

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

ROSALIE MOLINA,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	NO. 03-CV-2039
JO ANNE B. BARNHART,	:	
COMMISSIONER OF	:	
SOCIAL SECURITY,	:	
Defendant.	:	

Diamond, J.

Memorandum

Plaintiff Rosalie Molina asks this Court to overturn the decision of the Commissioner of Social Security denying her claim for disability benefits under Title II of the Social Security Act. I deny Plaintiff's Motion.

Procedural History

Plaintiff filed an application for disability insurance benefits under Title II of the Social Security Act, alleging disability due to hearing loss, chronic fatigue, depression, weakness, and pain in her chest, legs, and hands. 42 U.S.C. § 405(g) (2004). The Commissioner denied the application. At Plaintiff's request, an Administrative Law Judge conducted a hearing on October 30, 2001; he denied Plaintiff's claim on April 16, 2002. The Appeals Council reviewed the matter and, on February 12, 2003, upheld the ALJ's decision. The Commissioner's decision to deny benefits became final on February 12, 2003.

On April 2, 2003, Plaintiff timely filed a Complaint with this Court seeking

review of the ALJ's decision. Both Plaintiff and the Commissioner filed Motions for Summary Judgment. The case was referred to Magistrate Judge M. Faith Angell pursuant to 28 U.S.C. § 636(b) and Local Rule 72.1(d)(1)(C). In her Report and Recommendation, Judge Angell recommends that I affirm the ALJ's decision and grant summary judgment in the Commissioner's favor. Plaintiff has submitted her Written Objections to the Report and Recommendation.

Factual History

Plaintiff is 62 years old and has a high school education. (Tr. 18, 24, 59). She received disability insurance benefits from December 1988 until August 1996 because of physical limitations resulting from Epstein-Barr syndrome. (Tr. 18). Plaintiff has previously worked in a number of clerical jobs. Until 1990, Plaintiff worked as a clerical secretary for a hospital. (Tr. 70). From January 1994 through June 1995, she worked as a telephone order taker for a beauty supply company. (Tr. 70). In January 1998, Plaintiff began working as a telephone reservation taker for a bus company. (Tr. 70). She was lost this position when the bus company went out of business in August 1999. (Tr. 18, 70).

Plaintiff applied for disability insurance benefits in March 2000, claiming that she had been disabled since August 1999. (Tr. 18). At the October 30, 2001 hearing, Plaintiff testified before the ALJ, as did an independent medical expert, Daniel Lewis, M.D., and an independent vocational expert, Roslyn Pierce, M.A. Plaintiff alleged disability because of chronic fatigue, depression, asthma, gastroesophageal reflux disease, fibromyalgia, hypertension, undiagnosed pain in her hands, and hearing loss. (Tr. 18, 159). The ALJ found that because these asserted impairments would not prevent Plaintiff from performing her past relevant work,

she is not disabled under the Social Security Act. (Tr. 24). The ALJ assessed Plaintiff's residual functional capacity, concluding that Plaintiff can lift/carry up to 10 pounds frequently; sit/stand/walk (each) for approximately six hours per eight-hour workday; and has no non-exertional limitations except for "low hearing." (Tr. 24). The ALJ "accord[ed] little credibility to the claimant's subjective complaints, as . . . many of her symptoms . . . have not been shown to result from any impairments which have been clearly determined by appropriate clinical and laboratory diagnostic findings." (Tr. 19). Finally, the ALJ found that although Plaintiff has a combination of impairments considered "severe" under 20 C.F.R. § 404.1520(b), these medically determinable impairments do not "meet or equal" in severity the criteria for an impairment in the Listing of Impairments, Appendix 1, Subpart P, Social Security Regulation No. 4. (Tr. 16, 23).

Standard of Review

Judicial review of a Social Security claim is based upon the pleadings and the transcript of record. 42 U.S.C. § 405(g). The scope of review is "limited to determining whether the Commissioner applied the correct legal standards, and whether the record, as a whole, contains substantial evidence to support the Commissioner's findings of fact." Frazier v. Apfel, No. 99-715, 2000 U.S. Dist. LEXIS 3105, at *3 (E.D. Pa. Mar. 7, 2000) (citing Berger v. Apfel, 200 F.3d 1157, 1161 (8th Cir. 2000)); see also Schmidt v. Apfel, 201 F.3d 970 (7th Cir. 2000); Tejada v. Apfel, 167 F.3d 770, 773 (2d Cir. 1999). The Court exercises plenary review over questions of law. Finkelstein v. Sullivan, 924 F.2d 483, 486 (3d Cir. 1991). The Court reviews findings of fact for "substantial evidence," defined as "that which would be sufficient to allow a reasonable factfinder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of the evidence." Montes v. Apfel, No. 99-2377, 2000 U.S. Dist. LEXIS

4030, *2 (E.D. Pa. Mar. 27, 2000) (citing Richardson v. Perales, 402 U.S. 389, 401, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1972)). It is the responsibility of the ALJ, not the District Court, to assess the credibility of witnesses and resolve conflicts in the evidence. Perry v. Barnhart, No. 02-1289, 2003 U.S. Dist. LEXIS 24663, *18-19 (E.D. Pa. Sep. 26, 2003); Perez v. Barnhart, No. 02-5684, 2003 U.S. Dist. LEXIS 9803, *4 (E.D. Pa. May 27, 2003). If the ALJ's findings are supported by substantial evidence, the District Court is bound by them even if the Court would have found different facts. Fagnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001) (citing Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999)).

The District Court is obligated to give the Commissioner's decision given great deference. Montes v. Apfel, No. 99-2377, 2000 U.S. Dist. LEXIS 4030, *2 (E.D. Pa. Mar. 27, 2000). Furthermore, the Court may not "conduct *de novo* review of the Commissioner's decision or re-weigh the evidence of record." Palmer v. Apfel, 995 F. Supp. 549, 552 (E.D. Pa. 1998).

The extent of District Court review of a Magistrate Judge's Report is committed to the Court's discretion. Jozefick v. Shalala, 854 F. Supp. 342, 347 (M.D. Pa., 1994). See Thomas v. Arn, 474 U.S. 140, 154 (1985); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984); Heiser v. Ryan, 813 F. Supp. 388, 391 (W.D. Pa. 1993), aff'd, 15 F.3d 299 (3d Cir. 1994). The District Court must review *de novo* those portions of the Report to which objection is made. 28 U.S.C. § 636 (b)(1)(C) (2004). The judge may "accept, reject or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001); 28 U.S.C. § 636 (b)(1)(C).

Discussion

The ALJ concluded that "the claimant's medically determinable . . . combination

of conditions . . . do not prevent the claimant from performing her past relevant work.” (Tr. 24). Upon an independent review of the record, Magistrate Judge Angell concluded that “the ALJ had sufficient support in the Record to find that Ms. Molina was not totally disabled and could return to her prior work.” Angell Report and Recommendation at 5.

Plaintiff contends that the Magistrate Judge: (1) erred in adopting the ALJ's conclusion that Plaintiff is not disabled and recommending that the Commissioner's Summary Judgment Motion be granted; (2) failed to address Plaintiff's argument that the ALJ did not give the required deference to the opinion of Plaintiff's treating physician; (3) did not address Plaintiff's argument that the ALJ erred by failing to conduct a thorough inquiry into the types and levels of job stresses involved in the jobs identified by the vocational expert; (4) erred in adopting the ALJ's conclusion that Plaintiff's anxiety and depression are not severe impairments; and (5) erred in upholding the ALJ's decision not to include a number of Plaintiff's impairments in his hypothetical questioning of the vocational expert.

There is substantial evidence to support the ALJ's conclusion that the Plaintiff is not disabled. Testimony before the ALJ, and numerous exhibits, confirm that Plaintiff's impairments are either “mild,” “normal,” “not severe,” or not supported by objective medical evidence. (Tr. 109, 113, 116, 153, 157, 159, 160, 177, 181, 189, 193, 272, 293, 297-298, 300, 301). There is evidence that some of Plaintiff's impairments -- hearing loss, depression, and asthma -- are either adequately managed or at least aided by medical treatment, including hearing aids and anti-depression and asthma medications. (Tr. 110, 154, 159, 178, 230-231, 236). Additionally, the ALJ did not believe Plaintiff's testimony, particularly with respect to her assertions of impairment. (Tr. 19).

Three state agency physicians -- Drs. Maura Smith, Harry Weeks, and Steven Russell -- examined Plaintiff and submitted reports supporting the finding that Plaintiff is able to return to her previous employment and perform basic unskilled and semi-skilled work activities. (Tr. 107-115, 116-124, 216-218). A fourth doctor -- Dr. Daniel Lewis -- assessed Plaintiff's complete medical record and testified before the ALJ that, aside from the hearing problems (which he was not competent to assess), there are no conditions that would interfere with her ability to perform basic work activities. (Tr. 293). In these circumstances, the ALJ's determination that Plaintiff is not disabled is certainly reasonable.

Plaintiff next objects that the ALJ failed to afford proper deference to the opinion of her treating physician, Dr. Lance Wright. Plaintiff is correct that a treating doctor's opinion is usually given substantial weight. See Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988); 20 C.F.R. § 404.1527(d). An ALJ may disregard that opinion, however, if it contradicts itself or is inconsistent with the entire medical record. S.S.R. 96-2p, 111 (Supp. 2003); Harris v. Barnhart, No. 03-0213, 2004 U.S. Dist. LEXIS 12927 (E.D. Pa. Jul. 7, 2004). See also Jones v. Sullivan, 954 F.2d 125, 129 (3d Cir. 1991); Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994). Here, the written evaluations of Plaintiff's treating physician have notable inconsistencies, both internally and with the general record, including inconsistent diagnoses and an over-reliance on subjective complaints without objective support. (Tr. 21-22, 107-115, 116-124, 216-218). Accordingly, the ALJ could give "little weight to Dr. Wright's physical and mental capacities assessments." (Tr. 21). In light of the considerable evidence contradicting Dr. Wright's opinion -- including the opinions of Dr. Wright himself -- the ALJ was plainly correct here.

Plaintiff's next objection -- that the ALJ failed to inquire thoroughly into the types

and level of job stress -- also fails. The ALJ addressed Dr. Wright's belief that Plaintiff's "sustained effort under stress could not be maintained without respite, support, and time out," and concluded that this opinion (especially in light of contradicting medical evidence) did not support a finding of a "severe" mental impairment. (Tr. 22). Indeed, the ALJ found, based on other aspects of Dr. Wright's report, and on a psychiatric review conducted by Dr. Harry Weeks, that Plaintiff suffers from "not more than mild limitations in the areas of activities of daily living [and] social functioning." (Tr. 22). Further, the vocational expert, Rosalyn Pierce, M.A., was asked if a person suffering from a non-severe anxiety disorder and non-severe depression could perform the past relevant work. (Tr. 304). Ms. Pierce responded that such a person could perform all three past relevant jobs. (Tr. 304). The ALJ found this part of Ms. Pierce's testimony "credible and consistent with the evidence of records." (Tr. 23). The ALJ found it significant that Plaintiff has complained of anxiety and stress-related symptoms for many years, including periods during which she was gainfully employed. Plainly, the ALJ more than adequately inquired into the types and level of job stress Plaintiff could tolerate.

Plaintiff next asserts that the ALJ erred by characterizing Plaintiff's anxiety and depression as non-severe impairments. Yet, Dr. Wright (Plaintiff's treating physician) referred to her depression as "mild." (Tr. 22, 159, 272). Further, Plaintiff is being treated for her depression and anxiety through medication, and record evidence confirms that she has benefitted from this treatment. (Tr. 154, 159, 230). Plaintiff also has suffered from depression and anxiety for approximately ten years, and for a significant portion of that time, she was employed. Finally, the ALJ was certainly entitled to "accord little credibility to the claimant's subjective complaints." (Tr. 19). Accordingly, the ALJ reasonably concluded that Plaintiff's anxiety and

depression are not “severe impairments.”

Plaintiff finally contends that the ALJ failed to include a number of alleged impairments -- hearing loss, asthma, anxiety, and depression -- in the hypothetical questions posed to the vocational expert. Where, as here, an ALJ properly determines that an impairment is not supported by medical evidence in the record, he is not required to include such impairments in a hypothetical posed to a vocational expert. Randolph v. Barnhart, No. 03-3582, 2004 U.S. App. LEXIS 19146, *18 n.9 (8th Cir. Sept. 13, 2004) (citation omitted); Ridenbaugh v. Barnhart, 57 Fed. Appx. 101, 105-106 (3d Cir. 2003) (unpublished opinion). Additionally, where an impairment would not limit a claimant's ability to perform the tasks required by the employment, then the ALJ may omit the impairment from the hypothetical. See Ramirez v. Barnhart, 372 F.3d 546, 555 (3d Cir. 2004).

As discussed earlier, there is substantial evidence to support the ALJ's conclusion that Plaintiff's anxiety and depression were non-severe impairments, and that Plaintiff had previously been able to work while suffering from these ailments. Similarly, Plaintiff had been able to work despite her hearing problems. Although Plaintiff asserts that her hearing has worsened since she last worked, there is no objective evidence that her hearing has worsened *with* her hearing aides. Indeed, the ALJ noted that Plaintiff "does not allege that her bilateral hearing loss has not been adequately compensated for by appropriate hearing aids." (Tr. 19). Although Plaintiff complained about having trouble hearing customers while talking on the telephone, the ALJ stated that he can "accord little credibility to the claimant's subjective complaints." (Tr. 19). The ALJ also found that the objective medical findings as to Plaintiff's asthma did not support her complaints of asthma-related symptoms. (Tr. 19).

Finally, vocational expert testimony is not needed to establish that a claimant can return to her past relevant work. Banks v. Massanari, 258 F.3d 820, 827 (8th Cir. 2001) (the testimony of a vocational expert is “not required at step four where the claimant retains the burden of proving she cannot perform her prior work”) (citations omitted); accord Rivera v. Barnhart, 239 F. Supp. 2d 413, 421 (D.De. Dec. 23, 2002). As discussed earlier, the ALJ correctly determined that Plaintiff could return to her past relevant work; therefore, the testimony of a vocational expert is not required in this case. See Rivera, 239 F. Supp. 2d, at 420 (“[w]here there is other sufficient evidence to support the A.L.J.’s conclusion that a claimant is able to perform past relevant work, the testimony of a vocational expert is not needed.”) (citing 3 Social Security Law & Practice § 43:4).

In sum, after reviewing Plaintiff’s Objections *de novo*, I have determined that the ALJ’s legal rulings are correct and his factual findings are supported by substantial evidence. Accordingly, I adopt Judge Angell’s Report and Recommendation. An appropriate order follows.

Date

Paul S. Diamond, J.