

IP 05-1690-C H/K Terrell v Barnhart  
Judge David F. Hamilton

Signed on 01/05/07

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

LEOTHER TERRELL,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:05-cv-01690-DFH-TAB
	)	
JO ANNE B. BARNHART,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

LEOTHER TERRELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1:05-cv-1690-DFH-TAB
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

ENTRY ON JUDICIAL REVIEW

Plaintiff Leother Terrell seeks judicial review of a decision by the Commissioner of Social Security denying his claim for disability insurance benefits and supplemental security income under the Social Security Act. Acting for the Commissioner, an Administrative Law Judge (“ALJ”) determined that Mr. Terrell suffered from the severe impairments of hypertension, past opioid dependence, degenerative disc disease, osteomyelitis, tendinitis, and arthritis. The ALJ concluded, however, that he was not disabled for purposes of the Social Security Act because he was still capable of performing a restricted range of light work. On appeal, Mr. Terrell contends that the ALJ erred in concluding that his impairments did not meet or equal a listing and that he retained the residual functional capacity to do other work. For the reasons explained below, the ALJ’s decision is affirmed.

## *Background*

Mr. Terrell was born in 1951. R. 53. He has an eleventh grade education. R. 89. His relevant past work experience includes driving dump trucks as well as a moving van. R. 269-71. He alleges becoming disabled on March 15, 2002 due to “high blood pressure, arthritis, glaucoma, left shoulder pain, [and] back pain.” R. 83. He acknowledges abusing heroin in the past and has been diagnosed with hepatitis C. R. 281.

In July 2001, Mr. Terrell went to Wishard Memorial Hospital complaining of severe back pain after bending over a lot at work. R. 172. Though this was not the first time he had back problems, he was unable to relieve the pain using hot compresses as he had in the past. *Id.* His physician prescribed pain medication and released him. R. 176. In November 2001, Mr. Terrell returned to Wishard, again complaining of severe lower back pain. R. 166. He was diagnosed with a low back strain and prescribed Vicodin. R. 167.

In February 2002, Mr. Terrell was back in the emergency room with an “off and on” pain in his left arm that radiated to his shoulder and ribs. R. 160. The pain had been bothering him for about two weeks before coming in for treatment. *Id.* His treating physician released him after prescribing Vicodin. R. 160.

On May 1, 2002, Mr. Terrell returned to Wishard with neck pain and symptoms related to heroin withdrawal. R. 154-57. During his examination, Mr. Terrell explained that he had previously suffered a gunshot wound to the neck and shoulder area, and that he had been using heroin to control the pain. R. 157. This gunshot wound occurred in 1981. R. 112. The treating physician prescribed Clonidine for withdrawal, along with a short supply of Vicodin. R. 157. A radiology report issued on May 8, 2002 stated that while shotgun pellets remained in his soft tissue, his left shoulder bones and joints remained intact with no evidence of fractures or dislocations. R. 179.

On May 16, 2002, Mr. Terrell was seen at the Midtown Community Mental Health Center to discuss his plans to quit heroin. He declined methadone treatment, R. 149, and was reluctant to agree to follow-up care. R. 147. Less than one week later, he was diagnosed with hepatitis C. R. 152. X-rays indicated he had a degenerative disc condition in his back. *Id.*

On May 30, 2002 Mr. Terrell returned to the emergency room at Wishard Hospital complaining of leg and chest pain. R. 136. A chest x-ray at that time revealed no signs of active pulmonary disease. R. 178.

Several times during September and October 2002, Mr. Terrell went to Wishard Hospital complaining of pain in his left shoulder. R. 117-18, 126. During his October 14th visit, he was prescribed naproxen. R. 118. On October

25th, he complained to his physician about chronic shoulder pain. R. 200. The treating physician refused to give more narcotics, noting that Vicodin had been given just the previous day. *Id.* Mr. Terrell threatened to use illegal drugs if no one would help him. *Id.*

Mr. Terrell filed for disability insurance benefits on October 7, 2002. R. 64. On November 7, 2002, Dr. Ziad Issa performed a consultative physical exam. R. 112. During the exam Mr. Terrell claimed that he was disabled due to the gunshot wound dating from 1981. He reported constant pain in his left shoulder, a weak left hand grip, and limited ability to push, pull, twist, and button using his left hand. *Id.* Dr. Issa noted that Mr. Terrell is right-handed and that his right hand was normal. Dr. Issa described Mr. Terrell as generally “a well-developed adult in no apparent distress. Alert and cooperative during the course of examination with no perceived exertional dyspnea or difficulty getting out of a chair or on or off the examination table.” R. 113. As for objective abnormalities, Dr. Issa recorded that Mr. Terrell had 20/70 vision in both eyes without glasses, +1 edema in both legs, moderate tenderness over the left shoulder without swelling or limitation of motion, and weak left hand grip. R. 113-14.

On November 12, 2002, Mr. Terrell was at Wishard Hospital for a blood pressure check. R. 199. He reported persistent arm pain and was continued on Vicodin. *Id.* On January 14, 2003, his treating physician ordered x-rays after complaints of knee pain. R. 196. X-rays of the left ankle, right knee, and left

ankle revealed no signs of degenerative changes or dislocation, though there were possible signs of a healing stress fracture or shin splints on the left leg. R. 193-95. On January 28, 2003, Mr. Terrell returned to Wishard complaining of severe pain and seeking a refill of Vicodin. R. 192.

In June 2003, Mr. Terrell was diagnosed with edema in his legs, and he was ordered to wear embolism stockings. R. 188-89. His hip x-rays revealed minimal osteoarthritis. R. 187. X-rays of the spine suggested that he was suffering from osteopenia and microfractures of the end-plates of L2-L4, though disc space remained preserved. R. 186. The doctor suggested use of a cane. R. 184.

In September 2003, Mr. Terrell went to Wishard Hospital complaining of shortness of breath. He also described feeling depressed due to chronic pain. R. 219. One month later, he was back at Wishard Hospital complaining of headaches, anxiety, and chronic pain. R. 217. A later evaluation in December 2003 revealed normal bone density in the lumbar spine, normal bone density in the hip, and minimally osteopenic bone density in the femoral neck. R. 238.

During a therapy session in February 2004, Mr. Terrell again complained of pain in his lower back and left elbow. R. 221. In June 2004, he returned to Wishard Hospital complaining of pain “all over” and reported difficulty breathing, walking, moving, and eating. R. 244. The results of a CT scan were compatible

with discitis, osteomyelitis, and adjacent paravertebral inflammatory soft tissue and/or abscess formation. R. 246.

On October 7, 2002, Mr. Terrell filed the pending application for a period of disability and disability insurance benefits.<sup>1</sup> R. 64. His application was denied initially and upon reconsideration. At his request, a hearing was held before Administrative Law Judge Blanca Bianchi de la Torre on October 4, 2004.

#### *Testimony at the Hearing*

At the hearing, Mr. Terrell testified experiencing severe back pain in 2002 at a rate of once a week. R. 273. This pain would last one or two days. *Id.* He also noted feeling pain in his left side, knee, and ankle about three or four times a week. R. 273-74. The pain had worsened since 2002 and left him unable to bend over. R. 274. When he woke up in the morning, his pain level was at 5 or 6 on a 10-point scale. R. 287. After taking his medication the pain level decreased to a 2 and remained there the majority of the day. R. 287-88. His medications caused him to be drowsy a few hours after taking them. R. 277.

When asked about his physical capabilities, Mr. Terrell stated that he could walk three-quarters of a block, sit for 30 minutes continuously, and lift about 10 pounds. R. 278-79. He stated that on a typical day, he would get up at around

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<sup>1</sup>On January 19, 2005, Mr. Terrell also submitted a claim for supplemental security income. The ALJ considered and rejected this claim as well.

7:30 or 8:00 in the morning, dress himself, try to get a cup of coffee, and spend the rest of the day watching television. R. 279-80. Though his car did not work, he could still drive. R. 280.

The ALJ also asked vocational expert Ray Burger about a hypothetical person with Mr. Terrell's age, education, and work experience. The ALJ asked the expert to assume this hypothetical person was:

capable of lifting, carrying, pushing, and pulling 20 pounds occasionally and 10 pounds frequently . . . . He can sit for two hours at a time for a total of eight. He can stand for two hours at a time for a total of four. He can walk for two hours at a time for a total of four. He can climb stairs occasionally, but should never climb ladders, ropes or scaffolds. He can balance and stoop occasionally, but should never crouch, kneel, or crawl. He has no manipulative restrictions, but carries a cane in his right hand. He can use the upper and lower extremities for fine and gross manipulation and repetitive work. There are no mental restrictions and the environmental restriction is against more than minimal vibrations.

R. 294-95. The expert testified that an individual with such restrictions could still work as a light assembler, for which 10,208 such jobs existed in the state and 220,249 in the nation. He also testified that work as an inspector was possible, and that 4,419 such jobs existed in the state and 107,707 in the nation. R. 295.

#### *Procedural History*

The ALJ concluded that Mr. Terrell was not disabled for purposes of the Social Security Act and issued her decision denying benefits on May 27, 2005. R. 14-22. The Appeals Council denied Mr. Terrell's request for review, leaving the

ALJ's decision as the final decision of the Commissioner of Social Security. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Mr. Terrell now seeks this court's review of the denial of his application. The court has jurisdiction in the matter under 42 U.S.C. § 405(g).

*The Statutory Framework for Determining Disability*

To be eligible for disability insurance benefits, a claimant must establish that he suffers from a disability within the meaning of the Social Security Act. To prove disability under the Act, the claimant must show that he is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that could be expected to result in death or that has lasted or could be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d). Mr. Terrell was disabled only if his impairments were of such severity that he was unable to perform work that he had previously done and if, based on his age, education, and work experience, he also could not engage in any other kind of substantial work existing in the national economy, regardless of whether such work was actually available to him. *Id.*

This standard is a stringent one. The Act does not contemplate degrees of disability or allow for an award based on partial disability. *Stephens v. Heckler*, 766 F.2d 284, 285 (7th Cir. 1985). Even claimants with substantial impairments are not necessarily entitled to benefits, which are paid for by taxes, including

taxes paid by those who work despite serious physical or mental impairments and for whom working is difficult and painful.

The implementing regulations for the Act provide the familiar five-step process to evaluate disability. The steps are:

- (1) Has the claimant engaged in substantial gainful activity? If so, he was not disabled.
- (2) If not, did the claimant have an impairment or combination of impairments that are severe? If not, he was not disabled.
- (3) If so, did the impairment(s) meet or equal a listed impairment in the appendix to the regulations? If so, the claimant was disabled.
- (4) If not, could the claimant do his past relevant work? If so, he was not disabled.
- (5) If not, could the claimant perform other work given his residual functional capacity, age, education, and experience? If so, then he was not disabled. If not, he was disabled.

See generally 20 C.F.R. § 404.1520. When applying this test, the burden of proof is on the claimant for the first four steps and on the Commissioner for the fifth step. *Briscoe v. Barnhart*, 425 F.3d 345, 352 (7th Cir. 2005); *Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

Applying the five-step process, the ALJ found that Mr. Terrell satisfied step one because he had not engaged in substantial gainful activity since his alleged onset date of disability. At step two, the ALJ found that he suffered the severe impairments of hypertension, opioid dependence, degenerative disc disease,

osteomyelitis, tendinitis, and arthritis. At step three, the ALJ found that he failed to demonstrate that any of his severe impairments met or equaled any listed impairment. At step four, the ALJ found that he was not able to perform any of his past relevant work. The ALJ then considered Mr. Terrell's residual functional capacity at step five. She found that, despite his severe impairments, he retained the residual functional capacity to "perform a significant range of light work." R. 21. The ALJ found that Mr. Terrell was not disabled because he could perform a significant number of jobs in the national economy. *Id.*

#### *Standard of Review*

"The standard of review in disability cases limits . . . the district court to determining whether the final decision of the [Commissioner] is both supported by substantial evidence and based on the proper legal criteria." *Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005), quoting *Scheck v. Barnhart*, 357 F.3d 697, 699 (7th Cir. 2004). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Diaz v. Chater*, 55 F.3d 300, 305 (7th Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). To determine whether substantial evidence exists, the court must "conduct a critical review of the evidence,' considering both the evidence that supports, as well as the evidence that detracts from, the Commissioner's decision . . . ." *Briscoe*, 425 F.3d at 351, quoting *Lopez v. Barnhart*, 336 F.3d 535, 539 (7th Cir. 2003); see also *Zurawski v. Halter*, 245 F.3d 881, 888 (7th Cir. 2001).

The court must not attempt to substitute its judgment for the ALJ's judgment by reweighing the evidence, resolving material conflicts, or reconsidering facts or the credibility of witnesses. *Cannon v. Apfel*, 213 F.3d 970, 974 (7th Cir. 2000); *Luna v. Shalala*, 22 F.3d 687, 689 (7th Cir. 1994). Where conflicting evidence allows reasonable minds to differ as to whether a claimant is entitled to benefits, the court must defer to the Commissioner's resolution of that conflict. *Binion v. Chater*, 108 F.3d 780, 782 (7th Cir. 1997).

A reversal and remand may be required, however, if the ALJ committed an error of law, *Nelson v. Apfel*, 131 F.3d 1228, 1234 (7th Cir. 1997), or based his decision on serious factual mistakes or omissions. *Sarchet v. Chater*, 78 F.3d 305, 309 (7th Cir. 1996). This determination by the court requires that the ALJ's decision adequately discuss the relevant issues: "In addition to relying on substantial evidence, the ALJ must also explain his analysis of the evidence with enough detail and clarity to permit meaningful appellate review." *Briscoe*, 425 F.3d at 351, citing *Herron v. Shalala*, 19 F.3d 329, 333-34 (7th Cir. 1994). Although the ALJ need not provide a complete written evaluation of every piece of testimony and evidence, *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005), a remand may be required if the ALJ has failed to "build an accurate and logical bridge from the evidence to her conclusion." *Steele v. Barnhart*, 290 F.3d 936, 941 (7th Cir. 2002), quoting *Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001).

#### *Discussion*

I. *ALJ's Step Three Determination*

Mr. Terrell first challenges the ALJ's finding at step three that his impairments were not severe enough to meet or equal a listing. The ALJ observed in her opinion:

The medical evidence indicates that the claimant has hypertension, [a] history of opioid dependence – in remission, degenerative disc disease of the lumbar spine, osteomyelitis of the thoracic spine at T9-10, left elbow tendonitis, left shoulder arthritis, impairments that are “severe” within the meaning of the Regulations but not “severe” enough to meet either singly or in combination to (sic) one of the impairments listed in Appendix 1, Subpart P, Regulations No. 4. Furthermore, I find, based upon information obtained exclusively from health care professionals, that the record fails to establish the existence of an impairment or combination of impairments that is medically equivalent to an impairment specified in the Listing of Impairments (Appendix 1 to Subpart P of Regulations No. 4).

R. 16. Mr. Terrell contends the ALJ failed to articulate sufficiently her reasoning for this conclusion, did not identify the specific listings he failed to meet, and also failed to base her decision only on medical evidence.

In the face of conflicting evidence about a specific listing , an ALJ's failure to discuss a specific listing or to provide more of an explanation of a step three finding can provide a basis for a remand. See *Brindisi v. Barnhart*, 315 F.3d 783, 786 (7th Cir. 2003) (remanding where ALJ failed to discuss a specific listing because court could not meaningfully review the ALJ's conclusion); see also *Clifton v. Chater*, 79 F.3d 1007, 1009 (10th Cir. 1996) (ALJ's “summary conclusion that appellant's impairments did not meet or equal any Listed Impairment” was

“bare conclusion” and “beyond meaningful judicial review”); *Cook v. Heckler*, 783 F.2d 1168, 1173 (4th Cir. 1986) (“The ALJ should have identified the relevant listed impairments. He should then have compared each of the listed criteria to the evidence of Cook’s symptoms. Without such an explanation, it is simply impossible to tell whether there was substantial evidence to support the determination.”).

Remand is not required simply because the ALJ failed to refer to a relevant listing. “As to [claimant’s] argument that the ALJ’s failure to explicitly refer to the relevant listing alone necessitates reversal and remand, we have not yet so held and decline to do so here.” *Rice v. Barnhart*, 384 F.3d 363, 369-70 (7th Cir. 2004). The claimant ultimately has the burden of showing that he meets or equals a listing at step three. See *Briscoe*, 425 F.3d at 352 (burden of proof is on the claimant for the first four steps of the five-step sequential analysis). To show that he meets a listing, a claimant must show that he meets all requirements of a specific listed impairment. See *Scott v. Sullivan*, 898 F.2d 519, 523 (7th Cir. 1990).

Mr. Terrell has made no such showing. Even at this stage of judicial review, he has not identified a single listing that he believes he meets or equals. This challenge to the ALJ’s step three decision fails.

Mr. Terrell also points out that federal regulations require the ALJ to base her step three determination on only medical evidence. See 20 C.F.R. § 404.926(b). This is precisely what the ALJ did. At step three she relied “upon information obtained exclusively from health care professionals.” R. 16. The ALJ did not err when making her step three determination.

## II. *The ALJ's Residual Functional Capacity Analysis*

According to Mr. Terrell, the ALJ made four errors when determining his residual functional capacity. He argues the ALJ: (A) failed to articulate sufficiently a function-by-function assessment of his work-related abilities; (B) failed to consider his vision problems as part of the functional analysis; (C) ignored the effects of his pain medication and hepatitis C; and (D) improperly concluded he was capable of performing light work.

### A. *The ALJ's Function-By-Function Assessment*

Before expressing a claimant's residual functional capacity in terms of exertional categories like "sedentary," "light," "medium," "heavy," or "very heavy," the ALJ must first make a more detailed function-by-function assessment of a claimant's current physical and mental abilities. SSR 96-8p. These functions include the claimant's ability to sit, stand, walk, lift, carry, push, and pull. *Id.* The ALJ drew the following conclusions about Mr. Terrell's remaining physical abilities:

The claimant retains the residual functional capacity: lift, carry, push/pull up to 20 pounds occasionally and 10 pound (sic) frequently, for 2 hours at a time, and a total of 8 hours per day, and stand for 2 hours at a time, and a total of 4 hours per day; walk for 2 hours at a time, and a total of 4 hours a day. [M]ay climb stairs occasionally, but never climb ladders, ropes and scaffolds; may occasionally balance and stoop, but never crouch, kneel or crawl, and carries (sic) a cane in the right hand.

R. 21. Mr. Terrell argues that this assessment is inadequate because the ALJ failed to “include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g. laboratory findings) and nonmedical evidence (e.g., daily activities, observations).” SSR 96-8p.

In fact, the ALJ addressed in detail the reasons for her residual functional capacity assessment. The ALJ’s review of the evidence included in-depth examination of Mr. Terrell’s relevant medical history dating from July 2001 through June 2004. R. 16-17. The ALJ noted that in November 2002, Dr. Issa noted that Mr. Terrell had normal range of motion in his joints with moderate tenderness (but no swelling) in the left shoulder. *Id.*

The ALJ also cited the opinions of two state agency physicians, Drs. Cole and Sands. Each found that the tenderness in Mr. Terrell’s left shoulder and weakness in his left hand limited him to lifting and/or carrying 50 pounds occasionally, lifting and/or carrying 25 pounds frequently, standing and/or walking a total of 6 hours in an 8-hour workday, sitting about 6 hours in an 8-hour workday, with no restrictions on pushing and/or pulling save for his lifting and carrying limits. R. 102. The reviewing physicians found no postural, manipulative, communicative, or environmental limitations, R. 103-05, but did find he had limited near visual acuity and far visual acuity. R. 104.

The ALJ noted that no physician – including Mr. Terrell’s own treating physicians – had imposed any specific work-related restrictions. In light of the medical evidence (much of which developed after Drs. Ziad, Cole, and Sands completed their reports) and the plaintiff’s testimony at the administrative hearing, the ALJ then adjusted the assessment of Drs. Cole and Sands to the level reflected in her decision. The ALJ’s function-by-function assessment of Mr. Terrell’s abilities was not erroneous.

B. *ALJ’s Consideration of Vision Problems*

Mr. Terrell argues that the ALJ ignored the fact that he has glaucoma in his left eye and is blind in his right eye. According to Mr. Terrell, these vision problems undermine the ALJ’s conclusion at step five that he could still work as an assembler, DOT number 723.685-014, and inspector, DOT number 529.667-010.

An ALJ may not select and discuss only the evidence that favors her ultimate conclusion. The ALJ must minimally articulate reasons for rejecting or accepting specific evidence of disability so that a reviewing court can trace the path of the ALJ’s reasoning. *Rice*, 384 F.3d at 371. Moreover, an ALJ may not ignore an entire line of evidence that is contrary to the ruling. See *Golembiewski v. Barnhart*, 322 F.3d 912, 917 (7th Cir. 2003) (remanding because ALJ improperly ignored three lines of evidence). An ALJ is not required, however,

to provide an in-depth analysis of every piece of evidence the claimant provides. *Diaz*, 55 F.3d at 307-08; *Zblewski v. Schweiker*, 732 F.2d 75, 79 (7th Cir. 1984).

The ALJ's decision satisfies these principles. The evidence does indicate that the claimant suffered from glaucoma. R. 109, 112. While the ALJ makes no explicit mention of glaucoma in her opinion, it is nevertheless clear that she took into account the extent of Mr. Terrell's vision problem when making her disability determination and concluded that it did not affect his disability status. The ALJ cited Dr. Issa's medical report, R. 17, where the doctor noted Mr. Terrell's glaucoma but also recorded that he retained 20/70 vision without corrective lenses. R. 113. The ALJ also observed that Mr. Terrell testified that he could watch television and drive. R. 18. Drs. Sands and Cole reviewed the medical evidence and found some limits on his near and far acuity, but no limitations on his field of vision or depth perception. R. 104. Under the circumstances, the ALJ's failure to mention explicitly Mr. Terrell's glaucoma is, at most, harmless error. See *Keys v. Barnhart*, 347 F.3d 990, 994 (7th Cir. 2003) (applying the doctrine of harmless error to ALJ's determination).

Mr. Terrell has not pointed to any evidence in the record indicating that he was blind in his right eye at the time of the hearing. The plaintiff's own application for disability makes no mention of blindness. R. 83. During his hearing before the ALJ, Mr. Terrell's own attorney asked him: "Besides the pain, the back pain and the leg pain, do you have any other health problems at this

time?” R. 275. He answered: “Arthritis and hepatitis C.” *Id.* Shortly thereafter, his attorney asked: “Okay. So the main reason you believe you can’t work is the pain?” He responded: “Yes. Yes.” *Id.* At no point during this hearing did the issue of blindness arise. The minimal impact of Mr. Terrell’s vision problems was further underscored by the fact that he was able to review a list of medications given to him by his attorney. R. 277. If a claimant wants the ALJ to consider an impairment, he must at least make some effort to show that the impairment exists.

C. *The ALJ’s Consideration of Pain Medication and Hepatitis C*

Mr. Terrell argues that the ALJ failed to consider how prescribed pain medication and hepatitis C affected his residual functional capacity to do work. Because the ALJ clearly took into account the effects of pain medication and hepatitis C in making her decision, this challenge fails.

In reaching her conclusion, the ALJ noted that Mr. Terrell was taking “a variety of medications,” including Vicodin and morphine. R. 18. At the hearing, the ALJ asked Mr. Terrell if he suffered from any side effects due to his medications. He replied: “No more than get (sic) sleepy and once – I don’t know how to say. It makes my mouth dry and so forth, you know.” R. 282. In making her residual functional capacity assessment, the ALJ considered numerous

medical reports. None of these reports made any mention that the pain medications impaired Mr. Terrell's ability to work. R. 17.

The ALJ also noted that Mr. Terrell "testified to no problems related to Hepatitis C." R. 18. At the hearing, the ALJ asked: "Is the hepatitis C giving you any problems at this time?" R. 275. Mr. Terrell replied: "Not that I know of right now." *Id.* Mr. Terrell has not pointed to any other evidence showing that hepatitis C impaired his ability to work. The ALJ was aware of the effects of his medication as well as hepatitis C. She justifiably concluded that these effects did not affect the disability determination.

D. *Mr. Terrell's Residual Functional Capacity to Perform "Light" Work*

Mr. Terrell finally argues that the ALJ erred by finding that he retained the residual functional capacity to perform light work. The Social Security Administration defines "light work" as jobs that involve:

lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.

20 C.F.R. § 416.967(b). The ALJ determined that Mr. Terrell was:

limited to restricted light work - lifting only 20 pounds occasionally and 10 pounds frequently and standing, sitting or walking for only 2 hours at a time, and standing or walking at most for 4 hours in an 8 hour day. The

claimant is limited to climbing stairs occasionally and no other climbing, and only occasionally balancing or stooping and may never crouch[,] kneel or crawl.

R. 18-19. Mr. Terrell argues that the ALJ's assessment of his work-related abilities does not match the Social Security Administration's definition of light work, as the ALJ determined that he could stand or walk for a maximum of only 4 hours per workday while light work includes jobs that require "a good deal of walking or standing." 20 C.F.R. § 416.967(b).

Mr. Terrell's reliance on 20 C.F.R. § 416.967(b) is misplaced, as there is no basis for finding that the ALJ incorrectly characterized his exertional capabilities. The ALJ clearly never considered him capable of performing the *full range* of light work. Instead the ALJ ruled that he could perform only "a significant range of light work," R. 21, and observed that his "ability to perform all or substantially all of the requirements of light work is impeded by additional exertional and/or non-exertional limitations." R. 20. Despite these limited work capabilities, the ALJ found that Mr. Terrell could perform a significant number of other jobs in the national economy, such as work as an assembler or inspector. R. 21. According to the vocational expert, a person could still perform these jobs despite being unable to stand or walk more than 4 hours per 8-hour workday. R. 295. The ALJ did not err in concluding that Mr. Terrell could perform a limited range of light work.

*Conclusion*

For the foregoing reasons, the ALJ's decision denying benefits is supported by substantial evidence and does not reflect a legal error that would require remand. Accordingly, the ALJ's decision is affirmed. Final judgment will be entered accordingly.

So ordered.

Date: January 5, 2007

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DAVID F. HAMILTON, JUDGE  
United States District Court  
Southern District of Indiana

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