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Monday, August 3, 2009

U.S. District Court for D.C.

**ADMINISTRATIVE LAW / SOCIAL SECURITY BENEFITS
PROPER FACTORS FOR DETERMINING DEGREE OF "RESIDUAL FUNCTIONAL CAPACITY" IN DISABILITY
AND SSI CLAIMS**

Précis: The governing standard of review for a Social Security Administration (SSA) decision regarding the awarding of disability benefits is confined to determining whether it was supported by substantial evidence in the record. That standard falls somewhere between more than a scintilla but less than a preponderance of the evidence. To qualify for SSI a claimant must show that he is "disabled," meaning the context that he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. Once a claimant makes such a showing, the burden shifts the SSA to demonstrate that the claimant can do other work, considering his age, education, work experience, and any residual functional disability factors. In so doing, the SSA may rely on its Medical-Vocational Guidelines to demonstrate the claimant's ability to find alternative employment. In making such determinations, when an ALJ arrives at a conclusion that contradicts some part of the evidence on the record, the ALJ must explain the rationale for so doing. Otherwise a reviewing court cannot perform its assigned function because it will not know whether the evidence was rejected rather than simply ignored and it is not the Court's obligation to engage making these determinations for the ALJ. In determining SSI eligibility, the proper age factor consideration is a claimant's age at the time of the hearing.

Abstract: Plaintiff, a carpenter by trade, injured his right knee in 1989, and applied to the Social Security Administration (SSA) for disability benefits and ultimately for Supplement Social Security (SSI), but was denied at every step of the administrative process, before the Court remanded his case for a complete and proper hearing under the pertinent rules. **Facts.** Nine years after Plaintiff had been diagnosed with serious arthritis in his right knee which, he asserted, resulted in crepitation and required surgery that kept him from meaningful work in his trade, he applied to the SSA for disability benefits. Although he presented evidence from four medical doctors as to the degeneration of his knee and his accompanying pain, atrophy, and decreased range of motion, there was also competing evidence that some of his symptoms were "voluntary," that is, his condition could improve if he developed "a more positive attitude." The SSA denied his initial application, his request for reconsideration, his review before an ALJ, and his appeal before the SSA's Administration Appeals Council, before he sought review before the U.S. District Court. In the course of the administrative proceedings, the ALJ had ruled against him despite finding that the condition of his knee qualified as a "severe impairment," finding that it did not rise to the level of anything in the SSA's published list of medical conditions which qualified as "disabling." Further, passing over the Plaintiff's own testimony that the severe degree of pain he was suffering kept him from meaningful work in his field, the ALJ found that his "residual functional capacity," *i.e.*, "what an individual can still do despite his or her limitations," allowed him to engage in "a limited range of medium work" so as to preclude him from being denominated as "disabled" in order to receive SSA benefits on

that basis. Finally, the ALJ ruled that his "insured status" regarding the injury had expired even if it otherwise met the requisite qualifications for basic disability benefits. In his motion for reversal, the Plaintiff argued that the ALJ had erred in performing one of the requisite steps deemed vital to the evaluation process set forth by federal regulations, *i.e.*, to independently determine a claimant's "residual functional capacity" to perform "other work" notwithstanding his asserted impairment. Plaintiff assigned as error the ALJ's reliance upon the testimony of a vocational expert from the SSA whose testimony conflicted with the applicable Medical-Vocational Guidelines and the companion Discretionary of Occupation Titles which governed the evaluation of an expert's reported findings. The panoply of factors which these collateral sources require to be considered include the claimant's age at the time of the hearing, his ability, *inter alia*, to sit, stand, lift, carry, push, pull, climb, balance, bend, stoop, kneel, crouch, squat, crawl, and to walk or stand for any appreciable period of time. The SSA contended that the administrative findings did not contravene the accompanying collateral guidelines and that, even if

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they did, the error was harmless. **Rulings.** At the outset the Court noted that the governing standard of review is “confined to determining whether the ... [SSA's] was supported by substantial evidence in the record,” *i.e.*, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” set forth during the administrative process. That standard, the Court ruled, requires “more than a scintilla, but ... something less than a preponderance of the evidence.” By this point it was generally agreed that the Plaintiff had waited too long to make his basic disability claim and the Court confined its attention to whether the companion request for SSI had been properly handled. To qualify for SSI a claimant must show that he is “disabled,” meaning in that context that “he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.” Once a claimant makes such a showing, the burden shifts the SSA to demonstrate that the claimant can do “other work,” considering his age, education, work experience, and any residual functional disability factors. In so doing, the SSA may rely on its Medical-Vocational Guidelines to demonstrate the claimant's ability to find alternative employment, meaning effectively that he does not qualify as “disabled.” The ALJ, however, completely skipped making any such determinations under this analysis. This omission violated a basic principle of administrative law holding that when an ALJ “arrives at a conclusion ... that contradicts some part of the evidence on the record, the ALJ must explain his rationale” because a court on later view cannot “perform its assigned function ... without some indication ... as to whether the evidence was rejected rather than simply ignored.” The Court found that the SSA had entirely failed to refute the Plaintiff's assertion of error in this regard that that this failure alone justified reversal and remand. Here the ALJ's failure to make any findings with respect to whether the Plaintiff suffered from any pertinent restriction before arbitrarily placing him in the category to perform “medium” work and without explanation as to why the Plaintiff's own testimony and competing evidence to the contrary had apparently been disregarded was deemed plain error. The function of a reviewing court, it held, was “to review the determinations actually made by the ALJ, not to engage in these determinations for him” by parsing through the record in order to find some salving justification for the ruling below.

Moreover, the Court held that for SSI determination the ALJ had further erred by considering the independent factor of the Plaintiff's age at the time that his insured status had expired, rather than his age at the time of the hearing, thus mistakenly beginning its calculus by treating him as a younger man in determining his residual disability. For these reasons, the Court reversed that ruling and remanded the case so that an ALJ could more properly address all the evidence in the record regarding the Plaintiff's ability to perform “medium” work functions.

ROSS v. ASTRUE

D.D.C. No. C.A. 002-553. Decided July 24, 2009. (Reggie B. Walton, J.). [Counsel not given in published opinion.]

MEMORANDUM OPINION

WALTON, Judge: Solomon Ross, the plaintiff in this civil lawsuit, seeks a judgment reversing the denial of his application for social security disability insurance benefits and supplemental security income benefits by the Social Security Administration (the “Administration”). Complaint ¶ 4. Currently before the Court is the plaintiff's motion for a judgment of reversal or remand and the defendant's motion for a judgment of affirmance, which were filed pursuant to 42 U.S.C. § 405(g). After carefully considering the plaintiff's complaint, the administrative record, the parties' motions, and all memoranda of law and exhibits relating to those motions, the Court concludes that it must grant the plaintiff's motion, deny the defendant's motion, and remand this case to the Administration with instructions for the reasons that follow.

I. Background

Except where otherwise noted, the following facts are part of the administrative record submitted to the Court. The plaintiff, a carpenter by trade, Administrative Record (the “A.R.”) at 55, 59, 135–36, filed an application for disability insurance benefits and supplemental security income benefits on July 8, 1998, based on his alleged inability to work since injuring his right leg in January of 1989, *id.* at 12. According to the plaintiff, he was diagnosed with patellofemoral arthritis at that time, which required knee surgery. Pl.'s Mem. at 2. He alleges that since his injury, he continues to live with “chronic pain, crepitation, decreased range of motion, atrophy, and join line tenderness.” *Id.*

7826 EASTERN AVE., NW, SUITE 410
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Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JAMES K. KELLY, whose address is 4402 13TH PLACE, NE, WASHINGTON, DC 20017, was appointed personal representative of the estate of JEANETTE MAXINE KELLY, who died on APR 19, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ JAMES K. KELLY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2008-1039

LAWRENCE RONALD KEYS, Deceased

PATRICK T. HAND, Attorney

4900 MASSACHUSETTS AVENUE, NW, #220
WASHINGTON, DC 20016

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

PATRICK T. HAND, whose address is 4900 MASSACHUSETTS AVENUE, NW, #220, WASHINGTON, DC 20016, was appointed personal representative of the estate of LAWRENCE RONALD KEYS, who died on FEB 15, 2006 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ PATRICK T. HAND. TRUE TEST COPY /s/

ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, LEGAL TIMES. JUL 20, 27, AUG 3, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Foreign No. 2009-0055

ANDRENA LIGON, Deceased

MAY 23, 1987, Date of Death

Notice of Appointment of Foreign

Personal Representatives Notice to Creditors

TYRONE LIGON, whose address is 7467 SWAN POINT WAY, COLUMBIA, MD 21045, was appointed Personal Representative of the estate of ANDRENA LIGON, deceased, by the SURROGATE'S Court for BRONX County, State of NEW YORK, on OCT 1, 2007. Service of process may be made upon DERRICK HOOKS, 1440 ROCK CREEK FORD ROAD, NW, APT. 403, WASHINGTON, DC 20011, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: 716 FAIRMONT STREET, NW, WASHINGTON, DC 20011. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: JUL 20, 2009. /s/ TYRONE LIGON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Foreign No. 2009-0048

MARY TRANT O'DONOGHUE, Deceased

NOV 21, 1992, Date of Death

Notice of Appointment of Foreign

Personal Representatives Notice to Creditors

JAMES J. O'DONOGHUE, whose address is 7605 VILLANOVA RD., COLLEGE PARK, MD 20740, was appointed Personal Representative of the estate of MARY TRANT O'DONOGHUE, deceased, on MAY 13, 1993, by the REGISTER OF WILLS Court for PRINCE GEORGE'S County, State of MARYLAND. Service of process may be made upon JASON A. PARDO, JACKSON & CAMPBELL, P.C., 1120 20TH STREET, NW, STE 300 SOUTH, WASHINGTON, DC 20036, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: 1/5 INTEREST IN 3314 RESERVOIR RD., NW, WASHINGTON, DC. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First

Publication: JUL 20, 2009. /s/ JAMES J. O'DONOGHUE. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Foreign No. 2009-0047

NICHOLAS O'DONOGHUE, Deceased

JUN 13, 1982, Date of Death

Notice of Appointment of Foreign

Personal Representatives Notice to Creditors

JAMES J. O'DONOGHUE, whose address is 7605 VILLANOVA RD., COLLEGE PARK, MD 20740, was appointed Personal Representative of the estate of NICHOLAS O'DONOGHUE, deceased, on JUN 19, 2009, by the REGISTER OF WILLS Court for PRINCE GEORGE'S County, State of MARYLAND. Service of process may be made upon JASON A. PARDO, JACKSON & CAMPBELL, P.C., 1120 20TH STREET, NW, STE 300 SOUTH, WASHINGTON, DC 20036, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned the following District of Columbia real property: 1/5 INTEREST IN 3314 RESERVOIR RD., NW, WASHINGTON, DC. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: JUL 20, 2009. /s/ JAMES J. O'DONOGHUE. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

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**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Foreign No. 2009-0056

SHIRLEY ANN BOWLES, *Deceased*

MAR 1, 2008, *Date of Death*

Notice of Appointment of Foreign

Personal Representatives Notice to Creditors

HAROLD FRANKLIN BOWLES, whose address is P.O. BOX 152, SMITHERS, WV 25186, was appointed Personal Representative of the estate of SHIRLEY ANN BOWLES, deceased, on JUN 24, 2008, by the CIRCUIT Court for FAYETTE County, State of WEST VIRGINIA. Service of process may be made upon APPOINTEE, whose designation as District of Columbia agent has been filed with the Register of Wills, D.C. The decedent owned District of Columbia personal property. Claims against the decedent may be presented to the undersigned and filed with the Register of Wills for the District of Columbia, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001 within six months from the date of first publication of this notice. Date of First Publication: JUL 20, 2009. /s/ HAROLD FRANKLIN BOWLES. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, LEGAL TIMES. JUL 20, 27, AUG 3, 2009.

**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Administration No. 2009-0710

FRANKLIN E. COOK, JR., *Deceased*

JOHN C. MORRISON, Attorney
200 NORTH FAIRFAX STREET
ALEXANDRIA, VA 22314

**Notice of Appointment, Notice to Creditors And
Notice to Unknown Heirs**

CHARLES CONSTANS COOK, whose address is 1492 MASTERS DRIVE, WOODLAND PARK, CO 80863, was appointed personal representative of the estate of FRANKLIN E. COOK, JR., who died on MAY 16, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills

with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ CHARLES CONSTANS COOK. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Administration No. 2009-0688

CASSIE B. EVANS, *Deceased*

EVELYN C. PARCHMENT, ESQ., Attorney
7826 EASTERN AVE., NW, SUITE 410
WASHINGTON, DC 20012

**Notice of Appointment, Notice to Creditors And
Notice to Unknown Heirs**

DARRYL EVANS, whose address is 5045 8TH ST., NW, WASHINGTON, DC 20017, was appointed personal representative of the estate of CASSIE B. EVANS, who died on SEP 27, 2006 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ DARRYL EVANS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Administration No. 2009-0669

SELMA FEGELSON, *Deceased*

PAUL J. FEGELSON, ESQ., Attorney
4611 43RD PLACE, NW
WASHINGTON, DC 20016-4521

**Notice of Appointment, Notice to Creditors And
Notice to Unknown Heirs**

PAUL J. FEGELSON, whose address is 4611 43RD PLACE, NW, WASHINGTON, DC 20016-4521, was appointed personal representative of the estate of SELMA FEGELSON, who died on APR 30, 2009 WITH a Will, and will serve WITHOUT Court supervision.

All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ PAUL J. FEGELSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Administration No. 2009-0700

HANS JOSEF HUBER, *Deceased*

EDWARD G. VARRONE, ESQ., Attorney
SUITE 800, 910 17TH STREET, NW
WASHINGTON, DC 20006

**Notice of Appointment, Notice to Creditors And
Notice to Unknown Heirs**

CHRISTINE A. HUBER, whose address is 1111 11TH STREET, NW, APARTMENT 810, WASHINGTON, DC 20001, was appointed personal representative of the estate of HANS JOSEF HUBER, who died on MAY 14, 2009 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 20, 2009. /s/ CHRISTINE A. HUBER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 20, 27, AUG 3, 2009.

**Superior Court of the District of Columbia
PROBATE DIVISION**

Washington, DC 20001
Administration No. 2009-0689

JEANETTE MAXINE KELLY, *Deceased*

EVELYN C. PARCHMENT, ESQ., Attorney

The Administration denied the plaintiff's application on August 27, 1998, *id.* at 1, and affirmed its decision on reconsideration, *id.* at 2. The plaintiff then sought a hearing for the review of his application. *Id.* This request was granted, and on July 18, 2000, the plaintiff attended a hearing before an administrative law judge (the "ALJ"). *Id.*

At the hearing before the ALJ, the plaintiff presented evidence in the form of medical advice from four doctors, who generally agreed that, as a result of his injury, the plaintiff suffered from patellar femoral degeneration and pain in his right knee. A.R. at 14. However, the doctors did not discover any visual abnormalities, and the x-ray images did not reveal any "problem with the undersurface of [the plaintiff's] patella." *Id.* at 76. The doctors also concluded that some of the plaintiff's symptoms were "voluntary," and that his condition would not improve unless he developed a "more positive attitude." *Id.* A vocational expert also testified as to the availability of employment in the national economy for a hypothetical individual with the same education, physical impairments, and labor skills as the plaintiff. *Id.* at 18-19.

Following the hearing, the ALJ ruled against the plaintiff, finding that, although the plaintiff had not engaged in substantial gainful activity since January 27, 1989, and the condition of the plaintiff's right knee qualified as a "severe impairment," this impairment did not meet or equal a listing in the Appendix of disabling medical conditions maintained by the Administration. *Id.* at 19-20. Further, the ALJ concluded that the plaintiff's residual functional capacity allowed him to engage in a limited range of medium work, and that, as a consequence, the plaintiff did not meet the statutory definition of "disabled" based upon the range of employment options available to him under the relevant Medical-Vocational Guidelines. *Id.* at 21. The ALJ also denied the plaintiff's application for disability insurance benefits because the disability did not exist, in his opinion, "on or before the date [the plaintiff's] insured status expired." *Id.* at 20.

In light of the ALJ's decision, the plaintiff sought to appeal the denial of his claim to the Social Security Administration Appeals Council (the "Appeals Council"). *Id.* at 118. The Appeals Council denied his request on February 22, 2002. *Id.* at 4-5. Thereafter, the plaintiff filed his complaint in this Court.

The plaintiff filed his motion for judgment of reversal or remand on August 20, 2002. In support of that motion, the plaintiff argues that the ALJ erred in performing the fifth step of the five-step evaluation process set forth by 20 C.F.R. §§ 404.1520(a) and 416.920, which requires the ALJ to determine whether a claimant is capable of performing "other work" notwithstanding his impairment, Pl.'s Mem. at 7; *see also* 20 C.F.R. § 404.1520(g) (setting forth this requirement), *id.* § 416.920(g) (same). Specifically, he asserts that the ALJ (1) relied upon certain testimony by the vocational expert that conflicted with the applicable Medical-Vocational Guidelines governing the expert's findings, Pl.'s Mem. at 7-9, and the Dictionary of Occupational Titles, *id.* at 9, (2) failed to assess the plaintiff's residual functional capacity in the manner prescribed by the Administration, *id.* at 11-13, or "provide any rationale for failing to find some restriction upon [the p]laintiff's abilities to walk or stand," *id.* at 11, and (3) erred in finding that the plaintiff's testimony regarding the subjective degree of pain that he suffered was incredible, *id.* at 13-16.

In response to the plaintiff's motion for a judgment of reversal or remand, the defendant filed a cross-motion for judgment of affirmance on September 30, 2002.³ In support of his cross-motion, the defendant argues that (1) the testimony of the vocational expert relied upon by the ALJ did not contradict the applicable Medical-Vocational Guidelines considering the age of the plaintiff when his disability insurance expired, Def.'s Mem. at 11-12, and any contradiction between the vocational expert's testimony and the Dictionary of Occupational Titles was "harmless error," *id.* at 16-17, and (2) the ALJ's findings regarding the

plaintiff's residual functional capacity "finds ample support in the medical evidence of record, as well as in [the] plaintiff's own testimony," *id.* at 12. The defendant does not address the plaintiff's argument regarding the ALJ's credibility determination of the plaintiff. *See id.* at 11-17 (arguing only that the ALJ properly relied upon the vocational expert's testimony and that there is substantial support in the record for the ALJ's findings regarding the plaintiff's residual functional capacity). In response to the defendant's cross-motion, the plaintiff reiterates his prior arguments regarding the vocational expert's testimony and the ALJ's findings with respect to the plaintiff's residual functional capacity. Pl.'s Response at 1-7.

II. Standard of Review

As noted above, both parties seek relief pursuant to 42 U.S.C. § 405(g). Under that statute, a court reviewing a benefits determination by the Administration is "confined to determining whether the [Administration's] decision . . . [was] supported by substantial evidence in the record." *Brown v. Bowen*, 794 F.2d 703, 705 (D.C. Cir. 1986). With respect to the Administration's factual determinations, the "substantial evidence" requirement mandates that the Administration's findings be supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotation marks omitted). The standard requires "more than a scintilla, but . . . something less than a preponderance of the evidence." *Evans Fin. Corp. v. Director*, 161 F.3d 30, 34 (D.C. Cir. 1998).

With respect to the Administration's legal rulings, "the [district] court shall review only the question of conformity" by the Administration to its own regulations as well as "the validity of such regulations." 42 U.S.C. § 405(g). Thus, the reviewing court must uphold the Administration's legal "determination if it . . . is not tainted by an error of law." *Smith v. Bowen*, 826 F.2d 1120, 1121 (D.C. Cir. 1987). However, a court may only consider the grounds proffered by the agency in its

decision; *post hoc* rationalizations will not suffice. Butler v. Barnhart, 353 F.3d 992, 1003 n.5 (D.C. Cir. 2004).

III. Legal Analysis

Because the plaintiff concedes that “as of [his] date-last-insured, [he] was not disabled,” Pl.’s Response at 2, and because disability insurance benefits require a claimant to be disabled as of his date last insured, 42 U.S.C. § 423(a)(1)(A) (2006), the Court need not consider the merits of the plaintiff’s request for a judgment of reversal insofar as his disability insurance benefits are concerned. Rather, the only issue before the Court is the propriety of the ALJ’s ruling regarding the plaintiff’s claim for supplemental security income benefits. To qualify for supplemental security income benefits, 42 U.S.C. § 1382 requires a claimant to establish that he qualifies as “disabled” within the meaning of 42 U.S.C. § 1382c. Pursuant to 42 U.S.C. § 1382c(a)(3)(A), “an individual shall be considered to be disabled . . . if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.”

To evaluate whether an individual possesses an “inability to engage in any substantial gainful activity,” 42 U.S.C. § 416(i)(1), and therefore qualifies as disabled, the Administration applies a five-step sequential evaluation, 20 C.F.R. § 416.920(a). Under this analysis, the claimant must first show that he is not presently engaged in “substantial gainful activity.” Id. § 416.920(b). Second, the claimant must have a “severe impairment” that “specifically limits [his] . . . ability to do basic work activities.” Id. § 416.920(c). If the ALJ finds the impairment to be severe, then he should determine whether the claimant’s condition “meets or equals” an impairment listed as disabling in the regulations. Id. § 416.920(d). When such a correlation cannot be found, the claimant must demonstrate his inability to perform his past relevant work. Id. § 416.920(e).

Once the claimant makes this showing, the burden shifts in step five of the analysis to the Administration to demonstrate that the claimant can do

“other work” considering his age, education, past work experience, and residual functional capacity. Id. § 416.920(g). The Administration may rely upon the Medical-Vocational Guidelines to demonstrate the claimant’s ability to find alternative employment, thereby proving that the claimant does not qualify as disabled. Smalls v. Shalala, 996 F.2d 413, 416 (D.C. Cir. 1993).

Based upon the positions taken by the parties in their memoranda of law, the only issue before the Court is whether the ALJ correctly performed the fifth step in this sequential analysis; i.e., whether the ALJ committed an error of law or made factual findings without substantial support in the record in determining that the plaintiff could perform “other work” and therefore did not qualify as disabled within the meaning of 42 U.S.C. § 1382c(a)(3)(B).

Given the defendant’s failure to refute the plaintiff’s argument regarding the deficiencies in the ALJ’s decision not to fully credit the plaintiff’s testimony as to the subjective intensity of his pain, the Court could reverse and remand the case for that reason alone. Nevertheless, the Court will consider the propriety of the plaintiff’s remaining arguments to clarify the Administration’s obligations on remand by this Court. As set forth in greater detail below, the Court concludes that the ALJ erred both in determining the plaintiff’s residual functional capacity and in measuring the plaintiff’s age for purposes of the Medical-Vocational Guidelines. The Court will therefore remand this case to the Administration with instructions to repeat step five of the sequential process outlined above in its entirety.

A. The Plaintiff’s Residual Functional Capacity

Before engaging in steps four and five of the five-step sequential evaluation, the ALJ must determine the claimant’s residual functional capacity. Butler, 353 F.3d at 1000. This capacity reflects “what an individual can still do despite his or her limitations.” SSR 96-8p, Assessing Residual Functional Capacity in Initial Claims, 1996 WL 374184, at *2 (S.S.A. July 2, 1996) (the “S.S.A. Ruling”). Under 42 U.S.C. § 405(g), the Administration must comply with the

process set forth in the SSR 96-8p. See Butler, 353 F.3d at 1000–02 (finding reversible error in ALJ’s conclusions where the ALJ did not, *inter alia*, make the determinations required by the SSR 96-8p). The S.S.A. Ruling requires that the ALJ assess an individual’s ability to perform sustained “work-related physical and mental activities,” SSR 96-8p, 1996 WL 374184, at *2, by examining his exertional and non-exertional capacities, id. at *5. The exertional capacities that must be evaluated for possible limitations include the seven strength demands of “[s]itting, standing, walking, lifting, carrying, pushing, and pulling.” Id.

When the ALJ arrives at a conclusion regarding these strength functions that contradicts some part of the evidence on the record, the ALJ must explain his rationale, for “[t]he judiciary can scarcely perform its assigned review function . . . without some indication . . . [as to] whether [the] evidence was rejected rather than simply ignored.” Brown v. Bowen, 794 F.2d 703, 708 (D.C. Cir. 1986). For example, in Butler the ALJ indicated that the claimant’s residual functional capacity would allow her “to perform sedentary work so long as she [could] sit or stand at her own option” and was not required to “lift[] more than four pounds.” Butler, 353 F.3d at 998 (internal citation and quotation marks omitted). The District of Columbia Circuit remanded this decision, however, because the ALJ failed to address the medical evidence of record that contradicted his findings, including a doctor’s opinion explaining “that [the plaintiff] could not lift, reach[,] or stoop,” id. at 1001, and “could not perform work that required *any* lifting,” id. at 1002 (emphasis in original).

In the present case, the ALJ determined that the plaintiff’s residual functional capacity allowed him to “perform less than a full range of medium work,” with limitations on his ability to “push/pull[,] . . . climb[,] . . . balance, bend, stoop, kneel, crouch, squat[,] . . . crawl[,] [and] climb.” A.R. at 20. As the plaintiff correctly points out, the ALJ failed to make any finding with respect to whether the plaintiff suffered from any “restriction upon

shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ TERRI N. O’CONNELL /s/ MICHAEL R. MURPHEY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0724

ERNEST CHARLES WEST, *Deceased*

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JEROME EDWARD WEST AKA EDWARD JEROME WEST, whose address is 10302 BROOKHAVEN LANE, UPPER MARLBORO, MD 20772, was appointed personal representative of the estate of ERNEST CHARLES WEST, who died on MAR 6, 2009 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent’s will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ JEROME E. WEST. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0725

MARY ELIZABETH WEST AKA

MARY B. WEST, *Deceased*

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JEROME EDWARD WEST AKA EDWARD JEROME WEST, whose address is 10302 BROOKHAVEN LANE, UPPER MARLBORO, MD 20772, was appointed personal representative of the estate of MARY ELIZABETH WEST AKA MARY B. WEST, who died on MAR 6, 2009 WITH a Will, and

will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent’s will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ JEROME E. WEST. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0719

RONALD S. WILKINSON AKA

RONALD STERNE WILKINSON, *Deceased*

FRANK D. ALLEN, JR., Attorney
923 SOUTH CAROLINA AVE., SE
WASHINGTON, DC 20003-2145

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

SONIA GOEN FALETTI, whose address is 230 9TH STREET, NE, WASHINGTON, DC 20002, was appointed personal representative of the estate of RONALD S. WILKINSON AKA RONALD STERNE WILKINSON, who died on FEB 22, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent’s will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ SONIA GOEN FALETTI. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0705

CAMERON TAIHI WILLIAMS, *Deceased*

BARRY R. FIERST, ESQ., Attorney

200 A MONROE ST., SUITE 200

ROCKVILLE, MD 20850

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JANICE WILLIAMS AND ISAIAH WILLIAMS, whose addresses are 424 DELAFIELD PLACE, NW, WASHINGTON, DC 20011, were appointed personal representatives of the estate of CAMERON TAIHI WILLIAMS, who died on JUN 22, 2009 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ JANICE WILLIAMS, ISAIAH WILLIAMS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Third Insertions

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0690

LUCILLE D. ARMSTRONG, *Deceased*

JOAN M. WILBON, Attorney

JOAN M. WILBON & ASSOCIATES

1120 CONNECTICUT AVENUE, NW, SUITE 1020
WASHINGTON, DC 20036

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

YVONNE L. WILLIAMS, whose address is 4600 CONNECTICUT AVENUE, NW #429, WASHINGTON, DC 20008, was appointed personal representative of the estate of LUCILLE D. ARMSTRONG, who died on MAY 24, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent’s will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 20, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 20, 2010, or be forever barred. Persons

2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ GWENDOLYN L. JOHNSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia
 PROBATE DIVISION
 Washington, DC 20001
 Administration No. 2009-0727
EVE E. EPSTEIN, *Deceased*
 VIRGINIA A. MCARTHUR, *Attorney*
 LAW OFFICE OF VIRGINIA A. MCARTHUR
 1101 17TH STREET, NW, STE 820
 WASHINGTON, DC 20036

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs
 JAMES M. HARKLESS, whose address is 2801 NEW MEXICO AVENUE, NW, #305, WASHINGTON, DC 20007, was appointed personal representative of the estate of EVE E. EPSTEIN, who died on JUN 28, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ JAMES M. HARKLESS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia
 PROBATE DIVISION
 Washington, DC 20001
 Administration No. 2009-0709

First Publication: JUL 27, 2009. /s/ STEVEN C. MAYER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia
 PROBATE DIVISION
 Washington, DC 20001
 Administration No. 2009-0343
ROBERT E. PATTON, *Deceased*
 PATRICK T. HAND, *Attorney*
 4900 MASSACHUSETTS AVENUE NW, STE 220
 WASHINGTON, DC 20016

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs
 MARGARET PATTON, whose address is 16409 MUNN ROAD, CLEVELAND, OH 44111, was appointed personal representative of the estate of ROBERT E. PATTON, who died on DEC 16, 2007 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ MARGARET MARY PATTON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia
 PROBATE DIVISION
 Washington, DC 20001
 Administration No. 2009-0735
FRANK DEWITT RUSSELL, *Deceased*
Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

MICHAEL R. MURPHEY AND TERRI N. O'CONNELL, whose addresses are 1320 19TH STREET NW, SUITE 202, WASHINGTON, DC 20036 AND 20307 LUBAR WAY, BROOKVILLE, MD 20833, were appointed personal representatives of the estate of FRANK DEWITT RUSSELL, who died on JULY 3, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent

LOUIS J. LAMANNA, *Deceased*
 TREVOR M. ROSE, *Attorney*
 4603 CALVERT ROAD
 COLLEGE PARK, MD 20740
Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

RONALD WILLONER, whose address is 4603 CALVERT ROAD, COLLEGE PARK, MD 20740, was appointed personal representative of the estate of LOUIS J. LAMANNA, who died on JUN 30, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: JUL 27, 2009. /s/ RONALD WILLONER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. JUL 27, AUG 3, 10, 2009.

Superior Court of the District of Columbia
 PROBATE DIVISION
 Washington, DC 20001
 Administration No. 2009-0722
ANTOINETTE C. MAYER, *Deceased*
 RICHARD H. MAYFIELD, *Attorney*
 4910 MASSACHUSETTS AVE, NW, STE 215
 WASHINGTON, DC 20016

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs
 STEVEN C. MAYER, whose address is 10829 PLEASANT HILL DRIVE, POTOMAC, MD 20854, was appointed personal representative of the estate of ANTOINETTE C. MAYER, who died on JUN 18, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before JAN 27, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before JAN 27, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of

[his] ability to walk or stand,” Pl.’s Mem. at 11, two of the exertional capacities that must be assessed under the SSR 96-8p, 1996 WL 374184, at *5.

By placing the plaintiff in the medium work category—which “requires standing or walking, off and on, for a total of approximately six hours in an eight hour workday,” SSR 8310, Determining Capability to do Other Work—The Medical Vocational Rules of Appendix 2, 1983 WL 31251, at *6 (S.S.A. 1983)—without making an exception regarding the plaintiff’s walking and standing abilities or explaining why the medical evidence suggesting limitations on those functions should be disregarded, the ALJ arrived at a conclusion contrary to part of the medical evidence in the record without providing a rationale for rejecting this evidence. His conclusion must therefore be rejected under the reasoning of Brown.

The Administration suggests that “ample support [for the ALJ’s findings exists] in the medical evidence of record [and] . . . in [the] plaintiff’s own testimony.” Def.’s Mem at 12. In particular, the Administration points to the plaintiff’s testimony that he possesses the ability to stand for approximately “15 [to] 20 minutes” and “walk[] up the 20 stairs to his apartment about 4 times a day . . . [and] five blocks to the office after parking the car.” Id. (citing A.R. at 133, 141). But the function of this Court is to review the determinations actually made by the ALJ, not to engage in these determinations for him. SEC v. Chenery Corp., 332 U.S. 194, 196 (1947) (holding that a reviewing court “must judge the propriety of [an agency’s judgment] solely by the grounds invoked by the agency”). And without further explanation from the ALJ, this Court cannot “perform its assigned review function . . . [to ensure that the medical evidence contradicting the ALJ’s conclusion] was rejected rather than simply ignored.” Brown, 794 F.2d at 708. Therefore, the Court must reverse and remand this case to the Administration so that the ALJ can address the evidence in the record suggesting a possible limitation on the plaintiff’s ability to walk and stand.

B. Applicable Medical-Vocational Guidelines

The defendant argues in the alternative that even if the ALJ erred in determining that the plaintiff was capable of performing a limited range of medium work, this error was harmless because the application of the light and sedentary work categories within the Medical-Vocational Guidelines still results in a finding of “not disabled” based on the plaintiff’s age when his insured status expired. Def.’s Mem. at 11; see also 20 C.F.R., Part 404, Subpart P, Appendix 2 §§ 201.19, 202.18 (indicating that a younger individual with at least a limited education and who can perform sedentary or light work does not qualify as disabled). But as the plaintiff accurately points out, assuming he was able to perform light or sedentary work, he would have qualified as disabled had the ALJ accurately classified him as a person of advanced age when the hearing was conducted. See 20 C.F.R., Part 404, Subpart P, Appendix 2 § 201.02 (indicating that an individual at an advanced age who can perform light or sedentary work, but has a limited education and non-transferable work skills, qualifies as disabled); id. § 202.02 (same). Instead, the ALJ used the plaintiff’s age as of the time when his insured status expired, thereby classifying him as a younger individual and finding him not disabled. A.R. at 21.

This approach was in error. The date of an individual’s lapse of insured status does not relate to the supplemental security income benefits evaluation, but instead only bears significance for purposes of determining eligibility for disability insurance benefits. Compare 20 C.F.R. § 404.131 (setting forth the requirements for disability insurance benefits, which includes considering the claimant’s insured status), with id. § 416.202 (setting forth the requirements for supplemental security income benefits without making any reference to the claimant’s insured status). As such, the plaintiff’s age for purposes of his supplemental security income benefits should have been assessed as of the time when he appeared before the ALJ. See, e.g., Steed v. Astrue, 524 F.3d

872, 874 (8th Cir. 2008) (using the claimant’s age “[a]t the time of her [ALJ] hearing” in adjudicating benefits claim in which both “social security disability and supplemental security benefits” were sought); Crawford v. Bernhardt, 556 F. Supp. 2d 49, 51–53 (D.D.C. 2008) (considering the claimant’s age in adjudicating claim to recover supplemental security income based “on the date of the ALJ’s decision”).

Therefore, for purposes of evaluating eligibility for supplemental security income benefits, the plaintiff’s age must be measured at the time of his hearing, and not at the point when his insured status expired. Accordingly, this Court cannot overlook the ALJ’s residual functional capacity analysis as harmless error because, assuming that the plaintiff could only perform light or sedentary work as he asserts, the ALJ would have arrived at a result of “disabled” had he used the plaintiff’s age at the time of his hearing. The Court will therefore remand the Administration’s ruling with the instruction that the ALJ use the plaintiff’s age at the time of his July 18, 2000 hearing in determining whether the plaintiff qualifies as “disabled” under 42 U.S.C. § 1382c.

IV. Conclusion

“Although [the Court] must carefully scrutinize the entire record,” its role is “not to determine . . . whether [the plaintiff] is disabled;” rather, its responsibility is to determine “whether the ALJ’s finding that []he is not is based on substantial evidence and a correct application of the law.” Butler, 353 F.3d at 999. In this case, the decision reached by the ALJ cannot survive the Court’s review. Because the ALJ did not articulate an adequate basis for reaching his conclusions with respect to the plaintiff’s residual functional capacity, the Court will grant the plaintiff’s motion for a judgment of reversal with respect to his supplemental security income benefits claim and remand this case to the Administration for further proceedings consistent with this memorandum opinion.

SO ORDERED this 24th day of July, 2009.

Legal Notices



First Insertions

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0693

DOROTHY O. CALHOUN, *Deceased*

HAYNES ROBERT CONTEE, *Attorney*

1380 MONROE ST., NW #263

WASHINGTON, DC 20010

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

ASBURY UNITED METHODIST CHURCH, whose address is 926 11TH ST., NW, WASHINGTON, DC 20001, was appointed personal representative of the estate of DOROTHY O. CALHOUN, who died on MAR 20, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ LOUIS SHOCKLEY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0773

MARGUERITE J. FITZ, *Deceased*

CATHERINE MARY RAFFERTY, ESQ., *Attorney*

4801 YUMA STREET, NW

WASHINGTON, DC 20016

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

CATHERINE MARY RAFFERTY, whose address is 4801 YUMA STREET, NW, WASHINGTON, DC 20016, was appointed personal representative of the estate of MARGUERITE J. FITZ, who died on JUL 21, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose

whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ CATHERINE MARY RAFFERTY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0750

MARY MARGARET FLANAGAN, *Deceased*

JASON A. PARDO, ESQ., *Attorney*

1120 20TH STREET, NW, STE 300 SOUTH

WASHINGTON, DC 20036

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JAMES D. FLANAGAN, whose address is 4011 CHANEY COVE CT., DUNKIRK, MD 20754, was appointed personal representative of the estate of MARY MARGARET FLANAGAN, who died on JUN 13, 1987 WITHOUT a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ JAMES D. FLANAGAN. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0754

PATRICIA A. GREGORY, *Deceased*

QUINN, RACUSIN & GAZZOLA,

CHARTERED, *Attorney*

1667 K STREET, NW, SUITE 720

WASHINGTON, DC 20006

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

CHRISTOPHER T. GREGORY, whose address is 1822 A STREET, SE, WASHINGTON, DC 20003, was appointed personal representative of the estate of PATRICIA A. GREGORY, who died on DEC 12, 2002 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ CHRISTOPHER T. GREGORY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0756

HENRY D. RAYFORD, *Deceased*

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

PEGGY C. DOSS, whose address is 6212 NEW HAMPSHIRE AVE., NE, WASHINGTON, DC 20011, was appointed personal representative of the estate of HENRY D. RAYFORD, who died on MAY 6, 2009 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ PEGGY C. DOSS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, LEGAL TIMES. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia

PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0055

WARREN R. SOFFER, *Deceased*

ROBERT F. COMSTOCK, ESQ., *Attorney*

5225 WISCONSIN AVE, NW, SUITE 300

WASHINGTON, DC 20015

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

BRIAN A. RAPHAN AND JOYCE AIGEN AND LAWRENCE SOFFER, whose addresses are 7 PENN PLAZA, 8TH FLOOR, NEW YORK, NY 10001 AND 2092 S. SHERWOOD DR., APT. 107-M, VALDOSTA, GA 31602, 452 HARMONY WAY, MONROE TWP., NJ, 08831, were appointed personal representatives of the estate of WARREN R. SOFFER, who died on NOV 6, 2008 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ BRIAN A. RAPHAN, JOYCE AIGEN, LAWRENCE SOFFER. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0759

JOAN N. TANSEY, *Deceased*

RICHARD W. SNOWDON, *Attorney*

1317 F STREET, NW, SUITE 350

WASHINGTON, DC 20004

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

JAMES J. TANSEY, whose address is 410 SUMMER GARDEN WAY, ROCKVILLE, MD 20850, was appointed personal representative of the estate of JOAN N. TANSEY, who died on AUG 5, 2006 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the

undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ JAMES J. TANSEY. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0739

ANDREW M. WERTH AKA

ANDREW MICHAEL WERTH, *Deceased*

ROBERT F. COMSTOCK, ESQ., *Attorney*

5225 WISCONSIN AVENUE, NW, SUITE 300

WASHINGTON, DC 20015

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

GREGORY RICHARD WERTH, whose address is 4106 GARRISON STREET, NW, WASHINGTON, DC 20016, was appointed personal representative of the estate of ANDREW M. WERTH AKA ANDREW MICHAEL WERTH, who died on JAN 28, 2009 WITH a Will, and will serve WITHOUT Court supervision. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ GREGORY RICHARD WERTH. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0732

MERRY NELSON WILLIAMS, *Deceased*

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

CECILIA M. WILLIAMS-NELSON, whose address is 682 NICHOLSON STREET, NE, WASHINGTON, DC 20011, was appointed personal representative of the estate of MERRY NELSON WILLIAMS, who died on MAY 28, 2008 WITHOUT a Will, and will serve WITHOUT Court supervision. All unknown heirs and

heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 3, 2010. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 3, 2010, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its first publication shall so inform the Register of Wills, including name, address and relationship. Date of First Publication: AUG 3, 2009. /s/ CECILIA M. WILLIAMS-NELSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 17, 2009.

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0199

ANNETTA T. YAGER, *Deceased*

ADAM YAGER, *Attorney/Petitioner*

14407 AUTUMN GOLD ROAD

BOYDS, MD 20841

Notice of Standard Probate

Notice is hereby given that a petition has been filed in this Court by ADAM YAGER for standard probate, including the appointment of one or more personal representatives. Unless a complaint or an objection in accordance with Superior Court Probate Division Rule 407 is filed in this Court within 30 days from the date of first publication of this notice, the Court may take the action hereinafter set forth. In the absence of a will or proof satisfactory to the Court of due execution, enter an order determining that the decedent died intestate and appoint a supervised personal representative. Date of First Publication: AUG 3, 2009. /s/ ADAM YAGER. TRUE TEST COPY /s/ ANNE MEISTER, Register of Wills. Name of Newspapers: DWLR, NATIONAL LAW JOURNAL. AUG 3, 10, 2009.

Second Insertions

Superior Court of the District of Columbia PROBATE DIVISION

Washington, DC 20001

Administration No. 2009-0718

JOAN H. DUNNIGAN, *Deceased*

GIANNINA LYNN, *Attorney*

1008 PENNSYLVANIA AVE., SE

WASHINGTON, DC 20003

Notice of Appointment, Notice to Creditors And Notice to Unknown Heirs

GWENDOLYN L. JOHNSON, whose address is 1451 GIRARD STREET, NW, WASHINGTON, DC 20009, was appointed personal representative of the estate of JOAN H. DUNNIGAN, who died on JUN 12,