also discounted the Waddell test, citing to a 2012 article showing no association between Waddell signs and secondary gain or malingering! Many of the footnotes also discuss the various medications in the record, what they are prescribed for.

Gay, Number 12-1653 (6th Cir. April 2, 2013)—Court remands case because Court cannot tell whether the second ALJ intended to reopen the first ALJ's denial decision, stating what should be mentioned in the second ALJ's decision on this (pages 6-8). An ALJ can de facto reopen a first ALJ's decision, as noted in Crady, 835 F. 2d 617 (6th Cir. 1987).

Gayheart, 710 F. 3d 365 (6th Cir. 2013)—Court remands case. Court discusses the weight given to medical opinions (pages 375-377). The Court then finds that the ALJ failed to weigh the medical opinions properly with regard to the treating doctor and C.E.'s and medical advisors (.pages 376-377). With regard to mental impairments, the Court criticized the ALJ for failing to evaluate these on how the claimant could do the activity on a sustained basis at page 377. This is the standard required under 20 CFR 404.1520 a (c) (2).

With regard to the weight given to C.E.'s and to medical advisors, the Court found that the ALJ must give "greater scrutiny" to these opinions than to a treating source under 20 CFR 404.1527 (pages 379-380)! One psychologist medical advisor had determined at a first hearing that the impairments met a Listing but later changed her mind, and the Court found that the ALJ erred in not explaining her change of opinion on this (page 379). Another C.E. had a higher GAF score than anybody else in the record, and the ALJ erred in not explaining this (page 379).

The Court notes at page 380 that the Regulations do not allow greater scrutiny to a treating source opinion as a means to justify giving that opinion little weight, but instead the Regulations call for the opposite! Even if the treating source is not given controlling weight, the ALJ must then weigh the weight to be given to that opinion under the factors set out at 20 CFR 404.1527.

The Court wound up with a discussion of DA and A at pages 380-381, stating at page 381 that alcohol abuse is not a factor to be considered in determining the weight to be given to a treating source opinion under 20 CFR 404.1527 (c). Only after a finding of disability is made under the five step evaluation of disability under 20 CFR 404.1520 is DA and A considered under 20 CFR 404.1535.

Brooks, --Federal Appendix --, Number 11-5654 (6th Cir. Aug, 6. 2013)—Court remands case on mental impairments. The ALJ gave the most weight to a State Agency reviewer who found no severe mental impairments. About 18 months later, a psychiatrist did testing and documented low I.Q. and other problems. The court finds error in failing to give this more weight.

There is also good language on mental impairments and how these are diagnosed and evaluated, citing to Boulis-Gasche, 451 Fed. Appx. 488 (6th Cir. 2011) and to Blankenship, 874 F. 2d 1116 (6th Cir. 1989) on these, noting that these may be diagnosed with subjective complaints (pages 12 and 14 of opinion).

Page, 921 F. Supp. 2d 746 (E.D. Mich. 2013)—Court awards EAJA fee at hourly rate of $125.00 per hour, finding that attorney did not prove higher hourly rate than this. Cost of living increases in hourly rate may not be enough to show higher hourly rate; need proof of attorneys' hourly rate for this.

Inman, 920 F. Supp. 2d 863 (S.D. Ohio 2013)—Court reverses. ALJ did not analyze treater's medical opinion at page 865, and this was error.

Cox, 917 F. Supp. 2d 659 (E.D. Ky. 2013)—Court awards EAJA fee at rate of $125.00 per hour. Attorney had asked for $140.00 an hour, but Court finds that there was not enough proof of this hourly rate. Need attorney information regarding this hourly rate (how much attorneys in the locale charge).

Lariccia, Number 12-4198 (6th Cir. Dec. 13, 2013)—Court remands case. Clmt. appealed pro se. Court remands because ALJ did not discuss weight given to some treating sources (pages 13-14 of opinion). Court also finds error under Ruling 96-7p (1996) in ALJ's not considering why clmt. did not receive treatment for nervous impairments after moving to Ohio (problems with his insurance for this at pages 15-16), and court finds error in failing to consider V.A. disability rating under Ruling 06-3p (2006). The reasons the ALJ gave for discounting this V.A. rating were not correct (pages 17-18 of opinion).

Garcia, 741 F. 3d 758 (7th Cir. 2013)—Judge Posner again. He finds this one of the worst cases he had seen due to liver problems (page 760). A C.E. had said that the claimant could not work, and Posner notes that favoritism with applicants would not go down well with the agency at page 761! The ALJ's decision is riddled with errors at page 760. A doctor can also discuss why the person is not able to work. This is relevant and cannot be ignored (page 760).

The claimant's fiancee had testified, and the ALJ gave this "some weight" at page 761, discussing the weight to friends or relatives there. The ALJ erred on this in not specifying how much weight he assigned to this testimony. There is also good discussion at page 761 of the fact about a steady gait and walking heel to toe there. Judge Posner notes that a claimant can meet the Listings with a normal musculoskeletal system, citing to impairments with schizophrenia, deafness, epilepsy, oral cancer, renal failure, and severe abdominal pain at page 761.

At page 762, Judge Posner also discussed the "cart before the horse" credibility formula which he had previously ridiculed, citing to Biornson, on this. 671 F. 3d at 645-646. He is also surprised that the Dept. of Justice would defend such a denial at page 762-763!

SIXTH CIRCUIT CASES ON SOCIAL SECURITY IN 2012

Bjornson v. Commissioner, 671 F. 3d 640 (7th Cir. 2012)—Another good opinion by Judge Posner. He again criticizes the boilerplate language about credibility, but he also notes the template language that the subjective complaints are not credible to the extent of the residual functional capacity, noting that the Commissioner's attorney at oral argument did not know what this meant! Id. at 645.He also notes that the credibility finding is made before determining the residual functional capacity, and this is backward. Id. at 645-646.

He also criticized the finding that the testimony was not credible, based on the daily activities, noting that these did not show the ability to work. There is a difference between activities of daily living and activities of full-time work, as the claimant has more flexibility in scheduling the activities of daily living, can get help from others on the activities of daily living, and is not held to a minimum standard on the activities of daily living. He stated that the failure to recognize these differences is a "recurrent, and deplorable, feature of opinions" by ALJ's! Id. at 647.

With regard to the weight to the doctors, the Court criticized the ALJ for giving more weight to a non-examining medical advisor in this case, noting that the medical advisor's familiarity with the SSA disability program is only relevant if it allowed this medical advisor to offer an opinion concerning the eligibility for benefits, something which the ALJ had stated was his prerogative. Id. at 648. Judge Posner also noted that, under Ruling 96-7p (1996), the lack of objective medical findings, alone, is not a basis to disregard the claimant's statements about the symptoms. Id. at 648. Court remands case.

Turner v. Commissioner, 680 F. 3d 721 (6th Cir. 2012)—A Plaintiff who obtains a sentence 4 remand under 42 U.S.C. Section 405 (g) "incurs" attorney fees under the Equal Access to Justice Act, 28 U.S.C. Section 2412 (d). The District Courts erred on these three cases on this, and they are remanded back to the District Courts. Id. at 723-725. Costs of the filing fee are also recoverable under the EAJA and are awarded with a sentence 4 remand. Id. at 725.

Alexander v. Commissioner, 2012 W.L. 1658707 (N.D. Ohio 2012)—ALJ found moderate limitations on attention and concentration, and this is not covered by finding simple and repetitive work. Court remands case on this.

Cox v. Commissioner, 2012 W.L. 1576113 (E.D. Ky. 2012)—ALJ did not say how much weight he gave to the treating doctor after declining to give this doctor controlling weight. The failure to say how much weight is given to a treating doctor is an error of law under Cole, 661 F. 3d 931, 938 (6th Cir. 2011). The fact that a consultative doctor reaches a different conclusion from a treating doctor is not a sufficient reason to decline to give the treating doctor controlling weight under Hensley.

Stivers v. Commissioner, 2012 W.L. 1658642 (E.D. Ky. 2012)—Court remands case. The brevity of the ALJ's discussion of credibility was error, as the court cited to the specific factors of 20 CFR 404.1529 (c) and noted that the ALJ failed to discuss these so that they can be reviewed. This is not substantial evidence to support the ALJ's denial decision in this matter.

Ullman v. Commissioner, 693 F. 3d 709 (6th Cir. 2012)—Court holds that harmless error analysis applies to a credibility determination of the ALJ and denies appeal. The fact that the ALJ had the wrong date of an injury was harmless error in view of the other evidence cited by the ALJ, including the objective medical evidence and the limitations imposed by a doctor, limitations which the ALJ asked to the vocational expert to obtain jobs to deny benefits. Id. at 714.

Johnson-Hunt v. Commissioner, 500 Federal Appendix 411 (6th Cir. 2012)—Court remands case on the failure of the ALJ to give "good reasons" for discounting the disabling limitations from the treating doctor, noting that this is not harmless error. There is also discussion of the materiality standard regarding drug and/or alcohol use. Id. at 418-419.

Price v. Commissioner, Number 11-5116 (6th Cir. Sept. 21, 2012)—Court remands case. Court criticizes boilerplate language on credibility, citing to Seventh Circuit cases on this, noting circular reasoning on this (footnote 3). ALJ erred on daily activities, as the claimant no longer did these, and ALJ erred in the weight he assigned to treating doctor, also erring factually with regard to medications taken for the headaches.

Farrell v. Commissioner, 692 F. 3d 767 (7th Cir. 2012)—Court finds that Appeals Council erred on evidence first submitted to them under 20 CFR 404.970 (b) and remands case. Court discusses review of evidence first submitted to Appeals Council at pages 770-772 and standards of review of this by the Appeals Council. Does this holding cut into the holding in Cotton, 2 F. 3d 692 (6th Cir. 1993) and Eads in Seventh Circuit concerning evidence first submitted to Appeals Council and consideration of this by the federal court? Court also notes that residual functional capacity is not measured by the best days of the claimant, as unpredictable and intermittent attendance at work normally prevents working. Id. at 773.

Sleight v. Commissioner, 896 F. Supp. 2d 622 (E.D. Mich. 2012)—Court remands case. Under Ruling 02-1p (2002), ALJ erred in not explaining how he considered the obesity at all stages of the sequential evaluation of disability (page 632), as the claimant was 5"6" tall and weighed 450 pounds (page 633). The ALJ also erred in evaluating the sleep apnea (pages 634-636).

Parker v. Commissioner, 886 F. Supp. 2d 615 (S.D. Ohio 2012)—Court remands case. ALJ ignored findings of Dr. Vitols on C.E. without good reason for this, in order to avoid a finding of disability (page 621)! The ALJ ignored his limitation of no frequent lifting (page 623), and this was also error.

Valentine v. Commissioner, 886 F. Supp. 2d 639 (S.D. Ohio 2012)—Benefits granted regarding the weight to the treating doctor. ALJ discussed only conservative care at page 650, but court noted that there was no suggestion in the record that surgery would help. At pages 652-653, the court noted that the ALJ erred in weighing the treating doctor under the 6 specific factors of 20 CFR 404.1527 (d) (2), now (c) (2).

Lambert v. Commissioner, 886 F. Supp. 2d 671 (S.D. Ohio 2012)—The ALJ ignored the prior court remand order regarding the treating doctor, and court stated that this was not just an academic exercise, as the ALJ had claimed (page 685). Court grants benefits.

Burbo v. Commissioner, 877 F. Supp. 2d 526 (E.D. Mich. 2012)—This is a pro se case. ALJ erred on the credibility analysis. At page 542, the court noted that the ability to dress oneself and get off the examining table on a consultative exam was not inconsistent with a pain level of 6. The treating doctor had also noted that the claimant could only occasionally lift 5 pounds, and the ALJ erred on this. At page 543, the court discussed the use of a cane also.