

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Philip G. Reinhard	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 50241	DATE	5/30/2007
CASE TITLE	Aurand vs. Astrue		

DOCKET ENTRY TEXT:

For the reasons stated below, the court accepts the report and recommendation, denies defendant's motion for summary judgment, grants plaintiff's motion for summary judgment in part, and remands this case for further consideration of plaintiff's claim under Steps 4 and 5.

Philip G. Reinhard

■ [For further details see text below.]

Electronic Notices

STATEMENT

Plaintiff, Michael J. Aurand, filed a complaint seeking judicial review of the final decision of defendant, the Commissioner of the Social Security Administration, denying his claim for disability insurance benefits. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b), the magistrate judge issued a report and recommendation that this case be remanded for further consideration of plaintiff's claim under Steps 4 and 5 of the framework applied to such determinations. Defendant has filed a timely written objection to the report and recommendation.

The magistrate judge, in the report and recommendation, determined that the ALJ did not properly comply with Step 4 because she failed to rate the degree of plaintiff's stated symptoms and their impact on his ability to work in derogation of SSR 96-7p and 20 C.F.R. § 404.1529. The magistrate judge further found that the ALJ failed to comply with Step 5 when she did not include a specific reference to plaintiff's mental impairment (depression) in the hypothetical she posed to the vocational expert (VE) as required by SSR 96-8p.

After carefully reviewing the thorough report and recommendation, the relevant portions of the administrative record, and SSR 96-8p, the court agrees that the ALJ failed to include any reference, direct or indirect, to plaintiff's depression in her hypothetical. Nor does the record reflect any independent knowledge by the VE regarding such a limitation. See Steele v. Barnhart, 290 F. 3d 936, 942 (7th Cir. 2002). Therefore, on that basis the court accepts the report and recommendation and remands this case for further consideration under Step 5.

While the court finds it is a much closer question as to whether the ALJ complied with Step 4 in terms of following SSR 96-7p, the court accepts the report and recommendation with respect to the ALJ's credibility findings regarding plaintiff's stated symptoms.

For the foregoing reasons, the court accepts the report and recommendation, denies defendant's motion for summary judgment, grants plaintiff's motion for summary judgment in part, and remands this case for further consideration of plaintiff's claim under Steps 4 and 5.