IN THE UNITED STATES COURT
FOR THE DISTRICT OF DELAWARE

SHIRLEY A. SNYDER, Plaintiff, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	)	Civil Action No.: 03-321 GMS

MEMORANDUM

I. INTRODUCTION

This case arises out of the denial of Shirley Snyder's claim for Social Security disability benefits. On August 9, 2001, a hearing to determine whether Snyder is entitled to disability benefits was held before administrative law judge John W. Taggert ("ALJ Taggert"). On November 19, 2001, he issued a written opinion in which he ruled that Snyder is not disabled within the meaning of the Social Security Act. (D.I. 4 at 16-23.) The Appeals Council subsequently denied Snyder's request for review. (Id. at 5-6.) Snyder then filed an appeal to this court on March 25, 2003. (D.I. 1.) Presently before the court are Snyder's motion for summary judgment (D.I. 8), and the defendant Commissioner's cross motion for summary judgment (D.I. 10). For the following reasons, the court will vacate the decision of ALJ Taggert and remand the case for further proceedings consistent with this opinion.

II. BACKGROUND

Snyder was born on August 21, 1954 and has a high school education. (D.I. 4 at 69.) From 1975 to 1992 she was employed as an office supervisor, and from October 1994 to October 1999

she was employed as a customer service representative. (Id. at 80.) On January 7, 1999, Snyder underwent surgery on her right hand for carpal tunnel syndrome. (Id. at 133.) Four days later, she had a hysterectomy. (Id.) There were no complications, and she was discharged on January 14, 1999. (Id. at 138.)

A. Medical Evidence

Snyder claims she has been disabled since her surgeries. (Id. at 234.) She claims a swollen right-hand joint that has been stiff since the carpal tunnel operation. Snyder also claims to have reflex sympathetic dystrophy syndrome ("RSDS") (id. at 17), a condition that causes excruciating and burning pain in the hand.

On February 9, 1999, Snyder was examined by an occupational therapist after complaining of pain in her right shoulder and numbness in her right hand. (Id. at 148.) She was found to have edematous and stiff upper extremities. (Id. at 149.) On July 20, 1999, Snyder was examined by Dr. Bruce Lutz. (Id. at 156.) Although some of her symptoms were consistent with RSDS, he could not conclusively state that Snyder suffered from the syndrome. (Id.) Snyder was then evaluated by Dr. Kenneth Wolfe on October 25, 1999. (Id. at 171.) His examination revealed swollen joints, chronic right arm problems and a general decrease in strength, but it did not reveal any physical symptoms of RSDS. (Id. at 171.) In fact, on November 29, 1999, Dr. Wolfe found that Snyder's right shoulder and range of motion had improved with an injection of cortisone and physical therapy. (Id. at 170.) Then, on January 24, 2000, Dr. Wolfe found further improvement in Snyder's joint pain, swelling, and stiffness. (Id. at 168.) Once again, on May 15, 2000, Dr. Wolfe failed to find any physical symptoms of RSDS. (Id. at 165.)

On June 22, 2000, Dr. Wolfe completed an assessment of Snyder's ability to do work. (Id.

at 163.) He noted that her ability to lift, carry, stand, walk, and sit were all limited by her impairments. (Id.) Nevertheless, Dr. Wolfe's assessment was that Snyder could lift less than ten pounds, stand or walk for four hours per day, and sit for six hours per day. (Id.) Her condition improved even more by August 31, 2000, when Dr. Wolfe completed another assessment and found Snyder capable of lifting twenty pounds occasionally, lifting ten pounds frequently, and standing or walking for six hours per day. (Id. at 190.) Dr. K.T. Mohan also completed an assessment of Snyder's ability to do work in July 2001, and similarly concluded that Snyder was capable of lifting twenty pounds occasionally, sitting for four hours per day, and standing or walking for two hours per day. (Id. at 205.) But in spite of these improvements, Dr. Lourdes Aponte saw Snyder in April 2001 and diagnosed her with fibromyalgia, chronic right-hand pain, and RSDS. (Id. at 204.)[1]

B. Snyder's Testimony

Snyder testified that she has pain in the neck, shoulders, arms, back, legs, and feet. (Id. at 239-40.) She stated that the pain is most severe in her back, and that she feels it all the time. (Id. at 240.) Snyder testified that sitting long periods of time causes her to become stiff, forcing her to walk to loosen up. (Id.) Furthermore, Snyder claims that if she spends 15 minutes typing, she is forced to stop for an hour or two because her fingers swell. (Id. at 252-53.) She also testified that her medication makes her drowsy, snappy, and moody. (Id. at 239.)

C. Vocational Expert's Testimony

At the hearing in front of ALJ Taggert, a vocational expert was asked whether a woman of Snyder's age, education, and work experience, who could perform sedentary work not requiring

[1]There is other medical evidence in the record, but the court has summarized only the evidence necessary for it to render this decision.

continuous, repetitive use of her upper extremities and allowing her to change positions, could obtain work. (Id. at 250-52.) He testified that such a person, even a person limited to 15 minutes of typing per hour, could perform 84,000 jobs in the national economy and 2,200 in the local economy, working as either an information clerk or dispatcher. (Id.) But the vocational expert also testified that if Snyder's pain, coupled with the side effects of her medication, cut her productivity by 20%, she would not be able to perform any work. (Id. at 254.) However, he was not permitted to opine as to whether Snyder's productivity was actually cut by 20% due to her pain and medication. (Id. at 256.)

D. ALJ Findings

Pursuant to the five-step process outlined below, ALJ Taggert concluded that although Snyder is unable to perform her past relevant work, she has the residual functional capacity ("RFC") to perform sedentary work that permits her to change positions and does not require continuous or repetitive use of her upper extremities. (Id. at 20.) The evidentiary basis for his conclusion rested on the findings of her physicians and the testimony of the vocational expert. First, citing a series of examinations by Drs. Lutz and Wolfe – throughout which her symptoms steadily improved, and in which no physical symptoms of RSDS were detected – ALJ Taggert stated that the extent of pain claimed by Snyder is not credible. (Id.) Then, based on the answers to the questions posed to the vocational expert, ALJ Taggert determined that Snyder is not disabled within the meaning of the Social Security Act. (Id. at 22.)

III. STANDARD OF REVIEW

The Social Security Act defines "disability" as the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can

be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(A.) This definition has been further refined to a five-step sequential analysis. *See* 20 C.F.R. § 404.1520. The ALJ proceeds through the five-step process until a finding of "disabled" or "not disabled" is obtained. The process is summarized as follows:

> 1. If the claimant currently is engaged in substantial gainful employment, she will be found not disabled.
>
> 2. If the claimant does not suffer from a severe impairment, she will be found not disabled.
>
> 3. If the severe impairment meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1, and has lasted or is expected to last for a continuous period of at least twelve months, the claimant will be found disabled.
>
> 4. If the claimant can still perform work she has done in the past ("past relevant work") despite the severe impairment, she will be found not disabled.
>
> 5. Finally, the claimant's ability to perform work ("residual functional capacity"), age, education and past work experience are considered to determine whether or not she is capable of performing other work in the national economy. If she is incapable, a finding of disability will be entered. Conversely if the claimant can perform other work, she will be found not disabled.

See Cunningham v. Apfel, No. 00-693, 2001 WL 1568708, at *4 (D. Del. Dec. 7, 2001) (paraphrasing the five-step process for determining disability).

The disability determination involves a shifting burden of proof. *See Wallace v. Secretary of Health & Human Servs.*, 722 F.2d 1150, 1153 (3d Cir. 1983). In the first four steps of the analysis, the burden is on the claimant to prove every element of her claim by a preponderance of the evidence. At step five, however, the burden shifts to the Commissioner to prove that there is some other kind of substantial gainful employment the claimant is able to perform. *See Sykes v.*

Apfel, 228 F.3d 259, 263 (3d Cir. 2000); *see also Kangas v. Bowen*, 823 F.2d 775, 777 (3d Cir. 1987); *Olsen v. Schweiker*, 703 F.2d 751, 753 (3d Cir. 1983.) Substantial gainful employment is defined as "work that - (a) involves doing significant and productive physical or mental duties; and (b) is done (or intended) for pay or profit." 20 C.F.R. § 404.1510. When determining whether substantial gainful employment is available, the ALJ is not limited to consideration of the claimant's prior work, but may also consider any other substantial gainful activity which exists in the national economy. *See* 42 U.S.C. § 423(d)(1)(A), (2)(A); *Heckler v. Campbell*, 461 U.S. 458, 460 (1983).

Upon review, an ALJ's decision as to whether or not the claimant is disabled will be upheld if it is supported by substantial evidence. 42 U.S.C. §§ 405(g), 1383(c)(3); *Williams v. Sullivan*, 970 F.2d 1178, 1182 (3d Cir. 1992); *see also Fargnoli v. Halter*, 247 F.3d 34, 38 (3d Cir. 2001) (stating "[w]here the ALJ's findings of fact are supported by substantial evidence, . . . [the court is] bound by those findings, even if . . . [it] would have decided the factual issue differently"). Substantial evidence means more than a mere scintilla. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id*. (internal quotations omitted). Thus, the inquiry is not whether the reviewing court would have made the same determination, but whether the ALJ's conclusion was reasonable. *See Brown v. Bowen*, 845 F.2d 1211, 1213 (3d Cir. 1988.)

Nevertheless, in determining whether the disability decision is supported by substantial evidence, it must be clear to the reviewing court that the ALJ considered all relevant evidence. *Fargnoli*, 247 F.3d at 41. In terms of the claimant's RFC, "[t]hat evidence includes medical records, observations made during formal medical examinations, descriptions of limitations by the claimant and others, and observations of the claimant's limitations by others." *Id.* "Moreover, the ALJ's

finding of residual functional capacity must 'be accompanied by a clear and satisfactory explication of the basis on which it rests.'" *Id.* (quoting *Cotter v. Harris*, 642 F.2d 700, 704 (3d Cir. 1981)). In *Cotter*, the Third Circuit explained:

> [W]hen the medical testimony or conclusions are conflicting, the ALJ is not only entitled but required to choose between them. We cannot expect that this choice by the ALJ, in the exercise of his or her statutory responsibility, will be accompanied by a medical or scientific analysis which would be far beyond the capability of a non-scientist.
>
> We interpret our prior language and holding in light of our statutory function of judicial review. In this regard we need from the ALJ not only an expression of the evidence s/he considered which supports the result, but also some indication of the evidence which was rejected. In the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored.

642 F.2d at 705. In other words, unless the ALJ "has analyzed all evidence and has sufficiently explained the weight he has given to *obviously probative exhibits*, to say that his decision is supported by substantial evidence approaches an abdication of the court's duty to scrutinize the record as a whole to determine whether the conclusions reached are rational." *Gober v. Matthews*, 574 F.2d 772, 776 (3d Cir. 1978) (internal quotations omitted) (emphasis added).

IV. DISCUSSION

Snyder's first contention is that ALJ Taggert erred in concluding that the extent of pain she claims is not credible. (D.I. 9 at 5-8.) In so concluding, ALJ Taggert looked to the two-step process for evaluating subjective complaints outlined in Social Security Ruling 96-7p. First, the ALJ must "consider whether there is an underlying medically determinable physical or mental impairment(s) . . . that could reasonably be expected to produce the individual's pain or other symptoms." SSR 96-7p. "[I]f there is a medically determinable physical or mental impairment(s) but the impairment(s) could not reasonably be expected to produce the individual's pain or other symptoms,

the symptoms cannot be found to affect the individual's ability to do basic work activities." *Id.* Second, the ALJ "must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities." *Id.* To this end, the ALJ "must make a finding on the credibility of the individual's statements based on a consideration of the entire record." *Id.*

After hearing Snyder's testimony, ALJ Taggert concluded that her "complaints of weakness, pain, or stiffness of the neck, shoulder, arm, and hand are consistent with her diagnosis and credible." (D.I. 4 at 20.) "However," he went on to say, "the extent of the pain complained of by [Snyder] is less credible in light of the medical opinions of the treating physicians." (D.I. 4 at 20.) His conclusion was based on the findings of Dr. Lutz and Dr. Wolfe:

1. On July 21, 1999, Dr. Lutz found that Snyder had no cord compression, that she had no definite nerve root stenosis, and that her CT-1 disc was unremarkable;

2. On October 25, 1999, Dr. Wolfe found that Snyder did not show the physical changes suggestive of late stage RSDS;

3. On November 29, 1999, Dr. Wolfe found that Snyder's right shoulder and range of motion had improved with an injection and physical therapy;

4. On January 24, 2000, Dr. Wolfe found that Snyder's diffuse joint symptoms of pain, swelling, and stiffness had decreased; and

5. On May 15, 2000, Dr. Wolfe found that Snyder exhibited no clear signs of RSDS.

(Id.) Although it is not entirely clear from ALJ Taggert's opinion, he appears to implicitly acknowledge (presumably at step one of SSR 96-7p) that Snyder's medical condition could reasonably be expected to produce her subjective complaints. However, based on the five medical findings above, he ultimately decided (presumably at step two of SSR 96-7p) that Snyder is "not

totally credible in relation to her claims of limitations, severity, and extent of pain." (D.I. 4 at 20.)

Snyder argues it was error for ALJ Taggert to draw this conclusion from these findings. As to the finding by Dr. Lutz, Snyder begins by arguing that ALJ Taggert was "utterly unqualified to opine how this piece of evidence [i.e., no cord compression, no nerve root stenosis, and unremarkable CT-1 disc] relates to [her] complaints." (D.I. 9 at 5.) Snyder cites *Ruiz v. Apfel*, 98 F. Supp. 2d 200 (D. Conn. 1999), presumably for the proposition that ALJ Taggert's "utterly unqualified" opinion is a basis on which this court should vacate and remand his decision. (Id.) In *Ruiz*, the ALJ denied the claimant's disability claim based in part on his rejection of the opinions of the claimant's treating physician. 98 F. Supp. 2d at 208. On appeal, the district court reversed the ALJ because he had "call[ed] into question the issue of whether the listed symptoms support [the treating physician's] opinion," and therefore impermissibly "substituted his own opinion for that of the [claimant's] treating physician." *Id.* In the present case, the most ALJ Taggert can be accused of doing is substituting his own opinion for that of the claimant (i.e., Snyder's opinion as to the extent of her pain). Unlike the ALJ in *Ruiz*, ALJ Taggert did not reject the opinion of *any* physician. Thus, Snyder's reliance on *Ruiz* is misplaced.

Snyder further argues that ALJ Taggert merely "seized on to a single sentence at the end of [Dr. Lutz's] report and gave it independent significance of his own interpretation," while ignoring several other findings. (D.I. 9 at 5.) Relying on *Dominguese v. Massanari*, 172 F. Supp. 2d 1087 (E.D. Wis. 2001), Snyder argues it is improper to take "a specific negative finding out of context and render[] an independent medical opinion about what it means." (D.I. 9 at 6.) In *Dominguese*, the ALJ found the claimant's complaints of pain to be incredible based on the infrequency of her visits to the doctor, his observations of her demeanor, the claimant's ability to do light household chores,

and the "fact" that the claimant took no strong pain medications on a regular basis. 172 F. Supp. 2d at 1096-1099. The district court reversed the ALJ's decision because each basis for his credibility determination was flawed. The court rejected the ALJ's unexplained logical jump from evidence of the claimant's infrequent visits to her doctor, to his conclusion that her complaints of pain were not credible. *Id.* at 1096-97. The court also rejected the ALJ's credibility determination based on his observations of the claimant because nothing he observed actually undermined any of her stated pain limitations. *Id.* at 1097-98. With respect to the claimant's ability to do household chores, the court rejected the ALJ's credibility determination because, as far as the court could discern, he only relied upon her stated ability to do non-strenuous activities (such as arranging flowers, painting pots, and reading), and he failed to address her stated inability to do more strenuous activities (such as carrying multiple bags groceries, doing dishes, vacuuming, sweeping, etc.). *Id.* at 1098-99. Finally, the court rejected the ALJ's credibility determination based on the "fact" that the claimant took no strong pain medications on a regular basis because the record evidence suggested otherwise, and the ALJ did not explain his reasons for disregarding that evidence. *Id.* at 1099. The district court also reversed the ALJ for his failure to point out specific evidence that led him to reject the opinion of the claimant's physician, given that the record was actually consistent with the physician's opinion. *Id.* at 1099-1101.

In the present case, ALJ Taggert's failure to address alleged abnormalities found by Dr. Lutz is not comparable to the failures of the ALJ in *Dominguese*. In that case, the ALJ glossed over details very obviously favoring the claimant and arrived at sweeping conclusions without adequate explanation. Here, the glossed-over details do not obviously favor Snyder. In particular, Snyder points to the following ignored statements in Dr. Lutz's report: "Axial images demonstrate a right

lateral disc extrusion at C3-4 extending into the right C4 nerve root canal," "there are asymmetric postero-lateral disc bulges and osteophytic ridges to the left of midline effacing the subarachnoid space and slightly displacing the cord," "Uncovertebral osteophytes produce moderate bilateral nerve root canal stenosis," and "At C6-7 there is a moderate osteophytic ridge effacing the subarachnoid space ventral to the cord." (Id.) Snyder characterizes these statements by Dr. Lutz as "positive findings of abnormalities" which could be the source of her pain. (Id. at 6.) Frankly, this lay court has no idea what conclusions should be drawn from these alleged abnormalities. Moreover, Snyder has adduced no evidence that these alleged abnormalities could produce the type and extent of pain she claims. In the absence of such evidence, it would be improper for the court to remand the case on that basis. *See Gober*, 574 F.2d at 776 (the ALJ must explain his reasons for discounting "obviously probative evidence").

As to the findings of Dr. Wolfe, Snyder argues that ALJ Taggert took a single sentence out of context and attributed it with unfounded significance. (D.I. 9 at 6.) On October 25, 1999, Dr. Wolfe wrote the following:

> IMPRESSION: Ms. Snyder presents with a diffuse joint pain syndrome, involving large and small joints as well as the axial skeleton. There is objective tenderness in the PIP joints with limited hand motion and multiple fibrositic tender points. I am concerned about the possibility of an inflammatory or metabolic syndrome, such as rheumatoid arthritis, another inflammatory arthropathy or hypothyroidism. However, there is also the suggestion of the chronic, functional pain syndrome given the presence of multiple fibrositic tender points and the association of the symptoms with increased life stressors. She has chronic right arm problems, now related to adhesive capsulitis of the right shoulder. There is no evidence of the physical changes suggestive of RSDS.

(D.I. 4 at 171.) Snyder says ALJ Taggert erred by considering only the final sentence in the above narrative, and failing to address the remainder of Dr. Wolfe's findings. (D.I. 9 at 7.) For support Snyder points to *Fargnoli*, in which the Third Circuit remanded an ALJ's determination that the

claimant could perform light work because the court could not determine whether that determination was based on substantial evidence. 247 F.3d at 40. The court noted that the ALJ had (1) "failed to evaluate adequately all relevant evidence and to explain the basis of his conclusions," and (2) "failed to explain his assessment of the credibility of, and weight given to, the medical evidence and opinions from [the claimant's] treating physicians that contradict the ALJ's finding that [the claimant] can perform light work." *Id.* Regarding the first failure, the court found the ALJ's condensation of 115 pages of treatment notes into four short paragraphs created a synopsis too sparse for it to review effectively. *Id.* at 42. Regarding the second failure (which was surely precipitated by the first failure), the court pointed out that although the ALJ determined that the claimant was limited to "frequently lifting ten pounds, occasionally lifting twenty pounds, and standing and walking for six hours out of an eight-hour day," he made no mention of the treating physician's determination that the claimant was limited to "only seven to ten pounds of lifting, no prolonged periods of walking and no climbing, bending or squatting." *Id.* at 43. Based on their respective determinations, the ALJ concluded that the claimant was capable of light work, while the treating physician concluded that the claimant was incapable of even sedentary work. *Id.* Thus, the court directed the ALJ (on remand) to resolve this previously-unaddressed conflict. *Id.* at 43-44.

Viewed in a vacuum, ALJ Taggert's failure to address the entirety of the above narrative by Dr. Wolfe might be sufficient reason to rule in Snyder's favor. After all, the narrative does contain several potential sources of Snyder's claimed pain (e.g., rheumatoid arthritis, hypothyroidism, chronic functional pain syndrome, adhesive capsulitis, etc.).[2] However, Dr. Wolfe evaluated Snyder

[2]The court does not hold that these conditions could actually cause pain of the type and extent complained of by Snyder. As mentioned above, this is a lay court without medical expertise. However, unlike the alleged abnormalities reported by Dr. Lutz, these conditions are

on several subsequent occasions, and eventually determined that she was limited to lifting 20 pounds occasionally and 10 pounds frequently, that she was capable of standing, walking and sitting for 6 hours a day, and that she had an unlimited ability to push and pull. (D.I. 4 at 190.) Because his final analysis is consistent with ALJ Taggert's ultimate determination of Snyder's residual functional capacity, Dr. Wolfe's initial impressions do not seem to warrant much, if any, discussion in ALJ Taggert's written opinion.

Nevertheless, the court holds that ALJ Taggert erred under *Fargnoli* with regard to the findings of Dr. Aponte. In determining Snyder's complaints to be incredible, ALJ Taggert directly relied on two separate conclusions by Dr. Wolfe that she (Snyder) exhibited no signs of RSDS. (D.I. 4 at 20.) Yet, he neglected to explain how Dr. Aponte's more recent conclusion that Snyder does in fact have RSDS (id. at 204) impacted this credibility determination. The court is unable to discern whether ALJ Taggert discounted this evidence for some particular reason, or whether it never entered his calculus. Given the obvious importance of RSDS to his decision, ALJ Taggert erred by neglecting to address Dr. Aponte's findings.[3] *See Cotter*, 642 F.2d at 705. Thus, Dr. Aponte's findings must be addressed on remand.

---

suggestive enough in name alone that the court would normally expect the ALJ to explain their impact on his decision. In other words, they are "obviously probative."

[3]Snyder also argues that it was improper for ALJ Taggert to discount her complaints without contrary medical evidence (D.I. 9 at 7-8). She cites *Ruiz*, seemingly for the proposition that a steadily improving condition does not constitute contrary medical evidence. In *Ruiz*, the court said that the "ALJ cannot rely upon temporary relief from some of the symptoms of the [claimant's] mental illness to support his conclusion that [the treating physician's] opinion is not entitled to controlling weight." 98 F. Supp. 2d at 208. If only Dr. Wolfe's findings were at issue, *Ruiz* might be inapt because ALJ Taggert did not use evidence of Snyder's improvement to conclude that any treating physician's opinion is not entitled to controlling weight. However, had the findings of Dr. Aponte been considered, ALJ Taggert may have been forced to reach such a conclusion. Thus, the principles of *Ruiz* may arise on remand.

As to Snyder's argument that ALJ Taggert erred in failing to consider the effects of her pain medication (D.I. 9 at 7-8), the court agrees. According to SSR 96-7p, the ALJ "must consider" the "type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms." At her hearing, Snyder testified that her medication makes her drowsy, and snappy or moody. (D.I. 4 at 239.) Although ALJ Taggert reported her testimony on these side effects in his written opinion, the court is unable to determine what impact that testimony had on his decision. If he did not find the testimony credible, he must explain why. Here, the court perceives a logical gap that was not bridged between evidence of Snyder's improving medical condition, and ALJ Taggert's resultant conclusion that her testimony about the side effects of her medication is not credible. If Snyder is still being prescribed medication, then evidence of her improving physical condition is not necessarily probative as to the side effects of her medication because the side effects may persist irrespective of her changed physical condition. Therefore, this issue must also be addressed on remand.

Snyder's second contention concerns ALJ Taggert's use of the vocational expert. Once it is determined that a claimant cannot return to her previous work, the ALJ will often consult a vocational expert to determine whether the claimant's "work skills can be used in other work and the specific occupations in which they can be used." 20 C.F.R. §404.1566(e). "Vocational experts are not consulted for their medical expertise and are not charged with determining a [claimant's] RFC based on the medical evidence in the record." *Rivera v. Barnhart*, 239 F. Supp. 2d 413, 420 (D. Del. Dec. 23, 2002) (Farnan, J.). Thus, "it [is] the ALJ's function to first determine what medical restrictions [the] claimant [is] under and how they affect[] [her] residual functional capacity, and then to determine whether the vocational expert [has] identified a significant number of jobs in

a relevant market given these restrictions." *Maziarz v. Sec'y of Health & Human Servs.*, 837 F.2d 240, 247 (6th Cir. 1987).

Based on what the court has determined to be an inadequately supported credibility determination, ALJ Taggert assessed that Snyder's limitations include the following: never lifting anything over eleven pounds; occasionally lifting items up to ten pounds; no repetitive action of upper extremities; no sitting for long periods without the freedom to change positions at will. Based on this assessment, he concluded that she has the RFC "for sedentary work that requires less than continuous repetitive use of her upper extremities, and provides a latitude of changing positions in the course of the day." (D.I. 4 at 20.) ALJ Taggert also concluded that Snyder's limitations – including her limited ability to lift – prevent her from performing her past work. (Id. at 21.) Thus, he consulted a vocational expert to determine what, if any, work Snyder is capable of performing. According to the transcript, ALJ Taggert began by asking the vocational expert if he was familiar with the record, to which he replied that he was. (D.I. 4 at 247.) After a few questions about Snyder's past work, the vocational expert was then asked about other jobs a hypothetical person similar to Snyder would be able to perform. The following exchange took place between ALJ Taggert and the vocational expert:

> Q Let's just leave her past jobs, and move onto some purely hypothetical questions. Assuming again, an individual of the claimant's age, education and work experience, and in the performance of sedentary work. Are there customer service jobs that exist, where a person would have an opportunity to change positions, during the workday, and not have to sit constantly, using a keyboard, but rather would use a telephone, or headsets, or digital lighting, as opposed to the way she described her job, where she said everything that she did, had to be done on the computer keyboard?
>
> A Yes, Your Honor, there are positions as service representative, where the individual has latitude of changing position in the course of the day.

Q Can you give me some numbers? How about the repetitive use of the upper extremities, as opposed to the occasional use of the upper extremities? I assume all of these service rep jobs require the use of the upper extremities.

A Yes, sir.

Q But are there some that require less than continuous repetitive, and I keep emphasizing that, because she specifically testified, that everything she did had to be done through a word processor?

A Yes, Your Honor. Primarily in the category of information clerk, at the sedentary exertional level, whereby the individual does in fact, use a computer, but it is not on a constant and consistent basis. They also have the ability to sit and stand, and change positions in the course of the day. In the United States 46,000 of these positions exist, and in the local economy, and define the local economy as an area commonly referred to, as the Delmarva Peninsula. And that local area 1,200 of these positions exist.

Q Are there others, besides the information clerk, and what is the information clerk doing, why don't we start there. What might the person, information clerk be doing there in one of these 1,200 jobs in this area?

A More than taking orders, et cetera, an information clerk may be providing information to people, who are calling about services, and/or products. After awhile the individual knows most of this information, and times of operation, crisis, et cetera. And it isn't necessary for them to constantly be looking this information up. Thereby, they have the latitude of not being seated, so on a constant basis, or using a computer on a constant basis.

Q And how would they look the information up, either on something written, or on the computer?

A It would be on the computer, but as stated, the information after awhile, they already know most of it, and it isn't that constant adding, or getting information from the computer. It doesn't require them to make keystrokes on a constant basis, in order to have the information presented in front of them.

Q Okay. So they're giving the information verbally?

A Correct.

Q Primarily, as opposed to recording it and through a keystroke operation?

A Correct.

Q Is there another category, besides information clerk?

A Yes, Your Honor. The positions of dispatcher. Again, the individual is utilizing the same or similar skills, but again, they are not, it's not repetitive use of the upper extremities, it is not necessary that everything go through the computer, both to provide the information and/or to record the information. In the United States there are 38,000 of these positions. In the previously described local economy, 1,000 of these positions exist.

(Id. at 249-252.)

This line of inquiry is problematic because it is devoid of questions relating to the hypothetical person's limited ability to lift. Yet Snyder's limited ability to lift partially led ALJ Taggert to conclude that she is incapable of performing her past work. Therefore, even if an ALJ were to arrive at the same conclusion about Snyder's limitations after considering the findings of Dr. Aponte and the side effects of the medication, he would still need to establish that Snyder's limited ability to lift does not affect the vocational expert's conclusion. Furthermore, if new limitations are established on remand, it must be clearly stated in the record that those new limitations were also considered in determining the number of jobs available to Snyder. However, to the extent Snyder argues that the vocational expert should be permitted to opine as to her actual limitations, she is incorrect. As Judge Farnan held in *Rivera*, "[v]ocational experts are not consulted for their medical expertise and are not charged with determining a [claimant's] RFC based on the medical evidence in the record." 239 F. Supp. 2d at 420. Such determinations are the province of the ALJ. *Id.*

V. CONCLUSION

For the foregoing reasons, the court will vacate the decision of ALJ Taggert and remand the case for proceedings consistent with this opinion. Thus, the Commissioner's motion will be denied

and Snyder's motion will be granted insofar as it seeks to have the court reverse and remand the decision below.

Dated: March 2, 2005

_____/s/_____
UNITED STATES DISTRICT JUDGE