

## Summary of Significant Federal Court Decisions

(Decisions discussed below are from the W. District of PA, unless otherwise indicated)

### *Velardo v. Commissioner, 07-1604, decided January 29, 2009, per Standish, J.*

In a 39 page decision the Court rejected all Defendant's arguments against the finding that the claimant met Listing 12.05. According to the Court, the valid IQ scores, all of which were less than 70, combined with the other "severe" impairments, were sufficient to establish the claimant's disability. The Court specifically found, as against defendant's assertions, that 1) where there are multiple tests, the lowest controls, 2) the Commissioner could not invoke bases for affirming the decision that were not present in the ALJ decision itself (it had attempted to supplement the record with treatises and journal articles, etc. in support of its position), 3) found that the diagnosis of borderline intellectual functioning, as opposed to mental retardation, did not undermine plaintiff's 12.05 claim, 4) related, that a diagnosis of mental retardation was not necessary in any event, and 5) the Commissioner's attempt to undermine plaintiff's claim on the basis of a lack of proven "deficits in adaptive functioning" could not be affirmed because, aside from the debate about whether they are required at all, the ALJ never discussed them any way, so at the very least, even on the Commissioner's theory, the ALJ decision was deficient. The case was remanded for reconsideration. *This case was referred by Edgar Snyder & Associates.* **PENDING ON REMAND.**

### *Harris v. Commissioner, 08-863, decided January 20, 2009, per Schwab, J.*

In this case the Court reversed and awarded benefits in part, and remanded the rest of the case for reconsideration. Specifically, the Court agreed that uncontraverted evidence established that, at best, she could perform sedentary work. Given that there was no dispute by the Commissioner that this fact, combined with her age, education and past work led to a finding that she was disabled under the Grids as of her 50<sup>th</sup> birthday, she was awarded benefits as of September 2007, and the remainder of the case was remanded based on the Court's finding that the ALJ "failed to provide sufficient countervailing evidence to justify the deviation (from the treating doctors' opinions)". *This case was referred by E. J. Julian, Esq., Washington, PA.* **PENDING ON REMAND**

### *Bohizic v. Commissioner, 08-019, decided December 23, 2008, per Standish, J.*

The ALJ's primary justification for denying benefits in this case was his conclusion that plaintiff had not taken "significant steps" to alleviate her pain. This conclusion was flatly inconsistent with the record, which demonstrated that she had undergone *nine* surgeries, been prescribed numerous medications, taken physical and water therapy, had medical massages, used an aqua bed, used a TENS unit, had numerous injections of pain medication, wore braces on both wrists, and lies down and uses ice packs. The court agreed, and also agreed that the ALJ had improperly attempted to buttress his decision to deny benefits on her "wide range" of daily activities; the contradicted record established that she did little more than essential daily activities, and even those often with help from family members. Accordingly, the court remanded. *This case was referred by Larry Rowen, a non-attorney representative from Mercer, PA.* **PENDING ON REMAND.**

***Persun v. Commissioner, 08-900, decided December 23, 2008, per Muir, J (M.D. PA)***

In this case the court remanded to require the ALJ to appropriately explain his decision in light of uncontradicted evidence. Two psychologists, a treating source and the consultative examiner, identified significant work-related limitations. Although the ALJ discussed the treating source's opinion at some length in his decision, alleging internal inconsistencies, etc., the confirming CE's report was discussed in one sentence. That one sentence discussion of course did not explain how the ALJ resolved his rejection of the treating source's opinion with this confirmatory evidence. In this context, the court held that reliance on the State Agency reviewing physician's assessment was not justified. Furthermore, the ALJ never discussed the testimony of plaintiff's mother who explained, among other things, that plaintiff's "job" with his uncle was more of a favor than anything else, and that he got significant amounts of help at home with his schoolwork from his extended, special needs, high school. *This case was referred by Mark Persun, Esq., Latrobe, PA.* **PENDING ON REMAND.**

***Ashbaugh v. Commissioner, 08-666, decided December 15, 2008, per Lancaster, J. (adopting the recommendation of MJ Mitchell dated November 25, 2008).***

The consultative psychological examiner (who evaluated claimant, post-hearing, at the request of the ALJ) concluded that plaintiff had numerous marked to extreme limitations in his ability to perform work-related functions. The ALJ rejected these conclusions based primarily on his interpretation of the "F-K scales" described in the raw data attached to the CE's report. In fact, the ALJ went so far as to accuse the CE of initially "hiding" this evidence (because it was initially not attached to the report, but obtained on the request of the ALJ after reviewing the report). The ALJ never again followed up to the CE to obtain his input into these concerns about the raw data. The court agreed that it is not within the province of the ALJ to interpret such data, particularly when the evaluator is available. The court also agreed that the ALJ improperly relied upon vocational expert testimony taken at the first hearing (the ALJ held *three* hearings, one after the CE report was prepared, before deciding the case). The case was remanded to address these errors. *This case was referred by Quatrini Galloway, Greensburg, PA.* **PENDING ON REMAND.**

***Ludvico v. Commissioner, 08-332, decided December 5, 2008, per Schwab, J.***

In this appeal, plaintiff raised two issues: first, that the ALJ had failed to address the non-exertional impairments proven by the record in his hypothetical question to the vocational expert and, second, that a "borderline" grids situation existed given that the claimant was only five months shy of her 50th birthday on the date of the ALJ denial. The court agreed that the facts establish that a borderline situation existed and that the ALJ had failed to acknowledge it, no yet address it in his decision. Accordingly, the court remanded on this basis alone, without addressing the non-exertional impairment issue. *This case was referred by Edgar Snyder & Associates.* **PENDING ON REMAND.**

***Nice v. Commissioner, CA No.: 06-1444, dec. October 15, 2008, per McVerry, J.***

In this case the ALJ posed a hypothetical limitation that plaintiff was capable of performing "simple routine repetitive tasks", and denied benefits on the basis of the VE's response that jobs existed for a person with those limitations. However, in direct contradiction of Third Circuit case law, the ALJ failed to pose an "accurate" hypothetical since she failed to incorporate the specific work-related limitations set forth in the consultative examiner's psychological report. Specifically, the CE had indicated that plaintiff had "marked" limitations of her ability to attend and concentrate, respond to routine job stresses, and adapt to changes in a typical work setting. Thus, the ALJ erred in two ways, by failing to acknowledge, no yet evaluate this evidence, and by failing to account for it in her hypothetical question. *This case was referred by Eileen Bailey, Esq., Greensburg Pennsylvania. AWARDED ON REMAND.*

***Praias v. Commissioner, Ca. No.: 07-912, decided September 29, 2008, per McVerry, J.***

Plaintiff has been treated consistently for mental health disorders diagnosed alternately as bipolar disorder and schizoaffective disorder. In the somewhat remote past plaintiff had an alcohol abuse diagnosis, but by the time of the hearing he testified, and the record confirmed, that he had been sober at least two years. The ALJ's decision *flirts* with finding that plaintiff's DAA was "material" although he never came right out and said it; instead, he repeatedly stated in his decision that the only time plaintiff's mental impairments were severe was when he was using alcohol. However, this finding was belied by the evidence, which as stated above showed that plaintiff had not used any substances, and yet continued to be heavily medicated for his mental-health disorders with consistent GAF scores of 45 or lower. In the end, the district court concluded that it was not even clear whether the ALJ found that plaintiff's DAA was material; on this basis alone the case should be remanded for clearer findings and if the ALJ did find that plaintiff's DAA was material, then he was entitled to the "benefit of the doubt" described in the Commissioner's August, 1996 Memorandum. *This case was referred by the Allegheny County Mental Health Department. AWARDED ON REMAND.*

***Bair v. Commissioner, CA No.: 07-750, dec. September 24, 2008, per Cercone, J.***

In this case, despite acknowledging that plaintiff's treatment records and the results of the consultative examination established numerous mental health-related limitations, the ALJ's failure to include these limitations, which he described in his decision, including significant difficulty tolerating supervision, slow thought process and work pace, memory deficits, difficulty sustaining concentration and confusion, rendered the ALJ's hypothetical question "inaccurate" as a matter of law. Moreover, the District Court found that the ALJ erred in stating explicitly in his decision that he "ignores" GAF scores and even *that he would ignore a District Court order telling him to do otherwise*. Although the Court did not take up plaintiff's request that the case be assigned to a different ALJ on remand, it did agree that the ALJ's cavalier attitude toward the evidence, and his failure to pose a hypothetical that could be considered "accurate" within the meaning of Third Circuit case law, justified remand for reconsideration. *This case was referred by Quatrini Galloway of Greensburg Pennsylvania. PENDING ON REMAND.*

***Forsythe v. Commissioner, CA No.: 07-266, decided September 18, 2008, per Standish, J.***

The "bottom line" for the district judge in this case was that the ALJ simply failed to offer more than a cursory explanation for most of his findings, but in particular failed to adequately explain why plaintiff's headaches were "not severe", and why his disorganization of motor function did not meet or equal Listing 11.17. Also, plaintiff's medical treatment for fibromyalgia consisted of over 300 pages of medical records on file, yet the ALJ discussed them in a short three sentence paragraph. While mostly finding that the ALJ's decision was simply inadequate as a matter of law to perform the judicial review function of the District Court, the Court did specifically find that the evidence established plaintiff's headaches were, in fact, "severe" within the meaning of the regulations. *Referred by Timothy Ayers, Esq., Johnstown Pennsylvania.*  
**PENDING ON REMAND.**

***Harrison v. Commissioner, CA No.: 07-1136, dec. August 29, 2008, per Conti, J.***

The ALJ denied benefits to this 20-year-old claimant who was in special education, had never worked, and who had undergone two sets of IQ testing, both of which yielded valid results establishing a full-scale IQ of less than 70. Moreover, the ALJ found in his decision that plaintiff also had "severe" depression. One would think that this would be an "open and shut" case for disability under listing 12.05 (c). However, the ALJ denied benefits on the basis that the claimant had not proven "deficits in adaptive functioning". The District Court *reversed* and awarded benefits to the claimant, agreeing with plaintiff that listing 12.05(c) does not add this additional requirement to what is obviously a two-step process, finding, in essence, that "deficits in adaptive functioning" is *assumed* in the definition of "mental retardation" set forth in 12.05.  
**PENDING CALCULATION OF BENEFITS ON REMAND.**

***McHenry v. Commissioner, CAA 07-1360, decided August 5, 2008, per Standish, J.***

Plaintiff's date last insured is December 31, 2005; since the ALJ's decision was made after that date, this raised the stakes in the appeal since if unsuccessful the ALJ's decision would be the "final decision" of the Commissioner and would be *res judicata* and bar a further claim for benefits. In this mental impairment disability case, the ALJ purported to "analyze" almost 100 pages of mental health records in one sentence. Moreover, the ALJ cited a GAF of 60 as a basis for finding the plaintiff's limitations were only moderate, but completely fail to acknowledge or analyze the fact that there were at least 10 other global assessments in the file reporting a GAF of 50 or less, thus making the 60 an outlier. The court agreed that the ALJ had failed to provide a sufficient basis for his decision and in particular agreed that the ALJ may not cite evidence such as a GAF only when it supports the decision to deny benefits, without explaining why other evidence, such as the much lower GAF reported throughout the file, were rejected. *This case was referred by Michelle Mansmann, Esq.*  
**PENDING ON REMAND.**

**Elder v. Commissioner, CA 07-59, decided July 31, 2008, per Conti, J.**

The record in this case indisputably contained two valid IQ test results demonstrating that plaintiff's IQ that the first part of the requirements set forth in listing 12.05(c). The ALJ conceded in his decision that plaintiff had a "severe" other impairment, depression, which resulted in additional limitations sufficient to meet the second part of the requirements of 12.05. However, the Commissioner strenuously resisted this appeal on two bases: first, it argued that the test results really were not valid since the claimant had a cold the date of one test, and the conductor of the other test did not comment on her daily activities. (Never mind that the claimant did not have a cold the day of her second test, and that the first tester had in fact commented on her activities of daily living.) In any event, the Commissioner also asserted vigorously that in addition to the valid IQ tests require by the first part of 12.05(c) that the listings also require a diagnosis of mental retardation as defined in the DSM-IV. To make a very long story short, a very long reply brief was filed demonstrating the numerous ways in which this argument does not hold water; nevertheless the Magistrate Judge recommended affirming the ALJ's decision. However, yet another long brief, Objections to the Magistrate Judge's recommendation, was filed, and a motion for oral argument was granted. Following oral argument, the District Court decided not to adopt the Magistrate Judge's findings, but instead found that the Commissioner's decision was not supported by substantial evidence and **reversed**, and awarded benefits retroactive to 1999. *This case was referred by Edgar Snyder Associates.* **PENDING COMPUTATION OF PLAINTIFF'S PAST DUE BENEFITS AND MONTHLY BENEFITS.**

**French v. Commissioner, CA 07-1624, decided July 22, 2008, per Hay, MJ**

In this case the Commissioner moved for voluntary remand after plaintiff filed his brief. Plaintiff was "closely approaching advanced age", and had submitted evidence supporting the conclusion that he was capable, at best, of performing sedentary work, including the fact that he frequently needed a cane to walk. First alleged as error was the fact that the ALJ had found that a job plaintiff had done for only several weeks was "past relevant work"; since this job was a sedentary position, the ALJ found that he could perform this job and denied his claim that step four of the sequential evaluation. The regulations clearly contemplate that jobs of such short-term duration are not considered past relevant work. Moreover, according to the regulations and Rulings, plaintiff's need to use a cane frequently eliminates most or all work above the sedentary level. The Commissioner moved for remand to require the ALJ to reconsider plaintiff's residual functional capacity pursuant to Social Security ruling 83-14. *This case was referred by Pamela Miller, Esq., Carlson Lynch LLP.* **AWARDED ON REMAND.**

**Bailey v. Commissioner, CAA 07-21, decided July 15, 2008, per Baxter, MJ**

The ALJ's primary basis for rejecting the conclusions and opinions of plaintiff's treating psychiatrist was that, according to him, the record was "unclear" as to whether the psychiatrist had a treating relationship with plaintiff. Plaintiff's brief closely documented the numerous contacts between this physician and plaintiff, and argued that given the enhanced weight due to a treating physician's opinion in the Third Circuit (which the ALJ conceded in his decision), the fact that the ALJ did not give this report the correct status as a treating physician opinion meant that the decision was lacking a key analysis. Since it is not the District Court's prerogative to substitute the ALJ's missing analysis, it remanded for further proceedings. *Referred by Charles Pankow, Esq.* **AWARDED ON REMAND.**

***Burns v. Commissioner, CA 07-019, decided May 27, 2008, per Standish, J.***

The Court concurred with plaintiff's argument that the ALJ had improperly set his medical opinion against that of the long-time treating psychiatrist. Despite the psychiatrist's uncontradicted and consistent opinion of severe, disabling symptoms supported by numerous years of treatment notes (and no consultative opinion being performed) the ALJ instead relied on his assault on plaintiff's credibility. This attack took two forms especially rejected by the Court: the ALJ's reference to plaintiff's being the father of 7 children by 4 different mothers which gave him "clear motivation...to appear disabled", and his reference to the claimant's "reluctance" to participate in OVR when the record showed he had obtained a drafting certificate through that agency. The case was remanded for further development. *This case was referred by Leah Fink, Esq.* **AWARDED ON REMAND**

***Rutherford v. Commissioner, CA 07-191, decided April 25, 2008, per Schwab, J.***

In this case the evidence plainly supported a long history of treatment for migraine headaches, the effect of which the claimant described at her hearing. Nevertheless, the ALJ found that her headaches were a non-severe impairment and did not consider the effect of them on her ability to work. In this respect the ALJ also failed to pose any headache-related functional limitations in his hypothetical question to the vocational expert. Thus, the court remanded the case to require the ALJ to consider the work-related limitations associated with plaintiff's headaches and to take additional vocational expert testimony. *This case was referred by Barbara Artuso of Quatrini Galloway, Greensburg, PA.* **AWARDED ON REMAND**

***Washington v. Commissioner, CA 07-1134, dec. April 24, 2008, per Bloch, J. and Mitchell, MJ***

In this child's claim for SSI, the magistrate judge recommended, after oral argument, that the case be remanded to address the ALJ's "confusing and somewhat arbitrary standards in reaching his conclusion" and his failure to "point to definitive evidence supporting his conclusion". What was particularly troubling to the court was the fact that the ALJ had concluded at one point in his decision that the claimant had a marked disruption of his ability to complete tasks, but later in the decision indicated those limitations were "less than marked". The ALJ also ignored uncontradicted evidence that the claimant's ability to acquire and use information was clearly at least "markedly" limited as evidenced by test results greater than two standard deviations below the mean, as well as his demonstrated first-grade reading level even though he was in the eighth grade. The court adopted the magistrate judge's report and recommendation over defendant's objections. *This case was referred by Martin Clancy, Esq., Pittsburgh, PA.* **BENEFITS AWARDED ON REMAND.**

***Mercurio v. Commissioner, CA 07-1221, decided April 14, 2008, per Conti, J.***

The Commissioner moved for voluntary remand and his case after plaintiff's brief was filed. Specifically, plaintiff pointed out that although the ALJ had found that his drug and alcohol addiction was "material", the evidence of record plainly demonstrated that he had not abused any substances since at least October, 2003. Implicitly accepted by the government in its volunteering to remand was plaintiff's argument that methadone maintenance therapy is not, as alleged by the ALJ, "drug abuse". Since DA&A can not be material unless there is actual ongoing abuse, the case was remanded to reconsider the evidence of his

other impairments, which are primarily mental-health impairments. *This case was referred by Brian Bronson of Quatrini Galloway, Greensburg, PA.* **PENDING ON REMAND**

***Smoker v. Commissioner, CA 06-1556, decided April 4, 2008, per Lenihan, MJ and McVerry, J.***

In this case, plaintiff had produced a significant amount of evidence from her rheumatologist and neurologist that she had fibromyalgia and severe recurring headaches. Nevertheless, the ALJ concluded that these conditions were not "severe" within the meaning of the Social Security Act. With respect to plaintiff's fibromyalgia the ALJ had also relied in making the nonseverity finding, on the lack of so-called "objective" evidence to establish the condition, in clear violation of the Social Security Rulings. The Magistrate Judge agreed wholesale with plaintiff's assignments of error and recommended remand, which the Court adopted as its opinion. **AWARDED ON REMAND.** *This case was referred by Barbara Artuso, Esq. of Greensburg.*

***Rivera v Commissioner, CA 07-641, decided April 3, 2008, per Bloch, J.***

In this case, the ALJ cited a GAF score of 60 as supporting his decision to deny benefits. However, the record included numerous global assessment scores, and only this one of which was greater than 50 (and most of the time were 45). Moreover, counsel had asked the vocational expert to comment on the significance of GAF scores of 45-50; the vocational expert replied that someone who's GAF scores were usually 45 to 50, with one aberrant score of 60, would not be able to work based on the fact that they would be unable to work on a consistent basis. The court held that the ALJ cannot have it both ways: she could not cite to the one GAF score supporting her decision to deny benefits, while ignoring all the others. Acknowledging that there is not a direct correlation between GAF scores and disability evaluation under the Social Security Act, the court nevertheless concluded that since the ALJ had made an issue of the scores in terms of supporting her decision, she could not then ignore and fail to explain why she was rejecting the lower scores and the vocational expert testimony based upon that evidence. **PENDING ON REMAND.**

***Whiteleather v. Commissioner, CA 06-1325, decided March 25, 2008, Per Diamond, J.***

In this case the Court agreed that the ALJ's failure to properly evaluate the claimant's mental impairments on her ability to perform her past relevant work required remand. Specifically, the Court found that the ALJ had failed to perform the "particularized inquiry" required in the Regulations to determine the effect of mental impairments on a claimant's ability to work, given that only several sentences were dedicated to the subject in his decision. The Court also found that the ALJ failed to even clearly state which of the claimant's jobs were "past relevant work" within the meaning of the Regulations, further muddying the water. *This case was referred by Edgar Snyder & Associates.* **PENDING ON REMAND**

***Miltenberger v. Commissioner, CA 06-1606, decided February 14, 2008, per Bloch, J***

This case is, in a way, a rare breed: a case where the Court determined that the opinion of the treating physician, a psychiatrist who had been treating the claimant for years, was not given appropriate weight. The Court couched it in terms that it was not "clear" whether the ALJ had appropriately weighed the opinion, despite the fact that there was no contradictory evidence, the psychiatrist completed a

comprehensive work-assessment form, and his notes documented constant GAFs of 50 or below. Although the “treating physician rule” standing alone has, in this writer’s experience, not been a very effective appeal strategy, this case is a welcome exception. *The case was referred by Frank Moore, Esq., Pittsburgh. AWARDED ON REMAND.*

***Hardy v. Commissioner, CA 07-161, decided February 11, 2008, per McLaughlin, J***

The government moved for voluntary remand in this case, agreeing that it appeared that the ALJ and the claimant’s attorney were referring to evidence not of record in discussions which took place at one of four hearings scheduled in this case. It appears that there was at least one prior file related to a previous application for benefits which was discussed—the significance of this was that the ALJ discounted the opinion of the treating neurologist that the claimant was disabled prior to her date last insured of 9.30.2006 based on the fact that the neurologist had not seen her prior to the DLI. However the discussions between counsel and the ALJ makes it appear that the same neurologist performed a CE in 2005. *This case was referred by Gerald Sullivan, Esq., Meadville. AWARDED ON REMAND.*

***Matejevich v. Commissioner, CA 06-1557, decided January 8, 2008, per McVerry, J and Hay, MJ***

The Court adopted the Report and Recommendation of the Magistrate Judge, which agreed with plaintiff that the ALJ erred when he issued confusing findings on the “severity” of her headaches. At one point the ALJ said they were not severe, but later stated that they limited plaintiff to “simple” jobs—not only was the “simplicity” of the job not the work related limitation (missing work because of headaches was), the ALJ lumped together the claimant’s depression and headaches into his finding, without explanation. The Court also found notable the fact that while defendants brief spent 3 pages discussing the claimant’s headaches, and plaintiff attached a 9 page appendix to her brief detailing only her headache related doctor appointments, the ALJ decision contained only 13 sentences discussing this evidence, 2 of which were the above 2 ambiguous sentences discussing the severity of her headaches. The case was remanded for a new hearing. *The case was referred by David Harr, Esq. AWARDED ON REMAND.*

***Goodwin v. Commissioner, CA 06-1293, decided Dec. 21, 2007, per McVerry, J and Hay, MJ***

The Court adopted the Report and Recommendation of the Magistrate Judge that the decision of the ALJ was not supported by substantial evidence, accepting plaintiff’s assignments of error wholesale. Specifically, the Court held that the ALJ had failed to give appropriate weight to the treating psychiatrist’s opinion and relied improperly on an outdated State Agency reviewing physician’s opinion (made without the benefit of most of the treating evidence) and that there was no basis in the record for the ALJ’s statement that the treating psychiatrist “accepted everything the claimant told her without question” or his finding that the claimant “hid” her brief addiction to painkillers (in fact, this was the subject of several of her therapy visits). The case was remanded for a new hearing. *This case was referred by Edgar Snyder & Associates. AWARDED ON REMAND.*

***Hill v. Commissioner, CA 06-1309, decided December 17, 2007, per Standish, J.***

The claimant has a severe form of eczema which results in frequent severe, painful rashes all over her body. The ALJ’s “analysis” of whether her condition met the Listings consisted of one sentence, and he

never discussed the fairly specific "equals" language contained in the appropriate Listing 8.05. The Court believed that the body of the ALJ's decision was adequate discussion of the evidence as far as meeting the Listing went, but that the decision did not heed 8.05's requirement to consider the frequency and duration of severe outbreaks to make the "equals" determination. Accordingly, the Court remanded. *This case was referred by David Harr, Esq.* **AWARDED ON REMAND.**

***Bokin v. Commissioner, CA 06-851, decided October 31, 2007, per Standish J.***

In this case, counsel requested the ALJ to subpoena records which he had been unable to obtain. These records were significant as treating source office notes needed to support the opinion letter and medical source statement of the treating psychiatrist. The ALJ did not acknowledge these requests, or rule upon them in his decision, but rather issued a decision denying benefits. To add insult to injury, the ALJ denied benefits, in part, *because plaintiff's treating source records had not been submitted!* The court agreed that under the circumstances, the ALJ inappropriately denied benefits and that the long line of cases requiring an ALJ assist in the preparation of a claimant's case, even when they are represented, applied and the ALJ had failed to satisfy this obligation. Accordingly, the court remanded. *This case was referred by Edgar Snyder and Associates.* **AWARDED ON REMAND**

***Millin v. Commissioner, CA 06-186, decided October 31, 2007, per Diamond, J.***

The primary reason cited by the ALJ for rejecting the opinion of the treating rheumatologist was that the report (which the ALJ acknowledged described disabling limitations) *was unsigned.* Finding no authority for rejecting a report on this basis, and given the fact that the ALJ never raised this as an issue at the hearing (the report was submitted well in advance of the hearing), remand was required. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED ON REMAND**

***Glass v. Commissioner, CA 06-1558, decided September 27, 2007, per Schwab, J.***

This case is a virtual carbon copy of Dowell v. Commissioner, reviewed below. Here again the ALJ denied benefits in a "borderline application of the grids" scenario, failing to know that he was only 118 days away from his 55th birthday. The court remanded for the reasons cited in Dowell. *This case was referred by Ruth Kolb, Esq.* **BENEFITS AWARDED ON REMAND.**

***Dowell v. Comm., CA 06-261, decided September 14, 2007, per Standish, J.***

The ALJ determined that as of the claimant's date last insured on December 31, 1996, he was capable of performing light work and therefore was not disabled based on the application of the Grids. However, the ALJ failed to take into account that he was only 103 days shy of his 55th birthday on the date he was last insured; given that the ALJ's findings that plaintiff was unable to return to past work, and had no transferable work skills, he would be found disabled at age 55 on the same vocational considerations. Thus, a "borderline situation" existed which the ALJ did not address. The court remanded, consistent with the Third Circuit's decision in Lucas v. Commissioner (in which Karl Osterhout was lead counsel)

requiring that ALJs give explicit consideration to the applicable regulations in this type of case. *This case was referred by Charles Pankow, Esq.. DENIED ON REMAND.*

***Hicks v. Commissioner, CA 06-777, decided September 4, 2007, per Diamond, J.***

During the hearing, in previous counsel's pre-hearing memorandum, and in the ALJ decision reference was made to a psychological CE which found that the claimant had a full scale IQ of 68 (V-64, P- 69), raising the applicability of Listing 12.05. However, on appeal before the district court, the report was not part of the record (it is believed that evidence in a prior file was before the ALJ). The Commissioner resisted plaintiff's Motion to Compel the report, but was ordered to do so by the Court, and then argued that since the report was not "part of the record" in the application before the ALJ that it could not be used to argue that the decision was not supported by substantial evidence. Plaintiff argued, and the Court agreed, that the ALJ's reference to the report in the decision precluded this argument (which would ordinarily be true per Jones v. Heckler) and remanded the case for further consideration, and formal inclusion of the report into the record before the ALJ. *This case was referred by Ruth Kolb, Esq. BENEFITS AWARDED ON REMAND*

***Ramirez v. Commissioner, CA 07-280, decided August 15, 2007, per Schulze, J. (D. Md.)***

In this case the government moved for voluntary remand after plaintiff filed her brief, and the Court granted the motion. Plaintiff's primary allegations involved the vague hypothetical questions posed to the vocational expert, his even more vague responses and, to top it off, the ALJ's misrepresentation of the vocational expert's responses. This lack of clarity, in a case involving primarily non-exertional impairments (primarily a bipolar disorder and a personality disorder), clearly required remand. *This case was referred by Howard Bernstein, Esq., Silver Springs, Md. BENEFITS AWARDED ON REMAND.*

***Whatley v. Commissioner, CA 06-779, decided August 14, 2007, per Lancaster, J. and Caiazza, M.J.***

The Court adopted the Report and Recommendation of the Magistrate Judge that the case should be remanded to reconsider the evidence in light of the ALJ's having confusingly given "great weight" to certain medical opinions, barely discussing others and, in some cases, his failure to even acknowledge medical opinions. Moreover, the ALJ had given "great weight" to several medical opinions in the record that actually *supported* plaintiff's claim for benefits in certain aspects. Specifically acknowledging that it is not the province of a district court to guess at the intentions of an ALJ, or to substitute its (or the government's) interpretation of the medical evidence for that of the ALJ, the Court remanded the case for reconsideration, and in particular to specifically address each and every medical opinion of record and the weight that each report is entitled to, obtain additional vocational expert testimony, and issue a new decision. *This case was referred by David Harr, Esq., Greensburg. BENEFITS AWARDED ON REMAND.*

***Miller v. Commissioner, CA 06-1258, decided July 19, 2007, per Ambrose, J.***

In this case the Court remanded for further consideration of the medical evidence. In particular, the court agreed that the ALJ had failed to evaluate plaintiff's primary impairment, Reflex Sympathetic Dystrophy Syndrome (RSD) on its own terms, as required by Social Security Ruling (SSR) 03-2p, and instead had cited to the lack of "objective test results" as the primary basis for denying benefits. SSR 03-2p

specifically acknowledges that RSD is a "diagnosis of exclusion" made *in the absence* of positive radiological studies, etc. and instead is based upon specific criteria related to the nature of the patient's pain complaints, as well as certain physical signs that usually or always accompany the condition. Not only had the ALJ not addressed SSR 03-2p in his decision, the Commissioner also failed to address it in its brief, despite the fact that this was clearly the main argument made by plaintiff. For these reasons, the Court believed that it did not have a sufficient basis in the record, nor did it have any guidance as to the Commissioner's position, and remanded for further consideration. *This case was referred by Gary Frankhouser, Esq., Uniontown.* **BENEFITS AWARDED (PART FAV DECISION) ON REMAND.**

***Hunsberger v. Commissioner, CA No.: 06-1310, decided July 12, 2007, per Diamond J.***

The ALJ denied benefits on the basis that plaintiff's DA&A was "material". However, the record demonstrated that plaintiff had not used any substances since entering treatment a year and a half before the hearing *except* for the unfortunate fact that his psychiatrist "believed" he had been smoking marijuana the date of his last visit (the same day as his hearing!!!). Plaintiff argued that DA&A cannot be material without proof of actual *abuse* of a substance, which one event of use did not prove. The government moved for voluntary remand after the brief was filed. **BENEFITS AWARDED ON REMAND**

***Williams v. Commissioner, CA No.: 06-652, decided May 18, 2007, per Conti, J.***

In this case the court adopted the Report and Recommendation of the Magistrate Judge that the case be remanded to address vague conclusions and inconsistencies in the decision of the ALJ. In particular, the ALJ determined that drug and alcohol addiction was "material", referring to plaintiff's mental-health treatment records, but determined that her depression, diagnosed and described in the same records, was "not severe". The Commissioner had argued that despite the "misstated" severity finding, the ALJ's "true" finding was to be found elsewhere in his decision. The Court did not accept this explanation by the Commissioner, but alternatively explained that even if did, this *at least* demonstrated the inconsistency and vagueness of the decision. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED ON REMAND**

***Middleton v. Commissioner, CA No. 06-594, decided April 25, 2007, per Standish, J.***

In this extensive decision (45 pages long) the district court agreed that the ALJ committed numerous errors in his discussion of the medical evidence, and remanded the case for further development. Specifically, the Court found that the ALJ erred by rejecting an established diagnosis of conversion disorder and cognitive disorder, instead substituting his speculative opinions. In particular, the ALJ found that plaintiff was malingering, even though the diagnosis of conversion disorder specifically eliminates malingering as a possibility. Second, the ALJ had completely overlooked the conclusions of a consultative psychological examiner, not even mentioning this report in his decision. Finally, the ALJ did not discuss the fact that the Veterans Administration had found plaintiff 100% disabled. *This case was referred by Michel Dugan, Esquire.* **BENEFITS DENIED ON REMAND.**

**Kelly v. Commissioner, CA No. 06-780, decided March 7, 2007, per Schwab, J.**

In essence, the ALJ's error in this case boiled down to a misreading of a key medical report offered by plaintiff's long time treating psychiatrist. On a form provided by counsel, the psychiatrist was asked to answer the question: "How many days per month would your patient be *unable* to work due to exacerbation of psychological symptoms?" The form provided several possible answers including "None", "1-3", "4-7", etc. The psychiatrist crossed out the prefix "un" in the word "unable", and answered "None". The ALJ denied the claim, giving "great weight" to the opinion of the treating psychiatrist that plaintiff "would miss no days per month of work". What the ALJ failed to appreciate was that the psychiatrist had, in effect, changed the question itself to read: "How many days per month would your patient be *able* to work..." and thus his answer of "None" obviously had an entirely different meaning. The court agreed with plaintiff's argument in this respect and remanded to the ALJ to reconsider the evidence as actually stated. *This case was referred by Edgar Snyder and Associates.* **BENEFITS DENIED ON REMAND; CASE AGAIN ON APPEAL.**

**Palmer v. Commissioner, CA No. 06-853, decided March 2, 2007, per Hardiman, J.**

In this case plaintiff argued that the ALJ erred in finding that the report of a particular doctor was entitled "no weight" because, in ALJ's words, "it cannot be determined whether this doctor ever examined this patient more than on this particular occasion". Fortunately, what saved the claimant in this case was the fact that this doctor had a very unique signature. Counsel provided an exhibit to the court and to defense counsel showing that this unusual signature appeared in no less than 27 different places in the medical record, which plainly showed that this physician had in fact been *intimately* involved in the plaintiff's care. As such his opinion that plaintiff was disabled was entitled to status as a "treating physician opinion". The Commissioner filed a motion to remand, which the Court granted. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND**

**Maenner v. Commisioner, CA No. 06-221, decided February 16, 2007, per Gibson, J.**

In a relatively straightforward "treating physician rule" case, the Court agreed that the ALJ had failed to appropriately evaluate the opinions of plaintiff's long time treating primary care physician and psychiatrist. The error was more obvious with respect to the opinion of the treating psychiatrist, since the only contrary opinion was that of a State Agency reviewing psychiatrist who evaluated the file prior to any evidence being received from the treating psychiatrist. Indeed, the State Agency physician had concluded that plaintiff had a "non-severe" psychiatric impairment, a finding even the ALJ did not adopt. Moreover, the Court agreed with plaintiff's argument that the ALJ had misconstrued and misstated plaintiff's activities of daily living as supporting a denial of benefits when in fact the evidence supplied by plaintiff had at best showed that he was able to perform sporadic daily activities. *This case was referred by Cynthia Berger, Esq.* **BENEFITS AWARDED ON REMAND.**

**Flis v. Commissioner, CA No. 06-191J, decided February 9, 2007, per Diamond, J.**

The Commissioner moved for voluntary remand, in effect conceding each one of plaintiff's arguments: that the VE had never testified as to the number of jobs the hypothetical person would be able to perform,

that the evidence did not support the ALJ's finding that plaintiff's vision impairment was "nonsevere", that the evidence did not support the ALJ's conclusion that plaintiff could perform "medium work", that the ALJ's credibility determination was flawed since he did consider plaintiff's long and productive work history and because he could refer only to plaintiff's sporadic daily activities as being inconsistent with plaintiff's claim of disability and, finally that the sum total of the above errors rendered the hypothetical question to the vocational expert "inaccurate" as a matter of law. *This case was referred by Charles Pankow, Esq.* **BENEFITS AWARDED ON REMAND.**

***Margaret Norris o/b/o Dominic Arlotta, v. Commissioner, CA No.: 06-746, decided February 6, 2007, per McVerry, J.***

At the administrative hearing plaintiff's previous counsel had advised the ALJ that the claimant, a child applying for SSI, was about to undergo additional evidence with respect to his achievement of "milestones", since brain damage had occurred during childbirth. The record was held open to receive this evidence, which the attorney submitted prior to the issuance of the decision. However, for reasons that were never clear, these records were never received into the file, and the ALJ denied the claim making no reference to them. Plaintiff's previous counsel then submitted these records to the Appeals Council who determined that they did not "provide a basis for changing the decision" even though they clearly established that plaintiff was functioning at less than one half of his age-appropriate levels in social functioning, motor skills, etc., meaning that his condition clearly met the Listings. Upon review of the additional evidence, and plaintiff's arguments, the Commissioner agreed to a voluntary remand to consider the evidence. *This case was referred by Stanley Hilton, Esq.* **BENEFITS AWARDED ON REMAND**

***Sharick v. Commissioner, CA No. 05-1384, decided December 18, 2006, per Standish, J.***

In the case the Court reversed and remanded for payment of benefits retroactive to January 2003. In doing so, the Court agreed that the ALJ had failed to adequately explain his reasons for rejecting the opinions of plaintiff's long time treating neurologist and rheumatologist (supported by a raft of treatment records), both of whom had stated that she was disabled by fibromyalgia, osteoarthritis and rheumatoid arthritis, and erythema nodosum. The ALJ's attempt to dispose of these well formed opinions in **two sentences** in his decision (in the absence of any contrary opinion or CE) was, in the opinion of the Court, beyond the pale, and required reversal. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND.**

***Nicklowlow v. Commissioner, CA No. 05-1290, decided December 5, 2006, per Standish, J.***

The ALJ rejected the conclusions of the treating physician, who stated unequivocally that the claimant was unable to work, even though that physician had been "running the ball" in terms of arranging referrals to surgeons and pain specialists, and had a copy of all the referral narratives and treatment notes from these physicians in his file, AND examined the claimant one time per month. The file contained no CE, only the State Agency RFC which had not even been prepared by a doctor and, in any event, was prepared long before most of the above-mentioned evidence was part of the file. That, according to the Court, left the ALJ with nothing other than his own lay medical opinion upon which to deny benefits, so the case was remanded. *This case was referred by Leah Fink, Esq.* **BENEFITS AWARDED ON REMAND.**

**Roose v. Commissioner, CA No. 06-388, decided November 29, 2006, per Schwab, J.**

The claimant appeared unrepresented at his administrative hearing; he has a 72 IQ. The Court held that the ALJ had failed to fully apprise him of his right to counsel, and to assist him in the presentation of his claim. The claimant clearly did not understand his rights, per the quoted section of the hearing transcript, and the ALJ added insult to injury by failing to impress upon the claimant the need to update his medical file, then using the lack of evidence as a basis to give less credibility to his testimony. Moreover, the Appeals Council's failure to find that the "missing evidence" once supplied to it, was "new and material" constituted further error. The case was remanded for further proceedings. **BENEFITS AWARDED ON REMAND.**

**Wisor v. Commissioner, CA No. 06-497, decided November 14, 2006, per Schwab, J.**

In this case the Court agreed (within three weeks of the briefs being filed!) that the the ALJ decision was simply far too unclear for it to perform its duty of substantial evidence review. Primarily, the problems were that the ALJ failed to address all but one of the 14 opinions of disability contained in the file, and made blanket references to the evidence supposedly supporting his decision (i.e., "Exhibit 14F") when some of those exhibits contained the aforementioned disability opinions. The Court was also perplexed by the ALJ's having given "medium weight" (as opposed to "great" or "little" weight, which he gave to other exhibits) to the only opinion of disability he acknowledged. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND.**

**Baughman v. Commissioner, CA No. 05-1034, decided November 8, 2006, per Standish, J.**

The dispute in this case centered around the lack of clarity in a consultative examiner's report, and the appropriate weight to be given to the claimant's treating physicians opinions. Although the court felt that it was a "close call" it determined that the consultative examiner's statement that plaintiff could stand/walk for one hour, and sit for two, was unclear with respect to whether the examiner meant to state that these limitations were "total in an eight-hour work period" or "at a time" limitations. Moreover, the ALJ when he gave "no weight" to the one-page "check the box" assessment of plaintiff's treating physician that was submitted to the Department of Public Assistance. Although such evidence, according to the court, is ordinarily entitled to little weight, there is no basis in the law or in the medical evidence of the case to give no weight whatsoever to the report of the treating physician. *This case was referred by David Harr, Esquire.* **THE CLAIMANT RECEIVED A PARTIALLY FAVORABLE DECISION ON REMAND.**

**Halbrooke v. Commissioner, CA No. 05-832, September 28, 2006, per Bloch, J.**

Plaintiff's treating physician, a board-certified pain specialist and physiatrist, was also the consultative examiner. The conclusions of the consultative examination and subsequent treatment notes and opinion letters of this physician unequivocally supported plaintiff's complaints of severe pain which rendered him unable to work. Under the circumstances, the Court held that it was clear error for the ALJ to rely upon the State agency medical examiner, especially since his report predated by two years numerous records and opinion letters of the treating pain specialist, and remanded for reconsideration. **DENIED AFTER RE-HEARING—THE CASE IS AGAIN ON APPEAL.**

*Williams v. Commissioner, CA 05-879, September 28, 2006, per Standish, J.*

Plaintiff was evaluated on two occasions by consultative examiners, once in 2001 in connection with a prior application, and again in 2004 in connection with the instant case. Moreover, in 2003 and 2004 plaintiff was treated on a regular basis at a mental health clinic and was hospitalized on two occasions for treatment of depression. Accordingly, the ALJ erred by giving greater weight to the much older consultative examination, especially when the treatment notes, record of two hospitalization, and conclusions of the latter consultative examiner clearly supported a significant worsening in plaintiff's mental health condition. In this connection, the ALJ's hypothetical question to the vocational expert was also "inaccurate" as a matter of law since it failed to incorporate the well supported opinions of the latter consultative examiner and treating psychiatrist. **BENEFITS AWARDED ON REMAND.**

*Cross v. Commissioner, CA No. 05 – 392, decided September 18, 2006, per Diamond, J.*

In this case the district court agreed that the ALJ had improperly found plaintiff's depression and gastrointestinal disorders to be "nonsevere" within the meaning of the regulations. Moreover, the ALJ's decision was confusing and that it was impossible in the context of the decision to assess the ALJ statement that "(plaintiffs) nausea, fatigue and headaches are considered as symptoms which are subsumed by the impairments listed above", given that the ALJ had discussed both severe and the nonsevere impairments in the previous paragraph. Thus, it was impossible to know whether the ALJ heads "subsumed" the symptoms into his discussion of plaintiff severe impairments or nonsevere impairments. Finally, the court agreed that because of the above errors the hypothetical question to the vocational expert was "inaccurate" within the meaning of Third Circuit precedent. *This case was referred by Peter Mansmann, Esq., Pittsburgh.* **BENEFITS AWARDED ON REMAND—PARTIALLY FAVORABLE DECISION.**

*Kaylor v. Commissioner, CA No. 05-319, decided August 28, 2006, per Standish, J.*

As can be seen from an earlier summary, this case was previously the subject of a federal court remand. In this case, the Court found that the ALJ had *still* failed to address the testimony at the first hearing of claimant's HIV social worker with respect to his specific limitations, and with respect to HIV patients in general and the difficulties they face. Moreover, the ALJ *still* failed to address numerous office notes of the claimant's psychiatrist documenting global assessment of functioning scores in the 40s. Finally, these errors led to the ALJ's final error: given his failure to appropriately evaluate the evidence his hypothetical question to the vocational expert, the answer to which form the basis of the denial of benefits, was not "accurate" as required in Third Circuit case law. Accordingly, the case was again remanded for further proceedings. *This case was referred by Edgar Snyder & Associates.* **BENEFITS AWARDED ON REMAND, WITHOUT A HEARING.**

*Jenkins v. Commissioner, CA No.: 05-670, decided August 24, 2006, McVerry, J.*

In this case the ALJ had failed to explain at all how his decision to deny benefits was consistent with the extensive treating records from plaintiff's mental health clinic which included numerous global assessment of functioning scores in the 40s. Clearly, the ALJ's failure fell far short of his obligation to "explain on the

record the reasons for rejecting the opinion of a treating physician", citing Allen v. Bowen, 881 F.2d 37 (3Cir. 1989). This error by the ALJ led to the next: the failure to appropriately discuss the treating evidence also meant that the hypothetical question posed to the vocational expert, which formed the basis for the denial of benefits, could not be found "accurate" as a matter of law. Accordingly, the court remanded. **BENEFITS AWARDED ON REMAND.**

***Newcomer v. Commissioner, CA 05-1595, July 31, 2006 per Schwab, J.***

In this case the Court remanded because the ALJ had failed to give appropriate weight to the opinions of plaintiff's treating orthopedist. In particular, the Court found that the ALJ's characterization of the orthopedist as "always supporting claimants request for disability", and the orthopedist's failure to perform a particular "malingering test" was belied by the facts where the orthopedist provided extensive treating notes and supported his opinions with numerous references to various clinical tests performed in his office. Moreover, the Court rejected the ALJ's unfounded allegations of prescription drug abuse and the claimants allegedly "poor work record", assertions supported nowhere in the medical record. **DENIED ON REMAND—ON APPEAL**

***Lucas v. Commissioner, Third Circuit Court of Appeals, decided July 27, 2006.***

In this case the ALJ awarded benefits as of the claimant's 55th birthday based on grid rule 202.06. However, after the decision the appeals Council conducted on motion review and found that the claimant's eight last insured had expired *three months* before his 55th birthday. Accordingly, the appeals Council reversed the decision of the ALJ and denied benefits based on the same factual and credibility findings made by the ALJ. In collaboration with Thomas Sutton, Esq. of Philadelphia, we successfully argued that the case must be remanded since the appeals Council had failed to apply the grids in a nonmechanical manner when denying benefits, given the short period of time between the expiration of his insured status and his 55th birthday. *This case was referred by Edgar Snyder & Associates.* **BENEFITS AWARDED ON REMAND.**

***Bradish v. Commissioner, CA No.: 04 – 1946, decided March 6, 2006 per Bloch, J.***

The ALJ in this case posed a hypothetical question to the vocational expert that assumed a person who was limited to "light work" but would require "alternate sitting and standing work". However, the ALJ did not specify the frequency with which he would need to change positions, or the lengths of time she was capable of sitting and standing, plaintiff successfully argued, based on Social Security ruling 82 - 61 that a general limitation to "alternate stand/work" is inappropriate and required specific findings with regard to the frequency and lengths of time the claimant is capable of maintaining these postures. Accordingly, the court remanded for supplemental proceedings. *This case was referred by Mitch Dugan, Esq.* **THE CLAIMANT WITHDREW HER INITIAL APPLICATION, IN LIGHT OF AN AWARD OF BENEFITS ON A SUBSEQUENT APPLICATION.**

**Ewing v. Commissioner, CA No. 04-1189, decided March 6, 2006, per Frost, J., Abel, MJ (S. D.OH)**

In this case the District Court adopted the report and recommendation of the magistrate judge and found that the ALJ's description of plaintiffs fainting spells as a "non-severe impairment" was not supported by substantial evidence. Moreover, the court found that the ALJ had arrived at this conclusion by misstating the testimony of the vocational expert: while the ALJ described the VE's testimony as that plaintiff's fainting spells would have no impact in general on a person's ability to work, reference to the hearing transcript revealed that the vocational expert's testimony was directly to the contrary. The court remanded the case for supplemental proceedings. *This case was referred by Peter Mansmann, Esq., Pittsburgh.* **BENEFITS AWARDED ON REMAND.**

**Hall v. Commissioner, CA No.: 04 – 1937, decided February 6, 2006, per Hardiman, J.**

The ALJ determined in his hearing findings that plaintiff had a "severe" mental health impairment. However, in his meandering and contradictory hypothetical question to the vocational expert, the ALJ asked the expert to assume, among other things, that plaintiff's mental impairment "affected her no more than a person with normal mental health". The court concluded that there was a basic contradiction between finding a severe impairment but then asking the vocational expert to assume essentially no mental health limitations, and remanded for a rehearing. *This case was referred by Edgar Snyder & Associates.* **CLAIMANT WITHDREW HER CLAIM.**

**Parker-Davis v. Commissioner, CA No.: 04-1267, decided January 25, 2006, per Conti, J.**

The court remanded this case for a supplemental hearing and decision based on the ALJ's failure to adequately explain his rejection of evidence provided by the treating psychiatrist. Specifically, although the ALJ repeatedly referred to treating psychiatrist's GAF scores that predated the hearing by over two years, he made no mention of more recent scores in the 40s which demonstrated a worsening of the claimant's condition. The court found that the failure to discuss the later GAF scores, especially when the earlier ones were relied upon, was at best negligent and at worst intentional. **BENEFITS AWARDED ON REMAND.**

**Kulkulka v. Commissioner, CA No.: 04-1322, decided December 19, 2005, per Cercone, J.**

In this case, the ALJ had determined that the claimant could perform "light work" despite the fact that the claimant's testimony, the consultative examiner, the State agency physician, and plaintiff's treating physician at all describe limitations more consistent with "sedentary work". Since, given plaintiff's age, education, and work experience, the difference between a capability for light work and sedentary work was literally the difference between winning and losing the case, the district court remanded for reconsideration. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED, WITHOUT A HEARING, ON REMAND**

***Williams v. Commissioner, CA No. 05-880, decided November 30, 2005, per Schwab, J.***

In this case, the district court remanded, agreeing with plaintiff that the ALJ's decision contained a contradiction fatal to the decision denying benefits. Specifically, the ALJ found that plaintiff's mental health impairments were "severe" within the meaning of the regulations, however in his only hypothetical question the ALJ asked the vocational expert to assume that the claimant was "no more disabled by a mental impairment than any normal person". This limitation, in effect, asked the vocational expert to assume, at odds with the ALJ's hearing findings that plaintiff's mental impairment was "not severe". The nature of the error was such that it could only be addressed on remand. **BENEFITS AWARDED ON REMAND**

***Winters v. Commissioner, CA No. 05-1854, Third Circuit Court of Appeals, decided October 20, 2005***

The Third Circuit Court reversed, finding that the ALJ had improperly rejected the well-supported opinions of the plaintiff's treating psychiatrist in favor of an outdated consultative examination report that mistakenly stated that she was not in treatment for her mental health problems. Moreover the ALJ had mischaracterized plaintiff as "non-compliant" with her treatment regimen, a finding also not borne out by the record. **BENEFITS AWARDED ON REMAND**

***Warren v. Commissioner, CA No. 04-812, decided October 21, 2005 per Frost, J. (S.D. OH)***

Plaintiff was unrepresented at his administrative hearing. After taking the testimony of the claimant and a vocational expert at the hearing, the ALJ ordered post-hearing consultative examinations by a psychiatrist and psychologist. These reports identified numerous work-related limitations, both in the bodies of the reports as well as the medical assessment forms attached to those reports. Yet, the ALJ never obtained additional testimony from the vocational expert, instead relying upon the hypothetical question he posed prior to the inclusion of this evidence in the record. The court found that this failure to obtain additional vocational expert testimony was error, particularly in light of the ALJ's "heightened duty" to an unrepresented claimant, and remanded for further consideration. *This case was referred by Peter Mansmann, Esq. of Pittsburgh.* **BENEFITS AWARDED ON REMAND**

***Chappue v. Commissioner, CA No. 04-175J, decided September 26, 2005, per Diamond, J.***

Plaintiff argued that the ALJ's decision failed to set forth the "more detailed assessment" prescribed for the evaluation of mental health impairments pursuant to 20 CFR 404.1520a and Social Security Ruling 96-8p. Indeed, the ALJ relied exclusively on the less detailed assessment required for the purpose of determining whether not the claimant's mental health impairments "met or equalled the listings" without discussing in detail, as required by the regulations and SSR 96-8p, the twenty specific areas of work-related function set forth therein. According to the Court, this error led to a second: since the ALJ had failed to set forth these detailed findings, the hypothetical question posed to the vocational expert was legally insufficient, because it did not set forth all the claimants individual impairments and limitations. The Court remanded for the required findings, and supplemental vocational expert testimony. *This case was referred by Edgar Snyder and Associates.* **BENEFITS DENIED ON REMAND**

***Miller v. Commissioner, CA No. 04-660, decided August 22, 2005, per Diamond, J.***

The Court remanded this case for reconsideration of whether the claimant met the requirements of listing 12.05(c). The evidence showed that claimant clearly had IQ scores which met the "first prong" of the test set forth in Listing 12.05, and that he had an additional "severe impairment" as required by the "second prong" of the test. However, the ALJ determined that the IQ scores were not reliable, in light of the consultative examiner's comment that the IQ scores were "mildly questionable", and therefore denied benefits. Plaintiff successfully argued that the examiner never questioned the "validity" of the IQ scores. The Court held that "(A)t best, Dr. Newman's narration is ambiguous, at worst, it is contradictory. Since IQ scores are essential to a determination of listing level severity under 12.05, it is imperative that the results be clear". This ambiguity, according to the Court, could only be addressed by remand for additional analysis. Also, the Court rejected the Commissioner's argument that the record failed to show "significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period (i.e., onset of impairment before age 22)", on the basis that it could "clearly not affirm on that basis because the ALJ did not rely on that rationale (in the decision denying benefits)". *This case was referred by the Washington Mission Homeless Shelter.* **BENEFITS AWARDED ON REMAND, WITHOUT A HEARING**

***Rearick v. Commissioner, CA No. 04-1535, decided April 27, 2005, per Ambrose, J.***

In this case the Commissioner agreed to a voluntary remand to consider the primary arguments raised the plaintiff's brief. Specifically, plaintiff raised two central arguments on appeal, the first being that the medical source statement prepared by the consultative examiner clearly demonstrated plaintiff's inability to function more than four or five hours per day (1 hour standing/walking, 4 hours sitting). In an otherwise exhaustive discussion of that particular medical report, the ALJ omitted altogether any reference to the medical source statement. Second, despite the fact that one of plaintiff's impairments was severe diabetes which had necessitated an above-the-knee amputation, the ALJ did not appropriately discuss the fact that plaintiff came to the hearing on crutches because of difficulty he had had using his prosthetic device. The ALJ merely opined that this was a "temporary problem" without reference to any medical evidence of record. The Court agreed and remanded the case for consideration of these two issues. *This case was referred by Mark Morrow, Esq. of Butler, PA.* **UNKNOWN**

***Huey v. Commissioner, CA No. 03-1425, decided March 14, 2005, per Cercone, J.***

In this case plaintiff had alleged a number of errors related to the ALJ's failure to exercise his "heightened duty of care" in light of the fact that he had elected to proceed without counsel. The Court remanded, finding that although the record showed that plaintiff suffered from depression that was at least "severe" the ALJ asked him no questions about this impairment during the administrative hearing. Further, the ALJ finding that "no treating source had indicated that he was unable to work" was not literally true in light of several GAF scores of 50 in the record. Moreover, the ALJ misled plaintiff by stating during the hearing (probably in the context of determining "substantial gainful activity") that he was "not going to consider" his sporadic work activities, and then using those activities to undercut his claim of disability. Finally, while not ordering the ALJ to obtain the consultative examination, the court "strongly suggested"

that such an examination was appropriate. *This case was referred by Edgar Snyder & Associates.* **BENEFITS AWARDED ON REMAND**

***Altman v. Commissioner, CA No. 04-1831, 3d Cir. Court of Appeals, decided March 10, 2005.***

The Third Circuit court remanded this case for reconsideration in light of the ALJ's failure to give appropriate weight to medical evidence. Specifically, the evidence in dispute were the results of a detailed functional capacity evaluation performed at a local hospital's physical therapy department, which clearly limited plaintiff to at best part-time sedentary work. Although this report was signed by both a license physical therapist and a physician, the ALJ determined in his decision that since the report was "only" signed by a physical therapist, the results were from a "non-acceptable medical source" and he gave it "no weight" in his decision. Some confusion seemed to have resulted from the fact that this evaluation appeared twice in the administrative record: one of these reports was signed only by the physical therapist, and the other was countersigned by the physician. The court noted that even defense counsel admitted that this was an error on the part of the ALJ and did not accept its argument that it was "harmless" error. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND**

***Ferraro v. Commissioner, CA No. 04-786, decided January 4, 2005, per Diamond, J.,***

In this case defendant moved for voluntary remand, agreeing with plaintiff's argument that the ALJ had inappropriately weighed the evidence from treating sources and had "mechanically" applied the medical vocational guidelines, or grids, to a claimant was only several months shy of her 50th birthday when the decision denying her claim was issued. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND**

***Trabert v. Commissioner, CA 02-1334, decided October 18, 2004, per Standish, J.***

In this case, the court remanded for further proceedings based on the ALJ's failure to give appropriate weight to the uncontradicted, repeated, opinions of plaintiff's neurosurgeon that he was unable to work due to severe low back pain. The court agreed with plaintiff's argument that the ALJ had improperly relied upon his own "medical expertise" to deny benefits, and that therefore any hypothetical questions asked on the basis of that assessment of the evidence was "inaccurate" as a matter of law. The court remanded, instead of reversed, due to what it called an apparent conflict between the neurosurgeon's opinion and some MRI findings, which appeared minimal in nature. *This case was referred by Larry Rowen, a non-attorney representative from Mercer, Pennsylvania.* **BENEFITS AWARDED ON REMAND**

***Beall vs Commissioner, CA 03-1673, decided October 8, 2004, per Ambrose, J.,***

In this case, the uncontradicted medical evidence established that plaintiff, because of a serious injury to his lower leg, could stand and/or walk no more than one hour in an eight-hour day (as established by both the consultative examiner and the treating physician). The ALJ's first hypothetical question asked the vocational expert to assume a claimant who could otherwise perform sedentary work, but who could not stand and/or walk more than one hour per day. The vocational expert testified that there would be no jobs for person so impaired. At this point, the ALJ changed his hypothetical to state that plaintiff could

stand or walk. "1 to 2 hours"; the vocational expert then testified to a significant number of jobs such a person could perform. The Court stated that based on the record before it it could not determine the basis upon which the ALJ came to the conclusion that plaintiff was able to stand and/or walk up to two hours when the uncontradicted evidence stated otherwise, and was dubious of the ALJ's change to the less restrictive hypothetical, after perhaps not getting the answer he wanted in response to the first. The case was remanded to address this issue not resolved in the record. *This case was referred by David Harr, Esq.*  
**UNKNOWN**

***Otruba v. Commissioner, CA 03-1101, decided September 21, 2004, per Diamond, J.***

In this case, the Court remanded the basis of the ALJ's failure to appropriately evaluate plaintiff's residual functional capacity. In particular, a consultative examination report containing numerous specific mental limitations was completely overlooked in favor of the ALJ's blanket assessment, based on his lay medical opinion, of the findings contained in that report. Moreover, the ALJ concluded that despite this report plaintiff's mental impairment was "not severe", again based on the same lay evaluation. The Court also noted that since the ALJ's residual functional capacity assessment was in error, his hypothetical questioning of the vocational expert also constituted reversible error, since it was not based upon an accurate description of plaintiff's individual impairments. *This case was referred by Mitchell Dugan, Esq.*  
**BENEFITS DENIED ON REMAND**

***Malone v. Commissioner, CA 04-405, decided August 10, 2004, per Hardiman, J.***

The Court remanded this case for a re-hearing following a hearing where the ALJ told the plaintiff, who was unrepresented, that he would obtain evidence from his treating physician three times during the hearing, but did not do so. The Court held that the ALJ under the circumstances the ALJ had clearly not fulfilled his "heightened duty of care" to an unrepresented client when he failed to follow through on his promise. *This case was referred by David Harr, Esq.* **BENEFITS AWARDED ON REMAND**

***Cindric v. Commissioner, CA 04-147, decided July 19, 2004, per Schwab, J.***

The Court reversed and awarded benefits to plaintiff, largely on the basis of the ALJ's failure to include specific limitations described by the CE psychologist (that she had "no useful ability" to handle job-related stress) and because of the ALJ's "bizarre" finding that plaintiff had little or no impairment of her activities of daily living even though the record demonstrated that she received help from family and friends for all these activities including reminders to bathe and clean her apartment. *This case was referred by David Harr, Esq., Greensburg, PA.* **BENEFITS AWARDED ON REMAND**

***Franek v. Commissioner, CA 03-125J, decided July 15, 2004, per Gibson, J.***

The ALJ had given "no weight" to the report of a treating neurologist. The Court remanded, noting that it would be a rare case where the report of a treating specialist would be so thoroughly dismissed as was the opinion in this case. In fact, the Court noted that it was likely entitled to "controlling weight" and ordered reconsideration of this issue on remand. *This case was referred by Charles Pankow, Esq.* **BENEFITS AWARDED ON REMAND**

**Furrow v. Commissioner, CA 04-16J, decided July 7, 2004, per Gibson, J.**

In this case, defendant moved for voluntary remand based on plaintiff's argument that the ALJ had failed to appropriately weigh the treating physician's opinion, which was uncontradicted in the record by any examining source, that she was disabled. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED ON REMAND**

**Alabaugh v. Commissioner, CA 03-0042, decided June 16, 2004, per Cohill, J.**

The court remanded this case for reconsideration of the uncontradicted opinions of plaintiff's treating orthopedic physician. In its 33 page decision, the court in particular called the Commissioner to task for its failure to appropriately weigh the evidence and assess plaintiff's credibility, particularly in light of the fact that the ALJ did not have him evaluated by a consultative physician. *This case was referred by John Perry, Esq.* **BENEFITS AWARDED ON REMAND**

**Holler v. Commissioner, CA 03-4249, Third Circuit Court of Appeals, decided June 2, 2004**

The Third Circuit remanded this case for reconsideration to address the ALJ's flawed finding that the claimant could perform a full range of medium work. The claimant, who was unrepresented at her hearing, and who was of "advanced age" and had no past relevant work below the medium level of exertion, and had submitted all her physician's notes and an uncontradicted statement by the doctor that she was limited to sedentary work. *This case was referred by Edgar Snyder & Associates.* **BENEFITS AWARDED ON REMAND**

**Schiestle v. Commissioner, CA 02-2186, decided May 27, 2004, per McVerry, J.**

The Court agreed with plaintiff that the ALJ's failure to consider the seven page, single-spaced, letter written by his parents describing his 10 year "rampage", characterized by frequent violent outbursts and troubles with the police was clear error where the ALJ found that plaintiff was not credible. The case was remanded for explicit consideration of this evidence, and for general update of the medical evidence. *This case was referred by Brenda White of Mercer, PA.* **CLIENT DISAPPEARED ON REMAND**

**Boyce v. Commissioner, CA AW-03-2992, decided May 20, 2004, per Schulz, M.J. (D. MD)**

In this case, defendant requested voluntary remand based upon issues raised by Plaintiff in her brief, pointing out that the ALJ had failed to give appropriate weight to the opinions and records of her pain management specialist. *This case was referred by Howard Bernstein, Esq., of Silver Spring, MD.* **BENEFITS AWARDED ON REMAND**

**Hepinger v. Commissioner, CA 03-898, decided May 17, 2004, per Diamond, J.**

The Court concluded in this case that the ALJ had not adequately explained his basis for finding Plaintiff capable of performing her past relevant work (without VE testimony), given his finding that she could perform less than a full range of light work. The case was remanded for further development of this issue. **BENEFITS AWARDED ON REMAND**

***Saylor v. Commissioner, CA 03-033 J, decided May 13, 2004, per Gibson, J.***

In this case, the Court agreed with Plaintiff that this unrepresented claimant had not been given the benefit of the “heightened duty of care” owed to unrepresented claimants at Social Security hearings. The Court remanded to obtain several items of medical evidence known at the time of the hearing, but not obtained by the ALJ. *This case was referred by Edgar Snyder and Associates.* **UNKNOWN**

***Morreale v. Commissioner, CA 03-932, decided April 22, 2004, per Diamond, J.***

Remand was ordered by the Court in this case to address the ALJ’s error in finding that Plaintiff’s well documented mental disorder was “not severe”. Perhaps tipping the scale here was the additional fact that Plaintiff was not represented by counsel although a friend had appeared with her, and acted on her behalf. The Court declined the Commissioner’s invitation to paint Plaintiff as actually being “represented” at the hearing, and held the ALJ in this case to the “heightened duty of care” owed to unassisted Social Security claimants. *This case was referred by Leah Fink, Esq.* **BENEFITS AWARDED ON REMAND**

***Morrah v. Commissioner, CA 03-1302, decided April 20, 2004, per Lancaster, J.***

Plaintiff argued that the ALJ’s denial of benefits on the basis of regulations requiring denial of benefits when a claimant does not avail himself of prescribed treatment, was not supported by the evidence. Here, Plaintiff has blephorospasm, a condition causing uncontrollable closing of the eyes. Although Botox treatments had been recommended, the evidence showed that while this treatment would control the condition for several months periods of time, it also had side affects (excessive tearing and burning of the eyes for days at a time) which would also have work-related ramifications. This uncontradicted evidence of severe side affects to the recommended treatment had not been evaluated by the ALJ in his decision, and Defendant agreed to a remand for reconsideration. *This case was referred by Dave Harr, Esq., Greensburg, PA.* **BENEFITS AWARDED ON REMAND**

***Wheatley v. Commissioner, CA JKB-03-1753, decided April 19, 2004, per Brendan, J. (D. MD)***

In this case, the Court found that the ALJ had improperly concluded that claimant's mental impairments were “not severe”, had failed to discuss the contrary opinions of Plaintiff’s psychiatrist and primary care physician, and had failed to pose accurate hypotheticals to the vocational expert. The case was remanded for further consideration. *This case was referred by Howard Bernstein, Esq., of Silver Spring, MD.* **UNKNOWN**

***Eckert v. Commissioner, CA 02-1594, decided January 5, 2004, per Ambrose, J.***

Remand was ordered by the Court in this case to address insufficient hypothetical questioning of the vocational expert. Here, the ALJ included two limitations which were described in the record, but ignored

several others neither explaining why he rejected this evidence, or explaining why they were not in the hypothetical. *This case was referred by Charles Pankow, Esq.* **BENEFITS AWARDED ON REMAND**

***Pruss v. Commissioner, CA 02-132J, decided September 15, 2003, per Conti, J., Caizazza, M.J.***

The Court reversed and awarded benefits in this case, finding that Plaintiff's history of posttraumatic stress disorder was well documented and consistent, and supported his allegations of total disability. Of special interest here is that before reaching the merits, Plaintiff successfully resisted Defendant's Motion to Dismiss for untimely filing of the Complaint. The Court agreed with Plaintiff that since the Complaint was time stamped "Received" one day before the filing deadline, it was timely filed even though the Court did not rule on his IFP Motion until three days after the deadline. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED ON REMAND**

***Sabolek v. Commissioner, CA 01-1920, decided September 2, 2003, per Diamond, J.***

The Court found in this case that the ALJ's decision that Plaintiff's mental impairments were "not severe" was not supported by substantial evidence, and remanded for consideration of this issue. *This case was referred by Gary Frankhouser, Esq., of Uniontown.* **BENEFITS AWARDED ON REMAND**

***Ott v. Commissioner, CA 3: CV-02-2065, decided September 1, 2003, per Kosik, J. (M.D. PA)***

Defendant moved for voluntary remand following the filing of Plaintiff's brief which pointed out that the ALJ's failure to obtain VE testimony was clear error, as was his failure to give appropriate weight to treating source evidence. *This case was referred by Jean Owen, Esq., of Overland Park, KS.* **BENEFITS AWARDED ON REMAND**

***Meyers v. Commissioner, CA 02-309J, decided August 15, 2003, per Conti, J.***

Defendant moved for voluntary remand based on Plaintiff's assertion that although Listing 1.07 was the Listing appropriate to his medical condition, the ALJ had failed to even mention this Listing in his decision, no yet evaluate Plaintiff's condition in light of it. *This case was referred by Edgar Snyder and Associates.* **PLAINTIFF ABANDONED HIS CLAIM ON REMAND**

***Solarczyk v. Commissioner, CA 03-020, decided July 14, 2003, per J. Standish, J.; Mitchell, M.J.***

The Court remanded this case due to the ALJ's failure to call a medical expert, pursuant to S.S.R. 83-20, to determine the appropriate onset date of Plaintiff's disabling multiple sclerosis. In this case, it was undisputed that Plaintiff was currently disabled as of the date of his hearing, however his "date last insured" was December 31, 1999. Plaintiff successfully argued that under such circumstances, where an onset date must be "inferred" from the evidence, that the above mentioned Social Security Ruling requires medical expert testimony. In this case, Plaintiff also convinced the Court that the ALJ erred by failing to give any weight to his treating neurologist opinion that his condition in fact was disabling on or before his date last insured, even though Plaintiff did not begin seeing this physician until after that date. *This case was referred by Mark Persun, Esq. Of Ligonier, PA.* **BACK BENEFITS IN THE AMOUNT OF \$129,000 WERE AWARDED ON REMAND**

***Kaylor v. Commissioner, CA 03-018J, decided June 19, 2003, per Cercone, J.***

Defendant agreed to voluntary remand based on Plaintiff's allegations that the ALJ had failed to give appropriate weight to the uncontradicted opinions of a treating psychiatrist, had failed to even discuss the hearing testimony of Plaintiff's highly qualified AIDS social worker, and failed to incorporate the specific limitations set forth in Plaintiff's treating psychiatrist's mental status evaluation, and the medical source statement of the psychological consultative examiner. *This case was referred by Edgar Snyder and Associates.* **BENEFITS WERE DENIED ON REMAND, AND IS AGAIN BEFORE THE COURT (SEE ABOVE THOUGH—2<sup>ND</sup> APPEAL SUCCESSFUL, AND BENEFITS PAID PURSUANT TO THAT REMAND)**

***Chelko v. Commissioner, CA 02-120, decided December 9, 2002, per Cindrich, J.***

Plaintiff prevailed in this matter, successfully objecting to the Report and Recommendation of the magistrate judge which recommended affirmation of the Commissioner's decision, and also prevailed over the Defendant's Motion to Alter or Amend following the Court's decision not to adopt the Magistrate Judge's recommendation. Ultimately, Plaintiff convinced the Court that the ALJ had failed to give appropriate weight to the well supported opinions of Plaintiff's treating neurosurgeon that he was not able to work due to severe pain. The case was remanded for further consideration. *This case was referred by David Harr, Esq., of Greensburg.* **BENEFITS AWARDED ON REMAND**

***Irwin v. Commissioner, CA 01-321J, decided September 16, 2002, per Smith, J.***

This case was remanded by the Court for reconsideration of Plaintiff's complaints of pain and fatigue secondary to fibromyalgia which were well documented throughout the record by Plaintiff's rheumatologist. *This case was referred by Edgar Snyder and Associates.* **BENEFITS AWARDED ON REMAND**

***Dice v. Commissioner, CA 01-1038, decided May 22, 2002, per Ziegler, J.***

The Court in this case remanded for reconsideration due to internal inconsistencies in the ALJ's decision. Specifically, the ALJ found that Plaintiff's mental impairment was "severe", yet clearly relied on a psychiatric review technique form which was completed by a state agency physician, which concluded that Plaintiff's impairments were "not severe". Since the ALJ had plainly formed his hypothetical question on the basis of this state agency physician's assessment, the case was remanded to address this inconsistency. *This case was referred by Gary Frankhouser, Esq., of Uniontown.* **BENEFITS AWARDED ON REMAND**