

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELAINE BAYLOR,
Plaintiff

CIVIL ACTION

v.

JO ANNE B. BARNHART,
Defendant

:
: NO. 02-3580
:

ORDER AND MEMORANDUM

AND NOW, this 28 day of July, 2003, upon careful and independent consideration of the pleadings and record, the plaintiff's Motion for Summary Judgment (Docket No. 11), the defendant's Motion for Summary Judgment (Docket No. 12), and after review of the Report and Recommendation of United States Magistrate Judge M. Faith Angell (Docket No. 14) and the petitioner's objections thereto, IT IS HEREBY ORDERED that:

(1) the petitioner's objections to the Report and Recommendation are overruled for the reasons stated below;

(2) the Report and Recommendation is APPROVED and ADOPTED;

(3) the plaintiff's Motion for Summary Judgment is DENIED;

(4) the defendant's Motion for Summary Judgment is GRANTED;

(5) JUDGMENT IS HEREBY ENTERED for the defendant and against the plaintiff.

In her Report and Recommendation, Magistrate Judge M. Faith Angell concluded that substantial evidence supported the Administrative Law Judge's (ALJ) decision to deny the plaintiff supplemental security income (SSI) benefits. The Magistrate Judge recommended granting the defendant's summary judgment motion and denying the plaintiff's summary judgment motion.

The plaintiff objected to the Report and Recommendation. She argues that the Magistrate Judge did not fully consider the arguments in the plaintiff's summary judgment motion. The Court overrules the plaintiff's objections and adopts the Report and Recommendation. The Court writes separately to address the plaintiff's objections.

The plaintiff raises the same two issues **in** her summary judgment motion and objections. First, the plaintiff argues that the ALJ improperly disregarded her treating physician's opinion regarding the plaintiff's ability to work. Second, the plaintiff claims that the ALJ erred by not finding the plaintiff's testimony on the severity of her migraine headaches more credible especially when competent medical evidence corroborated the testimony.

Before reaching the plaintiff's objections, the Court observes that the Magistrate Judge correctly stated the standard of review for ALJ decisions that deny **SSI** benefits. The Court's review is limited to determining whether there was substantial

evidence to support the ALJ's findings. Substantial evidence is less than a preponderance of the evidence but more than a mere scintilla of evidence. A court may not weigh the evidence or substitute its own conclusions for that of the ALJ. Reefer v. Barnhart, 326 F.3d 376, 379 (3d Cir. 2003); Burns v. Barnhart, 312 F.3d 113, 118 (3d Cir. 2002).

Dr. Boris Nikolov, the plaintiff's treating neurologist, opined that the plaintiff's migraine headaches prevented her from sustaining **full** time employment. The ALJ, however, concluded that the plaintiff could perform the functional demands of light level exertional work subject to certain limitations. See R. 19-20, 154-55, 172-78, 180, 183, 189-92.

Generally, opinions of a treating physician are entitled to substantial weight. A treating physician's opinion on the nature and severity of an impairment is given controlling weight if the opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record." 20 C.F.R. § 416.927(d)(2); see Farqnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001).

A treating physician's opinion may not be outrightly rejected in the absence of contradictory medical evidence. The treating physician's opinion cannot be rejected due to the ALJ's

own credibility judgments, speculation, or lay opinion. Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000).

An ALJ may give more or less weight to the opinion depending on the supporting explanations for the opinion. Plummer v. Apfel, 186 F.3d 422, 430 (3d Cir. 1999). A physician's opinion may be discounted when: (1) the opinion is inconsistent with other information provided by that physician; (2) the opinion is inconsistent with medical evidence provided by other treating physicians; (3) the opinion is inconsistent with information provided by other examining physicians; or (4) the opinion is conclusory. See, e.g., Plummer, 186 F.3d at 430-31 (inconsistent information from treating physicians); Adorno v. Shalala, 40 F.3d 43, 47-48 (3d Cir. 1994) (inconsistent with other examining physicians); Jones v. Sullivan, 954 F.2d 125, 128-29 (3d Cir. 1991) (conclusory opinions). When the opinion of a treating physician is discounted or rejected, an ALJ must provide some reason for his decision. See Adorno, 40 F.3d at 48.

The ALJ's decision not to give Dr. Nikolov's opinion controlling weight was supported by substantial evidence. The ALJ noted that Dr. Nikolov did not offer clinical or laboratory diagnostic tests to support his opinion. This fact alone is enough for the ALJ not to give the opinion controlling weight. See 20 C.F.R. § 416.927(d) (2).

In addition to the lack of clinical or laboratory diagnostic tests, the ALJ observed that the Dr. Nikolov's opinion was inconsistent with other evidence in the record. For example, the **ALJ** discussed: (1) the plaintiff's self-reported activities such as cooking, cleaning, shopping, climbing stairs twice daily, and riding in taxis and automobiles; (2) the outpatient medical care the plaintiff received for her ailments; and (3) Dr. Nikolov's statement that the plaintiff's migraine headaches responded to medication before she suffered a head injury in September 1999. This was substantial evidence that was inconsistent with Dr. Nikolov's opinion. The ALJ, therefore, did not have to give controlling weight to Dr. Nikolov's opinion. See 20 C.F.R. § 416.927(d)(2).

Although Dr. Nikolov's opinion was not entitled to controlling weight, the ALJ was required to consider what weight to give Dr. Nikolov's opinion. The ALJ discounted the opinion because: (1) the opinion was based almost exclusively on the plaintiff's assertions; (2) there was a lack of objective medical evidence, such as clinical or diagnostic tests, supporting the opinion; (3) the opinion conflicted with the plaintiff's self reported activities; (4) the plaintiff only needed outpatient care for her migraine headaches; (5) Dr. Nikolov stated that the plaintiff's migraine headaches responded **to** medication until September 1999 when she suffered a head injury; and (6) the

earliest medical documentation in the record was from October 19, 1998 despite the plaintiff complaining that she suffered from migraine headaches since 1994.

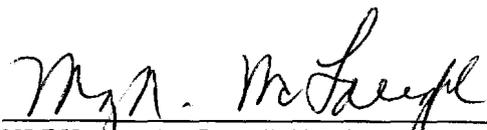
Contrary to the plaintiff's assertions, the ALJ did not outrightly reject Dr. Nikolov's opinion or substitute his own opinion for Dr. Nikolov's opinion. Instead, the ALJ discussed the lack of objective evidence supporting Dr. Nikolov's opinion and the evidence that undercut the opinion. Combining the lack of objective evidence supporting Dr. Nikolov's opinion with the evidence that undercut the opinion provides substantial evidence for the ALJ's decision to discount the opinion.

The ALJ also found the plaintiff's testimony regarding the severity of her migraine headaches not to be fully credible. The ALJ was required to give the plaintiff's subjective complaints serious consideration and make specific findings of fact, including credibility, regarding the plaintiff's testimony. Once the ALJ complied with these requirements, he could determine how much weight to give the plaintiff's testimony. See Burns, 312 F.3d at 129; Mason v. Shalala, 994 F.2d 1058, 1067-68 (3d Cir. 1993).

The ALJ complied with his duty in determining what weight to give the plaintiff's testimony. The ALJ properly exercised his authority to discount Dr. Nikolov's opinion. The discounting of Dr. Nikolov's opinion left the plaintiff without

medical evidence that corroborated her testimony. The ALJ decided not to fully credit the testimony after making specific findings of fact regarding the testimony including whether the plaintiff was credible. The ALJ discussed the evidence that was inconsistent with the plaintiff's testimony. This evidence included: (1) the plaintiff's self-reported activities; (2) the plaintiff only receiving outpatient medical care for her migraine headaches; and (3) the lack of medical documentation in the record before October 19, 1998 despite the plaintiff's assertion that she suffered from migraine headaches since 1994. The inconsistencies led the ALJ to find that the testimony was not fully credible. The inconsistencies also provide substantial evidence to support the ALJ's finding regarding the plaintiff's credibility. The ALJ's finding, therefore, cannot be disturbed.

BY THE COURT:



MARY A. McLAUGHLIN, J.