

Magistrate Finds “Check-Box” MSS Entitled To Weight

Most of us are delighted to get any kind of Medical Source Statement (MSS) from our clients’ treatment providers, even ones that involve “checking off” boxes. But we are also frustrated by the cavalier attitude with which many Administrative Law Judges (ALJs) treat these assessments. Mary Grace Ferrone, a disability attorney with Legal Services of the Hudson Valley, recently convinced a U.S. Magistrate Judge that such an assessment should have been accorded more weight than the ALJ gave it.

U.S. Magistrate Judge Kevin Nathaniel Fox agreed with Mary Grace, who argued in U.S. District Court that the ALJ erred in rejecting the treating source opinion that gave her client significant limitations. The judge noted the Social Security Administration (SSA) does not prescribe any particular format in which opinions must be produced. “Thus, the ‘check off’ format with no reference to underlying clinical observations,” was not a good reason not to give controlling weight to the treating source. The ALJ had rejected the opinion in a conclusory fashion as not consistent with the mental health treatment notes, without identifying any inconsistent treatment notes.

The Magistrate criticized the ALJ’s “circular reasoning.” The ALJ rejected the opinion because it was in “check off” format without reference to underlying clinical observations, at the same as rejecting it because it was not consistent with mental health treatment notes. The court found that having failed to identify the mental health notes inconsistent with the opinion, the ALJ also failed to give good reasons for not according the opinion controlling weight.

The court further found the ALJ erred by failing to identify what weight he gave the treating source opinion, effectively rejecting it by stating he did not give it significant weight. The ALJ also erred by failing to state what weight he gave the opinion of the consultative examiner; he simply said he gave it greater weight than that of the treating source. The Magistrate Judge aptly pointed out that reasoning meant the ALJ actually accorded the consultative examiner’s greater weight than none!

Because the ALJ committed legal error by failing to properly apply the treating physician rule, the court found the ALJ’s resulting residual functional capacity (RFC) was not supported by substantial evidence. Note that this claim was filed prior to the date – March 27, 2017 – the new opinion evidence regulations went into effect, so it was decided under 20 C.F.R. §416.927.

Congratulations to Mary Grace on this nice victory. The U.S. District Court Judge’s decision approving the Magistrate Judge’s Report and Recommendation and remanding the claim for further proceedings is at *Brown v. Commissioner of Social Security*, 2020 WL 3893252 (S.D.N.Y. July 7, 2020).

