

APPEALS COUNCIL
SOCIAL SECURITY ADMINISTRATION

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In the Matter of

Case #:

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MEMORANDUM

**REQUEST FOR REVIEW OF THE ALJ
DECISION AND ORDER DENYING, EITHER IN
WHOLE OR IN PART, SOCIAL SECURITY
DISABILITY BENEFITS.**

A. SPECIFIC ISSUES APPEALED:

The claimant states that the ALJ erred in evaluating the facts and evidence, and erred in the application of legal principles, including the applicable Rules and Regulations. As such, the claimant appeals the ALJ's decision denying benefits for the following specific reasons addressed below.

**1. THE ALJ ERRED BY FAILING TO CONSIDER WHETHER THE
CLAIMANT'S MIGRAINE HEADACHES EQUALED A LISTING.**

The Appeals Council previously remanded this case and ordered that the ALJ consider the impact of the claimant's headaches on the RFC. (P. 10). The ALJ still erred with respect to the headaches analysis.

First, the ALJ failed to consider whether the claimant's migraine headaches equals a listing; particularly Listings 11.02B. An equivalency finding could be satisfied by a showing that the claimant experienced migraine headaches once a week for 3 consecutive months. The ALJ recognized that the claimant has "chronic migraines" and that even with treatment, and even with some improvement, the claimant still experiences 3 migraine headaches a week. (P. 10). The ALJ also characterizes the headaches as only "somewhat tolerable" even after reduction of the severity following a Botox regimen. (P. 10).

The ALJ erred by failing to consider whether the headaches equaled a listing.

2. THE ALJ ERRED BY FAILING TO ACCOUNT FOR ANY LIMITATIONS IN THE RFC RELATED TO THE CLAIMANT'S MIGRAINE HEADACHES.

The Appeals Council previously remanded this case and ordered that the ALJ consider the impact of the claimant's headaches on the RFC. (P. 10). The ALJ states, "I have complied with this directive." Yet, despite this proclamation that the AC's directive was complied with, there are still no limitations for this severe condition in the RFC.

The claimant's migraine headaches are severe. As such, there must be a limitation in the RFC or the ALJ must expressly state why there are no limitations related to this condition in the RFC.

Here, the ALJ did not explain why no limitations were in the RFC and did not account for any limitations either. Thus, the ALJ erred.

The RFC does not account for any noise reduction nor does it account for any limitations related to exposure to light. However, the ALJ acknowledges that the claimant experiences photophobia. (P. 10).

The ALJ simply recited some information about the claimant's migraine headaches, but then did not account for any limitations in the RFC and did not explain why no limitations were accounted for. Thus, the ALJ erred and remand is again warranted on this issue.

3. THE ALJ DID NOT EVALUATE THE CLAIMANT'S TESTIMONY FROM HER SECOND HEARING.

The ALJ considered and evaluated the credibility of the claimant's testimony as it is set forth in her adult function report set forth at Exhibit 5E (P. 8), and also her testimony from her first hearing (P. 8). But, the ALJ did not make any reference anywhere in the decision as to how she considered the claimant's testimony from her second hearing. This is error.

B. BROAD REQUEST FOR REVIEW:

The Appeals Council has an affirmative duty to review the entire record, including "new and material evidence" before rendering its decision to grant or deny review. See Williams v. Halter, 135 F.Supp.2d 1225, 1231 (M.D.Fla.2001); 20 C.F.R. § 404.970(b).

Although an ALJ's findings of fact may be taken as conclusive, the Appeals Council may review all the evidence of record to decide whether the ALJ's findings are supported by substantial evidence. In Powell v. Heckler, 789 F.2d 176 (3d Cir.1986), the court held that the Appeals Council need not limit its review to

the issue appealed, but may review a claimant's entire case. *Id.* at 179; see also Hale v. Sullivan, 934 F.2d 895, 898 (7th Cir.1991) (once the Appeals Council receives a timely request for review, it is entitled to review the entirety of the case); Gronda v. Secretary of Health & Human Serv., 856 F.2d 36, 38–39 (6th Cir.1988) (Appeals Council had authority to review entire case within 60 days of ALJ's decision even though claimant only requested review of narrow aspect of case), *cert. denied*, 489 U.S. 1052, 109 S.Ct. 1312, 103 L.Ed.2d 581 (1989).

In this case, the claimant is asking the Appeals Council to review specific and narrow issues, which are identified in Section A, above. However, in addition to the specific issues identified above, the claimant is also asking the Appeals Council to review all the evidence of record to determine if the ALJ committed any other errors, beyond those errors that have been specifically identified above.

In this case, the claimant asserts that the ALJ erred in evaluating the facts, evidence, and erred in the application of legal principles, including the applicable Rules and Regulations. As such, it is requested that the Appeals Council vacate the decision denying benefits and remand the case for further consideration.

C. CONCLUSION:

The claimant asserts that the ALJ erred in evaluating the facts, evidence, and erred in the application of legal principles, including the applicable Rules and Regulations. Consequently, the claimant asserts that the decision denying benefits is not based upon substantial evidence. The claimant requests that the Appeals Council vacate the decision denying benefits and remand the case for further consideration.

Dated: March 27, 2024

Respectfully submitted:

/s/ [REDACTED]

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