UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana Division

BRYAN C. HADDIX,	)	
Plaintiff,	)	
v.	)	
	)	**Case No. 02-2101**
JO ANNE B. BARNHART,	)	
COMMISSIONER OF SOCIAL	)	
SECURITY,	)	
Defendant.	)	

REPORT AND RECOMMENDATION

On January 25, 2001, an Administrative Law Judge (hereinafter "ALJ") found that Plaintiff Bryan C. Haddix was not entitled to a period of disability or disability insurance benefits under Title II of the Social Security Act (42 U.S.C. §§ 416(i), 423). The ALJ found that, although Plaintiff had not engaged in substantial gainful activity since his accident in July 1999, he did not have an impairment or combination of impairments of qualifying severity, expected either to result in death or last for a continuous period of not less than twelve months and which began on or before the date the Plaintiff last met the disability insured status requirements. 42 U.S.C. § 423(d)(1)(A).

In April 2002, Plaintiff filed a Complaint (#1) against Defendant Tommy Thompson, Secretary of Health and Human Services, requesting review of the Social Security Administration's (hereinafter "SSA") final decision. In February 2003, Plaintiff filed a Motion for Summary Judgment (#13), requesting relief in the form of an order reversing the SSA's final decision. In April 2003, Defendant filed a Motion for an Order Which Affirms the Commissioner's Decision (#15). After reviewing the administrative record and the parties' memoranda, this Court recommends, pursuant to its authority under 28 U.S.C. § 636(b)(1)(B), that Plaintiff's Motion for Summary Judgment **(#13)** be **DENIED** and Defendant's Motion for an Order Which Affirms the Commissioner's Decision **(#15)** be **GRANTED**.

I. Background

In July 1999, Plaintiff Haddix, age 36, was involved in a serious motorcycle accident. Because he suffered fractures to the left forearm, left tibia, left tibial plateau, and left acetabula, he was hospitalized for eleven days, undergoing five operations. Upon discharge from the hospital, Plaintiff was given "strict" orders to remain non-weightbearing in his left lower extremity and left forearm up to his elbow. (R. 445.) In August 1999, Plaintiff went to the rehabilitation hospital for therapy and remained there until August 11, 1999. Plaintiff applied for disability insurance benefits (hereinafter "DIB") on August 30, 1999, claiming that he became disabled as a result of his injuries.

During his hospitalization, Plaintiff was under the care of orthopaedic surgeon DuWayne Carlson. During his September 19, 1999 appointment, Dr. Carlson limited Plaintiff to thirty to forty pounds of weightbearing on his left lower extremity and told him he could start putting weight on the left upper extremity. (R. 507.) The doctor also noted that Plaintiff's wounds were "well-healed." (R. 507.) By November 1999, Dr. Carlson increased Plaintiff to 50 percent weightbearing on his left extremity and prescribed physical therapy. (R. 533-35.)

In September 1999, Plaintiff resumed treatment with his family physician, Jeffrey Hatcher, D.O. (R. 550, 552.) On November 19, 1999, Dr. Hatcher stated that Plaintiff "continues to be totally disabled from performing any work" as a result of his fractures. (R. 120.) In December 1999, Dr. Hatcher sent a note to Plaintiff's attorney, stating in part that it was "reasonable to expect that [Plaintiff] will be incapacitated and unable to work for at least one year." (R. 529.)

A state agency physician reviewed Plaintiff's medical records in January 2000. Her Residual Functional Capacity (hereinafter "RFC") assessment indicated that, by July 2000, Plaintiff would be able to sit, stand, and/or walk for about six hours in an eight-hour workday, occasionally lift twenty pounds and frequently lift ten pounds, and have unlimited ability to push and/or pull, including the

operation of hand or foot controls. (R. 520-25.)

By February 2000, Plaintiff Haddix was restored to full weightbearing status, although he complained to Dr. Hatcher of left knee and foot pain. Dr. Hatcher suspected tendonitis from an abnormal gait and prescribed Celebrex. (R. 544.) In April 2000, Plaintiff met with podiatrist Dr. David A. Pressley regarding late-day swelling in his left leg, ankle, and foot. Dr. Pressley recommended orthotic footwear, support hose, and whirlpool and massage treatment. (R. 562-64.)

Plaintiff did not return to substantial gainful employment until February 2001. (Memorandum #14, p. 1.) Two days following Plaintiff's administrative hearing in September 2000, Dr. Hatcher wrote another letter, stating that "[d]ue to his accident last year, this patient has absolutely been unable to work for the last twelve to fourteen months . . . his medical problems have been so severe that he is unable to do any full or part time employment." (R. 568.)

Prior to his accident, Plaintiff worked as a warehouse manager, a shipping supervisor, an apartment house manager, and a part-time farmer. (R. 28-32.) At the time of his accident, Plaintiff met the disability insured status requirements of the Social Security Act. Plaintiff is married and has two children. (R. 25-26.)

During Plaintiff's administrative hearing on September 27, 2000, vocational expert Stephen Dolan considered a hypothetical individual who was 37 years of age and limited to sedentary work that would not require the use of foot or leg controls, climbing or working at unprotected heights, or prolonged standing or walking, and testified that those restrictions would eliminate the individual's ability to perform work similar to Plaintiff's previous occupations. However, Mr. Dolan noted that Plaintiff had transferrable skills that would apply to a significant number of other jobs available in the state. (R. 45-48.)

Following the hearing, the ALJ determined that Plaintiff was not under a disability as defined in the Social Security Act. 20 C.F.R. § 404.1520(f) (2001). The ALJ found that (1) Plaintiff cannot perform his past relevant work as a warehouse manager, a shipping supervisor, an apartment house manager, or a part-time farmer (R. 19); (2) Plaintiff's injuries, although serious, did not meet the requirement for an impairment or combinations of impairments listed in, or medically equal to one listed in 20 C.F.R. Part 404, Subpart P, Appendix I (R. 18); (3) "[b]ased on an exertional capacity for sedentary work, and the [Plaintiff's] age, education and work experience, section 404.1569 and Rules 201.28 and 201.29, Table No. 1, Appendix 2, Subpart P, Regulations No. 4 would direct a conclusion of 'not disabled'" (R. 19); (4) Plaintiff has acquired work skills that could "be applied to meet the requirements of semi-skilled work functions of other work" (20 C.F.R. § 404.1568) (R. 19); and (5) "[a]lthough the claimant's additional nonexertional limitations do not allow him to perform the full range of sedentary work . . . there are a significant number of jobs in the national economy that he could perform" (R. 19). In April 2002, the Appeals Council denied Plaintiff's request for review, thus making the ALJ's decision final. (R. 5.)

In May 2002, Plaintiff filed a complaint against Defendant seeking judicial review of the SSA Commissioner's final decision denying benefits and requesting disability benefits for a closed period of time from July 1999 to February 2001 and any applicable trial work period.

II. Standard of Review

In reviewing an ALJ's decision, this Court does not try the case *de novo* or replace the ALJ's findings with the Court's own assessment of the evidence. *Pugh v. Bowen*, 870 F.2d 1271, 1274 (7th Cir. 1989). The findings of the Regional Commissioner as to any fact, if supported by substantial evidence, are conclusive. 42 U.S.C. § 405(g). Thus, the question before the Court is whether the evidence substantially supports the ALJ's findings. *Diaz v. Carter*, 55 F.3d 300, 306 (7th Cir. 1996). The Supreme Court has defined substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Richardson v. Perales, 402 U.S. 389, 401 (1971). If, in light of all the evidence, reasonable minds could differ regarding the disposition of Plaintiff's claim, the Court must affirm the ALJ's decision. *Books v. Chater*, 91 F.3d 972, 977-78 (7th Cir. 1996). The Court gives considerable deference to the ALJ's credibility findings and will not overturn them unless the plaintiff can show that those findings are patently wrong. *Urban v. Sullivan*, 799 F. Supp. 908, 911 (C.D. Ill. 1992).

III. Analysis

Plaintiff argues that the ALJ erred by determining that his impairments did not preclude him from performing substantial gainful activity during a continuous period of twelve months. *See* 42 U.S.C. § 423(d)(1)(A). While the ALJ found that the medical records indicated that Plaintiff had "regained the capacity for limited work activity within twelve months of his injury" (R. 16), Plaintiff contends that the ALJ should have given more weight to his treating physician's opinion that Plaintiff was unable to work in any capacity within the twelve to fourteen month period following his accident. *See* 20 C.F.R. § 404.1527(d)(2). Furthermore, Plaintiff contends that the hypothetical question asked of the vocational expert did not "accurately describ[e] claimant at all significant, relevant respects" (*see Reed v. Secretary of Health and Human Services*, 804 F. Supp. 914, 922 (E.D. Mich. 1992)), thus invalidating his opinion that Plaintiff was able to perform a substantial number of jobs within twelve months of his accident.

A. The ALJ's Decision

In order to be determined disabled under the Social Security Act, an individual must have a physical or mental impairment or impairments of such severity that "he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . . ." 42 U.S.C. § 423(d)(2)(A). Further, the impairment must "be expected to result in death or . . . [must have] lasted or . . . be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 416(i)(1).

In order to establish the existence of a disability, the ALJ uses a five-step test outlined in the Code of Federal Regulations (hereinafter "Regulations"). 20 C.F.R. § 416.920(a)-(f). First, the ALJ ensures that the plaintiff is not engaged in substantial gainful activity. The plaintiff must have a severe impairment. Then, the ALJ checks to see whether the individual's impairment equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix I; if it does, the ALJ automatically finds the individual disabled as long as he meets the duration requirement. The impairment must preclude the individual from performing past relevant work. Finally, the impairment must prevent the plaintiff from engaging in other work.

Here, the ALJ found that Plaintiff failed to meet step three of the test, because his disability did not meet a listed impairment in appendix I. Looking at the other two steps to evaluate Plaintiff's claim, the ALJ also found that because he was not engaged in substantial gainful activity and his injuries initially limited his ability to engage in basic work activities or perform past relevant work, Plaintiff did meet steps one, two, and four of the test. However, based on the testimony of vocational expert Stephen Dolan, the ALJ held that Plaintiff could perform *other* work, considering his RFC, age, education, and work experience. Furthermore, she determined that Plaintiff's impairment *did not* last for a continuous period of at least twelve months. The ALJ found that, other than refills of medication from Plaintiff's treating physician Dr. Hatcher, there was no evidence of significant medical treatment after April 2000. Plaintiff's ability to engage in activities at home during the spring of 2000 further persuaded the ALJ that he was able to perform a range of sedentary work activities before the twelve-month period expired. Thus, the ALJ found that Plaintiff was not disabled according to the Social Security Act, and so not eligible for DIB.

B. Discussion

Plaintiff argues that the ALJ's decision was flawed because (1) the ALJ did not accept his treating physician's opinion that he was severely impaired and unable to perform any work for at least twelve months following his accident; (2) the vocational expert based his assessment on a defective

hypothetical and thus the ALJ did not meet her burden of proof by showing that Plaintiff could perform a substantial number of jobs; and (3) Plaintiff could not work because he was never given a release to work by his treating physician.

The treating physician statements upon which Plaintiff relies stress that Plaintiff was "unable to work" for at least twelve months or more. (R. 529, 568, and 589.) And, Plaintiff points out, the opinion of the treating physician is entitled to "controlling weight in the absence of evidence to the contrary." 20 C.F.R. 404.1527(d)(2); *Whitney v. Schweiker*, 695 F.2d 784, 789 (7th Cir. 1982). Yet the regulations make clear that a "statement by a medical source that you are 'disabled' or unable to work does not mean that the individual is considered disabled under the terms of the law. 20 C.F.R. 1527(e)(1); *Clifford v. Apfel*, 227 F.3d 863, 870 (7th Cir. 2000). Furthermore, "[a] treating physician's opinion regarding the nature and severity of a medical condition is entitled to controlling weight . . . *if it is well supported by medical findings and not inconsistent with other substantial evidence in the record*." 42 U.S.C. § 405(g) (emphasis added); *Clifford v. Apfel*, 227 F.3d 863, 870 (7th Cir. 2000). Dr. Hatcher's statements contain *no* medical documentation to support his assertion that Plaintiff was disabled for over twelve months and thus are inconclusive as to whether or not Plaintiff was actually disabled through July 2000. The lack of any evidence weakens Plaintiff's claim. It is undisputed that Plaintiff suffered a severe impairment, however, Dr. Hatcher's conclusory statements fail to confirm an impairment lasting a continuous twelve months, as required by the statute. *See* 42 U.S.C. § 423(d)(1)(A).

The ALJ acknowledged Dr. Hatcher's opinion but did not ultimately give it controlling weight, finding that it was contradicted by the weight of the medical evidence which showed that, as of February 2000, Plaintiff was able to walk without assistive devices and the last substantive treatment by a physician occurred in April 2000. (R. 16.) Medical documentation submitted by Plaintiff for the period April though August 2000 shows only that Dr. Hatcher issued prescriptions to Plaintiff for Hydrocordone, Celebrex, Belladonna, Glucophage, Paxil, and Prilosec; no other treatment or

limitations are discussed. (R. 573-75.) Furthermore, the ALJ found that Plaintiff's ability to perform certain daily activities such as caring for personal needs, helping to fix meals and do laundry, and shopping with his wife indicated an ability to perform work activities as well. (R. 17.) A family vacation in June 2000, when Plaintiff drove his family to the east coast, reinforced her finding that the relevant credibility factors failed "to support a level of pain that would preclude sedentary work." (R. 17.) Coupled with the state agency physician's findings of January 2000 (R. 520-25), which the ALJ must consider (*See* 20 C.F.R. § 404.1527(f)(2)(i)), the ALJ had substantial reason to discount the treating physician's opinion that Plaintiff was unable to work.

Plaintiff also argues that the vocational expert's assessment was in error. Because his treating physician, Dr. Hatcher had submitted at least two documents noting that Plaintiff was "unable to work" for the twelve months following his accident, Plaintiff contends that the vocational expert based his assessment on a flawed hypothetical, which assumed an individual who could perform some sedentary work and did not include Plaintiff's medically undocumented need to nap. According to Plaintiff, the notes from his treating physician clearly demonstrate that he was *unable* to perform *any* work during this period. Plaintiff once again asserts that the opinion of the treating physician is entitled to "controlling weight in the absence of evidence to the contrary." 20 C.F.R. 404.1527(d)(2); *Whitney*, 695 F.2d at 789. However, as discussed above, Dr. Hatcher's opinion is *not* given controlling weight because his conclusory statements insufficiently document the reasons *why* Plaintiff cannot perform any sedentary work within the twelve months following Plaintiff's accident. Thus Plaintiff's argument is unavailing. Because he cannot substantially prove that he was not able to perform some sort of sedentary work, Plaintiff cannot claim the vocational expert's assessment--that Plaintiff had transferrable skills that would apply to a significant number of other jobs available in the state--is improper.

Finally, Plaintiff points to the regulations to advance his contention that he was unable to go back to work because he had not yet been *released* to work by his treating physician, Dr. Hatcher. The regulations provide that "[i]n order to get benefits, you must follow treatment prescribed by your

physician if this treatment can restore your ability to work." 20 C.F.R. § 404.1530(a). Based on the regulation, Plaintiff contends that because his family doctor never released him to go back to work, by not working he was abiding by the doctor's orders and thus eligible for DIB. According to Plaintiff's testimony, Dr. Hatcher feared that a return to work would cause a re-injury. (R. 36.) However, the record contains no evidence that Dr. Hatcher prescribed any sort of treatment program for Plaintiff before or after April 2000. And, although one must follow treatment prescribed by one's physician to receive benefits, it does not logically follow that an individual who complies with the prescribed treatment is *guaranteed* benefits. Furthermore, there is no evidence that the regulations meant to include a physician's release as part of the individual's treatment plan.

Plaintiff bears the burden of proving that he is disabled. *See Welsh v. Halter*, 170 F. Supp. 2d 807, 814 (N.D. Ill. 2001). Plaintiff here has not met that burden. Specifically, Plaintiff has not shown that he was incapable of performing any form of sedentary work for a period of twelve months or greater. While Plaintiff relies on a letter dated December 8, 1999, in which Dr. Hatcher predicted that it was "reasonable to expect that [Plaintiff] will be incapacitated and unable to work for at least one year," that alone is not sufficient to show that, in April 2000, Plaintiff was still incapacitated. Yet the record contains no further medical documentation, until Dr. Hatcher's retrospective observation in September 2000, that Plaintiff was still unable to work in any capacity. (R. 568.) There is little support for Plaintiff's claim that he was unable to perform work activities during this period, and what evidence he does offer is not "well supported by medical findings and not inconsistent with other substantial evidence in the record." *See* 42 U.S.C. § 405(g). Thus, the ALJ did not err by considering Plaintiff's daily activities, as well as the record of his medical improvement, in determining that Plaintiff was capable of performing a "number of jobs in the national economy" within twelve months of his accident. (R. 19.)

After reviewing the records and the parties' memoranda, this Court concludes that the ALJ's decision was based on substantial evidence and is supported by social security regulations, statutes, and

case law. When the final decision of the SSA is based on substantial evidence, that decision is conclusive. *See* 42 U.S.C. § 405(g). Where reasonable minds could differ, the Court must affirm the ALJ's decision. *See Books*, 91 F.3d at 977-78. Because the ALJ has met her burden of proving that Plaintiff's impairment did not prevent him from performing other work, the Court should affirm the ALJ's decision that Plaintiff was not disabled within the meaning of the Social Security Act and thus is not eligible for benefits within a closed period from July 1999 through February 2001. Because Plaintiff is not eligible for DIB, we need not address his request for benefits continuing through his six-month trial work period. Accordingly, the Court recommends denying Plaintiff's Motion for Summary Judgment (#13) and granting Defendant's Motion for an Order Which Affirms the Commissioner's Decision (#15).

IV. Summary

For the reasons set forth above, the Court recommends that Plaintiff's Motion for Summary Judgment **(#13)** be **DENIED** and Defendant's Motion for an Order Which Affirms the Commissioner's Decision **(#15)** be **GRANTED**. The parties are advised that any objection to this recommendation must be filed in writing with the Clerk within ten (10) working days after service of a copy of this recommendation. *See* U.S.C. 636(b)(1). Failure to object will constitute a waiver of objections on appeal. *Video Views, Inc. V. Studio 21, Ltd.*, 797 F.2d 538 (7th Cir. 1986).

ENTERED this 14th day of July, 2003.

Signature on Clerk's Original

DAVID G. BERNTHAL
UNITED STATES MAGISTRATE JUDGE

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