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

FILED
DES MOINES, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

KRISTINE PETERSEN,	*	
	*	3-00-CV-90143
Plaintiff,	*	
	*	
v.	*	
	*	
KENNETH S. APFEL, Commissioner of Social Security,	*	
	*	ORDER
Defendant.	*	
	*	

Before the Court is Defendant's resisted Motion To Remand. In his brief in support of the Motion, the Commissioner states:

> After reviewing the above-captioned case, agency counsel requested that the Appeals Council reconsider the case, which it has agreed to do. Upon review, the Appeals Council concluded that remand should be requested in this case for the administrative law Judge (ALJ) to consider Plaintiff's Attention Deficit Hyperactivity Disorder (ADHD), as diagnosed by Frank S. Gersh, Ph.D. (Tr. at 206-09), and to determine what effect this has on Plaintiff's residual functional capacity. In addition, the ALJ should evaluate evidence from Plaintiff's treating physician, Pamela Kammen, M.D., regarding whether Plaintiff's meets Listing § 1.02. If the opinion of the treating physician is rejected, the ALJ must provide good reasons.

Having reviewed the record of this case in detail, the Court agrees with the Commissioner that a remand is the appropriate remedy. Regarding the ADHD, the Court notes that the ALJ did not find this to be a severe impairment. The severe impairments found by the ALJ are rheumatoid arthritis, chronic low back pain, and degenerative joint disease. Tr. at 24. Nevertheless, the vocational expert testified that if Plaintiff often has deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner, competitive work is not possi-

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ble. Tr. at 67-68. The restriction is based on the answer given by John F. Tedesco, Ph.D. when he completed a Psychiatric Review Technique Form on August 14, 1998. Tr. at 227. Dr. Tedesco found that the ADHD was a severe impairment which did not meet a listed impairment. Dr. Gersh wrote that objective assessment of sustained concentration revealed that Plaintiff performs at the 4th percentile on a test of attention capacity, and at low percentiles of other similar tests. Tr. at 208. Therefore, the ALJ should reevaluate whether or not the ADHD is a severe impairment and its effect on Plaintiff's residual functional capacity even if it does not meet the listings. In addition, on February 23, 1999, Dr. Kammen raised the possibility that depression may account for the fatigue that Plaintiff was experiencing. Tr. at 256. On remand, Plaintiff should be referred to a psychiatrist for an evaluation of a possible depressive disorder or other mental illness. Of course, Plaintiff's medical file should be made available to the psychiatrist.

The most serious of Plaintiff's impairments is the rheumatoid arthritis. It may very well be that during all or part of the alleged period of disability, Plaintiff has met section 1.02 of the listings. The answers to the interrogatories submitted to Dr. Kammen, however, are inadequate to establish a listing level impairment. Tr. at 282-83. In the first place, the handwritten answers are barely legible. In the second place, the doctor does not seem to directly answer the questions. For example, in response to the question regarding significant restriction, the doctor states that Plaintiff has significant pain in the ankles, but in the same sentence states that the primary limiting factor is fatigue. On remand, therefore, if Plaintiff's treating physician is unable or unwilling to provide the necessary evidence to establish whether or not Plaintiff meets a listed impairment, Plaintiff should be referred to rheumatologist for an examination and opinion.

This case, therefore, is hereby remanded to the Commissioner for further development

and a new decision consistent with this opinion.

The judgment to be entered will trigger the running of the time in which to file an application for attorney's fees under 28 U.S.C. § 2412 (d)(1)(B) (Equal Access to Justice Act). *See Shalala v. Schaefer*, 509 U.S. 292 (1993). *See also, McDannel v. Apfel*, 78 F.Supp.2d 944 (S.D. Iowa 1999), and LR 54.2(b).

IT IS SO ORDERED.

Dated this 7th day of February, 2001.

ROBERT W. PRATT
U.S. DISTRICT JUDGE