

DEC 07 2007

Aguilar v. New United, 05-16768

Kleinfeld, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent.

The district court clearly erred in concluding that Aguilar failed to demonstrate that he was disabled as of December 4, 2000. Dr. Rennert, who examined and treated Aguilar beginning in January 2001, stated that Aguilar's disability dated back to December 1, 2000. Nothing in the record discredits this diagnosis. Dr. Kahlon, who treated Aguilar on December 1, 2000, did not indicate whether or not he believed Aguilar was disabled. Illnesses often take a long time to diagnose, but that does not make the eventual diagnosis, including a statement about when the illness began, incorrect or unreliable. Dr. Rennert's statement that Aguilar's disability dates back to December 1, 2000 is the only physician statement we have regarding the date of onset of Aguilar's disability. The district court clearly erred when it determined that Aguilar was not disabled as of December 4, 2000.