

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANTHONY A. FOOKS,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security

Defendant.

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Civil Action No. 02-260-KAJ

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**MEMORANDUM OPINION**

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Gary C. Linarducci, Esquire, 92 Read's Way, Suite 102, New Castle, Delaware 19720;  
Counsel for Plaintiff.

Colm F. Connolly, United States Attorney; Judith M. Kinney, Assistant United States  
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April 21, 2004  
Wilmington, Delaware

## **JORDAN, District Judge**

### **I. INTRODUCTION**

Before me is a motion for summary judgment (Docket Item “D.I.” 10; the “Motion”) filed by plaintiff Anthony Fooks (“Fooks”), and a cross-motion for summary judgment (D.I. 12; the “Cross-Motion”) filed by the defendant, the Commissioner of Social Security (“Commissioner”). Fooks brings this action under 42 U.S.C. 405(g) and 42 U.S.C. § 1383(c)(3), seeking review of the Commissioner’s decision denying him disability insurance benefits under Title II of the Social Security Act (“the Act”), 42 U.S.C. §§ 401-433, and Supplemental Security Income (SSI) pursuant to Title XVI of the Act, 42 U.S.C. §§ 1381-1383f. (D.I. 13 at 1.) The court has jurisdiction to review the Commissioner’s decision under 42 U.S.C. § 405(g) of the Act.

For the reasons that follow, Fooks’ Motion (D.I. 10) will be denied, the Commissioner’s Cross-Motion will be denied (D.I. 12), and the case will be remanded for further proceedings consistent with this Opinion.

### **II. BACKGROUND**

#### **A. Procedural History**

On April 17, 1998, Fooks filed claims for Social Security Disability Insurance benefits and SSI benefits, alleging that he was disabled since September 1, 1996. (D.I. 4 at 68; D.I. 11 at 4.) The Social Security Administration (“SSA”) denied his claim originally and upon reconsideration. (D.I. 4 at 40, 42, 249-50.) Fooks then requested a hearing before an Administrative Law Judge (“ALJ”) and a hearing followed on March 8, 2000. (D.I. 4 at 25.) The ALJ found that Fooks did not qualify for disability or SSI

benefits. (D.I. 4 at 15-20.) Fooks appealed the ALJ's decision to the Appeals Council (the "Council"), but on February 7, 2002, the Council denied review. (D.I. 4 at 2-3.) Therefore, the March 8, 2000 decision of the ALJ became the final decision of the Commissioner. See 20 C.F.R. §§ 404.955, 404.981, 422.210. Fooks now seeks review by this court under 42 U.S.C. § 405(g). (D.I. 1.)

B. Facts

Fooks was forty years old at the time of the hearing. (D.I. 4 at 27.) He has a tenth grade education and claims that he is illiterate. (D.I. 4 at 28, 31.) Fooks' prior work experience includes working as a laborer at a poultry processing plant, a food processing plant, and a carwash. (D.I. 4 at 94-97.) Mr. Fooks lists his mother's address as his home, but from 1998 to 2000, he seemed to alternate between living with his girlfriend and living in his car. (D.I. 4 at 35, 93, 104, 113, 122, 125, 184, 186 ; D.I. 11 at 5.) Fooks alleges that he became unable to work on September 1, 1996 due to back pain, chest pain, and memory loss. (D.I. 4 at 15.)

1. Medical Evidence

On August 11, 1997, Fooks went to the Bayhealth Medical Center at Memorial Hospital Emergency Room for lower back pain. (D.I. 4 at 128.) The emergency room physician, Elsburgh O. Clarke, Jr., M.D., diagnosed Fooks as having acute lumbo-sacral strain, prescribed medication, and referred Fooks to Dr. Charles Wagner, M.D., a family practice physician at Milton Family Practice, for follow up. *Id.* On August 15, 1997, Fooks visited Dr. Wagner with complaints of neck and lower back pain. (D.I. 4 at 199.) Fooks described the pain as feeling like lightning going up the back of his neck and head. *Id.* Dr. Wagner noted that Fooks seemed to have full of range of motion in his

neck when he was talking, but when touched, he “is jumping all over the table.” *Id.* Dr. Wagner stated that “[a]s long as he’s not thinking about it, [he] has no discomfort.” *Id.* Dr. Wagner then explained that Fooks was “obviously having [a] major episode of myositis.” *Id.* Dr. Wagner found that the medication prescribed by the hospital was inappropriate and instructed Fooks to discontinue its use. *Id.* He then diagnosed Fooks with Lyme disease, prescribed Effexor for the depression associated with Lyme disease, and ordered x-rays of the lumbar and cervical spine. (D.I. 4 at 199; D.I. 11 at 7.)

On September 3, 1997, Fooks returned to Milton Family Practice and was examined by Dr. Robert M. Wilson, D.O. for his back pain. Fooks complained that the pain was concentrated more on his left side. (D.I. 4 at 198.) Dr. Wilson diagnosed him with lumbar strain and prescribed 600 milligrams of Daypro and lower back exercises. *Id.* Fooks returned to Dr. Wilson on September 9, 1997 and stated that there was no substantial improvement in the back pain. (D.I. 4 at 196.) Dr. Wilson noted that Fooks had a limited range of motion with forward and backward bending, positive muscle spasms at L3-L5 on the right, and DT reflexes of +2/4. (*Id.*) Dr. Wilson prescribed Flexeril for the muscle spasms, Daypro and moist heat for the pain, and lower back exercises. (*Id.*) On September 22, 1997, an x-ray examination showed bilateral spondylolysis at L5.

On December 15, 1997, Dr. Wilson completed a form for the State of Delaware Division of Social Services and indicated that although Fooks could not return to his usual occupation for three months due to injury, he could participate in classroom training or perform other work on a full-time basis. (*Id.* at 186.) On December 31, 1997,

the results of an MRI of the lumbar spine showed “mild desiccation of the L3-L4 disc space,” however, no disc herniation, disc bulge, or spinal stenosis existed. (*Id.* at 185.)

Fooks told Dr. Wilson on January 1, 1998 that he felt better on the anti-inflammatory medication, but that he still experiences pain across his lumbar spine. (*Id.* at 184.) Upon physical examination, Dr. Wilson found that Fooks was experiencing muscle spasms at the right L3-5, had DT reflexes of +2/4, and had full range of motion in his lumbar spine. He prescribed Daypro, use of moist heat, and physical therapy with hot packs and ultrasounds three times per week. (*Id.*) On February 13, 1998, Fooks told Dr. Wilson that physical therapy was not helping his lower back, and that his back was still “quite stiff and painful[,] esp[ecially] when he does any sitting or standing [for] prolonged periods of time.” (*Id.* at 182.) Dr. Wilson noted that Fooks had limited range of motion in forward/backward bending, muscle spasms at right L3-L5, and tenderness due to muscle spasm palpation. (*Id.* at 182.) He recommended physical therapy three times per week with the use of ultrasounds, stretching, strengthening, and hot packs, continued use of his treatment regime, and an evaluation by Dr. Edward F. Quinn, III, M.D., an orthopedist. (*Id.*)

Fooks visited Dr. Quinn twice in March of 1998 for lower back pain. (*Id.* at 134-36.) On March 3, 1998, Fooks told Dr. Quinn that walking and prolonged sitting increased his back pain and that prolonged sitting caused numbness in his left foot. (*Id.*) Dr. Quinn concluded that Fooks’ stance, gait, and balance were normal, there was “no paravertebral muscle spasm or atrophy,” there was “no unusual paravertebral muscle tone or list,” deep tendon reflexes were absent throughout, and that Fooks was able to “toe and heel walk.” (*Id.*) However, Dr. Quinn also found that palpation

tenderness existed at the mid lumbar region and there was “moderate to marked decreased range of motion of the lumbar spine.” (*Id.*) In reviewing Fooks’ December 31, 1997 MRI, Dr. Quinn found “degenerative disc disease of the lumbar spine,” and “spondylosis of the lumbar spine.” (*Id.*) Dr. Quinn prescribed Relafen, Flexeril, and physical therapy and administered trigger point injections in Fooks’ left and right SI joints. (*Id.* at 136.) At the beginning of his notes for the March 3, 1998 office visit, Dr. Quinn indicated that Fooks was working, however, at the end of these same notes, Dr. Quinn wrote that Fooks does not work. (*Id.*) Dr. Quinn also noted Day Pro, Advil, Flexeril, Relafen, Zantac, Parafon, and home exercises as the medications and procedures he prescribed for Fooks’ injury. (*Id.* at 180.)

On March 17, 1998, Fooks returned to Dr. Quinn’s office, where Dr. Quinn noted that Fooks was being seen for “localized back pain with no numbness or tingling.” (*Id.* at 134.) Dr. Quinn also noted that Fooks had no relief with the trigger point injections, experienced minimal relief with the Relafen and Flexeril, and had not attended the physical therapy sessions yet. (*Id.*) Fooks reported that the pain increased with activity, but remained present with prolonged sitting and standing. (*Id.*) The physical examination revealed that Fooks’ stance, gait, and balance were normal, there was “no paravertebral muscle spasm or atrophy,” there was “no unusual paravertebral muscle tone or list,” and deep tendon reflexes were “2+” throughout. (*Id.*) However, Dr. Quinn also found that palpation tenderness existed at the mid lumbar region and there was “mild decreased range of motion of the lumbar spine.” (*Id.*) Dr. Quinn concluded that there existed “degenerative disc disease of the lumbar spine” and “spondylosis of the lumbar spine.” (*Id.*) Fooks rejected receiving a trigger point injection. (*Id.*) Dr. Quinn

prescribed Parafon Forte and physical therapy, gave Fooks a manual for the lumbar spine, and placed Fooks on light duty work with back precautions.” (*Id.*) Dr. Quinn indicated that Fooks could perform light duty work with back precautions. (*See Id.* at 180.)

On June 10, 1998, Fooks returned to Milton Family Practice and was evaluated by Dr. Denina Helm, M.D. (D.I. 4 at 177.) He complained of pain in his right leg and pain in the right side of his head. (*Id.*) Dr. Helm diagnosed Fooks with low back pain and muscle spasms. (*Id.*)

On July 2, 1998, Fooks returned to Dr. Wilson for chest pain and right arm numbness. (*Id.* at 173.) Dr. Wilson noted that Fooks had limited range of motion with forward and backward bending and muscle spasms on the left side on L1-L5, and he prescribed Daypro and Parafon-Forte for the back pain. (*Id.*)

On July 10, 1998, state agency physician Vinoid Ketero, M.D. completed on Fooks a “Physical Residual Functional Capacity Assessment.” (*Id.* at 137-144.) Dr. Ketero determined that Fooks could occasionally lift and/or carry twenty pounds and frequently lift and/or carry twenty-five pounds, stand and/or walk and sit six hours in an eight-hour workday, and push and/or pull in an unlimited capacity. (*Id.* at 138.) Also, he determined that Fooks was occasionally limited in climbing, balancing, stooping, kneeling, crouching, and crawling. Dr. Ketero gave no substantial reason for his determinations, except to indicate that Fooks suffered from back pain. (*Id.* at 137-44.)

On July 10, 1998, Fooks also underwent two psychological evaluations. Joseph B. Keyes, Ph. D. conducted a psychological evaluation at the Delaware Disability Determination Service. (*Id.* at 146-49.) Dr. Keyes concluded that Fooks’ cognitive

functioning was in the borderline intellectual functioning range (*id.* at 148), and his working memory was in the extremely low range (*id.* at 149). Also, he was found to be capable of adequate interaction in individual and group situations. (*id.*) A state agency physician (“physician”) conducted a “Mental Residual Functional Capacity Assessment” on the same day (*id.* at 150-162) and concluded that Fooks suffered from Mental Retardation and Autism (*id.* at 154). In assessing Fooks, the physician found that he was markedly limited in his ability to understand and remember detailed instructions and ability to carry out detailed instructions. (*id.* at 150.) He found that Fooks was moderately limited in ability to maintain attention and concentration for extended periods, ability to respond appropriately to work challenges, ability to travel to unfamiliar locations, and ability to set goals and make independent plans. (*id.* at 150-51.) However, the physician found that there were no emotional difficulties that affected Fooks’ ability to care for himself or maintain employment. (*id.* at 155.)

On August 13, 1998, Fooks visited Dr. Wilson for back pain, and he was found to have full range of motion with side bending and rotation on the right and left side, limited range of motion with forward bending and backward bending, and a muscle spasm at right L3-5. (*id.* at 172.) Dr. Wilson also wrote a letter to Laurel Service Center on August 13, 1998. (*id.* at 202.) In the letter, he explained that Fooks had been responding well to the anti-inflammatory medication before a change in medications was required because of Fooks’ gastroesophageal reflux disease symptoms. (*id.*) He further stated that Fooks would benefit from continued use of anti-inflammatory medication and low back exercises. (*id.*)

On August 27, 1998, Fooks returned to Dr. Wilson's office because he aggravated his back while working. (*Id.* at 171.) Dr. Wilson noted that Fooks had a limited range of motion with forward and backward bending and muscle spasms at right L1-L5. (*Id.*) Dr. Wilson prescribed Vicoprofen and moist heat for the pain. (*Id.*)

In October, Fooks told Dr. Wilson that the anti-inflammatory medication was not helping his back, and Dr. Wilson changed his medication to Flexeril. (*Id.* at 164.) Fooks' physical examination revealed limited range of motion with forward bending, backward bending, side bearing and rotation to the left and right and pelvic muscle spasms on the right and left side from T12-L3. (*Id.* at 164.) Dr. Wilson also wrote to Laurel Service Center to inform them that Fooks was under his care for lumbar disc disease and would be out of work for at least six months. (*Id.* at 165, 202.)

In January of 1999, state agency physicians examined Fooks' physical and mental capacity. (*Id.* at 203-10.) The Physical Residual Functional Capacity Assessment revealed that Fooks could lift twenty pounds occasionally and ten pounds frequently, stand, walk or sit six hours in an eight-hour workday, and push or pull in an unlimited capacity. (*Id.* at 204.) Also, the evaluation revealed that Fooks was frequently limited in balancing and occasionally limited in climbing, stooping, kneeling, crouching, and crawling. (*Id.* at 205.) His environmental limitations included avoiding concentrated exposure to extreme heat, wetness, humidity, fumes, odors, gases, and poor ventilation and avoiding even moderate exposure to extreme cold and hazards like machinery and heights. (*Id.* at 207.) The state agency physician ("physician") noted that while Fooks had reduced flexion and extension, his reflexes and strength were normal. The physician suggested that Fooks could perform light work. (*Id.* at 210.) The Mental

Residual Functional Capacity Assessment revealed that Fooks was moderately limited in his ability to understand, remember, and carry out detailed instructions, ability to concentrate for extended periods, ability to perform activities within a schedule, ability to work in close proximity with others without being distracted, ability to complete a normal workday and week without interruption from psychologically based symptoms, ability to get along with others, and ability to adapt to changes. (*Id.* at 220-21.)

On July 15, 1999, Dr. Wilson diagnosed Fooks with Lumbar HNP and ordered him to continue taking Vicoprofen. (*Id.* at 239.) On December 2, 1999, Fooks returned to Dr. Wilson's office with reports that the Celebrex really helped ease his back pain. (*Id.* at 237.) Dr. Wilson prescribed continued use of the Celebrex and moist heat. (*Id.*) Fooks returned to Dr. Wilson for a follow up regarding the low back pain, and Dr. Wilson found limited range of motion in forward and back bending, side bending, and right and left rotation. (*Id.* at 236.) Also, Dr. Wilson noted "pos muscle spasm on [left] L1-5." (*Id.*) Dr. Wilson injected Fooks' lumbar areas with Celestone and Lidocaine and diagnosed him with Lumbar strain/sprain, osteo-arthritis, and herniated nucleus polposus. (*Id.*)

On February 20, 2000, Dr. Wilson completed a Physical Work Related Limitations Form ("Work Related Form"). (*Id.* at 225-34.) On the form, Dr. Wilson indicated that Fooks was "[t]otally disabled from any work activity" (*Id.* at 229), and met Listings 1.02, 1.04, and 1.05 of the Social Security Listing of Impairments (*Id.* at 234). Dr. Wilson opined that Fooks could only lift or carry five pounds because of his lumbar strain and herniated nucleus polposus. (*Id.* at 225.) Also, Dr. Wilson noted that Fooks could only sit, stand, or walk one hour without interruption, and three hours total, in an

eight-hour workday. (*Id.* at 226.) In evaluating Fooks' postural limitations, Dr. Wilson opined that Fooks could only occasionally<sup>1</sup> climb, stoop, crouch, kneel, crawl, and push or pull. (*Id.*) Finally, Dr. Wilson wrote that Fooks was restricted in moving machinery, working in temperature extremes, humidity, and near vibrations. Dr. Wilson also completed a form identifying Fooks' mental limitations. (*Id.* at 230-33.) He indicated that Fooks met Listings 12.04 and 12.06 of the Social Security Listing of Impairments (*Id.* at 233) because of his poor ability to function independently and to deal with work stresses and his only fair ability to follow work rules, deal with the public, maintain concentration, carry out complex and detailed job instructions, behave in an emotionally stable manner, relate predictably in social situations, and demonstrate reliability. (*Id.* 230-31.) Fooks' chronic depression was listed as the reason for his limitations (*Id.* at 230-32).

## 2. Vocational Expert's Testimony

On March 8, 2000, Joseph Rose, a vocational counselor, testified on the skill and exertional level of Fooks' past work and on whether Fooks would be able to work in the future. (D.I. 4 at 37-39.) Rose asserted that Fooks' past work was medium to heavy unskilled labor. (*Id.* at 38.) Rose stated that if the ALJ found Fooks' testimony to be totally credible, no jobs existed that Fooks could perform. (*Id.*) However, Rose opined that if the ALJ found that Fooks could perform light work with simple verbal instructions

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<sup>1</sup>The evaluation form used by Dr. Wilson defined "occasionally" as "from very little to 1/3 of an 8 hour day." (D.I. 4at 226.)

and no reading, then Fooks could work as a hand packer and assembler. (*Id.* At 18, 38.)<sup>2</sup>

C. The ALJ's Decision

To determine whether a claimant is entitled to disability benefits, an ALJ applies a “sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520[ ]”. *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000); see 20 C.F.R. § 404.1520; *Brewster v. Heckel*, 786 F.2d 581, 583 (3d Cir. 1986). Under that inquiry:

[T]he [ALJ] determines first whether an individual is currently engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, [she] will be found not disabled regardless of the medical findings. If an individual is found not to be engaged in substantial gainful activity, the [ALJ] will determine whether the medical evidence indicates that the claimant suffers from a severe impairment. If the [ALJ] determines that the claimant suffers from a severe impairment, the [ALJ] will next determine whether the impairment meets or equals the list of impairments in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. If the individual meets or equals the list of impairments, the claimant will be found disabled. If [she] does not, the [ALJ] must determine if the individual is capable of performing [her] past relevant work considering [her] severe impairment. If the [ALJ] determines that the individual is not capable of performing [her] past relevant work, then [the ALJ] must determine whether , considering the claimant's age, education, past work experience and residual functional capacity, [she] is capable of performing other work which exists in the national economy.

*Brewster*, 786 F.2d at 583-584 (internal citations omitted); see *Plummer v. Apfel*, 186 F.3d 422, 428-29 (3d Cir. 1999).

In this case, after applying the five-step evaluation, the ALJ determined that Fooks was not disabled within the meaning of the Act and its regulations. (D.I. 4 at 18.)

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<sup>2</sup>The transcript of the hearing indicates there were two jobs referenced by Mr. Rose, but the job title or description of the second job cannot be discerned from the transcript. (See *id.* at 38-39.) The second job is noted, however, in the ALJ's opinion. (*Id.* at 18.)

The ALJ first found that Fooks was not working and was not engaged in substantial gainful activity. (D.I. 4 at 15.) Next, the ALJ concluded that Fooks suffered from severe medically determinable impairments consisting of degenerative disc disease of the lumbar spine, spondylolysis at L5, and borderline intellectual functioning. (D.I. 4 at 16.) However, the ALJ found that these severe impairments did not meet or equal the criteria established for impairments in Appendix 1, Subpart P, Regulations No. 4 of the Code of Regulations. (*Id.*) The ALJ then determined that Fooks had a residual functional capacity to perform light work. (D.I. 4 at 16.) However, because Fooks' previous work experience as a laborer was "unskilled and medium to heavy in exertion," the ALJ determined that he was not able to perform his past relevant work. (D.I. 4 at 18.) Therefore, the ALJ had to determine, given Fooks' vocational profile (age, education, work experience and residual functional capacity), whether there are a significant number of jobs existing in the regional or national economy that she could perform. (*Id.*); see *Morales*, 225 F.3d at 316. To help make this determination, the ALJ solicited the testimony of a certified vocational expert. (*Id.*) At the March 8, 2000 hearing, vocational expert Joseph Rose testified that, given Fooks' vocational profile, he could work as a hand packer and assembler. (*Id.*) The ALJ, in reliance on the vocational expert's testimony, concluded that there are jobs in the national economy that Fooks could perform, and therefore, found Fooks not disabled under the Act and its regulations. (*Id.*)

### III. STANDARD OF REVIEW

A court applies plenary review to the Commissioner's application of law. *Markle v. Barnhart*, 324 F.3d 182, 187 (3d Cir. 2003). The Commissioner's findings of fact,

however, are reviewed to determine “whether there is substantial evidence to support such findings.” (*Id.*) A Court is required to review the entire record when making those determinations. *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003).

Substantial evidence is defined as “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). If the Commissioner’s decision is supported by substantial evidence, then a Court is bound by those factual findings. *Plummer*, 186 F.3d at 427.

#### IV. DISCUSSION

Fooks submits that the ALJ failed to provide good cause for rejecting the treating physician’s opinion and failed to give his treating physician’s opinion controlling weight. (D.I. 11 at 13-14.) Specifically, Fooks argues that the ALJ erred in rejecting and not giving weight to Dr. Wilson’s, the treating physician, medical opinion expressed in the Physical Work Related Limitations Form completed on February 20, 2000 . (*Id.* at 14; *See also* D.I. 4 at 225-34.)

The ALJ stated in his opinion that he would give no weight to Dr. Wilson’s findings as to whether Fooks met the impairments in Listings 12.04, 12.06, 1.04 and 1.05 because this opinion was unsupported by Dr. Wilson’s March 1998 opinion that Fooks could return to light duty work. (D.I. 4 at 16-17.) However, it appears that the ALJ was mistaken in believing that Dr. Wilson opined in March 1998 that Fooks could return to light duty work. The record does not appear to support the conclusion that Dr. Wilson opined that Fooks could perform work. Furthermore, the record does not

indicate that Fooks even visited Dr. Wilson in March of 1998. However, a close evaluation of the record does show that the March 1998 opinion referred to by the ALJ was given by Dr. Quinn, a physician who examined Fooks twice upon Dr. Wilson's referral.

According to the record, Dr. Quinn examined Fooks twice in March of 1998. (D.I. 4 at 134-36.) In Dr. Quinn's notes for the March 17, 1998 visit, Dr. Quinn released Fooks to light duty work. At the end of each visit's notes, Dr. Quinn wrote, "This is not the entire record of the office visit - consult flow sheet." (*Id.* at 134, 136.) Included in the record, albeit at a point in the compilation apart from Dr. Quinn's office notes, is an unlabelled flow sheet which lists Dr. Wilson as the "[r]eferring MD," and has two columns dated "3/3/98" and 3/17/98." (*Id.* at 180.) It seems unlikely that Dr. Wilson's notes would indicate that he himself was his own referring physician. Furthermore, none of Dr. Wilson's notes refer to a flow sheet. Finally, Fooks visited Dr. Quinn on March 3, 1998 and March 17, 1998, and the information documented on the flow sheet corresponds with Dr. Quinn's notes of both visits.

A treating physician's opinions and assessments are generally given more weight than a non-treating physician's. See C.F.R. § 416.927(d)(2). However, in order for the ALJ to give the treating physician's opinion controlling weight, the opinion must be "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and not be "inconsistent with the other substantial evidence" in the case record. (*Id.*) According to the regulations, the more evidence that is given to support an opinion, particularly medical signs and laboratory findings, the more weight the opinion will be given. C.F.R. § 416.927(d)(3). The more consistent the opinion is with the record, the

more weight it will be given by the ALJ. C.F.R. § 416.927(d)(4). Opinions of specialists related to their area of speciality are given more weight than the opinions of physicians who are not specialists. C.F.R. § 416.927(d)(5). Furthermore, the regulations state that “[a] statement by a medical source that you are “disabled” or “unable to work” does not mean that we will determine that you are disabled.” C.F.R. § 416.927(e)(1).

In this case, the ALJ gave no weight to Dr. Wilson’s opinion expressed in the Work Related Form. This is evidenced not only by the ALJ’s express statement that he gave no weight to it due to what he perceived as a discrepancy, but also by his conclusions regarding Fooks’ physical capacity, which are contrary to Dr. Wilson’s findings and adopt the conclusions given by the non-treating, non-examining state agency physicians. (D.I. 4 at 17.) Because the evaluations of Fooks’ physical capabilities largely determine the ALJ’s conclusion as to Fooks’ residual functional capacity to perform work, failure to give any weight to Dr. Wilson’s opinion could result in an improper functional capacity assessment.

In this case, it appears that the ALJ may have failed to properly consider and evaluate medical evidence in the record because of the appearance of Dr. Quinn’s “flow sheet” in an incongruous spot in the record. Because this court “has no fact-finding role in reviewing social security disability cases,” remand of this case is warranted so that the ALJ can review the record and again assess the weight that should be given to Dr. Wilson’s medical opinion. See *Grant v. Shalala*, 898 F.2d 1332, 1338 (3d Cir. 1983) quoting *Hummel v. Heckler*, 736 F.2d 91, 93 (3d Cir. 1984) (“[T]he district courts have no fact-finding role in Social Security cases”). While Dr. Wilson’s assessments may not be determinative in establishing that Fooks is disabled, further consideration and

evaluation of the evidence by the ALJ is appropriate, in light of what may be a mistaken belief that Dr. Quinn's conclusion was Dr. Wilson's.

#### IV. CONCLUSION

For the reasons stated, I will deny Fooks' Motion (D.I. 10) and the Commissioner's Cross-Motion (D.I. 12), and remand this case to the ALJ for additional proceedings consistent with this opinion. An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANTHONY A. FOOKS, )  
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 Plaintiff, )  
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 v. ) Civil Action No. 02-260-KAJ  
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 JO ANNE B. BARNHART, )  
 Commissioner of Social Security )  
 )  
 Defendant. )

ORDER

For the reasons set forth in the Court's Memorandum Opinion of today's date in this matter,

IT IS ORDERED that Plaintiff's Motion (D.I. 10) is DENIED without prejudice, and the Defendant's Cross-Motion (D.I. 12) is DENIED without prejudice.

IT IS FURTHER ORDERED that the decision of the Defendant denying Plaintiff disability insurance benefits is VACATED and REMANDED to the Defendant for further evaluation of Plaintiff's disability claim consistent with the Memorandum Opinion issued in this case today.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

April 21, 2004  
Wilmington, Delaware