UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Burger v. Astrue

282 F. App'x 883 (2d Cir. 2008) · Decided June 27, 2008

SUMMARY

The Second Circuit vacated a district court judgment upholding the denial of Nicole Burger's application for Social Security Disability Insurance benefits. The court held that, given Burger's lack of insurance, sporadic emergency treatment, and testimony regarding limitations that would preclude her past work, the administrative law judge had an affirmative duty to develop the medical record further. The case was remanded for additional record development and reconsideration of the disability claim.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	III; Raggi; Straub
JURISDICTION	Federal
DECIDED	June 27, 2008
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a district court judgment upholding the Commissioner's final determination denying Burger's application for Social Security Disability Insurance benefits.
STANDARD OF REVIEW	De novo review of the district court's decision, with review focused on whether the Commissioner applied the correct legal standard and relied on substantial evidence in determining that Burger was not disabled.
PRECEDENTIAL VALUE	Unpublished summary order; limited precedential value.
PARTIES	Nicole Burger v. John E. Astrue, Commissioner of Social Security

TOPICS

agency adjudication · judicial review of agency action · administrative law · standard of review · appellate procedure

PRACTICE AREAS

Social Security disability | administrative law | appellate procedure

QUESTIONS PRESENTED

1. Whether the ALJ properly rejected Burger's testimony about functional limitations based principally on her sporadic medical treatment and the absence of contemporaneous physician assessments.
2. Whether, where a claimant has a recognized severe impairment, somewhat credible testimony suggesting inability to perform past work, and an explanation based on inability to afford treatment, the ALJ had an affirmative duty to develop the medical record further before denying benefits.
3. Whether the district court properly upheld the Commissioner's denial of SSDI benefits.

HOLDINGS

1. The ALJ was required to develop the medical record more fully, including by endeavoring to obtain at least a belated residual functional assessment, before rejecting Burger's claim.
2. The district court's judgment could not stand because the administrative record had not been adequately developed before the Commissioner rejected Burger's claim.

KEY QUOTATIONS

> *"Under these circumstances, ie., a recognized severe impairment, "somewhat credible" testimony as to limitations that would preclude past employment, and a demonstrated inability to secure anything more than sporadic emergency treatment, the ALJ was obliged himself to develop the medical record more fully to ensure an accurate assessment of Burger's residual functional capacity."* (at 885)

> *"Because a hearing on disability benefits is a non-adversarial proceeding, the ALJ generally has an affirmative obligation to develop the administrative record. This duty exists even when the claimant is represented by counsel."* (at 885)

FACTUAL BACKGROUND

Burger alleged that a severe impairment confined her to bed for substantial portions of each day and prevented her from performing her former work as a secretary. She had sought only sporadic emergency treatment because she was uninsured and unable to pay for regular medical care, and she did not provide physician assessments of her functional limitations. The ALJ found her testimony only somewhat credible and concluded that she retained the residual functional capacity for light and sedentary work, but the Second Circuit determined that the record required further development.

PROCEDURAL HISTORY

The Commissioner of Social Security denied Burger's application for SSDI benefits for the period from January 8, 2000, through June 30, 2003. The district court upheld the Commissioner's determination. Burger appealed, and the Second Circuit vacated the district court's judgment and remanded with directions for further remand to the Social Security Administration.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The district court must remand the case to the Social Security Administration. The Administration must further develop the administrative record, including endeavoring to obtain at least a belated residual functional assessment, and reconsider Burger's claim for disability benefits.

CASES CITED

- Halloran v. Barnhart, 362 F.3d 28, 31 (2d Cir. 2004)
- Shaw v. Chater, 221 F.3d 126, 131, 133 (2d Cir. 2000)
- Green-Younger v. Barnhart, 335 F.3d 99, 106 (2d Cir. 2003)
- Arnone v. Bowen, 882 F.2d 34, 39 (2d Cir. 1989)
- Perez v. Chater, 77 F.3d 41, 47 (2d Cir. 1996)

OPINION

PER CURIAM.

SUMMARY ORDER Plaintiff Nicole Burger appeals from a judgment of the district court upholding a final determination by the Commissioner of Social Security ("Commissioner") denying Burger's application for Social Security Disability Insurance ("SSDI") for the period from January 8, 2000, until June 30, 2003.

We review the district court's decision de novo, focusing on whether the Commissioner applied the correct legal standard and relied upon substantial evidence in concluding that Burger was not disabled during the relevant period. See Halloran v. Barnhart, 362 F.3d 28, 31 (2d Cir.2004); Shaw v. Chater, 221 F.3d 126, 131 (2d Cir.2000).

We assume the parties' familiarity with the facts and record of prior proceedings, which we reference only as necessary to explain our decision. Burger submits that the Commissioner ' erred in concluding that despite her demonstration of a severe impairment, she retained the residual functional capacity to perform both light and sedentary work, which included her former work as a secretary.

We agree. The Commissioner's ruling essentially adopted findings by the Administrative Law Judge ("ALJ") who reviewed Burger's claim. While acknowledging that Burger herself testified to limitations that would preclude her performance of secretarial work, the ALJ concluded that this testimony was "only somewhat credible" in light of the absence of corroborative medical evidence.

Specifically, the ALJ noted that Burger had sought only "sporadic" treatment for her conditions and had not offered any physician's assessments of her functional limitations. It is the petitioner's burden to demonstrate that her impairments prevent her from returning to her former type of employment. See Green-Younger v. Barnhart, 335 F.3d 99, 106 (2d Cir.2003).

Moreover, an applicant's failure to seek medical treatment during the relevant disability period may cast doubt on her own testimony regarding pain or functional limitations. See Arnone v. Bowen, 882 F.2d 34, 39 (2d Cir.1989).

In this case, however, Burger offered an explanation for her decision to seek only occasional emergency treatment: she was uninsured and could not pay for regular medical care. As this court observed in Shaw v. Chater, 221 F.3d at 133, "[i]t would fly in the face of the plain purposes of the Social Security Act" to deny benefits on the basis of a claimant's inability to pay for treatment.

To be sure, there are some claimed impairments that, if credible, would be so painful that even an impoverished claimant would be expected to seek frequent treatment. But Burger's impairment does not appear to fall in this category. She claims her impairment confines her to bed for large parts of every day, but only occasionally triggers acute problems requiring emergency medical treatment.

Under these circumstances, ie., a recognized severe impairment, "somewhat credible" testimony as to limitations that would preclude past employment, and a demonstrated inability to secure anything more than sporadic emergency treatment, the ALJ was obliged himself to develop the medical record more fully to ensure an accurate as*885sessment of Burger's residual functional capacity.

Indeed, the relevant regulations specifically authorize the ALJ to pay for a consultative examination where necessary to ensure a developed record. See 20 C.F.R. § 404.1512(d)-(f); Perez v. Chater, 77 F.3d 41, 47 (2d Cir.1996) ("Because a hearing on disability benefits is a non-adversarial proceeding, the ALJ generally has an affirmative obligation to develop the administrative record.

This duty exists even when the claimant is represented by counsel." (internal citations omitted)). We recognize that a doctor's contemporaneous residual functional assessments are more valuable than ones made after the relevant claim period. Nevertheless, we conclude that the circumstances of this case required the ALJ to endeavor to secure at least a belated assessment before rejecting Burger's claim.

Accordingly, we conclude that this case should be remanded to the Commissioner with directions to develop the administrative record further and to reconsider Burger's claim for disability benefits. We VACATE the judgment of the district court and REMAND the case with directions

that the district court remand this case to the Social Security Administration for proceedings consistent with this order.