IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

RUSSELL S. McCORMICK, Plaintiff, vs. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	No. 4:06-cv-0271-JAJ **ORDER**

This matter comes before the Court pursuant to briefs on the merits of this application for disability insurance benefits. The final decision of the Commissioner of Social Security is affirmed.

I. PROCEDURAL BACKGROUND

On December 19, 2002, Plaintiff applied for Social Security Disability benefits under Title II of the Social Security Act (the Act) and for Supplemental Security Income (SSI) under Title XVI of the Act (Tr. 61-63, 422-45). The Social Security Administration denied both of Plaintiff's applications on May 19, 2003 (Tr. 30-37). Plaintiff requested reconsideration of both claims on July 2, 2003 (Tr. 38-39). On December 8, 2003, the Administration denied both claims after reconsideration (Tr. 40-43). Plaintiff appealed the denials to an administrative law judge (ALJ) on February 3, 2004. ALJ James Francis Gillet heard Plaintiff's case on September 20, 2004 (Tr. 445-99), and issued an unfavorable decision on February 24, 2005 (Tr. 20-29). Plaintiff requested a review by the Appeals Council on February 24, 2005 (Tr. 6, 12-16), and the Appeals Council denied review on April 5, 2006 (Tr. 6-8).

II. FACTUAL BACKGROUND

Plaintiff was 45-years-old at the time of hearing. He has completed high school, one year of college, and an apprenticeship working with sheet metal (Tr. 86, 453). He has

never married and has two children who do not live with him (Tr. 401). Plaintiff lives with his mother in her home in Council Bluffs, Iowa (Tr. 79, 114).

Plaintiff's past work experience consists of automobile repair work (Tr. 81). Specifically, Plaintiff fixed, buffed, painted, welded, and sanded automobiles (Tr. 81). He worked as an auto repair person from 1989 to 2001, with the exception of the time period between 1996 and February or March of 1998 (Tr. 155). Plaintiff filed for disability in 1997, was denied, and returned to work (Tr. 173).

In 1996, Plaintiff was diagnosed with Non-Insulin Dependent Diabetes Mellitus and Hepatitis C during pre-operative blood work for a repair surgery on his left elbow (Tr. 82, 173, 206). Plaintiff has intermittently sought treatment for diabetes and taken medications to control blood sugar levels since 1996 (Tr. 82,173). Plaintiff first obtained treatment for Hepatitis C in January of 2003 (Tr. 238). He has experienced negative side effects from the Hepatitis C treatment, including anemia and aggravation of diabetes (Tr. 352). Plaintiff has not been able to follow the typical one-year course of treatment for Hepatitis C because he has had to stop treatment or take lower doses due to the negative side effects (Tr. 478). Plaintiff has, at times, been non-compliant with treatments for both Hepatitis C and diabetes (Tr. 263).

Plaintiff has been treated for alcohol dependency on three occasions throughout his lifetime (Tr. 399 [1992], 397 [2000], 393-96 [2001-2002]). He has been arrested for driving under the influence of alcohol six times (Tr. 194). Plaintiff has been drinking since the age of 14 (Tr. 399). He alleges that his longest period of sobriety was four and one-half years in the 1990s (Tr. 399). Plaintiff testified in the hearing that he has been sober for the past four or five years (Tr. 456). Plaintiff also uses tobacco (Tr. 173). He has smoked cigarettes since he was a teenager, and now smokes approximately two to three packs a day (Tr. 174).

Plaintiff alleges disability due to Hepatitis C, diabetes, and arthritis since May 30, 2001. Plaintiff alleges that he stopped working after that date because he "was tired all the time and it was hard to maintain work" (Tr. 80). Plaintiff alleges that "flu-like symptoms, tiredness, pain and numbness in limbs, joint aches, sore spine, stabbing pain in arm and shoulder" limited his ability to work (Tr. 80). At hearing, the ALJ determined that Plaintiff has three severe impairments, Hepatitis C, adjustment disorder with mixed anxiety, and alcoholism in early, partial remission (Tr. 28).

A. Relevant Medical History

In 1996, Dr. Craig Barr, M.D., of Council Bluffs diagnosed Plaintiff with Hepatitis C and diabetes during pre-operative tests for repair surgery on Plaintiff's left elbow (Tr. 82). Dr. Barr prescribed medication to Plaintiff and treated Plaintiff until 1998 (Tr. 82).

On July 28, 2000, Plaintiff saw a physician at Alegent Health in Council Bluffs to obtain refills of diabetes medication (Tr. 208). An Alegent physician ordered lab tests for Plaintiff and prescribed 5 mg of Glucotrol XL to Plaintiff for treatment of diabetes (Tr. 208). The Alegent physician also instructed Plaintiff to schedule a follow-up appointment within two months (Tr. 208).

On September 7, 2000, Plaintiff checked himself into an outpatient chemical dependency treatment program at Jennie Edmundson Hospital in Council Bluffs after he had been arrested for a third time for driving under the influence of alcohol (Tr. 397). Plaintiff was diagnosed with alcohol dependency (Tr. 397, 402). Plaintiff was unable to maintain sobriety and was placed on Antabuse to stop him from drinking alcohol (Tr. 397). On May 9, 2001, Plaintiff completed the chemical dependency treatment (Tr. 397-98). Treatment personnel gave Plaintiff a "poor" prognosis upon discharge (Tr. 397-98).

On October 27, 2000, Plaintiff underwent medical testing for diabetes and Hepatitis C at Alegent Health (Tr. 207). On November 3, 2000, an Alegent physician confirmed Plaintiff's diagnosis of Hepatitis C (Tr. 207). The Alegent physician scheduled an

appointment for Plaintiff with Dr. Gary D. Volentine, M.D., a gastroenterologist, on November 13, 2000, to address Plaintiff's Hepatitis C (Tr. 207).

On November 13, 2000, Dr. Volentine recommended that Plaintiff undergo further testing and told Plaintiff to stop consuming alcohol so he could observe Plaintiff's liver function without the presence of alcohol (Tr. 245). On December 14, 2000, Plaintiff told Dr. Volentine that he had been abstinent from alcohol for two months and Dr. Volentine ordered a liver biopsy for Plaintiff (Tr. 245). Dr. Volentine performed the biopsy on January 9, 2001 (Tr. 243-44). On February 26, 200, Dr. Volentine confirmed Plaintiff's diagnosis of Hepatitis C, recommended that Plaintiff begin treatment, and gave Plaintiff a prescription for the treatment (Tr. 242). Between February 26, 2001, and August 23, 2001, Plaintiff failed to attend two scheduled appointments at Dr. Volentine's office and rescheduled three other appointments (Tr. 240-41). On August 23, 2001, Plaintiff told Dr. Volentine that he had not started treatment because of difficulties with insurance coverage and arrangement of nursing care (Tr. 240, 263). Dr. Volentine again prescribed to Plaintiff treatment for Hepatitis C (Tr. 240).

On December 18, 2001, Plaintiff underwent a chemical dependency evaluation at Jennie Edmundson Hospital (Tr. 393). Plaintiff's probation officer had referred him to Jennie Edmundson after Plaintiff was charged with public intoxication while on probation (Tr. 393). Following the evaluation, Plaintiff entered an intensive outpatient chemical dependency treatment program at the hospital (Tr. 396). On January 18, 2002, Plaintiff was discharged from chemical dependency treatment program (Tr. 393).

On June 13, 2002, Dr. Volentine again told Plaintiff that he needed to start treatment for the Hepatitis C (Tr. 239). Plaintiff stated that he was unable to afford treatment due to his problems acquiring insurance (Tr. 239). On September 15, 2002, an employee of Dr. Volentine's office told Plaintiff to reapply with the Commitment to Care program in order to obtain funding for Hepatitis C treatment (Tr. 238).

On December 9, 2002, Plaintiff underwent an outpatient evaluation for chemical dependency at Alegent Health Mercy Hospital (Tr. 196). Plaintiff was court-ordered to attend an outpatient chemical dependency program for persons convicted of operating while intoxicated (Tr. 198). Carol Kuncl, A.C.A.D.C., evaluated Plaintiff on December 9, 2004, and concurred with the court-ordered treatment (Tr. 198).

On January 8, 2003, Dr. Volentine ordered Plaintiff to undergo lab work and discussed with Plaintiff treatments for Hepatitis C (Tr. 173, 238). On January 21, 2003, Dr. Judith Benson, A.R.N.P., of Alegent Health Psychiatric Associates, performed an initial outpatient evaluation on Plaintiff (Tr. 188). She found that Plaintiff needed treatment for depression and alcohol dependency (Tr. 191). Dr. Benson stated that he had a "poor" prognosis because of his "previous commitment to and follow through with treatment, both medically and psychiatric" (Tr. 192).

On January 31, 2003, Dr. Volentine prescribed PegInterferon and Ribavirin to Plaintiff for treatment of Hepatitis C (Tr. 238). On January 14, 2003, Plaintiff attended a physical consultative appointment at Dr. Volentine's office (Tr. 263). On March 27, 2003, Dr. Volentine told Plaintiff that he had developed anemia and he reduced Plaintiff's prescription for Ribavirin in an effort to correct the anemia (Tr. 237). Dr. Volentine noted that Plaintiff's liver function was improving in response to the Hepatitis C treatment (Tr. 237). Dr. Volentine ordered that Plaintiff be followed closely throughout the Hepatitis C treatment, and recommended a follow-up appointment in two weeks (Tr. 237).

On April 15, 2003, Plaintiff was seen by Dr. Eugene R. Glass, Phys.D., at The Willow Group, P.C., for a psychological evaluation (Tr. 180-82). Dr. Glass found that Plaintiff was suffering from depression, anxiety, and alcohol dependency in early full remission (Tr. 182). Dr. Glass found that Plaintiff's mood disturbance was "being moderated somewhat successfully with the psychiatric treatment he has received" (Tr. 182). Dr. Glass found that, in Plaintiff's mental state at that time of examination, "he

probably would have difficulty in maintaining attention, concentration, and pace in carrying out instructions, although he would have success with remembering/understanding instructions and procedures in the typical workplace" (Tr. 182). Dr. Glass recommended to Plaintiff that he continue to receive regular psychotherapy sessions and medication (Tr. 182). On April 17, 2003, Plaintiff was seen for medication management by Dr. Benson (Tr. 187). Dr. Benson noted that Plaintiff was taking PegInterferon and Rebetrol for Hepatitis C treatment, Glycotrol for diabetes treatment, Naprosyn for muscle and joint pain, and Lexapro for depression and anxiety (Tr. 187). Dr. Benson found that Plaintiff continued to suffer from depression and anxiety compounded by alcohol dependency and Hepatitis C treatment (Tr. 187). Dr. Benson noted that Plaintiff showed mild improvement (Tr. 187). Dr. Benson increased Plaintiff's dosage of Lexapro and told him to return to the clinic in four weeks (Tr. 187).

On April 30, 2003, Plaintiff saw Dr. J. Zimmer, M.D., at Council Bluffs Community Health for his diabetes (Tr. 278). Plaintiff reported that his blood sugar was "out of control" and that he needed a refill of his diabetes medication prescription (Tr. 278). Dr. Zimmer prescribed a refill for Plaintiff and gave him the second phase of the Hepatitis B vaccine (Tr. 278).

On June 1, 2003, Plaintiff saw Dr. Benson for medication management (Tr. 186). Benson noted that Plaintiff continued to have impaired concentration, difficulty staying focused, anxiety, and difficulty sleeping (Tr. 186). Plaintiff attributed these symptoms to his ongoing Hepatitis C treatment (Tr. 186). Plaintiff denied alcohol or drug abuse (Tr. 186). Dr. Benson increased dosage of Lexapro, prescribed Ambien to help with sleep difficulties, and advised Plaintiff to return to clinic in four weeks or sooner if necessary (Tr. 186).

On August 6, 2003, Plaintiff was seen by Dr. Volentine regarding Plaintiff's ongoing treatment for Hepatitis C (Tr. 236). On that date, Plaintiff had been undergoing

Hepatitis C treatment for approximately eight months Tr. 236). Dr. Volentine noted that Plaintff was "doing relatively well" (Tr. 236).

On August 27, 2003, Plaintiff saw Dr. Zimmer (Tr. 276). Dr. Zimmer noted Plaintiff's breathing had improved that Plaintiff's diabetes had been controlled since his last visit (Tr. 276). Dr. Zimmer continued Plaintiff's prescription for medication to control blood sugar (Tr. 276).

On November 25, 2003, Plaintiff saw Dr. Volentine because Plaintiff had ceased his Hepatitis C treatment due to lack of response and was also experiencing abdominal pain, low back pain, and fatigue (Tr. 235). Dr. Volentine ordered lab tests for Plaintiff, ordered an x-ray of Plaintiff's low back, and prescribed Bentyl 20 for Plaintiff's abdominal cramps (Tr. 235). On November 26, 2003, Plaintiff underwent a chest x-ray at Jennie Edmundson Hospital (Tr. 246, 373). The x-ray indicated no acute abnormality of the chest (Tr. 246, 373). On the same day, Plaintiff also underwent an lumbar spine x-ray, which showed mild degenerative changes of the lumbar spine at L2-3 and L3-4 (Tr. 247, 372). The x-ray showed no acute abnormality of the lumbar spine (Tr. 247, 372).

On December 3, 2003, Plaintiff saw Dr. Zimmer because of pain in his lower back and extremities (Tr. 275). Dr. Zimmer found that Plaintiff had stopped taking his diabetes medication and, as a result, Plaintiff's diabetes was "out of control" (Tr. 275). Dr. Zimmer found that Plaintiff was suffering from polyuria, polydipsia, and other symptoms due to his cessation of medication (Tr. 275). Dr. Zimmer gave Plaintiff 40 units of Lantus insulin and instructed Plaintiff to return to taking diabetes medication daily (Tr. 275). Dr. Zimmer instructed Plaintiff to return to the clinic the following day for furthering monitoring (Tr. 275, 272). Plaintiff returned to the clinic to recheck blood sugar on December 4 (Tr. 274, 72) and 5 (Tr. 272, 73). Dr. Zimmer instructed Plaintiff to continue taking diabetes medication as ordered (Tr. 272, 73).

On December 18, 2003, Plaintiff saw Dr. Zimmer for a follow-up appointment regarding his diabetes (Tr. 271). Dr. Zimmer noted that Plaintiff had run out of medication and reported having problems sticking to an appropriate diet (Tr. 271). Dr. Zimmer also reviewed Plaintiff's chest and lower back x-rays with him, finding that both were normal except that the low back had mild arthritic changes at L3/L4 and L2/L3 (Tr. 271). Dr. Zimmer gave to Plaintiff a 24-week supply of Metaglip for regulation of his blood sugar levels (Tr. 271). Dr. Zimmer indicated that he wanted to see Plaintiff in the beginning of January for a follow-up appointment (Tr. 271).

On January 8, 2004, Plaintiff saw Dr. Zimmer for a recheck on his diabetes (Tr. 270). Dr. Zimmer noted that Plaintiff's blood sugar levels had decreased and stabilized (Tr. 270). Dr. Zimmer also noted that Plaintiff was taking one dose of diabetes medication daily in the evening (Tr. 270). Plaintiff complained to Dr. Zimmer of low back pain, and Dr. Zimmer urged him to be as active as possible with his back (Tr. 270). Dr. Zimmer told Plaintiff that he would like to see him again in a couple of months (Tr. 270).

On February 24, 2004, Plaintiff saw Dr. Zimmer at Council Bluffs Community Health because Plaintiff was experiencing low back pain and fatigue and was out the pain medication Tramadol (Tr. 269). Dr. Zimmer noted that he believed Hepatitis C was the cause of Plaintiff's back pain and fatigue, and urged Plaintiff to see Dr. Volentine regarding Hepatitis C symptoms (Tr. 269).

On May 19, 2004, Plaintiff saw Dr. Zimmer for a follow-up on his diabetes (Tr. 283). Dr. Zimmer found that Plaintiff's blood sugar levels had dropped, and as a result, Dr. Zimmer reduced Plaintiff's dosage of diabetes medication (Tr. 283). Dr. Zimmer noted that Plaintiff had also sustained a drop in hemoglobin due to Hepatitis C treatment, and encouraged Plaintiff to continue treatment for Hepatitis C with Dr. Volentine (Tr. 283). Dr. Zimmer also refilled Plaintiff's prescription for Tramadol (Tr. 283). Dr. Zimmer recommended that Plaintiff return to see him whenever necessary (Tr. 283).

On June 3, 2004, Plaintiff was seen by Dr. Abraham P. Matthews, M.D., of Hematology & Oncology Consultants, P.C., for anemia (Tr. 352-354). Dr. Volentine referred Plaintiff to Dr. Matthews because of Plaintiff's development of anemia (Tr. 352). Dr. Matthews determined that Plaintiff's anemia was likely the result of Hepatitis C treatment, as well as liver disease secondary to Hepatitis C and alcohol abuse (Tr. 353). Dr. Matthews recommended that Plaintiff have a chest x-ray and a CT scan of his abdomen and pelvis (Tr. 353).

On June 8, 2004, Plaintiff underwent a chest x-ray pursuant to Dr. Matthews recommendation (Tr. 224). The chest x-ray was normal, except it showed the presence of mild degenerative changes in the thoracic spine (Tr. 334). On that same date, Plaintiff also underwent CT scans of his pelvis and abdomen (Tr. 334). The CT scans of both Plaintiff's pelvis and abdomen were normal, except the CT scan of his abdomen revealed "a few mildly enlarged periaortic lymph nodes," measuring up to 1.3 cm in diameter (Tr. 335).

On June 10, 2004, Dr. Samer I. Renno saw Plaintiff at Hematology & Oncology Associates, P.C., because Dr. Volentine referred Plaintiff to Dr. Renno to be examined for pancytopenia, which is a reduction in the number or red blood cells, white blood cells, and platelets (Tr. 350). Dr. Renno found that the likely cause of Plaintiff's pancytopenia was the Hepatitis C treatment (Tr. 350). Dr. Renno advised Plaintiff to return for a followup appointment in one month (Tr. 350).

On July 8, 2004, Plaintiff was seen by Dr. Inagati M. Shah, M.D., of Hematology & Oncology Associates, P.C., for a follow-up appointment regarding his pancytopenia (Tr. 348). Dr. Shah noted that Plaintiff's condition had improved since last evaluation, and that such improvement was most likely secondary to decreased dose of medication for Hepatitis C (Tr. 348).

On July 21, 2004, Plaintiff saw Dr. Volentine (Tr. 368-69). Plaintiff reported that he felt fine and had no new symptoms (Tr. 368). Dr. Volentine ordered a CBC test, a comprehensive metabolic panel, an x-ray of the neck and spine, and a nucleic acid quantification for Hepatitis C (Tr. 369).

On September 3, 2004, Plaintiff saw Dr. Shah for a follow-up regarding his pancytopenia (Tr. 347). Dr. Shah noted that Plaintiff had ceased taking Rebetol for treatment of Hepatitis C and was currently undergoing Interferon treatment (Tr. 347). Dr. Shah noted that Plaintiff's white blood cell count had improved and his hemoglobin and platelet counts were stable (Tr. 347). Dr. Shah concluded that his office would observe Plaintiff from "a hematologic standpoint without any intervention" and recommended that Plaintiff visit the clinic for a followup in six months (Tr. 347).

B. Plaintiff's Subjective Complaints

On an undated Disability Report, Plaintiff listed arthritis, diabetes, and Hepatitis C as the conditions that limited his ability to work by causing "flu-like symptoms, tiredness, pain and numbness in limbs, joint aches, sore spine, stabbing pain in arm and shoulder" (Tr. 80). Plaintiff stated that he stopped working because "I was tired all the time and it was hard to maintain work" (Tr. 80).

On his January 5, 2003, Personal Pain/Fatigue Questionnaire, Plaintiff stated he had joint pain in all joints, and that the joint pain is worse in joints where he has arthritis, such as his right wrist, foot, and knee, and his left elbow, shoulder, and stomach (Tr. 110). Plaintiff stated that movement, Hepatitis C treatments, and fatigue exacerbated his pain (Tr. 110). Plaintiff described his pain as lasting "all the time sometimes worse than others especially when I move" (Tr. 110). Plaintiff stated that this pain restricted "basically all activities" (Tr. 111). Plaintiff stated that his pain and fatigue caused him to sleep "all the time" and that he must plan to take a nap before performing an activity (Tr. 112). Plaintiff stated that his pain caused him difficulty in his ability to care for his daily personal needs

(Tr. 112). Plaintiff stated that he could sit for an hour at a time and walk for 15 minutes (Tr.113).

On his January 5, 2003, Daily Activities Questionnaire, Plaintiff stated that he dresses and performs hair care rarely, and bathes and shaves only with help or reminders from his mother (Tr. 114). Plaintiff stated that he experienced difficulty completing chores because he could work for approximately one to two hours and then he would have to rest for four to six hours (Tr. 114). Plaintiff stated that he watches the History Channel and the Discovery Channel on television, as well as reads the Bible and the Sunday edition of the newspaper (Tr. 116). He stated that he rarely involves himself in social activity (Tr. 116). Plaintiff stated that he has problems concentrating because he becomes confused, cannot concentrate on the task he is supposed to be performing, and has a poor memory (Tr. 117).

In her January 22, 2003, Daily Activities Questionnaire (Third Party), Plaintiff's mother, Arbutus McCormick, stated that Plaintiff dresses regularly, shaves rarely, and bathes and performs hair care only with reminders (Tr. 118). Mrs. McCormick described Plaintiff's sleeping habits as being "extremely tired, difficulty sleeping nights" (Tr. 118). Mrs. McCormick listed daily reading of books, magazines, and newspapers as an interest of Plaintiff, and stated that Plaintiff understands and remembers the materials (Tr. 120). Mrs. McCormick stated that Plaintiff rarely involves himself in social activities and has a lot of difficulty going out in public because he has to rely on other people to take him and he often feels tired or depressed (Tr.120). She stated that Plaintiff has a tendency to become irritated with others and subsequently seeks out isolation (Tr. 120). Mrs. McCormick stated that Plaintiff has problems with concentration and memory (Tr. 121). She stated that when under stress, Plaintiff will either "blow up, drink, or sleep" (Tr.121). Mrs. McCormick identified the onset of Hepatitis C and diagnosis with diabetes as the time at which Plaintiff started to experience negative life changes (Tr. 121).

On his June 30, 2003, Reconsideration Disability Report, Plaintiff stated that since he filed his Social Security claim in December of 2002, his aches had worsened while his fatigue had become more intermittent (Tr. 122). He also stated that the back pain had increased since his date of application (Tr. 122). Plaintiff stated that since December 2002, he experienced mental limitations of not being able to concentrate and physical limitations of feeling "like a zombie" due to medications and tiring after one hour of work (Tr. 122).

On his July 24, 2003, Daily Activities Questionnaire (Applicant), Plaintiff indicated that his ability to perform self-care had decreased, stating that he bathed, dressed, shaved, and performed hair care only with help or reminders (Tr. 128). He stated that he rarely engages in social activities (Tr. 130). Plaintiff stated that he has problems with concentration and memory (Tr. 131). He also stated that he has trouble completing tasks and following directions because he becomes frustrated when he needs a long time to complete a simple task (Tr. 131). Plaintiff stated that he is not able to pay bills or manage money because he has no money nor income (Tr. 131).

On her July 24, 2004 Function Report-Third Party, Mrs. McCormick stated that Plaintiff is unable to perform any physical work for more than a few minutes (Tr. 132). During the day, Mrs. McCormick stated that Plaintiff watches television, works on small projects, and naps (Tr. 132). In regards to Plaintiff's projects, Mrs. McCormick stated that Plaintiff is disorganized, has problems with concentration, and rarely finishes a project (Tr. 136). She states that before Plaintiff's alleged disability, he would "fix anything on a car or mechanical, always busy at something" (Tr. 139).

On his July 26, 2003, Personal Pain/Fatigue Questionnaire, Plaintiff described his pain as:

> Left elbow arthritis from old break, R [sic] knee arthritis from old break, R rist [sic] old break, sharp stabbing pains from diabetes or other, left ear pops & gets loud possible broken

> drum, absolutely no lung capacity from smoking or asbestos or being a body man (Tr. 140).

Plaintiff stated that he experiences pain constantly throughout the day, and that movement and hot weather exacerbate his pain (Tr. 140). He stated that he is able to walk for two and one-half minutes without resting (Tr. 141). Plaintiff stated that he could no longer work due to his body aches and fatigue (Tr. 141). He also stated that he had problems sleeping through the night, and that he needs sleeping pills in order to get to sleep (Tr. 142).

On Plaintiff's undated Claimant's Statement When Request for Hearing is Filed and the Issue is Disability, Plaintiff indicated that his condition had changed since he filed for benefits on June 30, 2003 (Tr. 144). Plaintiff stated that his doctor instructed him to cease Hepatitis C treatment because of the negative side effects he was experiencing (Tr. 144). Specifically, Plaintiff's Hepatitis C treatment caused a drop in hemoglobin, weakness, sickness, and anemia (Tr. 44).

C. Competing RFCs

1. Dr. Pratt's Consultative Examination

On January 14, 2003, Plaintiff underwent a comprehensive history and physical examination conducted by Dr. George Pratt, D.O., M.S., and Iowa Disability Examiner Dawn Diskey of Professional Medical Examiners (Tr. 173-76). During the appointment, Dr. Pratt developed Plaintiff's medical and social histories, conducted a review of his systems, checked his vital signs, and performed a complete physical examination (Tr. 173-76). Dr. Pratt did not review Plaintiff's medical records (Tr. 175). Plaintiff told Dr. Pratt that he could walk no more than three blocks, stand for no more than 15 minutes, sit for no more than 45 minutes, and lift approximately 30 pounds (Tr. 173). Regarding Plaintiff's joints, Dr. Pratt found that Plaintiff had normal range of motion in all joints, except the hips, knees, and elbow (on flexion) (Tr. 175). Dr. Pratt stated that Plaintiff had

some crepitus of the right knee, but that Plaintiff could do a full squat, bend at the waist, and touch his toes (Tr. 175).

According to the report, Plaintiff's three chief complaints were diabetes, arthritis, and Hepatitis C (Tr. 173). Dr. Pratt found that none of Plaintiff's chief complaints caused him to be impaired in a manner that prevented him from obtaining employment (Tr. 175).[1] Dr. Pratt placed no restrictions on Plaintiff's ability to work" (Tr. 175, 266).

2. Dr. May's Physical RFC Assessment

On March 18, 2003, Dr. John A. May, M.D., completed a Physical Residual Functional Capacity Assessment for Plaintiff (Tr. 261-67). Dr. had not previously treated Plaintiff. Dr. May found that Plaintiff had no postural limitations, visual limitations, communicative limitations, nor environmental limitations (Tr. 261-267). Dr. May found that Plaintiff had extertional and manipulative limitations (Tr. 262-64). Dr. May limited Plaintiff's exertion to occasionally lifting or carrying 20 pounds or less, frequently lifting or carrying 10 pounds or less, standing or walking for six hours of an eight-hour work day, and sitting six hours of an eight-hour work day (Tr. 262). Dr. May also limited Plaintiff's manipulation to avoid use of his left arm when reaching in all directions (Tr. 264).

In addition, Dr. May noted that discrepancies existed between Plaintiff's complaints and Plaintiff's actual performance during examinations (Tr. 263). Specifically, Dr. May stated in his report that Plaintiff complained of occasional back, neck, and hand arthritis, evidence showed that Plaintiff had normal range of motion in these joints with normal grip strength (Tr. 263). Also, Dr. May noted that Plaintiff's statement that he could not button

[1] Dr. Pratt stated in the report that, "It appears from this examination and Mr. McCormick's history, his ability to perform income producing/work-related activities is not impaired. Sitting, standing, walking, bending, lifting, and carrying objects of reasonable weight should not be a problem. It does not appear that the alleged impairment affects the use of his neck, back, hands, wrists, or feet" (Tr. 175).

the top three buttons of his shirt due to cramps in his hands is inconsistent with findings at the examination (Tr. 263). Lastly, Dr. May noted that Plaintiff wrote on the pain questionnaire that he has knee, right foot, shoulder, and stomach pain, but made no mention of any such pain at examination (Tr. 262). In regards to Plaintiff's alleged knee pain, Dr. May noted that Plaintiff never sought any further treatment of it after repair surgery in 1996 and does not take pain medication for it (Tr. 263). Dr. May stated that the discrepancies eroded Plaintiff's credibility (Tr. 263).

3. Dr. Sheppard's Disability Determination Physical

On October 27, 2003, Dr. K. Neil Sheppard, M.D., performed a disability determination physical on Plaintiff. Dr. Sheppard identified Plaintiff's diagnoses as diabetes, chronic obstructive pulmonary disease, osteoarthritis, depression, history of surgery on right knee and left elbow, and chronic hepatitis C (Tr. 203). Dr. Sheppard stated that "[t]he only limitation that the patient would have at this point would be shortness of breath with exertion" (Tr. 203). Dr. Sheppard found that Plaintiff would have difficulty repetitively lifting anything that weighed more than 20 pounds (Tr. 203). Dr. Sheppard noted that Plaintiff was capable of doing physical work with his hands because he had "fairly thick calluses" on the palms of his hands and Plaintiff told Dr. Sheppard that he had been helping a bricklayer to do remodel his mother's bathroom and porch (Tr. 203).

4. Dr. Volentine's Hepatitis C RFC Analysis

On November 12, 2004, Dr. Volentine completed a Hepatitis C Residual Functional Capacity Questionnaire regarding Plaintiff (Tr. 414-421). Dr. Volentine indicated that he had been treating Plaintiff for four years (Tr. 415). In addition to Hepatitis C, Dr. Volentine stated that Plaintiff suffered from depression and diabetes (Tr. 415). He indicated that the Plaintiff's symptoms were chronic fatigue, recurrent fevers, enlarged

liver, muscle and joint aches, and anemia (Tr. 415). Dr. Volentine did not note Plaintiff's history of alcohol abuse.

Dr. Volentine stated that Plaintiff's fatigue, pain, or other symptoms frequently interfere with the attention and concentration needed to perform even simple tasks (Tr. 416). Dr. Volentine found that Plaintiff had the following limitations: Plaintiff is able to walk one city block without rest or severe pain, Plaintiff can sit for two hours before needing to get up, Plaintiff can stand for 30 minutes without having to sit down or walk around, Plaintiff can stand or walk for about two hours during the working day and can sit for about four hours during the working day, Plaintiff is not capable of working an eight-hour workday for five days a week, Plaintiff is capable of working 15 to 20 hours weekly, Plaintiff needs a job that permits him to shift positions at will, and Plaintiff would likely need to take eight unscheduled 10-20 minute breaks to rest during an average eight-work day (Tr. 416-17).

Dr. Volentine found that Plaintiff can frequently carry up to 10 pounds, occasionally carry 20 pounds, and rarely carry 50 pounds (Tr. 417-18). Dr. Volentine found that Plaintiff can occasionally twist, stoop, and climb stairs, and rarely crouch or squat or climb ladders (Tr. 418). Dr. Volentine found that Plaintiff could used his arms for reaching only 5% of the time during an eight-hour day (Tr. 418). Dr. Volentine found that Plaintiff will likely be absent from work as a result of his impairments or treatments more than four days a month (Tr. 418). Dr. Volentine also found that Plaintiff should avoid exposure to dust, fumes, gasses, and any other possible liver toxic hazards (Tr. 418).

D. Hearing Testimony

1. Plaintiff's Testimony

Plaintiff testified that he believes he is disabled because his diagnoses of Hepatitis C, diabetes, and arthritis (Tr. 452). Specifically, Plaintiff testified that the interaction between his diabetes and the side effects of his treatment for Hepatitis C are particularly

debilitating (Tr. 452). Plaintiff testified that his doctors had told him that in typical cases, Hepatitis C can be treated in one year (Tr. 479). Plaintiff testified, however, that due to his diabetes, a one-year treatment of Hepatitis would not be as successful for him as it would be in a typical case (Tr. 479-80). Plaintiff testified that the Hepatitis C treatment causes him weakness and unstable blood sugar levels (Tr. 478). As a result, Plaintiff testified, his diabetes worsens during Hepatitis C treatment (Tr. 478). Plaintiff testified that the aggravation of the diabetes causes doctors to take him off or lessen the Hepatitis C treatment in order to allow his body to handle the diabetes (Tr. 478). In regards to Hepatitis C treatment, Plaintiff testified that it makes him very tired (Tr. 460).

Plaintiff testified that he experiences pain in his lower back and in his joints (Tr. 463-64). He testified that the lower back pain is "paralyzing" if he is not taking painkillers (Tr. 463). Plaintiff testified that he has pain in his legs and that his feet go numb occasionally (Tr. 464). He testified that, due to breaking his left elbow and right knee, he has pain in both of those joints (Tr. 484, 467). Plaintiff testified that reaching both arms over his head would cause him pain because he has arthritis in his joints (Tr. 407). He testified that he has stabbing pains in his legs, stomach, neck, head, and arms (Tr. 484). Plaintiff also testified that he has pain in his neck caused by an injury he sustained in an automobile accident in July 2004 (Tr. 407).

Plaintiff testified to several physical limitations caused by his alleged disabilities. He testified that he could sit a chair for either 20 to 40 minutes or one hour to one and a half hours (Tr. 461). Plaintiff testified that he can stand and walk for 20 to 30 minutes without a rest (Tr. 461). He testified that he can lift 20 to 25 pounds with his right hand, but would need to rest after that exercise (Tr. 462). Plaintiff testified that he can bend over and pick up an item off the floor, but that it would be painful to him (Tr. 464-65). He testified that he can pick up a hammer as well as screws, nuts, and bolts (Tr. 465).

Plaintiff testified that he currently does not have a substance abuse problem and has not drank alcohol in the past four or five years (Tr. 456). He did not know his sobriety date (Tr. 456). Plaintiff testified that he has attended meetings of Alcoholics Anonymous in the past (Tr. 456). He testified that he currently cannot drive due to losing his license for a drunk driving charge (Tr. 469). Plaintiff testified that he believes he was wrongly diagnosed with alcoholism and that his problems with alcohol instead stemmed from diabetic reactions to alcohol (Tr. 455).

Plaintiff testified that he suffers from depression (Tr. 476). He testified that he believes his depression was brought on by his various health problems (Tr. 478). Plaintiff testified that Dr. Benson at Jennie Edmundson Hospital treats him for the condition (Tr. 476). Plaintiff also testified that Dr. Benson gives him sample packages of medication to treat the depression (Tr. 485).

2. The Vocational Expert's Testimony

The vocational expert testified that Plaintiff's work activity 15 years prior to the alleged onset date and 15 years prior to the application date is automobile body repairer (Tr. 489). She testified that there are medium physical demands for the job and it is a skilled occupation (Tr. 489). She identified Plaintiff's transferable skills as "use of hand and power tools, working to specifications, use of math, measuring accurately, also record keeping" (Tr. 490).

The ALJ then posed three hypothetical questions to the vocational expert (Tr. 490-94). First, the ALJ told the vocational expert to assume that a hypothetical plaintiff has the ability fo perform a full range of light exertional activity with the following limitations: no prolonged standing or walking, no repetitive pushing or pulling, occasional stair climbing, no climbing of ladders, occasional repetitive bending, twisting or turning, no crawling, stooping, squatting, kneeling, no balancing, frequent use of the dominant upper extremity in a controlled environment, free of dust, smoke, and fumes (Tr. 490). Further,

with the ability to perform simple tasks, requiring one, two, three steps, with frequent contact with the public or coworkers and who was capable to make simple work-related decisions (Tr. 490). Next, the ALJ asked if there was any work in the national economy that the hypothetical Plaintiff could perform considering the above-listed limitations (Tr. 490).

In response, the vocational expert testified that the hypothetical plaintiff would not be able to perform his past work as an automobile body repairman and his transferable skills would not transfer to light jobs with such limitations (Tr. 490-91). The vocational expert testified that Plaintiff would be able to work at unskilled occupations in the sedentary and light range where he could change positions from sitting to standing (Tr. 491). The vocational expert gave the examples of a cashier and light assembler (Tr. 491). She testified that, in Iowa, Nebraska, Missouri, and Kansas, there were 40,000 and 14,000 of each job, respectively (Tr. 491). The vocational expert testified that the hypothetical plaintiff could also perform sedentary work, such as administrative support occupations, sedentary assemblers, and sedentary hand packagers (Tr. 491). The vocational expert testified that there were 2,000, 6,000, and 700 of each job, respectively (Tr. 491).

The second hypothetical question that the ALJ asked the vocational expert was whether there would be any jobs available, in a significant number, in the national economy for a hypothetical plaintiff subject to the same vocational profile as the plaintiff and with the following residual functional capacity: The ability to perform a full range of sedentary work, with the limitations of a sit/stand option, no prolonged walking or standing, no repetitive pushing or pulling, no ability to climb stairs or ladders, occasional repetitive bending, twisting, or turning, no crawling, stooping, squatting or kneeling, no balancing, and the occasional use of non-dominant upper extremity in a controlled environment free of dust, smoke, and fumes, the ability to perform simple tasks requiring one, two, and three steps, and occasional contact with public or coworkers (Tr. 492). The

vocational expert testified that the hypothetical plaintiff would be able to perform the jobs of sedentary assembler, administrative support in the sedentary range, and hand packager in sedentary range (Tr. 493).

The third hypothetical question that the ALJ asked the vocational expert was whether there would be any jobs available, in a significant number, in the national economy for a hypothetical plaintiff with the same vocational profile as the plaintiff and with the following residual functional capacity: A full range of sedentary exertional activity with the following limitations: Sit/stand option, no prolonged walking, standing, no repetitive bending, twisting, or turning, no crawling, stooping, squatting, or kneeling, no balancing, the occasional use of the dominant, upper extremity, the controlled environment free of dust, smoke, and fumes, the ability to perform simple tasks requiring one, two, and three steps, the inability to accept criticism from supervisors, and the need to take frequent rest breaks, at least three of 45 minutes each during a normal workday. (Tr. 494). The vocational expert testified that there would no jobs that the plaintiff could perform in the national economy (Tr. 494).

Lastly, the vocational expert testified that the Plaintiff would not be able to perform any work if he sleeps 16 hours a day, is unable to use his elbows, wrists, and hands, and experiences respiratory problems (Tr. 495).

III. CONCLUSIONS OF LAW

A. Scope of Review

In order for the court to affirm the ALJ's findings of fact, those findings must be supported by substantial evidence appearing in the record as a whole. See Lochner v. Sullivan, 968 F.2d 725, 727 (8th Cir. 1992); Cruse v. Bowen, 867 F.2d 1183, 1184 (8th Cir. 1989). Substantial evidence is more than a mere scintilla. It means relevant evidence a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1997); Cruse, 867 F.2d at 1184; Taylor v. Bowen, 805 F.2d

329, 331 (8th Cir. 1986). The court must take into account evidence that fairly detracts from the ALJ's findings. Cruse, 867 F.2d at 1184; Hall v. Bowen, 830 F.2d 906, 911 (8th Cir. 1987). Substantial evidence requires "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Cruse, 867 F.2d at 1184 (quoting Consolo v. Fed. Mar. Comm'n, 383 U.S. 607, 620 (1966)). The court must consider the weight of the evidence appearing in the record and apply a balancing test to contradictory evidence. Gunnels v. Bowen, 867 F.2d 1121, 1124 (8th Cir. 1989); Gavin v. Heckler, 811 F.2d 1195, 1199 (8th Cir. 1987).

B. ALJ's Determination of Disability

Determining whether a claimant is disabled involves a five-step evaluation. See 20 C.F.R. § 404.1520(a)–(f); Bowen v. Yuckert, 482 U.S. 137, 140 (1987).

The five steps are:

> (1) If the claimant is engaged in substantial gainful activity, disability benefits are denied.
>
> (2) If the claimant is not engaged in substantial gainful activity, her medical condition is evaluated to determine whether her impairment, or combination of impairments, is medically severe. If the impairment is not severe, benefits are denied.
>
> (3) If the impairment is severe, it is compared with the listed impairments the Secretary acknowledges as precluding substantial gainful activity. If the impairment is equivalent to one of the listed impairments, the claimant is disabled.
>
> (4) If there is no conclusive determination of severe impairment, then the Secretary determines whether the claimant is prevented from performing the work she performed in the past. If the claimant is able to perform her previous work, she is not disabled.

> (5) If the claimant cannot do her previous work, the Secretary must determine whether she is able to perform other work in the national economy given her age, education, and work experience.

Trenary v. Bowen, 898 F.2d 1361, 1364 n.3 (8th Cir. 1990) (citing Yuckert, 482 U.S. at 140–42); 20 C.F.R. § 404.1520(a)–(f).

"To establish a disability claim, the claimant bears the initial burden of proof to show that he is unable to perform his past relevant work." Frankl v. Shalala, 47 F.3d 935, 937 (8th Cir. 1995) (citing Reed v. Sullivan, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the physical residual functional capacity (RFC) to perform a significant number of other jobs in the national economy that are consistent with the claimant's impairments and vocational factors such as age, education and work experience. Id.

Under the first step of the analysis, the ALJ found that Plaintiff did not perform any substantial gainful activity during the time period between the alleged date of onset, May 30, 2001, and the date of the hearing, September 20, 2004 (Tr. 21-22). Under the second step, the ALJ found that Plaintiff has three severe impairments, including Hepatitis C, adjustment disorder with mixed anxiety, and alcoholism in early, partial remission (Tr. 22). Under the third step, the ALJ also found that none of these impairments is so severe as to meet or medically equal any of the listed impairments (Tr. 22). Under the fourth step, the ALJ found that Plaintiff is unable to perform any of his past relevant work (Tr. 26-27). Under the fifth step, the ALJ found that Plaintiff had the capacity to perform jobs that existed in significant numbers in the national economy during the requested period of disability (Tr. 27). Thus, the ALJ found that Plaintiff was not disabled at any time during the requested period of disability (Tr. 27). During the requested period of disability, the ALJ found that Plaintiff had the following residual functional capacity:

> Sedentary work as defined in the regulations with the following restrictions. All work should permit a sit/stand option and should avoid prolonged sitting or standing. Work should avoid repetitive pushing or pulling, more than occasional climbing stairs and no climbing ladders. Any such work should avoid more than occasional bending, twisting, or turning; avoid crawling stooping, squatting, balancing, or kneeling; avoid more than frequent use of the upper extremity or more than occasionally with the non dominant upper extremity. Permissible work environments should be controlled and free of dust, smoke, and fumes. In addition, the claimant retains the ability to perform work consisting of greater than simple task requiring 1,2,3 steps and contacting the public and coworkers occasionally. (Tr. 28).

The ALJ also found that Plaintiff had no transferable skills from any past relevant work (Tr. 28).

C. ALJ's Application of Drug and Alcohol Abuse Rules

The 1996 amendments to the Social Security Act addressed how claimant's drug or alcohol abuse affects his or her application for benefits. 42 U.S.C. § 423(d)(2)(C). If drug or alcohol abuse compromises a contributing factor material to the determination of disability, the claimant's application must be denied. 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. § 404,1535. Regulations have been promulgated that set forth the procedure the ALJ is to use to make these determinations:

> (1) The key factor we will examine in determining whether the drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.
>
> (2) In making this determinations, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

20 C.F.R. § 404.1535(b). Bruggemann v. Barnhart, 348 F.3d 689, 694 (8th Cir. 2003).

When drug or alcohol abuse is present in a claimant's application for benefits, the ALJ must first determine whether the claimant is disabled based on the all of the claimant's medical limitations, including those associated with drug or alcohol abuse. Bruggemann, 348 F.3d at 694 ("The ALJ must base this disability determination on substantial evidence of Bruggemann's medical limitations without deductions for the assumed effects of substance abuse disorders."). If the ALJ finds that the claimant is disabled under the first step, then the ALJ must next determine which limitations would remain if the claimant were to stop abusing drugs or alcohol. Bruggemann, 348 F.3d at 694-95 (citing Petit v. Apfel, 218 F.3d 901, 903 (8th Cir. 2000) and 20 C.F.R. § 404.1535(b)(2)). The ALJ should end his analysis after the first step if, after considering all of the claimant's medical limitations, including those associated with drug or alcohol abuse, the ALJ determines that the claimant is not disabled. Id. In such a situation, the ALJ need not determine whether drug or alcohol abuse is a contributing material factor to claimant's disability because the ALJ found claimant not to be disabled. Id.

In this case, after considering all of Plaintiff's medical limitations, including those caused by abuse of drugs or alcohol, the ALJ found Plaintiff to be not disabled (Tr. 27). According to Plaintiff, the ALJ misapplied the rules regarding drug or alcohol abuse when making this determination. Plaintiff contends that, while determining that Plaintiff was not disabled, the ALJ inappropriately found that "the claimant's more serious complaints of fatigue are primarily due to the effects of DA&A" (Pl. Brief, 9-10). Plaintiff argues that the ALJ might have found Plaintiff disabled had the ALJ correctly applied the drug and alcohol abuse rules. Thus, Plaintiff argues that this decision should be reversed and remanded.

This Court rejects Plaintiff's argument and finds that the ALJ correctly applied the drug and alcohol abuse rules to Plaintiff in this case. In the section entitled "Evaluating the Evidence," the ALJ proceeds through the five-step sequential inquiry to determine

whether or not Plaintiff is disabled (Tr. 21-27). Plaintiff is correct in his statement that the ALJ notes Plaintiff's alcohol abuse in this section. Plaintiff is incorrect, however, in his allegation that the ALJ improperly considered drug and alcohol abuse in this part of the analysis. Under Bruggemann, the ALJ cannot exclude the effects of drug or alcohol abuse while making the preliminary determination of whether or not the claimant is disabled. Bruggemann, 348 F.3d at 694. The ALJ in this case did not exclude the effects of Plaintiff's alcohol abuse from the initial disability determination.[2] After considering the

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[2]The ALJ mentions Plaintiff's alcohol abuse four times in the section "Evaluating the Evidence." First, the ALJ stated, "Moreover, the undersigned concludes the claimant's more serious complaints of fatigue are primarily due to the effects of DA&A, particularly since the record reflects that the claimant has continued drinking despite of his testimony to the contrary" (Tr. 24). In this instance, the ALJ merely notes his conclusion that Plaintiff's fatigue is caused by drug and alcohol abuse (Tr. 24). He does not indicate that he is disregarding such fatigue in his initial disability determination.

Second, the ALJ stated, "However, the undersigned finds that such a temper is not documented in the record other than when under the influence of DA&A. Since the claimant asserts that his DA&A is in remission, the undersigned is inclined to find that the claimant's temper is no more limiting than found below" (Tr. 24). The ALJ's finding that Plaintiff's temper is not limiting because Plaintiff is no longer using alcohol is consistent with his determination that Plaintiff has the impairment of alcoholism in early, partial remission.

Third, the ALJ stated that, "Of note, Dr. Volentine did not report any history of alcohol abuse, which is evidence by claimant's participation in a chemical dependency program and lack of motivation to seek follow-up care (citation omitted). Moreover, the record suggests that the claimant has a history of denying he has an alcohol problem, even when concurrent tests indicated the opposite (citation omitted)" (Tr. 24). This statement by the ALJ refers to his assessment of the credibility of Plaintiff and Dr. Volentine. The ALJ does not indicate that he is disregarding the effects of Plaintiff's alcohol abuse in the initial determination of disability.

Fourth, the ALJ states, " In evaluating Dr. Volentine's statement, the undersigned finds that the doctor did not take proper account of claimant's alcoholism in describing his limitations over the relevant period under consideration . . . Since it appears that Dr. Volentine relied excessively on claimant's subjective statements, the

(continued…)

sum of Plaintiff's medical limitations, without excluding those caused or exacerbated by alcohol, the ALJ determined that Plaintiff was not disabled. Consequentially, the analysis ended at that point. The ALJ was not required decide whether alcohol abuse was a material contributing factor to Plaintiff's disability because the ALJ found that the Plaintiff ***did not have*** a disability.

Under the Code of Federal Regulations and Bruggemann, an ALJ who is dealing a claimant that has drug and alcohol abuse issues in a benefits claim is first required, based on the sum of all of his or her impairments, to determine whether or not claimant is disabled. 20 C.F.R. § 404.1535(b). Bruggemann, 348 F.3d at 694. The ALJ in this case followed that prescribed process and determined that the Plaintiff was not disabled, thus properly ending the inquiry and eliminating the need for the ALJ to make further determinations regarding Plaintiff. This Court finds that the ALJ properly applied the rules for drug and alcohol abuse to Plaintiff in this case.

D. Treating Physician

"A treating physician's opinion should not ordinarily be disregarded and is entitled to substantial weight. A treating physician's opinion regarding an applicant's impairment will be granted controlling weight, provided the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record." Singh v. Apfel, 222F.3d 448, 452 (8th Cir. 2000) (citation omitted). The regulations require the ALJ to give reasons for giving weight to or rejecting the statements of a treating physician. See 20 C.F.R. § 404.1527(d)(2).

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[2](…continued)
undersigned is inclined to give only partial weight to his opinion" (Tr. 24). Again, the ALJ is not disregarding the effects of Plaintiff's alcohol abuse in his determination of whether Plaintiff is disabled. Rather, the ALJ is using the objective medical evidence of Plaintiff's alcoholism and Dr. Volentine's handling of Plaintiff's alcoholism as grounds to question the credibility of Dr. Volentine.

Whether the ALJ gives great or small weight to the opinions of treating physicians, the ALJ must give good reasons for giving the opinions that weight. Holmstrom v. Massanari, 270 F.3d 715, 720 (8th Cir. 2001).

"The ALJ may discount or disregard such an opinion if other medical assessments are supported by superior medical evidence, or if the treating physician has offered inconsistent opinions." Hogan v. Apfel, 239 F.3d 958, 961 (8th Cir. 2001). Moreover, a treating physician's opinion does not deserve controlling weight when it is nothing more than a conclusory statement. Piepgras v. Chater, 76 F.3d 223, 236 (8th Cir. 1996). See also Thomas v. Sullivan, 928 F.2d 255, 259 (8th Cir. 1991) (holding that the weight given a treating physician's opinion is limited if the opinion consists only on conclusory statements).

Plaintiff argues that the ALJ erred by not giving controlling weight to the opinion of treating physician, Dr. Volentine, regarding the effects of Hepatitis C and corresponding treatment on Plaintiff. Specifically, Plaintiff argues that the ALJ should have given Dr. Volentine's opinions controlling weight because his opinions are supported by medically acceptable clinical and laboratory diagnostic techniques and his opinions meet the"not inconsistent" standard of Singh. Defendant argues that the ALJ properly accorded only partial weight to Dr. Volentine's opinion because his opinion was inconsistent with the treatment record, is based on Plaintiff's subjective complaints, and is not supported by medically acceptable clinical or diagnostic data.

"When one-time consultants dispute a treating physician's opinion, the ALJ must resolve the conflict between those opinions." Wagner v. Astrue, 2007 WL 2403743, 5 (C.A.8 (Iowa)) (quoting Cantrell v. Apfel, 231 F.3d 1104, 1107 (8th Cir. 2000)). In the present case, the ALJ found Dr. Volentine's RFC analysis to be based heavily on Plaintiff's subjective complaints and without sufficient support in the record (Tr. 25). That was a finding that the ALJ was able to make on this record.

The ALJ accorded Dr. Volentine's opinion less weight because he did not properly take into account Plaintiff's history of alcohol abuse in determining Plaintiff's limitations (Tr. 24). Specifically, the ALJ pointed to Dr. Volentine's failure to acknowledge that alcohol abuse caused the enlargement of Plaintiff's liver and his failure to recognize medical evidence that contradicted Plaintiff's allegations of long-term abstinence from alcohol (Tr. 24). Thus, the ALJ accorded only partial weight to Dr. Volentine's opinion and instead gave more weight to the opinions of Drs. Pratt and Glass (Tr. 24-25).

Plaintiff alleges in his brief that Dr. Volentine "had no reason to list alcoholism as a diagnosis" and that "the diagnosis of alcoholism is a mental illness and outside the Dr. Volentine's speciality." (Pl. Brief, 15). This court finds that Dr. Volentine did have a reason to list alcoholism as one of Plaintiff's diagnoses, as the form Dr. Volentine completed had a space entitled "Other diagnoses," in which Dr. Volentine wrote "Depression, diabetes" (Tr. 415). As to Plaintiff's second argument, Dr. Volentine apparently felt competent to comment on Plaintiff's mental health, although it is outside his speciality, as he included "depression" on his RFC analysis of Plaintiff (Tr. 415). This Court agrees that the absence of Plaintiff's alcohol abuse history in Dr. Volentine's reports is evidence that his opinion is based on the subjective complaints of Plaintiff.

The ALJ found that the record supports a conclusion that the Plaintiff has some employment limitations due to his impairments, but not as severe as those given by Dr. Volentine (Tr. 23). The ALJ discussed Plaintiff's hearing testimony, objective medical tests, and Dr. Volentine's analysis to determine the weight assigned to each of the treating and consulting physicians (Tr. 23). The ALJ found that Plaintiff's failure to request a refill of Tramadol, a muscle relaxer, did "not support a level of pain in the absence of medications that is very high or necessary precludes full time work" (Tr. 23). The ALJ found Plaintiff's testimony that he smokes two packs of cigarettes daily to be "inconsistent with the extent of the claimant's alleged breathing problems" (Tr. 23). Upon examining

Plaintiff's medical records regarding liver function associated with Hepatitis C, the ALJ found that the Hepatitis C might contribute to some fatigue, but such fatigue does not prevent Plaintiff from performing all types of work, as Dr. Volentine essentially reported in his RFC analysis (Tr. 23).

In determining Plaintiff's work limitations, the ALJ assigned more weight to Dr. Pratt's January 14, 2003, consultative examination report than Dr. Volentine's RFC analysis (Tr. 25). The report stated that Dr. Pratt observed Plaintiff get on and off the examination table without pain or restriction, observed Plaintiff displaying full strength during the examination, and observed Plaintiff's normal gait and station (Tr. 25). Dr. Pratt stated that Plaintiff had a normal range of motion in all joints, except the hips, knees, and elbow (on flexion) (Tr. 25). Dr. Pratt also stated that Plaintiff had some crepitus of the right knee, but that he observed Plaintiff do a full squat, bend at the waist, and touch his toes (Tr. 25). In his report, Dr. Pratt found no evidence for employment restrictions (Tr. 25).

In his decision, the ALJ accorded more weight to Dr. Glass's psychological evaluation of Plaintiff than Dr. Volentine's because Dr. Glass is a psychologist whereas Dr. Volentine is a gastroenterologist (Tr. 25). In his RFC assessment, Dr. Volentine stated that one of Plaintiff's disabilities was depression (Tr. 414, 416). Dr. Glass's report stated that Plaintiff was "somewhat successfully" moderating his mood disturbance with psychiatric treatment. The ALJ found Dr. Glass's assessment was inconsistent with the extreme limitations Plaintiff alleged were caused by depression (Tr. 25).

The Court finds that the ALJ properly considered those limitations that were supported by record evidence and gave reasons for the varying weight determinations given to each of the treating and examining physicians. Thus, this Court will not overturn the ALJ's decision to accord the opinion of Dr. Volentine less weight and the opinions of Drs. Pratt and Glass more weight.

Upon the foregoing,

IT IS ORDERED that the decision of the Commissioner of Social Security is hereby affirmed. This matter is dismissed. The Clerk of Court shall enter judgment accordingly.

DATED this 25th day of September, 2007.

JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA