UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IDA BUONANNO, Plaintiff, v. NANCY BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY,[1] Defendant.	)	C.A. No. 16-cv-251-M-LDA

ORDER

The Commissioner's Motion to Amend the Judgment (ECF No. 19) is DENIED. The Commissioner has failed to show that there is an intervening change in controlling law, new evidence, or the need to correct a clear error or prevent manifest injustice.

This Court believes it ruled correctly that the ALJ committed errors of law. It did not attack the ALJ's underlying factual findings. All of the experts (treating and state agency) found that the record was insufficient. The Commissioner now tries to downplay the fact that the claimant Ida Buonanno did not have health insurance causing a gap in treatment and evaluation by asserting that she did not seek free or emergent care. If this Court were to adopt such reasoning, it would undermine Social Security regulations and case law, which hold that where the "individual may be

[1] Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substituted Nancy A. Berryhill for the Commissioner of Social Security as the defendant in this action.

unable to afford treatment and may not have access to free or low-cost medical services," such may contradict a negative credibility finding based on the infrequency of treatment. SSR 96–7. There is nothing in the record to base a ruling that Ms. Buonanno had free or low-cost care available to her. Absent some affirmative evidence that this care was available and Ms. Buonanno did not avail herself of it, it is improper for the Commissioner or the ALJ to assert it as part of the ruling. Such a holding would swallow this rule.

The Commissioner's Motion to Amend the Judgment (ECF No. 19) is DENIED.

IT IS SO ORDERED.

John J. McConnell, Jr.
United States District Judge

June 19, 2017