

United States Court of Appeals
For the First Circuit

No. 83-1752

JOSE C. ZAYAS,
Plaintiff, Appellant,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Gilberto Gierbolini, U.S. District Judge]

Before

Campbell, Chief Judge,
Coffin and Breyer, Circuit Judges.

Rafael Carreras Valle on brief for appellant.
Richard K. Willard, Acting Assistant Attorney General,
Daniel F. Lopez Romo, United States Attorney, and Peter Krynski,
Trial Attorney, Office of the General Counsel, Social Security
Division, Department of Health and Human Services, on brief for
appellee.

March 27, 1984

PER CURIAM. The finding that control of claimant's hypertension has not been achieved because claimant failed to follow prescribed treatment is not supported by substantial evidence; there was no evidence that claimant failed to take his medicine. Other errors also require a remand. The ALJ found Grid Rules 201.10 and 202.11 applicable. The ALJ read both rules as directing a finding of not disabled when in actuality the first rule directs a finding of disabled. The second rule, Rule 202.11, is dependent on claimant having the residual functional capacity (RFC) for light work, which, among other things, entails an ability to lift up to 20 pounds with frequent lifting or carrying of objects up to 10 pounds. 20 CFR § 404.1567 (1983). While the ALJ made a finding claimant had the RFC for light work, he also found claimant should not lift or carry weights in excess of 10 pounds. We think the more specific finding--that claimant cannot lift in excess of 10 pounds--must prevail over the more general finding, and we regard the Appeals Council's attempt to rationalize the two inconsistent findings as unconvincing. Consequently, Rule 202.11 is not applicable. Furthermore, the finding, based on the vocational expert's testimony, that claimant could perform certain unskilled sedentary jobs would appear to conflict with Grid Rule 201.10 and 20 CFR Part 404, Subpart P, Appendix 2, § 201.00(g)(1983). Any departure from a Grid rule must, at a

minimum, be explained. Vazquez v. Secretary of Health and Human Services, 683 F.2d 1, 4-5 (1st Cir. 1982).

This case has been remanded once already and now a further remand is required. The Secretary should consider assigning the case to a different ALJ. Cf., Haverhill Gazette Company v. Union Leader Corp., 333 F.2d 798, 808 (1st Cir. 1964), cert. denied, 379 U.S. 931 (1964).

The judgment of the district court is vacated and the case is remanded with directions that the district court remand to the Secretary for further proceedings consistent with this opinion.