

GERALD EMMONS,	*	IN THE
<i>Appellant</i>	*	CIRCUIT COURT
vs.	*	FOR
DEPARTMENT OF HEALTH & MENTAL HYGIENE,	*	BALTIMORE CITY
<i>Appellee</i>	*	Case No.: 24-C-03-002783 AA
* * *	*	* * *

**MEMORANDUM OPINION**

This is an administrative appeal from a decision by the Board of Review of the Department of Mental Health and Hygiene (“Department”) affirming the decision of an Administrative Law Judge (“ALJ”) to remand Mr. Emmons’s case to the local department to be resubmitted for a new determination of medical assistance eligibility and to consider additional medical evidence submitted at the hearing and following the hearing.

On appeal, Mr. Emmons argues that the Department erred in affirming the ALJ’s decision for the following reasons: (1) federal law requires the ALJ to render a decision on Mr. Emmons’s application rather than remand the case for a new eligibility determination; (2) Maryland is required to comply with federal law in administering the Medical Assistance Program; (3) federal provisions assure a public benefits applicant a final decision resulting from a fair hearing; (4) there was sufficient evidence before the ALJ to render a decision on Mr. Emmons’s Application; and (5) because of the important public interests at stake and the likelihood of reoccurrence, the Court should rule on the merits of this case even though Mr. Emmons was granted his medical assistance on remand.

In response, the Department argues: (1) this case should be dismissed as moot because the Department agrees that Mr. Emmons is disabled and eligible for medical benefits; and

(2) the ALJ correctly remanded this case for the State’s physicians and disability specialists to consider additional medical evidence that Mr. Emmons submitted during and after the appeal hearing but did not submit with his application for medical assistance.

### **PROCEDURAL HISTORY**

Mr. Emmons applied for Medical Assistance because of disability.<sup>1</sup> On March 13, 2002, the Cecil County Department of Social Services sent the medical information he provided to the State Review Team (“SRT”) which included only a Form 4204 and a Medical Report Form 402B from Jui Chih Hsu, M.D., dated March 11, 2002. ALJ Opinion at 4. On June 17, 2002, the SRT determined that Mr. Emmons was not disabled; the local department notified Mr. Emmons on June 26, 2002 and he requested a hearing before an Administrative Law Judge. *Id.*

The ALJ found that Mr. Emmons applied for Medical Assistance under the ABD program for a household of one on or about February 19, 2002. *Id.* at 3. Mr. Emmons suffers from several medical conditions including hypothyroidism, back strain/sprain, and sleep apnea.<sup>2</sup> *Id.* at 3-4. Mr. Emmons cannot bend, squat, climb, or crawl. *Id.* at 4. Mr. Emmons cannot lift or carry more than ten pounds. *Id.* He can sit for three hours, and stand, walk, and reach for two hours. *Id.* Mr. Emmons cannot be exposed to extreme cold, extreme heat, humidity, chemicals, dust, and/or fumes/odors. These environmental

---

<sup>1</sup>Mr. Emmons had received Medical Assistance from January 2000 until January 2002 and lost his assistance after he did not return recertification documents he said he never received. Hearing Tr. at 27-28.

<sup>2</sup>The ALJ also found that Mr. Emmons may suffer from the following medical conditions: depression, cellulitis of the feet, rhinitis, alcohol dependency liver disorder, exoskeletal-muscle damage from auto accident in May 2002, prostate problems, growth in occipital lobe, congestive heart failure, and breathing disorders. *Id.* at 4 note 1

conditions exacerbate his shortness of breath. *Id.* Mr. Emmons has the following functional limitations: marked restriction activities of daily living; moderate difficulties in maintaining social functioning; difficulties often in maintaining concentration, persistence or pace. *Id.* He has had three or more related episodes of decompensation, each of extended duration. *Id.*

The ALJ found “that the SRT has failed to adhere to the requirements of the sequential evaluation process required by 20 C.F.R. § 416.20” and remanded the case to the SRT. *Id.* at 15.

. . . the local department should take reasonable efforts to obtain more medical documentation of the Appellant’s alleged medical conditions, including depression. The SRT should consider the additional medical information submitted by the Appellant at the administrative hearing as well as any additional medical information obtained by the local department pursuant to this decision, so that it can perform a thorough sequential evaluation, 20 C.F.R. §§ 416.901-916.998 (2001) (“Subpart I”), and if applicable, the special technique for evaluation of severity of mental impairment.

*Id.* at 16.

Mr. Emmons appealed the ALJ’s decision to the Board of Review of the Department of Mental Health and Hygiene. Before the Appeal was heard, the SRT found Appellant to be disabled and granted him Medical Assistance. After a hearing, the Board issued a decision adopting the ALJ’s findings and conclusions. Pursuant to Md. Code Ann., State Gov’t. § 10-222(a), Mr. Emmons seeks judicial review of the Board’s decision.

## DISCUSSION

### MOOTNESS

As an initial matter, the Court must determine whether the mootness doctrine prohibits consideration of this case. The Court of Appeals has stated that “[g]enerally, we dismiss moot questions ‘without expressing our views on the merits of the controversy.’” *Matthews v. Park & Planning*, 368 Md. 71, 96 (2002) (citations omitted). The Court has authority, however, to express its views on the merits of a moot case and will exercise that authority if the factors provided below concur with sufficient weight:

[1] The urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest;

[2] The public interest clearly will be hurt if the question is not immediately decided;

[3] The matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens; and

[4] Upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision.

*Id.* at 96-97. Each of these factors are discussed below.

1. *The Urgency of Establishing a Rule of Future Conduct in Matters of Important Public Concern Is Imperative and Manifest.*

There exists a strong public concern that patients entitled to Medical Service receive timely treatment. Applicants applying for Medical Assistance on the basis of disability are by definition sick and in need of medical attention. And until their applications are approved, they must often rely on costly emergency rooms and free clinics for care. Alternatively, they

postpone care, ultimately necessitating more costly medical treatment at the public expense. Here, because Mr. Emmons's case was remanded to the SRT and the local department, he had to wait over two additional months, from November 6, 2002 to January 16, 2003, until he began receiving Medical Assistance. Additionally it is important that the determinations are accurate so that the resources of the program are not expended for the care of those who are not disabled.

2. *The Public Interest Clearly Will Be Hurt If the Question Is Not Immediately Decided*

For the reasons discussed above, the public interest is hurt if the question is not decided at this point because patients such as Mr. Emmons could go months without treatment for failure of the ALJs to render a decision.

3. *If the Matter Involved Is Likely to Recur Frequently, and its Recurrence Will Involve a Relationship Between Government and its Citizens.*

The Court is satisfied that the situation is likely to reoccur. In 2001, there were 542,000 Marylanders enrolled in Medicaid. Memorandum of Appellant Gerald Emmons at 19 note 9 (citing Kaiser Commission on Medicaid and the Uninsured, Medicaid Enrollment in 50 States (July 2003 Update), *available at* <http://www.kff.org/content/2003/4124/4124.pdf>). In addition, almost all Medical Assistance recipients, except those few who are determined to be permanently disabled, must reapply and have their eligibility redetermined periodically. *See* 42 C.F.R. § 435.916; 20 C.F.R. 416.990. Mr. Emmons argues, and the Department does not dispute,<sup>3</sup> that ALJs in Maryland *routinely remand* Medical Assistance disability cases to the SRT and local departments, rather than rendering a decision on the merits. *See In re:*

---

<sup>3</sup>More than simply not disputing that ALJs routinely remand cases to SRT, the Department argues that the ALJ is required to do so in cases such as this one.

*Justin D.*, 357 Md. 431, 444 (2000) (“[i]t is clear from the record, however, and the parties have agreed, that it is common practice for the juvenile court in Montgomery County to enter orders of this kind, so the issue presented by appellants is a recurring and important one.”).

Furthermore, this matter is clearly between the government and its citizens. Medicaid is a government entitlement program enacted by Congress to provide medical assistance benefits for individuals with limited incomes. *See* 42 U.S.C. §1396 et seq.; 42 C.F.R. §§ 430-456. The program is a jointly funded collaboration between the states and the federal government.

4. *Upon Any Recurrence, the Same Difficulty Which Prevented the Appeal at Hand from Being Heard in Time Is Likely Again to Prevent a Decision.*

Although a delay caused by an unnecessary remand will cause problems for the applicant, it is likely to be resolved in the applicant’s favor before the appeal is heard. An appeal from the ALJ’s decision is first heard by the Board of Review after exceptions are filed and then if the decision of the ALJ is affirmed, the applicant may appeal to circuit court.

Here Mr. Emmons applied on February 19, 2002. He was notified on June 26, 2002 that the SRT had determined that he was not disabled. He filed a request for a hearing on July 8, 2002. The hearing was held September 10, 2002.<sup>4</sup> The ALJ issued a decision on November 6, 2002 remanding the matter to the SRT. Mr. Emmons filed exceptions to the Board of Review on December 4, 2002. The Board affirmed the ALJ on March 28, 2003 and Mr. Emmons filed an appeal to circuit court on April 22, 2003 which was first set in for

---

<sup>4</sup>It was postponed from August 13 to September 10, 2002 at Mr. Emmons request in order to permit him to get a legal representative.

hearing on November 21, 2003.<sup>5</sup> On January 16, 2003, while the exceptions were pending before the Board of Review, the SRT found Mr. Emmons disabled. This scenario is likely to reoccur in almost every instance where an applicant is found disabled because the SRT failed to follow the sequential evaluation set out in the regulations.

Therefore, this Court concludes that although moot, the merits should be addressed.

### **STANDARD OF REVIEW**

It is a fundamental principle of administrative law that upon an appeal of the decision of an administrative agency to the courts, a reviewing court cannot substitute its judgment for the expertise of the administrative agency from which the appeal was taken. *O'Donnell v. Bassler*, 289 Md. 501, 509-11 (1981). “Appellate review of an administrative agency’s decision is narrow.” *Finucan v. Board of Physicians*, 151 Md. App. 399, 411 (2003). The court determines “whether there was substantial evidence on the record as a whole to support the agency’s findings of fact and whether the agency’s conclusions of law were correct.” *Motor Vehicle Admin. v. Atterbeary*, 368 Md. 480, 490-91 (2002). When reviewing a board’s legal conclusions, the court “must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.” *Richmarr Holly Hills, Inc. v. American PCS*, 117 Md. App. 607, 652 (1997) (citing *Lee v. Maryland Nat’l Park & Planning Comm’n*, 107 Md. App. 486, 492 (1995)).

### **STATE REVIEW TEAM AND THE SEQUENTIAL EVALUATION PROCESS**

---

<sup>5</sup>At request of counsel for the Department, the Court postponed the hearing until February 3, 2004 and permitted supplemental briefing.

Medical Assistance is a jointly funded State and Federal program that provides medical insurance coverage to the indigent. To qualify for federal funding, the State Medical Assistance regulations must conform with superceding federal regulations and statutes. To conform to this federal requirement, the Maryland Department of Health and Mental Hygiene has adopted the federal disability standard for ABD Medical Assistance eligibility. In making a determination on disability, the Department has an obligation to assist the applicant in developing the medical evidence:

Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports . . . .

20 C.F.R. § 416.912(d). Furthermore, the agency is required to recontact medical sources when the evidence received from the treating physician or other medical sources is inadequate “to determine whether the [applicant] is disabled.” 20 C.F.R. § 416.912(e)(1). If the necessary information is not readily available from the medical treatment source or the agency is unable to seek clarification therefrom, it will provide the applicant with “one or more consultative examinations at [the agency’s] expense.” 20 C.F.R. 416.912(f).

Pursuant to COMAR 10.09.24.05E(2)(c), the SRT is required to evaluate whether an applicant’s impairments satisfy the requirements for set forth in the Code of Regulations (“C.F.R.”):

(c) A Family investment Administration review team shall

review the medical report and other evidence obtained under § E(2)(b) of this regulation and determine whether the individual's condition meets the definition of disability. The review team shall be composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity as specified in 20 C.F.R. Part 416, Subpart J.

20 C.F.R. §§ 416.901-416.998 (2001) ("Subpart I") sets forth the detailed method of evaluating eligibility for disability benefits under the SSI program.

The Procedural inquiry required in evaluating disability, commonly known as the sequential evaluation," is found in 20 C.F.R. § 416.920, which establishes a five-step sequential evaluation process used to determine whether an individual is disabled. The first step in the process requires a determination of whether the applicant is engaging in substantial gainful activity. § 416.920(b). If the applicant is not engaging in substantial gainful activity, the second step requires an assessment of whether the applicant has a severe impairment. § 416.920(c). The third step requires a determination of whether the individual meets or equals an impairment listed in appendix 1. § 416.920(d). If the impairment(s) meets the duration requirement and is listed in appendix 1, the agency must find the applicant disabled. *Id.* If the applicant does not have an impairment listed in appendix 1 that meets the duration requirement, the fourth step requires a determination of whether the impairment prevents the applicant from engaging in past relevant work. § 416.920(e). If the individual cannot still do past relevant work, the fifth and final step requires an assessment of whether the individual's impairment is disabling because it prevents the individual from doing other work. § 416.920(f).

The applicant bears the burden of production and proof during the first four steps of the inquiry. *Pass v. Chater*, 65 F.3d 1200, 1203 (4<sup>th</sup> Cir. 1995). If the applicant is able to carry this burden through the fourth step, the burden shifts to the agency in the fifth step to show that the applicant can make an adjustment to other work.<sup>6</sup> *Id.*

#### **NATURE OF THE HEARING**

Mr. Emmons argues that the ALJ erred by remanding his case to the agency for a new eligibility determination because there was sufficient information before the ALJ to render a final decision. The Department argues that the case was properly remanded for the SRT to consider additional evidence that was presented for the first time during the hearing before the ALJ. In order to address this question, the Court must first determine the nature of the hearing before the ALJ.

Both parties agree that a Medical Assistance applicant such as Mr. Emmons is entitled to a fair hearing that satisfies the standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970). Mr. Emmons argues that a fair hearing includes the right to have a decision by an impartial decision maker. *Id.* at 271. “[T]he decision maker’s conclusion as to a recipient’s eligibility must rest solely on the legal rules and evidence adduced at the hearing.” *Id.* See also 42 C.F.R. Section 431.244(a) (decision must be “based exclusively on evidence introduced at the hearing”). Further, the recipient must “appear personally before the official *who finally determines ... eligibility.*” *Id.* at 268 (emphasis added). Mr. Emmons argues that the person who “finally determines eligibility” is the ALJ and therefore it is an

---

<sup>6</sup> 20 C.F.R. § 416.20 was amended on August 26, 2003, which was after Mr. Emmons’s application was reviewed. The changes, however, do not substantively alter what each party has to prove.

error for the ALJ to remand the case to the SRT when there is sufficient evidence before the ALJ to finally decide the matter. In short, Mr. Emmons argues that the hearing is *de novo* and not a review of the action of the SRT.

The Department argues that the hearing before the ALJ is not a *de novo* hearing. In support of its argument, the Department argues that Mr. Emmons has confused two different types of hearing systems. Pursuant to 42 C.F.R. § 431.205(b), a State has a choice of the type of hearing system it provides. It may provide for a hearing before the agency or an evidentiary hearing with a right to appeal to a State agency.

- The State's hearing system must provide for—
- (1) A hearing before the agency; or
  - (2) An evidentiary hearing at the local level, with a right of appeal to a State agency hearing.

42 C.F.R. § 431.205(b). According to the Department, only if the State opts for a hearing which begins at the “local level” is there a hearing *de novo*. See 42 C.F.R. § 431.232 (if decision is adverse the State must notify the applicant “of his right to request that his appeal be a *de novo* hearing”).

The Department argues that Maryland opted for the first system and provides for a “hearing before the agency.” 42 C.F.R. § 431.242 sets out the procedural rights of an applicant at that hearing. The hearing gives the applicant an opportunity to examine the applicant's case file, examine all documents used by the State, “bring witnesses,” “establish all pertinent facts and circumstances,” and present argument and confront and examine witnesses. *Id.* The hearing must cover “agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility.” 42 C.F.R. § 431.241(a).

The Department argues that under these regulations “the ALJ *takes a new look, a fresh look at the evidence,*” and can “*affirm or reverse,*” the decision of the SRT. Department’s Supplemental Memorandum at 3. The Department also argues that the ALJ is deciding the “correctness” of the SRT’s decision which must rest on “the information” that was before the SRT to determine if it “correctly analyzed” the evidence before it. *Id.* It is the Department’s position that new evidence may not be presented at the hearing before the ALJ, but if it is presented a remand is required.

The Department states that “this position is in line with federal social security law.” *Id.* The only “federal social security law” cited to support this proposition is 20 C.F.R. §404.948 (c) and § 416.1448 (c). A close reading of those regulations makes clear that they only apply when there is a remand without a hearing.<sup>7</sup> Both of those sections are titled, “Deciding a case *without an oral hearing* before an administrative law judge,” (emphasis added), and while the title may not be part of the regulation, the title is certainly helpful in determining the meaning of the regulation. *See State v. Wagner*, 15 Md. App. 413, 422 (1972) (“[I]t is well settled that the title of the act can be used in conjunction with the body of the statute to ascertain its intent, purpose and the effect.”).

Furthermore, the language of the regulation is consistent with the title. Subsection (a) explicitly states that “the administrative law judge may issue a hearing without holding an oral hearing,” if “the evidence in the record supports a finding in favor of you [the applicant] and all the parties on every issue.” Subsection (b) provides that a party may waive a hearing upon written request or if the party lives outside the United States and does not explicitly

---

<sup>7</sup>The language of both regulations is identical.

state that he wants a hearing. Subsection (c) is the section cited by the Department. It provides:

- (1) The administrative law judge may remand a case to the appropriate component of our office for a revised determination if there is reason to believe that the revised determination would be fully favorable to you. This could happen **if the administrative law judge receives new and material evidence** or if there is a change in the law that permits the favorable determination.
- (2) Unless you request the remand the administrative law *judge shall notify you that your case has been remanded and tell you that if you object, you must notify him or her of you objections within 10 days of the date the case is remanded* or we will assume that you agree to the remand. If you object to the remand, the administrative law judge will consider the objection and rule on it in writing.

(Bold emphasis in Department’s Supplemental Memorandum at 4. Italics emphasis added).

It is clear from the italicized language and the other language in (c)(2) that this remand section applies only when there is a remand without an oral hearing. That did not occur here and not surprisingly, the ALJ did not notify Mr. Emmons that he had a right to object to the remand, so of course there is no written ruling on an objection. ALJ Opinion at 17.

Thus, the Department’s argument that the hearing before the ALJ is *not* a hearing *de novo* is both correct and, from the Department’s standpoint, proves too much.<sup>8</sup> The hearing before the ALJ is, as the Department points out, *the* “hearing before the agency.” Maryland has delegated the authority to conduct the “hearing before the agency” to the Office of Administrative Hearings. There is *no* hearing before the hearing at the OAH. The applicant

---

<sup>8</sup>Of course, if the hearing is *de novo*, it is the same as if there had not been another hearing. See 42 C.F.R. 431.201 (“De novo hearing means a hearing that starts from the beginning.”). See also *Halle Cos. v. Crofton Civic Association*, 339 Md. 131, 142 (1995) (*de novo* appeals are treated as “wholly original proceedings”) and *General Motors Co. v. Bark*, 79 Md. App. 68, 75-82 (discussing what a *de novo* hearing is).

does not appear before the SRT. The CMS State Medicaid Manual section 2903.2A provides that “[a] *conclusive decision* in the name of the state agency shall be made by the hearing authority [the ALJ].” (emphasis added). The decision of the ALJ is “final and binding” and takes effect “immediately.” COMAR 10.01.04.08C(1). CMS State Medicaid Manual, CMS-Pub 45, § 2903.2A provides that a remand is “not a substitute for ‘definitive and final administrative action.’”

Thus all the rights of a fair hearing apply, including the right to have the decision maker, the ALJ, decide the case. The language used by the Fourth Circuit in *Pass v. Chater*, makes clear that the ALJ is finding facts, not simply reviewing the decision of the SRT:

*The ALJ made detailed findings concerning Pass’s claimed disability.\*\*\**

\*\*\*[T]he ALJ concluded that Pass retained the capacity for sedentary work

65 F. 3<sup>rd</sup> at 1202 (emphasis added).

In determining whether a claimant is disabled, *the ALJ* follows a sequential five-step process.

*Id.* at 1203 (emphasis added).

[T]he ALJ determined that Pass retained the residual functional capacity for sedentary work activity ...’ *The ALJ then examined Pass’s employment history and concluded that the gate guard position previously held by Pass was sedentary...*

*Id.* (emphasis added).

Pass did not contest *the ALJ’s finding* concerning his ability to perform sedentary work, ....

*Id.* at 1204 note 2 (emphasis added).

If a claimant shows that he or she cannot perform past work at step four, *the ALJ must proceed to examine* step five whether

the claimant is able to perform other work.

*Id.* at 1204 (emphasis added).

Pass's allegation that his former position as a gate guard no longer exists does not draw into question the *ALJ's finding* that Pass was not disabled...

*Id.* at 1207 (emphasis added).

Finally, because in Maryland, the hearing before the ALJ is *the* "hearing before the agency," the suggestion that an applicant cannot present "new evidence" is inconsistent with constitutional requirements and the federal and statutory requirements for a hearing. 42 C.F.R. §431.205(d) specifically provides that "The hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart." *Goldberg v. Kelly* requires that "the decisionmaker's conclusions as to a recipient's eligibility must rest solely on the legal rules and *evidence adduced at the hearing.*" 397 U.S. at 271(emphasis added). 42 C.F.R. § 431.242 sets out the procedural rights of a recipient at a hearing and makes clear that evidence is not restricted to what was presented to the agency prior to the hearing:

Procedural rights of the applicant or recipient.

The applicant or recipient, or his representative, must be given an opportunity to--

(a) Examine at a reasonable time before the date of the hearing and during the hearing:

(1) The content of the applicant's or recipient's case file; and

(2) All documents and records to be used by the State or local agency or the skilled nursing facility or nursing facility at the hearing;

- (b) Bring witnesses;
- (c) Establish all pertinent facts and circumstances;
- (d) Present an argument without undue interference; and
- (e) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

*See also* 42 C.F.R. 431.244(a) (“Hearing recommendations or decisions *must be based exclusively on evidence introduced at the hearing*” (emphasis added)); 42 CFR § 431.201 (“Evidentiary hearing means a hearing conducted so that evidence may be presented.”)

### **WHAT THE ALJ DID**

The Department argues that a remand was appropriate here because Mr. Emmons presented the ALJ with new evidence that the ALJ could not evaluate because there was no medical expert to interpret the records.

Maryland ALJs are generalists. They hear cases involving many State agencies .... the ALJs, like other judges, are qualified to decide cases involving medical evidence where an expert has interpreted the evidence and explained how it relates to the disputed issue.

Appellee's Memorandum at 5-6. Mr. Emmons argues that the evaluation of the evidence is something that ALJs, attorneys and paralegals do on a regular basis.

As a general matter, the evaluation of medical evidence is not so arcane as to require extensive specialized training. Attorneys and paralegals representing Medical Assistance applicants regularly review medical records in order to assess and present the merits of their clients' claims. All that is required is a familiarity with disability standards established by the Social Security Administration, some rudimentary understanding of medical terminology (which can be aided by such basic resources as medical dictionaries, etc.), and an ability to apply the law to the facts of a particular case.

Mr. Emmons's Reply Memorandum at 7. Furthermore, Mr. Emmons argues that the medical

evidence that was presented to the SRT was sufficient to show that he is disabled.

An examination of the ALJ's Opinion reveals that the ALJ did not reach an independent decision but reviewed the decision of the SRT, and finding it lacking, remanded the matter back to the SRT:

A review of the exhibits offered into evidence by the local department indicates that in evaluating whether the Mr. Emmons is disabled under the federal requirements, the *SRT first correctly* determined that he is not engaged in substantial gainful activity. The *SRT next correctly* determined that the Mr. Emmons has a severe impairment. A determination was then made that the medical documentation... submitted by the Mr. Emmons's physician failed to meet or equal the severity requirements indicated [for each of his impairments].

Having determined that the Mr. Emmons's impairments did not meet or equal a listed impairment..., the SRT was required to make a determination that the Mr. Emmons's impairments prevent him from doing past relevant work. \*\*\*[T]he SRT was required to review the Mr. Emmons's residual functional capacity and the physical and mental demands of the work he had done in the past... \*\*\*[T]he SRT *correctly* determined that the Mr. Emmons cannot return to past relevant work.

\*\*\*

There is *insufficient information* contained in the SRT's report to make a determination as to whether the SRT properly performed a residual functional capacity assessment ... [as it is required to do]. There is *no indication* that the SRT considered the descriptions by [Mr. Emmons] or his physician,..., of Mr. Emmons's limitations that go beyond the symptoms, such as pain, that are important in the diagnosis and treatment of the Mr. Emmons's medical condition.

ALJ Opinion at 13-15 (emphasis added) (some citations omitted). The focus of the ALJ was on whether the SRT had made the correct determinations. The ALJ did not make an independent decision on any of the issues, as she was required to do.

The most blatant example of what the ALJ did, is the analysis concerning the report

from Mr. Emmons's physician. The ALJ pointed out that Mr. Emmons's physician, using the form supplied by SRT, had determined that Mr. Emmons was not able to work for at least one year. The ALJ noted that there was nothing in the record to contradict this finding. Citing *Evans v. Heckler*, 734 F. 2d. 1012, 1015 (4<sup>th</sup> Cir. 1984), the ALJ concluded that a treating physician's opinion can only be "disregarded...if there is persuasive contradictory evidence." ALJ Opinion at 15. But instead of finding that Mr. Emmons's medical condition prevents him from working for a period of at least one year, the ALJ focused on what the SRT and the local department had failed to do: "Therefore, for the reasons set forth above, I find that the SRT has failed to adhere to the requirements of the sequential evaluation process."<sup>9</sup> *Id.* at 15 (citation omitted).

In finding that the Mr. Emmons was not disabled, the SRT stated: "Medical Report does not show evidence that meets the criteria for disability." However, *the SRT's conclusion is in direct contrast to that of his physician,...*, who determined that the Mr. Emmons's medical condition prevents [Mr. Emmons] from working for a period of at least one year. The United States Court of Appeals for the Fourth Circuit held, in *Evans v. Heckler*, 734 F. 2d. 1012, 1015 (4<sup>th</sup> Cir. 1984), the "opinion of a claimant's treating physician is entitled to great weight and may be disregarded only if there is persuasive contradictory evidence." *Without an explanation from the SRT identifying the specific evidence it used to disregard the opinion of [Mr. Emmons's doctor], I cannot determine whether SRT's*

---

<sup>9</sup>Unlike the ALJ, this Court, is *reviewing* the decision of the ALJ, and *is not* conducting an independent hearing. Thus this Court *could not* make findings of facts no matter how detailed the record. See *Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore*, 128 Md. App. 494, 516 (1999) ("*Eastern I*"), *cert. denied*, 358 Md. 163 (2000) (In reviewing decision of an administrative agency, the "circuit court exceeded its authority by making wholly independent factual findings."); *Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore*, 146 Md. App. 283, 320 (2002) (If "a record of the facts on which the agency acted or a statement of reasons for its action is lacking," the reviewing court must remand the case "for the purpose of having the deficiency supplied." (Citation omitted)).

*conclusion was correct.*

\*\*\*\*

The evidence indicates that although the physician provided information that Mr. Emmons suffered from [a host of medical conditions], no further effort was made by the local department to obtain further medical evidence necessary to make a determination of disability. *I find that the local department had an obligation to do so....*

*Id.* at 15-16 (emphasis added). Mr. Emmons complains that the ALJ had an obligation to look at the evidence and render a decision in his favor because all of the evidence showed that he had a disability.

In *Evans v. Heckler*, the agency, and the ALJ found, and the district court agreed, that the applicants impairments were “‘not severe,’ and should not prohibit him from working.” 734 F. 2d at 1014 (footnote omitted). There was “no medical evidence supporting [that] conclusion anywhere in the record,” and “[t]o the contrary, the uncontroverted medical evidence leads directly to the opposite conclusion.” *Id.* at 1015. Noting that his treating physician had found him disabled and that there was no evidence to the contrary, the Court concluded that “the Secretary is obliged to find in favor of the claimant.” *Id.*

The Department argues that *Evans* does not apply because after *Evans*, 20 C.F.R. § 416.927(d)(2) was modified so that a treating physician’s opinion is given controlling weight only if (1) the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and (2) is not inconsistent with the other evidence in the case. Supplemental Memorandum at 7 citing *Ward v. Chater*, 924 F. Supp. 53, 55 (W.D. Va. 1996). 20 C.F.R. § 416.927(d)(2) provides that “[i]f we find that a treating source’s opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent

with the other substantial evidence in your case, we will give it controlling weight.”

There is nothing in the ALJ’s Opinion to suggest that Mr. Emmons’s treating physician’s opinion was not given controlling weight because it failed to satisfy either of those criteria. It is clear from a review of the ALJ’s Opinion, that there was more than sufficient evidence for the ALJ to reach a decision as to steps 1 through 4. All the evidence on those four issues supports Mr. Emmons and the Opinion suggests that the ALJ found Mr. Emmons’s doctor’s opinion persuasive. ALJ Opinion at 15. It is also clear that the ALJ did not believe that the SRT had satisfied its burden of showing that the impairments were not disabling because they do not prevent Mr. Emmons from doing other work.

In sum, as discussed above, the ALJ did not make independent findings of facts, but simply reviewed whether the evidence was sufficient to support the decision of the SRT and finding it wanting, remanded the matter. This was erroneous. *See Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore*, 146 Md. App. 283, 320 (2002) (administrative agency must make findings of fact that can be reviewed by court).

Although not a *remand*, an ALJ may in certain circumstances require SRT to perform a medical assessment. *See* 42 C.F.R. § 431.240 (b) (“*if the hearing officer considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, such a medical assessment must be obtained at agency expense and made part of the record*” (emphasis added)). That is not what occurred here. Further, under a different hearing system, a remand may also be appropriate. *See* State Medicaid Manual § 2903.2A (“The officially designated hearing authority may ...refer the matter back to the hearing officer for a resumption of the hearing *if the materials are insufficient to serve as a*

*basis for a decision...*”(Emphasis added.)).<sup>10</sup> Thus, a remand may be appropriate when the evidence is such that the ALJ cannot render a decision as to steps 1 through 4. That is not what occurred here.

## CONCLUSION

For all the reasons stated above, this Court will enter an order reversing and vacating the decision of the Board of Review affirming the ALJ.

Dated: February 6, 2004

---

Judge Evelyn Omega Cannon

---

<sup>10</sup>This is of course different than what occurs in Court where a party in the case would simply be dismissed because the party had failed to satisfy the burden of proof.